

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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SEP 06 2013

S.C. SUPREME COURT

APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

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Apellate Case No. 2010 – 150386

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SunTrust Mortgage, Inc.....Respondent,  
v.  
Mark Ostendorff.....Appellant.

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MOTION TO RESTORE AUTOMATIC STAY

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Mark Ostendorff  
135 Cedar Creek Circle  
Central, SC 29630  
(864) 640-3340  
Appellant, Pro Se  
[markostendorff@yahoo.com](mailto:markostendorff@yahoo.com)

Brian S. Tatum  
Tatum Law Firm  
P. O. Box 11250  
Charlotte, NC 28220  
(704) 307-4350  
Attorney for Respondent

COMES NOW Mark Ostendorff, Appellant, to this honorable Court, to restore the Automatic Stay in this case.

On July 25, 2013, Master-In-Equity ordered Lift of Stay in response to Sun Trust's Motion. Ostendorff opposed SunTrust's motion. All three are attached.

Ostendorff's appeal on his compulsory counterclaim has an automatic stay on any proceedings unless precluded by Rules of Court or Statute:

The Order to Lift Stay does not have any conclusions of law, nor any findings of fact, nor any circumstances to justify the lifting of the automatic stay, as there are none.

SCACR 241(a) General Rule. " As a general rule.. .... appeal....acts to automatically stay ..."

(b) Exceptions. " The exceptions to the general rule are found...Where specific conditions must be met.... those conditions must be strictly complied with."

The Order to Lift Stay does not even meet the threshold of an exception, much less any specific condition .

Section 18-9-10, South Carolina Code of Laws. When appeal may be taken.

Ostendorff's appeal has been. SunTrust meets no allowance to lift stay.

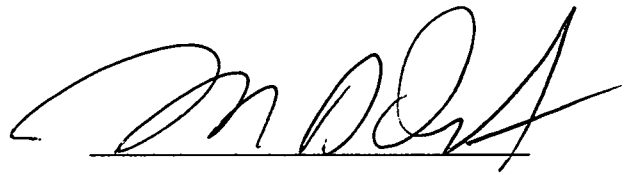
Should Ostendorff's appeal be reversed, remanded to hear parole evidence, etc., his home should not be foreclosed upon as it is unique in its lot size and location. The house can be replicated but not its uniqueness cannot be replicated.

Further, Ostendorff will show the trial court that SunTrust did breach its contract with Ostendorff to provide construction (rehab) money draws and was damaged. Through former SunTrust employees, which SunTrust has refused to provide addresses of although demanded under Request for Discovery, Ostendorff will show that SunTrust already securitized the loan and thus had financial incentive not make draws to Ostendorff and that SunTrust was not The Real Party of Interest in the foreclosure action.

Ostendorff, Appellant, asks from this court an Order from this Court to Restore Automatic Stay until Ostendorff's avenues of appeal are exhausted.

Respectfully submitted on this 3<sup>rd</sup> day of September, 2013.

1

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written over a horizontal line.

Mark Ostendorff

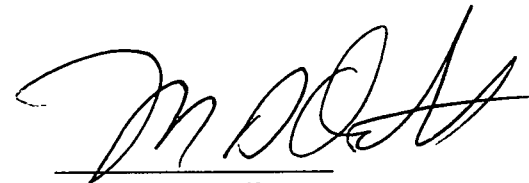
Appellant, Pro Se

CERTIFICATE OF SERVICE

I, Mark Ostendorff, certify that I placed a copy of Appellant's Motion To Restore Automatic Stay in the US Post Office with correct postage due on the below date to:

Tatum Law Firm  
Brian S. Tatum  
PO Box 11250  
Charlotte , NC 282250

September 4, 2013

A handwritten signature in black ink, appearing to read 'M. Ostendorff', written over a horizontal line.

