THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-03027
Appellate Case No. 2012-213629

Carolina First Bank[1], ... Appellant,

v.

Charles S. McCue, Builder Services Group, Inc., d/b/a Gale Contractor Services, Pebblethorn Landscape & Design, LLC, Falco, Inc., Distinctive Granite & Marble, Inc., Gustavo Angeles, individually and d/b/a Empire Construction, and Rose Hill Plantation Property Owners Association, ... Defendants,

of whom Charles S. McCue is the ..... Respondent.

APPELLANT'S RETURN TO MCCUE'S MOTION TO DISMISS

As articulated herein and as demonstrated by TD Bank's initial brief on file with this Court, the issues on appeal are not mooted or ended because of the short-sale related to the property subject to the foreclosure action filed by TD Bank. The nature of this entire action lies in equity.

In the case at bar, TD Bank has requested a deficiency judgment against McCue. Under the comprehensive statutory foreclosure regime, a request for a deficiency judgment is a statutory creation for which no right to a jury trial exists. Moreover, McCue's counterclaims for breach of contract, breach of contract accompanied by a fraudulent act, negligence, negligent supervision, and fraud and misrepresentation are all

[1] Carolina First Bank is now known as TD Bank.

permissive and, therefore, do not provide McCue with a right to a jury trial with respect to those claims. Therefore, McCue's motion should be denied, the full appeal heard, and the order of the lower court reversed.

I. A request for a deficiency judgment in a foreclosure suit brought pursuant to S.C. Code Ann. § 29-3-650 and § 29-3-660 sounds in equity.

McCue argues TD Bank's request for a deficiency judgment gives rise to a right to a jury trial. This is incorrect. The South Carolina statutory regime pled by TD Bank in its foreclosure complaint establishes that the ***court***—not a jury—makes the determination regarding whether a mortgagee is entitled to a deficiency judgment when the request for a deficiency is brought within the foreclosure action. The request for a deficiency is part of the foreclosure proceeding, which is an equitable proceeding. Asking for a deficiency judgment is not an action for damages at law.

TD Bank filed this foreclosure suit and requested a deficiency judgment for any remaining indebtedness that may exist following the sale of the subject property. In its Complaint, TD Bank alleged that S.C. Code Ann. § 29-3-650 and § 29-3-660 provided it with the right to foreclose and seek a deficiency judgment against those persons liable for any remaining indebtedness following the sale. TD Bank did not request damages at law in this action—it only requested recovery of the financial obligations provided by and pursuant to the mortgage and note.

Prior to 1791, South Carolina followed the common law rule regarding mortgages whereby an action to foreclose a mortgage was regarded as strictly *in rem*. *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 341-42, 242 S.E.2d 407, 409 (1978). Prior to 1791, in the event of default, the mortgagee was required to commence an action in a ***court of equity*** to foreclose the mortgage, to bar the mortgagor's right to

equity of redemption and to confirm good title in the mortgagee. *Id.* (emphasis added). If a personal or deficiency judgment was sought, the mortgagee was required to commence a separate ***action at law*** to obtain a judgment. *Id.* (emphasis added).

In 1791, the South Carolina Legislature changed the nature of a mortgage from that of a conveyance on condition to a lien. *Id.* Thus, at the time of the adoption of The South Carolina Constitution of 1868, no jury trial right existed in a foreclosure action seeking a deficiency judgment in the same action. *See Mims Amusement Co. v. S.C. Law Enforcement Div.*, 366 S.C. 141, 145, 621 S.E.2d 344, 345-46 (2005) ("The right to a trial by jury is guaranteed in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868.").

