

RECEIVED

Oct 23 2023

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master in Equity

Unpublished Opinion No. 2023-UP-0293
Filed August 16, 2023
Petition for Rehearing Denied September 21, 2023

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA
FEDERAL CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN
GEANURACOS and DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Petitioners.

Appellate Case No. 2020-001168
Lower Court Case No. 2018-CP-18-02053

APPENDIX – VOLUME II

Robert B. Varnado (SC Bar # 0007085)
VARNADO LAW FIRM, LLC
P.O. Box 387
Charleston South Carolina 29402
(843) 737-7301
Attorneys for Appellants

Other Counsel of Record:
Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorney for Respondent

Mary Lou Cercopely et al v. NCP Pilgrim, LLC
APPELLATE CASE NO.: 2020-1168

INDEX TO APPENDIX

ORDERS

Order of Reference 1.4.19	5
Order on Various Motions 4.4.19	8
Master’s Decree of Sale & Foreclosure 7.13.20	15
Master’s Notice of Foreclosure Sale 7.14.20	32
Master’s Supplemental Notice of Foreclosure Sale 8.5.20	35
Order Imposing Supersedeas Bond 10.15.20	40
Order Denying Appellants’ Emergency Motion to Stay Sale 8.5.20	53
Supplemental Master’s Decree of Sale & Foreclosure 8.5.20	56
Order Denying Appellants’ Motion to Reconsider 8.5.20	61

PLEADINGS

Summons, Complaint (with exhibits 1 through 6) & Lis Pendens 11.15.18	65
Answer & Counterclaims 1.23.19 (with exhibits A through D)	96
Reply (Answer) to the Counterclaims 2.21.19	123
Amended Summons & Complaint (w/o exhibits) 4.5.19	127
Amended Answer & Counterclaims (w/o exhibits) 4.22.19	133
Reply (Answer) to Amended Counterclaims 6.7.19	145
Notice of Appeal	149

MOTIONS AND MEMORANDA OF LAW

NCP’s Pre-Trial Brief 1.27.20	182
Appellants’ Pre-Trial Brief 1.28.20	190

NCP's Post-Trial Brief and Exhibits 2.11.20	198
Appellant's Post-Trial Brief and Exhibits 2.26.20	305
NCP's Response to Appellant's Post-Trial Memorandum 3.25.20	411
Emergency Motion to Stay and for Supersedeas 7.14.20	413
Motion to Reconsider 7.23.20	417
NCP's Memorandum in Opposition to Motion to Stay 7.30.20	428
NCP's Memorandum in Opposition to Motion to Reconsider 7.30.20	432
2nd Emergency Motion to Stay 8.25.20	447
NCP's Memorandum in Opposition to 2nd Motion to Stay 9.11.20	451
Reply Memorandum RE: 2nd Emergency Motion to Stay 9.14.20	458

TRANSCRIPTS & TRIAL EXHIBITS

Trial Transcript	462
Trial Exhibit 1	488
Trial Exhibit 2	491
Trial Exhibit 3	496
Trial Exhibit 4	498
Trial Exhibit 5	504
Trial Exhibit 6	514
Trial Exhibit 7	518
Trial Exhibit 8	522
Trial Exhibit 9	529
Trial Exhibit 10	534
Trial Exhibit 11	539
Trial Exhibit 12	541

Trial Exhibit 13	543
Trial Exhibit 14	555
Trial Exhibit 15	561
Trial Exhibit 16	564
Trial Exhibit 17	589
Trial Exhibit 18	592
Trial Exhibit 19	595
Trial Exhibit 20	597
Trial Exhibit 21	599

RULE 242(E) MATERIALS

Petitioners' Final Brief to Court of Appeals	605
Respondent's Final Brief to Court of Appeals	635
Petitioners' Final Reply Brief	658
Opinion	671
Petition for Rehearing	678
Order Denying Rehearing	688

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	PLAINTIFF'S RESPONSE TO
Mary Lou Cercopely; David S. Clancy; South	)	DEFENDANTS' POST-TRIAL
Carolina Federal Credit Union; Southcoast	)	MEMORANDUM
Community Bank; Joan Geanuracos; David	)	
Sean Clancy,	)	
DEFENDANTS.	)	
	)	

Plaintiff NCP Pilgrim, LLC ("NCP") respectfully submits its Response to Defendants' Post-Trial Memorandum, dated February 26, 2020 ("Memorandum").

Defendants' Memorandum presents issues that were waived at the January 28, 2020 trial. At the trial, after Plaintiff rested its case, Defendants expressly waived all defenses except for its contention that this Court lacked subject matter jurisdiction under section 1821(d)(13)(D) of the Financial Institutions Reform, Recovery, and Enforcement Act ("FIRREA"). 12 U.S.C. §1821(d)(13)(D). However, in their Memorandum, Defendants' assert an entirely new defense - the subject Home Equity Variable Draw Agreement ("Note") was not properly assigned to NCP from CRE/ADC Venture, 2012-1, LLC ("CRE/ADC"). It is Plaintiff's position this defense was clearly waived at trial and cannot be asserted.

Assuming, *arguendo*, that Defendants did not waive this new defense regarding the validity of the assignment from CRE/ADC to NCP during trial ("Assignment"), Plaintiff contends it is an unfounded defense for the following reasons.

First, Defendants did not raise any issue with the validity of the Assignment at trial. Plaintiff entered the Assignment into evidence through its witness, Brittany Loukus. Defendants

did not object to the Assignment and did not question the validity of the Assignment during their questioning of Ms. Loukus. Defendants cannot wait until after a trial has ended to raise an issue that could have been raised at trial. *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995). Defendants had ample opportunity throughout the trial to raise any issue regarding the validity of the Assignment but elected not to challenge the Assignment during the trial.

Second, Defendants' argument relies heavily on the terms of multiple documents, including a December 11, 2012 Private Owner Interest Sale and Assignment Agreement. None of these documents were entered into evidence at the January 28, 2020 trial. Thus, they are not properly before this Court.

Third, Defendants' argument assumes that NCP is not in possession of the original Note. NCP has repeatedly asserted in both written documents and through live testimony that it is in possession of the original Note. Furthermore, NCP will present the original Note to the Court and to Defendants at the status conference in front of Judge Chellis whenever it is rescheduled. As the owner and possessor of the original Note, NCP is entitled to enforce the terms of the Note and foreclose on the subject property.

Respectfully submitted,
Russell P. Patterson, P.A.

/s/Lauren P. Williams
Lauren P. Williams
Russell P. Patterson
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9301
lauren@russellpattersonlaw.com
russell@russellpattersonlaw.com
Attorneys for the Plaintiff

Hilton Head Island, SC
March 25, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION AND
	)	EMERGENCY MOTION FOR STAY OF
Mary Lou Cercopely, David S. Clancy,	)	PROCEEDINGS TO ENFORCE
South Carolina Federal Credit Union,	)	JUDGMENT or for SUPERSEDEAS BOND
Southcoast Community Bank, John	)	and TO IMPOSE BOND ON PLAINTIFF
Geanuracos, and David Sean Clancy	)	
	)	
Defendants.	)	
	)	

TO: LAURENS P. WILLIAMS, ATTORNEY FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the Defendants Mary Lou Cercopely, David S. Clancy and David Sean Clancy (“these Defendants”), by and through their below-counsel and pursuant to Rule 62(f) of the South Carolina Rules of Civil Procedure, and Rule 241(c) of the South Carolina Appellate Court Rules, will move before the Honorable James E. Chellis, Dorchester County Master in Equity, at such time, date and place as counsel may be heard, for an *Emergency Order for Stay of Proceedings to Enforce Judgment* [given Monday, July 13, 2020 in the above-case attached hereto as Exhibit “A”] and the Notice of Master’s Sale, given Tuesday, July 14, 2020, and attached hereto as Exhibit B). or alternatively to grant a *Supersedeas Bond*, and to preclude the judicial sale of the foreclosed property, TMS # 137-07-07-023-000-C, scheduled for September 1 and October 1, 2020.

This motion is based on the anticipated motion to reconsider, alter or amend to be taken by these Defendants of the judgment given on July 13, 2020, and the anticipated appeal therefrom to the South Carolina Court of Appeals.

1) Rule 62(b), SCRCP, which provides, in relevant part: “[w]hen an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay ... the bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the Court.”

2) Section 18-9-170 of the South Carolina Code states:

“If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. **When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment;** and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.”

(emphasis added).

3) Section 18-1-130(a)(2) of the South Carolina Code states in pertinent part:

“A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed. The plaintiff in such a case may not proceed with a sale of defendant's property if the defendant enters into an undertaking, with good sureties, in double the appraised value of the property or the amount of the judgment, to pay the judgment with legal interest and all costs

and damages the plaintiff may sustain by reason of the appeal or to produce the property levied on and submit to the sale if the judgment is confirmed.

emphasis added). Additionally, Rule 241(c)(3) of the South Carolina Appellate Court Rules states that “the granting of a supersedeas ... under this Rule, may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking as the lower court may deem appropriate.”

Accordingly,

(A) these Defendants seek that the Court impose a supersedeas bond upon them; to give these Defendants a reasonable time to post the bond; to postpone the judicial sale accordingly (scheduled to commence September 1, 2020); and for such other and further relief as the Court may deem just and proper.

(B) Additionally, if the Plaintiff still insists that the property be set for judicial sale and an appeal is filed, these Defendants move to have the Plaintiff post a bond or undertaking, with two good sureties, issued for double the appraised value of the property, pursuant to S.C. Code Ann. § 18-1-130(a)(2); and for such other and further relief as the Court may deem just and proper.

Pursuant to Rule 11, SCRCP, the undersigned certifies that consultation with counsel would serve no useful purpose.

(signature on following page)

Respectfully submitted,

BROWN & VARNADO LLC

/s Robert B. Varnado

Robert B. Varnado
103 Ronnie Boals Blvd. (29464)
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7301
rvarnado@brown-varnado.com
***Attorneys for the Defendants Mary Lou Cercopely,
David S. Clancy and David Sean Clancy***

July 14, 2020
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within ***Notice of Motion and Emergency Motion for Stay of Proceedings to Enforce Judgment, or Supersedeas Bond and to Enforce Bond on Plaintiff*** upon all parties to these matters by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed to counsel of record as follows:

Lauren P. Williams
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorney for Plaintiff

/s Robert B. Varnado

Robert B. Varnado

July 14, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF MOTION and
	)	DEFENDANTS MARY LOU
Mary Lou Cercopely, David S. Clancy,	)	CERCOPELY, DAVID S. CLANCY and
South Carolina Federal Credit Union,	)	DAVID SEAN CLANCY'S
Southcoast Community Bank, John	)	MOTION TO RECONSIDER
Geanuracos, and David Sean Clancy	)	
	)	
Defendants.	)	
	)	

**TO: RUSSELL P. PATTERSON, ESQUIRE and LAUREN P. WILLIAMS, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF:**

PLEASE TAKE NOTICE that the Defendants Mary Lou Cercopely, Davis S. Clancy and David Sean Clancy ("these Defendants") by and through their undersigned counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable James E. Chellis, Dorchester County Master in Equity, on August 3, 2020 at 11:00 a.m. at the Dorchester County Courthouse, 5200 East Jim Bilton Boulevard, St. George, South Carolina 29477, or at such other time, date and place as counsel may be heard, for an Order to Alter, Amend or otherwise Reconsider the *Master's Decree of Sale and Foreclosure* ("Order"), filed July 13, 2020, and the *Notice of Master's Sale* ("Notice") for September 1, 2020, also filed July 13, 2020.

BACKGROUND

The question on reconsideration is whether the Court has the power to proceed with Plaintiff NCP Pilgrim LLC's ("NCP") declaratory "action seeking a determination of rights with respect to, the assets of any depository institution for which the Federal Deposit Insurance

Corporation (“Corporation”)¹ has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver.” FIRREA at 12 U.S.C. 1821(d)(13)(D)(i).

Thus, the issue is *not* whether this court erroneously decided a matter of federal law; *nor* is it a question as to whether federal or state law properly governs a case properly before the Court. Rather, this motion seeks to have the Court reconsider the Order and Notice because this Court finally and erroneously asserted its jurisdiction to deal with a dispute beyond its power and instead in the exclusive domain of the Corporation.

RELEVANT FACTS

A few facts are needed to appreciate the jurisdictional bar here:

1. On June 10, 2004 David Clancy (“Clancy”) executed a Home Equity Variable Draw Agreement with Carolina Federal Savings Bank (“CFSB”) governing a line of credit (“Clancy LOC”) in an amount up to \$258,940.00.
2. His mother, Barbara Clancy executed a mortgage (“Mortgage”) on 117 South Cedar Street, Summerville South Carolina to secure repayment on the LOC.
3. On June 8, 2012, the Office of the Comptroller of the Currency (“OCC”) closed CFSB and named the Federal Deposit Insurance Corporation as Receiver (“FDIC-R”). *See* FDIC Press Release 2012-065, June 8, 2012.
4. Through a *structured transaction*, on December 11, 2012, FDIC-R sold and transferred the Clancy LOC (with 492 other “loans”) to itself, as the sole member of CRE/ADC Venture 2012-1, LLC (“CRE/ADC”) as evidenced by Assignment of Real Estate Mortgage

¹ The FDIC is referred to as ‘the Corporation’ in the statutes; 12 U.S.C. § 1811(a), *et seq.*

recorded with the Dorchester County ROD in Book 8718 at Pages 34-38. It later sold a minority interest in CRE/ADC to Colfin 2012 CRE ADC Funding, LLC.

5. Thereafter, Barbara A. Clancy died on October 31, 2012, and pursuant to her Will her interest in the subject property was left to Clancy and his sister, Mary Lou Cercopely (“Cercopely”), as evidenced by that Deed of Distribution recorded with the Dorchester County ROD in Book 9884 at Page 109.

6. On August 15, 2018, Colin Ferguson (“Ferguson”) a Kentucky attorney who performs various services for NCP, filed an Assignment of Mortgage from CRE/ADC to Plaintiff. (Plaintiff’s Pre-Trial Brief pp. 3).

7. The Assignment of Mortgage was signed by Plaintiff employee Marshall Burchard as Attorney-in-fact under a Limited Power of Attorney (“LPOA”) dated June 26, 2018 as evidenced by the Assignment of Mortgage recorded with the Dorchester County ROD in Book 11512 Pages 127-129.

8. On November 15, 2018, NCP filed a foreclosure action against these Defendants in Dorchester County as the “holder of said loan documents.”

9. Therein, NCP sought, *inter alia*, **a declaratory judgment as to perfect NCPP’s mortgage based on the following allegations in the complaint:**

“March 8, 2013, the Note and Mortgage was assigned by Carolina to CRE/ADC Venture 2012-1, LLC, as recorded with the ROD in Book 8718 at Page 33 (Exhibit 4).” (Complaint ¶ 12);

and that

“[t]hereafter, on or about August 23, 2018, CRE/ADC Venture 2012-1, LLC assigned the Note and Mortgage to NCP Pilgrim, LLC, as recorded with the ROD in Book 11512 at Page 126 (Exhibit 5).” (Complaint ¶ 13).

10. Based on public records in both Dorchester County² and on the Corporation's website,³ these Defendants challenged the validity of the purported assignments in their timely answer and requested further discovery memorializing a sale of the LOC from CRE/ADC to NCP.

11. NCP, however, produced no valid assignment under the UCC (because it is based on a Power of Attorney to assign the Mortgage, rather than delivery of the Clancy LOC which the Mortgage must follow); likewise, it has refused to take the simplest route of obtaining an order through the administrative process available from the Corporation to verify its rights.

12. Therefore, prior to the start of the trial, Defendants moved to dismiss the case for lack of subject matter jurisdiction pursuant to 12 U.S.C. 1821(d)(13)(D)(i)

13 Under FIRREA, 12 U.S.C. § 1821(d)(13)(D) sets a jurisdictional bar over certain claims by providing for judicial review only after an administrative claims process as follows:

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over —

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or
- (ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

² The LPOA, recorded Dorchester County ROD in Book 11512 at Pages 122-125, is signed on June 26, 2018 by Mark M. Hedstrom, Vice President of Colfin 2012 CRE ADC Funding, LLC, as Manager of CRE/ADC. The LPOA can be terminated at any time under December 31, 2018 when it automatically revokes. Page 124. The Court may take judicial notice.

³ https://www.fdic.gov/about/diversity/mwop/APIW_PP/6Structured_Transaction_Overview.pdf describing that the FDIC-R retains ownership and interest in the assets contributed to CRE/ADC.

LEGAL ARGUMENT AND ANALYSIS

I. FIRREA

The court's reliance on a procedural rule – i.e., that Clancy waived this argument⁴ – rests on an erroneous view of the scope of 12 U.S.C. § 1821(d)(13)(D)(i)'s pre-emption, and as matter of federal law, invokes federal jurisdiction⁵.

Acknowledging that other *federal courts* “have specifically recognized that the disposition of a failed banks’ assets is one of the quintessential statutory powers of the FDIC as receiver,” (Order pp. 5, ¶ 4), this Court nevertheless held the federal powers of the FDIC-R (rather than the failed institution) still got assigned to NCP anyway, citing *Twelfth RMA Partners, L.P. v National Safe Company*, 335 S.C. 635, 640, 518 S.E.2d. 44, 46 (Ct. App 1999) (“the receiver’s right to sue...would thus be among the ‘rights, remedies and benefits which are incidental to the thing assigned”).

The court's reasoning has some logic to it; but **“the point is not whether state law gives the state courts jurisdiction over particular controversies but whether jurisdiction provided**

⁴ While personal jurisdiction can be waived, subject matter jurisdiction may not be waived. *Eaddy v. Eaddy*, 283 S.C. 582, 584, 324 S.E.2d 70, 72 (1984). Lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal, by a party or by the court. *Ex Parte Canon*, 385 S.C. 643, 654, 685 S.E.2d 814, 821 (Ct. App. 2009).

⁵ The jurisdiction of federal courts is limited to that expressly authorized by the United States Constitution or statute enacted by Congress pursuant thereto. *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005). The Supremacy Clause of the United States Constitution provides that federal law “shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” U.S. CONST. ART. VI. As the South Carolina Court of Appeals has ruled: “Thus, as has been clear since the Supreme Court's decision in *M'Culloch v. Maryland*, 17 U.S. (4 Wheat.), 316, 4 L.Ed. 579 (1819), any state law that conflicts with federal law is ‘without effect.’” *Weston v. Kim's Dollar Store*, 385 S.C. 520, 525-526, 684 S.E.2d 769, 772 (Ct. App 2009).

by state law is itself pre-empted by federal law vesting exclusive jurisdiction over that controversy in another body.” *International Longshoremen’s Association, AFL-CIO v. Davis* 476 U.S. 380, 388 (1985) (emphasis in original).

Fatal to *any court’s jurisdiction* (including this Court’s) is the undisputed fact that “[o]n Friday, June 8, 2012, Carolina Federal Savings Bank, Charleston, S.C. was closed by the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (FDIC) was named Receiver.” FDIC Press Release PR-065-2012. Once the FDIC-R was involved, then the Corporation **alone** was authorized by Congress to say whether assignments are valid.

Thereupon, as explained by the Fourth Circuit Court of Appeals, “Subsection (i) bars any unexhausted ‘action seeking a determination of rights with respect to, the assets of any depository institution for which the which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver.’” *Willner v. Dimon*, 849 F.3d 93, 103 (4th Cir. 2017).

NCP’s position – adopted by the Court – is that the structured transaction between the FDIC-R and CRE/ADC somehow divested FDIC-R’s of its rights to the Clancy LOC and the Mortgage [ultimately finding that NCP got the right], is clearly an “action seeking a determination of rights with respect to, the assets of CFSB which the Corporation acquired from itself as such receiver.” 12 U.S.C. 1821(d)(13)(D)(i).

Therefore, as the United States Supreme Court explained in *Longshoremen v. Davis*, “when a particular issue has been placed by Congress within the primary and exclusive jurisdiction of [a federal agency], a state court will **have no subject matter jurisdiction to adjudicate the issue**” *Longshoremen*, 476 U.S. at 392. This Court could be right; it could be wrong; but it does not

matter because this Court lacks the subject matter jurisdiction to declare NCP's rights as it did in the Order. Only the Corporation has this power!

NCP's **own assignment to itself** fails no better. In *Brady Development Co., Inc. v. RTC*, 14 F.3d 998 (4th Cir.1994), the Fourth Circuit Court of Appeals construed the § 1821(d)(13)(D) limitation on judicial review in FIRREA as a *jurisdictional bar* “[r]easoning that the elaborate administrative scheme established in 12 U.S.C. §§ 1821(d)(5)-(14) would be rendered meaningless through improvident judicial review because creditors would opt out of the administrative review, we held that a plaintiff's failure to exhaust the administrative process deprives the courts of subject matter jurisdiction.” See *Tillman v. Resolution Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994).

Thus, NCP cannot claim to the effect: “well, FIRREA gives the Corporation all this power, but since the Court found NCP got this power (by way of a series of assignments ending up with NCP) then NCP somehow steps into the shoes of the FDIC-R!”

This is not the law. By telling the Court to keep for itself the ability to rule that the assignments were ‘A-OK’ – despite FIRREA – NCP has in essence violated this Court's jurisdictional limits, because FIRREA says that only the Corporation can decide that fact! Congress decided it; the Fourth Circuit upheld it; and the United States Supreme Court has explained why this rule is important.

Still, the Court has been persuaded by NCP to declare a critical piece of its chain of title as basically “100% fine” despite lacking subject matter jurisdiction to make this finding. Moreover, by giving NCP all the rights of the Corporation ***based on the assignments*** completely puts FIRREA on its head. If NCP really had the power of the FDIC-R by assignment, then under FIRREA it would have to have brought this case in federal court, not state. Yet all the FIRREA

authority cited by NCP are *federal* cases – not South Carolina cases, until they get to decisions like *Twelfth RMA Partners*.

The *Brady Development* opinion focuses the Court on the following question: why would NCP circumvent a simple administrative process, and proceed at all cost, without any ability to prove, that it is the real party in interest? The answer is clear! NCP knows that to ask the Corporation to rule on this issue under 12 U.S.C. 1821(d)(13)(D)(i) would mean that the FDIC-R is the holder of the Clancy LOC and the FDIC-R has a secured interest in the Mortgage!

II. Other Problem with Chain of Title.

When it filed its *Amended Summons and Complaint* on April 5, 2019, NCP said that CFSB assigned the Clancy LOC and Mortgage to CRD/ADC, LLC, who then assigned it on down to NCP. But at trial, NCP submitted Exhibit 6 showed that the FDIC-R assigned the Mortgage on effective December 11, 2012 – which gives rise to Clancy’s FIRREA argument (Exhibit 6).

NCP also submitted Exhibit 7 at trial, which showed that NCP was assigned the Mortgage on June 26, 2018. But Exhibit 7 was executed by Colfin 2013 CRE ADC Funding, LLC (“Colfin 2013”) on behalf of CRD/ADC, LLC – not by Colfin 2012 CRE ADC Funding, LLC (“Colfin 2012”)

This is despite the fact that Colfin 2013 is a separate Delaware company from Colfin 2012 and was never the minority owner in CRD/ADC Venture 2012-1, LLC. This is a huge hole in NCP’s chain of title and is fatal to NCP’s claim!⁶

⁶ Keep in mind that Colfin 2012 was a **minority member** (40%) of CRD/ADC, LLC, because the Corporation kept a 60% interest. How does the *minority member* assign out the Mortgage from CRD/ADC, LLC when the Corporation was the last entity to have a secured interest in the Mortgage? And exactly how does Colfin 2013 perform the assigning of Colfin 2012’s interest? One would think the Corporation would like to know. Fortunately, FIRREA decides this for the parties and the Court!

III. Order of Reference

It should be noted that the Plaintiff's Order of Reference dated January 4, 2019 is absent consent and pertains to only a "non-jury" action. Rule 53(b), SCRPC sets the parameters for referring a matter to the master: only in foreclosure actions or in any action where a party is in default, can the circuit court or the clerk of court refer the matter to the master-in-equity. When the Defendants timely answered thereafter, requesting a jury-trial, Rule 53(c) required that the matter shall be returned to the circuit court. Therefore, the Plaintiff's declaratory action, determining the validity of the assignments and its purported mortgage perfection was also not properly before the Court for this reason as well. "When resolution of the state procedural law question depends on a federal constitutional ruling, the state-law prong of the court's holding is not independent of federal law, and our jurisdiction is not precluded. . . . In such a case, the federal-law holding is integral to the state court's disposition of the matter, and our ruling on the issue is in no respect advisory." *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985).

CONCLUSION

"On the face of the statute, 12 U.S.C. § 1821(d)(13)(D), FIRREA's exhaustion requirement applies to any claim or action respecting the assets of a failed institution for which the FDIC is receiver," *McCarthy v. FDIC*, 348 F.3d 1075, 1081 (9th Cir. 2003), and must be upheld by this Court.

Under the preemption doctrine is rooted in the Supremacy Clause of the United States Constitution it is clearly within Congress' powers to establish an exclusive federal forum to adjudicate issues of federal law in a particular area that Congress has the authority to regulate under the Constitution. *See e.g. , Kalb v. Feuerstein*, 308 U. S. 433 (1940). Any challenge to a

state court's ability to adjudicate implicates a *choice of forum* rather than a *choice of law* question, therefore "a challenge to a court's power to adjudicate that may be raised at any time." *Longshoremen*, 476 U.S. at 382. "In such cases," as here, "any judgment issued by the state court will be *void ab initio* because subject matter jurisdiction is pre-empted." *Id.* at 392.

In light of FIRREA, and the other issues raised herein, these Defendants request the Court reconsider, alter or amend its rulings of July 13, 2020.

Respectfully submitted,

BROWN & VARNADO LLC

/s Robert B. Varnado

Robert B. Varnado
103 Ronnie Boals Boulevard (29464)
P.O. Box 1127
Mt. Pleasant, South Carolina 29465
Telephone: (843) 737-7300
Facsimile: (843) 654-5109
rvarnado@brown-varnado.com
***Attorneys for the Defendants Mary Lou Cercopely,
David S. Clancy and David Sean Clancy.***

July 23, 2020
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within *Notice of Motion and Defendants Mary Lou Cercopely, David S. Clancy and David Sean Clancy's Motion to Reconsider* upon all parties to these matters by e-filing:

Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Plaintiff

/s Robert B. Varnado

Robert B. Varnado

July 23, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	PLAINTIFF'S MEMORANDUM IN
PLAINTIFF,	)	OPPOSITION TO DEFENDANTS
	)	MARY LOU CERCOPELY, DAVID S.
vs.	)	CLANCY, AND DAVID SEAN
	)	CLANCY'S EMERGENCY MOTION
Mary Lou Cercopely; David S. Clancy; South	)	FOR STAY OF PROCEEDINGS TO
Carolina Federal Credit Union; Southcoast	)	ENFORCE JUDGMENT or for
Community Bank; Joan Geanuracos; David	)	SUPERSEDEAS BOND and TO
Sean Clancy,	)	IMPOSE BOND ON PLAINTIFF
DEFENDANTS.	)	
	)	

Plaintiff NCP Pilgrim, LLC ("NCP") respectfully submits this Memorandum in Opposition to Defendants Mary Lou Cercopely, David S. Clancy, and David Sean Clancy's (collectively "Defendants") Emergency Motion for Stay of Proceedings to Enforce Judgment or for Supersedeas Bond and To Impose Bond on Plaintiff ("Motion"). For the reasons set forth below, NCP respectfully requests that this Court deny Defendants' Motion at this time.

A. PROCEDURAL HISTORY

This is a commercial mortgage foreclosure action, which was filed on November 15, 2018. Subsequently, Defendants' filed an Answer and Counterclaims, dated January 23, 2019, and an Amended Answer and Counterclaims, dated April 22, 2019. A non-jury trial was held before this Court on January 28, 2020. As a result of the trial, this Court issued its Master's Decree of Sale and Foreclosure, dated July 13, 2020 ("Decree"), and its Notice of Master's Sale, dated July 14, 2020 ("Notice of Sale"). The Notice of Sale established a sales date of September 1, 2020 at 11:00 a.m.. at the Dorchester County Courthouse. Shortly after the Decree and Notice of Sale were issued, Defendants' filed the instant Motion, followed by their Motion to Reconsider, dated July 23, 2020. As of the date of this Memorandum, Defendants' Motion to Reconsider is still pending

before this Court and Defendants have not yet filed an appeal with the South Carolina Court of Appeals.

B. STANDARD OF REVIEW

Defendants' filed their Motion pursuant to Rule 241, SCACR. Rule 241 establishes that the filing of a notice of appeal in a foreclosure case does not automatically stay the relief ordered in the Decree and Notice of Sale. Rule 241(b)(4), SCACR. If a party wishes to stay the relief ordered in the Decree and Notice of Sale, he must move for an order imposing a supersedeas of matters decided in the order on appeal *after service of the notice of appeal*. Rule 241(c)(1), SCACR. In determining whether an order imposing supersedeas should be issued, the court should consider "whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. In the event a court issues an order imposing supersedeas, the order may be conditioned upon such terms, "including but not limited to the filing of a bond or undertaking," as the court may deem appropriate. Rule 241(c)(3), SCACR. Specifically, S.C. Code Ann. § 18-9-170 explicitly outlines the bond or undertaking required to obtain a stay of a judgment directly the sale of land to satisfy a mortgage. *Muckenfuss v. Fishburne*, 68 S.C. 41, 46 S.E. 537, 538 (1903). This Section states that an execution of a judgment directing the sale of real property shall not be stayed unless the following requirements are met -

a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered.

S.C. Code Ann. § 18-9-170. This Section goes on to establish specific additional criteria in the event the judgment directs the sale of land to satisfy a mortgage on the property:

the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency which sum shall be duly entered as a payment on the judgment.

Id. Thus, in order to stay the Decree and Notice, Defendants must comply with the requirements of both Rule 241, SCACR and S.C. Code Ann. § 18-9-170.

C. ARGUMENT

1. Defendants' Motion is Untimely and Should Be Denied.

Rule 241 specifically states that a motion for supersedeas cannot be filed until after the service of the notice of appeal. Rule 241(c)(1), SCACR. Here, Defendants have not yet even filed an appeal, let alone served a copy of the notice of appeal on all parties. Thus, Defendants Motion is untimely and should be dismissed without prejudice. If and when Defendants' file an appeal and serve a copy of the notice of appeal on all parties, then and only then, will they have an opportunity to file and argue their Motion for Supersedes. Thus, Defendants' motion for supersedeas should be denied without prejudice as untimely.

Similarly, Defendants' motion to stay is untimely and should be denied. Section 18-9-170 establishes the specific requirements to stay a foreclosure sale. S.C. Code Ann. § 18-9-170. At this time, Defendants have not complied with any of these requirements and have not posted any undertaking. If and when Defendants' file an appeal and serve a copy of the notice of appeal on all parties, they can then petition the court to establish a bond amount to be paid to the clerk of

court pursuant to S.C. Code Ann. § 18-9-230. Accordingly, Defendants' motion to stay should be denied without prejudice as untimely.

2. S.C. Code Ann. § 18-1-130(a)(2) Does Not Apply to Foreclosure Sales.

In their Motion, Defendants' assert that the undertaking outlined in Section 18-1-130(a)(2) applies to this matter and that NCP is required to file a bond to sell the subject property. Section 18-1-130(a)(2) deals specifically with the appeal of the execution of a monetary judgment and requires the plaintiff seeking the execution to post an undertaking before moving forward with the execution. However, South Carolina courts have explicitly held that this statute does not apply to sales due to mortgage foreclosures. *Carsten v. Wilson*, 241 S.C. 516, 521, 129 S.E.2d 431, 434 (1963). Instead, section 18-9-170 controls the process to stay a foreclosure sale subject to the filing of an appeal. *Id.* Thus, Defendants motion to require NCP to post a bond or undertaking in regard to the upcoming foreclosure sale should be denied.

D. CONCLUSION

For the reasons outlined above, this Court should deny Defendants' Emergency Motion for Stay of Proceedings to Enforce Judgment or for Supersedeas Bond and To Impose Bond on Plaintiff.

RUSSELL P. PATTERSON, P.A.

/s/Lauren P. Williams
 Lauren P. Williams
 Russell P. Patterson
 P.O. Box 8047
 Hilton Head Island, SC 29938
 (843) 341-9301
lauren@russellpattersonlaw.com
russell@russellpattersonlaw.com
 Attorneys for the Plaintiff

Hilton Head Island, SC
 July 30, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
PLAINTIFF,	)	
	)	PLAINTIFF'S MEMORANDUM IN
vs.	)	OPPOSITION TO DEFENDANTS
	)	MARY LOU CERCOPELY, DAVID S.
Mary Lou Cercopely; David S. Clancy; South	)	CLANCY, AND DAVID SEAN
Carolina Federal Credit Union; Southcoast	)	CLANCY'S MOTION TO
Community Bank; Joan Geanuracos; David	)	RECONSIDER
Sean Clancy,	)	
DEFENDANTS.	)	
	)	

Plaintiff NCP Pilgrim, LLC ("NCP") respectfully submits this Memorandum in Opposition to Defendants Mary Lou Cercopely, David S. Clancy, and David Sean Clancy's (collectively "Defendants") Motion to Reconsider Master's Decree of Sale and Foreclosure and Notice of Master's Sale, dated July 23, 2020 ("Motion"). For the reasons set forth below, NCP respectfully requests that this Court deny Defendants' Motion and uphold its Master's Decree of Sale and Foreclosure, dated July 13, 2020 and Notice of Master's Sale, dated July 13, 2020 (collectively "Order").

A. STATEMENT OF FACTS

NCP relies upon, and incorporates by reference, the underlying facts set forth in their Pre-Trial Brief, dated January 27, 2020, their Post-Trial Memorandum of Law, dated February 11, 2020, as well as the facts entered into evidence during the January 28, 2020 trial ("Trial"). However, a brief summary of the facts relevant to Defendants' Motion is provided below.

This is a commercial mortgage foreclosure action. On or about June 10, 2004, the Defendant, David S. Clancy ("Borrower"), borrowed \$258,840 from Carolina Federal Savings Bank ("Carolina Federal") as was evidenced by a customary Note ("Note"). (P. Tr. Ex. 1). This

loan was secured by a first mortgage on property owned by his mother, Barbara A. Clancy, located at 117 S. Cedar Street ("Mortgage"). (P. Tr. Ex. 2). Pursuant to the Note, the loan had an original maturity date of June 10, 2009. Thereafter, David Clancy and his mother, Barbara Clancy, signed two note and mortgage modifications on August 18, 2009 (P. Tr. Ex. 4) and on June 24, 2010 (P. Tr. Ex. 5). On or about October 13, 2012, Barbara Clancy passed away, leaving the Subject Property to her surviving children, Defendant Mary Lou Cercopely and the Borrower.

On or about January 30, 2013, the FDIC, which had taken over Carolina Federal, sold the Note and Mortgage to CRE/ADC Venture, 2012-1 LLC ("CRE/ADC"). (P. Tr. Exs. 6, 17, & 19). Thereafter, CRE/ADC sold the Note and Mortgage to the Plaintiff, NCP Pilgrim, LLC. (P. Tr. Exs. 7 & 18). The Borrower has not made a payment on this Note since January 14, 2013. (Tr. Trans. P. 9, L. 24).

At Trial, Defense counsel explicitly waived all counterclaims and defenses except for Defendants' contention that this Court lacks subject matter jurisdiction pursuant to FIRREA. (Tr. Trans. P. 42, L. 19 - P.44, L. 13 - Exhibit 1). Defense counsel elected to not present any evidence. *Id.* This waiver of all defenses and counterclaims except for lack of subject matter jurisdiction was very clear at trial, as follows:

MR. VARNADO: Your Honor, at this time Mr. Clancy will not put up a defense. And I'll prosecute his counterclaims. We are going to go on the -- saying respectfully that we believe that the Court does not have jurisdiction.

THE COURT: So you're not going forward on your counterclaims? And you're resting your defense on the facts that this Court doesn't have jurisdiction over the matter because of the argument you made earlier?

MR. VARNADO: Yes, sir.

THE COURT: Thank you very much.

MR. VARNADO: Your Honor, would you issue order a Form 4, or do you just want to wait until you decide everything on jurisdiction?

THE COURT: On jurisdiction? Let me put that in the order itself. I guess -- and this is something you need to think about, if you appeal the case and its determined that I didn't have jurisdiction, are you reserving --I'm not sure if you're reserving your counterclaims? Or have you abandoned them all together?

MR. VARNADO: I haven't abandoned them all together, but if an Appellate Court holds that you really did in fact have jurisdiction, then I think that I would --think that I would waive the counterclaims.

THE COURT: That's what I would expect you --

MR. VARNADO: But however if you --respectfully, if Your Honor didn't have jurisdiction, then everything would be to the -- I think that's what it is, Your Honor.

MS. WILLIAMS: Your Honor, I guess it would be our position that either Mr. Varnado decides today to waive his counterclaims in full or he argues them today to preserve them for the record. If he does not argue them today, it would be our position that they're waived in full.

THE COURT: Well, I think he said that. He understands that if the jurisdictional issues comes out different than what my decision has been and he is correct and I didn't have jurisdiction, then I couldn't have heard them anyway. But if I had jurisdiction and I'm affirmed on the remainder of the decision, then he will have waived his counterclaims as of this moment.

THE COURT: Well, let me ask you this question. Let's suppose --I almost took this position earlier so I'm going to hold the question of jurisdiction in advance and hear the case but decide to go ahead and rule that I did have jurisdiction. And if I'm wrong, I can be corrected. **I didn't expect Mr. Varnado to waive his defenses, but nonetheless, that will be the result of his defenses if I'm affirmed on the jurisdiction.**

Id. Thus, the only issue available for the Court's consideration as part of Defendants' Motion is the issue of subject matter jurisdiction. All other arguments regarding the validity of loan documents and the procedural history of this matter have been explicitly waived by Defendants and can no longer be argued before the Court.

B. STANDARD OF REVIEW

Defendants' filed their Motion pursuant to Rule 59(e), SCRCP. A Rule 59(e) motion can be used to petition the court to reconsider its original ruling based on a party's belief that the court has misunderstood, failed to fully consider, or failed to rule on an argument or issue. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). However, a party cannot use a Rule 59(e) motion to present an issue the party could have previously raised but elected not to raise prior to the court's ruling. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990).

C. ARGUMENT

1. The "Relevant Facts" in Defendants' Motion Includes Information That Is Not Properly Before the Court and Is Erroneous.

In their Motion, Defendants include a section entitled "Relevant Facts." This section includes multiple statements and information that have not been entered into evidence in this matter and are not properly before the Court. Further, the section includes information that is simply incorrect. Specifically, NCP contends the following statements are improper -

3. "On June 8, 2012, the Office of the Comptroller of the Currency ("OCC") closed CFSB and named the Federal Deposit Insurance Corporation as Receiver ("FDIC-R"). See FDIC Press Release 2012-065, June 8, 2012." ("Statement 3").
4. "Through a *structured transaction*, on December 11, 2012, FDIC-R sold and transferred the Clancy LOC (with 492 other "loans") to itself, as the sole member of CRE/ADC Venture 2012-1, LLC ("CRE/ADC") as evidenced by Assignment of Real Estate Mortgage recorded with the Dorchester County ROD in Book 8718 at Pages 34-38. It later sold a minority interest in CRE/ADC to Colfin 2012 CRE ADC Funding, LLC." ("Statement 4").
9. "Therein, NCP sought, *inter alia*, **a declaratory judgment as to perfect NCP's mortgage based on the following allegations in the complaint...**" ("Statement 9").

11. "NCP, however, produced no valid assignment under the UCC (because it is based on a Power of Attorney to assign the Mortgage, rather than delivery of the Clancy LOC which the Mortgage must follow)..." ("Statement 11").

A. Statements 3 and 4 Are Not Facts of This Case and Are Not Properly Before This Court.

Specifically, Statements 3 and 4 are not supported by any evidence presented at Trial. In support of Statement 3, Defendants cite a June 8, 2012 FDIC press release. This press release was not entered into evidence at the Trial and no copy of the press release has been provided. Therefore, Statement 3 is not properly before this Court. Similarly, the structured transaction agreement referenced in Statement 4 was not entered into evidence at Trial and a copy of the agreement has never been provided to the Court. Further, the Court has already properly ruled that the agreement is not properly before this Court. The Court should uphold this ruling and disregarding the contents of Statement 4.

Furthermore, Defendants cannot attempt to enter these statements as facts through their Motion. As discussed above, a Rule 59(e) Motion cannot be used to present an argument Defendants could have previously raised but elected not to raise at the time of Trial. *Hickman* at 456, 392 S.E.2d at 482. Here, Statements 3 and 4 appear to rely on historic information which was readily available at the time of Trial. However, Defendants did not present these arguments at Trial and thus, cannot elect to raise them for the first time now, over six months after Trial.

B. Statement 9 Is Erroneous and Should Not Be Included as a Fact in This Case.

In Statement 9, Defendants state that NCP is seeking a "declaratory judgment" to perfect its mortgage. This statement is incorrect. As clearly shown in NCP's Summons and Complaint, dated November 15, 2018, and its Amended Summons and Complaint, dated April 5, 2019, NCP is not seeking a declaratory judgment. Instead, NCP filed a routine mortgage foreclosure action, which is properly before this Court. Thus, the Court should disregard this incorrect statement.

C. Statement 11 is Erroneous and Should Not Be Included as a Fact in This Case.

In Statement 11, Defendants state that NCP has provided no valid assignment under the UCC of the subject Note. Again, this statement is incorrect in light of the evidence presented at Trial, the original Loan Documents delivered to Defense counsel for review after the Trial, and Defense counsel's the express waiver of all defenses and counterclaims except for lack of subject matter jurisdiction. Specifically, at Trial, NCP entered Exhibit 18 into evidence without objection from Defendants. Exhibit 18 is the Assignment of Home Equity Variable Draw Agreement, dated June 26, 2018, assigning the subject Note from CRE/ADC Venture 2012-1, LLC to NCP Pilgrim, LLC. If Defendants' believed Exhibit 18 was not admissible, the proper time to raise this objection was during the Trial. Defendants' cannot wait until after the Court has issued its final ruling to make an objection to this evidence for the first time. *Hickman* at 456, 392 S.E.2d at 482. Therefore, this statement is plainly false.

2. The Court Properly Concluded that Defendants' Waived All Defenses and Counterclaims, Except for Lack of Subject Matter Jurisdiction.

As stated above, during the Trial, Defendants expressly stipulated that they waived all potentially applicable defenses and counterclaims, with the exception of their argument that this Court lacks subject matter jurisdiction pursuant to FIRREA. (Exhibit 1). Based on this express stipulation and waiver, this Court properly concluded that Defendants' waived any arguments Defendants' presented in their Post-Trial Memorandum, dated February 26, 2020, that were outside the scope of the lack of subject matter jurisdiction argument. *See Bodkin v. Bodkin*, 388 S.C. 203, 228, 694 S.E.2d 230, 243 (Ct. App. 2010) (the court must accept stipulations as binding); *C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 292 S.C. 556, 559, 357 S.E.2d 714, 715 (Ct. App. 1987), *aff'd*, 296 S.C. 373, 373 S.E.2d 584 (1998); (stipulations are binding upon parties who make them); *Gatewood v. Moses*, 39 S.C.L. 244, 247 (S.C. App. L. 1852) (appellant

was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial). This same principle applies to the two new issues raised in Defendants' Motion - (1) "Other Problem with Chain of Title" and (2) "Order of Reference."

A. Defendants' Trial Waiver of Defenses Includes the Argument Contained in Defendants' Other Problem with Chain of Title Argument.

In their Motion, Defendants' assert for the first time that there is an issue with the June 26, 2018 assignment of Mortgage from CRE/ADC Venture 2012-1, LLC to NCP Pilgrim, LLC, which was entered into evidence at trial as Plaintiff's Exhibit 7. NCP asserts that Defendants' waiver of all potentially applicable defenses and counterclaims includes this new argument. Thus, Defendants' "Other Problem with Chain of Title" Argument was waived at trial and can no longer be asserted.

In the alternative, NCP also argues that this new argument is untimely. This argument should have been raised at Trial. Exhibit 7 was entered into evidence at Trial without objection by Defense counsel (Tr. Trans. P.21). Furthermore, Defense counsel had every opportunity to cross-examine NCP's witness regarding the validity of Exhibit 7 and to raise any concerns Defendants had with the Exhibit. However, Defendants' elected not to voice any concerns or objections at Trial. As discussed above, a Rule 59(e) motion cannot be used to present an argument Defendants could have previously raised but elected not to raise at trial. *Hickman* at 456, 392 S.E.2d at 482. Accordingly, if the Court finds that Defendants have not previously waived their "Other Problem with Chain to Title" Argument then it should be denied by the Court as untimely and improper.

B. Defendants' Trial Waiver of Defenses Includes the Argument Contained in Defendants' Order of Reference Argument.

In their Motion, Defendants' assert for the first time that the January 4, 2019 Order of Reference is improper. Similar to the reasoning applied above, NCP asserts that Defendants' waiver at Trial of all potentially applicable defenses and counterclaims includes this new argument and it can no longer be asserted.

In the alternative, if the Court determines Defendants did not previously waive this argument, the argument should be denied as untimely and improper. Specifically, Rule 53, SCRCP explicitly states that in "an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court." Here, NCP filed a foreclosure action on November 15, 2018, and the action was properly referred to the Dorchester County Master in Equity on January 4, 2019, by the Dorchester County Clerk of Court. Subsequently, on January 23, 2019, Defendants filed an Answer demanding a jury trial. Pursuant to this demand, a hearing was held before this Court on February 28, 2019. At that hearing, Defendants' failed to ever raise an objection regarding this Court's authority to rule on the jury trial demand. Furthermore, Defendants' failed to raise this argument at Trial or in the numerous other briefs filed with the Court in this matter. As discussed above, a Rule 59(e) motion cannot be used to present an argument Defendants could have previously raised but elected not to raise. *Hickman* at 456, 392 S.E.2d at 482. Accordingly, if the Court finds that Defendants have not previously waived their "Order of Reference" Argument then it should be denied by the Court as untimely and improper.

3. The Court Properly Concluded FIRREA Did Not Apply and that It Has Subject Matter Jurisdiction Over Plaintiff's Claims.

It is clear that this Court has subject matter jurisdiction over NCP's claims because the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") does not apply. 12 U.S.C. §1811 *et seq.* To reach this conclusion, the Court engaged in the detailed review of the jurisdictional bar established by FIRREA and the national case law regarding the applicability of this jurisdictional bar.

Subject matter jurisdiction is defined as "the power to hear and determine cases of the general class to which the proceedings in question belong." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 795, 796 (2008). "The question of subject matter jurisdiction is a question of law for the court." *Hammer v. Hammer*, 399 S.C. 100, 104-05, 730 S.E.2d 874, 876 (Ct. App. 2012). Subject matter jurisdiction "is distinct from the doctrine of exhaustion of administrative remedies, which is generally considered a rule of policy, convenience, and discretion, rather than one of law, and is not jurisdictional." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524, 529 (Ct. App. 2009).

The Court properly relied upon *Tillman v. Resolution Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994) and *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399 (D.C. Cir. 1995) to conclude that FIRREA sections 1821(d)(3)-(13) require only those persons or entities making claims *against a failed financial institution* or seeking to adjudicate their rights *against the failed institution* to present their claims first to the Federal Deposit Insurance Corporation ("FDIC") through its administrative claims process. To protect and enforce this administrative process, FIRREA imposes a limitation on judicial review which encompasses (i) any claim or action for payment from, or any action seeking a determination of rights with respect to the assets of any depository institution for which the FDIC has been appointed receiver, including assets which the FDIC may acquire from itself

as such receiver; or (ii) any claim relating to any act or omission of such institution or the FDIC as receiver. 12 U.S.C. §1821(d)(13)(D)(i)-(ii).

After correctly establishing the criteria for the applicability of FIRREA's jurisdictional bar, the Court properly concluded that NCP's claims were not subject to the jurisdictional bar because NCP is not making a claim against the failed institution, Carolina Federal, or against the receiver, the FDIC, in this action. This conclusion is consistent with a review of the national case law evaluating the applicability of FIRREA's jurisdictional bar, which apply the principle that a third-party who purchases an asset from the FDIC also has the authority to foreclose on the assigned asset. *See Dittmer Properties, L.P. v. F.D.I.C.*, 708 F.3d 1011, 1017 (8th Cir. 2013); *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999). *See also, Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018); *Haynes v. JPMorgan Chase Bank, N.A.*, 466 F. App'x 763, 766 (11th Cir. 2012); *Newman v. JP Morgan Chase Bank, N.A.*, 81 F. Supp. 3d 735, 745 (D. Minn. 2015). Without this principle, it would be illogical for a third-party to ever accept an assignment of an asset from the FDIC, because without the ability to foreclose, the asset would be deemed worthless. Thus, the Court's conclusion that FIRREA's jurisdictional bar does not apply to NCP's claims is well founded and proper.

Additionally, Defendants reliance on *Brady Development Co., Inc. v. RTC*, 14 F.3d 998 (4th Cir. 1994) is inaccurate. The court in *Brady* focused solely on the issue of whether "litigants who have an action pending in court against a savings and loan that is subsequently placed in receivership (a pre-receivership claim) must avail themselves of FIRREA's administrative process in order to continue the action." *Brady Development Co.* at 1002. This central issue is different than the issue presented in the case at hand for one key reason - NCP has not asserted any claims

against a failed financial institution. Instead, NCP merely filed a routine mortgage foreclosure action.

Finally, it appears that couched in Defendants' jurisdictional argument is the assertion that NCP is not the holder of the Note and Mortgage. This argument has been refuted by the assignments submitted at Trial as Exhibits 6, 17, 19, 7, and 18, which were admitted without objection by Defendants. Furthermore, this argument fails in light of the fact that NCP is in possession of the original Note ("Original Note"). The Original Note was delivered to Defense counsel for inspection on May 20, 2020. Following this inspection, Defendants did not raise any objection to the Original Note. As repeated numerous times throughout this Memorandum, Defendants cannot wait until after a judgment has been issued to present an argument or objection that could have previously been raised. *Hickman* at 456, 392 S.E.2d at 482.

D. CONCLUSION

For the reasons outlined above, this Court should deny Defendants' Motion to Reconsider, dated July 23, 2020, and uphold its Master's Decree of Foreclosure, dated July 13, 2020 and Notice of Master's Sale, dated July 13, 2020.

RUSSELL P. PATTERSON, P.A.

/s/Lauren P. Williams

Lauren P. Williams

Russell P. Patterson

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9301

lauren@russellpattersonlaw.com

russell@russellpattersonlaw.com

Attorneys for the Plaintiff

Hilton Head Island, SC
July 30, 2020

1 and Carolina Federal Savings Bank dated June 10,
2 2004; is that correct?

3 A. Yes.

4 Q. And what is the date of this agreement?

5 A. June 26, 2018.

6 MS. WILLIAMS: No further
7 questions, Your Honor.

8 MR. VARNADO: Briefly, Your Honor,
9 if I may.

EXAMINATION

10 BY MR. VARNADO:

11 Q. Britt, do you know who owns CRE Venture?
12 Do you know what kind of entity it is? Who owned
13 it?

14 A. I don't.

15 Q. Do you know if the FDIC owned it?

16 A. I don't.

17 Q. Do you know if the FDIC sold a
18 participation of 40 percent to ColFin?

19 A. I don't.

20 Q. Have you seen any other document that
21 shows the FDIC approved the last Exhibit 18 that
22 you read? Do you have any knowledge of that that
23 was it was approved by the FDIC?

24 A. I don't believe so.

25 MR. VARNADO: Thank you, Your
Honor.

THE COURT: Thank you.

MS. WILLIAMS: No further
questions, Your Honor.

THE COURT: Thank you.

MS. WILLIAMS: Your Honor, at this
time, other than the attorney's fees that we've
agreed to take up a later date, plaintiff rests
its case.

THE COURT: Thank you. Mr.
Varnado?

MR. VARNADO: Your Honor, at this
time Mr. Clancy will not put up a defense. And
I'll prosecute his counterclaims. We are going
to go on the -- saying respectfully that we
believe that the Court does not have
jurisdiction.

THE COURT: So you're not going
forward on your counterclaims? And you're
resting your defense on the facts that this Court
doesn't have jurisdiction over the matter because
of the argument you made earlier?

MR. VARNADO: Yes, sir.

THE COURT: Thank you very much.

1 Then, what I'm going to do is I'm going to take
2 the matter under consideration. Ms. Williams, I
wonder if you would be so kind as to have the
record transcribed for my benefit?

3 MS. WILLIAMS: Of course, Your
Honor.

4 THE COURT: You can either have it
transcribed just simply electronically. Or if
5 you want the paper, I'm going to read it on my
computer.

6 MS. WILLIAMS: Okay.

7 THE COURT: And I'll make a
decision. Once I make a decision, what we'll do
8 is we'll reconvene for purposes of -- well, first
of all, we will need to get together soon to look
9 at the note -- what I call the note. It's the
line of credit.

10 MS. WILLIAMS: Right.

11 THE COURT: And once I've had an
opportunity to review the record and cogitate a
12 little bit on what I've heard, I'll render a
decision. Probably will ask one or two of you to
13 write an order for me. Although I've been known
to write my own orders. But even when you write
an order for me, I've been known to change it
dramatically.

14 So a lot of the reasons I ask people to
write orders for me is because usually in your
15 word processors you have all the dates and the
recording figures, and all that stuff is already
16 there. And I don't have to retype it.

17 MS. WILLIAMS: Correct.

18 THE COURT: So I often just simply
rely on the order for basically that purpose, so
I don't have to retype things like that. I'm the
best cut and paste judge in South Carolina.

19 MS. WILLIAMS: Quite a feat.

20 MR. VARNADO: Your Honor, would you
issue order a Form 4, or do you just want to wait
until you decide everything on the jurisdiction?

21 THE COURT: On jurisdiction? Let
me put that in the order itself. I guess -- and
22 this is something you need to think about, if you
appeal the case and it's determined that I didn't
23 have jurisdiction, are you reserving -- I'm not
sure if you're reserving your counterclaims? Or
24 have you abandoned them all together?

25 MR. VARNADO: I haven't abandoned
them all together, but if an Appellate Court
holds that you really did in fact have

1 jurisdiction, then I think that I would -- think
2 that I would waive the counterclaims.

3 THE COURT: That's what I would
4 expect you --

5 MR. VARNADO: But however if you --
6 respectfully, if Your Honor didn't have
7 jurisdiction, then everything would be to the --
8 I think that's what it is, Your Honor.

9 MS. WILLIAMS: Your Honor, I guess
10 it would be our position that either Mr. Varnado
11 decides today to waive his counterclaims in full
12 or he argues them today to preserve them for the
13 record. If he does not argue them today, it
14 would be our position they're waived in full.

15 THE COURT: Well, I think he said
16 that. He understands that if the jurisdictional
17 issue comes out different than what my decision
18 has been and he is correct and I didn't have
19 jurisdiction, then I couldn't have heard them
20 anyway.

21 But if I had jurisdiction and I'm
22 affirmed on the remainder of the decision, then
23 he will have waived his counterclaims as of this
24 moment.

25 MS. WILLIAMS: That's correct, Your
Honor. And also, I just want to offer if the
Court would find it helpful, we would be happy to
do a post-trial brief on FIRREA just since we
only found about it this morning. But we have
our Dura case, and you've heard our position on
it.

MR. PATTERSON: Your Honor, Russell
Patterson. If I can be heard. I've done a lot
of foreclosures. Never seen this defense and
found out about it when we were riding up here.
So our arguments are based on what we could read
on our phone. I was driving so Ms. Williams was
looking at it.

We would like just a week to be able to
brief that issue because now we find out for the
first time driving up here that's the whole
defense when we've been dealing with all these
other issues. They're now gone. Now we're
dealing with an issue we've never even heard of
until this morning.

We would like to be able to at least put
together a little bit of case law because again,
there's hundreds of thousands of loans the FDIC's
taken over and sold and been foreclosed. If
defendant is right, there's got to be a bunch of

1 cases out there saying State Court, you can't
2 foreclose. So we would like to have a little bit
of time to look for it.

3 THE COURT: Well, let me ask you
4 this question. Let's suppose -- I almost took
5 this position earlier so I'm going to hold the
6 question of the jurisdiction in advance and hear
7 the case but decide to go ahead and rule that I
8 did have jurisdiction. And if I'm wrong, I can
9 be corrected.

10 I didn't expect Mr. Varnado to waive his
11 defenses, but nonetheless, that will be the
12 result of his defenses if I'm affirmed on the
13 jurisdiction. I will be happy to allow you to --
14 let's say 15 days to do a supplemental post-trial
15 brief on the issue of jurisdiction understanding
16 that I may reverse my opinion after I read the
17 additional information.

18 And Mr. Varnado, if you wish to reply to
19 that brief, I would give you 15 days from the day
20 it is submitted to reply to it.

21 MR. VARNADO: So 15 days from today
22 or tomorrow for plaintiff to file their brief?
23 And 15 days from receipt for me to file mine?

24 THE COURT: To reply to it so that
25 you both will have flushed out the issue. And
I'll have the option -- again, I would have the
option to overrule myself. I just made a ruling
on the bench. I could always reverse myself. I
did it already today in another case.

26 MR. VARNADO: Thank you, Your
27 Honor.

28 THE COURT: So if I have to change
29 my mind, I change my mind when I enter the order.
30 So yeah, I'm happy to allow you-all to do the
31 additional research so I can understand it
32 myself.

33 MS. WILLIAMS: Thank you, Your
34 Honor.

35 MR. VARNADO: Thank you, Your
Honor.

THE COURT: I'll leave it at that.
I mean, I've got thoughts coming out of my head.
They just want to burst out into words, but I'm
going to reserve them. So yes. Let's do the
post-trial briefs on that one issue and nothing
else.

MS. WILLIAMS: Yes, sir.

MR. VARNADO: Yes, sir.

THE COURT: And maybe by 30 days

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	SECOND
	)	NOTICE OF MOTION AND
	)	EMERGENCY MOTION FOR STAY OF
Mary Lou Cercopely, David S. Clancy,	)	PROCEEDINGS TO ENFORCE
South Carolina Federal Credit Union,	)	JUDGMENT or for SUPERSEDEAS BOND
Southcoast Community Bank, John	)	and TO IMPOSE BOND ON PLAINTIFF
Geanuracos, and David Sean Clancy	)	
	)	
Defendants.	)	
	)	

TO: LAURENS P. WILLIAMS, ATTORNEY FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the Defendants Mary Lou Cercopely, David S. Clancy and David Sean Clancy (“these Defendants”), by and through their below-counsel and pursuant to Rule 62(f) of the South Carolina Rules of Civil Procedure, and Rule 241(c) of the South Carolina Appellate Court Rules, will move before the Honorable James E. Chellis, Dorchester County Master in Equity, at such time, date and place as counsel may be heard, for an *Emergency Order for Stay of Proceedings to Enforce Judgment* and the Amended Notice of Master’s Sale. or alternatively to grant a *Supersedeas Bond*, and to preclude the judicial sale of the foreclosed property, TMS # 137-07-07-023-000-C, scheduled for October 1, 2020 and November 1, 2020; and/or to impose a bond on the Plaintiff pursuant to S.C. Code Ann.

This motion is based on the appeal to the South Carolina Court of Appeals taken on August 18, 2020.

1) Rule 62(b), SCRCP, which provides, in relevant part: “[w]hen an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay ... the bond may be given at or after the

time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the Court.”

2) Section 18-9-170 of the South Carolina Code states:

“If the judgment appealed from direct the sale or delivery of possession of real property, the execution of the judgment shall not be stayed unless a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which shall be specified in the undertaking. **When the judgment directs the sale of land to satisfy a mortgage thereon or other lien, the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency, which sum shall be duly entered as a payment on the judgment;** and in case the land shall be unimproved land, then in any action or proceedings now pending or hereafter begun in any of the courts of this State the undertaking shall further provide for the payment by appellant, if the judgment be affirmed, of any taxes due at the time of the appeal or already paid by the mortgagee, or becoming due during the pendency of the appeal, and also for the payment by appellant of the interest on the debt falling due during the pendency of such appeal.”

(emphasis added).

3) Section 18-1-130(a)(2) of the South Carolina Code states in pertinent part:

“A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed. The plaintiff in such a case may not proceed with a sale of defendant's property if the defendant enters into an undertaking, with good sureties, in double the appraised value of the property or the amount of the judgment, to pay the judgment with legal interest and all costs and damages the plaintiff may sustain by reason of the appeal or to produce the property levied on and submit to the sale if the judgment is confirmed.

emphasis added). Additionally, Rule 241(c)(3) of the South Carolina Appellate Court Rules states that “the granting of a supersedeas ... under this Rule, may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking as the lower court may deem appropriate.”

Accordingly,

(A) these Defendants seek that the Court impose a supersedeas bond upon them; to give these Defendants a reasonable time to post the bond; to postpone the judicial sale accordingly (scheduled to commence September 1, 2020); and for such other and further relief as the Court may deem just and proper.

(B) Additionally, if the Plaintiff still insists that the property be set for judicial sale and an appeal is filed, these Defendants move to have the Plaintiff post a bond or undertaking, with two good sureties, issued for double the appraised value of the property, pursuant to S.C. Code Ann. § 18-1-130(a)(2); and for such other and further relief as the Court may deem just and proper.

Pursuant to Rule 11, SCRCP, the undersigned certifies that consultation with counsel would serve no useful purpose.