Mark Ostendorff  
135 Cedar Creek Circle  
Central, SC 29630  
Pro Se  
(864) 640-3340

**CERTIFICATE OF SERVICE**

I, Mark Ostendorff, certify that I placed a copy of Appellant's Motion To Restore Automatic Stay in the US Post Office with correct postage due on the below date to:

Tatum Law Firm  
Brian S. Tatum  
PO Box 11250  
Charlotte , NC 282250

September 3, 2013



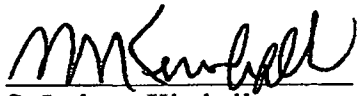
**Mark Ostendorff**  
135 Cedar Creek Circle  
Central, SC 29630  
Pro Se  
(864) 640-3340

Therefore, it is ordered as follows:

1. Plaintiff's Motion to Lift Stay in this action is hereby granted.
2. Plaintiff is hereby authorized to proceed with the foreclosure of its mortgage on the property described in the Mortgage recorded in Book 7985, at Page 302, in the office of the Clerk of Court for York County.
3. Plaintiff shall schedule a hearing on the foreclosure in this court at the earliest practicable date.

AND IT IS SO ORDERED.

July 25, 2013

  
S. Jackson Kimball  
Master-in-Equity for York County

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MOTION  
ATTACHMENT A  
EXHIBIT P. 2/2

STATE OF SOUTH CAROLINA  
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS  
CASE NO: 2007-CP-46-4305

SunTrust Mortgage, Inc.,  
Plaintiff

v.

Mark Ostendorff  
Defendant.

DEFENDANT'S OPPOSITION  
TO PLAINTIFF'S MOTION TO  
LIFT STAY

Defendant opposes plaintiff's motion and responds:

The case which is a compulsory counterclaim, is currently still on appeal in the South Carolina Supreme Court. There is a very good chance that the case will be heard:

Exhibit A – Plaintiff's motion to dismiss defendant's Petition for a Writ of Certiorari was denied by the South Carolina Supreme Court

Exhibit B - Affidavit of Mark Ostendorff -The South Carolina Supreme Court will remand back to trial court to hear parol evidence to contradict a surprise issue by plaintiff's attorney. The issue was never asserted and never once brought up by SunTrust as a required condition in the contract.

The case was a jury trial and will be sent back to the trial court for the facts to be heard by a jury under Anderson v. Liberty Lobby, Inc., 477 U.S. 242 , 105 S. Ct. 2505 , 2511 , 91 L. Ed. 2d. 202- Supreme Court, (1986) The Court cautioned that Summary Judgment not become a trial by affidavit and that "[c]redibility determinations, the weighing of evidence, and the drawing of legitimate inferences from facts are jury functions not those of a judge... The evidence of the non-movant is to be believed ,

MOTION  
ATTACHMENT B  
EXHIBIT (P. 12)

and all justifiable interferences are to be drawn in his favor.”

No reasonable jury would accept SunTrust’s attorney’s 3 ½ years later after –the-fact position of a missed due date.

Numerous issues are on appeal including plaintiff’s refusal to provide discovery.

Res judicata – This is the 2<sup>nd</sup> time this issue has been heard. The first time was an Order to Stay Action on 6/30/2010. The case is still in appeal.

WHEREFORE , Defendant respectfully that the Court deny Plaintiff’s Motion to Lift Stay.

Respectfully submitted this day 15<sup>th</sup> of July, 2013.

By:



Mark Ostendorff  
Pro Se  
137 King Street  
Central , SC 29630  
(864) 640-3340  
[markostendorff@yahoo.com](mailto:markostendorff@yahoo.com)

Motion  
ATTACHMENT  
EXHIBIT (B) 2/13

# The Supreme Court of South Carolina

Sun Trust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Petitioner.

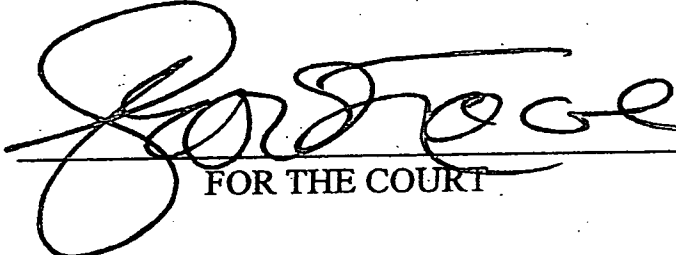
Appellate Case No. 2013-000144

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## ORDER

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Respondent moves to dismiss the petition for a writ of certiorari filed in this matter. Petitioner has filed a return in opposition to the motion. The motion is denied.