The courts of this state have long-abided by the legislative pronouncement evincing the lack of a jury trial right in a foreclosure action seeking a deficiency. In *Anderson v. Pilgram*, 30 S.C. 499, 9 S.E. 587 (1888), the South Carolina Supreme Court stated that in this State, an action for foreclosure was a proceeding *in personam* as well as *in rem*, and, therefore, a deficiency judgment could be granted in a foreclosure suit sounding in equity. Similarly, in *McConnell, et al. v. Barnes, et al.*, 142 S.C. 112, 140 S.E. 310 (1927), the Court recognized that a judgment for deficiency is an incident of the relief sought in a foreclosure action. In *McConnell*, the Supreme Court noted that the Act of 1791 integrated the action for foreclosure and the action for the deficiency after sale, thereby abandoning the strict distinction between actions *in rem* and *in personam*. *Id.* Thus, two centuries ago, South Carolina adopted a structure by which rights arising under mortgage obligations are adjudged when the action for foreclosure and deficiency judgment are filed together.

This structure exists under the current version of the South Carolina Code and provides that a mortgagee:

> shall be deemed the . . . owner of the money lent or due and the mortgagee shall be entitled to recover satisfaction for such money out of the land by ***foreclosure and sale according to law***.

S.C. Code Ann. § 29-3-10 (emphasis added). In codifying these rights, the General Assembly then established the mechanism—"according to law"—through which a mortgagee can obtain payment for the money lent or due under a mortgage contract—foreclosure sale and deficiency judgment. The General Assembly empowered ***the court***, not a jury, with the duty to determine whether payment for any remaining indebtedness is owed by a mortgagor or guarantor. The Code states:

> In actions to foreclose mortgages ***the court may adjudge and direct the payment*** by the mortgagor of any residue of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises in cases in which the mortgagor shall be personally liable for the debt secured by such mortgage ***and if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the court may adjudge payment*** of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.

S.C. Code Ann. § 29-3-660 (emphasis added). The General Assembly further directed that the power of the court to render such deficiency judgments can arise at the same time as the issuance of the order of foreclosure and sale. Specifically the General Assembly directed:

> ***The court may also render judgment against the parties liable for the payment of the debt secured by the mortgage*** and direct at the same time the sale of the mortgaged premises. ***Such judgment so rendered may be entered and docketed in the clerk's office in the same manner as other***

> ***judgments. Upon the sale of the mortgaged premises the officer making the sale under the order of the court shall credit upon the judgment so rendered for the debt the amount paid to the plaintiff from the proceeds of the sale.***

S.C. Code Ann. § 29-3-650 (emphasis added).

McCue's motion ignores the above statutes and the prior decisions of the South Carolina Supreme Court recognizing that a foreclosure proceeding, including a request for a deficiency, is equitable in nature.

The question is not a close one. Many decisions directly refute the unsupported grounds offered in McCue's motion. In 1912, based on prior versions of the above-cited statutes, the Supreme Court held that a foreclosure action which also seeks a deficiency judgment against a guarantor is an action sounding in equity. *See, e.g., Welborn v. Cobb*, 92 S.C. 384, 75 S.E. 681 (1912) (holding that a foreclosure action which also seeks a deficiency judgment is an equitable action); *see also General Plywood Corp. v. Richard Jones, Inc.*, 216 S.C. 322, 57 S.E.2d 636 (1950) (holding that a foreclosure suit seeking a deficiency sounds in equity and is properly referable to the equity court).

In fact, the precise grounds offered by McCue were expressly rejected by the Supreme Court in 1950 in *General Plywood Corp. v. Richard Jones*. The Court in *General Plywood Corp.*, in affirming the lower court's referral of the case to the Master wrote: "[a]ppellant further contends that, since respondent does not waive a deficiency judgment, the matter is for determination by a jury and not referable." *General Plywood Corp.*, 216 S.C. at 325, 57 S.E.2d at 636. The Court rejected the argument and held that "[t]he purpose of the foreclosure is to fully determine the entire controversy while at the same time protecting the rights of all parties, to determine the amount of the debt in order

to disburse the proceedings of the sale, and should there be a deficiency, the *Court of Equity* may give relief by way of a personal judgment." *Id.* (emphasis added).

