

Exhibit A

Answer and Counterclaim of Defendant McCue

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No: 07-CP-07-03027

CAROLINA FIRST BANK,)
)
Plaintiffs,)

Vs.)

CHARLES S. McCUE, et. al.,)
)
Defendants,)

ANSWER & COUNTERCLAIM OF
DEFENDANT McCUE

Defendant, Charles S. McCue, (hereinafter "McCue"), answering the foreclosure complaint of the Plaintiff, hereby admits, denies and avers as follows:

1. Except as hereinafter specifically admitted, McCue denies all material allegations of the complaint and demands strict proof thereof.
2. Admits the allegations of paragraphs 1 & 2 of the complaint.
3. Denies the allegations of paragraphs 3 thru 7 of the complaint for lack of information and belief, and therefore, demands strict proof thereof.
4. Admits the allegations of paragraph 8 of the complaint.

FIRST CAUSE OF ACTION

5. Re-alleges his answers set forth above to paragraphs 1-8 of the complaint.
6. Admits the allegations of paragraphs 10 & 11 of the complaint.
7. Denies that McCue has defaulted on the Note & Mortgage as alleged in paragraph 9 sic (on page 3 of the complaint) and admits that Plaintiff has declared the entire balance of principal and interest to be due and payable.
8. Admits so much of paragraph 10 sic (on page 3 & 4 of the complaint) as alleges that Plaintiff claims there is due and unpaid on the Note A and Mortgage A the claimed amounts and that demand has been made upon McCue for payment of said sums together with attorney fees and costs associated therewith. Answering further, McCue alleges that Plaintiff breached essential terms and conditions of the loan documents in that they failed to conduct the inspections called for in the loan documents and made unauthorized draw payments, and failed to withhold the retainage required by the loan documents.
9. Admit so much of paragraph 11 sic (on page 4 of the complaint) as alleges that mechanics liens of record have been filed and that said parties have asserted claims.

10. Admits that Plaintiff has claimed, in paragraph 12 of the complaint, it has a right to a deficiency judgment.

SECOND CAUSE OF ACTION

11. Re-alleges the answers set forth above to paragraphs 1 thru 12 of the complaint.
12. Denies the allegations set forth in paragraphs 14 & 15 of the complaint.
13. Avers that the document referred to in paragraph 16 of the complaint constitutes the best evidence of its contents and accordingly denies the allegations except as borne out by said document.
14. Denies the allegations of paragraphs 17 & 18 of the complaint and demands strict proof thereof.
15. Admits so much of paragraph 19 of the complaint as alleges that mechanics liens have been filed of record.
16. Admits so much of paragraph 20 as alleges that Plaintiff reserves the right to claim a deficiency judgment.
17. Denies that Plaintiff is entitled to the relief sought in the paragraph en captioned Wherefore or to any relief what so ever.

COUNTERCLAIM OF DEFENDANT McCUE

18. Defendant McCue, complaining of the Plaintiff, hereby alleges as follows:
19. On or about January 31, 2006, contemporaneously with the execution of the first mortgage, a document entitled "Carolina First/Mercantile Bank Construction Loan Agreement", was entered into by and between Plaintiff and McCue. A copy of said document is attached hereto and incorporated by reference.
20. Said document provided in pertinent part in paragraph 2 that:
 - The proceeds of the Loan...are to be disbursed by the Lender...upon an on-the-job inspection of the construction of the Building(s) by a representative of the Lender and upon the basis of the work remaining to be completed as determines by the Lender's inspector.... Ten percent of the Loan proceeds shall be retained by the Lender pending completion certifying completion and acceptance by the Owner(s) and the Lender of the construction of the Building(s)....At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs.
21. Plaintiff, on information and belief, failed to conduct on-the-job inspections as called for in the Construction Loan Agreement.
22. Plaintiff, on information and belief, failed to retain ten percent of the Loan proceeds pending completion certifying completion and acceptance by the Owner(s) and the Lender.
23. Plaintiff, on information and belief, failed to ascertain that at no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete

- the construction of the Building(s).
24. That Defendant McCue, never executed the Power Of Attorney, dated November 27, 2006.
 25. That said document was a forgery.
 26. That McCue never signed the \$300,000.00 Promissory Note dated November 27, 2006.
 27. That McCue never signed the Second Mortgage dated November 27, 2006.
 28. That, upon information and belief, said documents were executed by and with the knowledge of Carolina First personnel, that the Power of Attorney was a forgery.
 29. That Plaintiff failed to administer the second mortgage funds in accordance with Construction Loan Agreement in force between the parties.
 30. That upon information and belief, the second mortgage funds, were transferred in a single transaction, to Account Number 8102687098 and then debited out of said account almost immediately thereafter.
 31. That, upon information and belief, said proceeds were not used for the completion of the property for which the loan(s) were initially sought.
 32. Carolina First was negligent in failing to properly administer the proceeds from the initial loan.
 33. Carolina First was negligent in paying out the proceeds of second loan, on forged documents.
 34. Carolina knew, or should have known, of the negligence and or criminal activities of its employee(s).
 35. That Carolina First, despite having been put on notice that forged documents were relied upon by the Bank, caused to have issued a negative credit rating against McCue.
 36. That as a result of the Bank's actions, the negative credit rating has caused a cancellation of a credit car that McCue has owned for almost twenty (20) years and will likely increase interest expenses for renewal of existing personal and business credit lines and may new credit transactions he enters into.
 37. That Carolina First has wrongly damaged credit rating.