(signature on following page)

Respectfully submitted,

BROWN & VARNADO LLC

/s Robert B. Varnado

Robert B. Varnado
103 Ronnie Boals Blvd. (29464)
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7301
rvarnado@brown-varnado.com
***Attorneys for the Defendants Mary Lou Cercopely,
David S. Clancy and David Sean Clancy***

August 25, 2020
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within ***Second Notice of Motion and Emergency Motion for Stay of Proceedings to Enforce Judgment, or Supersedeas Bond and to Enforce Bond on Plaintiff*** upon all parties to these matters by depositing a true copy of the same in the U.S. mail, proper postage prepaid, addressed to counsel of record as follows, or via ECF if indicated.

Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorney for Plaintiff

VIA ECF

/s Robert B. Varnado

Robert B. Varnado

August 25, 2020
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	PLAINTIFF'S MEMORANDUM IN
PLAINTIFF,	)	OPPOSITION TO DEFENDANTS
	)	MARY LOU CERCOPELY, DAVID S.
vs.	)	CLANCY, AND DAVID SEAN
	)	CLANCY'S SECOND EMERGENCY
Mary Lou Cercopely; David S. Clancy; South	)	MOTION FOR STAY OF
Carolina Federal Credit Union; Southcoast	)	PROCEEDINGS TO ENFORCE
Community Bank; Joan Geanuracos; David	)	JUDGMENT or for SUPERSEDEAS
Sean Clancy,	)	BOND and TO IMPOSE BOND ON
DEFENDANTS.	)	PLAINTIFF
	)	

Plaintiff NCP Pilgrim, LLC ("NCP") respectfully submits this Memorandum in Opposition to Defendants Mary Lou Cercopely, David S. Clancy, and David Sean Clancy's (collectively "Defendants") Second Emergency Motion for Stay of Proceedings to Enforce Judgment or for Supersedeas Bond and To Impose Bond on Plaintiff, filed August 25, 2020 ("Motion").

A. PROCEDURAL HISTORY

This is a commercial mortgage foreclosure action which was filed on November 15, 2018. Subsequently, Defendants' filed an Answer and Counterclaims, dated January 23, 2019, and an Amended Answer and Counterclaims, dated April 22, 2019. A non-jury trial was held before this Court on January 28, 2020. At the commencement of the trial, Defense counsel waived all defenses except subject matter jurisdiction. Defendants presented no evidence at trial. As a result of the trial, this Court issued its Master's Decree of Sale and Foreclosure, dated July 13, 2020 ("Decree"), and its Notice of Master's Sale, dated July 14, 2020. Shortly after the Decree and Notice of Sale were issued, Defendants' filed their Motion to Reconsider, dated July 23, 2020. This Motion to Reconsider was denied by the Court on August 5, 2020. At that same time, the Court issued an Amended Notice of Master's Sale rescheduling the judicial sales date for October

6, 2020, at 11:00 a.m. ("Notice of Sale"). Additionally, Defendants' filed a Notice of Appeal appealing the Decree and Notice on or about August 18, 2020.

B. LEGAL REQUIREMENTS FOR A SUPERSEDEAS.

Defendants' filed their Motion pursuant to Rule 241, SCACR. Rule 241 establishes that the filing of a notice of appeal in a foreclosure case does **not** automatically stay the relief ordered in the Decree and Notice of Sale. Rule 241(b)(4), SCACR. If a party wishes to stay the relief ordered in the Decree and Notice of Sale, he must move for an order imposing a supersedeas of matters decided in the order on appeal after service of the notice of appeal. Rule 241(c)(1), SCACR. In determining whether an order imposing supersedeas should be issued, the court should consider "whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR. In the event a court issues an order imposing supersedeas, the order may be conditioned upon such terms, "including but not limited to the filing of a bond or undertaking," as the court may deem appropriate. Rule 241(c)(3), SCACR. Specifically, S.C. Code Ann. § 18-9-170 explicitly outlines the bond or undertaking required to obtain a stay of a judgment directing the sale of land to satisfy a mortgage. *Muckenfuss v. Fishburne*, 68 S.C. 41, 46 S.E. 537, 538 (1903). This Section states that an execution of a judgment directing the sale of real property shall not be stayed unless the following requirements are met -

a written undertaking be executed on the part of the appellant, with two sureties, to the effect that during the possession of such property by the appellant he will not commit or suffer to be committed any waste thereon and that if the judgment be affirmed he will pay the value of the use and occupation of the property from the time of the execution of the undertaking until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered.

S.C. Code Ann. § 18-9-170. This Section goes on to establish specific additional criteria in the event the judgment directs the sale of land to satisfy a mortgage on the property:

the undertaking shall provide that in case the judgment appealed from be affirmed and the land be finally sold for less than the judgment debt and costs then the appellant shall pay for any waste committed or suffered to be committed on the land and shall pay a reasonable rental value for the use and occupation of the land from the time of the execution of the undertaking to the time of the sale, but not exceeding the amount of such deficiency which sum shall be duly entered as a payment on the judgment.

Id. These requirements can be summarized as follows:

1. Written undertaking with two sureties;
2. Written undertaking to address the following potential damages to respondent:
 - a. Any waste to the property during the pendency of the appeal; and
 - b. Value of use and ownership of property, including rental value during the pendency of the appeal.

Thus, in order to stay the Decree and Notice of Sale, Defendants must comply with the requirements of both Rule 241, SCACR and S.C. Code Ann. § 18-9-170 and post an undertaking with the Dorchester County Clerk of Court prior to the date of the judicial sale.

C. ARGUMENT

1. The Court Should Grant Defendants' Motion for a Supersedeas Bond of \$620,787.20.

Rule 241, SCACR, states that a judge should only issue an order imposing supersedeas when such an order is "necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Here, it is fairly straightforward that the imposition of a supersedeas bond on Defendants is necessary to preserve the jurisdiction of Defendants' appeal. Thus, the court must look to S.C. Code Ann. § 18-9-170 to determine the amount of the supersedes bond.

As outlined above, section 18-9-170 establishes strict requirements for calculating the amount of a supersedeas bond to stay the execution of a judgment directing the sale of real property. First, this section establishes that to stay the sale of real property, the appellant must undertake a written execution with two sureties. S.C. Code Ann. § 18-9-170. Second, this undertaking must provide that during the time appellant continues to possess the property he will not commit or suffer to be committed any waste to the property and if the judgment is affirmed he will pay the value of the use and occupation of the property from the time of the undertaking until the delivery of possession pursuant to the judgment. *Id.* Finally, the undertaking must provide that in the event the judgment is affirmed and the property is sold for less than the judgment debt and costs, appellant shall pay for any waste committed or suffered to be committed on the land plus a reasonable rental value for the use and occupation of the land from the time of the undertaking until the time of the foreclosure sale. *Id.*

There is little South Carolina case law interpreting the requirements of section 18-9-170, but it can be presumed that the value of the use and occupation of the property can be determined based upon the rental value, insurance costs, taxes, and maintenance costs for the property. Furthermore, the value of any waste committed or suffered to be committed on the land can likely be determined using the current appraised value of the property. NCP had the property appraised by a qualified commercial appraiser on July 31, 2020, a copy of which is attached hereto as Exhibit 1. In addition to the current appraised value, the appraisal also provided an estimated rental value, insurance costs, and maintenance costs for the property.

Based on the criteria discussed above, this Court should issue an order requiring Defendants to obtain a supersedeas bond in the amount of \$662,588.83 secured by two sureties.

This figure is based upon the assumption that it will take approximately three (3) years to resolve Defendants' appeal, although many appeals take much longer, and can be broken down as follows:

July 31, 2020 Appraised Value of the Subject Property (Exhibit 1)		\$453,000.00
Property Taxes		\$28,974.40
2019 Delinquent Tax Fee Not Included in Decree	\$882.76	
Estimated 2020 Taxes (2019 Taxes + 10%)	\$6,918.44	
Estimated 2021 Taxes (2020 Taxes + 10%)	\$6,987.62	
Estimated 2022 Taxes (2021 Taxes + 10%)	\$7,057.50	
Estimated 2023 Taxes (2022 Taxes + 19%)	\$7,128.08	
Rental Value		\$120,966.76
Prorated 2020 Reasonable Rental Value (10/6/20-12/31/20 - \$102.43 for 86 days) (based on rental value information provided on page 60 of Exhibit 1)	\$8,808.76	
Estimated 2021 Reasonable Rental Value	\$37,386.00	
Estimated 2022 Reasonable Rental Value	\$37,386.00	
Estimated 2023 Reasonable Rental Value	\$37,386.00	
Insurance		\$7,765.48
Prorated 2020 Insurance (10/6/20-12/31/20 - \$6.58 for 86 days) (based on insurance information provided on page 60 of Exhibit 1)	\$565.48	
Estimated 2021 Insurance	\$2,400.00	
Estimated 2022 Insurance	\$2,400.00	
Estimated 2023 Insurance	\$2,400.00	
Maintenance Costs		\$10,080.56
Prorated 2020 Maintenance Costs (10/6/20-12/31/20 - \$8.54 for 86 days) (based on maintenance information provided on page 60 of Exhibit 1)	\$734.06	
Estimated 2021 Maintenance Costs	\$3,115.50	
Estimated 2022 Maintenance Costs	\$3,115.50	
Estimated 2023 Maintenance Costs	\$3,115.50	
Loan Interest		\$41,801.64
Prorated 2020 Interest (10/6/20-12/31/20 - 5.5% of \$234,657.55 for 86 days)	\$3,083.14	
2021 Interest	\$12,906.17	
2022 Interest	\$12,906.17	
2023 Interest	\$12,906.17	
TOTAL		\$662,588.83

2. S.C. Code Ann. § 18-1-130(a)(2) Does Not Apply to Foreclosure Sales.

In their Motion, Defendants' assert that the undertaking outlined in Section 18-1-130(a)(2) applies to this matter and that NCP is required to file a bond to sell the subject property. Section 18-1-130(a)(2) deals specifically with the appeal of the execution of a monetary judgment and requires the plaintiff seeking the execution of a monetary judgment to post an undertaking before moving forward with the execution. South Carolina courts have explicitly held that this statute does not apply to sales due to mortgage foreclosures. *Carsten v. Wilson*, 241 S.C. 516, 521, 129 S.E.2d 431, 434 (1963). Instead, courts have ruled that section 18-9-170 controls the process to stay a foreclosure sale subject to the filing of an appeal. *Id.* Thus, Defendants motion to require NCP to post a bond or undertaking in regard to the upcoming foreclosure sale should be denied.

3. Defendants' Request to Postpone the October 6, 2020 Judicial Sale Should be Denied.

As part of their Motion, Defendants' request the October 6, 2020 judicial sale be postponed for the second time to provide them with a reasonable time to post their requested supersedeas bond. This judicial sale was originally scheduled for September 1, 2020. However, it was postponed until October 6, 2020, following the Court's August 5, 2020 denial of Defendants' Motion to Reconsider to give Defendants ample time to file their Appeal and Second Motion for a Supersedeas Bond. Defendants filed their Notice of Appeal on August 18, 2020, and filed their Second Motion for a Supersedeas Bond on August 25, 2020. A hearing is currently scheduled on the Motion for Monday, September 14, 2020. Defendants will have ample time between the September 14 hearing and the October 6 judicial sales date to obtain and post the necessary bond with the Dorchester County Clerk of Court. Thus, the Court should deny Defendants' request to postpone the October 6, 2020 judicial sale for the second time.

D. CONCLUSION

For the reasons outlined above, this Court should issue an Order imposing a supersedes bond on Defendants in the amount of \$662,588.83 to be guaranteed by two sureties. The bond must specifically provide that (1) during the time Defendants continue to possess the property they will not commit or suffer to be committed any waste to the property; (2) if the judgment is affirmed they will pay the value of the use and occupation of the property from the time of the undertaking until the delivery of possession pursuant to the judgment; and (3) if the judgment is affirmed and the property is sold for less than the judgment debt and costs, Defendants shall pay for any waste committed or suffered to be committed on the land plus a reasonable rental value for the use and occupation of the land from the time of the undertaking until the time of the foreclosure sale. This bond must be posted with the Dorchester County Clerk of Court prior to the October 6, 2020 judicial sale in order to effectively stay the sale of the subject property. If Defendants' supersedes bond with two sureties is not timely posted, the judicial sale should be allowed to proceed.

Furthermore, this Court should deny Defendants' Motions to Postpone the October 6, 2020 judicial sale and to Impose Bond on Plaintiff for the reasons discussed above.

RUSSELL P. PATTERSON, P.A.

/s/Lauren P. Williams

Lauren P. Williams

Russell P. Patterson

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9301

lauren@russellpattersonlaw.com

russell@russellpattersonlaw.com

Attorneys for the Plaintiff

Hilton Head Island, SC
September 11, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CASE NO. 2018-CP-18-2053
NCP Pilgrim, LLC.,	)	
	)	
Plaintiff,	)	DEFENDANTS'
v.	)	REPLY MEMORANDUM
	)	TO PLAINTIFF'S
Mary Lou Cercopely, <i>et al.</i> ,	)	MEMORANDUM IN OPPOSITION
	)	
Defendants.	)	
_____	)	

TO: THE HON. JAMES E. CHELLIS, DORCHESTER COUNTY MASTER IN EQUITY:

COMES NOW THE Defendants Mary Lou Cercopely, David S. Clancy and David Sean Clancy ("Clancy") who submit the following Reply Memorandum to Plaintiff's Memorandum in Opposition (filed September 11, 2020) for Plaintiff's Second Emergency Motion for Supersedeas et al. (filed August 25, 2020).

BACKGROUND

NCP Pilgrim won a judgment of \$367,673.00 (with daily interest at \$35.80), plus fees of \$41,110.82. This brings the award to \$409,074.01 with interest.

Post-award, on August 17, 2020, NCP Pilgrim had the property appraised at \$453,000.00 as "commercial office/retail."

Now, NCP Pilgrim wants a bond of **\$620,787.20** – which is almost twice the original award and three times the value of the Note (\$234,657.55). The process in the South Carolina Court of Appeals generally takes 2 to 2.5 years to get a final decision.

LEGAL ARGUMENT

A bond of \$620,787.20 as requested by NCP Pilgrim is advanced in bad faith. It is intended to prevent Mr. Clancy from ever being able to afford a bond; its goal is to make the bond so "sky-

high” that his appeal is rendered moot. It also conflicts with both S.C. Code Ann. § 18-9-170 and Rule 241, SCACR, because: (1) the payment of a bond is not imposed by Rule 241; but if it is imposed then (2) Section 18-9-170 only requires the bond-holder to remunerate a respondent in case he loses his appeal for: (i) any waste; and (ii) a reasonable rate for the use and occupation of the property until the next sale. No other indicia are included. The “presumption” at p. 4 of NCP Pilgrim’s memorandum is just that – a presumption, unsupported by the law.

a. Most Indicia Advanced by Plaintiff is Unsupported by the Law.

Thus, asking for the appraised price of the building (\$453,000.00) is not consistent with either authority; neither is the request for annual taxes (\$28,974.00), insurance (\$10,080.56), or the “interest” (\$41,801.65) on the original Note consistent with either Rule 241 or Section 18-9-170. The “reasonable” rental value is set at \$37,386.00, which is fair – but receiving “real” rent is much, much more erratic. Also, maintenance costs (\$10,080.56 for 3.5 years) and insurance (\$7,765.48) are passed to the tenant and are part of the rent.

b. Calculation of the Bond by the Defendant.

Mr. Clancy will pay all rents received to NCP Pilgrim, less the costs of taxes, insurance and miscellaneous costs, while the case is on appeal. This will take care of the value of the use and occupancy of the Property while the matter is on appeal, which is by far the bulk of any reasonable bond.

In terms of waste, 117 North Cedar was Mr. Clancy’s childhood home. He is a native resident of Dorchester County and works as an automobile buyer in the county. He will not commit or suffer real waste to occur at his childhood home when he potentially has the chance to have the ruling overturned on appeal. None of NCP Pilgrim’s other requests meets the test of either S.C. Code Ann. § 18-9-170 and Rule 241, SCACR. Therefore, Clancy asks that the Court impose no

bond under Rule 241, or impose a bond in keeping with his ability to pay it willingness to pay all rents received to NCP Pilgrim.

c. The Bond to be Imposed on the Plaintiff.

NCP Pilgrim would have a point about S.C. Code Ann. § 18-1-130(a)(2) if they were seeking a non-deficiency judgment. But they are not. At Paragraph 15 of the *Master's Decree of Sale and Order of Foreclosure* (p. 14), the Court underlined and bolded that the Plaintiff demands a “personal or deficiency” judgment. Plaintiff refers to old cases [the most recent being *Carsten v. Williams*, 241 S.C 516, 521-522, 129 S.E. 431, 434-435 (1963)] which states that the only bond required is from the Appellant (not the Plaintiff) when the judgment orders the “sale of land to satisfy a mortgage thereon.”

None of the cases cited by NCP Pilgrim appear to cover the instant situation – in which it has obtained basically a monetary judgment secured by land, where Plaintiff must come up with the difference in the event that the land sells for less than appraised value at the sales. Had NCP Pilgrim been satisfied with a non-deficiency judgment, that would be correct. But in asking for a deficiency, they have turned it into a money judgment, and Section 18-1-130(a)(2) applies. Thus, if NCP Pilgrim wants to enforce the sale of the Property, it must give two bonds equal to double the appraised value (or \$906,000.00).

d. Date Defendant must pay.

Depending on the Court's discretion to impose a bond, Defendant should be given until the November 4, 2020 – which is the October 6, 2020 sale date plus 30 days required for deficiency judgments. There is no reason to require him to post his security prior to October 6, 2020 as NCP suggests.

CONCLUSION.

Clancy requests that the Court grant his Second Emergency Motion of August 25, 2020; not to impose a bond of \$620,787.20 on Clancy, but either no bond or a bond in keeping with his ability to pay and willingness to pay all rents received to NCP Pilgrim

BROWN & VARNADO LLC

/s Robert B. Varnado

By: _____

Robert B. Varnado

P.O. Box 1127

Mt. Pleasant, South Carolina 29465

Telephone: (843) 737-7300

Facsimile: (843) 654-5109

rvarnado@brown-varnado.com

Attorneys for Plaintiffs

September 14, 2020
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I did this date serve the attached document(s) on the parties listed below by placing them in the United States mail with proper postage affixed thereto and addressed as follows or via the E-flex system and email:

Lauren P. Williams
Russell P. Patterson
Attorney for Plaintiff

VIA E-FLEX/EMAIL

/s Robert B. Varnado

By: _____

Robert B. Varnado

September 14, 2020
Mount Pleasant, South Carolina

Page 1

1 IN THE PROBATE COURT
2 FOR THE STATE OF SOUTH CAROLINA
3 DORCHESTER COUNTY

4 TRANSCRIPT OF PROCEEDINGS
5 JANUARY 28, 2020

6 NCP PILGRIM, LLC,
7 Plaintiff,
8 vs. CASE NO. 2018-CP-18-2053

9 MARY LOU CERCOPELY; DAVID S. CLANCY; SOUTH
10 CAROLINA FEDERAL SAVINGS BANK; SOUTHCOAST
11 COMMUNITY BANK; JOAN GEANURACOS; DAVID SEAN
12 CLANCY,
13 Defendants.

14 BEFORE THE HONORABLE: JAMES CHELLIS
15 TIME: 11:30 AM

16 LOCATION: DORCHESTER COUNTY COURTHOUSE
17 SAINT GEORGE, SC

18
19
20
21
22 REPORTED BY: MACKENZIE ALLEN
23 CLARK & ASSOCIATES, INC.
24 CHARLESTON, SC 29415
25 843-762-6294
WWW.CLARK-ASSOCIATES.COM

1 APPEARANCES

2

3 ON BEHALF OF PLAINTIFF:

4 RUSSELL PATTERSON
5 BY: LAUREN WILLIAMS
6 BY: RUSSELL PATTERSON
7 19 Shelter Cove Lane
Suite 107
Hilton Head, SC 29928

8 ON BEHALF OF DEFENDANT:

9 BROWN & VARNADO
10 BY: ROBERT VARNADO
11 103 Church Street
Mount Pleasant, SC 29464

12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 3

1 INDEX

EXAMINATION	PAGE
3 DIRECT	26
BY MS. WILLIAMS	
CROSS-EXAMINATION	34
BY MR. VARNADO	
REDIRECT EXAMINATION	40
BY MS. WILLIAMS	
RECROSS-EXAMINATION	42
BY MR. VARNADO	
CERTIFICATE OF REPORTER	47

8

9 EXHIBITS

EXHIBIT	DESCRIPTION	PAGE
11 Plaintiff's	Prime + 1 Line of Credit	21
Exhibit No. 1	Nonresidential Loan,	
	6/10/04	
Plaintiff's	Mortgage, 6/16/04	22
Exhibit No. 2		
Plaintiff's	Rerecorded Mortgage,	22
Exhibit No. 3	6/5/06	
Plaintiff's	Note and Mortgage	23
Exhibit No. 4	Modification, 8/13/09	
Plaintiff's	Loan and Mortgage	23
Exhibit No. 5	Modification, 6/24/10	
Plaintiff's	Assignment of Real Estate	23
Exhibit No. 6	Mortgage	
Plaintiff's	Assignment of Mortgage or	23
Exhibit No. 7	Other Security Instrument	
Plaintiff's	Limited Power of Attorney	23
Exhibit No. 8	- CRE/ADC Venture 2012-1,	
20 LLC		
Plaintiff's	KeyBank Real Estate	24
Exhibit No. 9	Capital Loan History	
	Report, 1/24/13	
Plaintiff's	Letter from Russell	24
Exhibit No. 10	Patterson Office, 10/25/18	
Plaintiff's	Original Complaint	24
Exhibit No. 11		
Plaintiff's	Amended Complaint, 4/5/19	24
Exhibit No. 12		
Plaintiff's	NCP Pilgrim Affidavit of	24
Exhibit No. 13	Debt	

Page 4

Plaintiff's Foreclosure Action, 24

Exhibit No. 14 2/11/10

Plaintiff's Answer of Defendants, 25

Exhibit No. 15 3/29/10

Plaintiff's Current Tax Bill/Tax 25

Exhibit No. 16 Notice

Defendant's Letter from FDIC, 6/5/12 33

Exhibit No. 1

Defendant's Delinquent Tax 33

Exhibit No. 2

Plaintiff's Assignment of Home Equity 40

Exhibit No. 17 Variable Draw Agreement, 12/11/12

7 12/11/12

Plaintiff's Assignment of Home Equity 40

Exhibit No. 18 Variable Draw Agreement, 6/26/18

Plaintiff's Omnibus Agreement, 41

Exhibit No. 19 12/11/12

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 5

1 THE COURT: What I'm going to ask
2 plaintiff's counsel to do is give me sort of a
3 brief opening if you would, please, in the nature
4 of what you intend to be doing today. And we'll
5 let Mr. Varnado do the same. And then we'll get
6 started. Okay?
7 So first off, this is the matter of NCP
8 Pilgrim, LLC as the plaintiff against Mary Lou
9 Cercopely, David S. Clancy, South Carolina
10 Federal Credit Union, Southcoast Community Bank,
11 Joan Geanuracos. Did I pronounce that correctly?
12 MS. WILLIAMS: We did speak to her
13 yesterday, but I'm not exactly sure on how to
14 pronounce the name.
15 THE COURT: All right. I'm going
16 spell it for the court reporter. Joan
17 Geanuracos, G-E-A-N-U-R-A-C-O-S. And there is
18 also a defendant by the name of David Sean
19 Clancy. Before I go any further, let me make
20 sure. Those are two different people, or are
21 they one and the same, Mr. Varnado?
22 MR. VARNADO: I believe they're one
23 and the same, Your Honor, with Mr. Clancy here.
24 THE COURT: Is that correct, Mr.
25 Clancy?
MR. CLANCY: Yes, sir.
THE COURT: Is that your
understanding, Ms. Williams?
MS. WILLIAMS: That was my
assumption that -- yes.
THE COURT: Wait a minute. Let me
get your name right.
MS. WILLIAMS: It was Williams.
You're correct.
THE COURT: Okay. Ms. Williams.
MS. WILLIAMS: And yes, that's my
understanding. Also, just for the Court's
clarification, South Coast Community Bank is
represented by Samuel Altman. He is aware of the
hearing. And I think that he mailed your office
a letter, but he will not be here today.
THE COURT: I received a letter
from him indicating that he will not be present,
but that if in the event a foreclosure ensued and
there's a sale and a surplus that he would be
notified of the surplus.
MS. WILLIAMS: That's my
understanding, Your Honor.
THE COURT: Did you understand
that, Mr. Varnado?

Page 7

1 MS. WILLIAMS: Britt. B-R-I-T-T.
2 And then it's L-O-U-K-O-S.
3 THE COURT: Well, I would have
4 spelled that wrong.
5 MS. WILLIAMS: Correct. I think
6 I've done that many times.
7 THE COURT: Okay. Ms. Williams,
8 would you give me just a brief opening and tell
9 me where we're heading today and what you're
10 going to be seeking. And then I'll let Mr.
11 Varnado give me a brief presentation as well so I
12 can get acclimated with what we're talking about.
13 MS. WILLIAMS: Of course Your
14 Honor. So as we've all discussed, my name is
15 Lauren Williams. And I'm here on behalf of the
16 plaintiff, NCP Pilgrim, LLC. This is a
17 commercial foreclosure of a building located on
18 117 Cedar Street in the Summerville, South
19 Carolina that is jointly owned by Mr. Clancy and
20 his sister, Ms. Cercopely.
21 THE COURT: That's the name of --
22 excuse me. It's a curious pronunciation, but
23 it's Cercopely.
24 MS. WILLIAMS: Cercopely. I tried
25 to write it down to pronounce it correctly. I
will do my best.
THE COURT: It's a name that is a
kin to almost old -- I'm not sure if it's
Summerville, but it's at least Summerville when I
was growing up.
MS. WILLIAMS: Okay. Well, I will
do my best to honor the pronunciation.
THE COURT: Cercopely.
MS. WILLIAMS: Cercopely. So the
property is jointly owned by Ms. Cercopely and
Mr. Clancy, who is here today.
THE COURT: You told me it was
something 117?
MS. WILLIAMS: 117 Cedar Street.
My understanding it's located in downtown
Summerville.
THE COURT: Is it South Cedar or
North Cedar?
MS. WILLIAMS: I think that it is
South Cedar.
MR. VARNADO: Yes, sir.
THE COURT: Is this is property
that you used to serve as a -- I think it was
a --
MR. CLANCY: The Victorian house,

Page 6

1 MR. VARNADO: I believe that Mr.
2 Altman did write that. Your Honor. Yes, sir.
3 THE COURT: I think I saw -- if
4 he's answering on behalf of Joan Geanuracos, it's
5 a fairly typical and appropriate position to
6 take. The civil action number for the purposes
7 of the record is 2018-CP-18-02-053.
8 And today present is Ms. Lauren E.
9 Williams, Mr. Russell P. Patterson, both of the
10 South Carolina Bar, both who work out of Hilton
11 Head, South Carolina. We also have present Mr.
12 Robert B. Varnado.
13 MR. VARNADO: Yes, sir, Your Honor.
14 Thank you, sir.
15 THE COURT: Are you related to
16 Judge Brown?
17 MR. VARNADO: No. Very distantly,
18 sir.
19 THE COURT: Well, anyway, Mr.
20 Varnado is from the Charleston County Bar. And
21 he represents Mr. Clancy; is that correct?
22 MR. VARNADO: Yes, sir.
23 MR. CLANCY: Yes, sir.
24 MR. VARNADO: And I represent Ms.
25 Cercopely too, but she's not --
THE COURT: Cercopely?
MR. VARNADO: Cercopely, yes,
sir.
THE WITNESS: She's my sister, Your
Honor.
THE COURT: Mary Lou is your
sister?
MR. CLANCY: Yes, sir.
THE COURT: There's one other
person here today. Is that a witness for you,
Mr. Varnado?
MR. VARNADO: This is Mr. Ventrum
(ph), and he's assisting me with the case.
THE COURT: Oh, he's a lawyer
assistant?
MR. VARNADO: Not a lawyer, but
he's assisting me with the case.
THE COURT: He's your assistant?
Okay. Thank you. And again, Ms. Williams, will
you tell me who your witness is?
MS. WILLIAMS: Sure, your Honor.
This is Britt Loukos. She is a senior associate
with NCP Pilgrim. And I can spell her name if
that's helpful.
THE COURT: Britt?

Page 8

1 Your Honor.
2 THE COURT: The Victorian house.
3 Yes. Okay. I know exactly where it is. All
4 right. It's in my mind. In my mind's eye.
5 Let's put it that way.
6 MS. WILLIAMS: Perfect. So NCP
7 Pilgrim is the current holder of a note signed by
8 Mr. Clancy, a line of credit that is secured by a
9 mortgage that was signed by his mother, the
10 current owner of the property at the time the
11 mortgage was placed.
12 The note was dated June 10, 2004. And
13 it was originally held by Carolina Federal
14 Savings Bank. As I'm sure you know, Carolina
15 Federal Savings Bank was taken over by the FDIC.
16 The FDIC subsequently assigned the note to
17 CRE/ADC Venture who subsequently assigned it to
18 NCP Pilgrim, LLC.
19 The note is in the amount -- original
20 amount of \$258,840. And as I said, it was
21 secured by a first mortgage on the property that
22 was owned by Barbara A. Clancy, now owned by Mr.
23 Clancy and his sister, located at 117 South Cedar
24 Street.
25 THE COURT: How did they acquire
the property?
MS. WILLIAMS: How did --
THE COURT: The current defendants
acquire the property.
MS. WILLIAMS: The current
defendants? I believe that when Ms. Clancy died,
there was a deed of distribution that transferred
the property to David Clancy and Mary Lou
Cercopely. The deed was record with the
Dorchester County Register of Deeds out of the
estate.
THE COURT: I don't want to
interrupt you -- well, I do want to interrupt you
because I have a question.
MS. WILLIAMS: Sure.
THE COURT: So Ms. Clancy who
originally -- who owned the property and the
mortgage placed on property has since died?
MS. WILLIAMS: Correct, Your Honor.
She's deceased.
THE COURT: And she left the
property to her daughter, Ms. Cercopely, and Mr.
Clancy, who is here in court today?
MS. WILLIAMS: That is my
understanding.

1 THE COURT: That's the --
 2 MS. WILLIAMS: Yes, Your Honor.
 3 THE COURT: Okay. Go ahead.
 4 MS. WILLIAMS: Pursuant to the
 5 original terms of the note, there was an original
 6 maturity date of June 10, 2009. Approximately
 7 two years later in June 2006 the mortgage was
 8 rerecorded apparently by the original closing
 9 attorney, Mr. Stanley Claypoole, in order to add
 10 the maturity date and loan amount to the recorded
 11 mortgage.
 12 Thereafter, Mr. Clancy and his mother
 13 signed two note and mortgage modifications. The
 14 first on August 18, 2009, and the second on
 15 June 24, 2010. Both of these documents were
 16 recorded with the Dorchester County Register of
 17 Deeds. They also referenced the original and the
 18 rerecorded mortgage and the principle amount of
 19 the loan of \$258,940.
 20 The 2010, the second modification, was
 21 the end result of a February 2010 mortgage
 22 foreclosure action filed by the original note
 23 maker, Carolina Federal and a subsequent Chapter
 24 13 bankruptcy filing by Ms. Clancy.
 25 To resolve the foreclosure action and
 out of the bankruptcy, there is the second note
 and mortgage modification.
 And then as we've discussed in
 October 13, 2012, Ms. Barbara Clancy passed away.
 She left the property to her two children. And
 once NCP took over ownership of the loan, about
 four months later they initiated this lawsuit.
 They sent a demand letter to Mr. Clancy which was
 not responded to. And then we initiated this
 foreclosure action.
 In response to our summons and
 complaint, Mr. Varnado filed an answer and
 counterclaim. Subsequently, NCP discovered that
 there was a mathematical error in their
 calculation of the total amount owed. And we
 came before you, Your Honor, to seek permission
 to amend our complaint.
 That permission was granted. We amended
 our complaint. And Mr. Varnado subsequently
 filed an amended answer and counterclaim.
 THE COURT: Okay.
 MS. WILLIAMS: And it's undisputed
 that the last payment on this loan was made on
 January 14, 2013, over seven years ago. Sorry
 it's 2013. Yes, '13. It's 2020. Over 7 years

1 of 2012. And as Ms. Williams noted, the debt --
 2 the final extension of the debt came to in July
 3 of 2012. So it was a nonperforming loan that was
 4 managed by the FDIC as part of its takeover of
 5 Carolina First Savings Bank.
 6 Now, the Financial Institution Reform,
 7 Recovery, and Enforcement Act, FIRREA, was
 8 enacted in 1989. And it was in the wake of the
 9 savings and loan crisis. And one of its goals
 10 was to provide an administrative claims process
 11 or claims against the acts of the failed banks.
 12 So what you have here is I think, but
 13 I'm not quite sure, NCP Pilgrim is the last
 14 person who has been transferred this note. As a
 15 side, I don't think it's a negotiable instrument.
 16 I don't think that -- it doesn't meet the test of
 17 negotiability, and I can talk about that in a
 18 little bit.
 19 So basically it's a nonnegotiable
 20 instrument, we say. The NCP Pilgrim owns it.
 21 And I think that they say they got it from
 22 somebody else who, if you go back in time, it was
 23 the FDIC sold off all of Carolina First Savings
 24 Bank's checking accounts and stuff to Bank of
 25 North Carolina. And then they sold the
 nonperforming notes and loans to this LLC in
 which they gave a participation agreement to for
 40 percent to this company that's trying to sell
 them any way they can.
 Now, the reason why that's important,
 Your Honor, is we say that the FIRREA at
 Section 1821(d)(13)(D) -- that's really hard --
 but 1821(d)(13)(D) sets a jurisdictional bar over
 certain claims by providing for judicial review
 only after the administrative claims process has
 been followed.
 So that was 1821(d)(13)(D). And it's a
 statute. And it's out here. And it says,
 limitation of judicial review except as otherwise
 provided in this subsection, no court -- it says
 no court shall have jurisdiction over any claim
 or action for payment from or any other action
 seeking a termination of rights with respect to
 the assets of a depository institution in which
 the corporation, that means the FDIC, has been
 the appointed receiver.
 Now, Your Honor, I handed up to you --
 or Ms. Williams handed up to you my pretrial
 brief. It contains two cases attached to it as
 well as the letter that Mr. Clancy received by

1 ago.
 2 THE COURT: Did you file a reply to
 3 the counterclaim?
 4 MS. WILLIAMS: We did, Your Honor.
 5 We filed a timely reply. I'm happy to discuss
 6 any of the counterclaims that were filed by
 7 Mr. Varnado, but I believe he will summarize
 8 that.
 9 THE COURT: Let's let him address
 10 that. I think I've got the overall picture in my
 11 mind. I do recall this case coming up I guess it
 12 was about a year ago maybe.
 13 MS. WILLIAMS: It was some time
 14 ago. Yes, Your Honor.
 15 THE COURT: And I remember that I
 16 granted the right or the request to amend the
 17 complaint. And so now Mr. Varnado tell me about
 18 your position.
 19 MR. VARNADO: Well, Your Honor, we
 20 have a counterclaim. And I will address that
 21 momentarily if you'll let me.
 22 THE COURT: All right.
 23 MR. VARNADO: The first thing
 24 though that I think I need to bring up is lack of
 25 subject matter jurisdiction. And this is
 something that I recently discovered, but it is
 an older law. And the law is called FIRREA,
 which stands for the -- if you'll give me one
 second I can find it for you. I apologize, Your
 Honor. I thought I was all ready to go.
 THE COURT: FIRREA is the Financial
 Institutions Reform, Recovery, and Enforcement
 Act of 1989.
 MR. VARNADO: Yes, sir.
 THE COURT: Public law 101-73.
 MR. VARNADO: That is the law.
 THE COURT: Is this codified at 12
 U.S. Code § 1811, is that correct?
 MR. VARNADO: That is correct, sir.
 And, Your Honor, there are other consults which
 I'll get to. But as Ms. Williams alluded to in
 her opening statement, this was originally a loan
 executed by Carolina First Savings Bank. I call
 them CFSB. I think that the plaintiff calls them
 Carolina. I don't know which Your Honor prefers,
 but CFSB is what I say.
 And CFSB was received by the FDIC, the
 Federal Deposit Insurance Corporation. So that's
 important because the date that the FDIC took
 over the Carolina First Savings Bank was in June

1 certified mail on July 5, 2012 from the FDIC.
 2 And the first case is Freeman versus the
 3 Federal Deposit Insurance Company. And that's a
 4 D.C. Circuit case from 1985. And the next one is
 5 a case from the Fourth Circuit Court of Appeals
 6 called Willner versus Diamond. Willner versus
 7 Diamond in the Fourth Circuit Court of Appeals in
 8 2017.
 9 And basically it says that if you have a
 10 loan that comes out of the FDIC then you have to
 11 exhaust administrative remedies with the FDIC.
 12 And that this court and every other court -- no
 13 other court, whether it's federal, whether it's
 14 state can rule on whether or not the assignments
 15 were valid until we say the NCP Pilgrim goes to
 16 FDIC.
 17 So that's -- and it's an old law, but
 18 it's still a good law that I can tell. And then
 19 my brief, I put in that the subject matter
 20 jurisdiction. Subject matter jurisdiction is the
 21 power to hear and determine cases in the general
 22 class to which the proceedings in question
 23 belong. So yes, as a general rule, yeah, you
 24 hear cases involving foreclosures. That's for
 25 sure.
 But the jurisdiction of federal courts
 is limited to that expressly authorized by United
 States Constitution or Statute. And the
 Supremacy Clause in the United States
 Constitution provides that the federal law is the
 supreme law of the land.
 Basically what we say is that not only
 is there an administrative remedy which we feel
 that NCP Pilgrim has to accomplish, but that you
 can't hear the case until such time as that
 administrative function has been achieved. I
 don't even think you can hear it afterwards
 either, but I'll just say this that respectfully,
 Your Honor, we don't think you have the authority
 to hear this case until such time as they do
 their administrative remedy.
 And that you can raise subject matter
 jurisdiction at any time. And so therefore, we
 respectfully ask that you rule on that before you
 rule on anything else.
 And we would say that there's a Supreme
 Court case from 1995 -- I think it's Sherman
 versus Davis -- that says when a state court -- I
 believe it says when a state court is presented
 with something like this, it's got to rule on

Page 13

1 this first. Does the FIRREA really say what it
2 says they have to go to the FDIC?
3 And I know it's probably pretty odd, but
4 this is a case that came out of the FDIC. It
5 came out of -- and the FDIC wanted to be able to
6 say one of the first bites and had Congress enact
7 a law that says they have the first bite. They
8 get to decide. Thank you, Your Honor.

9 MS. WILLIAMS: Your Honor, I would
10 be happy to respond if that will be appropriate.

11 THE COURT: Well, go ahead and
12 respond. I don't know what you're going to tell
13 me, but go ahead.

14 MS. WILLIAMS: Of course. So, Your
15 Honor, we researched this issue this morning.
16 And after a close reading, we've read both cases
17 and we've reviewed the pertinent portions of the
18 FIRREA statute. And in Freeman versus the FDIC,
19 that case involved borrowers who were seeking to
20 stop a foreclosure filed by the FDIC.

21 And in that case, the court held that
22 the borrower could not stop the foreclosure and
23 was not entitled to a stay of the foreclosure
24 because under FIRREA the borrower should have
25 filed its claims against the FDIC and the failed
26 bank under the FDIC's administrative claims
27 procedures. And the Court allowed the
28 foreclosure to proceed.

29 So the Court interpreted FIRREA to apply
30 solely to -- in that case to the borrowers and to
31 the claims that were asserted by the borrower
32 against the FDIC and the failed bank.

33 THE COURT: In this case you have a
34 claim by the creditor against a borrower?

35 MS. WILLIAMS: Correct, Your Honor.
36 THE COURT: All right.

37 MS. WILLIAMS: And also, the other
38 case that was cited by the defendants is Willner
39 versus Diamond. And in that case, it involved a
40 foreclosure of a loan purchased from the FDIC
41 just like this case. And again, just like this
42 case, the borrower attempted to assert claims
43 relating to the actions of a failed bank.

44 The Court in Willner dismissed the
45 counterclaims filed by the borrower as to the
46 failed bank and the FDIC because the claims were
47 not timely filed under the FDIC's administrative
48 claims procedure.

49 Ultimately, the Court allowed the
50 purchaser of the loan to proceed with its

Page 15

1 knocks on the door of the bank. And the bank has
2 got this big, black sheet across the door saying,
3 we're closed by the FDIC. And this guy is
4 wanting his money, which is the demand deposit.

5 In order to make his claim against the
6 bank to get his demand deposit, at that point in
7 time, he has to take an administrative -- that's
8 an administrative claim governed by the FDIC
9 because the claim is against the bank.

10 Here we have a claim of the bank against
11 the debtor and the purchaser of an interest that
12 the bank once held against the debtor. I don't
13 see anything in that line as it talks about
14 claims against the bank.

15 Now, you have some counterclaims, which
16 if I rule that I don't have any jurisdiction, I
17 can't -- can I look behind to see if there's
18 really a claim against the bank?

19 MR. VARNADO: Well, I think it's
20 one thing, Your Honor. I understand what you're
21 saying. And I understand you've been surprised
22 by this so you're trying to understand it. But
23 the case out of the D.C. Circuit, which I cited,
24 and that is the Freeman case, it says at
25 page 1401 and 1402, which is on the page 6 of 10
of my case, at 1402 it says, we therefore hold
that 1821(d) jurisdictional bar is not limited to
claims by creditors, which I would say is NCP
Pilgrim, but extends to all claims and all
actions seeking a determination of rights with
respect to the assets of the failed financial
institution.

And then above it, it says, again, that
it's by creditor. So it applies to both, Your
Honor. And our position is that FIRREA applies
to both. It applies to both the claim of NCP
Pilgrim. It applies to my counterclaims.
Everything has to go in front of the FDIC.

MS. WILLIAMS: Your Honor, I would
just respond by saying NCP, I would echo your
initial explanation, mirrors what our thoughts
were that NCP is not a creditor. It's not a
borrower. It's not either one of the underlying
institution or of the FDIC. They were assigned
this asset from the FDIC and are seeking to
enforce it against the borrower. They are not
seeking anything from the underlying bank. They
don't have any claims against the FDIC or the
underlying bank.

Also, as I'm sure you're aware, millions

000457

Clark & Associates, Inc.

0465

Page 14

1 foreclosure. So our argument is that if anything
2 the FIRREA statute would apply to the argument
3 that the borrower has asserted against the failed
4 bank, CFSB, or the FDIC and that they had a very
5 short window of time to file these claims with
6 the FDIC under their administrative claims
7 procedure.

8 And the statute is very clear that
9 there's a small window of time if those claims
10 are not filed, they are time-barred. The Court
11 recognizes that's a harsh penalty, but the
12 purpose of the statute is to allow the FDIC to
13 timely administer and distribute and liquidate
14 any assets of the failed institution.

15 We would just also like to point out
16 that this is the first time -- this morning was
17 the first time we heard of this FIRREA argument.
18 The claim was not asserted in defendant's
19 pleadings. The case has been pending for a
20 significant period of time. And this is the
21 first time we were made aware of this issue.

22 THE COURT: Mr. Varnado, I would
23 like a brief reply.

24 MR. VARNADO: Yes, sir. Brief
25 reply. I disagree with my colleague's
interpretation of these cases. I believe that if
you look at it, it says anything even having to
do with NCP Pilgrim would have to file the case.
Maybe I would too. But we think that ultimately
this Court lacks a jurisdiction to hear it.

And honestly, Ms. Williams can say well,
we didn't know about it. But again, subject
matter jurisdiction can be raised at any time.
And this is a subject matter jurisdiction fight.
And if she says, well, it doesn't apply to my
claims, then it certainly doesn't apply to hers
either. Thank you, Your Honor.

THE COURT: Well, here is a --
obviously I haven't spent a long time on this
because you're just raising it this morning.
Here is the way I read it. It pops out my --
like, it's kind of like you can't see the forest
for the trees.

This statute appears to me to be talking
about claims against the creditor. Not the
debtor. This is a claim against the entity of
the bank.

For instance, let's say there was a
deposit -- a demand deposit at the bank. And the
person who has the right to that demand deposit

Page 16

1 of loans are sold routinely by the FDIC to
2 third-party purchasers. Those third-party
3 purchasers go on to foreclose against these
4 loans. There's nothing in either one of these
5 claims that says a third-party purchaser cannot
6 foreclose against a loan.

7 And if that was the case, I would
8 imagine there would be at least a few cases if
9 not many, many cases saying that a third-party
10 purchaser could not foreclose on a loan that they
11 purchased by the FDIC.

12 Also, why would a third-party purchaser
13 try to purchase a loan from the FDIC if they were
14 not allowed to collect it? So it's our position
15 that FIRREA does not apply to the FDIC in this
16 case. We are not making any claims or actions
17 against the assets of the underlying financial
18 institution, Carolina Federal Savings Bank.

19 MR. VARNADO: Your Honor, just
20 briefly. Ms. Williams can say that they're not a
21 creditor, but they are a creditor. And they are
22 a creditor because in the nonnegotiable note was
23 a transfer to sign from bit to bit to bit to
24 them.

25 So in order for you to be able to say
well, I find all these assignments are valid,
then you would have to -- I think would run into
the FIRREA. And so I don't think that Ms.
Williams can say, well, I just don't see how a
third party can do it because everyone, whether
you're a creditor, third party, counterclaimant,
has to go and do this and has to go in front of
the FDIC.

And if she can say, well, I don't know
why people would buy it. I haven't handled a lot
of FDIC cases, but I think that the statute is
clear. The federal statute is clear. The
Congress is clear that in order to get this done
you have to follow the jurisdictional guidelines
set by them. Thank you, Your Honor.

THE COURT: All right, I'm going
to say that I have jurisdiction. What are your
counterclaims, Mr. Varnado?

MR. VARNADO: Thank you, Your
Honor. Give me one second, and I'll bring them
up. My counterclaims were first in accounting
just to make sure that we knew the exact amount
because there was a HELOC, and there was at least
a huge discrepancy between the first number and
the second number.

Page 17

1 My second claim was for unfair trade
2 practices. My third claim was for negligent
3 misrepresentation. My fourth claim was for
4 constructive fraud. My fifth claim was that it
5 was unauthorized practice of law.
6 THE COURT: Okay. Let's take the
7 last one first. What basis do you have for
8 making a claim against a party that they are not
9 authorized to practice law? Is there any civil
10 action claim for that civil claim?
11 MR. VARNADO: It's not a civil
12 claim. It's not a claim that belongs to me that
13 I can assert and get damages for, but I think
14 it's a claim that we can assert because under
15 this case -- the South Carolina Supreme Court
16 case -- I had it right on the tip of my tongue.
17 I can't remember it.
18 THE COURT: The Wachovia case?
19 MR. VARNADO: No. It involves a
20 firm in Columbia. And it will come to me in a
21 second, Your Honor. I'm so sorry. But basically
22 the case says that these documents that are done
23 are very -- have a lot of legal effect. So
24 therefore, because you were doing this without
25 being authorized, then that was the claim that
you could be enjoined from doing it. So that's
the base of that claim, Your Honor.
THE COURT: Are you addressing that
in the sense that it's -- it violates a maxim
that he who seeks equity must do equity, or is it
some sort of equitable maxim that you're raising
those factual issues?
MR. VARNADO: I don't think it's a
legal maxim so much as it's --
THE COURT: Well, it wouldn't be a
legal maxim. It would be an equitable maxim.
MR. VARNADO: That's true, Your
Honor. I'm sorry. And it's not an equitable
maxim like the one that trips off the tongue, but
it basically says that entities like NCP Pilgrim
cannot do assignments and transfer. Like for
instance, there was an assignment of a
mortgage-owed security from CRE Venture to NCP
Pilgrim, but there was also known under a limited
power of attorney and also then signed by NCP
Pilgrim I believe to give them the home equitable
variable rate draw.
So basically we don't understand how and
why CRE Venture gave NCP Pilgrim limited power of
attorney, which NCP Pilgrim then gave the note to

Page 19

1 holder in due course, we think that's gone.
2 And then that would also apply to our
3 defense. It would at least be a defense to the
4 action against NCP. But I don't really think
5 that it would lie versus NCP Pilgrim if that
6 makes sense.
7 THE COURT: I understand what
8 you're saying. I do want to you to explain to me
9 why you're say this is a nonnegotiable
10 instrument, though.
11 MR. VARNADO: Okay. Your Honor, a
12 negotiable instrument --
13 MS. WILLIAMS: Your Honor, I think
14 that we are in a position we could agree that
15 it's not a negotiable instrument as a line of
16 credit. There's no pay to the order of. I think
17 that's what Mr. Varnado is going to argue. But
18 just to save the Court's time.
19 THE COURT: Okay.
20 MS. WILLIAMS: But you're welcome
21 to keep hearing him. I just wanted to let you
22 know our position.
23 THE COURT: All right. So you
24 agree that it's nonnegotiable? Then let's move
25 on.
MR. VARNADO: Thank you, sir.
THE COURT: So give me those other.
Unfair trade practices, letter of
misrepresentation, and what else?
MR. VARNADO: And negligence all
really lie in our opinion against Carolina First
Savings Bank. And at the minimum, they would be
defenses that Mr. Clancy could raise against the
transfer order. Since we're not in Article 3, we
can set that aside. And we're back and looking
at a nonnegotiable note, then the transferee
steps into the right as transferor on down the
line.
And the defendant, Mr. Clancy, then has
all the defenses that he would have against the
initial transferor. Does that make sense, Your
Honor?
THE COURT: I'm trying to follow
it. Let's go back to the original concept so I
can eliminate this from my thought process. But
a holder in due course is one who holds the
property without the claims of others. Is that
correct?
MR. VARNADO: Yeah. Basically I
think a holder in due course buys a negotiable

Page 18

1 themselves. And again, we say that would under
2 FIRREA, but I understand your ruling. But if the
3 Supreme Court of South Carolina is right, then
4 that has to be done by South Carolina attorneys.
5 And they say in their pretrial brief
6 that it wasn't. They said well, we have other
7 lawyers who did do it. And they're good lawyers.
8 But again, that's the basis of our claim.
9 THE COURT: Okay. I think that
10 Wachovia case turned on the maxim of unclean
11 hands. And I think in that case my recollection
12 of the facts on that case was that the lender
13 closed a mortgaged loan, which was a second
14 mortgage lien. And the Supreme Court -- I think
15 Justice Toal was the writer of that case?
16 MS. WILLIAMS: I think that's
17 correct, Your Honor.
18 THE COURT: Stated that the closing
19 itself required that under our rules -- under
20 South Carolina rules that that process itself is
21 a practice of law. And therefore, the lender had
22 unclean hands in trying to enforce a mortgage
23 that had not been explained through the expertise
24 of lawyer who would be able to explain to the
25 borrower that kind of document.
And then I remember shortly thereafter,
Wachovia began hiring lawyers to do the second
mortgage.
MS. WILLIAMS: Yes.
THE COURT: That was the practical
effect of that decision if I recall that as well
as practice of law. At any rate, it was an
unclean hands issue. What I'll let you do on
the -- so I think you're acknowledging to me, Mr.
Varnado, that there's really no civil claim.
There's no civil action the party holds for the
undue practice of law.
MR. VARNADO: There is none.
THE COURT: And unauthorized
practice of law. So we will -- I'll keep that in
mind as I go through the case for purposes of
unclean hands doctrine or maybe some equitable
maxim. But the other two you had was unfair
trade practices and --
MR. VARNADO: Constructive fraud.
And those are not -- if you remember the last
time we were before you, Your Honor, I said that
they were really against Carolina First Savings
Bank. And it's our position that if it is a
nonnegotiable note, so there's no holder or

Page 20

1 instrument on the open market. And as long as if
2 he or it doesn't know about any of the problems,
3 then he just wipes out everybody.
4 THE COURT: Is there a difference
5 between a holder in due course and a negotiable
6 instrument?
7 MR. VARNADO: I think that, Your
8 Honor, what you're asking is is that the holder
9 in due course is something that a holder of a
10 negotiable instrument can be a superholder and
11 wipe out everybody, but it has to be in the
12 context of a negotiable instrument, which has to
13 be -- a negotiable instrument, which under 3-603,
14 304 has to be paid to the order of, has to be for
15 a sum certain, which is not an HELOC obviously.
16 And for those reasons I think as Ms. Williams
17 alluded to, it's not a negotiable instrument.
18 Therefore, the holder and the holder in
19 due course -- and I know that can drive people
20 crazy -- it goes away. And then you're back to
21 well, under like Dixie Wood Preserving Company
22 versus Albert Gersten which is a case from 1964
23 that I cited in my brief. Then you kind of go
24 back to that. Okay, we're just going to look at
25 nonnegotiable instruments, the transfer,
transfer, transfer, and all the rights of the
transferee from the transferor.
I hope that makes sense, Your Honor.
That's as good as I can say it. I'm sorry.
THE COURT: So I think that takes
care of your opening, right?
MR. VARNADO: Yes, sir.
THE COURT: I understand where
you're coming from, but I'm going to let Ms.
Williams rapport on the case too.
MS. WILLIAMS: Thank you, Your
Honor. I would like to call to the stand Ms.
Britt Loukos here on behalf of NCP Pilgrim, LLC.
BRITT LOUKOS,
having been first duly sworn, was examined and
testified as follows:
THE COURT: You're under oath.
Please answer any questions Ms. Williams has.
Q. I'm going to call you Britt if that's
okay with you. Thank you for being here today.
I would ask -- I know that you have you a quiet
voice. If you could just speak loudly so
everybody in here can hear you.
A. I'll do my best.
Q. Thank you.

1 (Off-the-record discussion.)
 2 Q. Thank you, Your Honor. Ms. Loukos, so
 3 what is your official position with the
 4 plaintiff?
 5 A. I am a senior associate.
 6 Q. And in that role, are you someone who is
 7 responsible with keeping the records of the
 8 plaintiff?
 9 A. Yes.
 10 Q. Okay. And how about have you been the
 11 person responsible for keeping track of the
 12 records for this case for this loan with Mr.
 13 Clancy?
 14 A. Yes.
 15 Q. And do you -- I'm going to hand you an
 16 exhibit.
 17 A. Okay.
 18 (Plaintiff's Exhibit No. 1 was
 19 marked for identification.)
 20 MS. WILLIAMS: Your Honor, I have a
 21 separate copy of the exhibits if you would like
 22 one to look at.
 23 THE COURT: Have all the exhibits
 24 that you intend to have her identify been shown
 25 to Mr. Varnado?
 26 MS. WILLIAMS: Yes, they have. And
 27 I have a copy for him here today, Your Honor.
 28 THE COURT: Mr. Varnado, do you
 29 have any objections to the exhibits coming into
 30 evidence that she wants to enter?
 31 MR. VARNADO: No, Your Honor.
 32 THE COURT: So the exhibits that
 33 have been pre-filed. Let me make sure I've got
 34 these correctly. I'm going to have you do this
 35 for me, Ms. Williams. If you will identify the
 36 11 pre-filed exhibits that are filed on January
 37 the 27th.
 38 Would you identify them by publishing
 39 the title and the number of the exhibit? And we
 40 can save the Court a lot of time, you a lot of
 41 foundational questions, and Mr. Varnado --
 42 MS. WILLIAMS: Of course, Your
 43 Honor, I --
 44 THE COURT: His position allows --
 45 MS. WILLIAMS: Okay. It's my
 46 understanding you were discussing the exhibits
 47 that were attached on January 27th to our
 48 pretrial brief? I just want to make sure.
 49 THE COURT: Yes. January 27th
 50 there were 11 exhibits filed to what appears to

1 page 82 was recorded again with the corrective
 2 measure in it?
 3 MS. WILLIAMS: This is our
 4 position. I know Mr. Varnado has his different
 5 opinions about the rerecorded mortgage.
 6 THE COURT: But at any rate, that's
 7 what's on the record in Dorchester County? It's
 8 a re --
 9 MS. WILLIAMS: It's a rerecorded
 10 version of Exhibit 1 -- or Exhibit 2.
 11 THE COURT: Got it. Thank you.
 12 (Plaintiff's Exhibit No. 4 was
 13 marked for identification.)
 14 MS. WILLIAMS: Sure. Exhibit 4 is
 15 a note and mortgage modification dated
 16 August 13th, 2009 and recorded with the
 17 Dorchester County Register of Deeds in book 7202
 18 at page 108.
 19 THE COURT: Thank you.
 20 (Plaintiff's Exhibit No. 5 was
 21 marked for identification.)
 22 MS. WILLIAMS: Exhibit 5 another
 23 note and mortgage modification agreement dated
 24 June 24, 2010 and recorded with the Dorchester
 25 County Register of Deeds at book 7560 at
 26 page 145.
 27 THE COURT: Okay.
 28 (Plaintiff's Exhibit No. 6 was
 29 marked for identification.)
 30 MS. WILLIAMS: Exhibit 6 is an
 31 assignment of the real estate mortgage recorded
 32 with the Dorchester County Register of Deeds in
 33 book 8718 at page 33.
 34 THE COURT: Thank you.
 35 (Plaintiff's Exhibit No. 7 was
 36 marked for identification.)
 37 MS. WILLIAMS: Exhibit 7 is an
 38 assignment of mortgage or other security
 39 instrument. And it was recorded with the
 40 Dorchester County Register of Deeds in book 11512
 41 at page 126.
 42 THE COURT: That's correct. Thank
 43 you.
 44 (Plaintiff's Exhibit No. 8 was
 45 marked for identification.)
 46 MS. WILLIAMS: Exhibit 8 is a
 47 limited power of attorney from CRE/ADC Venture
 48 2012-1, LLC recorded with the Dorchester County
 49 Register of Deeds in book 11512 at page 122.
 50 MR. VARNADO: Ms. Williams, is that

1 be a pretrial -- I guess your pretrial -- hold on
 2 just a second.
 3 MS. WILLIAMS: That is correct,
 4 Your Honor. So Exhibit Number 1 is titled Prime
 5 + 1 Line of Credit nonresidential loan. And it
 6 is dated June 10, 2004.
 7 THE COURT: Okay.
 8 MS. WILLIAMS: Exhibit 2 is a
 9 mortgage recorded --
 10 THE COURT: Excuse me one second.
 11 Have each of these exhibits been marked by the
 12 reporter?
 13 MS. WILLIAMS: I have originals
 14 right here today, Your Honor.
 15 THE COURT: Let's go ahead and as
 16 you publish the name of the exhibit, have her --
 17 you've premarked them.
 18 MS. WILLIAMS: I have premarked
 19 them, Your Honor.
 20 THE COURT: So go ahead. And what
 21 I'm going to ask you to do is let me look at them
 22 as you -- I have copies on the pretrial brief,
 23 right?
 24 MS. WILLIAMS: Not all of them.
 25 There is a full set right here that I just handed
 26 to Mr. Varnado that has the majority of the
 27 exhibits. I think there are five additional
 28 exhibits, Your Honor.
 29 THE COURT: Okay. That will save
 30 some time. So the first exhibit, Plaintiff's 1,
 31 is the Prime + 1, LLC, nonresidential.
 32 MS. WILLIAMS: Correct, Your Honor.
 33 THE COURT: Okay. Go ahead.
 34 Number 2.
 35 (Plaintiff's Exhibit No. 2 was
 36 marked for identification.)
 37 MS. WILLIAMS: Exhibit Number 2 is
 38 a mortgage recorded with the Dorchester County
 39 Register of Deeds on June 16, 2004 in book 4189
 40 at page 82.
 41 THE COURT: Okay. Exhibit 3?
 42 (Plaintiff's Exhibit No. 3 was
 43 marked for identification.)
 44 MS. WILLIAMS: Exhibit 3 is a
 45 mortgage that was rerecorded with the Dorchester
 46 County Register of Deeds on June 5, 2006 at book
 47 5393 at page 356.
 48 THE COURT: Let me make sure I
 49 understand what you're saying. The mortgage
 50 which was filed on June 16, 2004, the 4189 at

1 Exhibit 8? I'm sorry.
 2 MS. WILLIAMS: Correct.
 3 MR. VARNADO: Thank you.
 4 (Plaintiff's Exhibit No. 9 was
 5 marked for identification.)
 6 MS. WILLIAMS: Exhibit 9 is a loan
 7 history report from KeyBank Real Estate Capital.
 8 And it says that it was printed on January 1 --
 9 24, 2013.
 10 THE COURT: Hold on one second.
 11 I'm trying to -- January --
 12 MS. WILLIAMS: 24th, 2013. It's in
 13 the bottom left corner. It says date printed.
 14 THE COURT: Oh, I see. 1/24/13.
 15 Got it. Number 9. Next?
 16 (Plaintiff's Exhibit No. 10 was
 17 marked for identification.)
 18 MS. WILLIAMS: Exhibit 10 is a
 19 letter from my office dated October 25, 2018 to
 20 Ms. Cercopely and Mr. Clancy.
 21 THE COURT: Thank you.
 22 (Plaintiff's Exhibit No. 11 was
 23 marked for identification.)
 24 MS. WILLIAMS: Exhibit 11 is a copy
 25 of the original complaint filed by my office. It
 26 doesn't include the mini exhibits.
 27 THE COURT: Okay.
 28 (Plaintiff's Exhibit No. 12 was
 29 marked for identification.)
 30 MS. WILLIAMS: Exhibit 12 is the
 31 amended complaint filed by my office on April 5,
 32 2019.
 33 THE COURT: Thank you.
 34 (Plaintiff's Exhibit No. 13 was
 35 marked for identification.)
 36 MS. WILLIAMS: Exhibit 13 is NCP
 37 Pilgrim's affidavit of debt. Dated today.
 38 MR. VARNADO: I think -- Your
 39 Honor, I think Ms. Williams gave that to me via
 40 e-mail, but I don't have a copy in this file.
 41 (Off-the-record discussion.)
 42 (Plaintiff's Exhibit No. 14 was
 43 marked for identification.)
 44 MS. WILLIAMS: Exhibit 14 is a copy
 45 of the February 11, 2010 foreclosure action filed
 46 by Carolina Federal Savings Bank against David S.
 47 Clancy, Barbara A. Clancy, South Coast Community
 48 Bank, and Ms. Joan -- you pronounce it so great
 49 -- Geanuracos.