South Carolina Courts have recognized the nature of foreclosure proceedings in more recent cases. It has been "explained that a mortgage 'represents security for an obligation, [but] not full payment thereof.'" *Am. Gen. Fin. Servs. v. Brown*, 376 S.C. 580, 583, 658 S.E.2d 99, 100 (2008) (quoting *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 340, 242 S.E.2d 407, 408 (1978)). As a result, the deficiency judgment becomes an incident to the foreclosure to ensure full payment of the debt obligation. *Braun*, 270 S.C. at 340, 242 S.E.2d at 408. In *American General Financial Services*, the Court reversed the Master-in-Equity who ruled that he had discretion to enter a deficiency judgment in a case where the foreclosure sale did not satisfy the entire amount due the lender. *Id.* The appellate court held that in a foreclosure action where the sale leaves money owed to the lender, the Master-in-Equity ***must*** enter a deficiency judgment. *Id.* Hence, the general rule is that "if the mortgaged premises are sold under a foreclosure decree and fail to bring a sufficient amount to satisfy the debt, the mortgagee is entitled, absent any statutory limitation or waiver on his part, to a personal judgment for the remaining deficiency." *Perpetual Bldg. and Loan Ass'n of Anderson v. Braun*, 270 S.C. at 340, 242 S.E.2d at 408 (internal citation and quotation omitted). The same is true in the case at bar. TD Bank asked for a deficiency judgment and the court, sitting in equity, is the proper entity to make that determination—***not*** a jury.

The right to a deficiency judgment in a foreclosure proceeding is not an insignificant right. The Legislature intended for a deficiency judgment to be denied only when it has been "expressly waived" by the mortgagee. *Braun*, 270 S.C. at 343, 242 S.E.2d at 409. TD Bank did not waive its right to a deficiency judgment.

Accordingly, as established by the General Assembly, the right to a deficiency judgment arises in connection with the foreclosure suit by operation of law and the action is one that sounds only in equity. No jury trial right exists in a foreclosure action because the court is sitting in equity and is vested with authority over the entirety of a foreclosure action, including the deficiency judgment determination. This procedure has been in place since 1791.

II. McCue's counterclaims do not give rise to any jury trial rights.

A. McCue's counterclaims are equitable.

Because the right to proceed in the proper mode of trial is a substantial right, a court should not erroneously require a party to proceed before a jury in an equity case. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72, 533 S.E.2d 331, 333 (2000). Conversely, a jury trial right does not arise in connection with a case to be tried within the equitable jurisdiction of the court. *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978).

"Characterization of an 'action as equitable or legal depends on the [counterclaimant's] main purpose' in bringing the action." *Smith*, 398 S.C. at 494, 730 S.E.2d at 332. (quoting *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978). "The main purpose of the action should generally be ascertained from the body of the [pleading]. However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action. The nature of the issues raised in the pleadings and character of relief sought under them determines the character of an action as legal or equitable." *Id.* (internal citations omitted); *see also S.C. Nat'l Bank v. Johnson*, 285 S.C. 80, 82, 328

S.E.2d 75, 76 (1985)(holding main purpose of action was to seeks rescission even though permitted to maintain action for damages in the same complaint).

A foreclosure action is an equitable action. *Collier v. Green*, 244 S.C. 367, 370, 137 S.E.2d 277, 279 (1964). However, the South Carolina Supreme Court has held that "[t]he purpose of the foreclosure is to fully determine the entire controversy while at the same time protecting the rights of all parties, to determine the amount of the debt in order to disburse the proceedings of the sale, and should there be a deficiency, the Court of Equity may give relief by way of a personal judgment." *See General Plywood Corp. v. Richard Jones*, 216 S.C. 322, 325 57 S.E.2d 636, 636 (1950). Further, "[w]here in actions of foreclosure, the defendant sets up a defense and/or a counterclaim affecting the consideration, and arising out of the transaction in which the mortgage or lien was created, the authorities hold that the issues thus raised are equitable and are to be tried by the court upon its equity side." *Collier* at 371, 137 S.E.2d at 280; *see also Byrn v. Walker*, 275 S.C. 83, 85, 267 S.E.2d 601, 602 (1980) (counterclaims in a foreclosure action that affect the validity of a mortgage lien or the amount due are equitable in nature). Thus, any counterclaims in a foreclosure action that go to the validity of the lien or question the amount due upon the debt secured by the mortgage are equitable, and a defendant has no right to a jury trial on such claims. *Id.*

A review of McCue's pleadings reveals the equitable nature of the relief he seeks. McCue's initial responsive pleading expressly requested rescission as relief in the Wherefore clause, did not request a jury trial and did not assert any of the counterclaims he attempts to rely upon to assert a right to a jury trial. (*See* Answer and Counterclaim of Defendant McCue attached as **Exhibit A**.) Similarly, McCue's Amended Answer and Counterclaim also expressly sought rescission and did not request a jury trial.