WHEREFORE, having answered Plaintiff's complaint and asserted Defendant McCue's counterclaim, Defendant McCue prays for the following relief:

1. Rescission of both notes and mortgages related to the subject property, with Plaintiff taking title to the real estate.
2. Reimbursement of closing costs on each loan.
3. Repayment of interest paid on each loan.
4. Reimbursement of property taxes paid.
5. Reimbursement of insurance and homeowners assessments paid by Defendant.
6. Payment of all outstanding liens of the subject property by Plaintiff.
7. Attorney fees and cost associated with both the loan closing and the

- defense and prosecution of this matter.
8. Compensation for damage done to Defendant's credit reputation.

CLABAUGH LAW OFFICES, P.A.
ATTORNEYS FOR DEFENDANTS

By: FRANK CLABAUGH

Frank H. Clabaugh, Esquire
Post Office Box 6131
Hilton Head Island, SC 29938

January 24, 2008

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 24 day of JANUARY, 2008
FRANK CLABAUGH
FRANK H. CLABAUGH, ESQUIRE

CAROLINA FIRST /MERCANTILE BANK
CONSTRUCTION LOAN AGREEMENT

State of South Carolina
County of Beaufort

Agreement made on JANUARY 31st between CAROLINA FIRST /MERCANTILE BANK, herein referred to as "Lender and CHARLES S MCCUE herein referred to as "borrower and _____ owner(s) of an interest in the security property who did not sign the note, but who signed the mortgage [Owner(s)].

The parties recite and declare that:

Borrower has made, executed and delivered to the Lender a note and mortgage of even date, conditioned to pay the sum of EIGHT HUNDRED FORTY THOUSAND DOLLARS ONLY with interest rate as provided in said note and mortgage - (hereinafter referred to as "Loan"). The Borrower is constructing a single family dwelling [herein sometimes referred to as building(s) according to plans and specifications which have previously been presented to Lender on the property described in said mortgage, and to known as 6 ROSE HILL DRIVE, BLUFFTON, SC 29910 and the loan is to be applied to the payment of the cost of constructing said Building(s).

For the reasons recited above, and in consideration of the mutual covenants contained herein, Lender and Borrower hereby agree one with the other as follows:

1. **Borrower's Obligations, The Borrower shall:**
 - a. Furnish the Lender approved plans, specifications, scale details, and Statements showing itemized cost of proposed building(s); said itemization to be based on contracts let wherever possible - otherwise on lowest estimate.
 - b. Construct and complete, free from all mechanics liens, and in compliance building restrictions and ordinances within 12 months (the "construction period") said Building(s) costing not less than \$ 840,000.00 in accordance with the plans & specifications approved to be or to be approved by Lender.
 - c. File with the Lender, if required by the Lender, a signed copy of an approved standard form of contract with completion date enforced by penalty payments and other general conditions.
 - d. As soon as the foundations are in, Borrower shall furnish to the Lender, at Borrower's expense, a foundation survey and plot plan by an engineer or registered land surveyor satisfactory to the Lender showing all matters affecting the property (visible or recorded) and the location of the Building(s) thereon - including distances from front, side and rear property lines. If the survey and plot plan disclose objectionable matters, the Lender may refuse to make the Loan or to make further disbursements of the Loan proceeds.
 - e. Obtain when requested by the Lender the approval of the Lender's Attorneys on all legal matters pertaining to the Loan.
 - f. Furnish insurance in amounts, forms, and of companies satisfactory to the Lender.
 - g. Pay or secure releases of all encumbrances of record which in the opinion of the Lender are or may be prior to its mortgage interest.
 - h. Use the loan proceeds only for the payment of material bills, labor, and for Other uses and purposes in and for the construction of said Building(s).
 - i. Furnish from time to time whenever requested a statement showing itemization of expenditures to date. Items due and unpaid and items necessary for completion of said Building (s), and to support said statement with receipted bills, affidavits, waivers of liens, and other satisfactory evidence of payment.
 - j. Discharge any lien other than the aforementioned construction mortgage

Upon the property or filed against the Borrower within thirty days after written demand by the Lender.