1 (Plaintiff's Exhibit No. 15 was
2 marked for identification.)
3 MS. WILLIAMS: And Exhibit 15 is a
4 copy of the March 29, 2010 answer filed on behalf
5 of David S. Clancy and Barbara A. Clancy.
6 THE COURT: In your 2010 case?
7 MS. WILLIAMS: Correct.
8 (Plaintiff's Exhibit No. 16 was
9 marked for identification.)
10 MS. WILLIAMS: And Exhibit 16 is a
11 copy of the current tax bill and tax notice for
12 the property of 117 South Cedar Street in
13 Dorchester County.
14 THE COURT: All right.
15 MS. WILLIAMS: We did also file an
16 affidavit of attorney's fees with the Court prior
17 to the hearing today. Happy to enter it into
18 evidence as an exhibit, but it is part of the
19 Court's records.
20 THE COURT: It depends on how I
21 handle this, but it's likely if I don't rule
22 today and I rule later, I may have a separate
23 hearing on the attorney's fees. So let me make
24 that decision later.
25 MS. WILLIAMS: Thank you, Your
Honor.
THE COURT: It's not part of the
record as we speak right now.
MS. WILLIAMS: Okay. And Your
Honor, I know we just walked through all of
these. I just want to confirm that all these
exhibits have been admitted.
THE COURT: All of the exhibits
without objection has been admitted into
evidence.
MS. WILLIAMS: Thank you, Your
Honor.
THE COURT: That means, Ms.
Williams, to the extent you can do so without
interfering with the rhythm of your examination,
you'll need to go through the foundational bases
from the admission of the document.
MS. WILLIAMS: Okay, Your Honor. I
will be as timely as possible.
THE COURT: Sometimes that throws
lawyers off, and they're prepared to go down one
path. And the judge all of a sudden takes all
that necessity out from underneath them. And
then they're at a loss of where to get back on
the railroad train. So good luck to you.

1 Q. And while you're still looking at
2 Exhibit 1, in the top right corner, what is the
3 maturity date of this loan?
4 A. June 10, 2004. Oh, I apologize.
5 June 10, 2009.
6 Q. Okay. And if you look back at the
7 maturity date that was added to Exhibit 3, is
8 that the same maturity date, June 10, 2009?
9 A. It is.
10 Q. All right. And let's add -- let's
11 discuss the second addition to paragraph 4A on
12 Exhibit 3, the loan amount of \$258,940. If you
13 look at paragraph 3 of Exhibit 3, does it state
14 -- does the mortgage state the loan amount?
15 A. It does.
16 Q. And what amount does it say?
17 A. \$258,940.
18 Q. And if you also look at Exhibit 2 on
19 paragraph 3, does it state the loan amount?
20 A. It does.
21 Q. And what is that number?
22 A. \$258,940.
23 Q. So really the only change to Exhibit 3
24 was the addition of the maturity date because the
25 loan amount was already on the face of the
mortgage; is that correct?
A. Correct.
Q. All right. And is it your understanding
that this loan and mortgage were modified?
A. Yes.
Q. Okay. I'm going to hand you Exhibit 4.
If you flip to the second page of Exhibit 4, this
is a note and mortgage modification agreement
dated August 13, 2009, correct?
A. Correct.
Q. And as we already talked about, if you
look at the first page of this exhibit, was it
recorded with the Dorchester County Register of
Deeds?
A. It was.
Q. Okay. And if you look at the bottom of
the second page of Exhibit 4, does this
modification agreement appear to be signed by Mr.
David S. Clancy and Ms. Barbara A. Clancy?
A. Yes.
Q. Do you know anything about what
disclosures were made to Mr. Clancy and Ms.
Barbara Clancy in connection with Exhibit 4?
A. I don't.
Q. So looking at Exhibit 4, let's look at

1 MS. WILLIAMS: Well, thank you.
2 EXAMINATION
3 BY MS. WILLIAMS:
4 Q. Ms. Loukos, I'm going to hand you what
5 has been admitted as Plaintiff's Exhibits 1 and
6 2. And if you look at Exhibit 1, which is the
7 note in the principle amount of \$258,400 dated
8 June 10, 2004; is that correct?
9 A. Correct.
10 Q. And looking at Exhibit 2, the date of
11 this mortgage is June 16, 2004; is that correct?
12 A. Yes.
13 Q. And do your records looking at Exhibit 2
14 does that indicate that this mortgage was
15 recorded with the Dorchester County Register of
16 Deeds?
17 A. Yes.
18 Q. And I'm going to hand you what has been
19 marked -- or entered into evidence as Plaintiff's
20 Exhibit 3. Does Exhibit 3 show that the original
21 mortgage was rerecorded on June 5, 2006 with the
22 Dorchester County Register of Deeds?
23 A. Yes.
24 Q. And looking at Exhibit 3, was there
25 information added to the mortgage after it was
originally recorded?
A. Yes.
Q. And what changes were made?
A. I believe section 4. They added the
maturity date and loan amount.
Q. Okay. And also looks there was added at
the very top was some asterisks. There was some
information added to Exhibit 3; is that correct?
A. Yes.
Q. And what was that information?
A. It says, this mortgage is being
rerecorded to add maturity date and loan amount.
Q. So I'm going to ask you to do some
comparisons of Exhibit 2 and Exhibit 3. So as
you talked about in paragraph 4, the maturity
date was added to Exhibit 3; is that correct?
A. Correct.
Q. Okay. And if you look right above that
on paragraph 4A of Exhibit 3, it says the equity
line of credit number; is that correct?
A. Yes.
Q. If you look at that number, does it
match the loan number at the very top right
corner of Exhibit 1?
A. Yes.

1 the first whereas clause. What does that say is
2 the original principle amount of the loan?
3 A. \$258,940.
4 Q. And if you're still looking at that same
5 paragraph, what is does it say is the current
6 principle balance of the loan at the time this
7 modification agreement was signed?
8 A. I believe it's the same amount. The
9 \$258,940.
10 Q. If you look at the end of the first
11 whereas clause, it says, the current principle
12 balance --
13 A. Oh, I apologize. \$237,990.52.
14 Q. And if you look at the second whereas
15 clause, is there reference made to a recorded
16 mortgage that secured this loan?
17 A. Yes.
18 Q. And what is the amount of the mortgage?
19 A. \$258,940.
20 Q. And then looking at item number 1 on
21 this note and mortgage modification, was there an
22 adjustment made to the maturity date of the note?
23 A. Can you tell me where that one is again?
24 THE COURT: Item 1.
25 Q. Item number 1. It says, we are hereby
extending the loan --
A. Extending the loan. August 5, 2019.
Q. I'm going to hand you what's been marked
as Exhibit Number 5. Looking at Exhibit
Number 5, is it your understanding this was
recorded with the Dorchester County Register of
Deeds?
A. Yes.
Q. If you look at page number 2, this is a
note and mortgage modification agreement dated
June 24, 2010; is that correct?
A. Correct.
Q. And if you look at the bottom of the
second page of Exhibit 5, does it appear that
this document was signed by David S. Clancy and
Barbara A. Clancy?
A. Yes.
Q. Do you know anything about what
disclosures were made to Mr. Clancy and Ms.
Barbara Clancy in connection with this exhibit?
A. No.
Q. So again, we're going to look at the two
whereas clauses. So looking at the first whereas
clause of Exhibit 5, what did it state was the
original principle amount of this loan?

Page 29

1 A. \$258,940.
 2 Q. And what was the current principle
 3 balance at the time that this modification
 4 agreement was executed?
 5 A. \$237,990.52.
 6 Q. Okay. And again, looking at the second
 7 whereas clause, does it again reference a
 8 recorded mortgage in the amount of \$258,940?
 9 A. It does.
 10 Q. Okay. And then looking at item number 1
 11 after the Now Therefore paragraph, was the
 12 maturity date of this loan changed from August 5,
 13 2019 to July 5, 2012?
 14 A. Yes.
 15 Q. So after looking at Exhibits 4 and 5,
 16 even if there was a question about the maturity
 17 date that was added to the rerecorded mortgage,
 18 it looks like Mr. Clancy signed two note and
 19 mortgage modification agreements confirming the
 20 existence of the mortgage on the subject property
 21 after the original mortgage was rerecorded; is
 22 that correct?
 23 A. Yes.
 24 Q. I'm going to hand you what has been
 25 marked as Plaintiff's Exhibit 6. Looking at
 Exhibit 6, does it appear this document was
 recorded with the Dorchester County Register of
 Deeds?
 A. Yes.
 Q. And again, looking at Exhibit 6, was the
 note and mortgage originally assigned by the FDIC
 acting as a receiver for Carolina Federal Savings
 Bank to CRE/ADC Venture 2012-1, LLC?
 A. Yes.
 Q. And that assignment occurred -- if you
 flip to the last page or second-to-last page, it
 appears that this assignment was effective the
 11th day of December 2012; is that correct?
 A. Correct.
 Q. I'm going to hand you what has been
 marked as Plaintiff's Exhibit 7. Looking at
 Exhibit 7, does it appear this document was
 recorded with the Dorchester County Register of
 Deeds?
 A. Yes.
 Q. And looking at the top left corner of
 the second page of Exhibit 7, who prepared this
 document?
 A. Collin Ferguson.
 Q. And do you know if Mr. Ferguson is a

Page 31

1 A. No.
 2 Q. Has he made the required monthly payment
 3 to principle and interest?
 4 A. No.
 5 Q. I'm going to hand you what's been marked
 6 as Exhibit Number 9. Looking at Exhibit 9, what
 7 is the last date that Mr. Clancy made a payment
 8 on this loan?
 9 A. January 14, 2013.
 10 Q. So the last payment was made over 7
 11 years ago; is that correct?
 12 A. Yes.
 13 Q. So if you flip back to Exhibit 1, if you
 14 look at page 2 and paragraph 23, does this loan
 15 provide for the collection of reasonable
 16 attorney's fees and costs?
 17 A. Yes.
 18 Q. I'm going to hand you what's been marked
 19 as Plaintiff's Exhibit 10. Before the initiation
 20 of this litigation, did you ask our office to
 21 send a demand letter to Mr. Clancy?
 22 A. I did.
 23 Q. And is Exhibit 10 a copy of that letter?
 24 A. Yes.
 25 Q. And if you look at Exhibit 10, it's
 right there in bold, what was the stated amount
 to cure?
 A. \$430,391.52.
 Q. And shortly after this demand letter was
 sent, NCP filed this foreclosure action; is that
 correct?
 A. Yes.
 Q. I'm going to hand you what's been marked
 as Plaintiff's Exhibit 11, a copy of the original
 complaint filed in this action. If you turn to
 the fourth page or what is page 4 at the bottom,
 Exhibit 16 -- paragraph 16 of Exhibit 11, how
 much was -- what is the amount that was due under
 the loan documents as of October 31, 2018?
 A. \$430,391.52.
 Q. And at some point after this complaint
 was filed and the demand letter was sent out, did
 you later determine that the \$430,000 number was
 incorrect?
 A. Yes. We found a mathematical error.
 Q. Okay. And is it correct to say that
 specifically NCP inadvertently incorporated a
 default interest rate of 5 percent that was not
 included in the terms of the note?
 A. Yes.

Page 30

1 lawyer?
 2 A. Yes.
 3 Q. Do you routinely do business with him on
 4 behalf of NCP Pilgrim?
 5 A. Yes.
 6 Q. And if you look at the third page of
 7 Exhibit 7, who assigned this assignment?
 8 A. Marshall Burchard.
 9 Q. And did he sign on behalf -- he worked
 10 for NCP Pilgrim; is that correct?
 11 A. Correct.
 12 MR. VARNADO: I'm sorry, Counsel,
 13 Is this 7? Were you talking the signature on 7?
 14 MS. WILLIAMS: Correct, Yes.
 15 MR. VARNADO: Sorry, Your Honor.
 16 Q. Just for clarification, Exhibit 7 is the
 17 assignment from CRE/ADC Venture 2012-1, LLC, to
 18 NCP Pilgrim of the note -- of the mortgage; is
 19 that correct?
 20 A. Yes.
 21 Q. And if you flip to Exhibit A of the
 22 assignment which is the last page, it states that
 23 what's being assigned is the mortgage from
 24 Barbara Clancy in favor of Carolina Federal
 25 Savings Bank dated June 10, 2004 in the original
 principle amount of \$258,940; is that correct?
 A. Yes.
 Q. And the effective date of this
 assignment is June 6, 2018; is that correct?
 A. Yes.
 Q. I'm going to hand you what's been marked
 as Plaintiff's Exhibit 8. Does it appear that
 this document was recorded with the Dorchester
 County Register of Deeds?
 A. Yes.
 Q. Exhibit 8 is a limited power of attorney
 from CRE/ADC Venture 2012-1, LLC; is that
 correct?
 A. Yes.
 Q. And if you look at the language of
 Exhibit 8, CRE/ADC Venture is designating
 Marshall Burchard as an authorized signatory; is
 that correct?
 A. Yes.
 Q. And how many other loans does NCP
 Pilgrim own in South Carolina?
 A. Nine.
 Q. So in your opinion has Mr. Clancy
 complied with the terms and provisions of the
 loan documents?

Page 32

1 Q. And did NCP take immediate actions to
 2 try to fix this mathematical error?
 3 A. Yes. We filed an amended document.
 4 Q. And is it fair to say that this loan was
 5 the first loan you worked on for NCP and it was
 6 the first time you reviewed loan documents?
 7 A. It was.
 8 Q. I'm going to hand you what's been marked
 9 as Exhibit 12. This is a copy of the amended
 10 complaint filed by NCP on April 5, 2018. And if
 11 you flip to the third page, again, to
 12 paragraph 16, what is the amount there that was
 13 stated that's due under the loan documents as of
 14 January 7, 2019?
 15 A. \$347 -- well, \$347,020.03.
 16 Q. Okay. And how did you calculate that
 17 figure? Did you remove the 5 percent incorrect
 18 default interest rate?
 19 A. We removed the 5 percent incorrect
 20 default rate.
 21 Q. And then I'm going to hand you what's
 22 been marked as Exhibit 13. This is a copy of
 23 your affidavit -- or NCP's affidavit of debt that
 24 you signed; is that correct?
 25 A. Correct.
 Q. And looking at that exhibit, what is the
 total amount of principle due on this loan?
 A. \$234,657.55.
 (Off-the-record discussion.)
 Q. And if you look at the bottom of the
 affidavit of debt, Exhibit 13, what is the total
 amount due on this loan?
 A. \$367,963.19.
 Q. And what is the per diem interest rate?
 A. \$35.85 per day.
 Q. And is it your understanding that this
 figure is based on all the information that NCP
 has in its loan file?
 A. Yes.
 Q. And do you believe the total amount due
 of \$367,963.19 to be true and correct?
 A. Yes.
 Q. And as part of that figure, did you also
 include the outstanding 2019 property taxes?
 A. Yes.
 Q. Is it your understanding that those
 property taxes have been paid?
 A. I believe they're unpaid.
 Q. I'm going to hand you Plaintiff's
 Exhibit 16, which is a copy of the tax bill and

000461

Clark & Associates, Inc.

0469

1 current tax status of the taxes on 117 South
2 Cedar Street.
3 Looking at the bottom of Exhibit 16,
4 what is the total amount of taxes currently due?
5 A. \$7,104.88.
6 Q. If you look at the top right left corner
7 of this document, what is the date that it was
8 printed?
9 A. January 23, 2020.
10 MS. WILLIAMS: Thank you. I don't
11 have any additional questions then. If you will
12 answer any that Mr. Varnado may have for you.
13 THE COURT: Excuse me one second.
14 Just so I'm clear. The Exhibit 13 that I hold in
15 my hand is not a copy -- or doesn't appear to be
16 a copy. Have I got a copy of it or have I got
17 the actual --
18 MS. WILLIAMS: Sure. That was the
19 same question Mr. Varnado just had. Ms. Loukos
20 just signed these this morning. So I had her
21 sign three. So there is an original in the court
22 file. You have an original. And Mr. Varnado has
23 an original as well.
24 (Off-the-record discussion.)
25 (Defendant's Exhibit No. 1 was
marked for identification.)
(Defendant's Exhibit No. 2 was
marked for identification.)
MR. VARNADO: Your Honor, may it
please the Court. I have premarked two exhibits.
I don't have extra copies of them. Ms. Williams
has --
THE COURT: Did she agree to them?
MS. WILLIAMS: I did just look at
them, Your Honor. And yes.
THE COURT: They are acceptable and
you'll let them be entered without objection?
MS. WILLIAMS: That is correct,
Your Honor.
THE COURT: All right. Now if you
would like, Mr. Varnado, we can turn on the
projector. Everybody can see the exhibits at the
same time. Or we can struggle along. I can
maybe send those out to be copied. What would
you like me to do?
MR. VARNADO: Whatever is easiest,
Judge. I think copies would quick. It's only
three pages, but if you want to use the
projector.
THE COURT: I am totally incapable

1 THE WITNESS: Biblical studies.
2 Yeah. Unrelated.
3 Q. But you got a masters in finance?
4 A. I did.
5 Q. When I say you, I'm going to talk about
6 NCP Pilgrim. Is that a fair --
7 A. I understand.
8 Q. Do you own the Clancy debt?
9 A. Yes.
10 Q. You own the debt?
11 A. I believe so. Yes.
12 Q. Okay. Well, how do you own the Clancy
13 debt? What would you point to to show that you
14 own --
15 A. We have an assignment.
16 Q. You have an assignment of mortgage,
17 right?
18 A. I believe so.
19 (Off-the-record discussion.)
20 Q. Britt, this is Exhibit Number 7. This
21 is a plaintiff's exhibit.
22 A. Got it.
23 Q. You have it?
24 A. Yes, sir.
25 Q. Okay, great. And this is -- what is
this? What is it titled on the second page?
A. Assignment of mortgage or other security
instrument.
Q. So you've got a mortgage, correct?
A. Correct.
Q. I'm going to come back to that in a
little bit, but what about the debt? What about
the note? Where is that?
A. In a file.
Q. It's what?
A. I don't have it in an exhibit.
Q. Okay. Do you have it? Do you know it
exists?
A. Yes.
Q. It exists?
A. Yes.
Q. Did you turn it over to your attorneys
in discovery?
A. I don't recall.
Q. Okay.
A. It's no problem to pull the note. We
have it in a file. I just don't have it with me
currently.
Q. Well, this is the trial. So do you have
an original copy of the note?

1 of operating either one of those machines.
2 MS. WILLIAMS: We may have at least
3 one extra copy of this letter.
4 (A recess was taken.)
5 MR. VARNADO: May it please the
6 Court.
7 EXAMINATION
8 BY MR. VARNADO:
9 Q. Hey, I'm sorry. I already forgot your
10 name.
11 A. It's Britt.
12 Q. Britt. Okay. And what was your last
13 name again?
14 A. Loukos.
15 Q. Loukos. Okay. And you work at NCP's
16 office?
17 A. Yes.
18 Q. And where is that located?
19 A. Charlotte.
20 Q. Charlotte, North Carolina. And your
21 title is what again?
22 A. Senior associate.
23 Q. Junior associate?
24 A. Senior.
25 Q. Senior associate. I'm sorry. How many
senior associates are there?
A. Just me.
Q. Just you?
A. Yes.
Q. And then how many work underneath you,
junior associates?
A. Yeah, I don't really feel like we're
structured that way. There's a few accountants
and a couple of other associates that don't
report to me directly.
Q. Okay. Are you an accountant?
A. No.
Q. What is your degree in?
A. I have a masters degree in finance.
Q. Okay. And just tell me where you went
to school just really quickly?
A. I got my masters at University of North
Carolina of Charlotte. And my undergraduate work
is at Colorado Christian University.
Q. Okay, Britt. Thank you very much.
THE COURT: They're both in
finance?
THE WITNESS: No.
THE COURT: What was your
undergraduate degree in?

1 A. Not with me.
2 Q. Do you have it even here in the
3 courtroom? In other words, can we take a few
4 minutes and have you fish it out, or is it too
5 much trouble?
6 A. It's not too much trouble. I just don't
7 have it with me.
8 Q. You don't have it with you at all?
9 A. No.
10 Q. It's back in Charlotte?
11 A. I believe that it's actually in our
12 Connecticut office which is where we keep all of
13 our files just for safekeeping. We keep them all
14 in one place.
15 Q. Okay. Britt, was NCP a servicer?
16 A. Yes.
17 Q. It was a servicer?
18 A. Yes.
19 Q. Can you speak up a little bit? I'm
20 sorry.
21 A. I mean, I guess I'm not necessarily
22 understanding what you're asking, but do I --
23 MS. WILLIAMS: Your Honor, I would
24 just object. She doesn't -- I don't think --
25 maybe Mr. Varnado could define the word servicer.
I don't know that Ms. Loukos knows exactly what
that term means.
MR. VARNADO: Okay. That's fair
enough.
THE COURT: Why don't you ask if
she knows what it means?
Q. Ms. Loukos, do you know what a servicer
is? What it commonly means?
A. I think I generally understand, but I
don't know exactly what you're referring to. So
if I could define --
Q. No. I want to know based on your
understanding of a servicer is, was NCP the
servicer?
A. I'm representing NCP so I just want to
make sure that I'm answering on behalf of the
company that I work for in an appropriate way.
Q. And I think that's fine. I think we all
--
A. Because what if I misunderstand? You
know?
Q. We all appreciate that. I want to know
based on your understanding of what a servicer
is, was NCP a servicer?
MS. WILLIAMS: Your Honor, I would

Page 37

1 just object. I don't know that it matters what
2 Ms. Loukos's definition of a servicer is. There
3 is a general definition of a servicer that I
4 would assume that Mr. Varnado is using. If he
5 could just define the term, I'm sure Ms. Loukos
6 would be happy to answer the question.

MR. VARNADO: I think she can
answer it. She knows --

THE WITNESS: The way that I see a
servicer --

THE COURT: Hold on. I'm going to
overrule the objection. Let her explain to us
what she knows of a servicer and whether or not
the company she works for is a servicer or not.

A. I'm happy to do that. So I think I have
a general idea of what it is that we do. We buy
notes. And then I typically manage those assets.
I'm not sure what your definition necessarily of
servicer is. But we go through, we see who
potentially hasn't made their payment in a while.

I take note of it. And then I kind of
pass it on to Lauren and have her investigate
further.

Q. Ms. Williams?

A. Yes.

Q. Okay. Great. Do you know if servicer
is a federally-defined term?

A. I'm not sure.

Q. Okay. Does CRE Venture, did that
entity, did it own the note?

A. I believe so.

Q. Does it still own the note?

A. I believe that they have sold it to us.

Q. You believe that they sold the loan, the
note to you, but you don't have it here? You
think it could be in Connecticut?

A. Correct. So to explain to you a little
bit about how our office works, frankly, I work
remote the majority of the time. And I think
that that would be kind of silly to leave client
files at my personal house.

So we keep all of our corporate files
just for safekeeping. I mean, these are pretty
important documents. So we keep them all stored
away in Connecticut.

Our team that physically looks through
stuff like that wasn't available when I made the
request, which, to be honest, it was I believe
Thursday afternoon. So it wasn't possible to go
to where we keep all of the original files like a

Page 39

MR. VARNADO: It is a copy of the
obligation to pay.

THE COURT: Copy of the obligation.
MR. VARNADO: Yes, sir.

THE COURT: And you want to see the
original of this document?

MR. VARNADO: Yes, sir. That's
all. Thank you.

THE COURT: All right. I'll allow
the record to remain open for purposes of the
plaintiff to submit in camera the original note
with you present, Mr. Varnado. I will examine in
camera the original of this document, Exhibit 1,
and determine if it is -- if Exhibit 1 the copy
is the accurate copy of the original note -- of
the original obligation to pay.

And if so, I will allow Exhibit 1 to
stand as an exhibit of the obligation to pay.

MR. VARNADO: Thank you, Your
Honor.

THE COURT: Is that okay?

MR. VARNADO: Yes, sir. It's very
okay. Thank you, sir.
(BY MR. VARNADO)

Q. The last questions I'm going to have for
you, Britt, are this. In Exhibit Number 8 --
Plaintiff's Exhibit Number 8, which I believe you
have, on the last page of Exhibit Number 8 is the
signature by Mark Hedstrom. Do you know Mark
Hedstrom?

A. I don't personally know him.

Q. Do you know if he's involved with your
company?

A. No.

Q. He's not?

A. I don't know him.

Q. You don't know him at all. Okay. I'm
sorry. Thank you. And how do you know -- do you
have any knowledge today -- and I don't think you
do, but do you -- if Mr. Hedstrom had the
authority to sign Exhibit 8?

A. I don't know.

Q. Okay.

MR. VARNADO: Your Honor, may I
have one minute? And I may be able to finish.

Your Honor, that's all I have. Thank
you very much, Britt. You may have some more
questions from Ms. Williams.

MS. WILLIAMS: I just have two
quick things, Your Honor. We'll be very fast.

Page 38

note that you're requesting and have it here on
time. But it's no problem for me to pull that
for you.

MS. WILLIAMS: Your Honor, I would
just ask that we would be allowed to provide the
original note to the Court and to Mr. Varnado at
a later date.

THE COURT: Let me ask you
something. I'm a little confused.

MR. VARNADO: Yes, sir.

THE COURT: Exhibit Number 1
directly states, I promise to pay to you -- that
would be the lender -- or your order at your
address or at such other location as you may
designate so much of the credit limit as may be
advanced under the agreement plus finance
charges, fees, charges, costs and expenses as
described in the line of credit.

Doesn't that create a promise to pay?

MR. VARNADO: It creates a promise
to pay. It creates a nonnegotiable promise to
pay because it doesn't have a total -- it doesn't
have a set sum certain amount. So therefore,
it's a nonnegotiable promissory note. That's our
position, Your Honor.

THE COURT: Is there a separate
obligation to pay someone other than this? I
don't think there would be. I've never -- I
mean, I've closed hundreds of these when I was
practicing law. And all we do is just -- I mean,
you sign a line of credit and a mortgage. And
that's the note and mortgage.

MR. VARNADO: Yes, sir. But I
asked Ms. Britt if she had the original. She
doesn't.

THE WITNESS: I don't have it with
me. We have the note.

MR. VARNADO: Ms. Williams, if
you're willing to have her send it to the Court,
I don't have it mind having it be made a -- leave
it open for an exhibit if that would be something
we would be willing to do.

MS. WILLIAMS: Yes. We're happy to
provide that.

MR. VARNADO: Would that be
acceptable, Your Honor?

MS. WILLIAMS: If that's what the
Court requests.

THE COURT: Exhibit 1 is the
obligation to pay, correct?

Page 40

Two additional exhibits. And I don't have
copies, but these have been produced.

MR. VARNADO: Your Honor, we accept
Exhibits 16 and 17.

MS. WILLIAMS: I think it's 17 and
18. So I have Plaintiff's Exhibit 17 and 18.
And I'm happy to have the witness identify them,
or I can just say them out loud.

THE COURT: Are you objecting to
them?

MS. WILLIAMS: He's not objecting.

MR. VARNADO: No, sir. I'm not.

THE COURT: So why don't you use
your ELMO? I want to use this.

MS. WILLIAMS: Sure. We got it all
set up.

(Plaintiff's Exhibit No. 17 was
marked for identification.)

(Plaintiff's Exhibit No. 18 was
marked for identification.)

MS. WILLIAMS: I don't know if
everybody can read that, but maybe you have it on
your computer in front of you.

THE WITNESS: I can see it. It's
fancy.

THE COURT: You can flip your
screen up and it'll turn on. Turn your screen
on.

MS. WILLIAMS: I'll wait for Mr.
Varnado.

MR. VARNADO: Thank you, Your
Honor. I do have the screen up.

THE COURT: All right.

EXAMINATION

BY MS. WILLIAMS:

Q. And for the record, we are looking at
Plaintiff's Exhibit 17. I can't fit it all in
the picture at the same time. Britt, looking at
Exhibit 17, the title of this document is the
assignment of the home equity variable draw
agreement; is that correct?

A. Yes.

Q. If you look at the face of the
agreement, does this say that the FDIC in its
capacity as receiver for Carolina Federal Savings
Bank is assigning the home equity variable draw
agreement between David S. Clancy and Carolina
Federal Savings Bank to CRE/ADC Venture 2012-1,
LLC?

A. Yes.

1 Q. What is the date of this agreement?
 2 A. December 11, 2012.
 3 Q. And just for clarity, this third
 paragraph says that the home equity variable draw
 4 agreement is being assigned; is that correct?
 5 A. Correct.
 6 Q. And it says it's between David S. Clancy
 and Carolina Federal Savings Bank --
 7 A. Yes.
 8 Q. -- dated June 10, 2004, correct?
 9 A. Yes.
 10 MS. WILLIAMS: Okay. I have an
 additional last-minute addition for the exhibits.
 11 This is what's been marked as Exhibit 19. This
 was produced as well.
 12 MR. VARNADO: No objection, Your
 Honor.
 13 THE COURT: Thank you, sir.
 (Plaintiff's Exhibit No. 19 was
 14 marked for identification.)
 15 Q. I'll have it over here for everyone to
 see. You're looking at what's been marked as
 16 Plaintiff's Exhibit 19. This is an omnibus
 agreement. Is that correct, Ms. Loukos?
 17 A. Yes.
 18 Q. And under this agreement, the FDIC in
 its capacity as receiver for Carolina Federal
 19 Savings Bank is assigning all loan documents to
 CRE/ADC Venture 2012-1, LLC; is that correct?
 20 A. Yes.
 21 Q. And so specifically, it is assigning all
 loan documents if you look at the bottom of the
 22 first paragraph associated with the loan made by
 Federal -- Carolina Federal Savings Bank to David
 23 S. Clancy dated June 10, 2004 in the amount of
 \$258,940; is that correct?
 24 A. Yes.
 25 Q. And what is the date of Exhibit 19?
 A. December 11, 2012.
 Q. And I'm now going to show you what has
 been marked as Plaintiff's Exhibit 18. Looking
 at Exhibit 18, this is the assignment of the home
 equity variable draw agreement; is that correct?
 A. Yes.
 Q. And it is from CRE/ADC Venture 2012-1,
 LLC to NCP Pilgrim, LLC; is that correct?
 A. Yes.
 Q. And if you look at the center indented
 paragraph, CRE is assigning the home equity
 variable draw agreement between David S. Clancy

1 Then, what I'm going to do is I'm going to take
 the matter under consideration. Ms. Williams, I
 2 wonder if you would be so kind as to have the
 record transcribed for my benefit?
 3 MS. WILLIAMS: Of course, Your
 Honor.
 4 THE COURT: You can either have it
 transcribed just simply electronically. Or if
 5 you want the paper, I'm going to read it on my
 computer.
 6 MS. WILLIAMS: Okay.
 7 THE COURT: And I'll make a
 decision. Once I make a decision, what we'll do
 8 is we'll reconvene for purposes of -- well, first
 of all, we will need to get together soon to look
 9 at the note -- what I call the note. It's the
 line of credit.
 10 MS. WILLIAMS: Right.
 11 THE COURT: And once I've had an
 opportunity to review the record and cogitate a
 12 little bit on what I've heard, I'll render a
 decision. Probably will ask one or two of you to
 13 write an order for me. Although I've been known
 to write my own orders. But even when you write
 14 an order for me, I've been known to change it
 dramatically.
 15 So a lot of the reasons I ask people to
 write orders for me is because usually in your
 16 word processors you have all the dates and the
 recording figures, and all that stuff is already
 there. And I don't have to retype it.
 17 MS. WILLIAMS: Correct.
 18 THE COURT: So I often just simply
 rely on the order for basically that purpose, so
 19 I don't have to retype things like that. I'm the
 best cut and paste judge in South Carolina.
 20 MS. WILLIAMS: Quite a feat.
 21 MR. VARNADO: Your Honor, would you
 issue order a Form 4, or do you just want to wait
 until you decide everything on the jurisdiction?
 22 THE COURT: On jurisdiction? Let
 me put that in the order itself. I guess -- and
 23 this is something you need to think about, if you
 appeal the case and it's determined that I didn't
 24 have jurisdiction, are you reserving -- I'm not
 sure if you're reserving your counterclaims? Or
 have you abandoned them all together?
 25 MR. VARNADO: I haven't abandoned
 them all together, but if an Appellate Court
 holds that you really did in fact have

1 and Carolina Federal Savings Bank dated June 10,
 2004; is that correct?
 2 A. Yes.
 3 Q. And what is the date of this agreement?
 4 A. June 26, 2018.
 5 MS. WILLIAMS: No further
 questions, Your Honor.
 6 MR. VARNADO: Briefly, Your Honor,
 if I may.
 7 EXAMINATION
 8 BY MR. VARNADO:
 9 Q. Britt, do you know who owns CRE Venture?
 Do you know what kind of entity it is? Who owned
 10 it?
 11 A. I don't.
 12 Q. Do you know if the FDIC owned it?
 13 A. I don't.
 14 Q. Do you know if the FDIC sold a
 participation of 40 percent to ColFin?
 15 A. I don't.
 16 Q. Have you seen any other document that
 shows the FDIC approved the last Exhibit 18 that
 17 you read? Do you have any knowledge of that that
 was it was approved by the FDIC?
 18 A. I don't believe so.
 19 MR. VARNADO: Thank you, Your
 Honor.
 20 THE COURT: Thank you.
 21 MS. WILLIAMS: No further
 questions, Your Honor.
 22 THE COURT: Thank you.
 23 MS. WILLIAMS: Your Honor, at this
 time, other than the attorney's fees that we've
 24 agreed to take up a later date, plaintiff rests
 its case.
 25 THE COURT: Thank you. Mr.
 Varnado?
 MR. VARNADO: Your Honor, at this
 time Mr. Clancy will not put up a defense. And
 I'll prosecute his counterclaims. We are going
 to go on the -- saying respectfully that we
 believe that the Court does not have
 jurisdiction.
 THE COURT: So you're not going
 forward on your counterclaims? And you're
 resting your defense on the facts that this Court
 doesn't have jurisdiction over the matter because
 of the argument you made earlier?
 MR. VARNADO: Yes, sir.
 THE COURT: Thank you very much.

1 jurisdiction, then I think that I would -- think
 that I would waive the counterclaims.
 2 THE COURT: That's what I would
 expect you --
 3 MR. VARNADO: But however if you --
 respectfully, if Your Honor didn't have
 4 jurisdiction, then everything would be to the --
 I think that's what it is, Your Honor.
 5 MS. WILLIAMS: Your Honor, I guess
 it would be our position that either Mr. Varnado
 6 decides today to waive his counterclaims in full
 or he argues them today to preserve them for the
 7 record. If he does not argue them today, it
 would be our position they're waived in full.
 8 THE COURT: Well, I think he said
 that. He understands that if the jurisdictional
 9 issue comes out different than what my decision
 has been and he is correct and I didn't have
 10 jurisdiction, then I couldn't have heard them
 anyway.
 11 But if I had jurisdiction and I'm
 affirmed on the remainder of the decision, then
 12 he will have waived his counterclaims as of this
 moment.
 13 MS. WILLIAMS: That's correct, Your
 Honor. And also, I just want to offer if the
 14 Court would find it helpful, we would be happy to
 do a post-trial brief on FIRREA just since we
 15 only found about it this morning. But we have
 our Dura case, and you've heard our position on
 16 it.
 17 MR. PATTERSON: Your Honor, Russell
 Patterson. If I can be heard. I've done a lot
 18 of foreclosures. Never seen this defense and
 found out about it when we were riding up here.
 19 So our arguments are based on what we could read
 on our phone. I was driving so Ms. Williams was
 looking at it.
 20 We would like just a week to be able to
 brief that issue because now we find out for the
 21 first time driving up here that's the whole
 defense when we've been dealing with all these
 22 other issues. They're now gone. Now we're
 dealing with an issue we've never even heard of
 23 until this morning.
 24 We would like to be able to at least put
 together a little bit of case law because again,
 25 there's hundreds of thousands of loans the FDIC's
 taken over and sold and been foreclosed. If
 defendant is right, there's got to be a bunch of

1 cases out there saying State Court, you can't
2 foreclose. So we would like to have a little bit
3 of time to look for it.
4 THE COURT: Well, let me ask you
5 this question. Let's suppose -- I almost took
6 this position earlier so I'm going to hold the
7 question of the jurisdiction in advance and hear
8 the case but decide to go ahead and rule that I
9 did have jurisdiction. And if I'm wrong, I can
10 be corrected.
11 I didn't expect Mr. Varnado to waive his
12 defenses, but nonetheless, that will be the
13 result of his defenses if I'm affirmed on the
14 jurisdiction. I will be happy to allow you to --
15 let's say 15 days to do a supplemental post-trial
16 brief on the issue of jurisdiction understanding
17 that I may reverse my opinion after I read the
18 additional information.
19 And Mr. Varnado, if you wish to reply to
20 that brief, I would give you 15 days from the day
21 it is submitted to reply to it.
22 MR. VARNADO: So 15 days from today
23 or tomorrow for plaintiff to file their brief?
24 And 15 days from receipt for me to file mine?
25 THE COURT: To reply to it so that
you both will have flushed out the issue. And
I'll have the option -- again, I would have the
option to overrule myself. I just made a ruling
on the bench. I could always reverse myself. I
did it already today in another case.
MR. VARNADO: Thank you, Your
Honor.
THE COURT: So if I have to change
my mind, I change my mind when I enter the order.
So yeah, I'm happy to allow you-all to do the
additional research so I can understand it
myself.
MS. WILLIAMS: Thank you, Your
Honor.
MR. VARNADO: Thank you, Your
Honor.
THE COURT: I'll leave it at that.
I mean, I've got thoughts coming out of my head.
They just want to burst out into words, but I'm
going to reserve them. So yes. Let's do the
post-trial briefs on that one issue and nothing
else.
MS. WILLIAMS: Yes, sir.
MR. VARNADO: Yes, sir.
THE COURT: And maybe by 30 days

1 CERTIFICATE OF REPORTER
2 I, MACKENZIE ALLEN, Court Reporter and Notary
3 Public in and for the State of South Carolina at
4 Large, do hereby certify that I correctly
5 reported the within-entitled matter and that the
6 foregoing is a full, true and correct
7 transcription of my shorthand notes of the
8 testimony and/or other oral proceedings had in
9 the said matter.
10 I further certify that I am neither
11 related to nor counsel for any party to the cause
12 pending or interested in the events thereof.
13 Witness my hand, I have hereunto affixed
14 my official seal this 7th day of February, 2020,
15 at Charleston, Charleston County, South Carolina.
16
17
18
19
20
21
22
23
24
25

MACKENZIE ALLEN

My commission expires
August 30, 2029

1 from now we can have a staffs conference of which
2 term we can look at the document that you're
3 going to produce. And I'll make my decision on
4 whether or not it's the same as what you've
5 entered in the record.
6 MR. VARNADO: Thank you, Your
7 Honor.
8 MS. WILLIAMS: Thank you, Your
9 Honor.
10 THE COURT: Thank you. It's a
11 pleasure seeing everybody.
12 MS. WILLIAMS: Thank you.
13 (The hearing was adjourned at 1:40
14 PM.)
15
16
17
18
19
20
21
22
23
24
25

WORD INDEX

< \$ >

\$234,657.55 32:14

\$237,990.52 28:7

29:3

\$258,400 26:4

\$258,840 8:10

\$258,940 9:10 27:6,

9, 11 28:2, 5, 10

29:1, 4 30:13 41:18

\$347 32:8

\$347,020.03 32:8

\$35.85 32:18

\$367,963.19 32:17,

21

\$430,000 31:22

\$430,391.52 31:14,

20

\$7,104.88 33:3

< § >

§ 10:19

< 1 >

1 3:1 4:1 21:9

22:2, 3, 15, 16 23:5

24:4 26:3, 25 27:1

28:10, 12, 13 29:5

31:7 33:13 38:6,

25 39:7, 9

1/24/13 3:20 24:7

1:40 46:7

10 3:20 8:6 9:3

15:13 22:3 24:8, 9

26:4 27:2, 3, 4

30:13 31:10, 12, 13

41:5, 18 42:1

10/25/18 3:20

101-73 10:18

103 2:10

107 2:6

108 23:9

11 3:20 21:18, 25

24:11, 12, 23 31:17,

19 41:1, 20

11:30 1:11

11512 23:20, 25

117 7:9, 19, 20 8:12

25:6 33:1

11th 29:19

12 3:20 10:19

24:14, 15 32:5

12/11/12 4:7

122 23:25

126 23:21

13 3:20 9:12, 15, 25

24:17, 18 27:17

32:11, 16 33:7

13th 23:8

14 4:1 9:25 24:21,

22 31:5

1401 15:13

1402 15:13

145 23:13

15 4:1 25:1, 2

45:8, 10, 11, 12

16 4:1 22:20, 25

25:4, 5 26:6 31:19

32:6, 25 33:2 40:2

17 4:1 40:2, 3, 9, 19,

20

18 4:7 9:7 40:3,

10 41:21 42:11

1811 10:19

1821(d) 15:14

1821(d)(13)(D) 11:16,

17, 19

19 2:5 4:7 41:7,

10, 12, 19

1964 20:11

1985 12:2

1989 10:17 11:4

1995 12:24

< 2 >

2 3:1 4:1 22:4, 17,

18, 19 23:5 26:3, 5,

7, 20 27:9 28:17

31:7 33:14

2/11/10 4:1

2004 8:6 22:3, 20,

25 26:4, 6 27:2

30:13 41:5, 18 42:1

2006 9:4 22:23

26:11

2009 9:3, 7 23:8

27:3, 4, 17

2010 9:8, 10, 11

23:12 24:23 25:2,

3 28:18

2012 9:15 11:1, 2

12:1 29:7, 19 41:1,

20

2012-1 3:1 23:24

29:17 30:9, 19

40:24 41:15, 23

2013 9:25 24:5, 6

31:5

2017 12:4

2018 24:10 30:15

31:20 32:5 42:3

2018-CP-18-02-053

6:4

2018-CP-18-2053

1:8

2019 24:16 28:14

29:7 32:7, 22

2020 1:4 9:25

33:5 47:7

2029 47:11

21 3:1

22 3:1

23 3:1 31:7 33:5

24 3:20 4:1 9:8

23:12 24:5 28:18

24th 24:6

25 4:1 24:10

26 3:1 42:3

27th 21:19, 24, 25

28 1:4

29 25:2

29415 1:23

29464 2:10

29928 2:6

< 3 >

3 3:1 19:17 22:21,

22 26:10, 12, 17, 20,

21, 22 27:4, 6, 7, 10,

12

3/29/10 4:1

30 45:25 47:11

304 20:7

31 31:20

33 4:1 23:17

34 3:1

356 22:24

3-603 20:7

< 4 >

4 3:1 23:6, 7

26:15, 20 27:16, 21

24, 25 29:8 31:18

43:20

4/5/19 3:20

40 3:1 4:1, 7

11:14 42:10

41 4:7

4189 22:20, 25

42 3:1

47 3:1

4A 26:22 27:6

< 5 >

5 3:1 12:1 22:23

23:10, 11 24:16

26:11 28:14, 15, 20

25 29:6, 7, 8 31:24

32:5, 9, 10

5393 22:24

< 6 >

6 3:1 15:13 23:14

15 29:13, 15 30:15

6/10/04 3:1

6/16/04 3:1

6/24/10 3:1

6/26/18 4:7

6/5/06 3:1

6/5/12 4:1

< 7 >

7 3:1 9:25 23:18,

19 29:21, 24 30:4, 7,

8 31:5 32:7 35:10

7202 23:9

7560 23:13

7th 47:7

< 8 >

8 3:1 23:22, 23
24:1 30:16, 18, 21
39:13, 14, 21
8/13/09 3:1
82 22:20 23:1
843-762-6294 1:23
8718 23:17

< 9 >

9 3:20 24:2, 3, 8
31:3

< A >

abandoned 43:24
able 13:3 16:13
18:12 39:23 44:20,
23
accept 40:2
acceptable 33:18
38:23
acclimated 7:6
accomplish 12:17
accountant 34:18
accountants 34:17
accounting 16:23
accounts 11:12
accurate 39:8
achieved 12:18
acknowledging
18:17
acquire 8:13, 15
Act 10:17 11:4
acting 29:16
Action 4:1 6:3
9:11, 13, 18 11:21
17:5 18:18 19:2
24:23 31:15, 18
actions 13:22 15:15
16:8 32:1
acts 11:6
actual 33:9
add 9:5 26:19 27:5
added 26:13, 15, 16,
17, 21 27:4 29:9
addition 27:6, 12
41:7
additional 22:14
33:6 40:1 41:7
45:9, 18

address 10:5, 10
38:7
addressing 17:14
adjourned 46:7
adjustment 28:11
administer 14:7
administrative 11:5,
18 12:6, 17, 18, 21
13:13, 24 14:3 15:4
admission 25:21
admitted 25:16, 17
26:3
advance 45:4
advanced 38:8
Affidavit 3:20
24:19 25:8 32:12,
16
affirmed 44:11 45:7
affixed 47:7
afternoon 37:25
ago 9:25 10:1, 6, 7
31:6
agree 19:7, 12
33:17
agreed 42:17
Agreement 4:1, 7
11:14 23:12 27:17,
22 28:4, 18 29:2
38:8 40:21, 22, 24
41:1, 3, 12, 13, 22, 25
42:2
agreements 29:10
ahead 9:2 13:6, 7
22:8, 10, 17 45:4
Albert 20:11
ALLEN 1:22 47:1,
10
allow 14:6 39:5, 9
45:7, 18
allowed 13:14, 25
16:7 38:3
allows 21:22
alluded 10:21 20:9
Altman 5:20 6:1
amend 9:21 10:8
Amended 3:20
9:22, 23 24:16
32:2, 5

amount 8:10 9:5, 9,
20 16:24 26:4, 15,
19 27:6, 7, 8, 10, 13
28:1, 4, 9, 25 29:4
30:13 31:13, 19
32:6, 14, 16, 20 33:2
38:12 41:18
and/or 47:4
Answer 4:1 9:19,
23 20:22 25:2
33:6 37:3, 4
answering 6:2
36:21
anyway 6:10 44:10
apologize 10:15
27:2 28:7
apparently 9:4
appeal 43:22
Appeals 12:3, 4
appear 27:22 28:20
29:13, 21 30:16
33:8
appears 14:22
21:25 29:19
Appellate 43:25
applies 15:17, 18, 19
apply 13:15 14:1,
18 16:8 19:1
appointed 11:23
appreciate 36:24
appropriate 6:3
13:5 36:21
approved 42:11, 12
Approximately 9:3
April 24:16 32:5
argue 19:9 44:7
argues 44:6
argument 14:1, 9
42:24
arguments 44:18
Article 19:17
aside 19:18
asked 38:17
asking 20:4 36:11
assert 13:21 17:7
asserted 13:16 14:2,
9
asset 15:23

assets 11:22 14:7
15:16 16:9 37:9
assigned 8:8, 9
15:22 29:16 30:4,
12 41:3
assigning 40:23
41:14, 16, 25
Assignment 3:1 4:
7 17:21 23:16, 19
29:18, 19 30:4, 9, 13,
15 35:8, 14 40:20
41:21
assignments 12:7
16:13 17:21
assistant 6:20, 22
assisting 6:19, 21
associate 6:24 21:
34:11, 12, 13
associated 41:17
ASSOCIATES 1:22
34:13, 16, 17
assume 37:2
assumption 5:15
asterisks 26:16
attached 11:25
21:24
attempted 13:21
Attorney 3:1 9:5
17:23, 25 23:24
30:18
attorneys 18:2
35:21
attorney's 25:8, 12
31:8 42:17
August 9:7 23:8
27:17 28:14 29:6
47:11
authority 12:20
39:21
authorized 12:14
17:5, 13 30:21
available 37:24
aware 5:20 14:11
15:25

< B >
back 11:11 19:18,
22 20:10, 12 25:25

27:3 31:7 35:16 36:5 balance 28:3, 6 29:2 BANK 1:10 5:5, 19 8:7, 8 10:22, 25 11:3, 12 13:13, 16, 22, 23 14:2, 24, 25 15:1, 3, 5, 6, 7, 9, 24, 25 16:9 18:25 19:16 24:23, 24 29:17 30:13 40:23, 24 41:4, 14, 17 42:1 bankruptcy 9:12, 13 banks 11:6 Bank's 11:12 Bar 6:5, 10 11:17 15:14 Barbara 8:11 9:15 24:24 25:3 27:22, 24 28:21, 23 30:12 base 17:14 based 32:19 36:19, 24 44:18 bases 25:21 basically 11:10 12:5, 16 17:11, 20, 24 19:25 43:17 basis 17:4 18:4 began 18:14 BEHALF 2:3, 8 6:2 7:8 20:19 25:2 30:2, 5 36:21 believe 5:11 6:1 8:16 10:4 12:25 14:13 17:23 26:15 28:4 32:20, 24 35:6, 9 36:6 37:16, 17, 24 39:14 42:13, 21 belong 12:12 belongs 17:6 bench 45:15 benefit 43:2 best 7:13, 16 20:25 43:18 Biblical 35:1 big 15:1	bill 25:6 32:25 Bill/Tax 4:1 bit 11:9 16:12 35:16 36:10 37:19 43:11 44:24 45:1 bite 13:4 bites 13:3 black 15:1 bold 31:13 book 22:20, 23 23:9, 13, 17, 20, 25 borrower 13:11, 12, 16, 17, 21, 23 14:2 15:22, 23 18:13 borrowers 13:10, 15 bottom 24:7 27:21 28:19 31:18 32:15 33:2 41:16 brief 5:2 7:4, 6 11:25 12:10 14:12 18:3 20:12 21:24 22:11 44:14, 20 45:8, 10, 12 briefly 16:10 42:4 briefs 45:23 bring 10:12 16:23 Britt 6:24, 25 7:1 20:19, 20, 22 34:6, 23 35:10 36:8 38:17 39:13, 24 40:19 42:6 B-R-I-T-T 7:1 BROWN 2:9 6:8 building 7:9 bunch 44:25 Burchard 30:4, 21 burst 45:22 business 30:2 buy 16:18 37:8 buys 19:25 < C > calculate 32:8 calculation 9:20 call 10:22 20:19, 22 43:8 called 10:14 12:3 calls 10:22 camera 39:6, 7	capacity 40:23 41:14 Capital 3:20 24:4 care 20:16 CAROLINA 1:1, 10 5:5 6:5, 6 7:10 8:7 9:12 10:22, 23, 25 11:3, 12, 13 16:9 17:8 18:2, 10, 24 19:16 24:23 29:16 30:12, 23 34:10, 22 40:23, 24 41:4, 14, 17 42:1 43:18 47:2, 8 CASE 1:8 6:19, 21 10:6 12:1, 2, 3, 18, 20, 24 13:2, 10, 11, 15, 17, 19, 20, 21 14:10, 14 15:12, 13 16:4, 8 17:8, 9, 11 18:5, 6, 8, 21 20:11, 18 21:6 25:3 42:18 43:22 44:15, 24 45:4, 15 cases 11:25 12:11, 12 13:8 14:13 16:4, 5, 18 45:1 cause 47:6 Cedar 7:9, 20, 21, 22, 23 8:12 25:6 33:1 center 41:24 CERCOPELY 1:8 5:5 6:13, 14 7:10, 12, 17, 18 8:17, 24 24:10 certain 11:17 20:8 38:12 certainly 14:18 CERTIFICATE 3:1 47:1 certified 12:1 certify 47:2, 5 CFSB 10:22, 23, 24 14:2 change 27:12 43:13 45:17 changed 29:6	changes 26:14 Chapter 9:12 charges 38:9 CHARLESTON 1:23 6:10 47:8 Charlotte 34:10, 22 36:5 checking 11:12 CHELLIS 1:11 children 9:15 Christian 34:22 Church 2:10 Circuit 12:2, 3, 4 15:12 cited 13:19 15:12 20:12 civil 6:3 17:5, 6 18:18 claim 11:21 13:17 14:9, 23 15:3, 4, 5, 18 17:1, 2, 4, 5, 6, 7, 13, 14 18:4, 18 claims 11:5, 6, 17, 18 13:13, 16, 21, 23 24 14:3, 5, 18, 23 15:7, 14, 15, 24 16:5 8 19:24 CLANCY 1:8, 11 5:5, 10, 12, 13 6:11 12, 17 7:10, 18, 25 8:4, 11, 12, 16, 17, 22 24 9:6, 12, 15, 17 11:25 19:17, 20 21:7 24:10, 24 25:3 27:22, 24 28:20, 21, 22, 23 29:9 30:12, 24 31:4, 11 35:4, 6 40:24 41:4, 18, 25 42:20 clarification 5:19 30:8 clarity 41:2 CLARK 1:22 class 12:11 Clause 12:15 28:1, 6, 8, 25 29:4 clauses 28:24 Claypoole 9:5
---	--	--	---

clear 14:4 16:19
33:7
client 37:20
close 13:8
closed 15:2 18:7
38:15
closing 9:4 18:9
Coast 5:19 24:24
Code 10:19
codified 10:19
cogitate 43:10
ColFin 42:10
colleague's 14:13
collect 16:7
collection 31:8
Collin 29:25
Colorado 34:22
Columbia 17:10
come 17:10 35:16
comes 12:5 44:9
coming 10:6 20:17
21:15 45:22
commercial 7:9
commission 47:11
commonly 36:17
COMMUNITY
1:10 5:5, 19 24:24
company 11:14
12:2 20:11 36:21
37:7 39:17
comparisons 26:20
Complaint 3:20
9:19, 21, 22 10:9
24:13, 16 31:18, 21
32:5
complied 30:25
computer 40:12
43:5
concept 19:22
conference 46:1
confirm 25:16
confirming 29:10
confused 38:5
Congress 13:3
16:19
Connecticut 36:6
37:18, 23
connection 27:24

28:23
consideration 43:1
Constitution 12:14,
15
constructive 17:2
18:23
consuls 10:20
contains 11:25
context 20:6
copied 33:22
copies 22:11 33:16,
24 40:1
copy 21:11, 14
24:12, 20, 22 25:2, 6
31:12, 17 32:5, 11,
25 33:8 34:2
35:25 39:1, 2, 7, 8
corner 24:7 26:25
27:1 29:23 33:3
corporate 37:21
Corporation 10:24
11:23
correct 5:12, 17
6:11 7:3 8:22
10:19, 20 13:18
18:9 19:24 22:2,
16 23:21 24:1
25:4 26:4, 5, 6, 17,
21, 23 27:13, 14, 17,
18 28:18, 19 29:11,
19, 20 30:5, 6, 7, 10,
13, 15, 19, 22 31:6,
16, 23 32:12, 13, 21
33:19 35:15 37:19
38:25 40:21 41:3,
5, 12, 15, 18, 22, 23
42:1 43:16 44:9,
13 47:3
corrected 45:5
corrective 23:1
correctly 5:6 7:13
21:17 47:2
costs 31:8 38:9
counsel 5:1 30:6
47:6
counterclaim 9:19,
23 10:2, 10
counterclaimant
16:16

counterclaims 10:3
13:23 15:8, 19
16:22, 23 42:20, 23
43:23 44:1, 6, 12
COUNTY 1:2, 17
6:10 8:18 9:8
22:19, 23 23:4, 9, 13,
16, 20, 24 25:7 26:8,
11 27:19 28:16
29:14, 22 30:17
47:8
couple 34:17
course 7:7 13:7
19:1, 23, 25 20:3, 5,
10 21:21 43:3
COURT 1:1 5:1, 8,
12, 14, 16, 18, 21, 25
6:2, 8, 10, 13, 16, 17,
20, 22, 25 7:2, 4, 11,
14, 17, 19, 21, 24 8:1,
13, 14, 19, 21, 23, 24
9:1, 2, 23 10:1, 5, 8,
11, 16, 18, 19 11:20,
21 12:3, 4, 6, 7, 24,
25 13:6, 11, 14, 15,
17, 18, 22, 25 14:5,
11, 15, 19 16:21
17:3, 8, 9, 14, 18
18:2, 5, 7, 9, 15, 20
19:4, 10, 12, 14, 22
20:2, 15, 17, 21
21:12, 14, 16, 20, 22,
25 22:4, 5, 8, 10, 15,
17, 21, 24 23:3, 6, 10,
14, 17, 21 24:5, 7, 11,
14, 17 25:3, 7, 8, 10,
14, 17, 19, 23 28:12
33:7, 11, 15, 17, 18,
20, 25 34:3, 23, 25
36:15 37:6 38:3, 4,
6, 13, 20, 24, 25 39:2,
3, 5, 11 40:5, 7, 13,
17 41:9 42:14, 16,
18, 21, 22, 23, 25
43:4, 6, 10, 17, 21, 25
44:2, 8, 14 45:1, 2,
13, 17, 21, 25 46:5
47:1

COURTHOUSE
1:17
courtroom 36:2
courts 12:13
Court's 5:19 19:9
25:10
Cove 2:5
crazy 20:10
CRE 17:22, 25
37:15 41:25 42:6
CRE/ADC 3:1 8:9
23:24 29:17 30:9,
19, 21 40:24 41:15
23
create 38:10
creates 38:10, 11
Credit 3:1 5:5 8:4
19:8 22:3 26:23
38:8, 9, 16 43:9
creditor 13:17
14:23 15:17, 21
16:11, 16
creditors 15:14
crisis 11:5
CROSS-
EXAMINATION
3:1
cure 31:14
curious 7:11
Current 4:1 8:4, 5
14, 15 25:6 28:3, 6
29:1 33:1
currently 33:2
35:24
cut 43:18

< D >
D.C 12:2 15:12
damages 17:7
date 9:3, 5 10:25
24:7 26:5, 15, 19, 21
27:2, 4, 12 28:11
29:6, 9 30:14 31:4
33:4 38:4 41:1, 19
42:2, 17
dated 8:6 22:3
23:8, 12 24:10, 19
26:4 27:17 28:18

30:13 41:5, 18 42:1
dates 43:15
daughter 8:24
DAVID 1:8, 10 5:5,
 9 8:17 24:23 25:3
 27:22 28:20 40:24
 41:4, 17, 25
Davis 12:24
day 29:19 32:18
 45:10 47:7
days 45:8, 10, 11, 12,
 25
dealing 44:21, 22
Debt 3:20 11:1
 24:19 32:12, 16
 35:4, 5, 7, 16
debtor 14:23 15:6
deceased 8:23
December 29:19
 41:1, 20
decide 13:4 43:20
 45:4
decides 44:6
decision 18:16
 25:12 43:7, 11
 44:9, 11 46:2
deed 8:16, 17
Deeds 8:18 9:9
 22:20, 23 23:9, 13,
 16, 20, 25 26:8, 11
 27:20 28:16 29:14,
 22 30:17
default 31:24 32:9,
 10
DEFENDANT 2:8
 5:9 19:20 44:25
Defendants 1:11
 4:1 8:14, 16 13:19
Defendant's 4:1
 14:9 33:13, 14
defense 19:2 42:20,
 23 44:17, 21
defenses 19:17, 20
 45:6, 7
define 36:13, 18
 37:3
definition 37:1, 2, 9
degree 34:19, 20, 25
Delinquent 4:1

demand 9:17 14:25
 15:2, 3 31:11, 15, 21
depends 25:10
Deposit 10:24 12:2
 14:25 15:2, 3
depository 11:22
described 38:9
DESCRIPTION 3:1
designate 38:8
designating 30:21
determination 15:15
determine 12:11
 31:22 39:7
determined 43:22
Diamond 12:3, 4
 13:20
died 8:16, 22
diem 32:17
difference 20:2
different 5:10 23:2
 44:9
DIRECT 3:1
directly 34:18 38:6
disagree 14:13
disclosures 27:24
 28:22
discovered 9:19
 10:13
discovery 35:22
discrepancy 16:25
discuss 10:3 27:6
discussed 7:7 9:14
discussing 21:23
discussion 21:1
 24:21 32:15 33:12
 35:10
dismissed 13:22
distantly 6:9
distribute 14:7
distribution 8:16
Dixie 20:11
doctrine 18:21
document 18:13
 25:21 28:20 29:13,
 21, 24 30:17 32:2
 33:4 39:3, 7 40:20
 42:11 46:1
documents 9:8
 17:11 30:25 31:20

32:3, 7 37:22
 41:14, 16
doing 5:2 17:12, 13
door 15:1
DORCHESTER 1:2,
 17 8:18 9:8 22:19,
 23 23:4, 9, 12, 16, 20,
 24 25:7 26:8, 11
 27:19 28:16 29:14,
 22 30:17
downtown 7:20
dramatically 43:13
Draw 4:1, 7 17:24
 40:20, 23 41:2, 22,
 25
drive 20:10
driving 44:19, 21
due 19:1, 23, 25
 20:3, 5, 10 31:19
 32:7, 14, 16, 20 33:2
duly 20:20
Dura 44:15