(*See* Amended Answer and Counterclaim ¶ 92 attached as **Exhibit B**.) The Amended Answer and Counterclaim for the first time asserted a fraud claim, but did not assert any of the other Counterclaims at Issue. (*Id.*) Tellingly, the prayer for relief in McCue's initial Answer and his Amended and Answer and Counterclaim expressly sought as the first and primary relief: "Rescission of both notes and mortgages related to the subject property, with Plaintiff taking title to the real estate," along with other relief consistent with rescission, such as reimbursement of interest and other costs incurred by McCue pursuant to the Note and Mortgage. (*See* Answer at **Exhibit A** and Amended Answer and Counterclaim at **Exhibit B**.) More than four years after this case was filed, McCue sought to amend his responsive pleading to assert the counterclaims upon which he relies to assert purported jury trial rights and for the first time requested a jury trial. (*See* Notice of Motion and Motion for Charles S. McCue to File Second Amended Answer and Counterclaim with proposed Second Amended Answer and Counterclaim attached as **Exhibit C**.) The amended counterclaims purposefully removed any reference to the word "rescission" in a carefully crafted attempt to avoid the statutory foreclosure regime that requires a bench trial to resolve this matter, though the relief sough clearly remains in the nature of rescission. (*Id.*) This artful pleading does not change the nature of McCue's claims, however.

"Rescission is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." *White*, 384 S.C. at 614, 682 S.E.2d at 502. "When a party elects and is granted rescission as a remedy, he is entitled to be returned to the status quo ante. Rescission entitles the party to a return of the consideration paid as well as any additional sums necessary to restore him to the position occupied prior to the making of the contract. A return to the status quo ante necessarily

requires any party damaged to be compensated." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 95, 594 S.E.2d 485, 494 (Ct. App. 2004). All of McCue's relief sought for the counterclaims is in the nature of rescission, despite his intentional avoidance of the words "rescission" or "rescind" in his most recent pleading. In his Prayer for Relief, McCue "prays that this Court order [CFB] to remove or cause the removal of all mortgages and liens against the subject property and for judgment against the Plaintiff for actual damages, including attorneys' fees and costs incurred by McCue in this action,..." (See Second Amended Answer to Complaint and Counterclaim attached at **Exhibit C**.) This language, which first and foremost asks for the removal of all mortgages and liens against the subject property, evidences McCue's continued main purpose of seeking rescission of the loans, even though it carefully avoids using the word "rescission." To the extent McCue's pleading attempts to avoid articulating his main purpose by vaguely referencing "actual damages," his discovery responses stating the relief sought give him away:

- "rescission of the CFB mortgage loan and equity line agreements on the grounds of fraud and is seeking that Plaintiff take title to the subject realty" (McCue's Answers to CFB's Second Interrogatories attached as **Exhibit D**);
- "repayment of all interest and late fees paid by [McCue] on each of the subject loans" (*Id.*);
- "any and all funds paid for by Mr. McCue towards the completion of the property located at 6 Rose Hill Drive, which currently total approximately $124,950.00, plus interest" (McCue's Third Supplemental Answers to CFB's Second Set of Interrogatories attached as **Exhibit E**); and

- "recovery of all funds taken from him by Defendant Witkowski and/or improperly transferred to Empire's accounts or the accounts of others, the sum of which is $300,000" (*Id.*).