- k. Pay all expenses for surveys, appraisals, reappraisals, searches, title insurance, certificates and examination of title, drawing, perfecting, and recording papers, whether the Loan is made or not.
 - l. Furnish the Lender with a policy of title insurance and/or certificate of title satisfactory to its showing such mortgage to be a first lien on the property excepting only such items as shall have been approved by the Lender in writing.
 - m. Insure that no materials, equipment, fixtures, or any other part of such building(s) on the property shall be purchased or installed pursuant to a security agreement or under any other arrangement wherein the right is reserved to remove or to repossess any such item or to consider it as personal property.
 - n. Comply with all restrictive covenants affecting the property and will cause the building(s) to be constructed so as not to violate the rights of any holder of any easement affecting the property and shall furnish to the Lender evidence of such compliance, if requested by the Lender.
2. **Disbursements and Application of Loan Proceeds.** The proceeds of the Loan and any funds furnished by borrower as required in paragraph 3 below, except as hereinafter otherwise provided, are to be disbursed by the Lender subject to the provisions of this Agreement upon an on-the-job inspection of the construction of the Building(s) by a representative of the Lender and upon the basis of the work remaining to be completed as determines by the Lender's inspector. Disbursements from the loan proceeds shall be made for all closing costs as incurred. No disbursement shall be made other than for closing costs or to pay and discharge prior liens until construction of the building(s) have begun and until a inspection, by a licensed inspector is performed to determine the percentage of completion made. Ten percent of the Loan proceeds shall be retained by the Lender pending completion certifying completion and acceptance by the Owner(s) and the Lender of the construction of the Building(s). The Final disbursement of the loan proceeds shall not be made until the borrower and contractor have presented to the Lender a certificate of completion certifying that all bills are paid, and the Borrower has executed an instrument releasing the Lender from any liability for obligations specified in this agreement or arising out of the Loan and certifying to the Lender that Borrower has accepted all construction of the Building(s), together with an estoppel certificate. All disbursements shall, at the Lender's option, be made by check jointly payable to the Borrower and contractor and any sub-contractor, laborer, or material man. At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all nonconstruction costs. If the lender shall receive notice from any contractor, subcontractor, laborer, or material man of a claim of lien, it shall have the option to make no further disbursements until such claim is satisfied or discharges.

3. **Limitations on Borrower's Rights.** The borrower has no right to assign his Rights under this agreement without prior written consent of the Lender, and no third party is to have any interest in the loan proceeds or any right to an accounting thereof. In no event shall any of the loan proceeds be used by the Borrower for any purpose other than construction of the Building(s) except as otherwise provided in this Agreement. ~~IT IS CLEARLY UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE LENDER IS NOT THE PAY-OUT AGENT OF THE BORROWER BUT IS CHECKING CONSTRUCTION OF SAID BUILDING(S) AND REQUIRING DOCUMENTS SOLELY FOR THE LENDER'S PROTECTION AND THAT THE BORROWER HAS NO RIGHT TO RELY ON ANY PROCEDURES REQUIRED OR PERFORMED BY THE LENDER.~~ The only consideration passing from the Lender to the Borrower is the Loan proceeds. The Borrower hereby certifies, should the net proceeds from the Loan be insufficient to complete said Building(s) in accordance with the plans and specifications, that

he has sufficient funds available and will, within thirty days after demand, furnish to the Lender such funds as may be necessary to complete said Building(s) in accordance with the plans and specifications which funds will be disbursed according to the Agreement; and the judgment of the Lender shall be final and conclusive on the matter. The Borrower hereby grants the Lender a security interest in such sums and pledges them to the performance of this Agreement.

4. **Procedure for Loan Disbursements.** Borrower may present not more than weekly to the lender a request for inspection. If the request is received on or before 12:01 p.m. Monday, the inspection shall be made that week and subject to the terms of this agreement, Loan proceeds shall be disbursed on Friday of that week. The Borrower will receive disbursements to be made hereunder and will hold the same as a trust fund for the purpose of paying only the cost of construction of the Building(s) and other related costs and for no other purpose.

5. **Inspection by Lender.** The Lender or its agent shall have the right at all times to enter upon said Building(s) and property during the period of this Loan and make inspections. A charge of \$75.00 "e" will be made and paid from the loan proceeds for each inspection in excess of 5 inspections. If the construction of said Building(s) is not in conformance with the plans or specifications or is not otherwise satisfactory to the Lender, it shall have the right to stop the construction of such Building(s) and order its replacement and to make no further disbursements until construction of said Building(s) is satisfactory to it. If the construction of said Building(s) is not made satisfactory to the Lender within thirty calendar days from the date of stoppage by the Lender, such failure shall constitute a default by the Borrower under the terms of this agreement. ~~THE LENDER IS UNDER NO OBLIGATION TO CONSTRUCT OR SUPERVISE THE CONSTRUCTION OF SAID BUILDING(S) IS FOR THE SOLE PURPOSE OF PROTECTING THE SECURITY OF THE LENDER. SUCH INSPECTION IS NOT TO BE CONSTRUED AS A REPRESENTATION THAT THERE WILL BE A COMPLIANCE ON THE PART OF THE BUILDER WITH THE PLANS AND SPECIFICATIONS OR THAT THE CONSTRUCTION OF SAID BUILDING(S) WILL BE FREE FROM FAULTY MATERIAL OR WORKMANSHIP, OR ACCEPTABLE TO BORROWER. THE BORROWER WILL MAKE OR CAUSE TO BE MADE SUCH OTHER INDEPENDENT INSPECTIONS AS HE MAY DESIRE FOR HIS OWN PROTECTION.~~ In the event work should cease on the construction of said Building(s), specifically including stoppage by the Lender in accordance with this paragraph or for any reason whatsoever, for an aggregate of thirty calendar days, whether consecutive or not, the same shall be construed as an event of default hereunder and under the note and mortgage.