 < E >
earlier 42:24 45:3
easiest 33:23
echo 15:20
effect 17:12 18:16
effective 29:19
 30:14
either 12:19 14:19
 15:22 16:2 34:1
 43:4 44:5
electronically 43:4
eliminate 19:23
ELMO 40:7
e-mail 24:20
enact 13:3
enacted 11:4
enforce 15:23 18:11
Enforcement 10:16
 11:4
enjoined 17:13
ensued 5:22
enter 21:15 25:9
 45:17
entered 26:10
 33:19 46:3

entities 17:20
entitled 13:12
entity 14:23 37:15
 42:7
equitable 17:16, 18
 19, 23 18:21
Equity 4:1, 7 17:15
 26:22 40:20, 23
 41:2, 22, 25
error 9:20 31:23
 32:1
Estate 3:1, 20 8:18
 23:16 24:4
event 5:22
events 47:6
everybody 20:2, 6,
 24 33:21 40:11
 46:6
evidence 21:15
 25:9, 18 26:10
exact 16:24
exactly 5:7 8:2
 36:13, 18
EXAMINATION
 3:1 25:20 26:1
 34:4 40:17 42:5
examine 39:6
examined 20:20
excuse 7:11 22:5
 33:7
executed 10:22 29:18
exhaust 12:6
EXHIBIT 3:1, 20
 4:1, 7 21:8, 9, 20
 22:2, 4, 8, 15, 18, 19
 21, 22 23:5, 6, 7, 10,
 11, 14, 15, 18, 19, 22,
 23 24:1, 2, 3, 8, 9, 11,
 12, 14, 15, 17, 18, 21,
 22 25:1, 2, 4, 5, 9
 26:3, 5, 7, 10, 12, 17,
 20, 21, 22, 25 27:1, 4,
 6, 7, 9, 12, 16, 19, 21,
 24, 25 28:15, 20, 23,
 25 29:13, 15, 21, 24
 30:4, 8, 11, 16, 18, 21
 31:3, 7, 10, 12, 13, 17,
 19 32:5, 11, 13, 16,
 25 33:2, 7, 13, 14

35:10, 11, 18 38:6,
21, 25 39:7, 9, 13, 14,
21 40:3, 9, 10, 19, 20
41:7, 10, 12, 19, 21
42:11
EXHIBITS 3:1
21:11, 12, 15, 16, 18,
23, 25 22:6, 14
24:13 25:16, 17
26:3 29:8 33:15,
21 40:1, 2 41:7
existence 29:10
exists 35:19, 20
expect 44:2 45:6
expenses 38:9
expertise 18:12
expires 47:11
explain 18:12 19:4
37:6, 19
explained 18:12
explanation 15:21
expressly 12:14
extending 28:13, 14
extends 15:15
extension 11:1
extent 25:20
extra 33:16 34:2
eye 8:2

< F >

face 27:13 40:22
fact 43:25
facts 18:6 42:23
factual 17:16
failed 11:6 13:13,
16, 22, 23 14:2, 7
15:16
fair 32:2 35:3
36:14
fairly 6:3
fancy 40:13
fast 39:25
favor 30:12
FDIC 4:1 8:8
10:24, 25 11:2, 12,
23 12:1, 5, 6, 8 13:1,
2, 3, 9, 10, 13, 16, 20,
23 14:2, 3, 6 15:2, 4,
19, 22, 23, 24 16:1, 6,

7, 8, 17, 18 29:16
40:22 41:13 42:8,
9, 11, 12
FDIC's 13:13, 24
44:24
feat 43:19
February 9:11
24:23 47:7
FEDERAL 1:10
5:5 8:7, 8 9:12
10:24 12:2, 7, 13, 15
16:9, 19 24:23
29:16 30:12 40:23,
24 41:4, 14, 17 42:1
federally-defined
37:14
feel 12:17 34:16
fees 25:8, 12 31:8
38:9 42:17
Ferguson 29:25
fifth 17:2
fight 14:17
figure 32:9, 19, 22
figures 43:15
file 10:1 14:3, 14
24:20 25:8 32:19
33:11 35:17, 24
45:12
filed 9:11, 19, 23
10:3 13:10, 13, 23,
24 14:5 21:18, 25
22:25 24:13, 16, 23
25:2 31:15, 18, 21
32:2, 5
files 36:7 37:21, 25
filing 9:12
final 11:1
finance 34:20, 24
35:2 38:8
Financial 10:16
11:3 15:16 16:9
find 10:15 16:13
44:14, 20
fine 36:22
finish 39:23
firm 17:10
FIRREA 10:14, 16
11:4, 16 13:1, 9, 12,

15 14:1, 9 15:18
16:8, 14 18:1 44:14
first 5:4 8:11 9:7
10:12, 22, 25 11:3,
12 12:1 13:1, 3, 4
14:8, 9, 11 16:23, 25
17:4 18:24 19:16
20:20 22:15 27:19
28:1, 5, 24 32:3
41:17 43:7 44:21
fish 36:2
fit 40:19
five 22:14
fix 32:1
flip 27:16 29:18
30:11 31:7 32:6
40:13
flushed 45:13
follow 16:20 19:22
followed 11:18
follows 20:21
foreclose 16:2, 3, 5
45:1
foreclosed 44:25
Foreclosure 4:1
5:22 7:9 9:11, 13,
18 13:10, 11, 12, 14,
20 14:1 24:23
31:15
foreclosures 12:12
44:17
foregoing 47:3
forest 14:21
forgot 34:5
Form 43:20
forward 42:23
found 31:23 44:15,
18
foundational 21:21
25:21
four 9:16
Fourth 12:3, 4 17:2
31:18
frankly 37:19
fraud 17:2 18:23
Freeman 12:1 13:9
15:12
front 15:19 16:16
40:12

full 22:13 44:6, 7
47:3
function 12:18
further 5:10 37:12
42:3, 15 47:5

< G >
GEANURACOS
1:10 5:6, 9 6:2
24:25
G-E-A-N-U-R-A-C-O-S 5:9
general 12:11, 12
37:2, 8
generally 36:17
GEORGE 1:17
Gersten 20:11
give 5:1 7:4, 6
10:14 16:23 17:23
19:14 45:10
go 5:10 9:2 10:15
11:11 13:1, 6, 7
15:19 16:2, 16
18:21 19:22 20:12
22:8, 10, 17 25:21,
23 37:10, 25 42:21
45:4
goals 11:5
goes 12:8 20:10
going 5:1, 8 7:5
13:6 16:21 19:9
20:12, 17, 22 21:8,
17 22:11 26:2, 9, 18
27:16 28:14, 24
29:12, 20 30:16
31:3, 9, 17 32:4, 11,
25 35:3, 16 37:6
39:13 41:20 42:20,
22 43:1, 5 45:3, 23
46:2
good 12:9 18:4
20:15 25:25
governed 15:4
granted 9:22 10:8
great 24:24 35:13
37:13
growing 7:15
guess 10:6 22:1

36:11 43:21 44:5
guidelines 16:20
guy 15:2

< H >

hand 21:8 26:2, 9
 27:16 28:14 29:12,
 20 30:16 31:3, 9, 17
 32:4, 11, 25 33:8
 47:7
handed 11:24 22:13
handle 25:11
handled 16:18
hands 18:6, 11, 17,
 21
happy 10:3 13:5
 25:9 37:3, 8 38:22
 40:4 44:14 45:7, 18
hard 11:16
harsh 14:6
Head 2:6 6:6
 45:22
heading 7:5
hear 12:11, 12, 18,
 19, 20 14:15 20:24
 45:4
heard 14:9 43:11
 44:10, 15, 17, 22
hearing 5:20 19:11
 25:9, 12 46:7
Hedstrom 39:15, 20
held 8:7 13:11
 15:6
HELOC 16:24 20:8
helpful 6:25 44:14
hereunto 47:7
Hey 34:5
Hilton 2:6 6:5
hiring 18:14
History 3:20 24:4
hold 15:13 22:1
 24:5 33:7 37:6
 45:3
holder 8:4 18:25
 19:1, 23, 25 20:3, 4,
 5, 9
holds 18:18 19:23
 43:25

Home 4:1, 7 17:23
 40:20, 23 41:2, 21,
 25
honest 37:24
honestly 14:16
Honor 5:12, 24 6:1,
 7, 15, 23 7:7, 16 8:1,
 22 9:1, 21 10:2, 7,
 10, 15, 20, 23 11:16,
 24 12:20 13:4, 5, 8,
 18 14:19 15:10, 18,
 20 16:10, 20, 23
 17:11, 14, 19 18:9,
 24 19:6, 7, 21 20:4,
 14, 19 21:1, 10, 14,
 16, 22 22:2, 7, 10, 14,
 16 24:20 25:13, 15,
 19, 22 30:8 33:15,
 18, 20 36:12, 25
 38:2, 13, 23 39:10,
 22, 23, 25 40:2, 16
 41:9 42:4, 14, 15, 16,
 19 43:3, 19 44:3, 4,
 5, 13, 16 45:16, 20,
 21 46:4, 5
HONORABLE 1:11
hope 20:14
house 7:25 8:1
 37:21
huge 16:25
hundreds 38:15
 44:24

< I >

idea 37:8
identification 21:10
 22:18, 22 23:7, 11,
 15, 18, 23 24:3, 9, 12,
 15, 18, 22 25:1, 5
 33:13, 14 40:9, 10
 41:10
identify 21:12, 18,
 19 40:4
imagine 16:4
immediate 32:1
important 10:25
 11:15 37:22
inadvertently 31:24

incapable 33:25
include 24:13 32:22
included 31:25
incorporated 31:24
incorrect 31:22
 32:9, 10
indented 41:24
INDEX 3:1
indicate 26:7
indicating 5:22
information 26:13,
 17, 18 32:19 45:9
initial 15:21 19:21
initiated 9:16, 17
initiation 31:10
instance 14:24
 17:21
Institution 11:3, 22
 14:7 15:16, 22 16:9
Institutions 10:16
Instrument 3:1
 11:8, 10 19:5, 6, 8
 20:1, 3, 5, 6, 7, 9
 23:20 35:14
instruments 20:13
Insurance 10:24
 12:2
intend 5:2 21:12
interest 15:6 31:2,
 24 32:9, 17
interested 47:6
interfering 25:20
interpretation 14:13
interpreted 13:15
interrupt 8:19
investigate 37:11
involved 13:10, 20
 39:16
involves 17:10
involving 12:12
issue 13:8 14:11
 18:17 43:20 44:9,
 20, 22 45:8, 13, 23
issues 17:16 44:22
item 28:10, 12, 13
 29:5
it'll 40:14

its 11:2, 5 13:13, 20
 32:19 40:22 41:14
 42:18

< J >

JAMES 1:11
JANUARY 1:4
 9:25 21:18, 24, 25
 24:4, 6 31:5 32:7
 33:5
JOAN 1:10 5:6, 8
 6:2 24:24
jointly 7:10, 18
Judge 6:8 25:24
 33:24 43:18
judicial 11:17, 20
July 11:1 12:1
 29:7
June 8:6 9:3, 4, 8
 10:25 22:3, 20, 23,
 25 23:12 26:4, 6, 11
 27:2, 3, 4 28:18
 30:13, 15 41:5, 18
 42:1, 3
Junior 34:12, 16
jurisdiction 10:13
 11:21 12:10, 13, 22
 14:15, 17 15:8
 16:21 42:22, 24
 43:20, 21, 23 44:1,
 10, 11 45:4, 5, 7, 8
jurisdictional 11:17
 15:14 16:20 44:8
Justice 18:8

< K >

keep 18:20 19:11
 36:6, 7 37:21, 22, 25
keeping 21:4, 6
KeyBank 3:20 24:4
kin 7:14
kind 14:21 18:13
 20:12 37:11, 20
 42:7 43:2
knew 16:24
knocks 15:1
know 8:2, 7 10:23
 13:2, 6 14:16
 16:17 19:11 20:1,

10, 23 23:2 25:15
 27:23 28:22 29:25
 35:19 36:13, 16, 18,
 19, 23, 24 37:1, 13
 39:15, 16, 18, 19, 21
 40:11 42:6, 7, 8, 9
knowledge 39:20
 42:12
known 17:22 43:12,
 13
knows 36:13, 16
 37:4, 7

< L >
lack 10:12
lacks 14:15
land 12:16
Lane 2:5
language 30:20
Large 47:2
last-minute 41:7
LAUREN 2:4 6:4
 7:8 37:11
law 10:14, 18 12:9,
 15, 16 13:4 17:3, 5
 18:11, 16, 19, 20
 38:15 44:24
lawsuit 9:16
lawyer 6:20, 21
 18:12 30:1
lawyers 18:4, 14
 25:23
leave 37:20 38:20
 45:21
left 8:23 9:15 24:7
 29:23 33:3
legal 17:12, 17, 18
lender 18:6, 11 38:7
Letter 3:20 4:1
 5:21 9:17 11:25
 19:14 24:10 31:11,
 12, 15, 21 34:2
lie 19:3, 16
lien 18:7
limit 38:8
limitation 11:20
Limited 3:1 12:14
 15:14 17:22, 25
 23:24 30:18

Line 3:1 8:4 15:7
 19:8, 19 22:3
 26:23 38:9, 16 43:9
liquidate 14:7
litigation 31:10
little 11:9 35:16
 36:10 37:19 38:5
 43:11 44:24 45:1
LLC 1:5 3:20 5:4
 7:8 8:9 11:13
 20:19 22:16 23:24
 29:17 30:9, 19
 40:25 41:15, 23
Loan 3:1, 20 9:5,
 10, 16, 24 10:21
 11:2, 5 12:5 13:20,
 25 16:3, 5, 7 18:7
 21:6 22:3 24:3
 26:15, 19, 24 27:2, 6,
 7, 10, 13, 15 28:1, 3,
 8, 13, 14, 25 29:6
 30:25 31:4, 7, 20
 32:2, 3, 7, 14, 16, 19
 37:17 41:14, 16, 17
loans 11:13 16:1, 2
 30:23 44:24
located 7:9, 20
 8:12 34:9
LOCATION 1:17
 38:7
long 14:20 20:1
look 14:14 15:9
 20:12 21:11 22:11
 26:3, 22, 24 27:3, 7,
 9, 19, 21, 25 28:5, 7,
 17, 19, 24 30:3, 20
 31:7, 13 32:15
 33:3, 17 40:22
 41:16, 24 43:8
 45:2 46:1
looking 19:18 26:5,
 7, 12 27:1, 25 28:2,
 10, 15, 24 29:3, 5, 8,
 13, 15, 21, 23 31:3
 32:13 33:2 40:18,
 19 41:11, 21 44:19
looks 26:16 29:9
 37:23
loss 25:25

lot 16:18 17:12
 21:20 43:14 44:17
LOU 1:8 5:4 6:16
 8:17
loud 40:4
loudly 20:24
Loukos 6:24 20:19,
 20 21:1 26:2
 33:10 34:7, 8
 36:13, 16 37:3
 41:12
L-O-U-K-O-S 7:1
Loukos's 37:1
luck 25:25

< M >
machines 34:1
MACKENZIE 1:22
 47:1, 10
mail 12:1
mailed 5:20
majority 22:13
 37:20
maker 9:12
making 16:8 17:4
manage 37:9
managed 11:2
March 25:2
Mark 39:15
marked 21:10 22:6,
 18, 22 23:7, 11, 15,
 18, 23 24:3, 9, 12, 15,
 18, 22 25:1, 5 26:10
 28:14 29:13, 21
 30:16 31:3, 9, 17
 32:4, 11 33:13, 14
 40:9, 10 41:7, 10, 11,
 21
market 20:1
Marshall 30:4, 21
MARY 1:8 5:4
 6:16 8:17
masters 34:20, 21
 35:2
match 26:24
mathematical 9:20
 31:23 32:1

matter 5:4 10:13
 12:10, 21 14:17
 42:24 43:1 47:3, 5
matters 37:1
maturity 9:3, 5
 26:15, 19, 20 27:2,
 12 28:11 29:6, 8
maxim 17:15, 16, 17
 18, 20 18:5, 22
mean 36:11 37:22
 38:15 45:22
means 11:23 25:19
 36:14, 16, 17
measure 23:1
meet 11:8
millions 15:25
mind 8:2 10:6
 18:21 38:20 45:17
mind's 8:2
mine 45:12
mini 24:13
minimum 19:16
minute 5:16 39:23
minutes 36:2
mirrors 15:21
misrepresentation
 17:2 19:15
misunderstand
 36:23
Modification 3:1
 9:10, 14 23:8, 12
 27:17, 22 28:4, 11,
 18 29:2, 10
modifications 9:7
modified 27:15
moment 44:12
momentarily 10:11
money 15:2
monthly 31:1
months 9:16
morning 13:8 14:8,
 20 33:10 44:15, 23
Mortgage 3:1 8:5,
 6, 11, 22 9:4, 6, 7, 9,
 11, 14 18:7, 11, 14
 22:5, 19, 23, 25 23:3,
 8, 12, 16, 19 26:6, 7,
 11, 13, 18 27:7, 13,
 15, 17 28:8, 9, 11, 18

29:4, 9, 10, 11, 16
 30:9, 12 35:8, 14, 15
 38:16
mortgaged 18:7
mortgage-owed
 17:22
mother 8:5 9:6
Mount 2:10
move 19:12

< N >
name 5:7, 9, 16
 6:24 7:7, 11, 14
 22:8 34:5, 7
nature 5:2
NCP 1:5 3:20 5:4
 6:24 7:8 8:3, 9
 9:16, 19 11:7, 10
 12:8, 17 14:14
 15:14, 18, 20, 21
 17:20, 22, 23, 25
 19:2, 3 20:19
 24:18 30:2, 5, 9, 23
 31:15, 24 32:1, 3, 5,
 19 35:3 36:8, 19, 20,
 25 41:23
NCP's 32:12 34:8
necessarily 36:11
 37:9
necessity 25:24
need 10:12 25:21
 43:8, 22
negligence 19:15
negligent 17:1
negotiability 11:9
negotiable 11:8
 19:6, 8, 25 20:3, 5, 6,
 7, 9
neither 47:5
never 38:14 44:17,
 22
Nine 30:24
nonnegotiable 11:10
 16:11 18:25 19:5,
 12, 18 20:13 38:11,
 12
nonperforming 11:2,
 13

Nonresidential 3:1
 22:3, 16
North 7:22 11:13
 34:10, 21
Notary 47:1
Note 3:1 8:4, 6, 8,
 10 9:3, 7, 11, 13
 11:7 16:11 17:25
 18:25 19:18 23:8,
 12 26:4 27:17
 28:11, 18 29:9, 16
 30:9 31:25 35:17,
 23, 25 37:11, 15, 16,
 18 38:1, 3, 12, 16, 19
 39:6, 8 43:8
noted 11:1
notes 11:13 37:9
 47:4
Notice 4:1 25:6
notified 5:23
number 6:3 16:25
 21:20 22:2, 17, 19
 24:8 26:23, 24
 27:11 28:10, 13, 15,
 17 29:5 31:3, 22
 35:10 38:6 39:13,
 14

< O >
oath 20:21
object 36:12 37:1
objecting 40:5, 6
objection 25:17
 33:19 37:6 41:8
objections 21:15
obligation 38:14, 25
 39:1, 2, 8, 9
obviously 14:20
 20:8
occurred 29:18
October 9:15 24:10
 31:20
odd 13:2
offer 44:13
Office 3:20 5:20
 24:10, 13, 16 31:10
 34:8 36:6 37:19
official 21:2 47:7

Off-the-record 21:1
 24:21 32:15 33:12
 35:10
Oh 6:20 24:7 27:2
 28:7
Okay 5:3, 18 6:22
 7:4, 16 8:2 9:2, 23
 17:3 18:5 19:6, 10
 20:12, 23 21:5, 9, 23
 22:4, 15, 17, 21
 23:14 24:14 25:15,
 22 26:16, 22 27:3,
 16, 21 29:3, 5 31:23
 32:8 34:6, 8, 18, 20,
 23 35:6, 13, 19, 23
 36:8, 14 37:13, 15
 39:11, 12, 19, 22
 41:6 43:6
old 7:14 12:9
older 10:14
Omnibus 4:7 41:12
once 9:16 15:6
 43:7, 10
open 20:1 38:21
 39:5
opening 5:2 7:4
 10:21 20:16
operating 34:1
opinion 19:16
 30:24 45:9
opinions 23:3
opportunity 43:10
option 45:14
oral 47:4
order 9:5 15:3
 16:13, 19 19:8, 17
 20:7 38:7 43:12,
 13, 17, 20, 21 45:17
orders 43:12, 14
Original 3:20 8:10
 9:3, 4, 9, 11 19:22
 24:13 26:10 28:1,
 25 29:11 30:13
 31:17 33:11, 12
 35:25 37:25 38:3,
 17 39:3, 6, 7, 8
originally 8:7, 21
 10:21 26:13 29:16

originals 22:7
outstanding 32:22
overall 10:5
overrule 37:6 45:14
owed 9:20
owned 7:10, 18
 8:11, 21 42:7, 8
owner 8:5
ownership 9:16
owns 11:10 42:6

< P >
PAGE 3:1 15:13
 22:20, 24 23:1, 9, 13
 17, 21, 25 27:16, 19,
 21 28:17, 20 29:18
 24 30:3, 11 31:7, 18
 32:6 35:13 39:14
pages 33:24
paid 20:7 32:24
paper 43:5
paragraph 26:20,
 22 27:6, 7, 10 28:3
 29:6 31:7, 19 32:6
 41:2, 17, 25
part 11:2 25:9, 14
 32:22
participation 11:14
 42:10
party 16:15, 16
 17:4 18:18 47:6
pass 37:11
passed 9:15
paste 43:18
path 25:24
PATTERSON 2:4,
 5 3:20 6:5 44:16,
 17
pay 19:8 38:6, 10,
 11, 14, 25 39:1, 8, 9
payment 9:24
 11:21 31:1, 4, 5
 37:10
penalty 14:6
pending 14:10 47:6
people 5:10 16:18
 20:10 43:14

percent 11:14
31:24 32:9, 10
42:10
Perfect 8:3
period 14:10
permission 9:21, 22
person 6:18 11:7
14:25 21:6
personal 37:21
personally 39:16
pertinent 13:9
ph 6:19
phone 44:19
physically 37:23
picture 10:5 40:19
PILGRIM 1:5 3:20
5:4 6:24 7:8 8:4,
9 11:7, 10 12:8, 17
14:14 15:15, 19
17:20, 22, 23, 25
19:3 20:19 30:2, 5,
9, 23 35:3 41:23
Pilgrim's 24:19
place 36:7
placed 8:6, 22
Plaintiff 1:5 2:3
5:4 7:8 10:22
21:2, 4 39:6 42:17
45:12
Plaintiff's 3:1, 20
4:1, 7 5:1 21:9
22:15, 18, 21 23:6,
10, 14, 18, 22 24:2, 8,
11, 14, 17, 21 25:1, 4
26:3, 10 29:13, 21
30:16 31:10, 17
32:25 35:11 39:14
40:3, 9, 10, 19 41:10,
12, 21
pleadings 14:10
Pleasant 2:10
please 5:2 20:22
33:15 34:3
pleasure 46:6
plus 38:8
PM 46:7
point 14:8 15:3
31:21 35:7

pops 14:21
portions 13:9
position 6:3 10:9
15:18 16:7 18:25
19:7, 11 21:2, 22
23:2 38:13 44:5, 7,
15 45:3
possible 25:22
37:25
post-trial 44:14
45:8, 23
potentially 37:10
Power 3:1 12:11
17:23, 25 23:24
30:18
practical 18:15
practice 17:3, 5
18:11, 16, 19, 20
practices 17:1
18:22 19:14
practicing 38:15
prefers 10:23
pre-filed 21:17, 18
premarked 22:9
33:15
prepared 25:23
29:24
present 5:22 6:4, 6
39:6
presentation 7:6
presented 12:25
preserve 44:6
Preserving 20:11
pretrial 11:24 18:3
21:24 22:1, 11
pretty 13:2 37:22
Prime 3:1 22:2, 16
principle 9:9 26:4
28:1, 3, 6, 25 29:1
30:13 31:2 32:14
printed 24:4, 7 33:4
prior 25:8
probably 13:2
43:11
PROBATE 1:1
problem 35:23 38:1
problems 20:1
procedure 13:24

14:4
procedures 13:14
proceed 13:14, 25
PROCEEDINGS
1:2 12:11 47:4
process 11:5, 18
18:10 19:23
processors 43:15
produce 46:2
produced 40:1 41:8
projector 33:21, 25
promise 38:6, 10, 11
promissory 38:12
pronounce 5:6, 7
7:13 24:24
pronunciation 7:11,
16
property 7:18, 24
8:5, 11, 13, 15, 17, 21,
22, 24 9:15 19:24
25:6 29:10 32:22,
24
prosecute 42:20
provide 11:5 31:8
38:3, 22
provided 11:20
provides 12:15
providing 11:17
provisions 30:25
Public 10:18 47:2
publish 22:8
publishing 21:19
pull 35:23 38:1
purchase 16:7
purchased 13:20
16:6
purchaser 13:25
15:6 16:3, 5, 6
purchasers 16:1, 2
purpose 14:6 43:17
purposes 6:3 18:21
39:5 43:7
Pursuant 9:2
put 8:3 12:10
42:20 43:21 44:23
< Q >

question 8:20
12:11 29:8 33:10
37:3 45:3, 4
questions 20:22
21:21 33:6 39:13,
24 42:4, 15
quick 33:24 39:25
quickly 34:21
quiet 20:23
quite 11:7 43:19
< R >
railroad 25:25
raise 12:21 19:17
raised 14:17
raising 14:20 17:16
rapport 20:18
rate 17:24 18:16
23:3 31:24 32:9,
10, 17
read 13:8 14:21
40:11 42:12 43:5
44:18 45:9
reading 13:8
ready 10:15
Real 3:1, 20 23:16
24:4
really 11:16 13:1
15:9 18:18, 24
19:2, 16 27:12
34:16, 21 43:25
reason 11:15
reasonable 31:8
reasons 20:8 43:14
recall 10:6 18:16
35:22
receipt 45:12
received 5:21
10:24 11:25
receiver 11:23
29:16 40:23 41:14
recess 34:2
recognizes 14:6
recollection 18:6
reconvene 43:7
record 6:4 8:17
23:4 25:14 39:5
40:18 43:2, 10
44:7 46:3

recorded 9:5, 8
 22:5, 19 23:1, 8, 12,
 16, 20, 24 26:8, 13
 27:19 28:8, 16
 29:4, 14, 22 30:17
recording 43:15
records 21:4, 6
 25:10 26:7
Recovery 10:16
 11:4
RECROSS-
EXAMINATION
 3:1
REDIRECT 3:1
reference 28:8 29:4
referenced 9:9
referring 36:18
Reform 10:16 11:3
Register 8:18 9:8
 22:20, 23 23:9, 13,
 16, 20, 25 26:8, 11
 27:19 28:16 29:14,
 22 30:17
related 6:8 47:6
relating 13:22
rely 43:17
remain 39:5
remainder 44:11
remedies 12:6
remedy 12:17, 21
remember 10:8
 17:9 18:13, 23
remote 37:20
remove 32:9
removed 32:10
render 43:11
reply 10:1, 3 14:12,
 13 45:10, 11, 13
Report 3:20 24:4
 34:18
REPORTED 1:22
 47:3
REPORTER 3:1
 5:8 22:6 47:1
represent 6:12
represented 5:20
representing 36:20
represents 6:11

request 10:8 37:24
requesting 38:1
requests 38:24
required 18:10 31:1
Rerecorded 3:1 9:4,
 9 22:23 23:3, 5
 26:11, 19 29:9, 11
research 45:18
researched 13:8
reserve 45:23
reserving 43:23
resolve 9:13
respect 11:22 15:16
respectfully 12:19,
 22 42:21 44:3
respond 13:5, 6
 15:20
responded 9:17
response 9:18
responsible 21:4, 6
resting 42:23
rests 42:17
result 9:11 45:7
retype 43:16, 18
reverse 45:9, 15
review 11:17, 20
 43:10
reviewed 13:9 32:3
rhythm 25:20
riding 44:18
right 5:8, 16 8:2
 10:8, 11 13:18
 14:25 16:21 17:8
 18:2 19:12, 19
 20:16 22:7, 12, 13
 25:7, 14 26:22, 24
 27:1, 5, 14 31:13
 33:3, 20 35:9 39:5
 40:17 43:9 44:25
rights 11:22 15:15
 20:13
ROBERT 2:9 6:6
role 21:3
routinely 16:1 30:2
rule 12:7, 12, 22, 23,
 25 15:8 25:11 45:4
rules 18:10
ruling 18:1 45:14
run 16:14

RUSSELL 2:4, 5
 3:20 6:5 44:16
 < S >
safekeeping 36:7
 37:22
SAINT 1:17
sale 5:23
Samuel 5:20
save 19:9 21:20
 22:15
SAVINGS 1:10 8:7,
 8 10:22, 25 11:3, 5,
 12 16:9 18:24
 19:16 24:23 29:16
 30:13 40:23, 24
 41:4, 14, 17 42:1
saw 6:2
saying 15:1, 11, 20
 16:5 19:4 22:25
 42:21 45:1
says 11:19, 20 12:5,
 24, 25 13:1, 4 14:14,
 18 15:12, 13, 17
 16:3 17:11, 20
 24:4, 7 26:18, 22
 28:6, 13 41:2, 4
SC 1:17, 23 2:6, 10
school 34:21
screen 40:14, 16
seal 47:7
SEAN 1:10 5:9
second 9:7, 10, 13
 10:15 16:23, 25
 17:1, 11 18:7, 14
 22:1, 5 24:5 27:6,
 16, 21 28:7, 20 29:3,
 24 33:7 35:13
second-to-last 29:18
Section 11:16 26:15
secured 8:4, 11
 28:8
Security 3:1 17:22
 23:19 35:14
see 14:21 15:7, 9
 16:15 24:7 33:21
 37:5, 10 39:3
 40:12 41:11

seeing 46:6
seek 9:21
seeking 7:5 11:22
 13:10 15:15, 23, 24
seeks 17:15
seen 42:11 44:17
sell 11:14
send 31:11 33:22
 38:20
senior 6:24 21:3
 34:11, 12, 13
sense 17:15 19:3,
 21 20:14
sent 9:17 31:15, 24
separate 21:11
 25:11 38:13
serve 7:24
servicer 36:8, 9, 13
 16, 19, 20, 24, 25
 37:1, 2, 5, 7, 10, 13
set 16:20 19:18
 22:13 38:12 40:8
sets 11:17
seven 9:25
sheet 15:1
Shelter 2:5
Sherman 12:24
short 14:3
shorthand 47:4
shortly 18:13 31:1
show 26:10 35:7
 41:20
shown 21:12
shows 42:11
side 11:8
sign 16:12 30:5
 33:11 38:16 39:21
signatory 30:21
signature 30:7
 39:15
signed 8:4, 5 9:7
 17:23 27:22 28:4,
 20 29:9 32:12
 33:10
significant 14:10
silly 37:20
simply 43:4, 17
sir 5:13 6:1, 7, 9,
 11, 12, 14, 17 7:23

10:17, 20 14:12	16:18, 19	taken 8:8 34:2	39:20 40:3 43:22
19:13 20:16 35:12	stay 13:12	44:25	44:1, 4, 8
38:5, 17 39:2, 4, 11,	steps 19:19	takeover 11:2	third 16:15, 16
12 40:6 41:9	stop 13:10, 11	takes 20:15 25:24	17:1 30:3 32:6
42:25 45:24, 25	stored 37:22	talk 11:9 35:3	41:2
sister 6:15, 16 7:10	Street 2:10 7:9, 20	talked 26:20 27:18	third-party 16:1, 3
8:12	8:12 25:6 33:1	talking 7:6 14:22	5, 6
small 14:5	structured 34:17	30:7	thought 10:15
sold 11:12, 13 16:1	struggle 33:22	talks 15:7	19:23
37:17 42:9 44:25	studies 35:1	Tax 4:1 25:6	thoughts 15:21
solely 13:15	stuff 11:12 37:24	32:25 33:1	45:22
somebody 11:11	43:15	taxes 32:22, 24	thousands 44:24
soon 43:8	subject 10:13	33:1, 2	three 33:11, 24
Sorry 9:25 17:11,	12:10, 21 14:16, 17	team 37:23	throws 25:23
19 20:15 24:1	29:10	tell 6:23 7:4 10:9	Thursday 37:25
30:6, 8 34:5, 13	submit 39:6	12:9 13:6 28:12	TIME 1:11 8:5
36:10 39:19	submitted 45:11	34:20	10:7 11:11 12:18,
sort 5:1 17:16	subsection 11:20	term 36:14 37:3,	20, 22 14:3, 5, 8, 9,
SOUTH 1:1, 8 5:5,	subsequent 9:12	14 46:1	10, 11, 17, 20 15:4
19 6:5, 6 7:9, 21, 23	subsequently 8:8, 9	termination 11:22	18:24 19:9 21:20
8:12 17:8 18:2, 10	9:19, 22	terms 9:3 30:25	22:15 28:3 29:2
24:24 25:6 30:23	sudden 25:24	31:25	32:3 33:22 37:20
33:1 43:18 47:2, 8	Suite 2:6	test 11:8	38:1 40:19 42:17,
SOUTHCOAST	sum 20:8 38:12	testified 20:21	20 44:21 45:2
1:10 5:5	summarize 10:4	testimony 47:4	time-barred 14:5
speak 5:6 20:24	Summerville 7:9, 15,	Thank 6:7, 22 13:4	timely 10:3 13:24
25:14 36:10	21	14:19 16:20, 22	14:7 25:22
specifically 31:24	summons 9:18	19:13 20:18, 23, 25	times 7:3
41:16	superholder 20:5	21:1 23:6, 10, 17, 21	tip 17:8
spell 5:8 6:24	supplemental 45:8	24:2, 11, 17 25:13,	title 21:20 34:11
spelled 7:2	suppose 45:3	18 26:1 33:5	40:20
spent 14:20	Supremacy 12:15	34:23 39:4, 10, 12,	titled 22:2 35:13
staffs 46:1	supreme 12:16, 23	19, 23 40:16 41:9	Toal 18:8
stand 20:19 39:9	17:8 18:2, 7	42:13, 14, 16, 18, 25	today 5:2, 21 6:4,
stands 10:14	sure 5:7, 10 6:23	45:16, 19, 20 46:3, 4,	18 7:5, 18 8:24
Stanley 9:5	7:14 8:7, 20 11:7	5, 6	20:23 21:14 22:7
started 5:3	12:13 15:25 16:24	thereof 47:6	24:19 25:9, 11
STATE 1:1 12:7,	21:17, 24 22:24	thing 10:12 15:10	39:20 44:6, 7
24, 25 27:7, 10	23:7 33:9 36:21	things 39:25 43:18	45:11, 15
28:25 45:1 47:2	37:3, 9, 14 40:8	think 5:20 6:2 7:3,	told 7:19
Stated 18:9 31:13	43:23	22, 24 10:5, 12, 22	tomorrow 45:12
32:7	surplus 5:23	11:6, 8, 11 12:19, 20,	tongue 17:8, 20
statement 10:21	surprised 15:11	24 14:15 15:10	top 26:16, 24 27:1
States 12:14, 15	sworn 20:20	16:14, 18 17:7, 17	29:23 33:3
30:11 38:6		18:5, 6, 7, 8, 17 19:1,	total 9:20 32:14, 16,
status 33:1		2, 7, 8, 25 20:4, 8, 15	20 33:2 38:11
statute 11:19 12:14	< T >	22:14 24:19, 20	totally 33:25
13:9 14:1, 4, 6, 22	take 6:3 15:4 17:3	33:24 36:12, 17, 22	track 21:6
	32:1 36:2 37:11	37:4, 8, 18, 20 38:14	
	42:17 43:1		

trade 17:1 18:22
19:14
train 25:25
transcribed 43:2, 4
TRANSCRIPT 1:2
transcription 47:4
transfer 16:12
17:21 19:17 20:13
transferee 19:18
20:14
transferor 19:19, 21
transferred 8:16
11:7
transferrer 20:14
trees 14:22
trial 35:25
tried 7:12
trips 17:20
trouble 36:3
true 17:19 32:21
47:3
try 16:7 32:1
trying 11:14 15:11
18:11 19:22 24:6
turn 31:18 33:21
35:21 40:14
turned 18:5
two 5:10 9:4, 7, 15
11:25 18:22 28:24
29:9 33:15 39:25
40:1 43:11
typical 6:3
typically 37:9

< U >
U.S 10:19
Ultimately 13:25
14:15
unauthorized 17:3
18:20
unclean 18:5, 11, 17,
21
undergraduate
34:22, 25
underlying 15:22,
24, 25 16:9
underneath 25:24
34:15

understand 5:25
15:10, 11 17:24
18:1 19:4 20:17
22:25 35:4 36:17
45:18
understanding 5:14,
19, 24 7:20 8:25
21:23 27:14 28:15
32:18, 23 36:11, 19,
24 45:8
understands 44:8
undisputed 9:24
undue 18:19
unfair 17:1 18:22
19:14
Union 5:5
United 12:14, 15
University 34:21, 22
unpaid 32:24
Unrelated 35:1
use 33:24 40:7
usually 43:14

< V >
valid 12:8 16:13
Variable 4:1, 7
17:24 40:20, 23
41:2, 22, 25
VARNADO 2:9
3:1 5:3, 11, 25 6:1,
6, 7, 9, 10, 11, 12, 14,
18, 19, 21 7:6, 23
9:19, 22 10:4, 9, 10,
12, 17, 18, 20 14:11,
12 15:10 16:10, 22
17:6, 10, 17, 19
18:18, 19, 23 19:6, 9,
13, 15, 25 20:4, 16
21:13, 14, 16, 21
22:13 23:2, 25
24:2, 19 30:6, 8
33:6, 10, 11, 15, 21,
23 34:3, 4 36:13, 14
37:2, 4 38:3, 5, 10,
17, 19, 23 39:1, 2, 4,
6, 10, 11, 12, 22 40:2,
6, 15, 16 41:8 42:4,
6, 13, 19, 25 43:19,

24 44:3, 5 45:6, 10,
11, 16, 20, 25 46:3
Ventrum 6:19
Venture 3:1 8:9
17:22, 25 23:24
29:17 30:9, 19, 21
37:15 40:24 41:15,
23 42:6
version 23:5
versus 12:1, 3, 24
13:9, 20 19:3 20:11
Victorian 7:25 8:1
violates 17:15
voice 20:24
vs 1:8

< W >
Wachovia 17:9
18:5, 14
Wait 5:16 40:15
43:20
waive 44:1, 6 45:6
waived 44:7, 12
wake 11:4
walked 25:15
want 8:19 19:4
21:24 25:16 33:24
36:19, 20, 24 39:3
40:7 43:5, 20
44:13 45:22
wanted 13:3 19:11
wanting 15:2
wants 21:15
way 8:3 11:15
14:21 34:17 36:21
37:5
week 44:20
welcome 19:10
Well 6:10 7:2, 6, 16
8:19 10:10 11:25
13:6 14:16, 18, 19
15:10 16:13, 15, 17
17:18 18:3, 16
20:11 26:1 32:8
33:12 35:6, 25
41:8 43:7 44:8
45:2
went 34:20

we're 7:5, 6 15:2
19:17, 18 20:12
28:24 34:16 38:22
44:22
we've 7:7 9:14
13:8, 9 42:17
44:21, 22
WILLIAMS 2:4
3:1 5:6, 14, 15, 17,
18, 24 6:5, 22, 23
7:1, 3, 4, 7, 8, 12, 16,
17, 20, 22 8:3, 14, 15
20, 22, 25 9:1, 2, 24
10:2, 7, 21 11:1, 24
13:5, 7, 18, 19 14:1
15:20 16:10, 15
18:8, 15 19:7, 10
20:8, 18, 22 21:10,
13, 18, 21, 23 22:2,
7, 9, 12, 16, 19, 22
23:2, 5, 7, 11, 15, 19
23, 25 24:1, 3, 6, 9,
12, 15, 18, 20, 22
25:2, 4, 5, 8, 13, 15,
18, 20, 22 26:1, 2
30:7 33:5, 9, 16, 17
19 34:1 36:12, 25
37:12 38:2, 19, 22,
24 39:24, 25 40:3,
8, 11, 15, 18 41:6
42:3, 15, 16 43:1, 3
6, 9, 16, 19 44:5, 13
19 45:19, 24 46:4,
22
willing 38:20, 21
Willner 12:3 13:1
22
window 14:3, 5
wipe 20:6
wipes 20:2
wish 45:10
within-entitled 47:3
WITNESS 6:15, 18,
23 34:24 35:1
37:5 38:18 40:4,
12 47:7
wonder 43:2
Wood 20:11
word 36:13 43:15
words 36:2 45:22

work 6:5 34:8, 15,
22 36:21 37:19
worked 30:5 32:3
works 37:7, 19
write 6:1 7:13
43:12, 14
writer 18:8
wrong 7:2 45:5
**WWW.CLARK-
ASSOCIATES.COM**
1:24

< Y >

yeah 12:12 19:25
34:16 35:1 45:18
year 10:6
years 9:4, 25 31:6
yesterday 5:7
you-all 45:18

Trial Exhibit 1

000480

0488



As Receiver for Carolina Federal Savings Bank
1509 Hwy. 17 North, Mount Pleasant, SC 29464

CERTIFIED MAIL: _____

July 5, 2012

Mr. David Clancy
418 Lakeview Drive
Summerville, SC 29485

SUBJECT: Carolina Federal Savings Bank-FIN 10441
Mount Pleasant, South Carolina – In Receivership
Closing Date: June 8, 2012

LOAN NUMBER: 244015970

Dear Mr. Clancy:

On June 8, 2012, Carolina Federal Savings Bank (the "Institution"), was closed by the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the "FDIC") was appointed as receiver of the Institution (the "Receiver"). Under the laws of the United States, the Receiver is charged with the duty of winding up the affairs of the former Institution in a manner that conserves and preserves the assets of the Institution and that maximizes the net present value return to the receivership from the sale or disposition of such assets.

The records of the Institution indicate you have a loan obligation to the former Institution and that you are in default of your obligations with respect to this loan because you are 61 days past due on your loan payment due for May 5, 2012.

The Receiver expects you to abide by the terms and conditions of your current loan agreement or promissory note, and you are legally obligated to do so. **The Receiver hereby advises you that you are in default, due to non payment of the loan payments and the Receiver demands payment to bring the note current. As of this writing, the total amount due as of July 5, 2012 is \$26,000.98, consisting of the following:**

May 5, 2012 Payment:	\$1,365.72
June 5, 2012 Payment:	\$1,365.72
Late Charges:	\$1,502.16
Legal Fees:	\$3,884.29
Accrued Interest to 6/24/10:	\$16,831.82
Late Charges to 6/24/10:	\$1,051.27

TOTAL DUE:	\$26,000.98
-------------------	--------------------

This loan continues to accrue interest at the rate of \$ 35.85 per day.



NCP Pilgrim 2-7-19 000188

000481

0489

This letter serves as formal demand for payment of this amount plus accruing interest. Unless paid in full by August 6, 2012, the Receiver intends to pursue all rights and remedies available under the loan documents, including accelerating the note if the default is not timely cured.

All payments should be made payable to "FDIC as Receiver for Carolina Federal Savings Bank," and you should send all future correspondence and payments to the address you are currently using for this purpose.

FDIC representatives are available to talk to you about your options. In order to expedite this process, we ask that you submit within ten (10) days from the date of this letter a complete financial package for our consideration. Below is an outline of what the package should contain.

- o Daytime and evening phone number for a representative to contact you.
- o Hardship letter outlining in detail what led to the loan default.
- o Completed and notarized current financial statement for all borrowers and guarantors.
- o Last 2 years federal tax returns for all borrowers and guarantors, including K-1s.
- o Previous 90 day bank statements.

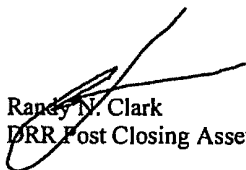
An FDIC financial statement format and affidavit is attached to this letter for you to use.

Thank you for your cooperation. If you have any questions, you may call 843-571-6900 to speak to an FDIC representative. You also may contact the Receiver in writing at the below address:

FDIC as Receiver for Carolina Federal Savings Bank
1509 Highway 17 North
Mount Pleasant, SC 29464

Sincerely,

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK



Randy N. Clark
DRR Post Closing Asset Manager

Trial Exhibit 2

000483

0491

CAROLINA FEDERAL SAVINGS BANK
POST OFFICE BOX 30518
1106 ST ANDREWS BOULEVARD (29407)
CHARLESTON, SC 29417

DAVID S. CLARK
4 LATHAM CIRCLE
CHARLESTON, SC 29407

Loan Number 0244016970
Agreement Date 08-10-2004
Credit Limit \$250,940.00
Maturity Date 05-10-2009

Lender

Borrower

PRIME + 1 LOC NON RESIDENTIAL

1. DEFINITIONS. In this Agreement, these terms have the following meanings.

A. Pronouns. The pronouns "I," "me" and "my" refer to all Borrowers signing this Agreement, jointly and individually, and each other person or legal entity that agrees to pay this Agreement. "You" and "your" refer to the Lender, or any person or legal entity that acquires an interest in the Line of Credit.

B. Agreement. Agreement refers to this PRIME + 1 LOC NON RESIDENTIAL and any extensions, renewals, modifications or substitutions of it.

C. Billing Cycle. Billing Cycle means the interval between the days or dates of regular periodic statements.

D. Credit Limit. Credit Limit means the maximum amount of principal you will permit me to owe you under this Line of Credit, at any one time. My Credit Limit is stated at the top of this Agreement.

E. Line of Credit. Line of Credit refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures, and this Agreement.

F. Loan Account Balance. Loan Account Balance means the sum of the unpaid principal balance advanced under the terms of this Agreement, finance charges, fees, and other charges that are due, and other amounts advanced to me or others under the terms of this Line of Credit.

G. Property. Property means any real or personal property that secures my obligations under this Line of Credit.

Other important terms are defined throughout this Agreement.

2. PROMISE TO PAY. I promise to pay to you or your order, at your address, or at such other location as you may designate, so much of the Credit Limit as may be advanced under this Agreement, plus finance charges, fees, charges, costs, and expenses as described in this Line of Credit.

3. AGREEMENT TERM. This Agreement begins on the Agreement Date and continues until the Maturity Date. I may request advances for 5 YEARS (Draw Period) beginning on the Agreement Date.

4. ADVANCES. I may request advances by the following methods:

A. ☒ I write a CHECK.

B. ☐ I draw my transaction account below \$_____ (Triggering Balance). Transaction account number _____

C. ☒ I request a withdrawal IN PERSON, BY PHONE OR BY MAIL

D. ☐ I make a purchase or withdrawal with my _____

E. ☒ I authorize you to make a payment to a third person or another account.

You will make the advance by advancing the amount directly to me, depositing it in my transaction account, or by paying a designated third person or account. You will record the amount as an advance and increase my Loan Account Balance.

5. ADVANCE LIMITATIONS. You do not have to make any advances during any period in which I have a right to cancel. My ability to request and access advances is also subject to the following additional limitations.

A. ☐ Initial Advance. On _____, I will receive an Initial Advance of \$_____.

B. Minimum Advance. Subject to the limitations contained in this Agreement, when I request an advance: THE MINIMUM AMOUNT YOU WILL ADVANCE WILL BE \$500.00 (MINIMUM ADVANCE). YOU WILL ADVANCE EITHER THE MINIMUM ADVANCE OR EXACTLY THE AMOUNT I REQUEST, PROVIDED THE REQUESTED AMOUNT EQUALS OR EXCEEDS THE MINIMUM ADVANCE.

C. ☐ Maximum Amount of Advances. I may not request advances totaling more than \$_____ per _____.

D. ☐ Maximum Number of Advances. I may not request more than _____ advances per _____.

6. ☐ MINIMUM BALANCE. I agree to maintain a principal balance outstanding during the term of this Agreement of at least \$_____ (Minimum Balance).

7. CREDIT LIMIT. Subject to the terms and conditions of this Agreement, I may borrow on this Line of Credit up to the Credit Limit. I agree not to request or obtain an advance that will cause the unpaid principal of my Loan Account Balance to exceed the Credit Limit. I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan Account Balance to be greater than the Credit Limit, but that you may, at your option, grant such a request without obligating yourselves to do so in the future. My Credit Limit will not be increased if I overdraw the Line of Credit. If I exceed the Credit Limit, I agree to pay the amount by which the unpaid principal of my Loan Account Balance exceeds the Credit Limit immediately, even if you have not yet billed me. Any sums in excess of the Credit Limit will not be secured by the Property, unless they are for accrued but unpaid interest or expenditures made pursuant to the security instrument securing the Property.

8. COMPUTATION OF FINANCE CHARGES. Finance charges begin to accrue immediately when you make an advance to me. Finance charges will be computed as follows:

TO FIGURE THE FINANCE CHARGE FOR EACH BILLING CYCLE, A DAILY PERIODIC RATE IS MULTIPLIED BY THE DAILY BALANCE OF MY LOAN ACCOUNT BALANCE EACH DAY. TO FIGURE THE DAILY BALANCE, YOU FIRST TAKE MY LOAN ACCOUNT BALANCE AT THE BEGINNING OF EACH DAY, AND ADD ANY NEW ADVANCES, AND SUBTRACT ANY PAYMENTS OR CREDITS THAT APPLY TO DEBT REPAYMENT, AND ANY UNPAID FINANCE CHARGES, FEES, AND CHARGES. THIS GIVES YOU THE DAILY BALANCE.

9. PERIODIC RATE AND ANNUAL PERCENTAGE RATE. The periodic rate used in calculating the Finance Charge is 0.013699% and the corresponding Annual Percentage Rate is 5.000%. The annual percentage rate includes interest and not other costs.

10. VARIABLE RATE. The annual percentage rate may change. It will always be the value of the Index described as the:

THE HIGHEST RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE USA'S THIRTY LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE

plus 1.000 percentage points.

A. ☒ Rounding. This rate will be rounded TO THE NEAREST .001.

B. Rate Changes. The annual percentage rate may increase if the Index rate increases. An Index rate increase will result in a higher finance charge and it may have the effect of increasing my periodic Minimum Payment. A decrease in the Index rate will have the opposite effect as an increase. An Index rate increase or decrease will take effect ON THE FIRST OF THE MONTH.

The annual percentage rate can increase or decrease QUARTERLY (☐ after remaining fixed for _____). If the Index rate changes more frequently than the annual percentage rate, you will use the Index rate in effect on the day you adjust the annual percentage rate to determine the new annual percentage rate. In such a case, you will ignore any changes in the Index rate that occur between annual percentage rate adjustments.

C. ☐ Carryover. Any annual percentage rate increases or decreases not implemented by you either because of periodic, annual or lifetime rate caps, or because of a statutory limitation, may be carried over to subsequent rate adjustment periods and may be implemented to the extent not offset by opposite movement in the Index rate. If this occurs, the annual percentage rate will not relate to the Index rate in the manner described. When you have adjusted the annual percentage rate to take advantage of all increases or decreases in the Index rate, the initial relationship between the Index rate and the annual percentage rate will resume.

D. Rate Change Limitations. Annual percentage rate changes are subject to the following limitations:

(1) ☐ Periodic Limits. The Annual Percentage Rate cannot increase by more than _____ percentage points (☐ or decrease by more than _____ percentage points).

(2) ☒ Lifetime Floor. The Annual Percentage Rate will never be lower than: 5.000%.

(3) Lifetime Cap. The Annual Percentage Rate will never be higher than: 18.000%.

11. FEES AND CHARGES. I agree to pay, or have paid, the fees and charges listed in the FEES APPENDIX that appears at the end of this Agreement.

12. **PAYMENT DATE.** During the term of this Agreement, a Minimum Payment will be due on or before the Payment Date indicated on my periodic statement for any Billing Cycle in which there is an outstanding balance on my account. My Minimum Payments will be due: MONTHLY

13. **MINIMUM PAYMENT.** On or before each Payment Date, I agree to make a payment of at least the Minimum Payment amount. The Minimum Payment will equal the following:

Interest only

A. ☒ **Rounding.** The Minimum Payment will be rounded TO THE NEAREST 01

B. ☒ **Payment Of Balance.** If my Loan Account Balance at the end of a Billing Cycle is less than \$100.00, my Minimum Payment will equal the entire outstanding Loan Account Balance.

C. **Payment At Maturity.** On the Maturity Date I must pay the entire outstanding Loan Account Balance.

14. ☒ **PRINCIPAL REDUCTION.** The Minimum Payment ☐ will not reduce ☒ may not fully repay the principal balance outstanding on my Loan Account Balance.

15. ☒ **FINAL PAYMENT.** At maturity, I ☐ may have to ☒ will repay the entire outstanding Loan Account Balance in a single payment. At that time you may, but are not obligated to, refinance this Line of Credit. If you do refinance this Line of Credit at maturity, I understand that I may have to pay some or all of the closing costs normally associated with a new loan.

16. **ADDITIONAL PAYMENT TERMS.** If my Loan Account Balance on a Payment Date is less than the Minimum Payment amount, I must pay only the amount necessary to reduce my Loan Account Balance to zero or to any required Minimum Balance. If I otherwise fail to fully pay the Minimum Payment amount, you may, but are not required to, advance money to me to make the payment. All the terms of this Agreement will apply to such an advance. Subject to any required Minimum Balance, I can pay off all or part of what I owe at any time. I must continue to make my periodic Minimum Payment so long as I owe any amount. Unless otherwise agreed or required by applicable law, payments and other credits will be applied first to any charges I owe other than principal and finance charges, then to any finance charges that are due, and finally to principal. No late charge will be assessed on any payment when the only delinquency is due to late fees assessed on earlier payments and the payment is otherwise a full payment.

17. ☐ **NEGATIVE AMORTIZATION.** Under some circumstances, my payments will not cover the finance charges that accrue and negative amortization will occur. Negative amortization will increase the amount that I owe you and reduce my equity in my home. In the event that negative amortization occurs, the unpaid portion will be:

18. **SECURITY** You have secured my obligations under this Line of Credit by taking a security interest (by way of a separate security instrument dated 06-10-2004) in the following Property:

THE DWELLING AND REAL PROPERTY LOCATED AT 117 SOUTH CEDAR STREET, SUMMERVILLE, SC, 29843

Property securing any other loans that I have with you may also secure this Agreement.

19. **PROPERTY INSURANCE.** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Line of Credit. I may obtain property insurance from anyone I want that is reasonably acceptable to you. If I get the insurance from or through you, I will pay \$_____ for _____ of coverage.

20. **COMMISSIONS OR OTHER REMUNERATION.** I understand and agree that any insurance premiums paid to insurance companies as part of this Agreement will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this Agreement may also involve money retained by you or paid back to you as commissions or other remuneration.

21. **DEFAULT.** I will be in default if any of the following occur.

A. **Payments.** I fail to make a payment as required by this Agreement.

B. **Property.** My loss or inaction adversely affects the Property or your rights in the Property.

C. ☐ **Fraud.** I engage in fraud or material misrepresentation in connection with this Line of Credit.

22. **REMEDIES.** After I default, and after you give any legally required notice and opportunity to cure, you may at your option do any of the following:

A. **Termination and Acceleration.** You may terminate this Line of Credit and make all or any part of the amount owing by the terms of this Agreement immediately due.

B. **Advances.** You may temporarily or permanently prohibit any additional advances.

C. **Credit Limit.** You may temporarily or permanently reduce the Credit Limit.

D. **Additional Security.** You may demand additional security or additional parties to be obligated to pay this Agreement.

E. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

F. **Payments Made On My Behalf.** You may make amounts advanced on my behalf immediately due, and you may add these amounts to the Loan Account Balance.

G. **Sources.** You may use any and all remedies you have under applicable law or any agreement securing this Agreement.

Except as otherwise required by law, by choosing a remedy you do not give up your right to use another remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

23. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after default, to the extent permitted by law, I agree to pay the following:

ALL EXPENSES OF COLLECTION, ENFORCEMENT OR PROTECTION OF YOUR RIGHTS AND REMEDIES UNDER THIS AGREEMENT INCLUDE, BUT ARE NOT LIMITED TO, REASONABLE ATTORNEYS' FEES NOT IN EXCESS OF 15 PERCENT OF THE UNPAID DEBT AFTER DEFAULT AND REFERRAL TO AN ATTORNEY WHO IS NOT YOUR SALARIED EMPLOYEE. THESE EXPENSES ARE DUE AND PAYABLE IMMEDIATELY, IF NOT PAID IMMEDIATELY, THESE EXPENSES WILL BEAR INTEREST FROM THE DATE OF PAYMENT UNTIL PAID IN FULL AT THE HIGHEST INTEREST RATE IN EFFECT AS PROVIDED FOR IN THE TERMS OF THIS AGREEMENT. ALL FEES AND EXPENSES WILL BE SECURED BY THE PROPERTY I HAVE GRANTED TO YOU, IF ANY, TO THE EXTENT PERMITTED BY THE UNITED STATES BANKRUPTCY CODE. I AGREE TO PAY THE REASONABLE ATTORNEYS' FEES YOU INCUR TO COLLECT THIS DEBT AS AWARDED BY ANY COURT EXERCISING JURISDICTION UNDER THE BANKRUPTCY CODE.

24. **SUSPENSION OF CREDIT AND REDUCTION OF CREDIT LIMIT.** You may temporarily prohibit me from obtaining additional advances or reduce my Credit Limit during any period in which any of the following are in effect.

A. The value of the Property securing this Line of Credit declines significantly below its appraised value for purposes of this Line of Credit;

B. You reasonably believe that I will not be able to meet the repayment requirements under my Line of Credit due to a material change in my financial circumstances;

C. I am in default of a material obligation under this Line of Credit. I understand that you consider all of my obligations to be material. Categories of obligations that you consider material include, but are not limited to: my obligation to not commit fraud or misrepresentation in connection with this Line of Credit; my obligation to meet the repayment terms of this Line of Credit; my obligation to not adversely affect the Property or your rights in the Property; my obligation to pay fees and charges; my advance obligations; my obligation to fulfill the terms of the instrument securing this Agreement, and any other security instruments on the Property; my obligation to notify you; and my obligation to provide you with information;

D. Government action prevents you from imposing the annual percentage rate provided for in this Agreement;

E. The priority of your security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of my Credit Limit;

F. The maximum annual percentage rate allowed under this Agreement is reached;

G. You are notified by a regulatory agency that continued advances constitute an unsafe and unsound practice; or

H. Any Borrower requests a suspension of credit privileges.

In order to reinstate my credit privileges under the original terms of this Agreement, I must send you a written request to that effect. My credit privileges will only be reinstated if you determine that the condition which caused you to prohibit additional extensions and/or reduce the Credit Limit no longer exists. If appraisal or credit report fees are incurred in making this determination, you may (if allowed by applicable law) charge me such fees. If credit privileges were suspended at my request, they need not be reinstated unless all Borrowers request reinstatement.

25. SET-OFF. You may set-off any amount due and payable by you under this Agreement against my right to receive money from you, unless prohibited by applicable law. For example, your right of set-off will not apply if I may obtain credit under this Agreement by using a credit card.

26. AMENDMENTS. Generally, the terms of this Agreement cannot be changed. You may, however, make the following changes:

- A. You may make changes that I agree to in writing at the time of the change.
- B. You may make changes that will unequivocally benefit me.
- C. You may make insignificant changes.
- D. You may change the index and margin if the original index becomes unavailable. Any new index will have an historical movement substantially similar to the original index, and together with the new margin, produce an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.
- E. You may make changes that are described elsewhere in this Agreement.

27. TERMINATION. I may terminate this Line of Credit at any time upon written notice to you. Termination by one Borrower terminates the Line of Credit for all Borrowers. Termination will not affect my obligation to repay advances made prior to the termination, nor will it alter my duties to perform under the terms of an instrument securing this Agreement until such instrument is released. Upon termination I will return to you any remaining access devices in my possession that were issued or used in connection with the Line of Credit.

28. WAIVERS AND CONSENT. To the extent not prohibited by law and except for any required notice of right to cure for the failure to make a required payment, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor. To the extent not prohibited by law, I and any other party to this Line of Credit, also consent to the following actions that you may take, and waive defenses that may be available based on these actions, or based on the status of a party to this Line of Credit.

- A. You may renew or extend payments on this Agreement, regardless of the number of such renewals or extensions.
- B. You may release any Borrower or other person who may be liable for the indebtedness under this Agreement.
- C. You may release, substitute or impair any Property securing this Agreement.
- D. You may invoke your right of set-off.
- E. You may enter into any sales or repurchases of this Agreement to any person in any amounts and I waive notice of such sales or repurchases.
- F. I agree that any Borrower is authorized to modify the terms of this Agreement or any other Line of Credit document.
- G. You may inform any party who guarantees this Line of Credit of any loan accommodations, renewals, extensions, modifications, substitutions, or future advances.

No delay or forbearance on your part in exercising any of your rights or remedies will be construed as a waiver by you, unless such waiver is in writing and is signed by you.

29. TAX DEDUCTIBILITY. I should consult a tax advisor regarding the deductibility of interest and charges under this Line of Credit.

30. PERIODIC STATEMENTS. If I have an outstanding balance on my account or have any account activity, you will send me a periodic statement at the end of each Billing Cycle. This periodic statement will reflect, among other things, credit advances, finance charges, other charges, payments made, other credits, my previous account balance

and my new account balance. The periodic statement will also identify my Minimum Payment for the cycle and the date it is due (Payment Date).

31. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay this Line of Credit is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on this Line of Credit, or any number of us together, to collect on this Line of Credit. Extending this Line of Credit or new obligations under this Line of Credit, will not affect my duty under this Line of Credit and I will still be obligated to pay this Line of Credit. The duties and benefits of this Line of Credit will bind and benefit the successors and assigns of you and me.

32. INTEGRATION AND SEVERABILITY. This Agreement is the complete and final expression of the agreement. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

33. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

34. NOTICE, FINANCIAL REPORTS, AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address above, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Line of Credit and to confirm your lien status on any Property. Time is of the essence.

35. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably feel you need to decide whether to continue this Line of Credit. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

36. APPLICABLE LAW. This Agreement is governed by: THE LAWS OF SOUTH CAROLINA, THE UNITED STATES OF AMERICA AND, TO THE EXTENT REQUIRED, BY THE LAWS OF THE JURISDICTION WHERE THE PROPERTY IS LOCATED.