  
C.J.  
FOR THE COURT

Columbia, South Carolina

May 1, 2013

cc:

Brian Steed Tatum

Mark Ostendorff

The Honorable Jenny Kitchings

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EXHIBIT A (1)

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM YORK COUNTY

Court of Common Pleas

S. Jackson Kimball, Special Circuit Judge

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Case No. 2007-CP-46-04305

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SunTrust Mortgage, Inc. .... Respondent,

v

Mark Ostendorff ..... Appellant

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AFFIDAVIT OF MARK OSTENDORFF

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I, Mark Ostendorff, submit this affidavit to the court per Rule 224 (c) (3)

I, Mark Ostendorff, have personally prepared this affidavit and swear as to its accuracy and truthfulness to the best of my personal knowledge. I am over eighteen years old and I am competent to Testify to the matters stated therein.

1

I discussed with Mike Watts, and he verified with whom I understood was Joseph Bridges in Greenville, SC, the originator of the Mortgage, on when the interest payments must be made to be in agreement with my contract documents thus ensuring Ostendorff would continue to receive construction draws, a satisfactory VOM( verification of mortgage), and also a favorable credit reporting.

2

Mike Watts called me shortly after our discussion and told me he had talked to Greenville and that "...there really was no due date" and also "... no reporting to credit bureau ". Mike Watts and I agreed that I would make interest payments by the end of the month. This would ensure a satisfactory VOM , just in case someone at SunTrust started reporting to the credit bureaus.

B4

EXHIBIT B

1/3

3

I made interest payments by the end of each month as we agreed

4

SunTrust stopped Ostendorff's construction draws even though Ostendorff made all interest payments by the end of each month.

5

SunTrust never gave any reason why it stopped my construction draws.

6

The issue of interest payment due dates never was discussed after the initial discussion between Ostendorff and Mike Watts

7

The only time the issue of Ostendorff being late on the interest payments was at the hearing for summary judgment

8

There was over \$11,000 remaining in Ostendorff's construction account. This adequate to complete the house.

9

SunTrust's Mike Watts and Darrell Williams assured Ostendorff that SunTrust would provide a "cash out" refinance after construction (rehab) was complete. The proceeds could then convert Ostendorff's high interest, short-term debt into a low interest, long term debt.

This intent was shown by SunTrust paying off Ostendorff's credit card debt to MBNA on or shortly after the construction loan closing. The debt is shown on page 152 of Record on Appeal

10

Steve Burmiester of SunTrust paid two months interest on Ostendorff's account with monies remaining, for the months of February and March 2007. The months paid are shown on Susan Walker's affidavit, item 14 page4, page 57 of Record on Appeal. Burmiester (SunTrust) itself paid the interest payment for February 2007 and March 2007 late by paying on March 15,2007 and thus was payment date is not an issue.

AFFIANT:

*[Handwritten signature of Mark Ostendorff]*

Mark Ostendorff

Sworn to and subscribed before me  
This 20 day of November 2012

*[Handwritten signature of Notary Public]*

NOTARY PUBLIC

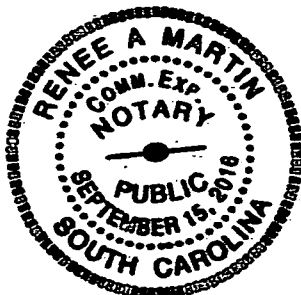


EXHIBIT B 2/3

(NOTARY SEAL)

My Commission Expires:

9/5/2016

BB

3

EXHIBIT B 3/3

STATE OF SOUTH CAROLINA

COUNTY OF YORK

SunTrust Mortgage, Inc.,

Plaintiff(s)

vs.

Mark Ostendorff

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 07-CP-46-4305

**PLAINTIFF'S MOTION  
TO LIFT STAY**

COMES NOW SunTrust Mortgage, Inc. ("SunTrust"), Plaintiff in the above-styled civil action, and moves this Court to lift the foreclosure stay entered in the above-captioned matter and shows this honorable Court the following:

On December 18, 2009, this Court entered an order granting SunTrust's motion for summary judgment with respect to Defendant's counterclaims. On January 17, 2009, Defendant filed a notice of appeal regarding the order granting summary judgment, and soon after, this Court stayed the foreclosure proceeding pending the outcome on appeal. On November 14, 2012, the South Carolina Court of Appeals affirmed the decision of this Court in granting SunTrust's motion for summary judgment. A true and correct copy of the appellate decision is attached hereto as Exhibit A.