6. **Default by Borrower.** In the event of a default or failure by the Borrower in the performance of any of the terms, covenants, and conditions contained in this Agreement or the note or mortgage, all of the obligations of the Lender disbursed or advanced by the Lender shall, at the option of the Lender, become immediately due and payable; and the Lender may withdraw any sums on deposit with it under the terms of this Agreement and credit the same upon the indebtedness of the Borrower under the note herein before referred to and in the event such sums are so credited on the note, the same shall not in any respect cure or waive any default under the note and mortgage and this agreement or any notice or default or invalidate any act done pursuant to any such notice; and such credit on the note shall not change, alter, or prejudice any rights given to the Lender by the note, mortgage or this Agreement or any right of the Lender to foreclose the mortgage; and the mortgage shall be a valid and subsisting first lien upon the property to the extent of the amount which has already been disbursed, less any credit from the Borrower's funds, with interest as aforesaid; or the Lender may, at its option, and without prior notice,

demand, or presentment, and without becoming liable to make any other or further disbursements, enter upon or take possession of the property and the Building(s) and call upon or employ contractors, subcontractors, material men, suppliers, agents, or watchmen to complete or protect the property and Building(s); make disbursements of the Loan proceeds together with any funds, if any, deposited by Borrower under paragraph 3, for application to or as a reserve for payment of any or all costs, expenses, fees (including legal fees), commissions, taxes, insurance, and other obligations incurred in the completion, protection, and maintenance of the property or Building(s) or in the protection of the Lender's interest therein, as the Lender in its sole reasonable discretion shall determine either with or without a voucher or order executed by Borrower. Any sums disbursed or paid by the Lender under the authority of any of the foregoing, or any other provision of this Agreement shall be deemed to have been paid and disbursed to Borrower, and repayment thereof shall be secured by the mortgage and any other security interests granted or contemplated by this Agreement and the disbursement or mortgage or any notice of default or invalidate any act done pursuant to any such notice, and such disbursement or payment shall not change, alter, or prejudice any rights given to the Lender by the mortgage or note or this Agreement or any right of the Lender to foreclose the mortgage.

7. **Death of Borrower.** In the event of the death of the Borrower while still holding title to the property, the Lender or any person holding the note and mortgage may, in case the work on the Building(s) is continued as provided in this Agreement, continue to make disbursements under this Agreement and subject to all of its terms and conditions, to the Borrower's executors, administrators, or legal representatives, and all sums so disbursed shall be deemed disbursements under this Agreement, as if made to the Borrower in his lifetime and shall be fully secured by this mortgage.
8. **Transfer of Property.** In the event of the Borrower parting with the title or being in any way, except by death, deprived of his title to the property, the Lender or anyone holding the note and mortgage may at its option continue to make disbursement under this Agreement and on the note and mortgage, subject to all the terms and conditions thereof, to such person or persons or organizations as may succeed to the Borrower's title; and all sums so disbursed by the Lender shall be deemed disbursements under this Agreement and shall be secured by the mortgage.
9. **Appointment of Lender as Agent.** The Borrower hereby irrevocably appoints, designates, empowers, and authorizes the Lender, as agent, to file for record any notices of completion, cessation of labor, or any other notice that the Lender deems necessary to file for record to protect the interest of the Lender under the provisions of this Agreement or the note and mortgage. Such appointment of the Lender as agent is hereby expressly declared to be that of an agency coupled with an interest, and as such, to be irrevocable.
10. **Change in Plans.** No change in the plans or specifications or extra charges shall be made after the same have been approved by the Lender without first obtaining the written consent of the Lender to such change. All contracts let by the undersigned or any of them in connection with the construction shall contain this provision.
11. **Waiver.** The waiver by the Lender of any breach hereof shall not be deemed, nor shall the same constitute, a waiver of any subsequent breach on the part of the Borrower.
12. **Legal Action.** The Lender shall have the right to commence, to appear in, or to defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties hereunder, or the payment of any of the Loan proceeds and in connection therewith to incur and pay all costs and expenses, including its attorney's fees in a reasonable amount, in any such action in which the

Lender shall appear. The Lender shall have the right, but is not obligated, to pay costs, expenses, or reasonable attorney's fees out of the Loan proceeds.

13. **Time is Essence.** Time is hereby expressly made of the essence of this Agreement.

14. **Application of Agreement.** This Agreement is made for the sole protection of the Borrower and the Lender, their successors and assigns, and no other person or persons shall have any right of action hereon. This Agreement and the note and mortgage above-mentioned contain all of the terms and conditions agreed to by the undersigned, or any or all of them, and no other agreement regarding the subject matter of this Agreement, unless it is in writing and signed by the Lender, and the Borrower shall be deemed to exist or to bind any party hereto. The Borrower has read and understands the whole of this agreement not expressed in this Agreement or the note or mortgage has been made to induce the Borrower to enter into it.

15. **Exemption from Personal Liability, Extensions, Etc., Not to Release Interest in Property.** If any person executes this Construction Loan Agreement who did not execute the Note, then nothing contained in the Agreement shall obligate such person further than to bind such person's right, title, and interest in the mortgaged property described briefly in the above, and on default hereunder no deficiency or other personal judgment shall be demanded or entered against to time, modifications of any other term or condition of this Agreement at any time, and from time to time, without the consent of such person, shall not operate to release, in any manner, the liability of such person or such person's successors in interest insofar as such person's interest in the property is concerned. Lender shall not be required, at any time, to commence proceedings against any Borrower who executed this Agreement by reason of any demand made by such person or such person's successors in interest.

16. ~~The Borrower agrees to indemnify and hold harmless the Lender from any claims arising by reason of the execution of this Agreement or the consummation of the transactions contemplated hereby.~~

17. Subject to applicable state law, the construction documents may set forth a 1/8% Non-Conversion Fee that is charged for failure to convert the loan to a permanent phase. The fee would be added to the loan amount and collected at time of payoff.