37. OTHER TERMS. If checked, the following addenda are attached to and made a part of this Agreement:

- A. ☐ Automatic Withdrawal
- B. ☐ Conversion Option
- C. ☐ Credit Insurance
- D. ☐ Discounted Rate
- E. ☐ Preferred Rate
- F. ☐

38. ADDITIONAL TERMS.

SIGNATURES. I understand that terms following a ☐ only apply if checked. By signing, I agree to the terms of this Agreement and acknowledge receipt of a copy of this Agreement.

BORROWER:

x David S. Clancy
DAVID S. CLANCY

x _____ x _____ x _____

LENDER:

x Brian J. Michel
BRIAN J. MICHEL, VICE PRESIDENT

YOUR BILLING RIGHTS KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information: (a) Your name, (b) The dollar amount of the suspected error, (c) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your bill automatically from your savings, checking, share draft or other account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your Credit Limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$60 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right: (a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

FEES APPENDIX

OTHER CHARGES

APPRAISAL FEE: \$225.00

CREDIT REPORT FEE: \$25.00

TITLE INSURANCE FEE: APPROXIMATELY \$3 PER \$1000 BORROWED

ATTORNEY FEE: \$250.00

FLOOD CERT. FEE: \$15.00

COURIER FEE: \$15.00

IF PAYMENT IS MADE MORE THAN 15 DAYS AFTER IT IS DUE, I AGREE TO PAY A LATE CHARGE OF 5.00% OF THE LATE AMOUNT.

RETURNED CHECK CHARGE: I AGREE TO PAY A FEE NOT TO EXCEED \$15.00 FOR EACH CHECK, NEGOTIABLE ORDER OF WITHDRAWAL OR DRAFT I ISSUE IN CONNECTION WITH THIS LINE OF CREDIT THAT IS RETURNED BECAUSE IT HAS BEEN DISHONORED.

STOP PAYMENT CHARGE: \$15.00

TERMINATION FEE: \$200.00

TERMINATION FEE: IF I CLOSE ACCOUNT WITHIN 12 MONTHS

BELOW MINIMUM ADVANCE FEE: \$10.00 IF ADVANCE ON ACCOUNT UNDER MINIMUM

Trial Exhibit 3

000488

0496

Delinquent Tax Collector
Sidney B. Jones III

County of Dorchester

201 Johnston St
St George, SC 29477

RECEIVED IN PAYMENT OF 2018 AD VALOREM TAXES IN THE AMOUNT OF 6609.77 TOTAL TAX
PAID ONLY ON THE PROPERTY DESCRIBED HEREON.

DISTRICT 207 TMS # ASSESSMENT: 15,000
137-07-07-023000 TOTAL MILLS: 381.30

75.00 SWUF PAID
22.38 STWMF PAID
118.20 SWCF PAID
115.00 COST PAID
6940.35 TOTAL PAID

R-2018-00021914-00
CERCOPELY MARY LOU & DAVID S

DATE PAID: 11/15/2019 10:42:22

209 W 7TH NORTH ST APT 13A
SUMMERVILLE SC 29483-6646

BATCH: 9115

TRAN-NO 117893 DELDCJQB02

*** Customer Copy ***



000489

0497

Trial Exhibit 4

000490

0498

0499

000491



11.20

J. STANLEY CLAYPOOLE, P.A.
ATTORNEY AT LAW
2155 WEST PARK LANE
N. CHARLESTON, S.C. 29405
Clancy 04-1307
FILED-RECORDED
RMC / ROD
2004 JUN 16 AM 10:37
LINDA M. HESSERVY
DORCHESTER COUNTY, SC

This document was prepared by CAROLINA FEDERAL SAVINGS BANK POST OFFICE BOX 30518 CHARLESTON, SC 29417

State of South Carolina

Specs Above This Line For Recording Data

MORTGAGE
(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is 06/16/2004, and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: KAZANA A. CLANCY
414 LAKEVIEW DRIVE
SUMMERVILLE, SC 29413

☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgages, their signatures and acknowledgments.

LENDER: CAROLINA FEDERAL SAVINGS BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
POST OFFICE BOX 30518
1108 ST ANDREWS BOULEVARD (LS407) CHARLESTON, SC 29417

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
T.M.S. # 127-07-022

The property is located in CHARLESTON at 712 NORTH CHARLESTON STREET
(County) (City) South Carolina (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 250,000. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)
HOME EQUITY LINE OF CREDIT # 0214015770

SOUTH CAROLINA - HOME EQUITY LINE OF CREDIT MORTGAGE (NOT FOR FHA, FLA, MA OR VA USE)
Copyright 2000 by Carolina Federal Savings Bank, P.A. Char. Ch. 11/1/00 Form GCM-40010-SC 1/04/04

BAC Page 1 of 41

NCP Pilgrim 2-7-19 001455

BK 4189PG083

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender executed after this Security Instrument, each Mortgagor agrees that this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagors, or any one or more Mortgagors and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All other obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of redemption with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

5. **MORTGAGE COVENANTS.** Mortgagor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Mortgagor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Mortgagor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees to provide to Lender copies of all notices of completion or comply with all covenants. Mortgagor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices, and such notices are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claimer that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice in the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Authority to Perform. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholder, Condominiums; Planned Unit Developments. Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is required by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Mortgagor will provide to Lender upon request, any financial statements or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 391), as applicable.
8. **DEFAULT.** Mortgagor will be in default if any of the following occur:
 Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Mortgagor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Mortgagor fails to maintain required insurance on the Property; (b) Mortgagor transfers the Property; (c) Mortgagor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Mortgagor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Mortgagor dies; (f) if more than one Mortgagor, any Mortgagor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Mortgagor and subjects Mortgagor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not extending any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Mortgagor breaches any covenant in this Security Instrument, Mortgagor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, (fees incurred for inspecting, best interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees of not more than 15% of the unpaid debt when it is referred for collection to an attorney who is not a salaried employee of the Lender, court costs, and other legal expenses allowed by law. To the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.
11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term "hazardous substance" under any Environmental Law includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or to the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property, or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachment, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variation by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Wherever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
16. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.
17. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
18. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
19. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
- (Check all applicable boxes)
- ☐ Assignment of Leases and Rents ☐ Other
20. ☐ **ADDITIONAL TERMS.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

Barbara A. Clancy (Seal)
(Signature) BARBARA A. CLANCY (Date) (Signature) (Date)

Signed, sealed and delivered in the presence of:
Samuel R. Riedel (Witness) *Heather L. Liscia* (Witness)

PROBATE:

STATE OF NORTH CAROLINA COUNTY OF CHARLOTTE ss.
Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 18TH day
of JUNE, 2004.

Heather L. Liscia (Seal) *Samuel R. Riedel*
Notary Public for North Carolina
My commission expires: 01/14/12

BK 4189PG086

Exhibit "A"

All that lot, piece, or parcel of land, with the buildings thereon, situate, lying and being in the Town of Summerville, in the County of Dorchester (formerly Berkeley), in the State aforesaid; measuring and containing sixty-three (63) feet, six inches, in front on Black Jack Street, now known as Cedar Street, and the same on the back line, by two hundred and ten (210) feet in depth, be the said dimensions more or less; butting and bounding, Northwest on Black Jack Street, now known as Cedar Street, Northeast on Lands now or formerly of John H. Grainger, Southeast on lands now or formerly of Thaddeus W. Phelon, and Southwest on lands now or formerly of the Estate of C.H. Kornahrens.

Being the same property conveyed to William E. Clancy and Barbara Anne Clancy by deed of John Grainger Lanneau, George Johnston Lanneau, and Jessie L. Finucan on March 20, 1981 and recorded on March 23, 1981 in book 436 at page 118 of the Dorchester County RMC office. Thereafter being the same property conveyed to the Mortgagor herein, Barbara Anne Clancy, by deed of distribution of William E. Clancy on January 25, 1990 and recorded on January 25, 1990 in book 717 at page 101 of the Dorchester County RMC office.

TMS: 137-07-07-023

Initials: _____

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 11th
Day of June 2004
at 12:57 PM and recorded
in book 4189 page 86
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

NCP Pilgrim 2-7-19 001459

ELECTRONICALLY FILED - 2020 Mar 25 11:10 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1802053

0503

000495

Trial Exhibit 5

000496

0504

BK 5393PG356

BK 14187 82

STANLEY CLAYPOOLE, P.A.
ATTORNEY AT LAW
2155 NORTH PARK LANE
N. CHARLESTON, S.C. 29406

2004 JUN 16 AM 10:37

Clancy 04-1307

**This Mortgage is being re-recorded to add the Maturity Date and Loan Amount.

This document was prepared by CAROLINA FEDERAL SAVINGS BANK POST OFFICE BOX 30518 CHARLESTON, SC 29417

State of South Carolina

Space Above This Line For Recording Data

MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is 08-10-2004, and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: BARBARA A CLANCY
418 LAKEVIEW DRIVE
SUMMERVILLE, SC 29483

☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgagors, their signatures and acknowledgments.

LENDER: CAROLINA FEDERAL SAVINGS BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
POST OFFICE BOX 30518
1106 ST ANDREWS BOULEVARD (29407) CHARLESTON, SC 29417

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
T.M.S. # 137-07-07-023

FILED - RECORDED
RMC / ROD
2006 JUN - 5 PM 3:05
MARGARET L. BAILEY
DORCHESTER COUNTY, SC

The property is located in DORCHESTER at 117 SOUTH CEDAR STREET
(County)
(Address) SUMMERVILLE, South Carolina 29483
(City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 258,940.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)
HOME EQUITY LINE OF CREDIT # 0244016970
Maturity Date 6/10/2009
Loan Amount \$258,940.00



- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All other obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of rescission with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

5. **MORTGAGE COVENANTS.** Mortgagor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Mortgagor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Mortgagor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees to make all payments when due and to perform or comply with all covenants. Mortgagor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Authority to Perform. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

8. **DEFAULT.** Mortgagor will be in default if any of the following occur:

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Mortgagor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Mortgagor fails to maintain required insurance on the Property; (b) Mortgagor transfers the Property; (c) Mortgagor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Mortgagor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Mortgagor dies; (f) if more than one Mortgagor, any Mortgagor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Mortgagor and subjects Mortgagor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Mortgagor breaches any covenant in this Security Instrument, Mortgagor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees of not more than 15% of the unpaid debt when it is referred for collection to an attorney who is not a salaried employee of the Lender, court costs, and other legal expenses allowed by law. To the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
- C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
- D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.

12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
16. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.
17. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
18. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
19. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument
- [Check all applicable boxes]
- ☐ Assignment of Leases and Rents ☐ Other
20. ☐ **ADDITIONAL TERMS.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1

Barbara A. Clancy (Seal) (Seal)
 (Signature) BARBARA A. CLANCY (Date) (Signature) (Date)

Signed, sealed and delivered in the presence of:

Sammy Lubard *Heather Feliciano*
 (Witness) (Witness)

PROBATE:

STATE OF SOUTH CAROLINA , COUNTY OF CHARLESTON } ss.
 Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 18TH Day
 of JUNE, 2004

Heather Feliciano (Seal) *Sammy Lubard*
 Notary Public for South Carolina

My commission expires: 01/14/12

BK 3916086

Exhibit "A"

BK 5393PG360

All that lot, piece, or parcel of land, with the buildings thereon, situate, lying and being in the Town of Summerville, in the County of Dorchester (formerly Berkeley), in the State aforesaid, measuring and containing sixty-three (63) feet, six inches, in front on Black Jack Street, now known as Cedar Street, and the same on the back line, by two hundred and ten (210) feet in depth, be the said dimensions more or less; butting and bounding, Northwest on Black Jack Street, now known as Cedar Street, Northeast on Lands now or formerly of John H. Grainger, Southeast on lands now or formerly of Thaddeus W. Phelon, and Southwest on lands now or formerly of the Estate of C.H. Kornahrens.

Being the same property conveyed to William E. Clancy and Barbara Anne Clancy by deed of John Grainger Lanneau, George Johnston Lanneau, and Jessie L. Finucan on March 20, 1981 and recorded on March 23, 1981 in book 436 at page 118 of the Dorchester County RMC office. Thereafter being the same property conveyed to the Mortgagor herein, Barbara Anne Clancy, by deed of distribution of William E. Clancy on January 25, 1990 and recorded on January 25, 1990 in book 717 at page 101 of the Dorchester County RMC office.

TMS: 137-07-07-023

Initials: _____

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 11th
Day of Sept 2004
at 10:57a M and recorded
in book 4189 page 32
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

RECEIVED

Apr 26 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS
and DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

RECORD ON APPEAL – VOLUME III

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7301
Attorneys for Appellants

Other Counsel of Record:
Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Respondent

Mary Lou Cercopely et al v. NCP Pilgrim, LLC
APPELLATE CASE NO.: 2020-1168

**INDEX TO RECORD ON APPEAL
VOLUME 1**

ORDERS

Order of Reference 1.4.19	1
Order on Various Motions 4.4.19	3
Master's Decree of Sale & Foreclosure 7.13.20	10
Master's Notice of Foreclosure Sale 7.14.20	27
Master's Supplemental Notice of Foreclosure Sale 8.5.20	30
Order Imposing Supersedeas Bond 10.15.20	35
Order Denying Appellants' Emergency Motion to Stay Sale 8.5.20	48
Supplemental Master's Decree of Sale & Foreclosure 8.5.20	51
Order Denying Appellants' Motion to Reconsider 8.5.20	56

PLEADINGS

Summons, Complaint (with exhibits 1 through 6) & Lis Pendens 11.15.18	60
Answer & Counterclaims 1.23.19 (with exhibits A through D)	91
Reply (Answer) to the Counterclaims 2.21.19	118
Amended Summons & Complaint (w/o exhibits) 4.5.19	122
Amended Answer & Counterclaims (w/o exhibits) 4.22.19	128
Reply (Answer) to Amended Counterclaims 6.7.19	140
Notice of Appeal	144

MOTIONS AND MEMORANDA OF LAW

NCP's Pre-Trial Brief 1.27.20	177
-------------------------------	-----

Appellants' Pre-Trial Brief 1.28.20	185
NCP's Post-Trial Brief and Exhibits 2.11.20	193

INDEX TO RECORD ON APPEAL VOLUME II

NCP's Post-Trial Brief and Exhibits 2.11.20 cont'd	250
Appellant's Post-Trial Brief and Exhibits 2.26.20	296
NCP's Response to Appellant's Post-Trial Memorandum 3.25.20	402
Emergency Motion to Stay and for Supersedeas 7.14.20	404
Motion to Reconsider 7.23.20	408
NCP's Memorandum in Opposition to Motion to Stay 7.30.20	419
NCP's Memorandum in Opposition to Motion to Reconsider 7.30.20	423
2nd Emergency Motion to Stay 8.25.20	438
NCP's Memorandum in Opposition to 2nd Motion to Stay 9.11.20	442
Reply Memorandum RE: 2nd Emergency Motion to Stay 9.14.20	449

TRANSCRIPTS & TRIAL EXHIBITS

Trial Transcript	453
Trial Exhibit 1	480
Trial Exhibit 2	483
Trial Exhibit 3	488
Trial Exhibit 4	490
Trial Exhibit 5	496

**INDEX TO RECORD ON APPEAL
VOLUME III**

Trial Exhibit 6	502
Trial Exhibit 7	506
Trial Exhibit 8	510
Trial Exhibit 9	517
Trial Exhibit 10	522
Trial Exhibit 11	527
Trial Exhibit 12	529
Trial Exhibit 13	537
Trial Exhibit 14	543
Trial Exhibit 15	549
Trial Exhibit 16	552
Trial Exhibit 17	577
Trial Exhibit 18	580
Trial Exhibit 19	583
Trial Exhibit 20	585
Trial Exhibit 21	587

Trial Exhibit 6

000502

0514



Recording Date: 08/18/2009

Instrument: 23

Book: 7202 Page: 108-110

FILED-RECORDED
RMC / ROD

2009 Aug 18 AM 10:15:51

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 7.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds



THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

000503



STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER

FILED/RECORDED
August 18, 2009
DORCHESTER COUNTY
REGISTER OF DEEDS

NOTE and MORTGAGE
MODIFICATION AGREEMENT

Loan #: 02-44015970

117 South Cedar Street, Summerville, SC 29483

THIS AGREEMENT made and entered into this 13th day of August, 2009, by and between, DAVID S. CLANCY and BARBARA A. CLANCY ("Mortgagors"), and CAROLINA FEDERAL SAVINGS BANK ("Mortgagee");

WHEREAS, DAVID S. CLANCY did execute and deliver its certain Promissory Note dated June 10, 2004, in the original principal amount of TWO HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED FORTY and 00/100 DOLLARS (\$258,940.00), ("Promissory Note"), payable to the order of Mortgagee said Note being due and payable on June 10, 2009; and with a current principal balance of \$237,990.52;

WHEREAS, BARBARA S. CLANCY did deliver as security for its Promissory Note that certain Mortgage dated June 10, 2004, in the amount of TWO HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED FORTY and 00/100 DOLLARS (\$258,940.00), and recorded in the RMC Office for Dorchester County in Book 5393, Page 356 on June 16, 2004; and

WHEREAS, Mortgagors and Mortgagee are desirous of modifying said Note and Mortgage, being hereby acknowledged, the parties hereto agree as follows:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration and the sum of (\$2,000.00 toward accrued interest, \$7.00 recording fee for a total of \$2,007.00) the receipt and sufficiency being hereby acknowledged, the parties hereto agree as follows:

1. We are hereby extending the loan to August 5, 2019.
2. The interest rate will change from Prime + 1.00% with a 5.00% floor to 6.50% fixed for 5 years and will re-price on August 2014 to the 5-year Treasury Constant Maturity + 4.00%. There will be a 6.50% floor.
3. Monthly payments will change from Interest only to Principal & Interest and will be based on a 25- year amortization.
4. There will be 119 monthly payments of \$1,618.72 beginning September 5, 2009 and 1 balloon payment of \$186,318.33 on August 5, 2019.
5. The loan will be transferred from the Consumer Loan System to the Commercial Loan System. The accrual will be 365/360. The payment due date will change from the 20th of the month to the 5th of the month. The accrued interest due through August 12, 2009 is \$5,296.11 and with the \$2,000.00 paid toward interest, this leaves \$3,296.11 interest due that will be transferred to the Commercial Loan System. The outstanding late charges of \$241.97 will also be transferred to the Commercial Loan System.
6. This modification shall not constitute a waiver of any other provisions of the Note and Mortgage or any rights that Mortgagee may have under the Note and Mortgage arising from Mortgagor's actions or inactions prior to or subsequent to such modification.
7. All of the terms and conditions of the Note and Mortgage and all the other lien documents in favor of the said Note and Mortgage shall remain in full force and effect, and the same are hereby in all other respects republished, ratified, and confirmed.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals this 13th day of August, 2009.

IN THE PRESENCE OF:

Donna Schweir
Earl Martin

MORTGAGORS:

David S. Clancy
David S. Clancy
Barbara A. Clancy
Barbara A. Clancy

Return to: Carolina Federal Savings Bank, 1509 Highway 17 North, Mount Pleasant, SC 29464

000504

IN THE PRESENCE OF:

MORTGAGEE: Carolina Federal Savings Bank

mla bry
Robert L. Bry

[Signature]
By: Stephen C. Herman
For: Carolina Federal Savings Bank
Its: Chief Lending Officer

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on August 13, 2009 by David S. Clancy.

Christian F. Adams
Notary Public for South Carolina
My Commission Expires: 3/6/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on August 13, 2009 by Barbara A. Clancy

Christian F. Adams
Notary Public for South Carolina
My Commission Expires: 3/6/11

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on August 13, 2009 by Stephen C. Herman for Carolina Federal Savings Bank.

Christian F. Adams
Notary Public for South Carolina
My Commission Expires: 3/6/11

Trial Exhibit 7

000506

0518



Recording Date: 07/09/2010

Instrument: 15

Book: 7560 Page: 154-156

FILED-RECORDED
RMC / ROD

2010 Jul 09 AM 10:15:15

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 7.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

000507

0519



FILED/RECORDED
July 9, 2010
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

NOTE and MORTGAGE
MODIFICATION AGREEMENT
Loan #: 02-44015970
117 South Cedar Street, Summerville, SC 29483

THIS AGREEMENT made and entered into this 24th day of June, 2010, by and between, DAVID S. CLANCY and BARBARA A. CLANCY ("Mortgagors"), and CAROLINA FEDERAL SAVINGS BANK ("Mortgagee");

WHEREAS, DAVID S. CLANCY did execute and deliver its certain Promissory Note dated June 10, 2004, in the original principal amount of TWO HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED FORTY and 00/100 DOLLARS (\$258,940.00), ("Promissory Note"), payable to the order of Mortgagee said Note being due and payable on June 10, 2009 with a current principal balance of \$237,990.52;

WHEREAS, BARBARA S. CLANCY did deliver as security for its Promissory Note that certain Mortgage dated June 10, 2004, in the amount of TWO HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED FORTY and 00/100 DOLLARS (\$258,940.00), and recorded in the RMC Office for Dorchester County in Book 5393, Page 356 on June 16, 2004; and

WHEREAS, the loan was modified on August 13, 2009;

WHEREAS, Mortgagors and Mortgagee are desirous of modifying said Note and Mortgage, being hereby acknowledged, the parties hereto agree as follows:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration and the sum of (\$0.00) the receipt and sufficiency being hereby acknowledged, the parties hereto agree as follows:

1. We are hereby changing the maturity date from August 5, 2019 to July 5, 2012.
2. The interest rate will change from 6.50% fixed to 5.50% fixed.
3. The new monthly payments will be based on a 30- year amortization.
4. There will be 23 monthly payments of \$1,365.72 beginning August 5, 2010 and 1 balloon payment of \$233,260.81 on July 5, 2012.
5. Accrued interest to June 24, 2010 in the amount of \$16,831.82 will be added to payoff charges and \$1,051.27 in late charges will also be added to payoff charges.
6. This modification shall not constitute a waiver of any other provisions of the Note and Mortgage or any rights that Mortgagee may have under the Note and Mortgage arising from Mortgagor's actions or inactions prior to or subsequent to such modification.
7. All of the terms and conditions of the Note and Mortgage and all the other lien documents in favor of the said Note and Mortgage shall remain in full force and effect, and the same are hereby in all other respects republished, ratified, and confirmed.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals this 24th day of June, 2010.

IN THE PRESENCE OF:

Lindsey Howley
Hugh Berry

MORTGAGORS

David S. Clancy

Barbara A. Clancy

Return to: Carolina Federal Savings Bank, 1509 Highway 17 North, Mount Pleasant, SC 29464

000508

0520

IN THE PRESENCE OF:

Donna Schwin
Sabir Hylke

MORTGAGEE: Carolina Federal Savings Bank

By: Stephen C. Herman
 For: Carolina Federal Savings Bank
 Its: Chief Lending Officer

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on June 24, 2010 by David S. Clancy.

Lee A. Berry
 Notary Public for South Carolina
 My Commission Expires: 5-1-13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on June 24, 2010 by Barbara A. Clancy

Lee A. Berry
 Notary Public for South Carolina
 My Commission Expires: 5-1-13

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on June 24, 2010 by Stephen C. Herman for Carolina Federal Savings Bank.

Christine F. Adams
 Notary Public for South Carolina
 My Commission Expires: 3/6/11

Return to: Carolina Federal Savings Bank, 1509 Highway 17 North, Mount Pleasant, SC 29464

000509

0521

Trial Exhibit 8

000510

0522



Recording Date: 03/08/2013

Instrument: 5

Book: 8718 Page: 33-38

FILED-RECORDED
RMC / ROD

2013 Mar 08 AM 10:12:50

DORCHESTER COUNTY
SC Deed Rec Fee: .00
Dor Co Deed Rec Fee: .00
Filing Fee: 10.00
Exemption #:
MARGARET L. BAILEY
Register of Deeds

THIS PAGE IS HEREBY ATTACHED AND MADE PART OF
THE PERMANENT RECORD OF THIS DOCUMENT. IT IS
NOT TO BE DETACHED OR REMOVED AND MUST BE
CITED AS THE FIRST PAGE OF THE RECORDED
DOCUMENT. THE TOP OF THE PAGE IS TO BE USED FOR
RECORDING PURPOSES AND IS NOT TO BE USED FOR
ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
ST. GEORGE, SC 29477
843-563-0181 or 843-832-0181

000511

0523



10-
THIS DOCUMENT PREPARED BY
AND UPON RECORDATION, RETURN TO:
ANDERSON, MCCOY & ORTA, P.C.
100 North Broadway, Suite 2600
Oklahoma City, OK 73102
Telephone: (888) 236-0007

Dorchester County, State of South Carolina

FILED/RECORDED
March 8, 2013
DORCHESTER COUNTY
REGISTER OF DEEDS

ASSIGNMENT OF REAL ESTATE MORTGAGE

On June 8, 2012, Carolina Federal Savings Bank, Charleston, SC (the "Failed Bank") was closed by its supervising institution, and the Federal Deposit Insurance Corporation (acting in any capacity, the "FDIC") was appointed as Receiver.

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC, at 550 17th Street NW, Washington, D.C. 20429-0002 (hereinafter referred to as "Assignor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over to **CRE/ADC VENTURE 2012-1, LLC**, a Delaware limited liability company, its successors and assigns, at 2450 Broadway, 6th Floor, Santa Monica, California 90404, all right, title and interest in and to those documents listed immediately below, which relate to property described on the attached Exhibit A:

CRE/ADC 2012-1
AMO Ref.: 3059.145
Loan Ref.: 244015970
AssetID: 10441000754
ServicerRef: 030289863

Real Estate Mortgage, dated June 10, 2004 (the "Mortgage"), executed by Barbara A. Clancy (the "Grantor"), in the original principal sum of Two Hundred Fifty-Eight Thousand Nine Hundred Forty and 00/100 Dollars (\$258,940.00) securing a Note made payable to Carolina Federal Savings Bank and which Mortgage was recorded on June 16, 2004, in Book 5393, Page 356 in the Real Estate Records of Dorchester County, State of South Carolina ("Real Estate Records").

TO HAVE AND TO HOLD THE SAME UNTO SAID CRE/ADC VENTURE 2012-1, LLC, ITS SUCCESSORS AND ASSIGNS.

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER, BY THE FDIC IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC, OR IN ITS CORPORATE CAPACITY. THE LOAN IS CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE FDIC OR ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

CRE/ADC 2012-1
AMO Ref.: 3059.145
Loan Ref.: 244015970
AssetID: 10441000754
ServicerRef: 030289863

IN WITNESS WHEREOF, FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC, has caused this instrument to be executed this 30th day of January, 2013, effective as of the 11th day of December, 2012.

ASSIGNOR:

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC

Witness:

Aimee DiMaria
Aimee DiMaria

Barbara A. Basgall
Barbara A. Basgall

By: Vanessa A. Orta
Name: Vanessa A. Orta
Title: Attorney-in-Fact

ACKNOWLEDGMENT

STATE OF OKLAHOMA)

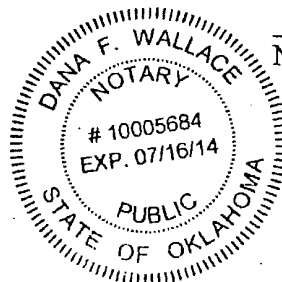
COUNTY OF OKLAHOMA)

SS:

On this 30th day of January, 2013, before me personally appeared Vanessa A. Orta, as Attorney-in-Fact for FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, and she thereupon duly acknowledged to me that she executed the same to be her free act and deed.

WITNESS my hand and official seal.

My commission expires:



Dana F. Wallace
Name of Notary: Dana F. Wallace

IN WITNESS WHEREOF, FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC, has caused this instrument to be executed this 30th day of January, 2013, effective as of the 11th day of December, 2012.

ASSIGNOR:

Witness:

Aimee DiMaria
Aimee DiMaria

FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC

Barbara A. Basgall
Barbara A. Basgall

By: Vanessa A. Orta
Name: Vanessa A. Orta
Title: Attorney-in-Fact

ACKNOWLEDGMENT

STATE OF OKLAHOMA)

COUNTY OF OKLAHOMA)

SS:

On this 30th day of January, 2013, before me personally appeared Vanessa A. Orta, as Attorney-in-Fact for FEDERAL DEPOSIT INSURANCE CORPORATION IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument, and she thereupon duly acknowledged to me that she executed the same to be her free act and deed.

WITNESS my hand and official seal.

My commission expires:



Dana F. Wallace
Name of Notary: Dana F. Wallace

EXHIBIT A

All that lot, piece, or parcel of land, with the buildings thereon, situate, lying and being in the Town of Summerville, in the County of Dorchester (formerly Berkeley), in the State aforesaid, measuring and containing sixty-three (63) feet, six inches, in front on Black Jack Street, now known as Cedar Street, and the same on the back line, by two hundred and ten (210) feet in depth, be the said dimensions more or less; butting and bounding, Northwest on Black Jack Street, now known as Cedar Street, Northeast on Lands now or formerly of John H. Grainger, Southeast on lands now or formerly of Thaddeus W. Phelon, and Southwest on lands now or formerly of the Estate of C.H. Komahrens.

Being the same property conveyed to William E. Clancy and Barbara Anne Clancy by deed of John Grainger Lanneau, George Johnston Lanneau, and Jessie L. Finucan on March 20, 1981 and recorded on March 23, 1981 in book 436 at page 118 of the Dorchester County RMC office. Thereafter being the same property conveyed to the Mortgagor here/n, Barbara Anne Clancy, by deed of distribution of William E. Clancy on January 25, 1990 and recorded on January 25, 1990 in book 717 at page 101 of the Dorchester County RMC office.

LESS AND EXCEPT ANY AND ALL PROPERTY PREVIOUSLY RELEASED OF RECORD.

CRE/ADC 2012-1
AMO Ref.: 3059.145
Loan Ref.: 244015970
AssetID: 10441000754
ServicerRef: 030289863

000516

0528

Trial Exhibit 9

000517

0529

MARGARET L BAILEY
DORCHESTER COUNTY
REGISTER OF DEEDS

201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

*** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE ***

*** ELECTRONICALLY RECORDED DOCUMENT ***

Instrument #:	2018020938	
Receipt Number:	50878	Return To:
Recorded As:	EREC-ASSIGNMENT	
Recorded On:	August 23, 2018	
Recorded At:	08:38:19 AM	Received From: SIMPLIFILE
Recorded By:	CB	Parties:
Book/Page:	RB 11512: 126 - 129	Direct- CLANCY, BARBARA A
Total Pages:	4	Indirect- CRE ADC VENTURE 2012 A LLC

*** EXAMINED AND CHARGED AS FOLLOWS ***

Recording Fee: \$8.00
Tax Charge: \$0.00



Margaret Bailey

Margaret Bailey - Register of Deeds

000518

0530



ELECTRONICALLY FILED - 2020 Mar 25 11:10 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1802053

Prepared by, and after
Recording, return to:

Colin Ferguson
Dickinson Wright PLLC
300 West Vine St., Ste. 1700
Lexington, KY 40507
Telephone: (615) 620-1705

Cross Reference: Book 5393, Page 356

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT OF MORTGAGE OR OTHER SECURITY INSTRUMENT

As of the 26th day of June, 2018, **CRE/ADC VENTURE 2012-1, LLC**, a Delaware limited liability company, having an address c/o Colony Northstar, Inc., 515 South Flower Street, 44th Floor, Los Angeles, CA 90071 ("Assignor"), as the holder of the instrument(s) hereinafter described and for valuable consideration hereby endorses, assigns, sells, transfers and delivers to **NCP PILGRIM LLC**, a Delaware limited liability company, having an address c/o Northlight Capital Partners, 64 Wall Street, Ste. 212, Norwalk, CT 06850 ("Assignee"), its successors, participants and assigns, without recourse or warranty, all right, title and interest of Assignor in and to those certain instruments described on Exhibit A attached hereto, as the same may have been renewed, assigned, amended, supplemented, restated or modified.

Together with any and all notes and obligations therein described, the debt and claims secured thereby and all sums of money due and to become due thereon, with interest provided for therein, and hereby irrevocably appoints Assignee hereunder its attorney to collect and receive such debt, and to foreclose, enforce and satisfy the foregoing the same as it might or could have done were these presents not executed, but at the cost and expense of Assignee.

Together with any and all other liens, privileges, security interests, rights, entitlements, equities, claims and demands as to which Assignor hereunder possesses or to which Assignor is otherwise entitled as additional security for the payment of the notes and other obligations described herein.

This Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed this 15th day of Aug., 2018.

[Signature]
 Witness
Stephen Parro
 Printed Name

[Signature]
 Witness
Gregory Walker
 Printed Name

ASSIGNOR:

CRE/ADC VENTURE 2012-1, LLC, a
 Delaware limited liability company

By: NCP Pilgrim LLC, a Delaware limited
 liability company

Its: Attorney-in-fact under Limited Power of
 Attorney dated June 26, 2018

By: [Signature]
 Name: Marshall Burchard
 Title: Authorized Signatory

ACKNOWLEDGEMENT

STATE OF CONNECTICUT)
)
 COUNTY OF Fairfield)

On the 15 day of August, 2018, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Marshall Burchard, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity as authorized signatory on behalf of NCP Pilgrim LLC, a Delaware limited liability company, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official SEAL.

Signature: [Signature]
 Notary Public

My Commission Expires:
LUKASZ MYSLIWIEC
NOTARY PUBLIC
 MY COMMISSION EXPIRES JAN. 31, 2023

EXHIBIT A

MORTGAGE from BARBARA A. CLANCY, in favor of Carolina Federal Savings Bank, dated as of June 10, 2004, in the original principal amount of \$258,940.00, and recorded in Book 5393, Page 356, in the Real Estate Records of Dorchester County, South Carolina.

Trial Exhibit 10

000522

0534

**MARGARET L BAILEY
DORCHESTER COUNTY
REGISTER OF DEEDS**

201 Johnston Street ~ Saint George, SC 29477 (843) 563-0181

***** THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE *****

***** ELECTRONICALLY RECORDED DOCUMENT *****

Instrument #:	2018020937	
Receipt Number:	50878	Return To:
Recorded As:	EREC-POWER OF ATTORNEY	
Recorded On:	August 23, 2018	
Recorded At:	08:38:18 AM	Received From: SIMPLIFILE
Recorded By:	CB	Parties:
Book/Page:	RB 11512: 122 - 125	Direct- CRE ADC VENTURE 2012 1 LLC
Total Pages:	4	Indirect- BURCHARD, MARSHALL

***** EXAMINED AND CHARGED AS FOLLOWS *****

Recording Fee: \$15.00

Tax Charge: \$0.00



Margaret Bailey

Margaret Bailey - Register of Deeds

000523

NCP Pilgrim 2-21-



0535

ELECTRONICALLY FILED - 2020 Mar 25 11:10 AM - DORCHESTER - COMMON PLEAS - CASE#2018CP1802053

PREPARED BY:

McCOY & ORTA, P.C.
100 North Broadway, Suite 2600
Oklahoma City, Oklahoma 73102
Telephone: 888-236-0007

AND UPON RECORDATION

RETURN TO:

Dickinson Wright PLLC
300 West Vine St. Ste. 1700
Lexington, KY 40507

**LIMITED POWER OF ATTORNEY
CRE/ADC VENTURE 2012-1, LLC**

KNOW ALL PERSONS BY THESE PRESENTS that CRE/ADC VENTURE 2012-1, LLC, a Delaware limited liability company, hereafter called (the "Company"), hereby designates Marshall Burchard, as Authorized Signatory, of NCP PILGRIM LLC, a Delaware limited liability company (the "Attorney-in-Fact"), to act on behalf of the Company for the sole purpose of executing the documents outlined below; and

WHEREAS the undersigned has full authority to execute this Limited Power of Attorney on behalf of the Company;

NOW THEREFORE, the Company grants to the Attorney-in-Fact the authority, subject to the limitations herein, as follows:

1. To execute, acknowledge, seal and deliver on behalf of the Company, any and all instruments of transfer and conveyance, appropriately completed, with all ordinary or necessary endorsements, acknowledgments, affidavits and supporting documents as may be necessary or appropriate to evidence the sale and transfer of any asset.

2. To grant to the Attorney-in-Fact full power and authority to do and perform all acts necessary to carry into effect the powers granted by this Limited Power of Attorney as fully as the Company in any capacity might or could do with the same validity as if all and every such act had been herein particularly stated, expressed and especially provided for.

Limited Power of Attorney
CRE/ADC Venture 2012-1, LLC

1

This Limited Power of Attorney shall be effective from the date herein executed, and shall continue in full force and effect through December 31, 2018, unless otherwise terminated by an official of the Company, or its successors and assigns authorized to do so ("Revocation"). At such time this Limited Power of Attorney will be automatically revoked. Any third party may rely upon this document as the named individuals' authority to continue to exercise the powers herein granted unless a Revocation has been recorded in the public records of the jurisdiction where this Limited Power of Attorney has been recorded, or unless a third party has received actual notice of a Revocation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Company has caused these presents to be executed and subscribed in its name this 26 day of June, 2018.

Signed, sealed and delivered
in the presence of:

COMPANY:

**CRE/ADC VENTURE 2012-1, LLC, a
Delaware limited liability company**

By: [Signature]

Name: KEVIN CHAIT

Witness

By: [Signature]

Name: TAM TRAN

Witness

By: ColFin 2012 CRE ADC Funding, LLC

Its Manager

By: [Signature]

Name: Mark M. Hedstrom

Title: Vice President

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

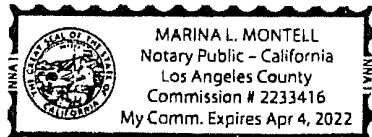
COUNTY OF LOS ANGELES)

SS:

On this 26 day of June, 2018, before me, Marina L. Montell, Notary Public, personally appeared Mark M. Hedstrom, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Marina L. Montell
My commission expires: April 4, 2022

Trial Exhibit 11

000527

0539

Loan Number: 010063670



KeyBank Real Estate Capital
Loan Servicing Department
P.O. Box 713397
Overland Park, KS 66211
888-979-1200

Loan History Report

Borrower Name: David Clancy
Borrower Addr: Barbara A. Clancy
418 Lakeview Drive
Summerville, SC 29485-0000

Property Name: 117 South Cedar Street
Property Addr: 117 South Cedar Street
Summerville, SC 29483

Loan Number: 010063670
Note Date: 06/10/2004
Original Loan Amt: \$258,940.00
Maturity Date: 07/05/2012
Next Due Date: 07/05/2012
Interest Rate: 5.5000%
Late Fee Percent: 5.0000%
Grace Days: 15

Current Loan Balance: \$234,657.55
Current Tax Balance: \$0.00
Current Insurance Balance: \$0.00
Current MIP/Guar Balance: \$0.00
Current Reserve Balance: \$0.00
Current Advances: \$489.50
Current Suspense: \$0.00
Late Fees Outstanding: \$0.00

System Date	Effective Date	Paid For Date	Description	Amount	Principal Paid	Interest Paid	Tax Amount	Insurance Amount	MIP Amount	Reserve Paid	Late Fees Paid	Suspense	Prin Ending Balance	Dish Type Code
08/20/12			NEW LOAN	234,657.55	234,657.55	0.00	0.00	0.00	0.00	0.00	0.00	0.00	234,657.55	
10/03/12			Change of basis A to R	234,657.55	234,657.55	0.00	0.00	0.00	0.00	0.00	0.00	0.00	234,657.55	
10/05/12		10/05/12	LATE CHARGE ASSESSE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	234,657.55	
12/27/12		09/24/12	MISC EXPENSE	489.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	234,657.55	
01/15/13	01/14/13	09/05/12	PAYMENT RECD	986.80	0.00	986.80	0.00	0.00	0.00	0.00	0.00	0.00	234,657.55	
01/15/13	01/14/13	10/05/12	PAYMENT RECD	124.56	0.00	124.56	0.00	0.00	0.00	0.00	0.00	0.00	234,657.55	
Date Range Totals:					449,315.10	1,111.36	0.00	0.00	0.00	0.00	0.00	0.00		

Date Printed: 01/24/2013

Page 1 of 1

NCP Pilgrim 2-7-19 001308

0540

000528



Trial Exhibit 12

000529

0541

Russell P. Patterson, P.A.

Serving the Lowcountry for over 34 years



Physical Address

19 Shelter Cove Ln., Ste. 107
Hilton Head, SC 29928

Russell P. Patterson

russell@russellpattersonlaw.com

Lauren P. Williams

lauren@russellpattersonlaw.com

Mailing Address

P.O. Box 8047
Hilton Head, SC 29938
(843) 341-9300
(843) 341-9301 fax

October 25, 2018

Ms. Mary Lou Cercopely
209 W 7th North Street, Apt. 13A
Summerville, SC 29483-6646

Mr. David S. Clancy
209 W 7th North Street, Apt. 13A
Summerville, SC 29483-6646

Re: Loan No. 02-44015970
Date of Loan: June 10, 2004
Original Principal Amount: \$258,940.00

Dear Ms. Cercopely and Mr. Clancy:

Please be advised that my Firm has been retained by NCP Pilgrim, LLC ("NCP"), who recently purchased the above referenced loan from the FDIC, in connection with the current default for the above referenced loan. Pursuant to the terms of the June 24, 2010 Note and Mortgage Modification, this loan matured on July 5, 2012. The current amount outstanding on this loan is \$430,391.52 ("Amount to Cure"). Please be advised if you do not contact my office regarding the Amount to Cure within ten (10) days from the date of this letter, I will proceed to enforce the rights of NCP under the loan documents, including but not limited to the promissory note and mortgage.

I urge you to give this matter your prompt and serious attention.

Sincerely,
RUSSELL P. PATTERSON, P.A.

Lauren P. Williams
Lauren P. Williams

Enclosures

cc: Britt Loukos (w/o encl.)- via email

**THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT
AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

000530

0542



Trial Exhibit 13

000531

0543

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-__
NCP Pilgrim, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	
Mary Lou Cercopely; David S. Clancy; South	)	COMPLAINT
Carolina Federal Credit Union; Southcoast	)	(Mortgage Foreclosure)
Community Bank; Joan Geanuracos; David	)	(Non-Jury)
Sean Clancy,	)	
	)	
DEFENDANTS.	)	
	)	

The Plaintiff, complaining of the Defendants herein, respectfully shows the Court that:

1. Plaintiff, NCP Pilgrim, LLC ("NCP"), is a limited liability company doing business in the State of South Carolina.
2. That NCP is the owner and holder of a note and mortgage covering real property which is the subject of the foreclosure action herein located in the County of Dorchester and is described more fully in Exhibit A attached hereto ("Subject Property").
3. That NCP is informed and believes that Defendant David S. Clancy ("Borrower") is an individual residing in the County of Dorchester, South Carolina and is currently an owner of the Subject Property.
4. That NCP is informed and believes that Defendant Mary Lou Cercopely is an individual residing in the County of Dorchester, South Carolina and is currently an owner of the Subject Property.
5. Upon information and belief, Defendants are not in the military service of the United States or otherwise protected by the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.



6. On or about June 10, 2004, for value received, Borrower executed and delivered to Carolina Federal Savings Bank ("Carolina"), NCP's predecessor in interest, a note for the sum of \$258,940 reflecting a loan in said amount ("Original Note" - Exhibit 1).

7. To better secure the payment of the said Original Note and all renewals, in accordance with the terms and conditions thereof, and with the other documents herein referenced, Barbara A. Clancy ("Clancy") executed and delivered to Carolina a first mortgage on the Subject Property ("Mortgage").

8. Thereafter Mortgage was recorded in the Office of the Register of Deeds for Dorchester County ("ROD") in Book 5393 at Page 356. A copy of the Mortgage is attached hereto as Exhibit 2 and incorporated herein by reference.

9. That the Mortgage constitutes a first mortgage lien on the Subject Property.

10. Thereafter the above loan was modified on various occasions, with the last being on July 9, 2010. At that time, Borrower and Clancy executed a Note and Mortgage Modification (Exhibit 3) whereby the maturity date was changed to July 5, 2012. The Original Note and Modification are collectively referred to as Note.

11. Thereafter, Barbara A. Clancy died on October 31, 2012, and pursuant to her Will her interest in the subject property was left to Mary Lou Cercopely ("Cercopely") and David S. Clancy, as evidenced by that Deed of Distribution recorded with the ROD in Book 9884 at Page 109. That record title to the Subject Property is now held by Borrower and Cercopely.

12. That on or about March 8, 2013, the Note and Mortgage was assigned by Carolina to CRE/ADC Venture 2012-1, LLC, as recorded with the ROD in Book 8718 at Page 33 (Exhibit 4).

13. Thereafter, on or about August 23, 2018, CRE/ADC Venture 2012-1, LLC assigned the Note and Mortgage to NCP Pilgrim, LLC, as recorded with the ROD in Book 11512 at Page 126 (Exhibit 5).

14. That Borrower is in breach of his obligations with regard to the debt and financing arrangements set out above, including without limitation, the following:

- a. Failure to make payments of principal and interest due pursuant to their contractual obligations.

15. That the loan documents provide for the recovery of reasonable attorney fees, plus all costs.

16. Accordingly, NCP as holder of the said loan documents, elects to and does declare the entire balance of the said indebtedness due and payable. There is due under the loan documents as of October 31, 2018, the sum of \$430,391.52, together with interest at \$68.44 per day, late fees from that date forward, and the costs and disbursements of this action, including attorney's fees.

17. That NCP demands a deficiency judgment against the Borrower in the event that the sale of the Subject Property herein being foreclosed does not yield a sum sufficient to satisfy all indebtedness due to NCP including costs and attorney's fees.

18. That the subject note and mortgage are not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac, and the current loan servicer is not currently participating in the Home Modification Program ("HMP").

19. That this action is not subject to S.C. Supreme Court Administrative Order 2011-05-02-01 because the Subject Property is a commercial property.

20. That the following parties have or may claim an interest in the Subject Property, all of which are inferior and subordinate the NCP's Mortgage lien:

<u>Party</u>	<u>Interest</u>	<u>ROD Recording Info.</u>
a. Southcoast Community Bank	Mortgage Holder Assignment of Rents	6626/117 6626/126
b. Joan Geanuracos	Mortgage Holder	7107/277
c. David Sean Clancy	Mortgage Holder	9623/112
d. South Carolina Federal Credit Union	Judgment Holder	2010-CP-18-2211

WHEREFORE, having fully set forth its complaint, NCP prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the said Note and Mortgage, as modified, held by NCP together with attorney's fees and the costs of this action, be ascertained and determined under the direction of this Court.

2. That NCP's Mortgage on the Subject Property be declared a first lien on the Subject Property, and that NCP have judgment of foreclosure against the Borrower for the amount found to be due together with an allowance for future costs, expenses, and disbursements.

3. The Subject Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within action and sale,
- b. Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage as to said property and as set forth above for the Subject Property, together with reasonable attorney's fees, costs, and expenses as aforesaid, and to the establishment of a deficiency judgment if appropriate under the circumstances, and/or
- c. Third, the surplus, if any, be distributed according to law.

4. An Order be entered directing and empowering the Sheriff of Dorchester County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Subject Property hereinabove described should the same become necessary.

5. An Order be entered for the ejectment of any Defendant in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items, if any, not subject to the lien of the Plaintiff's Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the Subject Property by placing said personal property on the public street or highway or by any other means.

6. That the equity of redemption of all parties be protected.

7. An Order be entered for reimbursement of all costs incurred by the Plaintiff as a result of the delinquency.

8. An Order be entered for other and further relief as may be just and proper.

RUSSELL P. PATTERSON, P.A.

By: /s/ Lauren P. Williams

Russell P. Patterson
Lauren P. Williams
P.O. Drawer 8047
Hilton Head Island, SC 29938
(843) 341-9300
russell@russellpattersonlaw.com
lauren@russellpattersonlaw.com
Attorneys for the Plaintiff

Hilton Head Island, South Carolina
November 15, 2018

Trial Exhibit 13

000537

0549

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	AMENDED COMPLAINT
Mary Lou Cercopely; David S. Clancy; South	)	(Mortgage Foreclosure)
Carolina Federal Credit Union; Southcoast	)	(Non-Jury)
Community Bank; Joan Geanuracos; David	)	
Sean Clancy,	)	
	)	
DEFENDANTS.	)	

The Plaintiff, complaining of the Defendants herein, respectfully shows the Court that:

1. Plaintiff, NCP Pilgrim, LLC ("NCP"), is a limited liability company doing business in the State of South Carolina.
2. That NCP is the owner and holder of a note and mortgage covering real property which is the subject of the foreclosure action herein located in the County of Dorchester and is described more fully in Exhibit A attached hereto ("Subject Property").
3. That NCP is informed and believes that Defendant David S. Clancy ("Borrower") is an individual residing in the County of Dorchester, South Carolina and is currently an owner of the Subject Property.
4. That NCP is informed and believes that Defendant Mary Lou Cercopely is an individual residing in the County of Dorchester, South Carolina and is currently an owner of the Subject Property.



5. Upon information and belief, Defendants are not in the military service of the United States or otherwise protected by the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

6. On or about June 10, 2004, for value received, Borrower executed and delivered to Carolina Federal Savings Bank ("Carolina"), NCP's predecessor in interest, a note for the sum of \$258,940 reflecting a loan in said amount ("Original Note" - Exhibit 1).

7. To better secure the payment of the said Original Note and all renewals, in accordance with the terms and conditions thereof, and with the other documents herein referenced, Barbara A. Clancy ("Clancy") executed and delivered to Carolina a first mortgage on the Subject Property ("Mortgage").

8. Thereafter Mortgage was recorded in the Office of the Register of Deeds for Dorchester County ("ROD") in Book 5393 at Page 356. A copy of the Mortgage is attached hereto as Exhibit 2 and incorporated herein by reference.

9. That the Mortgage constitutes a first mortgage lien on the Subject Property.

10. Thereafter the above loan was modified on various occasions, with the last being on July 9, 2010. At that time, Borrower and Clancy executed a Note and Mortgage Modification (Exhibit 3) whereby the maturity date was changed to July 5, 2012. The Original Note and Modification are collectively referred to as Note.

11. Thereafter, Barbara A. Clancy died on October 31, 2012, and pursuant to her Will her interest in the subject property was left to Mary Lou Cercopely ("Cercopely") and David S. Clancy, as evidenced by that Deed of Distribution recorded with the ROD in Book 9884 at Page 109. That record title to the Subject Property is now held by Borrower and Cercopely.

12. That on or about March 8, 2013, the Note and Mortgage was assigned by Carolina to CRE/ADC Venture 2012-1, LLC, as recorded with the ROD in Book 8718 at Page 33 (Exhibit 4).

13. Thereafter, on or about August 23, 2018, CRE/ADC Venture 2012-1, LLC assigned the Note and Mortgage to NCP Pilgrim, LLC, as recorded with the ROD in Book 11512 at Page 126 (Exhibit 5).

14. That Borrower is in breach of his obligations with regard to the debt and financing arrangements set out above, including without limitation, the following:

a. Failure to make payments of principal and interest due pursuant to their contractual obligations.

15. That the loan documents provide for the recovery of reasonable attorney fees, plus all costs.

16. Accordingly, NCP as holder of the said loan documents, elects to and does declare the entire balance of the said indebtedness due and payable. There is due under the loan documents as of January 7, 2019, the sum of \$347,020.03, together with interest at \$35.85 per day, late fees from that date forward, and the costs and disbursements of this action, including attorney's fees.

17. That NCP demands a deficiency judgment against the Borrower in the event that the sale of the Subject Property herein being foreclosed does not yield a sum sufficient to satisfy all indebtedness due to NCP including costs and attorney's fees.

18. That the subject note and mortgage are not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac, and the current loan servicer is not currently participating in the Home Modification Program ("HMP").

19. That this action is not subject to S.C. Supreme Court Administrative Order 2011-05-02-01 because the Subject Property is a commercial property.

20. That the following parties have or may claim an interest in the Subject Property, all of which are inferior and subordinate the NCP's Mortgage lien:

<u>Party</u>	<u>Interest</u>	<u>ROD Recording Info.</u>
a. Southcoast Community Bank	Mortgage Holder	6626/117
	Assignment of Rents	6626/126
b. Joan Geanuracos	Mortgage Holder	7107/277
c. David Sean Clancy	Mortgage Holder	9623/112
d. South Carolina Federal Credit Union	Judgment Holder	2010-CP-18-2211

WHEREFORE, having fully set forth its complaint, NCP prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the said Note and Mortgage, as modified, held by NCP together with attorney's fees and the costs of this action, be ascertained and determined under the direction of this Court.

2. That NCP's Mortgage on the Subject Property be declared a first lien on the Subject Property, and that NCP have judgment of foreclosure against the Borrower for the amount found to be due together with an allowance for future costs, expenses, and disbursements.

3. The Subject Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within action and sale,
- b. Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage as to said property and as set forth above for the Subject Property,

together with reasonable attorney's fees, costs, and expenses as aforesaid, and to the establishment of a deficiency judgment if appropriate under the circumstances, and/or

c. Third, the surplus, if any, be distributed according to law.

4. An Order be entered directing and empowering the Sheriff of Dorchester County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Subject Property hereinabove described should the same become necessary.

5. An Order be entered for the ejectment of any Defendant in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items, if any, not subject to the lien of the Plaintiff's Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the Subject Property by placing said personal property on the public street or highway or by any other means.

6. That the equity of redemption of all parties be protected.

7. An Order be entered for reimbursement of all costs incurred by the Plaintiff as a result of the delinquency.

8. An Order be entered for other and further relief as may be just and proper.

RUSSELL P. PATTERSON, P.A.

By: /s/ Lauren P. Williams

Russell P. Patterson

Lauren P. Williams

P.O. Drawer 8047

Hilton Head Island, SC 29938

(843) 341-9300

russell@russellpattersonlaw.com

lauren@russellpattersonlaw.com

Attorneys for the Plaintiff

Hilton Head Island, South Carolina
April 5, 2019

Trial Exhibit 14

000543

0555

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	CIVIL ACTION NO.: 2018-CP-18-2053
NCP Pilgrim, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	AMENDED COMPLAINT
Mary Lou Cercopely; David S. Clancy; South	)	(Mortgage Foreclosure)
Carolina Federal Credit Union; Southcoast	)	(Non-Jury)
Community Bank; Joan Geanuracos; David	)	
Sean Clancy,	)	
	)	
DEFENDANTS.	)	

The Plaintiff, complaining of the Defendants herein, respectfully shows the Court that:

1. Plaintiff, NCP Pilgrim, LLC ("NCP"), is a limited liability company doing business in the State of South Carolina.
2. That NCP is the owner and holder of a note and mortgage covering real property which is the subject of the foreclosure action herein located in the County of Dorchester and is described more fully in Exhibit A attached hereto ("Subject Property").
3. That NCP is informed and believes that Defendant David S. Clancy ("Borrower") is an individual residing in the County of Dorchester, South Carolina and is currently an owner of the Subject Property.
4. That NCP is informed and believes that Defendant Mary Lou Cercopely is an individual residing in the County of Dorchester, South Carolina and is currently an owner of the Subject Property.



5. Upon information and belief, Defendants are not in the military service of the United States or otherwise protected by the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended.

6. On or about June 10, 2004, for value received, Borrower executed and delivered to Carolina Federal Savings Bank ("Carolina"), NCP's predecessor in interest, a note for the sum of \$258,940 reflecting a loan in said amount ("Original Note" - Exhibit 1).

7. To better secure the payment of the said Original Note and all renewals, in accordance with the terms and conditions thereof, and with the other documents herein referenced, Barbara A. Clancy ("Clancy") executed and delivered to Carolina a first mortgage on the Subject Property ("Mortgage").

8. Thereafter Mortgage was recorded in the Office of the Register of Deeds for Dorchester County ("ROD") in Book 5393 at Page 356. A copy of the Mortgage is attached hereto as Exhibit 2 and incorporated herein by reference.

9. That the Mortgage constitutes a first mortgage lien on the Subject Property.

10. Thereafter the above loan was modified on various occasions, with the last being on July 9, 2010. At that time, Borrower and Clancy executed a Note and Mortgage Modification (Exhibit 3) whereby the maturity date was changed to July 5, 2012. The Original Note and Modification are collectively referred to as Note.

11. Thereafter, Barbara A. Clancy died on October 31, 2012, and pursuant to her Will her interest in the subject property was left to Mary Lou Cercopely ("Cercopely") and David S. Clancy, as evidenced by that Deed of Distribution recorded with the ROD in Book 9884 at Page 109. That record title to the Subject Property is now held by Borrower and Cercopely.

12. That on or about March 8, 2013, the Note and Mortgage was assigned by Carolina to CRE/ADC Venture 2012-1, LLC, as recorded with the ROD in Book 8718 at Page 33 (Exhibit 4).

13. Thereafter, on or about August 23, 2018, CRE/ADC Venture 2012-1, LLC assigned the Note and Mortgage to NCP Pilgrim, LLC, as recorded with the ROD in Book 11512 at Page 126 (Exhibit 5).

14. That Borrower is in breach of his obligations with regard to the debt and financing arrangements set out above, including without limitation, the following:

a. Failure to make payments of principal and interest due pursuant to their contractual obligations.

15. That the loan documents provide for the recovery of reasonable attorney fees, plus all costs.

16. Accordingly, NCP as holder of the said loan documents, elects to and does declare the entire balance of the said indebtedness due and payable. There is due under the loan documents as of January 7, 2019, the sum of \$347,020.03, together with interest at \$35.85 per day, late fees from that date forward, and the costs and disbursements of this action, including attorney's fees.

17. That NCP demands a deficiency judgment against the Borrower in the event that the sale of the Subject Property herein being foreclosed does not yield a sum sufficient to satisfy all indebtedness due to NCP including costs and attorney's fees.

18. That the subject note and mortgage are not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac, and the current loan servicer is not currently participating in the Home Modification Program ("HMP").

19. That this action is not subject to S.C. Supreme Court Administrative Order 2011-05-02-01 because the Subject Property is a commercial property.

20. That the following parties have or may claim an interest in the Subject Property, all of which are inferior and subordinate the NCP's Mortgage lien:

<u>Party</u>	<u>Interest</u>	<u>ROD Recording Info.</u>
a. Southcoast Community Bank	Mortgage Holder	6626/117
	Assignment of Rents	6626/126
b. Joan Geanuracos	Mortgage Holder	7107/277
c. David Sean Clancy	Mortgage Holder	9623/112
d. South Carolina Federal Credit Union	Judgment Holder	2010-CP-18-2211

WHEREFORE, having fully set forth its complaint, NCP prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the said Note and Mortgage, as modified, held by NCP together with attorney's fees and the costs of this action, be ascertained and determined under the direction of this Court.

2. That NCP's Mortgage on the Subject Property be declared a first lien on the Subject Property, and that NCP have judgment of foreclosure against the Borrower for the amount found to be due together with an allowance for future costs, expenses, and disbursements.

3. The Subject Property be sold under the direction of this Court, the equity of redemption be barred, and the proceeds of sale be applied as follows:

- a. First, to the costs and expenses of the within action and sale,
- b. Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage as to said property and as set forth above for the Subject Property,

together with reasonable attorney's fees, costs, and expenses as aforesaid, and to the establishment of a deficiency judgment if appropriate under the circumstances, and/or

c. Third, the surplus, if any, be distributed according to law.

4. An Order be entered directing and empowering the Sheriff of Dorchester County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the Subject Property hereinabove described should the same become necessary.

5. An Order be entered for the ejectment of any Defendant in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items, if any, not subject to the lien of the Plaintiff's Mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the Plaintiff or its agents from the Subject Property by placing said personal property on the public street or highway or by any other means.

6. That the equity of redemption of all parties be protected.

7. An Order be entered for reimbursement of all costs incurred by the Plaintiff as a result of the delinquency.

8. An Order be entered for other and further relief as may be just and proper.

RUSSELL P. PATTERSON, P.A.

By: /s/ Lauren P. Williams

Russell P. Patterson

Lauren P. Williams

P.O. Drawer 8047

Hilton Head Island, SC 29938

(843) 341-9300

russell@russellpattersonlaw.com

lauren@russellpattersonlaw.com

Attorneys for the Plaintiff

Hilton Head Island, South Carolina
April 5, 2019

Trial Exhibit 15

000549

0561

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
NCP Pilgrim, LLC,	)	CIVIL ACTION NO.: 2018-CP-18-2053
	)	
PLAINTIFF,	)	
	)	
vs.	)	
	)	NCP PILGRIM, LLC's AFFIDAVIT
Mary Lou Cercopely; David S. Clancy; South	)	OF DEBT
Carolina Federal Credit Union; Southcoast	)	
Community Bank; Joan Geanuracos; David	)	
Sean Clancy,	)	
DEFENDANTS.	)	

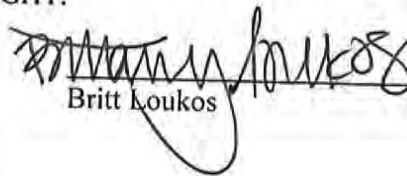
PERSONALLY appeared before me, the undersigned representative of Plaintiff NCP Pilgrim, LLC, who, upon being duly sworn, states as follows:

The total amount due on Loan No. x5970 from David s. Clancy, as shown in Exhibit A is as follows:

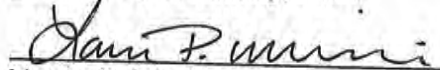
Principal	\$234,657.55
Interest to January 28, 2020 (5.5%)	33,735.28
Prior Accrued Interest	66,358.96
Late Charges (5%)	13,233.62
Prior Accrued Fees, Taxes, and Insurance	12,872.90
2019 Property Taxes (unpaid)	7,104.88
TOTAL	<u>\$367,963.19</u>

Interest continues to accrue at the rate of \$35.85 per day from January 29, 2020.