On or about January 17, 2013, Defendant filed his Petition for Writ of Certiorari (the "Petition"). In addition to failing to comply with Rule 267, SCACR, the Petition appears to only dispute the lower court's findings of fact. It is a basic principal that a court reviewing a case on a writ of certiorari must "confine its review to the correction of errors of law only, and will not review the findings of fact of an inferior Court or body except when such findings are wholly

*Motion  
ADD ATTACHED  
EXHIBIT  
P. 1*

unsupported by the evidence." Pettiford v. South Carolina State Bd. of Educ., 218 S.C. 322, 62 S.E.2d 780 (1950). Therefore, there is little chance that the Supreme Court will review Defendant's case.

WHEREFORE, Plaintiff SunTrust respectfully requests that the Court lift the stay so that it can proceed with the foreclosure, and grant Plaintiff SunTrust such other and further relief as it deems just and proper.

Respectfully submitted this 9th day of April, 2013.

TATUM LAW FIRM, PLLC

By: 

BRIAN S. TATUM  
South Carolina Bar No. 73975  
Attorney for Plaintiff

P.O. Box 11250  
Charlotte, North Carolina 28220  
Phone: (704) 307-4350  
Efax: (704) 754-4140  
Email: [BSTatum@tatumlegal.com](mailto:BSTatum@tatumlegal.com)





## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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[www.sccourts.org](http://www.sccourts.org)

November 14, 2012

Mark Ostendorff  
PO Box 14846  
Greenville SC 29610


Mr. Brian Steed Tatum  
PO Box 11250  
Charlotte NC 28220

Re: Sun Trust Mortgage v. Ostendorff, Mark  
Appellate Case No. 2010-150386

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

  
CLERK

cc: S. Jackson Kimball, III





**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**

SunTrust Mortgage, Inc., Respondent,

v.

Mark Ostendorff, Appellant.

Appellate Case No. 2010-150386

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Appeal From York County  
S. Jackson Kimball, Special Circuit Judge

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Unpublished Opinion No. 2012-UP-608  
Heard October 30, 2012 – Filed November 14, 2012

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**AFFIRMED**

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Mark Ostendorff, Appellant pro se.

Brian Steed Tatum, of Tatum Law Firm, PLLC, of  
Charlotte, North Carolina, for Respondent SunTrust  
Mortgage Inc.

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**PER CURIAM:** In this mortgage foreclosure case, Appellant Mark Ostendorff seeks review of the circuit court's order granting summary judgment to Respondent SunTrust Mortgage, Inc. on Ostendorff's counterclaim for breach of contract. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:



1. As to the circuit court's conclusion that SunTrust was entitled to suspend construction draws as a matter of law: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) ("The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous."); *Charles v. Canal Ins. Co.*, 238 S.C. 600, 608, 121 S.E.2d 200, 205 (1961) ("[T]he function of courts is to adjudge and enforce contracts as they are written and entered into by the parties.").
2. As to whether the issues of fact asserted by Ostendorff precluded summary judgment: Rule 220(c), SCACR ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."); Rule 56(c), SCRCF (providing that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law" (emphasis added)); *In re Walter M.*, 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Generally, an issue must be both raised to and ruled upon by the trial court in order to be preserved for appellate review.").
3. As to whether SunTrust's failure to provide Ostendorff with certain discovery responses precluded summary judgment: *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence.").
4. As to Ostendorff's challenge to the jurisdiction of the special circuit judge: *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review."); *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998), *aff'd as modified*, 337 S.C. 622, 525 S.E.2d 246 (2000) ("An issue is also deemed abandoned if the argument in the brief is merely conclusory.").



**AFFIRMED.**

**HUFF, THOMAS, and GEATHERS, JJ., concur.**

*Co*