IN WITNESS WHEREOF, this Agreement is executed the day and year first above written.

WITNESS:

Angie K. Wymit
Bette A. Wojcik

Charles S. McCue by
Charles S. McCue

BORROWER:
Charles S McCue

BORROWER:

CAROLINA FIRST BANK
By: BETTE A WOJCIK
Its Asst. Vice President

PROBATE (As To Borrower)

STATE OF
COUNTY OF

Before me personally appeared the undersigned and made oath that (s)he saw the within-names: (check applicable statement).

- (Individual(s)) (X) Borrower sign, seal, and as Borrower's act and deed deliver the with-written Agreement;
- (Corporation) () _____, President, and _____, Secretary of _____, a corporation (Borrower) sign, seal, and deliver this within-written Agreement as the act and deed of said corporation;
- (Partnership) () _____, general partner(s) of _____ a, _____ (write in 'limited' or 'general') partnership), sign, seal and deliver the within-written Agreement as the act and deed of said partnership;
- (Partnership by Corporation) () _____, President, _____, Secretary of _____, a corporate general Partner of _____ a _____ (write in 'limited' or 'general') partnership, sign, seal, and deliver the within-written Agreement as the act and deed of said partnership (Borrower);

and that (s)he with the other witness witnessed the execution thereof.

Sworn before me this 31st
Day of JANUARY, 2006
[Signature] (Seal)
Notary Public for SOUTH CAROLINA
My commission expires: 8-22-15

[Signature]

PROBATE (As To Lender)

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Before me personally appeared the undersigned and made oath that (s)he saw the within named bank by Bette A Wojcik, its Asst. Vice President, sign, seal and as its act and deed, deliver the written Agreement and that (s)he with the other witnessed the execution thereof.

Sworn before me this 31st
Day of JANUARY, 2006

(Seal)
Notary Public for South Carolina
My commission expires: _____

PROBATE (As To Endorsers, Guarantors, or other Obligors)

STATE OF _____
COUNTY OF _____

Before me personally appeared the undersigned and made oath that (s)he saw the within named Endorsers, guarantors, or other obligors sin, seal, and as their act and deed, deliver the within Agreement and that (s)he with the other witness witnessed the execution thereof.

Sworn before me this _____
Day of _____, 2005

(Seal)
Notary Public for _____
My commission expires: _____

CONTRACTOR'S CERTIFICATE

This is to certify that:

1. The undersigned understands the terms and conditions as set forth in the above Construction Loan Agreement and agrees herewith.
2. Any rights that may have accrued or may accrue by virtue of any agreement or contract with the Above Borrower in connection with the said property or the said improvements to the property are hereby subordinated to said mortgage.

CONTRACTOR [Signature]

Exhibit B

Amended Answer and Counterclaim

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON
PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No: 07-CP-07-03027

CAROLINA FIRST BANK,)
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Plaintiffs,)
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Vs.)
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CHARLES S. McCUE, et. al.,)
)
Defendants,)
_____)

2009 MAY 27 AM 10:54
ELECTRONICALLY FILED
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**FIRST AMENDED ANSWER & COUNTERCLAIM OF
DEFENDANT/COUNTER PLAINTIFF
CHARLES S. McCUE**

Defendant, Charles S. McCue, (hereinafter "McCue"), answering the foreclosure complaint of the Plaintiff, hereby admits, denies and avers as follows:

ANSWER

1. Except as hereinafter specifically admitted, McCue denies all material allegations of the complaint and demands strict proof thereof.
2. Admits the allegations of paragraphs 1 & 2 of the complaint.
3. Denies the allegations of paragraphs 3 thru 7 of the complaint for lack of information and belief, and therefore, demands strict proof thereof.
4. Admits the allegations of paragraph 8 of the complaint.

ANSWER TO FIRST CAUSE OF ACTION

5. Re-alleges his answers set forth above to paragraphs 1-8 of the complaint.
6. Admits the allegations of paragraphs 10 & 11 of the complaint.
7. Denies that McCue has defaulted on the Note & Mortgage as alleged in paragraph 9 sic (on page 3 of the complaint) and admits that Plaintiff has declared the entire balance of principal and interest to be due and payable.
8. Admits so much of paragraph 10 sic (on page 3 & 4 of the complaint) as alleges that Plaintiff claims there is due and unpaid on the Note A and Mortgage A the claimed amounts and that demand has been made upon McCue for payment of said sums together with attorney fees and costs associated therewith. Answering further, McCue alleges that Plaintiff breached essential terms and conditions of the loan documents in that they failed to conduct the inspections called for in the loan documents and made unauthorized draw payments, and failed to withhold the retainage required by the loan documents.
9. Admit so much of paragraph 11 sic (on page 4 of the complaint) as alleges that mechanics liens of record have been filed and that said parties have asserted claims.
10. Admits that Plaintiff has claimed, in paragraph 12 of the complaint, it has a right to a deficiency judgment.