FURTHER SAYETH AFFIANT NAUGHT.


Britt Loukos

SWORN TO before me this
28 day of January, 2020.


Notary Public for NORTH CAROLINA
My Commission Expires: _____

LAUREN WILLIAMS
Notary Public, State of South Carolina
My Commission Expires 8/16/2022

000550

0562



0563

000551

Loan Payoff Calculator - Clancy 1/23/20

INPUTS	
General	
Loan #	30289863
Payoff Date	1/7/2019
Principal	
Principal Balance	\$ 234,657.55
Principal Balance Date	6/30/2017
Interest	
Interest Rate	5.50%
Begin Date	7/1/2017
End Date	1/28/2020
Late Fees	
Fee (applied to every pymt. 15 days late)	5.00%
Begin Date	7/9/2010
End Date	7/5/2012

Loan #30289863		
Current Principal Balance		\$ 234,657.55
Interest Owed		\$ 100,094.24
5.5% of \$234,657.55 for 942 days	\$ 33,735.28	
Prior Accrued Interest	\$ 66,358.96	
Late Fees		\$ 13,233.62
5% of 23 Monthly Pymts of \$1,365.72	\$ 1,570.58	
5% of Balloon Pymt of 233,260.81	\$ 11,663.04	
Taxes, Insurance, Other		\$ 19,977.78
2019 Taxes (unpaid)	\$ 7,104.88	
Prior Accrued Fees	\$ 12,872.90	
Total Payoff as of 1/23/20		\$ 367,963.19

Per Diem	
*Assumes 360 Day Year	
Regular Interest	\$ 35.85
Total	\$ 35.85

Trial Exhibit 16

000552

0564

2-11-10

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Carolina Federal Savings Bank,

Plaintiff(s)

vs.

David S. Clancy, et al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 18-

441-

(Please Print)

Submitted By: Mark W. McKnight

Address: P. O. Box 1255, Charleston, SC 29402

SC Bar #: 3865

Telephone #: 843-577-2837

Fax #: 843-722-4094

Other:

E-mail: mmcknight@bellsouth.net

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. (Proof of ADR/Exemption 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)
Previous Notice of Intent Case #
20 -CP-
☐ 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) |
| Inmate Petitions
☐ PCR (500)
☐ 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)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ 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)
☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: February 5, 2010

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 1224 (07/00)

000553

Page 1 of 2
NCP Pilgrim

0565

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

CAROLINA FEDERAL SAVINGS BANK,)

Plaintiff,)

vs.)

DAVID S. CLANCY,)
BARBARA A. CLANCY,)
a/k/a BARBARA ANNE CLANCY,)
SOUTHCOST COMMUNITY BANK)
and JOAN GEANURACOS,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-18 449

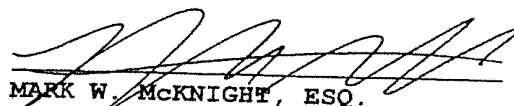
LIS PENDENS

CLERK OF COURT
2010 FEB 11 PM 5:04
DORCHESTER COUNTY

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff has filed or will, within twenty (20) days of the date hereof, file an action in the Court of Common Pleas for Dorchester County against the Defendants to foreclose upon that certain Mortgage dated June 10, 2004 and recorded in the Office of the Dorchester County Register of Deeds on June 16, 2004 in Book 4189, at page 082 and thereafter re-recorded on June 5, 2006 in Book 5393, at page 356 so as to add the maturity date and loan amount.

This action affects property situate in Dorchester County, South Carolina, as described on Exhibit "A" attached hereto.



MARK W. MCKNIGHT, ESQ.
154 King Street, Second Floor
Post Office Box 1255
Charleston, SC 29402
(843) 577-2837
(843) 722-4094/Fax
ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina
February 5, 2010

Exhibit "A"

All that lot, piece, or parcel of land, with the buildings thereon, situate, lying and being in the Town of Summerville, in the County of Dorchester (formerly Berkeley), in the State aforesaid; measuring and containing sixty-three (63) feet, six inches, in front on Black Jack Street, now known as Cedar Street, and the same on the back line, by two hundred and ten (210) feet in depth, be the said dimensions more or less; butting and bounding, Northwest on Black Jack Street, now known as Cedar Street, Northeast on Lands now or formerly of John H. Grainger, Southeast on lands now or formerly of Thaddeus W. Phelon, and Southwest on lands now or formerly of the Estate of C.H. Kornahrens.

Being the same property conveyed to William E. Clancy and Barbara Anne Clancy by deed of John Grainger Lanneau, George Johnston Lanneau, and Jessie L. Finucan on March 20, 1981 and recorded on March 23, 1981 in book 436 at page 118 of the Dorchester County RMC office. Thereafter being the same property conveyed to the Mortgagor herein, Barbara Anne Clancy, by deed of distribution of William E. Clancy on January 25, 1990 and recorded on January 25, 1990 in book 717 at page 101 of the Dorchester County RMC office.

TMS: 137-07-07-023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) CASE NO.: 2010-CP-18-_____

CAROLINA FEDERAL SAVINGS BANK,)

Plaintiff,)

vs.)

DAVID S. CLANCY,)
BARBARA A. CLANCY,)
a/k/a BARBARA ANNE CLANCY,)
SOUTHCOAST COMMUNITY BANK)
and JOAN GEANURACOS,)

Defendants.)

SUMMONS AND NOTICES
(Mortgage Foreclosure)

NONJURY

2010 FEB 11 PM 5:04

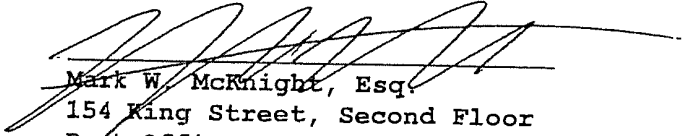
CERTIFIED COPY

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office, 154 King Street, Second Floor, Post Office Box 1255, Charleston, South Carolina 29402, 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)
RESIDE(S), 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 Plaintiff.



Mark W. McKnight, Esq.
154 King Street, Second Floor
Post Office Box 1255
Charleston, SC 29402
(843) 577-2837
(843) 722-4094/Fax
ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina
February 5, 2010

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 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. If the original creditor is different from the current creditor, the creditor's law firm will provide the debtor with the name and address of the original creditor if requested by the debtor, in writing, within thirty (30) days of the receipt of this notice.
4. The debt described in the Complaint attached hereto and evidenced by the Note and Mortgages described therein will be assumed to be valid by the creditor's law firm unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
5. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereon 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 by the creditor's law firm.
6. Written requests should be addressed to Mark W. McKnight, Attorney at Law, Post Office Box 1255, Charleston, South Carolina 29402.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION
OBTAINED WILL BE USED FOR THAT PURPOSE.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	CASE NO.: 2010-CP-18-_____
CAROLINA FEDERAL SAVINGS BANK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	(Mortgage Foreclosure)
DAVID S. CLANCY,	)	
BARBARA A. CLANCY,	)	
a/k/a BARBARA ANNE CLANCY,	)	NONJURY
SOUTHCOST COMMUNITY BANK	)	
AND JOAN GEANURACOS,	)	
	)	
<u>Defendants.</u>	)	

The Plaintiff complains of the Defendants as follows

FOR A FIRST CAUSE OF ACTION
(Foreclosure)

FIRST: The Plaintiff, Carolina Federal Savings Bank ("Carolina Federal"), is a federally chartered savings bank authorized to do business and doing business in the State of South Carolina.

SECOND: The Defendants, David S. Clancy and Barbara A. Clancy, a/k/a Barbara Anne Clancy ("the Clancys"), are, upon information and belief, Dorchester County residents.

THIRD: The Defendant, Southcoast Community Bank, is, upon information and belief, a South Carolina corporation. It is made a party hereto by virtue of a mortgage between it and the Clancys dated March 5, 2008, and recorded in the Office of the Register of Deeds for Dorchester County on March 7, 2008 in Book 6522, at Page

56. This mortgage is subject to a separate foreclosure action captioned Southcoast Community Bank vs. David S. Clancy, Barbara Anne Clancy, Joan Geanuracos and the South Carolina Department of Revenue, Case Number 2009-CP-18-3191. The Plaintiff is informed and believes that this mortgage is junior and subordinate to the lien of the Plaintiff's Mortgage as hereinafter described.

FOURTH: The Defendant, Joan Geanuracos, is, upon information and belief, a Charleston County resident. She is made a party hereto by virtue of an assignment of a mortgage in the amount of \$80,000.00 from David S. Clancy and Barbara Ann Clancy to Spartanburg Mortgage & Investments, Inc. dated December 9, 2008 and recorded on December 10, 2008. The assignment from Spartanburg Mortgage & Investments, Inc. is dated June 5, 2009, and was recorded in the Office of the Register of Deeds for Dorchester County on June 15, 2009 in Book 7107, at page 277. The Plaintiff is informed and believes that this mortgage is junior and subordinate to the lien of the Plaintiff's Mortgage as hereinafter described.

FIFTH: On about June 10, 2004, David S. Clancy, for value received, made, executed and delivered to Carolina Federal a certain Note (the "Note"), a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference, in the principal sum of TWO HUNDRED FIFTY-EIGHT THOUSAND, NINE HUNDRED FORTY AND 00/100 DOLLARS (\$258,940.00) payable in accordance with the terms thereof which are incorporated herein by reference.

SIXTH: To better secure the payment of said Note, Barbara A. Clancy, on or about June 10, 2004, signed, sealed, executed and delivered to Carolina Federal a certain Mortgage (the "Mortgage"), a copy of which is attached hereto as Exhibit "B" and made a part hereof by reference, granting and conveying to Carolina Federal all of her right, title and interest in and to certain real property described therein.

SEVENTH: This Mortgage was duly recorded in the Office of the Register of Deeds for Dorchester County on June 16, 2004 in Book 4189, at page 082 and thereafter re-recorded on June 5, 2006 in Book 5393, at page 356 so as to add the maturity date and loan amount.

EIGHTH: At the special request of the Clancys on or about August 13, 2009, the Note and Mortgage were modified. This Note and Mortgage Modification Agreement was duly recorded in the Office of the Dorchester County Register of Deeds on August 18, 2008 in Book 7202, at page 108. A copy of the Note and Mortgage Modification Agreement is attached hereto as Exhibit "C" and made a part hereof by reference. All other terms and conditions of the Note and Mortgage not amended thereby remain in full force and effect.

NINTH: In the Mortgage it was agreed that, among other things, the Barbara A. Clancy would pay the Note with interest thereon as the same became due in accordance with the terms thereof; would keep the property insured against those risks covered under a standard fire and extended coverage policy, and against such other hazards as the Mortgagee should from time to time require; and would preserve the property for the benefit of the Mortgagee.

TENTH: The conditions of the Note and Mortgage have been broken in that the Clancys have, among other things, failed to pay the principal of and/or interest on the Note when due or to cure said default upon demand as provided in the Mortgage, and the Plaintiff has elected to declare the unpaid balance of the Note, the interest accrued thereon, and all other indebtedness secured thereby to be, immediately due and payable.

ELEVENTH: There is now due and owing to the Plaintiff from the Clancys on said Note and Mortgage a sum in excess of TWO HUNDRED FORTY-NINE THOUSAND THREE HUNDRED SIXTY SEVEN AND 14/100 DOLLARS (\$249,367.14).

TWELFTH: The Plaintiff has placed the Note and Mortgage in the hands of its attorney, Mark W. McKnight, Esq., for collection and foreclosure.

WHEREFORE, the Plaintiff prays as follows:

(1) That the Court determine the full amount due to the Plaintiff from the Clancys under the Note, Mortgage and other documents referred to herein and made a part hereof and enter its judgment against them in favor of the Plaintiff in like amount;

(2) That the Court foreclose the lien of the Plaintiff's Mortgage and order the property encumbered thereby to be sold at public auction, with the proceeds of such sale to be applied as follows:

(a) first, to the payment of the costs and expenses of taking possession of the subject premises and of holding, using, leasing, repairing, improving and selling the same, including without limitation (i) receivers' fees, (ii) court costs, (iii) attorney's or accountant's fees, (iv) costs of advertisement, and (v) the payment of any and all impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of the Plaintiff therein and thereto;

(b) second, to the payment of all amounts, other than the outstanding principal balance on the Note and accrued but unpaid interest thereon, which may be due to the Plaintiff under the Note and other documents referred to herein, together with interest thereon as provided therein;

(c) third, to the payment of all accrued but unpaid interest due on the Note;

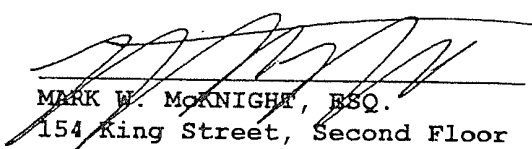
(d) fourth, to the payment of the outstanding principal balance of the Note;

(e) fifth, to the extent funds are available therefor out of the proceeds of sale, and, to the extent known by Plaintiff, to the payment of any indebtedness or obligation secured by any subordinate deed of trust, trust deed, mortgage or deed to secure debt on, or security interest in, the subject premises; and

(f) sixth, to the Defendants or to such persons or other entities as may legally be entitled thereto.

(3) That the Court enter its Order forever foreclosing and barring the Defendants and/or any other persons, firms or corporations claiming by, through or under the Defendants since the filing of the Lis Pendens in this suit from and of any and all equity of redemption and/or other rights in and to the property which is the subject matter hereof; and

(4) That the Court grant the Plaintiff such other and further relief as it may deem just and proper.


MARK W. MORNIGHT, ESQ.
154 King Street, Second Floor
Post Office Box 1255
Charleston, SC 29402
(843) 577-2837
(843) 722-4094/Fax
ATTORNEY FOR THE PLAINTIFF

Charleston, South Carolina
February 5, 2010

CAROLINA FEDERAL SPINGS BANK
POST OFFICE BOX 20518
1106 ST ANDREWS BOULEVARD (28407)
CHARLESTON, SC 29417

DAVID S. CLANCY
4 LATHAM CIRCLE
CHARLESTON, SC 29407

Loan Number 0244015970

Agreement Date 06-10-2004

Credit Limit \$258,840.00

Maturity Date 06-10-2009

Lender

Borrower

PRIME +1 LOC NON RESIDENTIAL

1. DEFINITIONS. In this Agreement, these terms have the following meanings.

A. Pronouns. The pronouns "I," "me" and "my" refer to all Borrowers signing this Agreement, jointly and individually, and each other person or legal entity that agrees to pay this Agreement. "You" and "your" refer to the Lender, or any person or legal entity that acquires an interest in the Line of Credit.

B. Agreement. Agreement refers to this PRIME +1 LOC NON RESIDENTIAL and any extensions, renewals, modifications or substitutions of it.

C. Billing Cycle. Billing Cycle means the interval between the days or dates of regular periodic statements.

D. Credit Limit. Credit Limit means the maximum amount of principal you will permit me to owe you under this Line of Credit, at any one time. My Credit Limit is stated at the top of this Agreement.

E. Line of Credit. Line of Credit refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures, and this Agreement.

F. Loan Account Balance. Loan Account Balance means the sum of the unpaid principal balance advanced under the terms of this Agreement, finance charges, fees, and other charges that are due, and other amounts advanced to me or others under the terms of this Line of Credit.

G. Property. Property means any real or personal property that secures my obligations under this Line of Credit.

Other important terms are defined throughout this Agreement.

2. PROMISE TO PAY. I promise to pay to you or your order, at your address, or at such other location as you may designate, so much of the Credit Limit as may be advanced under this Agreement, plus finance charges, fees, charges, costs, and expenses as described in this Line of Credit.

3. AGREEMENT TERM. This Agreement begins on the Agreement Date and continues until the Maturity Date. I may request advances for 5 YEARS (Draw Period) beginning on the Agreement Date.

4. ADVANCES. I may request advances by the following methods:

A. ☒ I write a CHECK

B. ☐ I draw my transaction account below \$_____ (Triggering Balance). Transaction account number _____

C. ☒ I request a withdrawal IN PERSON, BY PHONE OR BY MAIL

D. ☐ I make a purchase or withdrawal with my _____

E. ☒ I authorize you to make a payment to a third person or another account.

You will make the advance by advancing the amount directly to me, depositing it in my transaction account, or by paying a designated third person or account. You will record the amount as an advance and increase my Loan Account Balance.

5. ADVANCE LIMITATIONS. You do not have to make any advances during any period in which I have a right to cancel. My ability to request and access advances is also subject to the following additional limitations.

A. ☐ Initial Advance. On _____ I will receive an initial Advance of \$_____.

B. Minimum Advance. Subject to the limitations contained in this Agreement, when I request an advance:
THE MINIMUM AMOUNT YOU WILL ADVANCE WILL BE \$500.00 (MINIMUM ADVANCE). YOU WILL ADVANCE EITHER THE MINIMUM ADVANCE OR EXACTLY THE AMOUNT I REQUEST, PROVIDED THE REQUESTED AMOUNT EQUALS OR EXCEEDS THE MINIMUM ADVANCE.

C. ☐ Maximum Amount of Advances. I may not request advances totaling more than \$_____ per _____.

D. ☐ Maximum Number of Advances. I may not request more than _____ advances per _____.

6. ☐ MINIMUM BALANCE. I agree to maintain a principal balance outstanding during the term of this Agreement of at least \$_____ (Minimum Balance).

7. CREDIT LIMIT. Subject to the terms and conditions of this Agreement, I may borrow on this Line of Credit up to the Credit Limit. I agree not to request or obtain an advance that will cause the unpaid principal of my Loan Account Balance to exceed the Credit Limit. I understand that you will not ordinarily grant a request for an advance that would cause the unpaid principal of my Loan Account Balance to be greater than the Credit Limit, but that you may, at your option, grant such a request without obligating yourselves to do so in the future. My Credit Limit will not be increased if I overdraw the Line of Credit. If I exceed the Credit Limit, I agree to pay the amount by which the unpaid principal of my Loan Account Balance exceeds the Credit Limit immediately, even if you have not yet billed me. Any sums in excess of the Credit Limit will not be secured by the Property, unless they are for accrued but unpaid interest or expenditures made pursuant to the security instrument securing the Property.

8. COMPUTATION OF FINANCE CHARGES. Finance charges begin to accrue immediately when you make an advance to me. Finance charges will be computed as follows:

TO FIGURE THE FINANCE CHARGE FOR EACH BILLING CYCLE, A DAILY PERIODIC RATE IS MULTIPLIED BY THE DAILY BALANCE OF MY LOAN ACCOUNT BALANCE EACH DAY. TO FIGURE THE DAILY BALANCE, YOU FIRST TAKE MY LOAN ACCOUNT BALANCE AT THE BEGINNING OF EACH DAY, AND ADD ANY NEW ADVANCES, AND SUBTRACT ANY PAYMENTS OR CREDITS THAT APPLY TO DEBT REPAYMENT, AND ANY UNPAID FINANCE CHARGES, FEES, AND CHARGES. THIS GIVES YOU THE DAILY BALANCE.

9. PERIODIC RATE AND ANNUAL PERCENTAGE RATE. The periodic rate used in calculating the Finance Charge is 0.015668% and the corresponding Annual Percentage Rate is 5.600%. The annual percentage rate includes interest and not other costs.

10. VARIABLE RATE. The annual percentage rate may change. It will always be the value of the index described as the:

THE HIGHEST RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE USA'S THIRTY LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE

plus 1.000 percentage points.

A. ☒ Rounding. This rate will be rounded TO THE NEAREST 0.01.

B. Rate Changes. The annual percentage rate may increase if the index rate increases. An index rate increase will result in a higher finance charge and it may have the effect of increasing my periodic Minimum Payment. A decrease in the index rate will have the opposite effect as an increase. An index rate increase or decrease will take effect ON THE FIRST OF THE MONTH.

The annual percentage rate can increase or decrease QUARTERLY (or after remaining fixed for _____). If the index rate changes more frequently than the annual percentage rate, you will use the index rate in effect on the day you adjust the annual percentage rate to determine the new annual percentage rate. In such a case, you will ignore any changes in the index rate that occur between annual percentage rate adjustments.

C. ☐ Carryover. Any annual percentage rate increases or decreases not implemented by you either because of periodic, annual or lifetime rate caps, or because of a statutory limitation, may be carried over to subsequent rate adjustment periods and may be implemented to the extent not offset by opposite movement in the index rate. If this occurs, the annual percentage rate will not relate to the index rate in the manner described. When you have adjusted the annual percentage rate to take advantage of all increases or decreases in the index rate, the initial relationship between the index rate and the annual percentage rate will resume.

D. Rate Change Limitations. Annual percentage rate changes are subject to the following limitations:

(1) ☐ Periodic Limits. The Annual Percentage Rate cannot increase by more than _____ percentage points (or decrease by more than _____ percentage points).

(2) ☒ Lifetime Floor. The Annual Percentage Rate will never be lower than: 5.000%.

(3) Lifetime Cap. The Annual Percentage Rate will never be higher than: 18.000%.

11. FEES AND CHARGES. I agree to pay, or have paid, the fees and charges listed in the FEES APPENDIX that appears at the end of this Agreement.

12. **PAYMENT DATE.** During the term of this Agreement, a Minimum Payment will be due on or before the Payment Date indicated on my periodic statement for any Billing Cycle in which there is an outstanding balance on my account. My Minimum Payments will be due: MONTHLY

13. **MINIMUM PAYMENT.** On or before each Payment Date, I agree to make a payment of at least the Minimum Payment amount. The Minimum Payment will equal the following:

Interest only

A. ☒ **Rounding.** The Minimum Payment will be rounded TO THE NEAREST .01

B. ☒ **Payment Of Balance.** If my Loan Account Balance at the end of a Billing Cycle is less than \$100.00, my Minimum Payment will equal the entire outstanding Loan Account Balance.

C. **Payment At Maturity.** On the Maturity Date I must pay the entire outstanding Loan Account Balance.

14. ☒ **PRINCIPAL REDUCTION.** The Minimum Payment ☐ will not reduce ☒ may not fully repay the principal balance outstanding on my Loan Account Balance.

15. ☒ **FINAL PAYMENT.** At maturity, I ☐ may have to ☒ will repay the entire outstanding Loan Account Balance in a single payment. At that time you may, but are not obligated to, refinance this Line of Credit. If you do refinance this Line of Credit at maturity, I understand that I may have to pay some or all of the closing costs normally associated with a new loan.

16. **ADDITIONAL PAYMENT TERMS.** If my Loan Account Balance on a Payment Date is less than the Minimum Payment amount, I must pay only the amount necessary to reduce my Loan Account Balance to zero or to any required Minimum Balance. If I otherwise fail to fully pay the Minimum Payment amount, you may, but are not required to, advance money to me to make the payment. All the terms of this Agreement will apply to such an advance. Subject to any required Minimum Balance, I can pay off all or part of what I owe at any time. I must continue to make my periodic Minimum Payment as long as I owe any amount. Unless otherwise agreed or required by applicable law, payments and other credits will be applied first to any charges I owe other than principal and finance charges, then to any finance charges that are due, and finally to principal. No late charge will be assessed on any payment when the only delinquency is due to late fees assessed on earlier payments and the payment is otherwise a full payment.

17. ☐ **NEGATIVE AMORTIZATION.** Under some circumstances, my payments will not cover the finance charges that accrue and negative amortization will occur. Negative amortization will increase the amount that I owe you and reduce my equity in my home. In the event that negative amortization occurs, the unpaid portion will be:

18. **SECURITY.** You have secured my obligations under this Line of Credit by taking a security interest (by way of a separate security instrument dated 06-18-2004) in the following Property:

THE DWELLING AND REAL PROPERTY LOCATED AT 117 SOUTH CEDAR STREET, SUMMERVILLE, SC, 29483

Property securing any other loans that I have with you may also secure this Agreement.

19. **PROPERTY INSURANCE.** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Line of Credit. I may obtain property insurance from anyone I want that is reasonably acceptable to you. If I get the insurance from or through you, I will pay \$ for _____ of coverage.

20. **COMMISSIONS OR OTHER REMUNERATION.** I understand and agree that any insurance premiums paid to insurance companies as part of this Agreement will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this Agreement may also involve money retained by you or paid back to you as commissions or other remuneration.

21. **DEFAULT.** I will be in default if any of the following occur.

A. Payments. I fail to make a payment as required by this Agreement.

B. Property. My ☐ action adversely affects the Property or your rights in the Property.

C. ☐ Fraud. I engage in fraud or material misrepresentation in connection with this Line of Credit.

22. **REMEDIES.** After I default, and after you give any legally required notice and opportunity to cure, you may at your option do any of the following:

A. **Termination and Acceleration.** You may terminate this Line of Credit and make all or any part of the amount owing by the terms of this Agreement immediately due.

B. **Advances.** You may temporarily or permanently prohibit any additional advances.

C. **Credit Limit.** You may temporarily or permanently reduce the Credit Limit.

D. **Additional Security.** You may demand additional security or additional parties to be obligated to pay this Agreement.

E. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

F. **Payments Made On My Behalf.** You may make amounts advanced on my behalf immediately due, and you may add these amounts to the Loan Account Balance.

G. **Sources.** You may use any and all remedies you have under applicable law or any agreement securing this Agreement.

Except as otherwise required by law, by choosing a remedy you do not give up your right to use another remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

23. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after default, to the extent permitted by law, I agree to pay the following:

ALL EXPENSES OF COLLECTION, ENFORCEMENT OR PROTECTION OF YOUR RIGHTS AND REMEDIES UNDER THIS AGREEMENT. EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, REASONABLE ATTORNEYS' FEES NOT IN EXCESS OF 15 PERCENT OF THE UNPAID DEBT AFTER DEFAULT AND REFERRAL TO AN ATTORNEY WHO IS NOT YOUR SALARIED EMPLOYEE. THESE EXPENSES ARE DUE AND PAYABLE IMMEDIATELY. IF NOT PAID IMMEDIATELY, THESE EXPENSES WILL BEAR INTEREST FROM THE DATE OF PAYMENT UNTIL PAID IN FULL AT THE HIGHEST INTEREST RATE IN EFFECT AS PROVIDED FOR IN THE TERMS OF THIS AGREEMENT. ALL FEES AND EXPENSES WILL BE SECURED BY THE PROPERTY I HAVE GRANTED TO YOU, IF ANY. TO THE EXTENT PERMITTED BY THE UNITED STATES BANKRUPTCY CODE, I AGREE TO PAY THE REASONABLE ATTORNEYS' FEES YOU INCUR TO COLLECT THIS DEBT AS AWARDED BY ANY COURT EXERCISING JURISDICTION UNDER THE BANKRUPTCY CODE.

24. **SUSPENSION OF CREDIT AND REDUCTION OF CREDIT LIMIT.** You may temporarily prohibit me from obtaining additional advances or reduce my Credit Limit during any period in which any of the following are in effect.

A. The value of the Property securing this Line of Credit declines significantly below its appraised value for purposes of this Line of Credit;

B. You reasonably believe that I will not be able to meet the repayment requirements under my Line of Credit due to a material change in my financial circumstances;

C. I am in default of a material obligation under this Line of Credit. I understand, that you consider all of my obligations to be material. Categories of obligations that you consider material include, but are not limited to: my obligation to not commit fraud or misrepresentation in connection with this Line of Credit; my obligation to meet the repayment terms of this Line of Credit; my obligation to not adversely affect the Property or your rights in the Property; my obligation to pay fees and charges; my advance obligations; my obligation to fulfill the terms of the instrument securing this Agreement, and any other security instruments on the Property; my obligation to notify you; and my obligation to provide you with information;

D. Government action prevents you from imposing the annual percentage rate provided for in this Agreement;

E. The priority of your security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of my Credit Limit;

F. The maximum annual percentage rate allowed under this Agreement is reached;

G. You are notified by a regulatory agency that continued advances constitute an unsafe and unsound practice; or

H. Any Borrower requests a suspension of credit privileges.

In order to reinstate my credit privileges under the original terms of the Agreement, I must send you a written request to that effect. My credit privileges will only be reinstated if you determine that the condition which caused you to prohibit additional extensions and/or reduce the Credit Limit no longer exists. If appraisal or credit report fees are incurred in making this determination, you may (if allowed by applicable law) charge me such fees. If credit privileges were suspended at my request, they need not be reinstated unless all Borrowers request reinstatement.

25. SET-OFF. You may set-off any amount due and payable under the terms of this Agreement against my right to receive money from you, unless prohibited by applicable law. For example, your right of set-off will not apply if I may obtain credit under this Agreement by using a credit card.

26. AMENDMENTS. Generally, the terms of this Agreement cannot be changed. You may, however, make the following changes:

- A. You may make changes that I agree to in writing at the time of the change.
- B. You may make changes that will unequivocally benefit me.
- C. You may make insignificant changes.
- D. You may change the Index and margin if the original Index becomes unavailable. Any new Index will have an historical movement substantially similar to the original Index, and together with the new margin, produce an annual percentage rate substantially similar to the rate in effect at the time the original Index became unavailable.
- E. You may make changes that are described elsewhere in this Agreement.

27. TERMINATION. I may terminate this Line of Credit at any time upon written notice to you. Termination by one Borrower terminates the Line of Credit for all Borrowers. Termination will not affect my obligation to repay advances made prior to the termination, nor will it alter my duties to perform under the terms of an instrument securing this Agreement until such instrument is released. Upon termination I will return to you any remaining access devices in my possession that were issued or used in connection with the Line of Credit.

28. WAIVERS AND CONSENT. To the extent not prohibited by law and except for any required notice of right to cure for the failure to make a required payment, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor. To the extent not prohibited by law, I and any other party to this Line of Credit, also consent to the following actions that you may take, and waive defenses that may be available based on these actions, or based on the status of a party to this Line of Credit.

- A. You may renew or extend payments on this Agreement, regardless of the number of such renewals or extensions.
- B. You may release any Borrower or other person who may be liable for the indebtedness under this Agreement.
- C. You may release, substitute or impair any Property securing this Agreement.
- D. You may invoke your right of set-off.
- E. You may enter into any sales or repurchases of this Agreement to any person in any amounts and I waive notice of such sales or repurchases.
- F. I agree that any Borrower is authorized to modify the terms of this Agreement or any other Line of Credit document.
- G. You may inform any party who guarantees this Line of Credit of any loan accommodations, renewals, extensions, modifications, substitutions, or future advances.

No delay or forbearance on your part in exercising any of your rights or remedies will be construed as a waiver by you, unless such waiver is in writing and is signed by you.

29. TAX DEDUCTIBILITY. I should consult a tax advisor regarding the deductibility of interest and charges under this Line of Credit.

30. PERIODIC STATEMENTS. If I have an outstanding balance on my account or have any account activity, you will send me a periodic statement at the end of each Billing Cycle. This periodic statement will reflect, among other things, credit advances, finance charges, other charges, payments made, other credits, my previous account balance

SIGNATURES. I understand that terms following a ☐ only apply if checked. By signing, I agree to the terms of this Agreement and acknowledge receipt of a copy of this Agreement.

BORROWER:

X David S. Clancy
DAVID S. CLANCY

LENDER:

X Brian J. Michel
BRIAN J. MICHEL, VICE PRESIDENT

YOUR BILLING RIGHTS KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error problem appeared. You can telephone us, but doing so will not preserve your rights.

Equal Housing Lender
©2000 Bankers Systems, Inc., ST. CLOUD, MN

FORM HE-V-D 2/7/2002

(page 3)

and my new account balance. The periodic statement will also identify my Minimum Payment for the cycle and the date it is due (Payment Date).

31. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay this Line of Credit is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on this Line of Credit, or any number of us together, to collect on this Line of Credit. Extending this Line of Credit or new obligations under this Line of Credit, will not affect my duty under this Line of Credit and I will still be obligated to pay this Line of Credit. The duties and benefits of this Line of Credit will bind and benefit the successors and assigns of you and me.

32. INTEGRATION AND SEVERABILITY. This Agreement is the complete and final expression of the agreement. If any provision of this Agreement is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

33. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Agreement.

34. NOTICE, FINANCIAL REPORTS, AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address above, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Line of Credit and to confirm your lien status on any Property. Time is of the essence.

35. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably feel you need to decide whether to continue this Line of Credit. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

36. APPLICABLE LAW. This Agreement is governed by: THE LAWS OF SOUTH CAROLINA, THE UNITED STATES OF AMERICA AND, TO THE EXTENT REQUIRED, BY THE LAWS OF THE JURISDICTION WHERE THE PROPERTY IS LOCATED.

37. OTHER TERMS. If checked, the following addenda are attached to and made a part of this Agreement:

- A. ☐ Automatic Withdrawal
- B. ☐ Conversion Option
- C. ☐ Credit Insurance
- D. ☐ Discounted Rate
- E. ☐ Preferred Rate
- F. ☐

38. ADDITIONAL TERMS.

In your letter, give us the following information: (a) Your name and account number, (b) The dollar amount of the suspected error, (c) Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about. If you have authorized us to pay your bill automatically from your savings, checking, share draft or other account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your Credit Limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right: (a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and (b) The purchase price must have been more than \$50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

FEES APPENDIX

OTHER CHARGES

APPRAISAL FEE: \$225.00

CREDIT REPORT FEE: \$25.00

TITLE INSURANCE FEE: APPROXIMATELY \$3 PER \$1000 BORROWED

ATTORNEY FEE: \$250.00

FLOOD CERT. FEE: \$15.00

COURIER FEE: \$15.00

IF PAYMENT IS MADE MORE THAN 15 DAYS AFTER IT IS DUE, I AGREE TO PAY A LATE CHARGE OF 5.00% OF THE LATE AMOUNT.

RETURNED CHECK CHARGE: I AGREE TO PAY A FEE NOT TO EXCEED \$15.00 FOR EACH CHECK, NEGOTIABLE ORDER OF WITHDRAWAL OR DRAFT I ISSUE IN CONNECTION WITH THIS LINE OF CREDIT THAT IS RETURNED BECAUSE IT HAS BEEN DISHONORED.

STOP PAYMENT CHARGE: \$15.00

TERMINATION FEE: \$200.00

TERMINATION FEE: IF I CLOSE ACCOUNT WITHIN 12 MONTHS

BELOW MINIMUM ADVANCE FEE: \$10.00 IF ADVANCE ON ACCOUNT UNDER MINIMUM

BK 5393PG356

J. STANLEY CLAYPOOLE, P.A.

ATTORNEY AT LAW

2155 NORTH PARK LANE

N. CHARLESTON, S.C. 29406

Clency 04-1307

**This Mortgage is being re-recorded to add the Maturity Date and Loan Amount.

This document was prepared by CAROLINA FEDERAL SAVINGS BANK POST OFFICE BOX 30518 CHARLESTON, SC 29417

BK 418916082

FILED-RECORDED

RMC/RDD

JUN 16 AM 10:37

DORCHESTER COUNTY, SC

State of South Carolina

Space Above This Line For Recording Data

MORTGAGE

(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage (Security Instrument) is 06-19-2004..... and the parties, their addresses and tax identification numbers, if required, are as follows:

MORTGAGOR: BARBARA A. CLANCY
418 LAKEVIEW DRIVE
SUMMERVILLE, SC 29483

☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgages, their signatures and acknowledgments.

LENDER: CAROLINA FEDERAL SAVINGS BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
POST OFFICE BOX 30518
1108 ST ANDREWS BOULEVARD (29407) CHARLESTON, SC 29417

2. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender the following described property:
T.M.S. # 137-07-023

FILED-RECORDED
RMC/RDD
2006 JUN -5 PM 3:05
HANNAH L. BAILEY
DORCHESTER COUNTY, SC

The property is located in DORCHESTER at 117 SOUTH CEDAR STREET
(County)
..... SUMMERVILLE South Carolina 29483
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 259,940.00..... This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note.
4. SECURED DEBT AND FUTURE ADVANCES. The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).)
HOME EQUITY LINE OF CREDIT # 0244015870
Maturity Date 6/10/2009
Loan Amount \$258,940.00

BK 5393PG357 BK 4189PG083

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.
- C. All other obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

In the event that Lender fails to provide any necessary notice of the right of rescission with respect to any additional indebtedness secured under paragraph B of this Section, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument (but does not waive the security interest for the debts referenced in paragraph A of this Section).

5. **MORTGAGE COVENANTS.** Mortgagor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Mortgagor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Mortgagor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees to make all payments when due and to perform or comply with all covenants. Mortgagor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

Claims Against Title. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

Authority to Perform. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Mortgagor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

Condemnation. Mortgagor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Mortgagor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

BK 5393PG358

BK 4189PG084

Financial Reports and Additional Documents. Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.
7. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.
8. **DEFAULT.** Mortgagor will be in default if any of the following occur:

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Mortgagor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Mortgagor fails to maintain required insurance on the Property; (b) Mortgagor transfers the Property; (c) Mortgagor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Mortgagor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Mortgagor dies; (f) if more than one Mortgagor, any Mortgagor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Mortgagor and subjects Mortgagor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

9. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Mortgagor is in default. In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

10. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Mortgagor breaches any covenant in this Security Instrument, Mortgagor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, reasonable attorneys' fees of not more than 15% of the unpaid debt when it is referred for collection to an attorney who is not a salaried employee of the Lender, court costs, and other legal expenses allowed by law. To the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay for any recordation costs of such release.

11. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Mortgagor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Mortgagor shall immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
12. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

BK 5393PG359 4189PG085

13. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.
14. **SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.
15. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.
16. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.
17. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
18. **APPLICABLE LAW.** This Security Instrument is governed by the laws as agreed to in the Secured Debt, except to the extent required by the laws of the jurisdiction where the Property is located, and applicable federal laws and regulations.
19. **RIDERS.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument.
- (Check all applicable boxes)
- ☐ Assignment of Leases and Rents ☐ Other
20. ☐ **ADDITIONAL TERMS.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

Barbara A. Clancy (Seal) (Seal)
 (Signature) BARBARA A. CLANCY (Date) (Signature) (Date)

Signed, sealed and delivered in the presence of:

Sammy Seibert *Heather Felicini*
 (Witness) (Witness)

PROBATE:

STATE OF SOUTH CAROLINA, ... COUNTY OF CHARLESTON) ss.
 Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof

Sworn to and subscribed before me this 10TH day
 of JUNE, 2004.

Heather Felicini (Seal) *Sammy Seibert*
 Notary Public for South Carolina
 My commission expires: 01/14/12

BK 796086

Exhibit "A"

BK 5393PG360

All that lot, piece, or parcel of land, with the buildings thereon, situate, lying and being in the Town of Summerville, in the County of Dorchester (formerly Berkeley), in the State aforesaid; measuring and containing sixty-three (63) feet, six inches, in front on Black Jack Street, now known as Cedar Street, and the same on the back line, by two hundred and ten (210) feet in depth, be the said dimensions more or less; butting and bounding, Northwest on Black Jack Street, now known as Cedar Street, Northeast on Lands now or formerly of John H. Grainger, Southeast on lands now or formerly of Thaddeus W. Phelon, and Southwest on lands now or formerly of the Estate of C.H. Komahrens.

Being the same property conveyed to William E. Clancy and Barbara Anne Clancy by deed of John Grainger Lanneau, George Johnston Lanneau, and Jessie L. Finucan on March 20, 1981 and recorded on March 23, 1981 in book 436 at page 118 of the Dorchester County RMC office. Thereafter being the same property conveyed to the Mortgagor herein, Barbara Anne Clancy, by deed of distribution of William E. Clancy on January 25, 1990 and recorded on January 25, 1990 in book 717 at page 101 of the Dorchester County RMC office.

TMS: 137-07-07-023

Initials: _____

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 11th
Day of Sept 2007
at 10:57 AM and recorded
in book 4187 page 82
LINDA T. MESSERY
REGISTER OF MESNE CONVEYANCES

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER

FILED/RECORDED
August 18, 2009
DORCHESTER COUNTY
REGISTER OF DEEDSNOTE and MORTGAGE
MODIFICATION AGREEMENT

Loan #: 02-44015970

117 South Cedar Street, Summerville, SC 29483

THIS AGREEMENT made and entered into this 13th day of August, 2009, by and between, DAVID S. CLANCY and BARBARA A. CLANCY ("Mortgagors"), and CAROLINA FEDERAL SAVINGS BANK ("Mortgagee");

WHEREAS, DAVID S. CLANCY did execute and deliver its certain Promissory Note dated June 10, 2004, in the original principal amount of TWO HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED FORTY and 00/100 DOLLARS (\$258,940.00), ("Promissory Note"), payable to the order of Mortgagee said Note being due and payable on June 10, 2009; and with a current principal balance of \$237,990.52;

WHEREAS, BARBARA S. CLANCY did deliver as security for its Promissory Note that certain Mortgage dated June 10, 2004, in the amount of TWO HUNDRED FIFTY-EIGHT THOUSAND NINE HUNDRED FORTY and 00/100 DOLLARS (\$258,940.00), and recorded in the RMC Office for Dorchester County in Book 5393, Page 356 on June 16, 2004; and

WHEREAS, Mortgagors and Mortgagee are desirous of modifying said Note and Mortgage, being hereby acknowledged, the parties hereto agree as follows:

NOW THEREFORE, in consideration of the promises contained herein and other good and valuable consideration and the sum of (\$2,000.00 toward accrued interest, \$7.00 recording fee for a total of \$2,007.00) the receipt and sufficiency being hereby acknowledged, the parties hereto agree as follows:

1. We are hereby extending the loan to August 5, 2019.
2. The interest rate will change from Prime + 1.00% with a 5.00% floor to 6.50% fixed for 5 years and will re-price on August 5, 2014 to the 5-year Treasury Constant Maturity + 4.00%. There will be a 6.50% floor.
3. Monthly payments will change from Interest only to Principal & Interest and will be based on a 25- year amortization.
4. There will be 119 monthly payments of \$1,618.72 beginning September 5, 2009 and 1 balloon payment of \$186,318.33 on August 5, 2019.
5. The loan will be transferred from the Consumer Loan System to the Commercial Loan System. The accrual will be 365/360. The payment due date will change from the 20th of the month to the 5th of the month. The accrued interest due through August 12, 2009 is \$5,296.11 and with the \$2,000.00 paid toward interest, this leaves \$3,296.11 interest due that will be transferred to the Commercial Loan System. The outstanding late charges of \$241.97 will also be transferred to the Commercial Loan System.
6. This modification shall not constitute a waiver of any other provisions of the Note and Mortgage or any rights that Mortgagee may have under the Note and Mortgage arising from Mortgagor's actions or inactions prior to or subsequent to such modification.
7. All of the terms and conditions of the Note and Mortgage and all the other lien documents in favor of the said Note and Mortgage shall remain in full force and effect, and the same are hereby in all other respects republished, ratified, and confirmed.

IN WITNESS WHEREOF, the parties hereto have set their hand and seals this 13th day of August, 2009.

IN THE PRESENCE OF:

Donna Schwein
Emily Martin

MORTGAGORS:

David S. Clancy
David S. Clancy
Barbara A. Clancy
Barbara A. Clancy

IN THE PRESENCE OF:

meabon
Robert Lyle

MORTGAGEE: Carolina Federal Savings Bank

[Signature]
By: Stephen C. Herman
For: Carolina Federal Savings Bank
Its: Chief Lending Officer

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on August 13, 2009 by David S. Clancy.

Christina F. Adams
Notary Public for South Carolina
My Commission Expires: 3/6/11

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on August 13, 2009 by Barbara A. Clancy

Christina F. Adams
Notary Public for South Carolina
My Commission Expires: 3/6/11

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Acknowledgement

This instrument was acknowledged before me on August 13, 2009 by Stephen C. Herman for Carolina Federal Savings Bank.

Christina F. Adams
Notary Public for South Carolina
My Commission Expires: 3/6/11

Trial Exhibit 17

000577

0589

3/29/10

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTERIN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-18-441CAROLINA FEDERAL
SAVINGS BANK
Plaintiff
vsDAVID S. CLANCY, BARBARA
A. CLANCY, a/k/a BARBARA
ANNE CLANCY, SOUTHCOAST
COMMUNITY BANK and
JOAN GEANURACOS

Defendant

2010 MAR 29 PM 1:03
CLERK OF COURT
DORCHESTER COUNTY**ANSWER OF THE DEFENDANTS, DAVID S. CLANCY AND BARBARA A. CLANCY**

The defendants, David S. Clancy and Barbara A. Clancy, would respond to the complaint of the plaintiff as follows:

1. That each and every allegation contained in the complaint not admitted, qualified or otherwise explained is hereby denied.
2. That the allegations of paragraphs First and Second of the complaint are admitted.
3. That the defendants believe that the allegations of paragraphs third and fourth are probably true, but, have not independently confirmed certain information contained in these paragraphs such as recording, relative status between the competing claims and other matters and demand strict proof thereof. Defendants do admit to executing mortgages to the defendants named in paragraphs third and fifth.
4. That the allegations of paragraphs fifth and sixth of the complaint are hereby admitted.
5. That the allegations of paragraph seventh are outside the knowledge of the defendants and the defendants can neither admit or deny the allegations regarding recording and demand strict proof thereof.
6. That as to the allegations of paragraph eighth, the defendants admit that the note and mortgage were modified, but, lack information regarding recording and

DD
Page 14
2 pages



000578

0590

demand strict proof thereof as to those allegations.

7. That no response is required to paragraph ninth as the documents speak for themselves and defendants demand strict proof thereof.
8. That as to the allegations of paragraph tenth, the defendants admit that they are not current on payments to the plaintiff and that the plaintiff has elected to pursue foreclosure of the note and mortgage in this matter.
9. That the allegations of paragraph eleventh are denied as no accounting or other information is set forth or attached to the complaint, and defendants have no way to determine the correctness of the calculations, the reasonableness of charges or other indebtedness and defendants demand that plaintiff be required to strictly account and prove all charges and expenses claimed to be owed.
10. That defendants have no knowledge of the allegations of paragraph twelfth, but, believing that Mark W. McKnight is both a good and honest attorney do not question the allegations contained therein nor require strict proof of his employment.

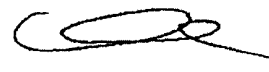
DM
Page 24
2/20/20

WHEREFORE, have fully responded to the complaint the defendants pray:

- a. That the complaint be dismissed.
- b. That if the complaint not be dismissed, that the plaintiff be required to prove by good, complete and competent evidence the allegations contained in the complaint.
- c. For such other and further relief as to the Court seems just and proper.

Charleston, South Carolina

March 22, 2010



D. Nathan Davis
Davis Law SC
711-A St. Andrews Blvd.
Charleston, S. C. 29407
843-571-4042 Office
888-821-9554 Facsimile
Nathan@davislawsc.com
Attorney for David Clancy
Barbara A. Clancy
Court ID # 1563

Trial Exhibit 18

000580

0592

Owner Information

CERCOPELY MARY LOU & DAVID S CLA
209 W 7TH NORTH ST APT 13A
SUMMERVILLE, SC 29483-6646

Payment Information

Status	Unpaid
Payment Date	
Amount Paid	\$0.00

Property Information

Map No.	137-07-07-023-000-C
Notice No.	R-2019-00021914-00
Description	S CEDAR ST 117
District	207
Appraised Value	\$287,500.00
Assessed Value	\$17,250.00

Bill Information

Record Type	Real
Tax Year	2019
Receipt	21914

Taxes

Base Taxes	\$6,897.94
Penalty	\$206.94
Total Due	\$7,104.88

000581





DORCHESTER COUNTY TREASURER
CINDY L. CHITTY
 201 JOHNSTON ST. • SAINT GEORGE SC 29477-2412
 500 NORTH MAIN ST. • SUMMERVILLE SC 29485
 TEL: (843) 563-0165
 Fax: (843) 563-0131

2019 REAL ESTATE TAX NOTICE

CHANGE OF ADDRESS

INFORMATION FOR CHANGE OF ADDRESS PLEASE PRINT BELOW

CHANGE

OF

ADDRESS

ONLY

Signature

Phone

IF CHANGE OF ADDRESS, RETURN WITH PAYMENT COUPON

NOTICE NUMBER & YEAR	TAX DIST	MAP-BLOCK-PARCEL NO.	MORTGAGE CODE & MTG CO	DATE OF NOTICE	RATIO	
R-2019-00021914-00	207	137-07-07-023-000-C	0	9/25/2019 12:00:00 AM	6%	
# ACRES	# LOTS	ASSESSED VALUE OF LAND	#IMPS	ASSESSED VAL OF IMPS	TOTAL ASSESSMENT	PROPERTY CLASSIFICATION
0.31	0	13,980		3,270	17,250	17,250

YOUR TAX DISTRIBUTION		MESSAGES	
16.93%	County Operating	54.00	\$947.01
1.01%	County Debt	5.90	\$101.78
1.69%	County Library	5.50	\$94.86
2.09%	County Capital Improvements	6.80	\$117.30
3.0%	Children in Crisis	1.00	\$17.25
5.8%	Senior Citizens Centers	1.90	\$32.78
55.47%	School Operating	163.60	\$3,167.10
16.30%	School Debt	53.00	\$914.25
2.62%	School Vocational	9.20	\$158.70
1.01%	School Trident Tech	3.30	\$56.93
100.00%	Sub-Total	.00	\$5,607.08
	Total City	59.50	\$1,026.39
	Less SC Homestead	.00	\$0.00
	Less School Tax Credit Savings	.00	\$0.00
	Plus SWUF (Solid Waste User Fee)	.00	\$75.00
	Plus SWCF (Solid Waste Collection Fee)	.00	\$118.20
	Plus STWMF (Stormwater Management Fee)	.00	\$70.36
	Grand Total	.00	\$5,897.94

Prop Loc: S CEDAR ST 117

MESSAGES
 If your property has been sold, contact your closing attorney for your responsibilities.

TOTAL DUE until Jan 15, 2020	\$6,897.94
Jan 16 - Feb 3, 2020	\$7,104.88
Feb 4 - Mar 16, 2020	\$7,587.74
Delinquent thru Apr 28, 2020	\$7,932.64
PRIOR YEAR TAX ON THIS PROPERTY: \$0.00 Includes taxes and fees	

ACCORDING TO SC CODE OF LAWS SEC. 12-45-430, AMOUNT MUST BE PAID IN FULL BEFORE DUE DATE OR NO RECEIPT CAN BE ISSUED. PARTIAL PAYMENTS ARE NOT ACCEPTED

To Pay by Credit Card Call 1-888-544-9434 or Visit www.dorchestercountytaxesonline.com

There will be a nominal fee charged for this service. If you pay online you WILL NOT be mailed a paid receipt. You can print it from website.

RETURN THIS STUB WITH PAYMENT

DORCHESTER COUNTY REAL ESTATE TAX NOTICE

NOTICE NUMBER & YEAR	TAX DIST	MAP-BLOCK-PARCEL NO.	MORTGAGE CODE & MTG CO	DATE OF NOTICE	RATIO
R-2019-00021914-00	207	137-07-07-023-000-C	0	9/25/2019 12:00:00 AM	6%

TOTAL DUE BY Jan 15, 2020 **\$6,897.94**

DORCHESTER COUNTY, SC - Due Payable Upon Request
Please WRITE NOTICE NUMBER on check.

PENALTIES APPLY:

Jan 16 - Feb 3, 2020	\$7,104.88
Feb 4 - Mar 16, 2020	\$7,587.74
Delinquent Mar 17 thru Apr 28, 2020	\$7,932.64

MAKE CHECK PAYABLE TO: DORCHESTER COUNTY TREASURER

CERCOPELY MARY LOU & DAVID S CLA
 209 W 7TH NORTH ST APT 13A
 SUMMERVILLE, SC 29483-6646

DORCHESTER COUNTY TREASURER
 CINDY L. CHITTY
 PO BOX 63058
 CHARLOTTE NC 28263-3058

Internet Tax Bill 1/23/2020

000582

Trial Exhibit 19

000583

0595

ASSIGNMENT OF HOME EQUITY VARIABLE DRAW AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, the **FEDERAL DEPOSIT INSURANCE CORPORATION** (acting in any capacity, the "FDIC") **IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC**, at 550 17th Street, NW Washington, D.C. 20429-0002 (hereinafter referred to as "Assignor" or "Grantor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over to **CRE/ADC VENTURE 2012-1, LLC**, its successors and assigns (hereinafter referred to as "Assignee" or "Grantee"), at 2450 Broadway, 6th Floor, Santa Monica, California 90404, all right, title and interest in and to that certain:

HOME EQUITY VARIABLE DRAW AGREEMENT made by and between David S. Clancy (the "Borrower") and CAROLINA FEDERAL SAVINGS BANK (the "Lender") dated June 10, 2004 governing a line of credit in an amount up to \$258,940.00, as same may have been modified or amended.

TO HAVE AND TO HOLD THE SAME UNTO SAID CRE/ADC VENTURE 2012-1, LLC, ITS SUCCESSORS AND ASSIGNS.

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE, AND WITHOUT REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, OR BY OPERATION OF LAW, OF ANY KIND OR NATURE WHATSOEVER, BY THE FDIC IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC OR IN ITS CORPORATE CAPACITY. THE LOAN IS CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS, IMPLIED OR BY OPERATION OF LAW, BY ANY PERSON, INCLUDING THE FDIC OR ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS.

Dated as of December 11, 2012

ASSIGNOR:

**FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CAPACITY AS
RECEIVER FOR CAROLINA FEDERAL
SAVINGS BANK, CHARLESTON, SC**

By: 

Name: Vanessa A. Orta

Title: Attorney-in-Fact

CRE-ADC 2012-1
AMO Ref.: 3059.145
Loan Ref.: 244015970
AssetID: 10441000754
ServicerRef: 030289863

000584

0596



Trial Exhibit 20

000585

0597

ASSIGNMENT OF HOME EQUITY VARIABLE DRAW AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, the **CRE/ADC VENTURE 2012-1, LLC, LLC, a Delaware limited liability company**, whose address is 515 South Flower Street, 44th Floor, Los Angeles, CA 90071 (hereinafter referred to as "Assignor" or "Grantor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over to **NCP PILGRIM LLC, a Delaware limited liability company**, its successors and assigns (hereinafter referred to as "Assignee" or "Grantee"), whose address is 64 Wall Street, Suite 212, Norwalk, CT 06850, all right, title and interest in and to that certain:

HOME EQUITY VARIABLE DRAW AGREEMENT made by and between DAVID S. CLANCY and CAROLINA FEDERAL SAVINGS BANK dated June 10, 2004 governing a line of credit in an amount up to \$258,940.00, as same may have been modified or amended.

TO HAVE AND TO HOLD THE SAME UNTO SAID NCP PILGRIM LLC, ITS SUCCESSORS AND ASSIGNS.

Dated as of the 26 day of June, 2018.

CRE/ADC VENTURE 2012-1, LLC, LLC, a Delaware limited liability company

By ColFin 2013 CRE ADC Funding, LLC
Its Manager

By: 

Name: Mark M. Hedstrom
Title: Vice President

Matter: 117 South Cedar Street
Midland Loan Ref.: 30289863

000586

0598



Trial Exhibit 21

000587

0599



OMNIBUS ASSIGNMENT

The **FEDERAL DEPOSIT INSURANCE CORPORATION** (acting in any capacity, the "FDIC") **IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC**, at 550 17th Street NW, Washington, D.C. 20429-0002 (hereinafter referred to as "Assignor" or "Grantor"), for value received, does by these presents, grant, bargain, sell, assign, transfer and set over "*as-is*", "*where-is*", *without recourse, covenant, representation or warranty* of any kind or nature, express or implied to **CRE/ADC Venture 2012-1, LLC**, a Delaware limited liability company, its successors and assigns, at 2450 Broadway, 6th Floor, Santa Monica, California 90404, all right, title and interest in and to the loan documents (the "Loan Documents") associated with that certain loan made by Carolina Federal Savings Bank to David S. Clancy dated June 10, 2004 in the amount of \$258,940.00, as same may have been modified or amended (the "Loan").

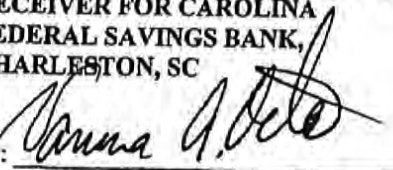
TO HAVE AND TO HOLD THE SAME UNTO SAID CRE/ADC VENTURE 2012-1, LLC, ITS SUCCESSORS AND ASSIGNS.

THIS ASSIGNMENT IS MADE WITHOUT RECOURSE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL, BY THE FDIC IN ITS CAPACITY AS RECEIVER FOR CAROLINA FEDERAL SAVINGS BANK, CHARLESTON, SC OR IN ITS CORPORATE CAPACITY. THE LOAN DOCUMENTS ARE CONVEYED "AS IS" AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING AS TO COLLECTABILITY, ENFORCEABILITY, VALUE OF COLLATERAL, ABILITY OF ANY OBLIGOR TO REPAY, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, BY ANY PERSON, INCLUDING THE FDIC OR ITS OFFICERS EMPLOYEES, AGENTS OR CONTRACTORS.

Dated as of the 11th day of December, 2012.

ASSIGNOR:

**FEDERAL DEPOSIT INSURANCE
CORPORATION IN ITS CAPACITY AS
RECEIVER FOR CAROLINA
FEDERAL SAVINGS BANK,
CHARLESTON, SC**

By: 

Name: Vanessa A. Orta

Title: Attorney-in-Fact

CRE/ADC 2012-1
AMO Ref: 3059.145
Loan Ref: 244015970
AssetID: 10441000754
ServicerRef: 030289863

NCP Pilgrim 2-7-19 000771

000588

0600

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APPELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA
FEDERAL CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN
GEANURACOS and DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the ***Record on Appeal*** contains all material proposed to be included by any of the parties, not any other material.

/s Robert B. Varnado

Robert B. Varnado
(S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7301
Attorneys for Appellants

May 17, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APPELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC,..... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA
FEDERAL CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN
GEANURACOS and DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY and DAVID SEAN
CLANCY

are the..... Appellants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the ***Record on Appeal*** the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following, on the 19th Day of May 2020 or VIA EMAIL IF SO INDICATED.

Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Respondent

VIA EMAIL

May 19, 2021
Mt. Pleasant, South Carolina

/s Robert B. Varnado

Robert B. Varnado (S.C. Bar # 0007850)
BROWN & VARNADO, LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellants

RECEIVED

Jun 18 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA
FEDERAL CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN
GEANURACOS and DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the ***Record on Appeal*** contains all material proposed to be included by any of the parties, not any other material.