As evidenced above, McCue expressly requests rescission in his discovery responses, alternately stated in his Prayer for Relief as cancellation of the mortgage and liens, and then goes on to detail the precise categories of damage he contends are available to him under a rescission theory. Specifically, repayment of interest, late fees and other costs related to the loan plainly are rescission damages designed to put McCue back in the status quo ante, as are out-of-pocket expenses allegedly incurred by McCue in order to complete the residence. As such, they are rescission damages and therefore equitable in nature.

McCue should not be permitted to manufacture the right to a jury trial through artful pleading more than four years into the proceedings. The South Carolina Supreme Court has previously rejected attempts by litigants to "earn" the right to a jury trial in an equitable action. In *Rosenbaum v. S-M-S 32*, the plaintiff purchased real property at a tax sale and filed an action to clear title pursuant to S.C. Code Ann. § 12-61-20. The defendant answered by way of general denial and asserted a counterclaim of action for trespass to try title, seeking damages for trespass and demanding a jury trial. 311 S.C. 140, 141, 427 S.E.2d 897, 897 (1993). The circuit court struck the counterclaim because the plaintiff had asserted an equitable claim seeking a remedy under a process expressly provided for purchasers at tax sales by statute. *Id.* at 141-142, 427 S.E.2d at 897. The Supreme Court affirmed the circuit court's decision, holding that the defendant could not "evade the intent of the legislature and obtain the right to a jury trial by interposing a counterclaim designed the thwart the reasonable and practical implication of Chapter

61." Id. As detailed above, TD Bank here brought its foreclosure action pursuant to a statutory scheme created by the legislature. Specifically, S.C. Code Ann. § 29-3-610 to -790 provides a procedure by which a mortgagor may foreclose and seek a deficiency in an equitable action decided by the court. This codified a process established by the Act of 1791, which integrated the actions of foreclosure and the action for deficiency after sale into one equitable action, without the right to a jury trial. *See McConnell, et al. v. Barnes, et al.*, 142 S.C. 112, 140 S.E. 310 (1927). Like the defendant in *Rosenbaum*, McCue improperly attempts to earn the right to a jury trial by camouflaging his request for equitable relief as legal counterclaims. A litigant may not alter the character of a equitable claim merely by calling it a legal claim. The South Carolina Supreme Court has previously articulated this long established principle of law and common sense, stating "Generally...it may be said that the essential character of the cause of action, and the remedy or relief it seeks, as shown by the allegations of the [pleading], determine whether a particular action is at law or equity, **unaffected by the conclusions of the pleader or what the pleader calls it, or the prayer for relief**..." *Rogers v. Nation*, 284 S.C. 330, 332 (Ct. App. 1985) (quoting *Bell v. Mackey*, 191 S.C. 105, 119, 3 S.E.2d 816, 822 (1939)) (emphasis added).

The procedural history in this matter along with McCue's pleadings and discovery responses demonstrate that the main purpose of McCue's counterclaims is to seek rescission. As noted in *Johnson*, a case still may be required to be tried non-jury even where legal counterclaims are asserted along with equitable claims if the "main purpose" of the counterclaims is to procure rescission. 285 S.C. at 82, 328 S.E.2d at 76-77. Here, it is plain that McCue's main purpose in bringing these counterclaims is to obtain rescission. Voiding the mortgage is the central request in his Prayer for Relief, and he

expressly asks for rescission and related damages in his discovery responses itemizing his damages. Therefore, the trial court committed reversible error by incorrectly ruling that McCue is entitled to a jury trial on the above-discussed counterclaims. This issue is not resolved or mooted by the short-sale and must be determined before the trial of this matter to ensure the proper mode of trial is had in this equitable action.

B. If McCue's counterclaims are not equitable, those claims are permissive as raised in this action and he has waived his right to a jury trial upon those claims.

In order for McCue to be entitled to a jury trial on the Counterclaims at Issue in this equitable foreclosure action, the counterclaims must be legal **and** compulsory. *See Smith*, 398 S.C. 487, 498, 730 S.E.2d 328, 333. As noted above, because McCue's counterclaims are equitable in nature, he is not entitled to a jury trial. Therefore, no further inquiry should be necessary. Even if McCue's counterclaims were deemed to be legal claims, they are permissive and McCue still is not entitled to a jury trial.