ANSWER TO SECOND CAUSE OF ACTION

11. Re-alleges the answers set forth above to paragraphs 1 thru 12 of the complaint.

12. Denies the allegations set forth in paragraphs 14 & 15 of the complaint.
13. Avers that the document referred to in paragraph 16 of the complaint constitutes the best evidence of its contents and accordingly denies the allegations except as borne out by said document.
14. Denies the allegations of paragraphs 17 & 18 of the complaint and demands strict proof thereof.
15. Admits so much of paragraph 19 of the complaint as alleges that mechanics liens have been filed of record.
16. Admits so much of paragraph 20 as alleges that Plaintiff reserves the right to claim a deficiency judgment.
17. Denies that Plaintiff is entitled to the relief sought in the paragraph encaptioned wherefore or to any relief what so ever.

COUNTERCLAIM OF DEFENDANT/COUNTER PLAINTIFF McCUE

COUNT I

18. Defendant/Counter Plaintiff Charles S. McCue ("McCue"), complaining of the Plaintiff, hereby alleges as follows:

19. On or about January 31, 2006, contemporaneously with the execution of the first mortgage, a document entitled "Carolina First/Mercantile Bank Construction Loan Agreement", was entered into by and between Plaintiff and McCue. A copy of said

document is attached hereto and incorporated by reference.

20. Said document provided in pertinent part in paragraph 2 that:

The proceeds of the Loan... are to be disbursed by the Lender... upon an on-the-job inspection of the construction of the Building(s) by a representative of the Lender and upon the basis of the work remaining to be completed as determines by the Lender's inspector.... Ten percent of the Loan proceeds shall be retained by the Lender pending completion certifying completion and acceptance by the Owner(s) and the Lender of the construction of the Building(s)....At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs.

21. Plaintiff, on information and belief, failed to conduct on-the-job inspections as called for in the Construction Loan Agreement.

22. Plaintiff, on information and belief, failed to retain ten percent of the Loan proceeds pending completion certifying completion and acceptance by the Owner(s) and the Lender.

23. Plaintiff, on information and belief, failed to ascertain that at no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of the Building(s).

24. That Defendant/Counter Plaintiff McCue, never executed the Power Of Attorney, dated November 27, 2006.

25. That said document was a forgery.

26. That McCue never signed the \$300,000.00 Promissory Note dated November 27, 2006.

27. That McCue never signed the Second Mortgage dated November 27, 2006.

28. That, upon information and belief, said documents were executed by and with the knowledge of Carolina First personnel, that the Power of Attorney was a forgery.

29. That Plaintiff failed to administer the second mortgage funds in accordance with Construction Loan Agreement in force between the parties.

30. That upon information and belief, the second mortgage funds, were transferred in a single transaction, to Account Number 8102687098 and then debited out of said account almost immediately thereafter.

31. That, upon information and belief, said proceeds were not used for the completion of the property for which the loan(s) were initially sought.

32. Carolina First was negligent in failing to properly administer the proceeds from the initial loan.

33. Carolina First was negligent in paying out the proceeds of second loan, on forged documents.

34. Carolina knew, or should have known, of the negligence and or criminal activities of its employee(s).

35. That Carolina First, despite having been put on notice that forged documents were relied upon by the Bank, caused to have issued a negative credit rating against McCue.

36. That as a result of the Bank's actions, the negative credit rating has caused a cancellation of a credit car that McCue has owned for almost twenty (20) years and will likely increase interest expenses for renewal of existing personal and business credit lines

and may new credit transactions he enters into.

37. That Carolina First has wrongly damaged credit rating.

WHEREFORE, having answered Plaintiff's complaint and asserted Defendant/Counter Plaintiff McCue's Counterclaim, Defendant/Counter Plaintiff McCue prays for the following relief:

- a. Rescission of both notes and mortgages related to the subject property, with Plaintiff taking title to the real estate.
- b. Reimbursement of closing costs on each loan.
- c. Repayment of interest paid on each loan.
- d. Reimbursement of property taxes paid.
- e. Reimbursement of insurance and homeowners assessments paid by Defendant/Counter Plaintiff.
- f. Payment of all outstanding liens of the subject property by Plaintiff.
- g. Attorneys fees and cost associated with both the loan closing and the defense and prosecution of this matter.
- h. Compensation for damage done to Defendant/Counter Plaintiff's credit reputation.

AMENDED COUNTERCLAIM

ADDITIONAL FACTS IN SUPPORT OF AMENDED COUNTERCLAIM

1. On or about December 15, 2003 Carolina First Bank (hereinafter "CFB") employed

Blair Witkowski ("Witkowski") as a loan originator in its Hilton Head, SC offices.

2. On or about May 18, 2004, despite hesitation concerning the quality of his work files and documentation, CFB promoted Witkowski to Assistant Vice President, Hilton Head Mortgage Loan Manager.

3. On or about March 30, 2005, a deed was issued to Charles S. McCue for 6 Rose Hill Drive, Lot 52, with construction to permanent financing provided by Low Country Bank.

4. Thereafter, in the Spring of 2005 construction commenced at that address by Empire Construction Company.

5. On or about, December 15, 2005 the Pike Appraisal Company issued an appraisal for the property, as improved, in the amount of \$1,050,000.

6. On or about January 3, 2006, a specific power of attorney was given to Catherine Olivetti, Esquire by Charles S. McCue for closing on a mortgage loan funded by Carolina First Bank ("CFB") for construction refinancing of the 6 Rose Hill Drive property.