/s Robert B. Varnado

Robert B. Varnado
(S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7301
Attorneys for Appellants

May 17, 2021

RECEIVED

Sep 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

APPELLANTS' FINAL BRIEF

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

Other Counsel of Record:
Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Respondent

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Introduction.....	1
Statement of Issues on Appeal	2
Statement of the Case	2
Standard of Review	5
Argument	6
I. The Dorchester County Master in Equity’s interpretation of 12 U.S.C. 1821(d)(13)(D) was erroneous and violates the Supremacy Clause of the United States Constitution.	10
II. No “independent” state ground from 12 U.S.C. § 1821(d)(13)(D) exists.	11
III. There exists no “firmly established” and “strictly followed” state grounds to support the Master in Equity’s decision.	15
Conclusion	21
Transfer to Supreme Court	23

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Abie State Bank v. Bryan</i> , 282 U.S. 765 (1931).....	8, 11, 15
<i>Ake v. Oklahoma</i> , 470 U.S. 68 (1985)	7, 9
<i>Allison v. WL Gore & Associates</i> , 394 S.C. 185, 714 S.E.2d 547 (2011)	17
<i>ATC South, Inc. v. Charleston County</i> , 380 S.C. 191, 669 S.E.2d 337 (2008).....	18
<i>Barr v. City of Columbia</i> , 378 U.S. 146 (1964).....	15
<i>Beard v. Kindler</i> , 558 U.S. 53 (2009).....	9
<i>Caminetti v. United States</i> , 242 U. S. 470 (1917).....	2
<i>Charleston Co. Parks Rec. Comm'n v. Somers</i> , 319 S.C. 65, 459 S.E.2d 841 (1995)	8
<i>Connecticut National Bank v. Germain</i> , 503 U.S. 249 (1992)	11
<i>Crosby v. National Foreign Trade Council</i> , 530 U. S. 363 (2000)	22
<i>Deep Keel v. Atlantic Private Group</i> , 413 S.C. 58, 773 S.E.2d 607 (2015).....	21
<i>Dittmer Properties, L.P. v. F.D.I.C.</i> , 708 F.3d 1011 (8th Cir. 2013)	8, n.2
<i>Elgin v. Department of Treasury</i> , 576 U.S. 1 (2012).....	1, 9
<i>Free Enterprise Fund v. Public Company Accounting Oversight Board</i> , 561 U.S. 477 (2010).....	9
<i>Freeman v. F.D.I.C.</i> , 56 F.3d 1394 (D.C. Cir. 1995)	8, n.2
<i>Freemantle v. Preston</i> , 398 S.C. 186, 728 S.E.2d 40 (2012).....	18
<i>Gantt v. Selph</i> , 423 S.C. 333, 814 S.E.2d 523 (2018).....	17
<i>Grant v. Grant</i> , 12 S.C. 29, 1879 WL 4923 (1879).....	19, n. 9
<i>Harris v. Reed</i> , 489 U.S. 255 (1989)	12
<i>Hathorn v. Lovorn</i> , 457 U.S. 255 (1982).....	15

<i>Hitachi Electronic Devices USA, Inc. v. Platinum Technologies, Inc.</i> , 366 S.C. 163, 621 S.E.2d 38 (2005)	18-19
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	16
<i>James v. City of Boise, Idaho</i> , 136 S.Ct. 685, 2016 WL 280883 (2016)	11, n.4
<i>Joint Venture v. Onion</i> , 938 F.2d 35 (5th Cir. 1991)	8, n.2
<i>Kalb v. Feuerstein</i> , 308 U.S. 433 (1940)	14, 15
<i>Langley v. FDIC</i> , 484 U.S. 86 (1987).....	11, n.4
<i>Lee v. Kemna</i> , 534 U.S. 362 (2002)	9
<i>Lever v. Lighting Galleries, Inc.</i> , 374 S.C. 30, 647 S.E.2d 214 (2007).....	21, n.11
<i>Lloyd v. F.D.I.C.</i> , 22 F.3d 335 (1st Cir. 1994).....	8, n.2
<i>Longshoremen v. Davis</i> , 476 U.S. 380 (1986)	passim
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	18, 19, n.9
<i>McCarthy v. FDIC</i> , 348 F.3d 1075 (9th Cir.2003)	13, n.5
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	9, 12
<i>Moriarty v. Garden Sanctuary Church of God</i> , 341 S.C. 320, 534 S.E.2d 672 (2000)	9
<i>Murphy v. National Collegiate Athletic Assn.</i> , ___ U.S. ___, 138 S.Ct. 1461 (2018)	22
<i>Nitro-Lift Technologies, L.L.C. v. Howard</i> , 568 U.S. 17 (2012)	11, n.4
<i>Northwestern Bank v. Neal</i> , 271 S.C. 544, 248 S.E.2d. 585 (1979)	13, 19
<i>Oneale v. Thornton</i> , 6 Cranch 53 (1810)	11
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	9, 12
<i>Platt v. Carroll</i> , 125 S.C. 493, 119 S.E. 180 (1923).....	21, n.11

<i>Puerto Rico Dept. of Consumer Affairs v. ISLA Petroleum Corp.</i> , 485 U. S. 495 (1988).....	22
<i>Rivers v. Roadway Express, Inc.</i> , 511 U.S. 298, 312 (1994)	7
<i>Roberts v. LaConey</i> , 375 S.C. 97, 650 S.E.2d 474 (2007).....	19
<i>Rogers Townsend & Thomas, PC v. Peck</i> , 419 S.C. 240 797 S.E.2d 396 (2017)	19
<i>Rubin v. United States</i> , 449 U.S. 424 (1981)	11
<i>Sloan v. Hardee</i> , 371 S.C. 495, 640 S.E.2d 457 (2007)	16
<i>Sloan v. School District of Greenville Co.</i> , 342 S.C. 515, 537 S.E.2d 229 (Ct. App. 2000)	20
<i>State v. Oxner</i> , 391 S.C. 135, 705 S.E. 2d 51 (2011).....	17
<i>Tillman v. Resolution Tr. Corp.</i> , 37 F.3d 1032 (4th Cir. 1994)	8, n.2
<i>Thompson v. S.C. Comm’n on Alcohol & Drug Abuse</i> , 267 S.C. 463, 229 S.E.2d 718 (1976)	20
<i>Twelfth RMA Partners, L.P. v. National Safe Corp.</i> , 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999)	13
<i>United States v. Goldenberg</i> , 168 U. S. 95 (1897)	11
<i>United States v. Ron Pair Enterprises, Inc.</i> , 489 U. S. 235 (1989)	11
<i>U.S. Bank Trust Nat. Ass’n v. Bell</i> , 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009)	19, n.8
<i>Willner v. Dimon</i> , 849 F.3d 93 (4th Cir. 2017).....	8, n.2
<i>Whitmore v. Arkansas</i> , 495 U. S. 149 (1990)	19, n.9

CONSTITUTIONS

U.S. Const. Art. VI, Clause 2 (Supremacy Clause)	passim
S.C. Const. Art. V, § 11	17

STATUTES, REGULATIONS and RULES

12 U.S.C. § 1821(d)(2)(A)(i)-(ii).	10
12 U.S.C. § 1821(d)(2)(G)(i)(II).....	8, n.2
12 U.S.C. § 1821(d)(13)(D)(i)	passim
12 U.S.C. § 1823(d)(3)(A).....	3
12 U.S.C. 1823(d)(4)	3
12 U.S.C. 1823(e)(1).....	3
S.C. Code Ann. § 14-8-200(b)(3)	3
S.C. Code Ann. § 36-4-104(1).....	18
S.C. Code Ann. § 36-9-203(g)	18
S.C. Code Ann. § 36-9-309(4)	18
S.C. Code Ann. § 36-9-313(h)	18
Rule 204, South Carolina Appellate Court Rules	22
Rule 53(b), South Carolina Rules of Civil Procedure	16
Rule 902(9), South Carolina Rules of Evidence	21
Rule 1003, South Carolina Rules of Evidence	21

OTHER AUTHORITIES

3 J. Story, <i>Commentaries on the Constitution of the United States</i> § 1831 (1st ed. 1833).....	22
Report No. AUD-12-012, Background, ¶. 2, September 2012	13, n.4 (14)

INTRODUCTION

Under the Supremacy Clause [U.S. Const. Art. VI, cl. 2], the Master’s order is not merely *erroneous*, it is beyond his *power* – and is therefore **void**. This conclusion does not apply to pre-emption generally, but only to those laws that pre-empt a State’s actual adjudicatory or regulatory power. *Longshoremen v. Davis*, 476 U.S. 380, 391 (1986).

It is clearly within Congress’ powers under the Constitution to establish an exclusive federal forum to adjudicate issues of federal law in a particular area that Congress has the authority to regulate. *Longshoremen*, 476 U.S. at 388. Whether Congress has done so *in this specific case* is the question of law that must be answered when a party claims that a state court’s adjudicatory power is pre-empted.

Such a determination of Congressional intent – and of the boundaries and character of a pre-empting congressional enactment – is one of federal law. *Id.* The courts are to examine whether “the text ... expressly limit[s] the jurisdiction that other statutes confer.” *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 489 (2010); *see also, e.g., Elgin v. Department of Treasury*, 576 U.S. 1, 25 (2012) (explaining that, “[w]hen dealing with an express preclusion clause ... we determine the scope of preclusion simply by interpreting the words Congress has chosen.”).

Therefore, the resolution of the matter “begins where all such inquiries must begin: with the language of the *statute* itself.” *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (emphasis added). In this case, it is also where the inquiry should end.

First, the relevant statute declares that “no court shall have jurisdiction over any claim or action for payment from, or any action seeking a determination of rights with

respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver.” 12 U.S.C. § 1821(d)(13)(D)(i). And, most critically, the Master does not nor cannot point to a single independent and adequate state ground in support of his decision. *See Beard v. Kindler*, 558 U.S. 53, 60 (2009).

ISSUES ON APPEAL

1. Was the Dorchester County Master in Equity’s interpretation of a federal law, 12 U.S.C. § 1821(d)(13)(D), not merely erroneous, but also void under the Supremacy Clause of the United States Constitution?
2. Does an “independent” state ground from 12 U.S.C. § 1821(d)(13)(D) exist?
3. Does there exist any “firmly established” and “strictly followed” state grounds to support the Master in Equity’s decision?

STATEMENT OF THE CASE

As it cannot be disputed that “the sole function of the courts is to enforce [a statute] according to its terms,” *Id.* (citing *Caminetti v. United States*, 242 U. S. 470, 485 (1917)); *see also Evans v. State*, 344 S.C. 60, 543 S.E.2d 547 (2001). Thus, few facts are needed to appreciate the constitutional issue here.

On June 10, 2004, Barbara Clancy executed a mortgage (“Mortgage”) on 117 South Cedar Street, Summerville, South Carolina (“Property”) to secure repayment on a Home Equity Line of Credit (“HELOC”) granted her son, David Clancy, by Carolina Federal Savings Bank¹ (“CFSB”), insured by the FDIC, not to exceed \$258,940.00. [R pp. 566-574].

¹ Carolina Federal Savings Bank (CFSB) was chartered in August 1960 as a federal credit union under the name of Sacred Heart of Charleston, S.C. Federal Credit Union. In August

Thereafter, CFSB's federal regulator, the Office of the Comptroller of the Currency ("OCC") closed CFSB; pursuant to the Financial Institutions Recovery Reform and Enforcement Act ("FIRREA"), Pub. L. 101-73, 103 Stat. 183 (1989) and it appointed the Federal Deposit Insurance Corporation ("FDIC" or "Corporation") as receiver ("FDIC-R") on June 8, 2012. *See* 12 U.S.C. § 1821(c)(6)(B). [R. p. 481-482].

Upon its appointment, and by operation of law, the FDIC-R succeeded to "all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and title to the books, records, and assets of any previous conservator or other legal custodian of such institution," 12 U.S.C. § 1821(d)(2)(A)(i)-(ii). [R. p. 3].

Pursuant to 12 U.S.C. § 1823(d)(1), the FDIC has the legal right to purchase Clancy's HELOC and shall, by operation of law, assume "all of the rights, powers, privileges, and authorities of the [FDIC] as receiver under sections 1821 and 1825(b) of this title," by acquiring such asset. 12 U.S.C. § 1823(d)(3)(A). The FDIC-R or FDIC may "acquire, directly or indirectly, ownership or control through—(i) an acquisition of shares; (ii) an acquisition of assets or assumption of liabilities; (iii) a merger or consolidation; or (iv) any similar transaction." 12 U.S.C. 1823(d)(4). To effectuate the broad powers, "[n]o agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired ... by purchase or as receiver of any insured depository institution, shall be valid" to defeat or diminish the interest of the FDIC "unless such agreement (A) is in writing, (B) was executed by the depository institution and any person claiming an adverse interest

1999, the credit union converted its charter to a thrift and changed its name to Carolina Federal Savings Bank.

thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution, (C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and (D) has been, continuously, from the time of its execution, an official record of the depository institution.” 12 U.S.C. 1823(e)(1).

FDIC-R is granted additional rights and duties under that, *inter alia*, declare “no court shall have jurisdiction over any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver.” 12 U.S.C. § 1821(d)(13)(D)(i).

To effectuate such an “acquisition,” FDIC-R formed ‘CRE/ADC Venture 2012-1, LLC’ (“Company”) on December 5, 2012 as its sole member. Pursuant to the Contribution Agreement, the FDIC-R “*contributed in part and sold in part* to the Company [FDIC-R’s] the right title and interest to [certain assets]” including Clancy’s HELOC. *See* Private Owner Interest Sale and Assignment Agreement (“Agreement”). The Company then issued a promissory note payable to the FDIC in the amount of \$71 million, due December 11, 2019. [R. p. 410].

After conducting a sealed bid auction for a forty percent (40%) limited liability company interest in the Company, the FDIC selected Colony Capital Acquisitions, LLC (“CCA”) as the successful bidder. CCA, as required under the Agreement, formed ColFin 2012 CRE ADC-1 Holdco, LLC (“Private Owner” or “PO”) as the 40% limited liability company owner; FDIC-R retained a sixty percent (60%) interest in the Company. The Agreement expressly states “that the Private Owner may not assign this Agreement or any

of its rights, interests or obligations hereunder. Any purported assignment or delegation in violation of this Agreement shall be null and *void ab initio*.”

On March 13, 2013, the FDIC-R filed an Assignment of Real Estate Mortgage, recorded in Dorchester County RMC Book 8718, Pages 33-37, effective December 11, 2012. The HELOC is not mentioned as part of the assignment. [R. p. 81].

On June 28, 2018, Midland Bank contacted Clancy to inform him that the servicing of his loan was being transferred to NCP Pilgrim, LLC. Thereafter, on October 25, 2018, NCP counsel, Ms. Lauren Williams, wrote Appellants, informing them that her client “had recently purchase the loan from the FDIC,” and demanded payment. [R. p. 530].

On November 15, 2018 Respondent filed a foreclosure action against Appellants in Dorchester County, stating it was as the “holder of said loan documents,” and seeking, *inter alia*, a declaratory judgment as to perfect its mortgage based on the following allegations in the complaint:

“March 8, 2013, the Note and Mortgage was assigned by Carolina to CRE/ADC Venture 2012-1, LLC, as recorded with the ROD in Book 8718 at Page 33 (Exhibit 4).” Complaint ¶ 12; and

“Thereafter, on or about August 23, 2018, CRE/ADC Venture 2012-1, LLC assigned the Note and Mortgage to NCP Pilgrim, LLC, as recorded with the ROD in Book 11512 at Page 126 (Exhibit 5).” Complaint ¶ 13.

[R. pp. 532-536.].

On January 3, 2019 Respondent filed a Proposed Order of Reference that states “Pursuant to an Order of the South Carolina Supreme Court, this Non-Jury matter is now referred to the Dorchester County Master In Equity with finality,” for the Dorchester County Clerk of Court to sign. The Clerk of Court signed the order of reference the next day. [R. p. 1]. Thereafter, on January 22, 2019, the Appellants timely answered with

defenses and counterclaims. [R. pp. 91-117]. The Master did not return the case to the Circuit Court.

At the trial, January 23, 2020, Appellant's counsel moved to dismiss the case, arguing that pursuant to subsection (i) of 12 U.S.C. § 1821(d)(13)(D), no court has jurisdiction over Respondent's declaratory judgment to determine "rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver." The Appellant's position is that the plain language of subsection (i) ousts jurisdiction to find "NCP is seeking to exercise its lawful authority to enforce the subject note and mortgage it was assigned by virtue of the assignment from CRE/ADC Venture 2012-1, LLC." [R. p. 15].

Although the entire statutory section moved upon is under one hundred words, the Master conceded: "I have not spent a long time on this because [Appellants] are just raising it this morning," and determined that "the statute appears to me to be talking about claims against the creditor. Not the debtor." [R. p. 457 (p. 14/line 20)].

The Master then determined he had jurisdiction over the foreclosure, but that the Appellants' counterclaim against Respondent under SCUTPA were barred under FIRREA. [R. p. 457]. The Master then took testimony as to the Respondent's right in the HELOC and Mortgage, allowing more than two additional months to obtain possession and present the note to the court. [R. pp. 463, 465].

Interpreting "FIRREA sections 1821(d)(3)-(13) require persons making claims *against* a failed financial institution – or seeking to adjudicate their rights *against* the failed institution to present their claims first to the FDIC through its administrative claims

process” – the Master denied the motion and ultimately awarded a judgment for the Respondent on July 13, 2020 for \$367,963.19, with interest accruing at \$35.28 per day. (emphasis in original). [R. pp. 20, 21].

Specifically, the Master’s Order of July 13, 2020 states: “First and foremost, NCP is not making a claim against the failed institution, Carolina Federal, or against the receiver, the FDIC, in this action. Instead, NCP is seeking to exercise its lawful authority to enforce the subject note and mortgage it was assigned by virtue of the assignment from CRE/ADC Venture 2012-1, LLC. Thus, I find the administrative claims process and the limitation on judicial review found in §1821(d)(13)(D) are not applicable.” [R. p. 15].

Petitioner timely moved to reconsider on July 23, 2020, citing *Ake v. Oklahoma*, 470 U.S. 68, 75 (1985), for the proposition that whether the Master had jurisdiction to declare “NCP is seeking to exercise its lawful authority to enforce the subject note and mortgage it was assigned by virtue of the assignment from CRE/ADC Venture 2012-1, LLC” is antecedent to a determination as to whether his interpretation of 12 U.S.C. § 1821(d)(13)(D)(i) was correct. [R. pp. 998-1007]. The Master denied Appellants Motion to Reconsider by his order of August 5, 2020. [R. pp. 48-50]. Appellants then timely appealed to the Court of Appeals on August 18, 2020. [R. pp. 144-177].

STANDARD OF REVIEW

It is clearly within Congress’ powers to establish an exclusive federal forum to adjudicate issues of federal law in a particular area that Congress has the authority to regulate² under the Constitution. *Longshoremen v. Davis*, 476 U.S. 380, 388. (1986).

² The Master concedes this point: “FIRREA was enacted in 1989 as an emergency measure to enable the FDIC to expeditiously resolve and liquidate the hundreds

Whether Congress has done so in this specific case is the question that must be answered, when a party claims (as here) that a state court's adjudicatory power is pre-empted. Such a determination of congressional intent and of the boundaries and character of a pre-empting congressional enactment is one of federal law. *Id.* Therefore, federal question raised by the Appellants [and before the Dorchester County Master in Equity], is purely one of statutory interpretation.

The issue of interpretation of a statute is a question of law for the court. *Charleston Co. Parks Rec. Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (holding the determination of legislative intent is a matter of law). Thus, courts are to examine whether “the text ... expressly limit[s] the jurisdiction that other statutes confer.” *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 489 (2010); *see also, e.g., Elgin v. Department of Treasury*, 576 U.S. 1, 25 (2012) (explaining that, “[w]hen dealing with an express preclusion clause ... we determine the scope of preclusion simply by interpreting the words Congress has chosen.”).

Although this Court is free to decide questions of law with no particular deference to the lower court, a fundamental tenet of the Supremacy Clause of the United States

of failed financial institutions throughout the country. *Tillman v. Resolution Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994). Specifically, FIRREA gives the FDIC the authority to exercise all rights, titles, powers, and privileges of the insured depository institution with respect to the assets of the institution, including the power to transfer any asset or liability of the institution. 12 U.S.C. §1821(d)(2)(A)(i) & (d)(2)(G)(i)(II). Courts across the United States have repeatedly ruled the FDIC's authority includes the power to foreclose on the property of a debtor held by the failed bank as collateral, and no court may enjoin the exercise of that power. *See e.g. Willner v. Dimon*, 849 F.3d 93, 106 (4th Cir. 2017); *Dittmer Properties, L.P. v. F.D.I.C.*, 708 F.3d 1011, 1017 (8th Cir. 2013); *Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399 (D.C. Cir. 1995); *Lloyd v. F.D.I.C.*, 22 F.3d 335, 336-37; 281-300 (1st Cir. 1994); *281-300 Joint Venture v. Onion*, 938 F.2d 35, 39 (5th Cir. 1991), *cert. denied*, 502 U.S. 1057 (1992).” [Order 7/13/20].

Constitution provides that “[t]he States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.” *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940); *see also Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000) (no particular deference to lower court to decide questions of law). Therefore, because “pre-emption, the practical manifestation of the Supremacy Clause, is always a federal question,” *Longshoremen v. Davis*, 476 U.S. at 388, any “asserted non-federal ground must independently and adequately support the judgment.” *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931).

To constitute an “independent” state bar, such a bar must rest on a purely state law ground. *See e.g. Michigan v. Long*, 463 U.S. 1032 (1983); *Ake v. Oklahoma*, 470 U.S. 68 (1985). A state procedural rule is “adequate” if it is “firmly established” and “regularly followed.” *Beard v. Kindler*, 558 U.S. 53, 60 (2009) (quoting *Lee v. Kemna*, 534 U.S. 362, 375 (2002)).

That determination, itself a federal question, must be addressed on the merits by our Supreme Court, subject to review by the United States Supreme Court (“SCOTUS³”). *See Michigan v. Long*, 463 U.S. at 1038-1040 (1983). Therefore, because Appellants’ principle issue involves a constitutional challenge to the state court’s adjudicatory powers, this Appeal should be transferred to the South Carolina Supreme Court pursuant to S.C. Code Ann. 14-8-200(b)(3).

ARGUMENT

³ As we are faced with interwoven questions of state and federal laws, for clarity the Appellants will refer to the U.S. Supreme Court as ‘SCOTUS’ to avoid any confusion with the South Carolina Supreme Court.

I. The Dorchester County Master in Equity’s interpretation of 12 U.S.C. 1821(d)(13)(D) was erroneous and violates the Supremacy Clause of the United States Constitution.

The relevant subsection of FIRREA, 12 U.S.C. § 1821(d)(13)(D)(i), is absolutely clear that the Court is without substantive jurisdiction over any claim or action of the type put forth in the Respondent’s action herein. The statute provides:

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over —

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or
- (ii) any claim relating to any act or omission of such institution or the [FDIC] as receiver.

Under sub-paragraph (i), there can be no dispute that CFSB was a “depository institution.” Nor can there exist any dispute that, pursuant to 12 U.S.C. § 1821(c)(6)(B), the Office of the Comptroller of the Currency [“OCC”] has statutory authority to appoint the FDIC as receiver. Therefore, there can be no dispute that upon its appointment, and by operation of law, on June 8, 2012 the FDIC-R succeeded to: “all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and title to the books, records, and assets of any previous conservator or other legal custodian of such institution,” 12 U.S.C. § 1821(d)(2)(A)(i)-(ii).

The error is absolutely clear, as the SCOTUS has “stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992); *United States v. Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241-242 (1989); *United States v. Goldenberg*, 168 U. S. 95, 102-103 (1897); *Oneale v. Thornton*, 6 Cranch 53, 68 (1810).

The Master simply rejected the plain language of the statute, which extends the jurisdictional bar in clause (i) to any (1) claim or (2) action for payment from or (3) any action seeking a determination of rights with respect to the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver.⁴ When the words of a statute are unambiguous, then, this first canon is also the last: “judicial inquiry is complete.” *Rubin v. United States*, 449 U.S. 424, 430 (1981); *see also In Re Estate of Brown*, 430 S.C. 474, 493, 846 S.E.2d 342, 352 (2020) (“[i]n construing a statute, we need not resort to rules of construction where the statute’s language is plain”).

II. No “independent” state ground from 12 U.S.C. § 1821(d)(13)(D) exists.

Because “pre-emption, the practical manifestation of the Supremacy Clause, is always a federal question,” [*Longshoremen*, 476 U.S. at 388], any “asserted non-federal ground must independently and adequately support the judgment.” *Abie State Bank* at 773.

⁴ Assuming, *arguendo*, there exists some ambiguity as to what defines “the assets of any depository institution for which the [FDIC] has been appointed receiver,” SCOTUS interprets assets to include the HELOC and Mortgage. *Langley v. FDIC*, 484 U.S. 86, 92 (1987). Therefore, the Master “like any other state or federal court, is bound by [the United States Supreme Court’s] interpretation of federal law.” *James v. City of Boise, Idaho*, 136 S.Ct. 685, 686, 2016 WL 280883 (2016) (*per curiam*) (citing *Nitro-Lift Technologies, L.L.C. v. Howard*, 568 U.S. 17, 20-21 (2012) (*per curiam*)).

For a state law or procedure to be “independent,” the state law basis for the decision must not be interwoven with federal law. *Michigan v. Long*, 463 U.S. at 1040-41; *Harris v. Reed*, 489 U.S. 255, 265 (1989).

A.

In *Michigan v. Long*, the SCOTUS adopted a “plain statement rule,” requiring courts “need only make clear by a plain statement in its judgment or opinion that the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.” *Long*, at 1041. The Master’s Order; however, contains no such statement. [R. pp. 10-26].

Therefore, when, as in this case, “a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.” *Id.* at 1040-1041.

B.

Moreover, the Master’s finding that “NCP is seeking to exercise its lawful authority to enforce the subject note and mortgage it was assigned by virtue of the assignment from CRE/ADC Venture 2012-1, LLC,” is also fatal, because he believes federal law requires the result. The Master concedes his decision is based on how other courts have analyzed 12 U.S.C. § 1821(d)(13)(D), *as opposed to any particular South Carolina law*. He concludes those cases “do not support the argument that a third-party purchaser cannot proceed with a judicial foreclosure,” and “does not did not require the third-party purchaser to engage in the FDIC’s administrative claims review and allowed the foreclosure action

to proceed as filed;” nor “stand for the assertion that a third-party purchaser of a loan owned by the FDIC must participate in the FDIC’s administrative claims process before foreclosing on its purchased loan;” or “states that a master in equity does not have jurisdiction over a foreclosure of a loan previously held by the FDIC in each case.” [R. pp. 10-26].

C.

Respondent will undoubtedly argue that we accept, as a matter of law, that there exists “firmly established” and “regularly followed” South Carolina law that *the note follows the mortgage*. [See § II., D., infra]. Ironically, the very order Respondent provided the Master and the Master signed proves fatal to its cause by citing *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999), for “the universally recognized principle that an assignee has all the same rights and privileges as the assignor to hold that a third-party who purchases an asset from the FDIC also has the authority to pursue the foreclosure of the assigned asset.” The principle is applicable here because the HELOC is not a negotiable instrument. *See Northwestern Bank v. Neal*, 271 S.C. 544, 546, 248 S.E.2d. 585, 586 (1979) (declaring “[w]hether or not a writing is negotiable is governed by § 3-104(1) of the Uniform Commercial Code.”).

In the final analysis, Respondent’s attempt to use the transaction between the FDIC-R and CRE/ADC Venture 2012-1, L.L.C.⁵ is utterly futile. Clearly, because no court has

⁵ The Respondent’s position conflicts with the FDIC’s own explanation of how FIRREA’s statutory scheme that contemplates the FDIC’s sweeping authority to manage the affairs of a failed bank to further the purpose of expeditious resolution of the failed bank’s affairs, regardless of whether the FDIC retains assets outright or through a “structured transaction.” *See McCarthy v. FDIC*, 348 F.3d 1075, 1079 (9th Cir.2003). As further explained by the Corporation’s Office of Inspector General: “In a structured

jurisdiction over “any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver,” 12 U.S.C. § 1821(d)(13)(D)(i), the “universally recognized principle that an assignee has all the same rights and privileges as the assignor to hold that a third-party who purchases an asset from the FDIC also has the authority to pursue the foreclosure of the assigned asset,” is interwoven in and not independent of federal law. As conceded by the Respondent, an assignment confers rights and the principle “is not an independent and adequate state ground supporting the judgment.” *Longshoremen v. Davis*, 476 U.S. at 388 (1987).

D.

In *Kalb v. Feuerstein*, 308 U. S. 433 (1940), the SCOTUS faced an issue involving state jurisdiction in a bankruptcy case (which was strikingly similar to the issue presented in the case at bar). In *Kalb*, a state court had entered a judgment of foreclosure against the appellants. Although the appellants had a petition pending concurrently in the Bankruptcy Court, the state rejected their challenge that the foreclosure was invalid because of the pending bankruptcy proceedings on the basis of a procedural default.

In the face of the appellees’ assertion that the procedural default presented an adequate nonfederal ground for the State’s judgment, the SCOTUS accepted the appellants’ contention that federal law itself “oust[ed] the jurisdiction of the state court.” *Kalb*, 308 U.S. at 436. The state judgment thus “was not merely erroneous but was beyond

transaction, the FDIC-R pools a group of similar assets, such as single-family, commercial real estate, or construction-type loans, from one or more failed-bank receiverships and transfers the assets into a newly created LLC. In exchange for contributing the assets, FDIC-R obtains the entire ownership interest, or equity, in the LLC. Following a competitive bid process FDIC-R then sells a portion of the equity in the LLC to prequalified, private-sector investors, but still retains its majority interest.” See Report No. AUD-12-012, Background, ¶. 2, September 2012.

[the state court's] power, void, and subject to collateral attack.” *Id.*, 308 U.S. at 438. The SCOTUS based this holding on Congress’ exclusive right to regulate bankruptcy, which gave it the power to vest jurisdiction over bankruptcy proceedings exclusively in one forum and to withdraw that jurisdiction from all other forums, and Congress’ statutory exercise of that right.

Since then, the SCOTUS has held that “[e]nactment of such exclusive jurisdiction must, by operation of the Supremacy Clause, pre-empt conflicting state-court jurisdiction,” *Longshoremen*, 476 U.S. at 393.

Under the relevant statutory section of FIRREA, Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. Rather, Congress adopted 12 U.S.C. § 1821(d)(13)(D)(i) as a jurisdictional bar for which, consequently, any reliance on “waiver” or failure to secure a supersedeas “does not protect a state-court judgment from pre-emption.” *Id.*

III. There exists no “firmly established” and “strictly followed” state grounds to support the Master in Equity’s decision.

In order to defeat the jurisdictional bar contained in the plain language of 12 U.S.C. § 1821(d)(13)(D)(i), any “asserted non-federal ground must independently and adequately support the judgment.” *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931). Assuming, *arguendo*, an “independent” state ground existed, “state courts may not avoid deciding federal issues by invoking procedural rules that they do not apply evenhandedly to all similar claims.” *Hathorn v. Lovorn*, 457 U.S. 255, 262-63 (1982) (quoting *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964)).⁶

⁶ The SCOTUS has added no requirement of a showing of manipulative intent on the part of the state court.

A.

Pursuant to Rule 53(b), SCRCP: “In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case.”

On January 3, 2019 Respondent filed a Proposed Order of Reference that states: “[p]ursuant to an Order of the South Carolina Supreme Court, this Non-Jury matter is now referred to the Dorchester County Master In Equity with finality,” for the Dorchester County Clerk of Court to sign. The Clerk of Court signed the order of reference the next day. The Appellants were not in default, nor did they consent. SCRCP includes no provision to allow a clerk to refer “non-jury” matters. The procedural rule is clearly not “strictly followed.”

B.

The South Carolina Supreme Court has elucidated that when a state court interprets state statute, “[w]ords must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007). After all, “[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.”. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). If this rule was “firmly established” and “strictly followed,” then the Master would have been unable to reach his conclusion. Certainly, this rule has not been “strictly followed” either.

C.

Respondent appears to assert that jurisdiction is *waivable*, but this argument fails because there are no “firmly established” and “regularly followed” rules pertaining to jurisdiction in this state. For example, compare: “[a] court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question. *e.g.* *Dove v. Gold Kist, Inc.*” [as cited in *Allison v. WL Gore & Associates*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011)], with the holding that “[s]ubject matter jurisdiction is ‘the power to hear *and* determine cases of the general class to which the proceedings in question belong.’ *Dove v. Gold Kist, Inc.* (emphasis added)” [as cited in *Gantt v. Selph*, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018)].

Similarly, in certain circumstances, jurisdiction is authorized pursuant to S.C. Const. Art. V, § 11 (“The [c]ircuit [c]ourt shall be a general trial court with original jurisdiction in civil and criminal cases. . . .”) and, therefore, lack of jurisdiction can be raised at any time, even on appeal. But at other times, subject matter jurisdiction is a procedural matter which must be raised and preserved. *See, e.g., State v. Oxner*, 391 S.C. 135, 134, 705 S.E. 2d 51, 52 (2011). This is another example of a rule not being “strictly followed.”⁷

D.

The Respondent’s entire case is built upon the assertion that as the “predecessor in interest,” [Complaint ¶. 6.], to CFSB, it is the “holder” of certain “loan documents,”

⁷ Regardless, the fact that *in this case* the issue was both raised and preserved, *Oxner’s* conflict with *Ake v. Oklahoma* need not be addressed.

[Complaint] – implicating procedural rules pertaining to standing and/or real party in interest. But, again, no such rules are strictly followed in South Carolina.

In *Freemantle v. Preston*, 398 S.C. 186, 192-193, 728 S.E.2d 40, 43 (2012), our Supreme Court elucidated two strict⁸ ways standing is obtained. When as here, rights depend upon an alleged assignment of a mortgage, standing is conferred by statute. S.C. Code Ann. §§ 36-9-203(g); -309(4); -313(h). When rights are asserted as a “holder” of a promissory note, that question is answered by: “[w]hether or not a writing is negotiable is governed by § 3-104(1) of the Uniform Commercial Code.” *Northwestern Bank v. Neal*, 271 S.C. 544, 546, 248 S.E.2d 585, 586 (1979).

The *Freemantle* Court is also explicit in its holding that “when standing is conferred by statute,” there exists no requirement that a Plaintiff also establish “constitutional standing by showing “he has suffered an “injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992) (internal quotations and citations omitted)).” *Freemantle*, 398 S.C. at 194, 728 S.E.2d at 44; *see also Hitachi Electronic Devices USA, Inc. v. Platinum Technologies, Inc.*,

⁸ *Freeman* also cites a third option, citing *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 198, 669 S.E.2d 337, 341 (2008), for the proposition that our Supreme Court “has *long* recognized the ‘public importance’ exception to the general standing requirements,” (emphasis added), by citing cases less than a decade past. It should be axiomatic that the recently created “public importance” exception, works to assure the two previous “firmly established” rules are no longer “strictly followed.”

366 S.C. 163, 170, 621 S.E.2d 38, 41 (2005) (“[o]nly where the U.C.C. is incomplete does the common law provide applicable rules”).⁹

Our Supreme Court has determined more than once that when a debt collector obtains an assignment for mere collection purposes only, and pay no value as required under S.C. Code Ann. § 36-9-203(g), the Plaintiff “is not representing its own legal interests ... but the legal interests of others, [and] it is engaging—without license or other authorization—in the practice of law.” *Roberts v. LaConey*, 375 S.C. 97, 105, 650 S.E.2d 474, 478 (2007); *Rogers Townsend & Thomas, PC v. Peck*, 419 S.C. 240, 244, 797 S.E.2d 396, 298 (2017). Thus, unless a Plaintiff meets the statutory requirements under the Uniform Commercial Code, no constitutional standing can be found because no legal interests are acquired.

Completely inapposite, however, is the holding in *Bank of America v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (2013) – which declared that because “[s]everal bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure,” by virtue of the fact that [Bank of America] “is the servicer of [Draper’s] loan” – it then concluded that “the master correctly found [Bank of America] had standing to foreclose on the

⁹ Together, these procedural rules, as highlighted by our Supreme Court’s reliance on *Lujan*, would indicate that absent a remedy provided by the U.S. Constitution, federal statute or South Carolina statute, a court in this state is without jurisdiction. See *Grant v. Grant*, 12 S.C. 29, 31, 1879 WL 4923 (1879) (explaining “[n]o remedy is complete without a definition of the cases to which it should extend, and the [S.C.] constitution is wholly silent on this subject. There is, therefore, nothing in the [S.C.] constitution tending to deprive the legislature of full power of granting or withholding such remedy which the legislature primarily possesses”). After all, it is the “doctrine of standing,” that serves “to identify those disputes which are appropriately resolved through the judicial process.” *Lujan* at 560 (citing *Whitmore v. Arkansas*, 495 U. S. 149, 155 (1990)).

mortgage.” *Id.*, 405 S.C. at 223, 746 S.E.2d at 482. Not only has *Draper* rejected the S.C. Supreme Court’s finding [*see LaConey supra*], but the decision is contrary to federal law, which explicitly denies such rights to a mortgage servicer. *See* 11 U.S.C. § 541(d); 15 U.S.C. § 1641(f). In *Draper*, it was actually found perfectly acceptable to allow a third party to record assignments of a mortgage. *Id.*, 405 S.C. at 217, 746 S.E.2d at 479 (“MERS transferred its rights under the mortgage to BAC Home Loans Servicing, L.P. by an assignment”).

However, while *Draper* recognizes that “[s]tanding is a fundamental requirement for instituting an action,” and “refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” [*Draper*, 405 S.C. at 220, 746 S.E.2d at 481], it then cites to *Sloan v. School District of Greenville Co.*, 342 S.C. 515, 524, 537 S.E.2d 229, 334 (Ct. App. 2000) for “the requirement of standing is not an inflexible one.” *Id.* But the case relied on by *Sloan* for this kernel – *Thompson v. S.C. Comm’n on Alcohol & Drug Abuse*, 267 S.C. 463, 467, 229 S.E.2d 718, 719 (1976) -- never articulates this rule explicitly.¹⁰

To further illustrate that rules are not strictly followed, the *Draper* Court determines that at times

“‘[t]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but ... the assignment of the mortgage alone does not carry with it an assignment of the note.’ *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); *see also Ballou v. Young*, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) (‘The transfer of a note carries with it a mortgage given to secure payment of such note.’).”

¹⁰ The *Thompson* Court merely held “that public officials may not contest the validity of a statute, the rule is not an inflexible one” but never articulated that the requirement of standing, in general, is inflexible. 267 S.C. at 467, 229 S.E.2d at 719.

Draper, 405 S.C. at 220, 746 S.E.2d at 481. But then, at other instances, *Draper* holds that: “[a] mortgage and a note are separate securities for the same debt.” *Id.*¹¹ Unable to find a resolution, the *Draper* court concluded, based solely on federal decisions, that the “mortgage follows the servicer.” *Id.* 405 S.C. at 223, 746 S.E.2d at 482.

More conflicting is that less than two years after *Draper* established that having a copy of a note under Rule 1003, SCRE is sufficient to identify a “holder” (defined by S.C. Code Ann. 36-1-201), our Supreme Court correctly identified Rule 902(9), SCRE, to resolve the matter in *Deep Keel v. Atlantic Private Group*, 413 S.C. 58, 67, 773 S.E.2d 607, 611-612 (2015) (“[e]xtrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to ... [c]ommercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law” (emphasis added)).

CONCLUSION

In the final analysis, 12 U.S.C. 1821(d)(13)(D) ousts the jurisdiction of a state court to determine the rights as it pertains to a promissory note secured by a mortgage. Because South Carolina has no “firmly established” and “strictly followed” grounds as it pertains to foreclosure actions in this state, no “adequate” state ground exists.

The Supremacy Clause supplies a rule of priority. It provides that the “Constitution, and the Laws of the United States which shall be made in Pursuance thereof,” are “the

¹¹ Like the popular children’s game “Chinese whispers,” *Draper* similarly cites to *US Bank Trust Nat. Ass’n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (2009) [which in turn cites to *Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 33, 647 S.E.2d 214, 216 (2007)] for the proposition that “[a] mortgage and a note are separate securities for the same debt.” However, *Lever* drew its citation from *Platt v. Carroll*, 125 S.C. 493, 119 S.E. 180 (1923), but *Lever* took the substituted the word “note” in place of “**bond**” from *Platt* (*i.e.* a personal guarantee executed by a third party) – two distinctly different concepts!

supreme Law of the Land ... any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.” U.S. Const., Art. VI, cl. 2.

Although both our Supreme Court and the SCOTUS have sometimes used different labels to describe the different ways in which federal statutes may displace state laws – for example, of express, field, and conflict preemption – but these categories “are not rigidly distinct.” See *Crosby v. National Foreign Trade Council*, 530 U. S. 363, 372, n. 6, (2000) (internal quotation marks omitted).

In fact, at least one feature unites them; invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to “a constitutional text or a federal statute” that does the displacing or conflicts with state law. *Puerto Rico Dept. of Consumer Affairs v. ISLA Petroleum Corp.*, 485 U. S. 495, 503, (1988); see also 3 J. Story, *Commentaries on the Constitution of the United States* § 1831, p. 694 (1st ed. 1833) (“the supremacy of the laws is attached to those only, which are made in pursuance of the constitution”).

The Appellants have done just that. Because 12 U.S.C. 1821(d)(13)(D)(i) “imposes restrictions on private actors” and “a state law confers rights that conflict with the federal law,” then “the federal law takes precedence and the [court’s jurisdiction] is preempted.” *Murphy v. National Collegiate Athletic Assn.*, __ U.S. __, 138 S.Ct. 1461, 1480 (2018).

It really is that simple – because, after all, “the point is not whether *state* law gives the state courts jurisdiction over particular controversies but whether jurisdiction provided by state law is itself pre-empted by *federal* law vesting exclusive jurisdiction over that controversy in another body.” *Longshoremen*, 476 U.S. at 388.

TRANSFER TO SUPREME COURT

Appellants' principle issue involves a constitutional challenge to the state court's adjudicatory powers, this Appeal should be transferred to the South Carolina Supreme Court, pursuant to S.C. Code Ann. § 14-8-200(b)(3) and Rule 204, SCACR.

Respectfully submitted,

/s Robert B. Varnado

Robert B. Varnado (S.C. Bar # 007085)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

September 15, 2021
Charleston, South Carolina

RECEIVED

Sep 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the *Appellant's Final Brief* contains all material
proposed to be included by any of the parties, not any other material.

/s Robert B. Varnado

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

RECEIVED

Jun 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Case No. 2020-001168

NCP PILGRIM, LLC

Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

Of whom MARY LOU CERCOPELY, DAVID S. CLANCY,
And DAVID SEAN CLANCY are the

Appellants.

RESPONDENT NCP PILGRIM, LLC'S FINAL BRIEF

Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head, South Carolina 29938
(843) 341-9300
Attorneys for the Respondent
NCP Pilgrim, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
STATEMENT OF ISSUES ON APPEAL.....	5
STATEMENT OF THE CASE	5
STANDARD OF REVIEW.....	12
ARGUMENT	12
I. THE TRIAL COURT PROPERLY RULED THAT FIRREA DID NOT APPLY AND THAT IT HAD SUBJECT MATTER JURISDICTION OVER RESPONDENT'S CLAIMS.	
12	
A. A Review of the FIRREA Administrative Claims Process and Jurisdictional Bar.	13
B. The Trial Court Properly Concluded that the FIRREA Administrative Claims Process and Jurisdictional Bar Did Not Apply.....	15
C. The FIRREA Administrative Claims Process and Jurisdictional Bar Do Not Preempt The Trial Court from Determining the Jurisdictional Bar Does Not Apply.....	17
II. THE TRIAL COURT PROPERLY CONCLUDED THAT APPELLANTS' WAIVED ALL DEFENSES AND COUNTERCLAIMS, EXCEPT FOR LACK OF SUBJECT MATTER JURISDICTION.	19
A. The Trial Court Properly Concluded that Appellants' Trial Waiver of Defenses Included Any Argument Regarding the Validity of NCP's Chain of Title for the Note and Mortgage..	20
B. The Trial Court Properly Concluded that Appellants' Trial Waiver of Defenses Included Any Argument Regarding the Validity of the Order of Reference.	20
III. ANY ARGUMENTS CONTAINED IN APPELLANTS' APPEAL REGARDING STAYING THE SALE OF THE SUBJECT PROPERTY ARE MOOT.....	21
CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control</i> , 428 S.C. 189, 203, 833 S.E.2d 451, 459 (Ct. App. 2019)	13
<i>Bodkin v. Bodkin</i> , 388 S.C. 203, 228, 694 S.E.2d 230, 243 (Ct. App. 2010)	10, 19, 20
<i>C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n</i> , 2929 S.C. 556, 559, 357 S.E.2d 714, 715 (Ct. App. 1987), <i>aff'd</i> 296 S.C. 373, 373 S.E.2d 584 (1998)	10, 19, 20
<i>Carolina First Bank v. BADD, LLC</i> , 414 S.C. 289, 293, 778 S.E.2d 106, 108 (2015)	13
<i>CFRE, LLC v. Greenville Cty. Assessor</i> , 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)	13
<i>Deutsche Bank Nat'l Tr. Co. v. Burke</i> , 902 F.3d 548, 552 (5th Cir. 2018)	16
<i>Dittmer Properties, L.P. v. F.D.I.C.</i> , 708 F.3d 1011, 1011 (8th Cir. 2013)	15, 16
<i>First Palmetto Sav. Bank, F.S.B. v. Patel</i> , 344 S.C. 179, 183, 543 S.E.2d 241, 243 (Ct. App. 2001)	12
<i>Franchise Tax Bd. of State of Cal. V. Constr. Laborers Vacation Tr. For S. California</i> , 463 U.S. 1, 23-24 (1983)	18
<i>Freeman v. F.D.I.C.</i> , 56 F.3d 1394, 1399 (D.C. Cir. 1995)	14, 15, 18
<i>Gatewood v. Moses</i> , 39 S.C.L. 244, 247 (S.C. App. L. 1852)	10, 19
<i>Hammer v. Hammer</i> , 399 S.C. 100, 104-05, 730 S.E.2d 874, 876 (Ct. App. 2012)	12
<i>Hart v. Bayer Corp.</i> , 199 F.3d 239, 244 (5th Cir. 2000)	18
<i>Haynes v. JPMorgan Chase Bank, N.A.</i> , 466 F. App'x 763, 766 (11th Cir. 2012)	16
<i>Haywood v. Drown</i> , 556 U.S. 729, 734-35 (2009)	18
<i>Hodges v. Tarrant</i> , 31 S.C. 608, 9 S.E. 1038, 1039 (1889)	12
<i>Joint Venture v. Onion</i> , 938 F.2d 35, 39 (5th Cir. 1991), <i>cert. denied</i> , 502 U.S. 1057 (1992)	16
<i>Kalb v. Feuerstein</i> , 308 U.S. 433, 438-41 (1940)	18, 19
<i>Lloyd v. F.D.I.C.</i> , 22 F.3d 335, 336-37 (1st Cir. 1994)	15
<i>Newman v. JP Morgan Chase Bank, N.A.</i> , 81 F. Supp. 3d 735, 745 (D. Minn. 2015)	16
<i>Normandy Corp. v. S.C. Dep't of Transp.</i> , 386 S.C. 393, 409, 688 S.E.2d 136, 144 (Ct. App. 2009)	17, 18
<i>Peoples Fed. Sav. & Loan Ass'n v. Edwards</i> , 286 S.C. 475, 477, 334 S.E.2d 290, 291 (Ct. App. 1985)	12
<i>Pyramid Constr. Co. v. Wind River Petroleum, Inc.</i> , 866, F.Supp. 513, 517 (D. Utah 1994)	16
<i>Ravan v. Greenville Cty.</i> , 315 S.C. 447, 460, 434 S.E.2d 296, 304 (Ct. App. 1993)	12
<i>S.C. Dep't of Transp. v. First Carolina Corp. of S.C.</i> , 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007)	20, 21
<i>S.C. State Ports Auth. v. Jasper Cty.</i> , 368 S.C. 388, 398, 629 S.E.2d 625, 629 (2006)	13
<i>Skinner v. Westinghouse Elec. Corp.</i> , 380 S.C. 91, 93-94, 668 S.E.2d 785, 796 (2008)	12
<i>Tillman v. Resolution Tr. Corp.</i> , 37 F.3d 1032, 1035 (4th Cir. 1994)	14, 15, 18
<i>Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.</i> , 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999)	16
<i>Weston v. Kim's Dollar Store</i> , 385 S.C. 520, 536, 684 S.E.2d 769, 777 (Ct. App. 2009), <i>aff'd and remanded</i> , 399 S.C. 303, 731 S.E.2d 864 (2012)	15, 17
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)	20, 21
<u>Other Authorities</u>	
122 A.L.R. Fed. 519	16

Statutes

12 U.S.C. §1811 <i>et seq.</i>	5
12 U.S.C. §1821(d)(13)(D).....	5, 6, 13, 14, 15, 18, 21
12 U.S.C. §1821(d)(3)	14
12 U.S.C. §1821(d)(3)-(13)	13, 14, 15, 17, 20
12 U.S.C. §1821(d)(5)(A)(i)	14
12 U.S.C. §1821(d)(6)(A).....	14
S.C. Code Ann. § 18-9-170.....	22

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court properly hold it had subject matter jurisdiction over this commercial foreclosure action based on its conclusion that the jurisdictional bar found in 12 U.S.C. §1821(d)(13)(D) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. §1811 *et seq.* ("FIRREA") does not preempt its authority under Rule 53, SCRCP?

STATEMENT OF THE CASE

A. Procedural History

This is an appeal of a commercial mortgage foreclosure action for a vacant commercial building located at 117 S. Cedar Street in Summerville, South Carolina ("Subject Property"). Respondent NCP Pilgrim, LLC ("NCP") as the holder of the subject Note and Mortgage, filed its Summons, Complaint, and Lis Pendens on November 15, 2018. R.pp. 60-90. On January 4, 2019, this foreclosure action was referred to the Dorchester County Master in Equity ("MIE") pursuant to Rule 53, SCRCP. R. pp. 1-2.

Appellants Mary Lou Cercopely ("Cercopely"), David S. Clancy ("Clancy"), David Sean Clancy, and Defendant Southcoast Community Bank n/k/a Pinnacle Bank timely filed Answers. R. pp. 91-117. Specifically, Appellants Cercopely and Clancy (collectively "Appellants") filed an Answer and Counterclaim on January 23, 2019, which included a demand for a jury trial. *Id.* A hearing was held on February 28, 2019, regarding, among other issues, Appellants' demand for a jury trial. Appellants' demand was denied by the MIE in the April 4, 2019 Order Denying Defendants Cercopely and Clancy's Demand for a Jury Trial, Granting Plaintiff's Motion to Amend, and Denying Plaintiff's Motion to Appoint a Receiver ("Order Denying Jury Trial"). R.pp. 2-4. The Order Denying Jury Trial was not appealed.

Shortly thereafter, Respondent filed its Amended Summons and Complaint on April 5,

2019 (R. pp. 122-27), and Appellants filed their Amended Answer and Counterclaim on April 22, 2019 (R. pp. 128-39). A foreclosure trial was held before the MIE on January 28, 2020 ("Trial"). At Trial, Appellants waived all defenses and counterclaims stated in their Amended Answer and Counterclaim and raised a new defense asserting that the Dorchester County Master in Equity lacked subject matter jurisdiction under FIRREA. R. p. 455, line 16 - p. 456, line 17; R. p. 463, line 19 - line 13 (Tr. 11:16-13:17; 42:19-44:13). Specifically, Appellants asserted that subject matter jurisdiction lies with the Federal Deposit Insurance Corporation ("FDIC") pursuant to 12 U.S.C. §1821(d)(13)(D). In examining the requirements of FIRREA found in §1821(d), the Trial Court held that NCP's action to foreclose was not a claim subject to the FDIC's administrative review process or the limitation on judicial review. R. pp. 14-17. Thus, the Trial Court concluded that its subject matter jurisdiction was not preempted by 12 U.S.C. §1821(d)(13)(D), awarded NCP a judgment against Clancy in the amount of \$409,074.01, and ordered the subject property be sold at the upcoming foreclosure sale. R. p. 20; R. p. 31.

Subsequently, Appellants filed an Emergency Motion for Stay of Proceedings to Enforce Judgment or for Supersedeas Bond and To Impose Bond on Plaintiff, on July 14, 2020, which was ultimately denied by the MIE as premature in the August 5, 2020 Form Order. R. pp. 404-07; R. pp. 48-50. On July 23, 2020, Appellants filed a Motion to Reconsider the Decree of Foreclosure, based on their position that the MIE lacked subject matter jurisdiction under FIRREA. R. pp. 408-18. This Motion was also denied by the MIE on August 5, 2020, in the Order Denying Defendants Cercopely, Clancy, and David Sean Clancy's Motion to Reconsider ("Order Denying MTR"). R. pp. 56-59. Shortly thereafter, Appellants filed the instant Appeal with the South Carolina Court of Appeals on August 18, 2020 (Case No. 2020-001168).

On August 25, 2020, Appellants filed their Second Emergency Motion for Stay of

Proceedings to Enforce Judgment or for Supersedeas Bond and to Impose Bond on Plaintiff with the MIE ("Motion for Bond"). R. pp. 438-41. A hearing was held on Appellants' Motion for Bond on September 14, 2020, and on October 15, 2020, the MIE issued an Amended Order Imposing Supersedeas Bond ("Order Imposing Bond"). R. pp. 35-47. The Order Imposing Bond required the Appellants to post a bond of \$172,000, along with a number of other reasonable requirements, with the Dorchester County Clerk of Court by 5:00 p.m. on November 30, 2020, to stay the December 1, 2020, judicial sale of the Subject Property. R. pp. 42-46. This Order was not appealed.

On November 23, 2020, prior to the December 1, 2020 Judicial Sale, Appellants filed a Motion for Relief from Supersedeas, to Enjoin Master's Sale on 12/01/20, and to Transfer Appeal to the Supreme Court with the South Carolina Court of Appeals ("COA Motion"). The COA Motion was denied by the Court of Appeals on November 30, 2020.

Subsequently, Appellants failed to post a bond with the Dorchester County Clerk of Court by November 30, 2020, and thus, failed to stay the sale under the MIE's Order Imposing Bond. Also, on November 30, 2020, NCP waived its right to a deficiency judgment against Clancy by filing its Notice of Plaintiff's Waiver of Right to Deficiency Judgment.

The Subject Property was sold on December 1, 2020, to NCP pursuant to that certain deed recorded with the Dorchester County Register of Deeds ("ROD") in Book RB 13053 at Page 266. Shortly after this sale, NCP learned that Appellants filed a Motion for Relief from Supersedeas, to Enjoin Master's Sale on 12/01/20, and to Transfer Appeal to the Supreme Court¹ (Case No. 2020-001574) and a Petition for Writ of Mandamus to Court of Appeals with the South Carolina

¹ The South Carolina Supreme Court Clerk of Court indicated that this Motion would be construed as a motion to certify the appeal under Rule 204(b), SCACR.

Supreme Court² (Case No. 2020-1567), which are both currently under advisement with the South Carolina Supreme Court.³

B. Factual History⁴

On or about June 10, 2004, Clancy borrowed \$258,840 from Carolina Federal Savings Bank (“Carolina Federal”) as was evidenced by a customary Note (“Note”). R. pp. 464-67. This loan was secured by a first mortgage the Subject Property owned by Barbara A. Clancy (“Mortgage”). R. pp. 487-91; 493-97. Pursuant to the Note, the loan had an original maturity date of June 10, 2009. Thereafter, Clancy and his mother signed two note and mortgage modifications on August 18, 2009, (R. pp. 499-501) and on June 24, 2010 (R. pp. 503-05). On or about October 13, 2012, Barbara Clancy passed away, leaving the Subject Property to her surviving children, Cercopely and Clancy.

On or about January 30, 2013, the FDIC, which had taken over Carolina Federal, sold the Note and Mortgage to CRE/ADC Venture, 2012–1 LLC (“CRE/ADC”) as evidenced by the Assignment of Real Estate Mortgage recorded with the ROD in Book 8718 at Page 33, the Assignment of Home Equity Variable Draw Agreement, and the Omnibus Assignment. R. pp. 507-12; 580; 584. Thereafter, CRE/ADC sold the Note and Mortgage to NCP as evidenced by the Assignment of Mortgage or Other Security Instrument recorded with the ROD in Book RB 11512 at Page 126 and the Assignment of Home Equity Variable Draw Agreement. R. pp. 514-17; 582. It is undisputed that NCP is the current owner and holder of the Note⁵ and that Clancy has not

² The South Carolina Supreme Court Clerk of Court indicated that this Petition would be construed as a request for relief under Rule 245, SCACR.

³ Both Motions have since been denied by the South Carolina Supreme Court.

⁴ NCP’s reading of Rule 208(b)(1)(C) SCACR is that disputed facts or matters should not be included in the Statement of Case. In order to avoid being bound by Clancy’s Factual History in its Statement of the Case under Rule 208(b)(2) SCACR, NCP has set forth a brief factual summary.

⁵ As stated in the Decree, NCP is in possession of the Original Note and Original Mortgage, which was produced to Appellants’ counsel on May 20, 2020. R. p. 18. As that time, Appellants’ counsel did not raise any objection to the authenticity of the Original Note and Original Mortgage. *Id.*

made a payment on this Note since January 14, 2013. R. p. 18; R. p. 455, line 24 (Tr. 9:24).

At Trial, Appellants' counsel explicitly waived all counterclaims and defenses except for Appellants' contention that FIRREA preempted the Trial Court's subject matter jurisdiction and elected to not present any evidence. R. pp. 455, line 16 - 456, line 17; R. p.463, lines 19 - 13 (Tr. 11:16-13:17; 42:19-44:13). This waiver of all defenses and counterclaims except for lack of subject matter jurisdiction was very clear, as follows:

MR. VARNADO: Your Honor, at this time Mr. Clancy will not put up a defense. And I'll prosecute his counterclaims. We are going to go on the -- saying respectfully that we believe that the Court does not have jurisdiction.

THE COURT: So you're not going forward on your counterclaims? And you're resting your defense on the facts that this Court doesn't have jurisdiction over the matter because of the argument you made earlier?

MR. VARNADO: Yes, sir.

THE COURT: Thank you very much.

MR. VARNADO: Your Honor, would you issue order a Form 4, or do you just want to wait until you decide everything on jurisdiction?

THE COURT: On jurisdiction? Let me put that in the order itself. I guess -- and this is something you need to think about, if you appeal the case and its determined that I didn't have jurisdiction, are you reserving --I'm not sure if you're reserving your counterclaims? Or have you abandoned them all together?

MR. VARNADO: I haven't abandoned them all together, but if an Appellate Court holds that you really did in fact have jurisdiction, then I think that I would --think that I would waive the counterclaims.

THE COURT: That's what I would expect you --

MR. VARNADO: But however if you --respectfully, if Your Honor didn't have jurisdiction, then everything would be to the -- I think that's what it is, Your Honor.

MS. WILLIAMS: Your Honor, I guess it would be our position that either Mr. Varnado decides today to waive his counterclaims in full or he argues them today to preserve them for the record. If he does not argue them today, it would be our

position that they're waived in full.

THE COURT: Well, I think he said that. He understands that if the jurisdictional issues comes out different than what my decision has been and he is correct and I didn't have jurisdiction, then I couldn't have heard them anyway. But if I had jurisdiction and I'm affirmed on the remainder of the decision, then he will have waived his counterclaims as of this moment.

THE COURT: Well, let me ask you this question. Let's suppose --I almost took this position earlier so I'm going to hold the question of jurisdiction in advance and hear the case but decide to go ahead and rule that I did have jurisdiction. And if I'm wrong, I can be corrected. **I didn't expect Mr. Varnado to waive his defenses, but nonetheless, that will be the result of his defenses if I'm affirmed on the jurisdiction.**

("Trial Waiver of Defenses"). R. p.463, lines 19 - 13 (Tr. 42:19-44:13). Thus, the only issue preserved for appeal is the issue of subject matter jurisdiction. *Gatewood v. Moses*, 39 S.C.L. 244, 247 (S.C. App. L. 1852) (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial). All other arguments, including the validity of loan documents, standing, referral of this case to the MIE, and the procedural history of this matter, have been explicitly waived by Appellants and can no longer be argued before the Court. *Id.* See also *Bodkin v. Bodkin*, 388 S.C. 203, 228, 694 S.E.2d 230, 243 (Ct. App. 2010) (the court must accept stipulations as binding); *C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 2929 S.C. 556, 559, 357 S.E.2d 714, 715 (Ct. App. 1987), *aff'd* 296 S.C. 373, 373 S.E.2d 584 (1998) (stipulations are binding upon parties who make them).

C. Appellants' Statement of the Case Includes Information Not Properly Before the Court.

In their Initial Brief, Appellants' Statement of the Case includes multiple statements and information that have not been entered into evidence in this matter and are not properly before the Court. Appellant Br. at 4-5. Specifically, NCP contends the following statements are improper because they rely on information and documents not entered into evidence at Trial and are not

properly before this Court.

1. "To effectuate such an "acquisition," FDIC-R formed 'CRE/ADC Venture 2012-1, LLC' ("Company") on December 5, 2012, as its sole member." Appellant Br. at 4.
2. "Pursuant to the Contribution Agreement, the FDIC-R "*contributed in part and sold in part* to the Company [FDIC-R's] the right title and interest to [certain assets]" including Clancy's HELOC. *See* Private Owner Interest Sale and Assignment Agreement ("Agreement"). [Assign. Agrm'nt]." Appellant Br. at 4.
3. "The Company then issued a promissory note payable to the FDIC in the amount of \$71 million due December 11, 2019. [Prom. Note]." Appellant Br. at 4.
4. "After conducting a sealed bid auction for a forty percent (40%) limited liability company interest in the Company, the FDIC selected Colony Capital Acquisitions, LLC ("CCA") as the successful bidder." Appellant Br. at 4.
5. "CCA, as required under the Agreement, formed ColFin 2012 CRE ADC-1 Holdco, LLC ("Private Owner" or "PO") as the 40% limited liability company owner; FDIC-R retained a sixty percent (60%) interest in the Company." Appellant Br. at 4.
6. "The Agreement expressly states "that the Private Owner may not assign this Agreement or any of its rights, interests, or obligations hereunder. Any purported assignment or delegation in violation of this Agreement shall be null and *void ab initio*." [POA Agm'nt]." Appellant Br. at 4-5.

These six (6) statements are not supported by any evidence presented at Trial. Additionally, throughout these six statements, Appellants reference a Contribution Agreement, Private Owner Interest Sale and Assignment Agreement, Promissory Note, and Private Owner Agreement, none of which were entered into evidence at Trial. As stated above, Appellants elected not to present

any evidence at trial and Appellants cannot attempt to enter these statements as facts through their Initial Brief. *See Hodges v. Tarrant*, 31 S.C. 608, 9 S.E. 1038, 1039 (1889) (an alleged fact cannot be asserted for the first time in an appeal, it must also have been asserted in the underlying case). Thus, these documents are not properly before this Court and any information concerning them should be disregarded. *Ravan v. Greenville Cty.*, 315 S.C. 447, 460, 434 S.E.2d 296, 304 (Ct. App. 1993) (the appellate court will not consider any fact which does not appear in the Record on Appeal).

STANDARD OF REVIEW

An action to foreclose a real estate mortgage is one in equity. *First Palmetto Sav. Bank, F.S.B. v. Patel*, 344 S.C. 179, 183, 543 S.E.2d 241, 243 (Ct. App. 2001). This characterization remains even when a counterclaim raises legal issues, such as the determination of subject matter jurisdiction. *See Peoples Fed. Sav. & Loan Ass'n v. Edwards*, 286 S.C. 475, 477, 334 S.E.2d 290, 291 (Ct. App. 1985). Therefore, this Court may find facts in accordance with its own view of the preponderance of the evidence. *Patel* at 183, 543 S.E.2d at 243.

ARGUMENT

I. THE TRIAL COURT PROPERLY RULED THAT FIRREA DID NOT APPLY AND THAT IT HAD SUBJECT MATTER JURISDICTION OVER RESPONDENT'S CLAIMS.

The Trial Court properly concluded that it had subject matter jurisdiction over NCP's claims under Rule 53, SCRCP because FIRREA section 1821(d)(13)(D) does not apply to NCP's claims. R. pp. 14-17. Subject matter jurisdiction is defined as "the power to hear and determine cases of the general class to which the proceedings in question belong." *Skinner v. Westinghouse Elec. Corp.*, 380 S.C. 91, 93-94, 668 S.E.2d 785, 796 (2008). "The question of subject matter jurisdiction is a question of law for the court." *Hammer v. Hammer*, 399 S.C. 100, 104-05, 730 S.E.2d 874, 876 (Ct. App. 2012). Here, the Trial Court properly concluded that it had subject

matter jurisdiction to hear this matter pursuant to Rule 53, SCRCP and denied Appellants' demand for a jury trial based on the well-established principals outlined in *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 293, 778 S.E.2d 106, 108 (2015). R. p. 4-6.⁶ Subsequently, the Trial Court concluded that its subject matter jurisdiction was not preempted by FIRREA, after engaging in a detailed review of the administrative claims process and jurisdictional bar established by FIRREA in §1821(d)(3)-(13) and the relevant national case law. R. pp. 14-17. Thus, the Trial Court properly concluded it had subject matter jurisdiction in this matter, as discussed in detail below.