Under South Carolina law, "[i]f the complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim." *Mortgage Electronic Systems, Inc. v. White*, 384 S.C. 606, 682 S.E.2d 498 (Ct. App. 2009). However, if a defendant asserts a counterclaim which is not legal and compulsory in an equitable action, he waives any right to a jury trial on that counterclaim. *See N.C. Federal Savings and Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 516, 381 S.E.2d 903, 904 (1989). Foreclosure proceedings are equitable proceedings in South Carolina. *See, e.g., DAV Corp.*, 298 S.C. at 516, 381 S.E.2d at 904 (referring to foreclosure proceeding as equitable).

In *DAV Corp.*, the South Carolina Supreme Court determined that counterclaims related to a subsequent oral agreement whose breach could not have avoided a default on

the note at issue were permissive. The Supreme Court reasoned that the counterclaims were permissive because they did not "affect the enforceability of the Note." *Id.* Therefore, legal counterclaims asserted in a foreclosure proceeding are permissive unless they are logically related to enforceability of the note and mortgage. *Id.*; *see also Smith*, 398 S.C. 487, 498, 730 S.E.2d 328, 333 (holding alleged violation of the attorney-preference statute was permissive because it did not relate to enforceability of the note and mortgage).

In this case, the Counterclaims at Issue cannot logically relate to enforceability of the notes and mortgages because they would not have avoided default and centered on activities that occurred after the Construction Loan was made. *See DAV Corp.*, 298 S.C. at 518, 381 S.E.2d at 905 (holding counterclaims related to oral agreement after loan closing permissive did not affect enforceability of Note).

First, McCue admitted enforceability of the loan documents with regard to the amounts used to payoff Lowcountry Bank at closing and partial summary judgment already has been on this basis. (*See* 5/7/09 Order attached as **Exhibit F**.) As such, the factual allegations and relief sought necessarily relate to actions that occurred after the loan documents were executed.

Second, the specific acts alleged by McCue supporting his purported legal claims do not refer to activities during or prior to the closing, but instead refer to activities after closing such as CFB allegedly "failing to monitor and administer the construction loan," "failing to have a written policy governing draw requests," and "failing to comply with the requirements of its own loan documents pertaining to inspections prior to approval of draw requests." (*See* Second Amended Answer and Counterclaim attached at **Exhibit C** at ¶ 123.) Indeed, the gravamen of McCue's factual

allegations is that TD Bank failed to properly administer construction loan funds by failing to uncover the mortgage fraud scheme by Third-Party Defendants Chad McCue, Atkinson and Witkowski. (*Id.* ¶ 29.) Because the draws and disbursals were not done as part of the loan closings, all of the events related to whether loan funds were disbursed properly necessarily occurred after closing and execution of the loan documents. (*Id.*)

Therefore, the Counterclaims at Issue are related to post-closing activities and cannot be logically related to enforcement of the notes and mortgages. Consequently, even if McCue contends his main purpose is not to seek rescission, he is not entitled to a jury trial because the Counterclaims at Issue are permissive.

Conclusion

Based on the above, the motion to dismiss should be denied and the issues in this case decided by this Court.

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Columbia, South Carolina
September 5, 2013

THE STATE OF SOUTH CAROLINA
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APPEAL FROM BEAUFORT COUNTY
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of whom Charles S. McCue is..... Respondent.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Carolina First Bank, do hereby certify that I have served all counsel in this action with a copy of the document(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Document(s):

TD Bank's Return to McCue's Motion to Dismiss

Served:

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September 5, 2013

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September 5, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

RE: Carolina First Bank vs. Charles S. McCue, et al
C/A No. 2007-CP-07-03027
Appellate Case No. 2012-213629
Our File No. 04387/09362

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Carolina First Bank's Return to McCue's Motion to Dismiss in regard to the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via our courier.

By copy of this letter to counsel of record, we are serving them with a copy of this pleading.

Very truly yours,

A. Mattison Bogan

AMB:lpw
Enclosures
cc: Drew A. Laughlin, Esquire
Mitchell Thoreson, Esquire
John W. Wilkins, Esquire