7. On or about January 31, 2006 Charles S. McCue refinanced his construction loan with CFB in the amount of \$840,000.

8. On or about February 1, 2006, CFB issued a check in the amount of \$579,600 to Low Country Bank to pay off the underlying mortgage on the 6 Rose Hill Drive property.

9. On or about March 16, 2006, Assistant Vice President Witkowski was promoted by CFB to Vice President of Mortgage Lending, Regional Mortgage Manager, despite CFB's knowledge of irregularities in his loan documentation and several substandard performance

reviews documenting his failures to comply with bank policies and procedures.

10. From January 31, 2006 through November 30, 2006, CFB failed to properly administer proceeds of the McCue construction loan and repeatedly made disbursements when such disbursements were improper.

11. On or about July 20, 2006, CFB's construction loan administrator wrote, concerning 6 Rose Hill Drive, "Property is 80% complete and we need to hold 12% of the uncompleted work. He has received a total in advances of \$790,052.75. The loan amount is \$840,000.00. Minus the draws, the balance in the account is \$49,947.21."

12. Upon information and belief, said property was not 80% complete at that time.

13. On or about September 14, 2006, CFB's construction loan administrator alleged "98% completion" of the 6 Rose Hill Drive property.

14. Upon information and belief, said property was not 98% complete at that time.

15. On or about November 16, 2006 the 6 Rose Hill Drive property was appraised by Island Appraisal Company in the amount of \$1,600,000.

16. On or about November 20, 2006 Scott Krivda of CFB sent a title search request order form to Macdonald Hall & Associates title search firm, reflecting an alleged \$300,000 CFB Home Equity Line of Credit ("HELOC") loan originated by Mr. Krivda.

17. On or about November 21, 2006, loan officer SMK approved a \$300,000 "second mortgage" HELOC loan allegedly for Charles S. McCue.

18. On or about November 27, 2006, Chad Easler, a notary in the employ of CFB,

notarized a limited power of attorney allegedly on behalf of Charles S. McCue.

19. The signature on that power of attorney is not that of Charles S. McCue, nor are the signatures on any of the mortgage documents.

20. Said power of attorney was a forgery.

21. On or about November 27, 2006 CFB wrote to McDonnell Hall & Associates stating that "the borrower," Charles McCue, wants to close the loan for 6 Rose Hill.

22. On November 27, 2006 CFB Vice President Witkowski fraudulently opened a "Cashline Home Equity Line of Credit," creating a mortgage in favor of CFB in the amount of \$300,000 and prepared a settlement statement for said "second loan."

23. On or about December 1, 2006, CFB Vice President Witkowski caused \$300,000.00 to be deposited into Charles S. McCue's account, Account Number 7098.

24. On or about December 1, 2006, CFB Vice President Witkowski debited the account of Charles S. McCue in the amount of \$200,000.

25. On or about December 1, 2006, CFB Vice President Witkowski credited Empire Construction Company's account at CFB, Account 2494, in the amount of \$200,000.00 from the account of Charles McCue, with the notation "McCue HELOC."

26. On or about December 1, 2006, CFB Vice President Witkowski debited the Empire Construction account, Account 2924 in the amount of \$40,000.00.

27. On or about December 1, 2006, CFB Vice President Witkowski credited his own personal account at CFB, Account 8102870523, in the amount of \$40,000.00

28. As of December 15, 2006, documentation in CFB's loan underwriting files indicated that Charles S. McCue had a TRW credit score of 752 and an Equifax credit score of 726.

29. On or about December 27, 2006 CFB Vice President Witkowski debited the account of Charles S. McCue and made the loan payment of Stephen Sattler, account number 512-094-6244 in the amount of \$2,666.94.

30. On or about December 27, 2006 CFB Vice President Witkowski debited the account of Charles S. McCue and made the loan payment of David Bachrach, account 512-094-5540 in the amount of \$2,756.25.

31. On or about December 27, 2006 CFB Vice President Witkowski debited the account of Charles S. McCue and made the loan payment of Stephen Sattler, account number 512-094-6244 in the amount of \$1,361.52.

32. On or about February 23, 2007, CFB terminated its Vice President of Regional Mortgage Lending, Witkowski, for violation of CFB's code of conduct.

33. At the time of CFB Vice President Witkowski's termination by CFB, CFB was expressly aware that its Vice President, Witkowski, had been engaged in a complex mortgage fraud scheme, which included, but was not limited to, fraud upon Charles S. McCue, as pled with specificity above.

34. On or about March 6, 2007, a notice and certificate of lien was filed on the 6 Rose Hill property by Builders Services Group, Inc. in the amount of \$24,200.

35. As a result of the filing of the lien, Charles S. McCue learned in the spring of 2007

that a HELOC loan had fraudulently been taken out in his name in the amount of \$300,000.

36. From May 11, 2007 through May 30, 2007 CFB executives, including but not limited to Blair Witkowski's supervising Vice President, Joe Lindsey, reviewed the contents of Charles S. McCue's loan files in detail, but deliberately withheld and failed to inform Charles S. McCue of the results of that review.

37. On June 4, 2007 CFB issued a notice of default to Charles S. McCue on loan number 4180277213.

38. On or about July 13, 2007, a notice and certificate of mechanics lien was filed by PebbleThorn Landscape in the amount of \$7,536.52.

39. On or about September 14, 2007 CFB Executive Vice President Joe Lindsay sought an update of the \$1,600,000 appraisal on the Rose Hill property.