A. A Review of the FIRREA Administrative Claims Process and Jurisdictional Bar.

A review of the FIRREA administrative claims process and jurisdictional bar as a whole reveals the Trial Court properly concluded it has subject matter jurisdiction in this matter. When determining the applicability of a statute, "the statute must be read as a whole and sections [that] are part of the same general statutory law must be construed together and each one given effect." *A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control*, 428 S.C. 189, 203, 833 S.E.2d 451, 459 (Ct. App. 2019) (citing *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 625, 629 (2006))). Appellants' argument ignores the statute as a whole and instead focuses solely on the language contained in a small sliver of the extensive FIRREA sections, namely, §1821(d)(13)(D). Their argument fails to consider that small section in light of the language contained in all of §1821(d). In essence, Appellants are asking the Court to put on blinders in its analysis of this issue. The proper method of statutory interpretation, as applied by the Trial Court, is to evaluate the language found in §1821(d)(13)(D) in light of the FIRREA statute as a whole.

FIRREA was enacted in 1989 as an emergency measure to enable the FDIC to

⁶ The Order Denying Jury Trial was not appealed.

expeditiously resolve and liquidate failed financial institutions throughout the country. *Tillman v. Resolution Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994). FIRREA sections 1821(d)(3)-(13) outline the FDIC's administrative claims review process and jurisdictional bar for those persons making claims against a failed financial institution or seeking to adjudicate their rights against the failed institution. *See* 12 U.S.C. §1821(d)(3)-(13); *See e.g. Tillman at 1035; Freeman v. F.D.I.C.*, 56 F.3d 1394, 1399 (D.C. Cir. 1995). Specifically, §1821(d)(13)(D) requires persons making claims against a failed financial institution or seeking to adjudicate their rights against the failed institution to present their claims first to the FDIC through its administrative claims process ("Jurisdictional Bar"). *See* 12 U.S.C. §1821(d)(13)(D); *Tillman at 1035; Freeman at 1399*. Under the administrative claims process, a party seeking to assert a claim against a failed institution must present his claim to the receiver for an initial determination of whether the claim should be allowed within 90 days of the publication of notice by the receiver. 12 U.S.C. §1821(d)(3). The receiver then has 180 days after the claim is filed to determine whether to approve the claim. 12 U.S.C. §1821(d)(5)(A)(i). After the receiver's initial decision, or if the receiver makes no decision within the 180-day period, a claimant may file a suit on the claim in one of two designated federal courts within the specified time period. 12 U.S.C. §1821(d)(6)(A). Essentially, this statutory scheme provides a dispute resolution structure that allows the FDIC initially to collect assets, determine rights, and resolve claims **against** the failed institution before disputes over such matters can be heard in court. Thus, a review of the entirety of 12 U.S.C. §1821(d)(3)-(13) plainly shows the Jurisdictional Bar does not apply to Respondent's foreclosure case because the case is not making a claim against the failed financial institution, Carolina Federal, or against the receiver, the FDIC, in this action.

B. The Trial Court Properly Concluded that the FIRREA Administrative Claims Process and Jurisdictional Bar Did Not Apply.

As stated above, whether a federal statute preempts state law is a question of law for the court to decide. *Weston v. Kim's Dollar Store*, 385 S.C. 520, 536, 684 S.E.2d 769, 777 (Ct. App. 2009), *aff'd* and remanded, 399 S.C. 303, 731 S.E.2d 864 (2012). Here, the Trial Court properly ruled that FIRREA did not preempt its jurisdiction under Rule 53, SCRCP and therefore, the Trial Court had subject matter jurisdiction over this matter.

After conducting a detailed review of the language contained in §1821(d)(3)-(13) and the case law interpreting these sections, the Trial Court properly ruled that Respondent's claims were not subject to FIRREA because NCP was not making a single claim against the failed institution, Carolina Federal, or against the receiver, the FDIC, in this action. In reaching this conclusion, the Trial Court properly relied upon *Tillman* and *Freeman* to conclude that FIRREA section 1821(d)(13)(D) requires only those persons or entities making claims *against a failed financial institution* or seeking to adjudicate their rights *against the failed institution* to present their claims first to the FDIC through its administrative claims process. Ultimately, the Trial Court reasoned that NCP was simply seeking to exercise its lawful authority to enforce the Note and Mortgage it was assigned by virtue of the June 26, 2018 Assignments from CRE/ADC by filing a routine foreclosure action, which is not a claim subject to the administrative review process and the Jurisdictional Bar found in §1821(d)(13)(D). R. pp. 514-517; R. p. 582.

This conclusion is consistent with a review of the national case law evaluating the applicability of the Jurisdictional Bar. Cases throughout the United States have repeatedly held it is abundantly clear the FDIC is authorized to pursue the foreclosure of a failed bank's assets. *Dittmer Properties, L.P. v. F.D.I.C.*, 708 F.3d 1011, 1011 (8th Cir. 2013); *Freeman* at 1399; *Lloyd v. F.D.I.C.*, 22 F.3d 335, 336-37 (1st Cir. 1994); *Joint Venture v. Onion*, 938 F.2d 35, 39 (5th Cir.

1991), *cert. denied*, 502 U.S. 1057 (1992). Specifically, courts have recognized that the disposition of a failed bank's assets is one of the quintessential statutory powers of the FDIC as a receiver. *Pyramid Constr. Co. v. Wind River Petroleum, Inc.*, 866 F.Supp. 513, 517 (D. Utah 1994). These same courts have applied the well-established legal principle that an assignee has all the same rights and privileges as the assignor to hold that a third-party who purchases an asset from the FDIC also has the authority to pursue the foreclosure of the assigned asset. *Dittmer* at 1017; *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999). *See also*, *Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018); *Newman v. JP Morgan Chase Bank, N.A.*, 81 F. Supp. 3d 735, 745 (D. Minn. 2015); *Haynes v. JPMorgan Chase Bank, N.A.*, 466 F. App'x 763, 766 (11th Cir. 2012). Without this principle, it would be illogical for a third-party to ever accept an assignment of an asset from the FDIC, because without the ability to foreclose, the asset would be worthless.

Throughout the multiple cases ruling a third party could proceed with the foreclosure of an asset purchased by a third-party from the FDIC, not one case stated that the third-party purchaser was subject to the FDIC's administrative claims process or Jurisdictional Bar. *See* 122 A.L.R. Fed. 519. Instead, each court has repeatedly upheld the third-party's right to foreclose and did not impose a limitation on judicial review. Respondent has been unable to locate a single case adopting Appellants' position that a third-party purchaser of a loan from the FDIC cannot proceed with a judicial foreclosure and neither have Appellants. As there have been hundreds of thousands of such loans sold by the FDIC, it would seem logical there would be many reported cases supporting Appellants' argument. However, there are none.

Finally, it would be entirely illogical that a third party who purchases an asset from the FDIC would later have to get the FDIC's approval through the administrative claims process before

it could exercise its rights under the terms of the asset. The FDIC's goal is to liquidate the assets of a failed financial institution in order to pay off the failed institution's creditors as quickly as possible. If an asset sold to a third-party purchaser is subject to the administrative claims process, there would be a substantial chilling effect upon the FDIC's ability to perform its statutory functions as a receiver because no third-party would ever purchase an asset from a failed institution. This is especially true in this case where Respondent is attempting to foreclose the loan over seven (7) years after the FDIC took over the failed institution, Carolina Federal, and long after all of the time constraints of the administrative claims process have expired. *See* 12 U.S.C. §1821(d)(3)-(13). Thus, it would not only be impractical for Respondent to comply with the FDIC's administrative claims process, it would be impossible. As highlighted above, Appellant's arguments are at odds with the plain language and intent of FIRREA.

C. The FIRREA Administrative Claims Process and Jurisdictional Bar Do Not Preempt The Trial Court from Determining the Jurisdictional Bar Does Not Apply.

As outlined above, the Jurisdictional Bar only applies in two distinct scenarios, when a person is making a claim against a failed financial institution or seeking to adjudicate their rights against the failed institution. As the Trial Court properly concluded, neither of these two scenarios are present in Respondent's foreclosure action. As discussed below, the Trial Court had the authority to make such a conclusion.

Whether a federal statute preempts state law is a question of law for the trial court to decide. *Weston v. Kim's Dollar Store*, 385 S.C. 520, 536, 684 S.E.2d 769, 777 (Ct. App. 2009), *aff'd* and *remanded*, 399 S.C. 303, 731 S.E.2d 864 (2012). Courts should not lightly infer preemption. *Normandy Corp. v. S.C. Dep't of Transp.*, 386 S.C. 393, 409, 688 S.E.2d 136, 144 (Ct. App. 2009). Federal law may preempt state law in three distinct ways: "(1) Congress may expressly define the extent to which it preempts state law; (2) Congress may occupy a field of regulation, 'impliedly'

preempting state law; or (3) a state law may be preempted to the extent it 'conflicts' with federal law." *Id.*

In their Initial Brief, Appellants appear to assert the argument that the mere possibility of the applicability of the Jurisdictional Bar automatically divests the Trial Court from subject matter jurisdiction in this matter. This argument is incorrect. State courts as well as federal courts are entrusted with concurrent jurisdiction to try federal claims. *Haywood v. Drown*, 556 U.S. 729, 734-35 (2009). Furthermore, "the mere fact that a given federal law might 'apply' or even provide a federal defense to a state-law cause of action, is insufficient alone to establish federal question jurisdiction. To give rise to federal question jurisdiction, a court must find complete preemption." *Hart v. Bayer Corp.*, 199 F.3d 239, 244 (5th Cir. 2000) (citing *Franchise Tax Bd. of State of Cal. V. Constr. Laborers Vacation Tr. For S. California*, 463 U.S. 1, 23-24 (1983)).

The Jurisdictional Bar is distinct from other instances of federal preemption, such as the bankruptcy stay highlighted by Appellants in *Kalb v. Feuerstein*, 308 U.S. 433, 438-41 (1940). The plain language of the Jurisdictional Bar clearly indicates that Congress established two specific scenarios under which exclusive jurisdiction would lie with the FDIC. Thus, the Jurisdictional Bar falls squarely into the first way federal law may preempt state law and the plain language establishes the very limited extent to which exclusive jurisdiction would lie with the FDIC. As outlined above, those scenarios are when an individual is (1) making claims against a failed financial institution or (2) seeking to adjudicate their rights against the failed institution. See 12 U.S.C. §1821(d)(13)(D); See e.g. *Tillman* at 1035; *Freeman* at 1399. When a court determines that neither of those two specific scenarios apply, then the Jurisdictional Bar does not apply. Just as the Trial Court did in this matter.

Throughout their Initial Brief, Appellants repeatedly state that the FIRREA Jurisdictional

Bar is indistinguishable from the jurisdictional bar analyzed in *Kalb*. Appellant Br. at 14-15. However, this statement is incorrect. The jurisdictional bar analyzed in *Kalb* is found in the Frazier-Lemke Act. *Kalb* at 436. The *Kalb* court found that the Frazier-Lemke Act's jurisdictional bar preempted all state mortgage foreclosures against farmers based on the Act's explicit and repeated language establishing this complete preemption, such as "the prohibitions . . . shall apply to all judicial or official proceedings in any court or under the direction of any official, and shall apply to all creditors, public or private, and to all of the debtor's property, wherever located." *Id.* at 440-41. The language found in FIRREA's Jurisdictional Bar is clearly distinct from the broad reaching language relied on in *Kalb*. Thus, Appellants' argument is a misguided comparison.

Accordingly, the Trial Court possessed the necessary authority to properly conclude that FIRREA did not apply to Respondent's claims.

II. THE TRIAL COURT PROPERLY CONCLUDED THAT APPELLANTS' WAIVED ALL DEFENSES AND COUNTERCLAIMS, EXCEPT FOR LACK OF SUBJECT MATTER JURISDICTION.

As stated above, during Trial, Appellants expressly stipulated that they waived all potentially applicable defenses and counterclaims, with the sole exception of their argument that the Trial Court's subject matter jurisdiction was preempted by FIRREA. R. p. 463, lines 19 - 13 (Tr. 42:19-44:13). Based on this express stipulation and waiver, the Trial Court properly concluded that Appellants waived any arguments that were outside the scope of their lack of subject matter jurisdiction argument. *See Bodkin* at 228, 694 S.E.2d at 243 (the court must accept stipulations as binding); *C.A.N. Enterprises, Inc.* at 559, 357 S.E.2d at 715 (stipulations are binding upon parties who make them); *Gatewood* at 247 (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial). This same reasoning applies to the arguments contained in Appellants' Initial Brief that are outside the scope of their argument that

the MIE lacks subject matter jurisdiction pursuant to the provisions of 12 U.S.C. §1821(d)(3)-(13), including their arguments related to the validity of NCP's chain of title regarding the Note and Mortgage and the validity of the Order of Reference. Appellant Br. at 13-14; 16-21.

A. The Trial Court Properly Concluded that Appellants' Trial Waiver of Defenses Included Any Argument Regarding the Validity of NCP's Chain of Title for the Note and Mortgage.

In its Order Denying MTR, the Trial Court properly concluded that Appellants' Trial Waiver of Defenses included a waiver of any argument related to the validity of NCP's chain of title regarding the Note and Mortgage. R. p. 57. In their Initial Brief, Appellants' appear to reassert their argument that NCP is not the valid owner and holder of the Note and Mortgage. Appellant Br. at 13-14; 17-21. This argument has no connection to Appellants' lack of subject matter jurisdiction argument. Thus, Appellants' expressly waived this argument at Trial, and it is not preserved for appellate review. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")); *Gatewood* at 247 (appellant was not permitted to raise and discuss a legal ground expressly waived at the circuit court trial).

B. The Trial Court Properly Concluded that Appellants' Trial Waiver of Defenses Included Any Argument Regarding the Validity of the Order of Reference.

Similar to the reasoning outlined above, the Trial Court properly concluded that Appellants' Trial Waiver of Defenses included a waiver of Appellants' argument regarding the validity of the Order of Reference. This argument also has no connection to Appellants' lack of subject matter jurisdiction argument and was expressly waived at Trial. *See Bodkin* at 228, 694 S.E.2d at 243; *C.A.N. Enterprises, Inc.* at 559, 357 S.E.2d at 715.

In the alternative, if the Court determines Appellants did not previously waive this argument, it should be denied as untimely and improper. Specifically, Rule 53, SCRCP explicitly states that in "an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court." Here, NCP filed a foreclosure action on November 15, 2018, and the action was properly referred to the MIE on January 4, 2019, by the Dorchester County Clerk of Court. Subsequently, on January 23, 2019, Appellants filed an Answer demanding a jury trial. Pursuant to this demand, a hearing was held before the Trial Court on February 28, 2019. At that hearing, Appellants failed to raise an objection regarding the Trial Court's authority to rule on the jury trial demand and their request for a jury trial was denied (R. pp. 4-6) and subsequently elected not to appeal the Order of Reference or Order Denying Jury Trial. Additionally, Appellants failed to raise this argument at Trial or in the numerous other briefs filed with the Trial Court in this matter. Thus, Appellants failed to preserve this issue for appeal, and it can no longer be presented. *S.C. Dep't of Transp.* at 301, 641 S.E.2d at 907 (quoting *Wilder Corp.* at 76, 497 S.E.2d at 733 ("it is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")).

III. ANY ARGUMENTS CONTAINED IN APPELLANTS' APPEAL REGARDING STAYING THE SALE OF THE SUBJECT PROPERTY ARE MOOT.

Respondent asserts that any arguments contained in Appellants' appeal regarding staying the sale of the Subject Property are moot because Appellants failed to comply with the statutory process to stay a foreclosure sale. Also, the Subject Property was ultimately sold at the December 1, 2020 foreclosure sale. South Carolina law clearly states that the filing of a notice of appeal in a foreclosure case does not automatically stay the relief ordered in the decree of foreclosure and notice of sale. Rule 241(b)(4), SCACR. Instead, if a party wishes to stay a judgment directing the

sale of land to satisfy a mortgage in connection with his appeal, he must move for an order imposing a supersedeas of matters decided in the order on appeal after service of the notice of appeal on all parties. Rule 241(c)(1), SCACR. S.C. Code Ann. § 18-9-170 explicitly outlines the requirements of a supersedeas bond or undertaking required to obtain a stay in this situation.

In the instant matter, the MIE issued an Order Imposing Bond, according to the above legal authorities on October 15, 2020. R. pp. 36-51. Appellants failed to comply with any of the terms of this order. Appellants cannot now come to this Court seeking to Appeal the MIE's rulings without complying with the underlying statutes. In fact, Appellants' November 23, 2020, COA Motion was already denied by the Court of Appeals on these same grounds on November 30, 2020. Thus, any arguments regarding the stay of the sale of the Subject Property should be dismissed as moot.

CONCLUSION

Accordingly, for the reasons outlined above, the Trial Court properly concluded that the administrative process, and by the same vein, the jurisdictional bar established under FIRREA sections 1821(d)(3)-(13), does not apply to Respondent's claims in this action. Consequently, the Trial Court properly ruled that its subject matter jurisdiction was not preempted by FIRREA, and it had the jurisdictional authority to rule on Respondent's foreclosure claims in this matter.

Respectfully submitted,

/s/ Lauren P. Williams
Russell P. Patterson
Lauren P. Williams
Russell P. Patterson, P.A.
P.O. Box 8047
Hilton Head Island, SC 29938
(843) 341-9300
Russell@russellpattersonlaw.com
Attorneys for the Respondent,
NCP Pilgrim, LLC

Hilton Head Island, South Carolina
June 21, 2021

RECEIVED

Jun 21 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Case No. 2020-001168

NCP PILGRIM, LLC

Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

Of whom MARY LOU CERCOPELY, DAVID S. CLANCY,
And DAVID SEAN CLANCY are the

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCAR.

Respectfully submitted,

/s/ Lauren P. Williams

Russell P. Patterson

Lauren P. Williams

Russell P. Patterson, P.A.

P.O. Box 8047

Hilton Head Island, SC 29938

(843) 341-9300

Russell@russellpattersonlaw.com

Attorneys for the Respondent,

NCP Pilgrim, LLC

Hilton Head Island, South Carolina
June 21, 2021

RECEIVED

Sep 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

APPELLANTS' FINAL REPLY BRIEF

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

Other Counsel of Record:
Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Respondent

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Argument	1
I.....	1
II.....	3
Conclusion	8

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Abie State Bank v. Bryan</i> , 282 U.S. 765 (1931).....	2, 7
<i>Barr v. City of Columbia</i> , 378 U.S. 146 (1964).....	7
<i>Beard v. Kindler</i> , 558 U.S. 53 (2009).....	2
<i>Bodkin v. Bodkin</i> , 388 S.C. 203, 694 S.E.2d 230 (Ct. App. 2010)	6, n.1
<i>C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm'n</i> , 292 S.C. 556, 357 S.E.2d 714 (Ct. App. 1987), <i>aff'd</i> 296 S.C. 373, 373 S.E.2d 584 (1988)	6, n.1
<i>Crosby v. National Foreign Trade Council</i> , 530 U. S. 363 (2000)	22
<i>Dove v. Gold Kist, Inc.</i> , 314.S.C. 235, 442 S.E.2d 598 (1994).....	6
<i>Elgin v. Department of Treasury</i> , 576 U.S. 1 (2012).....	3
<i>Free Enterprise Fund v. Public Company Accounting Oversight Board</i> , 561 U.S. 477 (2010).....	3
<i>Gatewood v. Moses</i> , 39 S.C.L. 244, 247 (S.C. App. L. 1852).....	6, n.1
<i>Harris v. Reed</i> , 489 U.S. 255 (1989)	2, 7
<i>Hathorn v. Lovorn</i> , 457 U.S. 255 (1982).....	7

<i>International Longshoremen’s Ass’n., AFL-CIO v. Davis</i> , 476 U.S. 380 (1986)	passim
<i>Kansas v. Garcia</i> , 140 S.Ct. 791 (2020).....	9
<i>Langley v. FDIC</i> , 484 U.S. 86 (1987).....	5
<i>Lamie v. U.S. Trustee</i> , 540 U.S. 526 (2004)	5
<i>Lee v. Kenna</i> , 534 U.S. 362 (2002).....	2
<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	2, 7
<i>Moriarty v. Garden Sanctuary Church of God</i> , 341 S.C. 320, 534 S.E.2d 672 (2000)	2
<i>Murphy v. National College Athletic Ass’n.</i> , 584 U.S. ___, 138 S.Ct. 1461 (2018).....	5, 9
<i>Nix v. Mercury Motor Express, Inc.</i> , 270 S.C. 477, 242 S.E.2d 683 (1978)	6
<i>Turner v. South Carolina Dep’t Environ. Control</i> , 377 S.C. 540, 661 S.E.2d 118 (Ct. App. 2018).....	7
<i>United States v. Ron Pair Enterprises, Inc.</i> , 489 U.S. 235 (1989)	3, 9
<i>Virginia Uranium, Inc. v. Warren</i> , 578 U.S. ___, 139 S.Ct. 1894	4, 5, 8

CONSTITUTIONS

U.S. Const. Art. VI, Clause 2 (Supremacy Clause)	passim
--	--------

STATUTES, REGULATIONS and RULES

12 U.S.C. § 1821(d)	4
12 U.S.C. § 1821(d)(13)(D)(i)-(iii).....	passim

OTHER AUTHORITIES

5 Am.Jur.2d Appellate Review § 555 (1995)	10
---	----

I.

The Appellants argue that whether the Dorchester County Master in Equity (“Master”) had the power to adjudicate NCP Pilgrim LLC’s (“Respondent” or “NCP”) mortgage foreclosure action – to be repaid on a Home Equity Line of Credit (“HELOC”) – is a question of statutory interpretation.

So too is an action for a deficiency judgment based on the HELOC, as well as a suit to declare that NCP (or any party for that matter) has the “authority to enforce the subject note and mortgage it was assigned by virtue of the assignment from CRE/ADC Venture 2012-1, LLC.”

Appellants point directly to subsection 12 U.S.C. § 1821(d)(13)(D)(i)-(ii) of the Financial Institutions Reform, Recovery and Enforcement Act (“FIRREA”) that provides:

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over

- (i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or
- (ii) any claim relating to any act or omission of such institution or the [FDIC] as receiver.

Appellants further demonstrated that because “[i]t is clearly within Congress’ powers to establish an exclusive federal forum to adjudicate issues of federal law in a particular area that Congress has the authority to regulate under the Constitution” ... then any such “determination of congressional intent and of the boundaries and character of a pre-empting congressional enactment is one of federal law. Pre-emption, the practical manifestation of the Supremacy Clause, is always a federal question.” *International Longshoremen’s Ass’n, AFL-CIO v. Davis*, 476 U.S. 380, 388 (1986).

A fundamental tenet of the Supremacy Clause of the United States Constitution provides that “[t]he States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.” *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940); U.S. Const. Art. VI, Clause 2. Thus, in order for a court to overcome deciding the federal question of jurisdiction, any “asserted non-federal ground must independently and adequately support the judgment.” *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931).

To constitute an “independent” state bar, the state law basis for the decision must not be interwoven with federal law and rest purely on state law grounds. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983); *Harris v. Reed*, 489 U.S. 255, 265 (1989). A state law or procedural rule is “adequate” if it is “firmly established” and “regularly followed.” *Beard v. Kindler*, 558 U.S. 53, 60 (2009) (quoting *Lee v. Kemna*, 534 U.S. 362, 375 (2002)).

In their initial brief, Appellants argued that the Master did not cite a single “independent” or “adequate” state ground to support his finding that he had jurisdiction, nor did the Master supply a plain statement in his order that “the federal cases are being used only for the purpose of guidance, and do not themselves compel the result that the court has reached.” *Long*, 463 U.S. at 1041. “Accordingly, when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.” *Id.*

Because the South Carolina Supreme Court is free to ignore the Master’s conclusion and decide for itself [*Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)], Appellants have made clear that (1) because the federal question here involved pre-

emption of a state court’s adjudicatory powers, then (2) there can exist no “independent” state ground to support the Master’s finding.

Moreover, Appellants have asserted (because nearly every state ground involved here, ie standing, real party in interest, subject matter jurisdiction and statutory interpretation) are not “firmly established” and “regularly followed,” there also exists no adequate state ground to support a finding of state court jurisdiction. [App. Br, § III].

Thus, the Appellants argue that the resolution “begins where all such inquiries must begin: with the language of the *statute* itself.” *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (emphasis added).

In this case, it is also where the inquiry should end because “the text ... expressly limit[s] the jurisdiction that other statutes confer.” *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 489 (2010); *see also, e.g., Elgin v. Department of Treasury*, 576 U.S. 1, 25 (2012) (explaining that, “[w]hen dealing with an express preclusion clause ... we determine the scope of preclusion simply by interpreting the words Congress has chosen.”).

II.

Clearly undeterred by the fact that Appellants have relied almost exclusively on *United States Supreme Court* decisions rejecting each of its arguments as unconstitutional, the Respondent submitted their brief which argues, in essence, that it should be enough for any party or court to rest on a supposition (or wish) that “it must be in there somewhere.”

According to the Respondent, the plain language of the jurisdictional bar found in 12 U.S.C. § 1821(d)(13)(D)(i)-(ii) “ignores the statute as a whole and instead focuses solely on the language contained in a small sliver of the extensive FIRREA sections, namely, §1821(d)(13)(D).” [Resp. Br. at 13]. Respondent asserts that the Appellants “are asking the Court to put on blinders

in its analysis of this issue. The proper method of statutory interpretation, as applied by the Trial Court, is to evaluate the language found in §1821(d)(13)(D) in light of the FIRREA statute as a whole,”[Id.], and that “a review of the entirety of 12 U.S.C. §1821(d)(3)-(13) plainly shows the Jurisdictional Bar does not apply to Respondent's foreclosure case because the case is not making a claim against the failed financial institution, Carolina Federal, or against the receiver, the FDIC.” [Resp. Br. at 14].

The problem with Respondent’s thinking is twofold. First Congress expressly states that aside from what is otherwise provided within 12 U.S.C. § 1821(d), “no court shall have jurisdiction over” what is expressed in subparagraphs (i) and (ii). And, second, when, a litigant (like the Respondent in this case) is unable to point “specifically to constitutional text or federal statute,” then its position is not supported by the traditional tools of statutory interpretation, but instead “rests on a supposition (or wish) ‘it must be in here somewhere.’” *Virginia Uranium, Inc. v. Warren*, 578 U.S. ___, 139 S.Ct. 1894, 1901 (2019).

Respondent next asserts that “[f]ederal law may preempt state law in three distinct ways,” and by failing to allege the distinct label of complete pre-emption, “[a]ppellants appear to assert the argument that the mere possibility of the application of [12 U.S.C. § 1821(d)(13)(D)] automatically divests the Trial Court from subject matter jurisdiction in this matter.” [Resp. Br. at 17-18].

The United States Supreme Court, however, disagrees, stating that “these categories are not rigidly distinct.” *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372, n. 6 (2000) (internal quotation marks omitted). In fact, Appellants need only to point specifically “a constitutional text or a federal statute” that does the displacing or conflicts with state law. *Virginia Uranium*, 139 S.Ct. at 1901. Precedent is clear that, if federal law “imposes restrictions or confers

rights on private actors” and “a state law confers rights or imposes restrictions that conflict with the federal law,” then “the federal law takes precedence and the state law is preempted.” *Murphy v. National Collegiate Athletic Assn.*, 584 U. S. ___, 138 S.Ct. 1461, 1480 (2018).

To be sure, the United States Supreme Court is clear that NCP’s “argument would result not in a construction of the statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. With a plain, non-absurd meaning in view, we need not proceed in this way.” *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (alterations adopted and quotation omitted); *see also Virginia Uranium*, 139 S.Ct. at 1900, (explaining that “in any field of statutory interpretation, it is our duty to respect not only what Congress wrote but, as importantly, what it didn't write.”).

There exists no language to conclude, as Respondent asserts, “that FIRREA section 1821(d)(13)(D) requires only those persons or entities making claims *against* a *failed financial institution* or seeking to adjudicate their rights *against* the *failed institution* to present their claims first to the FDIC through its administrative claims process.” [Resp. Br. 15]. As such, Respondent’s foreclosure and deficiency actions are clearly an “action for payment of [CFSB] for which the [FDIC] has been appointed receiver.” *Id.*, *see also Langley v. FDIC*, 484 U.S. 86, 92 (1987), (confirming a lower court’s finding that a promissory note and mortgage securing its repayment are “assets” of a depository institution at the time it is placed in receivership.”).

The plain language of 12 U.S.C. § 1821(d)(13)(D)(i) reveals how misguided Respondent’s argument that the issue as to whether NCP has been assigned the Note “has no connection to Appellant’s lack of subject matter jurisdiction argument.” [Resp. Br. at 20]. Subparagraph (i) clearly ousts jurisdiction to find that “NCP is seeking to exercise its lawful authority to enforce the subject note and mortgage it was assigned by virtue of the assignment from CRE/ADC Venture

2012-1, LLC” [Master Order]. But Respondent knows this an attempt to argue evidence that the FDIC may have, through the CRE/ADC Venture 2012-1, LLC, acquired the HELOC and Mortgage “itself from as such receiver,” as “waived.”

As stated before, Respondent’s attempt to circumvent the jurisdictional bar established by **Congress** is misguided. It is misguided, even if the Master understood NCP’s position that “[a]ll other arguments, including the validity of loan documents, standing, referral of this case to the MIE, and the procedural history of this matter, have been explicitly waived by Appellants and can no longer be argued before the Court.” [Resp. Br. at 10]. In fact, the Master elucidated that he “almost took [the] position earlier to hold the question of jurisdiction in advance and hear the case,” [Resp. Br. at 10], “but decided to go ahead and rule I have jurisdiction.” [*Id.*]. Clearly the Master understood as he told NCP’s counsel that if Appellants’ counsel “is correct and I didn’t have jurisdiction, then I couldn’t have heard them anyways.” [Resp. Br. at 9].

To be certain, Respondent’s argument that “The Trial Court Properly Concluded that Appellants’ [sic] Waived All Defenses and Counterclaims, Except for Subject Matter Jurisdiction” fails on its assertion. This is because “[a] court lacking subject matter jurisdiction has no authority to act regardless consent of the litigants (emphasis added).” *Dove v. Gold Kist, Inc.*, 314 S.C. 235, 238, 442 S.E.2d 598, 600 (1994) (citing *Nix v. Mercury Motor Express, Inc.*, 270 S.C. 477, 242 S.E.2d 683 (1978)).

Respondent’s waiver argument, based on the cases cited¹ [Resp. Br. at 10], is in reality asking the court to invoke procedural rules in a manner different from similar claims as *Gold Kist*,

¹ *Gatewood v. Moses*, 39 S.C.L. 244, 247 (S.C. App. L. 1852); *Bodkin v. Bodkin*, 388 S.C. 203, 228, 694 S.E.2d 230, 243 (Ct. App. 2010); *C.A.N. Enterprises, Inc. v. S.C. Health & Human Servs. Fin. Comm’n*, 292 S.C. 556, 559, 357 S.E.2d 714, 715 (Ct. App. 1987), *aff’d* 296 S.C. 373, 373 S.E.2d 584 (1988)].

and *Nix v. Mercury Motor*. See *Hathorn v. Lovorn*, 457 U.S. 255, 262-63 (1982) (quoting *Barr v. City of Columbia*, 378 U.S. 146, 149 (1964)).² (“state courts may not avoid deciding federal issues by invoking procedural rules that they do not apply evenhandedly to all similar claims.”).

To be clear – Respondent is attempting to assert that the even if the Master’s jurisdiction is pre-empted, its order of foreclosure is not! The United States Supreme Court, however, rejects any notion that “waiver” can overcome issues of standing, real party in interest, power to order supersedeas and sale “does not protect a state-court judgment from pre-emption.” *Longshoremen*, 476 U.S. at 393. The “waiver” argument cannot possibly be an “asserted non-federal ground must independently and adequately support the judgment.” *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931).

As outlined in their Initial Brief, Appellants are not raising new issues, but asserting the issues of waiver, standing, real party in interest or the courts power of sale and supersedeas cannot be independent of whether the Master had jurisdiction in the first place. To constitute an “independent” state bar, the state law basis for the decision must not be interwoven with federal law and rest purely on state law grounds. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983); *Harris v. Reed*, 489 U.S. 255, 265 (1989). And both the Master and S.C. Supreme Court recognize this fact.

In the final analysis because Respondent failed to address the argument that its asserted non-federal ground must be “independent” and “adequate” to support judgment, then Respondents’ “waiver” argument is in fact waived! *Turner v. South Carolina Dep’t Environ. Control*, 377 S.C. 540, 547, 661 S.E.2d 118, 121 (Ct. App. 2008) (“If [a] respondent fails to

² The United States Supreme Court has added no requirement of a showing of manipulative intent on the part of the state court.

respond to an issue in his brief, the appellate court may treat the failure to respond as a confession that the appellant's position is correct.”); 5 Am.Jur.2d *Appellate Review* § 555, at 254 (1995).

CONCLUSION

Respondent’s primary argument that “[t]he plain language of jurisdictional bar clearly indicates that Congress established two specific scenarios under which exclusive jurisdiction would lie with the FDIC... those scenarios are when an individual is (1) making claims against a failed financial institution or (2) seeking to adjudicate their rights against the failed institution. See 12 U.S.C. § 1821(d)(13)(D)” [Resp. Br. at 18], is a question of statutory interpretation. *Virginia Uranium*, 139 S.Ct. at 1901.

Yet, the text of the relevant subsection of FIRREA, 12 U.S.C. § 1821(d)(13)(D)(i)-(ii), provides:

- (D) Limitation on judicial review
Except as otherwise provided in this subsection, no court shall have jurisdiction over —
 - (iii) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or
 - (iv) any claim relating to any act or omission of such institution or the [FDIC] as receiver.

The error is clear - the Master simply ignored the existence of the plain, unambiguous language in subparagraph (i) which extends the jurisdictional bar in clause to (1) any claim or (2) action for payment from or (3) any action seeking a determination of rights with respect to the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver. He did not, as Respondent now asserts, base his decision on state law. [R. pp. 10-26].

Clearly, Respondent’s argument is thus “that it must be in here somewhere.” *Virginia*

Uranium at 1901. However, *Virginia Uranium* and *Kansas v. Garcia*, 140 S.Ct. 791, 801 (2020) both operate to rid courts of any notion that pre-emption can be asserted or denied “based on a freewheeling judicial inquiry as to whether a state statute is in tension with federal objectives.” *Garcia*, 140 S.Ct. at 801. The Court’s rational is clear and has not changed in over two centuries:

“The Supremacy Clause provides that the Constitution, federal statutes, and treaties constitute ‘the supreme Law of the Land.’ Art. VI, cl. 2. The Clause provides ‘a rule of decision’ for determining whether federal or state law applies in a particular situation.”

Id.

That Supremacy Clause is void of any equitable consideration that the Respondent asserts – “If federal law ‘imposes restrictions or confers rights on private actors’ and ‘a state law confers rights or imposes restrictions that conflict with the federal law,’ ‘the federal law takes precedence and the state law is preempted.’” *Id.* (citing *Murphy v. National Collegiate Athletic Ass’n*, 584 U.S. ___, 138 S.Ct. 1461, 1480 (2018)).

Therefore, the resolution of the matter “begins where all such inquiries must begin: with the language of the *statute* itself.” *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (emphasis added). In this case, it is also where the inquiry should end.

Respectfully submitted.

s Robert B. Varnado

VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

September 15, 2021
Charleston, South Carolina

RECEIVED

Sep 15 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the *Appellant's Final Reply Brief* contains all material proposed to be included by any of the parties, not any other material.

/s Robert B. Varnado

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
36 Broad Street, Suite 200
Charleston, South Carolina 29401
(843) 737-7301
Attorneys for Appellants

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

NCP Pilgrim, LLC, Respondent,

v.

Mary Lou Cercopely and David S. Clancy, Appellants.

Appellate Case No. 2020-001168

Appeal From Dorchester County
James E. Chellis, Master-in-Equity

Unpublished Opinion No. 2023-UP-293
Submitted June 1, 2023 – Filed August 16, 2023

AFFIRMED

Robert Bratton Varnado, of Brown & Varnado, LLC, of
Charleston, for Appellants.

Russell Pierce Patterson and Lauren Patterson Williams,
both of Russell P. Patterson, PA, of Hilton Head Island,
for Respondent.

PER CURIAM: In this foreclosure action, Appellants Mary Lou Cercopely and David Sean Clancy argue that the master-in-equity erred by ruling that the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) does not deprive the court of subject matter jurisdiction. We affirm.

FACTS

On June 10, 2004, Barbara Clancy (Barbara) purchased commercial property in Summerville (the Property). Barbara's son, David S. Clancy (Clancy) executed a Home Equity Variable Draw Agreement with Carolina Federal Savings Bank (CFSB) for \$258,840 secured by a mortgage (the Mortgage) executed by Barbara. Barbara and Clancy signed two mortgage modifications, the first on August 13, 2009 and the second on June 24, 2010. On June 8, 2012, CFSB was closed by the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Company (FDIC) was appointed receiver. On July 5, 2012, the FDIC notified Clancy that he and his mother were in default due to missed payments on the mortgage.

On October 13, 2012, Barbara passed away, leaving her interest in the Property to her two children, Clancy and Mary Lou Cercopely (collectively, Appellants). Appellants continued to make payments on the loan until January 14, 2013, then defaulted by failing to make the required monthly payments. Appellants were again notified that they were in default on their mortgage obligations in a letter dated July 17, 2017.

In the meantime, on December 11, 2012, the FDIC assigned the Mortgage to CRE/ADC Venture 2012-1, LLC (CRE/ADC) through a structured transaction. On August 15, 2018, CRE/ADC sold and assigned the Mortgage to NCP Pilgrim, LLC (NCP).

On October 25, 2018, NCP informed Appellants that it had recently taken ownership of their mortgage loan, was aware that Appellants were in default on their mortgage obligations, and requested payment of the \$430,391.52 outstanding. On November 15, 2018, after Appellants failed to respond to NCP's demand letter, NCP filed a summons, complaint, and *lis pendens* against Appellants, requesting the court grant a foreclosure on the Property along with costs and expenses. On January 4, 2019, the action was referred to the Dorchester County Master-in-Equity pursuant to Rule 53(b), SCRCp. On January 22, 2019, Appellants timely filed an answer with counterclaims.

On January 28, 2020, a foreclosure trial was held before the master. At trial, Appellants waived all defenses and counterclaims apart from subject matter jurisdiction.

After trial, the master found that he had jurisdictional authority to hear NCP's foreclosure claims. He awarded a judgment against Appellants in the sum of \$367,963.19, plus interest of \$35.85 per day from January 29, 2020. In a supplemental decree of sale and foreclosure issued thereafter, Appellants were also ordered to pay \$41,110.82 in attorney's fees and costs. This appeal followed.

ISSUES ON APPEAL

- I. Did the master err in finding that Appellants waived all defenses and counterclaims aside from the issue of subject matter jurisdiction?
- II. Did the master err in finding that he had subject matter jurisdiction to rule on NCP's claims?

STANDARD OF REVIEW

"Actions for foreclosure or the cancellation of instruments are actions in equity." *Wilder Corp. v. Wilke*, 324 S.C. 570, 576, 479 S.E.2d 510, 513 (Ct. App. 1996), *aff'd*, 330 S.C. 71, 497 S.E.2d 731 (1998). However, "[t]he issue of whether a federal statute preempts state law is a question of law." *Eggleston v. United Parcel Serv., Inc.*, 428 S.C. 373, 378, 834 S.E.2d 713, 715 (Ct. App. 2019). Further, "[t]he question of subject matter jurisdiction is a question of law." *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 353 (2022) (quoting *Byrd v. McDonald*, 417 S.C. 474, 478, 790 S.E.2d 200, 202 (Ct. App. 2016)). "The appellate court 'may make its own ruling on a question of law without deferring to the circuit court.'" *Eggleston*, 428 S.C. at 378, 834 S.E.2d at 715 (quoting *Henderson v. Summerville Ford-Mercury Inc.*, 405 S.C. 440, 446, 748 S.E.2d 221, 224 (2013)).

LAW/ANALYSIS

I. Waiver

As an initial matter, Appellants question the validity of the assignment of the loan documents to NCP and the validity of the order referring this case to the master. At trial, Appellants expressly waived all arguments unrelated to the

master's subject matter jurisdiction. As a result, Appellants' arguments related to any other issues are unpreserved for our review. *See McCrea v. City of Georgetown*, 384 S.C. 328, 332, 681 S.E.2d 918, 921 (Ct. App. 2009) ("A stipulation is an agreement, admission, or concession made in judicial proceedings by the parties or their attorneys and is binding upon those who make them. The court must accept stipulations as binding upon the parties." (citation omitted)).

II. Subject Matter Jurisdiction

Appellants argue that the master lacked subject matter jurisdiction to hear Respondent's foreclosure action under FIRREA. We disagree.

"An assignee stands in the shoes of its assignor." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013). *See also* S.C. Code Ann. § 36-3-203(b) (Supp. 2022) ("Transfer of an instrument . . . vests in the transferee any right of the transferor to enforce the instrument . . ."). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage" *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930).

Appellants assert that the following section of FIRREA limits the master's jurisdictional authority:

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the [FDIC] as receiver.

12 U.S.C. § 1821(d)(13)(D). In essence, Appellants believe the above section divests South Carolina courts of subject matter jurisdiction over this action because CFSB was a "depository institution" and the FDIC was appointed receiver of its assets. FIRREA is inapplicable for two reasons.

A. The Assignment to NCP

First, FIRREA does not apply when the FDIC relinquishes its rights to a mortgage and note in an assignment agreement.

On August 15, 2018, NCP assumed the Mortgage along with all rights, title, and interest previously held by CRE/ADC. After the assignment agreement was executed, CRE/ADC was completely divested of any right to foreclose or seek relief in relation to the mortgage. *See* § 36-3-203(b) ("Transfer of an instrument . . . vests in the transferee any right of the transferor to enforce the instrument . . ."); *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999) ("When a contract is assigned, the assignee should have all the same rights and privileges, including the right to sue on the contract, as the assignor."). This was true even though the FDIC owned a majority interest in CRE/ADC at the time of execution. *See Deutsche Bank Nat'l Tr. Co. v. Burke*, 902 F.3d 548, 552 (5th Cir. 2018) (finding that "[b]ecause the FDIC could sell 'all the real and personal property' of [a failed bank], it necessarily had power to assign the rights under the note, including the foreclosure rights" (citation omitted) (quoting 12 U.S.C. § 192)).

Under FIRREA, state courts are deprived of their jurisdiction over a claim if it is one of three types of claims. The first is a claim involving "the assets of any depository institution for which the [FDIC] has been appointed receiver." 12 U.S.C. § 1821(d)(13)(D)(i). The second involves "assets which the [FDIC] may acquire from itself as [a] receiver[.]" *Id.* The last category of claims covered by the statute are those "relating to any act or omission of such [depository] institution or the [FDIC] as receiver." § 1821(d)(13)(D)(ii).

The first type of claim is not at issue in the current case because when the assignment agreement between CRE/ADC and NCP was properly executed, the Mortgage could no longer be considered an asset of CFSB and the FDIC could no longer be considered the Mortgage's receiver. *See* 12 U.S.C. § 1821(e)(6)(C)(ii) (stating that a receiver has no further liability in respect to a mortgage that was assigned or sold). The second type of claim is also not at issue because the assignment agreement with NCP represented an unequivocal relinquishment of all rights and obligations related to the mortgage. The FDIC may not now reacquire the mortgage, because it is no longer the mortgage's receiver. The final category is likewise not at issue because NCP never filed a claim against the FDIC based on the FDIC's acts or omissions. Therefore, the master properly held he had jurisdiction to hear NCP's foreclosure action.

B. FIRREA's Manifest Purpose

Second, FIRREA is inapplicable because subjecting foreclosure actions against defaulting mortgagors to the provisions of FIRREA would be antithetical to FIRREA's manifest purpose.

"The true guide to statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose." *Silva for Est. of Silva v. Allstate Prop. & Cas. Ins. Co.*, 424 S.C. 512, 517, 818 S.E.2d 753, 756 (2018) (quoting *Jackson v. Charleston Cnty. Sch. Dist.*, 316 S.C. 177, 181, 447 S.E.2d 859, 861 (1994)).¹

"FIRREA was enacted in 1989 as an emergency measure to enable the . . . [FDIC] to resolve and liquidate expeditiously the hundreds of failed financial institutions throughout the country." *Tillman v. Resol. Tr. Corp.*, 37 F.3d 1032, 1035 (4th Cir. 1994). "Congress required persons making claims *against* a failed financial institution or seeking to adjudicate rights against [those institutions] to present their claims first to the receiver for resolution." *Id.* (emphasis added). Indeed, section 1821(d) only references claims against failed financial institutions or their receivers. *See e.g.* § 1821(d)(5)(A)(i) (defining the time period in which the FDIC must allow or disallow "any claim against a depository institution . . . with the [FDIC] as receiver[]"); § 1821(d)(6)(A) (explaining that "with respect to any claim against a depository institution for which the [FDIC] is receiver[,] . . . the claimant may request administrative review of the claim . . . or file suit on such claim" in an appropriate United States district court). Also, section 1821(d)(13)(D)'s limitation on judicial review was interpreted as a "jurisdictional

¹ Appellants also rely on *Virginia Uranium, Inc. v. Warren*, 139 S. Ct. 1894, 1901 (2019) to argue that because Respondent was unable to point "specifically to 'a constitutional text or federal statute,'" *id.*, it may not avail itself of the tools of statutory interpretation. This statement subverts the language's meaning when read in its proper context. The *Virginia Uranium* court explained that while courts have discussed various categories of federal preemption, "at least one feature unites them: Invoking some brooding federal interest or appealing to a judicial policy preference should never be enough to win preemption of a state law; a litigant must point specifically to 'a constitutional text or a federal statute' that does the displacing or conflicts with state law." *Id.* (quoting *Puerto Rico Dep't of Consumer Affairs v. ISLA Petroleum Corp.*, 485 U.S. 495, 503 (1988)). Thus, it is Appellants' rather than Respondent's burden to point specifically to a federal statute that displaces or conflicts with state law.

bar"—something on which Appellants rely in their brief—because of a concern that "creditors [of failed financial institutions] would opt out of the administrative review[.]" *Tillman*, 37 F.3d at 1035–36. While we recognize that FIRREA's jurisdictional bar is not limited to creditors, we believe it is limited to claims against a failed financial institution or its receiver and should not be extended to include foreclosure claims against mortgagors.

In the present case, NCP is neither a creditor nor any other type of party seeking to determine its rights against CFSB as a failed financial institution or the FDIC as its receiver. Instead, NCP properly initiated this foreclosure action against Appellants. Therefore, FIRREA's jurisdictional bar is inapplicable to this action.

Accordingly, the decision of the master-in-equity is

AFFIRMED.²

WILLIAMS, C.J., and GEATHERS and VERDIN, JJ., concur.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

RECEIVED

Aug 30 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

APPELLANTS' PETITION FOR REHEARING

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
25 Cumberland Street, Suite 200 (29401)
P.O. Box 387
Charleston, South Carolina 29402
(843) 737-7301
Attorneys for Appellants

Other Counsel of Record:
Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Respondent

Pursuant to the Decision dated August 16, 2023, the Petitioners Mary Lou Cercopely, David S. Clancy and David Sean Clancy (“Petitioners”) respectfully file the following ***Petition for Rehearing*** pursuant to Rules 221(a) and 240 of the South Carolina Appellate Court Rules.

1.

FIRREA¹ is a federal – not South Carolina – statute. FIRREA was enacted by Congress, not the South Carolina General Assembly. Congress is the supreme legislature in the land, which includes the Palmetto State.

FIRREA says explicitly – and it is absolutely clear – that neither the South Carolina Court of Common Pleas nor the South Carolina Court of Appeals have substantive jurisdiction over any claim or action to find in NCP’s favor that “on or about March 8, 2013, the Note and Mortgage was assigned by Carolina to CRE/ADC Venture 2012, LLC ...”. [R. p. 63 ¶ 12]. 12 U.S.C. § 1821(d)(13)(D)(i). This power is given to the FDIC-R. 12 U.S.C. § 1821(d)(2)(A)(i)-(ii).

Consequently, the Appellants cited the Supremacy Clause of the United States Constitution (U.S. Const. Art. VI, Clause 2), which is the supreme law of the land.² Appellants even crafted

¹ The Financial Institutions Reform, Recovery and Enforcement Act (“FIRREA”), Pub Law 101-73, Statutes at Law 103 Stat. 183 (overwhelmingly enacted by the 101st United States Congress and signed into law by President George H.W. Bush in 1989).

² Some of the United States Supreme Court (“SCOTUS”) cases cited by Appellants include: *International Longshoremen’s Ass’n, AFL-CIO v. Davis*, 476 U.S. 380, 388 (1986) (“Pre-emption, the practical manifestation of the Supremacy Clause, is always a federal question”); *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940) (“[t]he States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land”); *Abie State Bank v. Bryan*, 282 U.S. 765, 773 (1931) (to overcome deciding the federal question of jurisdiction, any “asserted non-federal ground must independently and adequately support the judgment; *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (To constitute an “independent” state bar, the state law basis for the decision must not be interwoven with federal law and rest purely on state law grounds); *Beard v. Kindler*, 558 U.S. 53, 60 (2009) (“A state procedural rule is “adequate” if it is “firmly established” and “regularly followed.”); *Elgin v. Department of Treasury*, 576 U.S. 1, 25 (2012) (explaining that, “[w]hen dealing with an express preclusion clause ... we determine the scope of preclusion simply by interpreting the words Congress has chosen.”). *Ake v.*

the first issue on appeal around the Supremacy Clause: “Was the Dorchester County Master in Equity’s interpretation of a federal law, 12 U.S.C. § 1821(d)(13)(D), not merely erroneous, but also void under the Supremacy Clause of the United States Constitution?”

Here, though, the Court of Appeals appears to ignore the U.S. Constitution. It passes by all of the analysis of the United States Supreme Court³ – the supreme authority on the Constitution and federal law. It is as if the Supremacy Clause does not exist at all – that the Appellants pulled it whole cloth out of the air – and therefore it can be safely ignored in South Carolina. It even says that the Appellants waived a big chunk of their lack of subject matter jurisdiction argument – which cannot be waived. *Kalb v. Feuerstein*, 308 U. S. 433, 438 (1940).

The Supreme Court of the United States says that is clearly within Congress’ powers under the U.S. Constitution to establish an exclusive federal forum to adjudicate issues of federal law in a particular area that Congress has the authority to regulate. *International Longshoremen’s Ass’n, AFL-CIO v. Davis*, 476 U.S. 380, 388 (1986). But the South Carolina Court of Appeals apparently does not need to look at the decisions of SCOTUS when analyzing a federal statutory scheme like FIRREA. It seems that relying on South Carolina law is good enough when dealing with issues of federal preemption.

Whether Congress has preempted state law in the case of FIRREA is the question that must be answered, especially when the appeal is based on Appellants’ claims that the state court’s adjudicatory power has actually been pre-empted. The courts are to examine whether “the text ...

Oklahoma, 470 U.S. 68 (1985). *Beard v. Kindler*, 558 U.S. 53, 60 (2009) (A state procedural rule is “adequate” if it is “firmly established” and “regularly followed.”).

³ E.g., *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (resolution of the matter “begins where all such inquiries must begin: with the language of the *statute* itself.”) Others include: *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992); *United States v. Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241-242 (1989); *Rubin v. United States*, 449 U.S. 424, 430 (1981); *United States v. Goldenberg*, 168 U. S. 95, 102-103 (1897).

expressly limit[s] the jurisdiction that other statutes confer.” *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 489 (2010); *see also*, *Elgin v. Department of Treasury*, 576 U.S. 1, 25 (2012) (explaining that, “[w]hen dealing with an express preclusion clause ... we determine the scope of preclusion simply by interpreting the words Congress has chosen.”). The failure of the Court of Appeals to examine the applicability of the Supremacy Clause and preemption law is a fatal error.

2.

The Court of Appeals also erred when it relied on *Silva for Est. of Silva v. Allstate Prop. & Cas. Ins. Co.*, 424 S.C. 512, 517, 818 S.E.2d 753, 756 (2018) for the holding “[t]he true guide for statutory construction is not the phraseology of an isolated section or provision, but the language of the statute as a whole considered in the light of its manifest purpose” to render an opinion on FIRREA. FIRREA is a federal scheme.

In *Board of Governors, FRS v. MCorp Financial, Inc.*, 502 U.S. 32, 38-39 (1991), SCOTUS held that “FISA’s preclusion provision speaks directly to the jurisdictional question at issue in this litigation” and that (with respect to actions under 12 U.S.C. § 1818): “Congress has spoken clearly and directly: ‘[N]o court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any [OCC] notice or order under this section.’” Similarly, the D.C. Circuit held in *CityFed Fin. Corp.*, 58 F.3d 741 (D.C. Cir. 1995) that to prevent regulated parties “from interfering with the comprehensive powers of the federal banking regulatory agencies, Congress severely limited the jurisdiction of courts to review ongoing administrative proceedings brought by banking agencies.”

When a federal statute contains an express provision regarding preemption, the preemption inquiry must focus on the plain wording of that provision, which generally contains the most

reliable evidence as to whether Congress intended to preempt state law. *CSX Transp. v. Easterwood*, 507 U.S. 658 (1993).

This is a specific type of pre-emption that is recognized by the S.C. Supreme Court in *City of Cayce v. Norfolk Southern Railroad Co.*, 391 S.C. 395, 402, 706 S.E.2d 6, 9 (2011). In *Cayce*, our Supreme Court explained that “[w]hen a federal statute contains an express provision regarding preemption, the preemption inquiry must focus on the plain wording of that provision, which generally contains the most reliable evidence as to whether Congress intended to preempt state law. *CSX Transp. v. Easterwood*, 507 U.S. 658, 113 S.Ct. 1732 (1993) (other citations omitted).”

Thus, the Court of Appeals erred in using the state court’s “manifest purpose” rule – in what should have been a preemption case – rather than SCOTUS’s rule that it needs to look at the plain wording of the provision to determine 12 U.S.C. § 1821(d)(13)(D)’s applicability. *Cayce*, 391 S.C. at 402, 706 S.E.2d at 9.

3.

A finding on subject matter jurisdiction adverse to NCP would mean that NCP lacks standing “to recover satisfaction for such money out of the land by foreclosure and sale according to law.” *See, e.g.*, S.C. Code Ann. § 29-3-210

The only lawful way to avoid such a finding under the federal preemption standard is for the Court of Appeals to have found “firmly established” and “regularly followed” state procedural ground that overcomes 12 U.S.C. § 1821(d)(13)(D). *See e.g., Michigan v. Long*, 463 U.S. 1032 (1983); *Ake v. Oklahoma*, 470 U.S. 68 (1985).

The Court of Appeals does not even try. But, significantly, the way that the Court of Appeals discusses South Carolina case law and statutes in the Opinion shows that there is nothing

even remotely approaching firmly established or regularly followed state procedural grounds in this state.

For example, the note is a promissory note (HELOC) [S.C. Code Ann. § 36-9-102(65)], and therefore can only be properly assigned under U.C.C. Article 9, at S.C. Code Ann. § 36-9-203. The note is most definitely *not* a negotiable instrument (or “instrument”) [S.C. Code Ann. § 36-9-102(47)], and therefore it cannot be “transferred” under U.C.C. Article 3, codified at S.C. Code Ann. 36-3-203. The same holds true for a “mortgage”. Also, the term transfer is basically a U.C.C. term of art which is defined by Article 3. Yet, the Court of Appeals uses 3-203 twice to say there was a proper assignment of a *mortgage*.

So, when the Court of Appeals incorrectly mixes and matches defined terms like “transfer”, “assignment” and “instrument” interchangeably (Opinion, §§ II and II.A) ... or uses pre-U.C.C. caselaw (e.g., *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930)) ... or employs common-law assignment principles not from the U.C.C. (e.g., *Twelfth RMA Partners, L.P. v. National Safe Corp.*, 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999)) – or even (as far as Appellants can tell) apparently defines the Mortgage as an “instrument” [which seems to be utilizing a common-law definition not a U.C.C. Article 3 definition] ... then *a fortiori* it is not applying “firmly established” and “regularly followed” state procedural grounds⁴. There exists no “firmly established” and

⁴ This is because the S.C. Supreme Court has repeatedly and unequivocally held that the doctrine of “displacement” applies in the context of the UCC. *See e.g. Hitachi Electronic Devices (USA), Inc. v. Platinum Technologies, Inc.*, 366 S.C. 163, 170, 621 S.E.2d 38, 41 (2005). Under the principle of displacement, “[o]nly where the UCC is incomplete does the common law provide applicable rules.” *Hitachi*, 366 S.C. at 170, 621 S.E.2d at 41. In *In Re Estate of Rider*, the S.C. Supreme Court held that “the UCC provisions were created to provide a uniform method of resolving issues in order to promote liquidity and finality, to be supplemented by (not thwarted by) the rules of agency and other applicable laws.” 407 S.C. 386, 398, 756 S.E.2d 136, 143 (2014). By ignoring this rule and interposing new, interchangeable definitions, the Court of Appeals shows there is nothing firmly established in South Carolina to get around federal preemption.

“strictly followed” state grounds to support the Court of Appeals finding that the FDIC assigned its interest to CRE/ADC Venture 2012-1, LLC.

4.

Virginia Uranium, Inc. v. Warren, 139 S.Ct. 1894, 1901 (2019) is misapplied. It is a case which discusses preemption – which the Court of Appeals promptly ignores – but instead it chooses to cite it for the proposition that “a litigant must point specifically to ‘a constitutional text or federal statute’ that does the displacing or conflicts with state law” and then states that it is “**the Appellant’s ... burden** to point specifically to a federal statute the displaces or conflicts with state law (emphasis added) – as if the Appellant’s somehow haven’t done just that in multiple references to 12 U.S.C. § 1821(d)(13)(D)! Here, it is tautology to ignore the broader holding of *Virginia Uranium*, while citing it to absolve the Respondents from pointing to their own constitutional text or statute.

5.

Tillman v. Resolution Tr. Corp., 37 F.3d 1032 (4th Cir. 1994) is also inapplicable. The *Tillman* court explains that “[w]hile we recognize that FIRREA's jurisdictional bar is not limited to creditors, we believe it is limited to claims against a failed financial institution or its receiver and should not be extended to include foreclosure claims against mortgagors.” 37 F.3d at 1035-1036.

Here, it is important to note that Appellant’s appeal is not based on a foreclosure *claim* against a mortgagor; rather, the mortgagor is (1) raising subject matter jurisdiction against NCP, who has gone to the circuit court seeking a finding from circuit court that its mortgage assignment gives it the right to sue Appellants; and (2) indicating that 12 U.S.C. § 1821(d)(13)(D) prevents

NCP from doing this. Thus, *Tillman's* holding (that FIRREA should not be extended to include foreclosure claims against mortgagors) is therefore inapplicable in this fact pattern.

Conclusion

For the foregoing reasons, the South Carolina Court of Appeals should reverse its Opinion of August 16, 2023.

RECEIVED

Aug 30 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis
Dorchester County Master-in-Equity

APPELLATE CASE NO. 2020-001168

NCP PILIGRIM, LLC, ... Respondent,

v.

MARY LOU CERCOPELY, DAVID S. CLANCY, SOUTH CAROLINA FEDERAL
CREDIT UNION, SOUTHCOAST COMMUNITY BANK, JOAN GEANURACOS and
DAVID SEAN CLANCY,

of whom MARY LOU CERCOPELY, DAVID S. CLANCY
and DAVID SEAN CLANCY are the Appellants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the *Appellants' Petition for Rehearing* in the above referenced case has been served upon counsel of record by mailing a copy in an envelope properly addressed with postage prepaid on this day to the following, on the 28th Day of August 2023:

Russell P. Patterson, Esquire
Lauren P. Williams, Esquire
Russell P. Patterson P. A.
P. O. Box 8047
Hilton Head Island, SC 29938
Attorneys for Respondent

(signature on following page)

/s Robert B. Varnado

Robert B. Varnado (S.C. Bar # 0007850)
VARNADO LAW FIRM, LLC
25 Cumberland Street, Suite 200 (29401)
P.O. Box 387
Charleston, South Carolina 29402
(843) 737-7301
Attorneys for Appellants

August 28, 2023
Charleston, South Carolina

The South Carolina Court of Appeals

NCP Pilgrim, LLC, Respondent,

v.

Mary Lou Cercopely; David S. Clancy; South Carolina
Federal Credit Union; Southcoast Community Bank;
Joan Geanuracos; David Sean Clancy, Defendants,

of whom Mary Lou Cercopely, David Clancy and David
Sean Clancey are the Appellants.

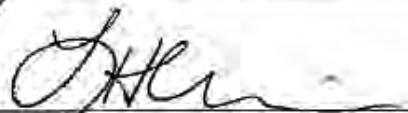
Appellate Case No. 2020-001168

ORDER

After careful consideration of the petition for rehearing, this court has discovered no material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.

 J.

 J.

Columbia, South Carolina

cc:

FILED
Sep 21 2023

Robert Bratton Varnado, Esquire
Russell Pierce Patterson, Esquire
Lauren Patterson Williams, Esquire
Cheryl L. Graham

FILED
Sep 21 2023