40. On or about September 17, 2007, CFB attorney John T. Moore spoke with Charles S. McCue, recommending he obtain counsel concerning forbearance on the CFB loan based upon a prospective sale of the home. This conversation was memorialized in a letter from Mr. Moore to Mr. McCue.

41. On or about September 20, 2007 a notice and certificate of mechanics lien was filed by Falco, Inc., for \$12,030.

42. On or about September 21, 2007 Charles S. McCue retained Attorney Frank H. Clabaugh to represent him in connection with the fraud associated with the CFB loans.

43. On September 23, 2007 and again on October 9, 2007 a complete copy of Charles S.

McCue's files were requested from CFB. Such files were not produced by CFB.

44. On or about October 8, 2007, a notice and certificate of mechanics lien was filed by Distinctive Granite in the amount of \$4,539.

45. On or about October 11, 2007, a notice and certificate of Mechanic's Lien was filed by Gustavo Angeles for \$4,050.

46. On or about October 17, 2007 Attorney William Stover, as counsel on behalf of Charles S. McCue, wrote to Attorney John Moore as counsel for CFB expressly notifying CFB that there had been fraudulent conduct by CFB employees in connection with Mr. McCue's loans with CFB.

47. On or about October 25, 2007, despite CFB's express knowledge of fraud by its own executives and employees in connection with Mr. McCue's loans with CFB, and in connection with the loans of many other CFB customers, CFB filed a verified Summons and Complaint of Foreclosure against Charles S. McCue in the Court of Common Pleas of Beaufort County, South Carolina.

48. On or about October 30, 2007 counsel for Mr. McCue, William Stover, Esquire, informed counsel for CFB, John Moore, Esquire, in writing, that CFB is continuing to withhold the contents of Mr. McCue's loan files, as they still had not been produced.

49. On or about November 4, 2007 counsel for CFB, Attorney John Moore, sent a letter to William Stover, Esquire acknowledging that CFB was informed of the forgery before CFB filed its foreclosure action against Mr. McCue.

50. On or about November 14, 2007 counsel for Mr. McCue, William Stover, Esquire, again requested in writing a copy of the loan files and other information. CFB failed again to timely respond.

51. On or about December 1, 2007 Charles S. McCue was shopping at Robert's Antiques, a retail store in Lewisburg, West Virginia in the presence of approximately 30 individuals. Mr. McCue attempted to pay for his purchases using his Wells Fargo Visa credit card. Mr. McCue was informed by the merchant that the card had been canceled and was to be kept by the merchant cut up, and returned to Wells Fargo. The credit card had been canceled as a result of the bank's deliberate reports of false information to the Equifax, Experian and TransUnion Credit Reporting Agencies ("CRAs") concerning Mr. McCue's credit history. As a result of this incident, Mr. McCue suffered extreme embarrassment, anxiety, and emotional distress.

52. On or about December 4, 2007 counsel for Mr. McCue, William Stover, Esquire, wrote to counsel for CFB, John Moore, Esquire, that Mr. McCue's credit card of 20 years had been canceled as a result of false reporting by CFB to Credit Reporting Agencies ("CRAs") of false and fraudulent mortgage debt and improper foreclosure based on same.

53. On or about December 13, 2007 Charles S. McCue wrote to Equifax, Transunion and Experian CRAs expressly informing them of the mortgage fraud and requesting an investigation.

54. On or about December 23, 2007 CRAs Trans Union, Experian and Equifax wrote to

Mr. McCue, acknowledging receipt of his report of fraud and request for investigation.

55. On or about January 14, 2008 counsel for Mr. McCue, William Stover, Esquire, wrote to CFB counsel John Moore informing Mr. Moore that the false information and foreclosure reported by CFB were severely damaging Mr. McCue's credit, causing severe financial problems for Mr. McCue.

56. By January 14, 2008, Mr. McCue's credit score had precipitously declined to 577 based upon the intentional, malicious, false and improper collection activity of CFB of a known fraudulent debt.

57. On or about January 23, 2008 CFB falsely claimed in writing that it was going to correct and/or remove the improper and false credit reports made by CFB to the CRAs.

58. On or about March 28, 2008. Wells Fargo wrote to Mr. McCue, reducing his credit line from \$70,000 to \$11,200 based on CFB's reporting of a known false delinquency to Experian and others.

59. As a result of the malicious, intentional and wrongful conduct in reporting knowingly false credit information concerning Charles S. McCue to the CRAs and CFB's failing to properly reinvestigate Mr. McCue's claims made to the CRAs of fraud and identity theft, Charles McCue suffered and continues to suffer extreme emotional distress and anxiety, has suffered injuries and physical manifestations of injury, and sought medical care from his primary treating physician, Dr. Louis Gross, and other physicians for the same.

60. As a further result of CFB's deliberate, malicious, intentional and wrongful

reporting of credit information it knew to be false and misleading, Mr. McCue also was contacted in the Winter and Spring of 2007 by several bank creditors, including First National Bank in Ronceverte, West Virginia and Huntington National Bank in West Virginia based on the false derogatory credit information fraudulently placed on Mr. McCue's credit history by CFB. These creditors requested meetings with Mr. McCue to discuss his credit worthiness. This caused Mr. McCue further health problems, loss of sleep, nervousness, undue embarrassment and other emotional distress regarding his ability to conduct normal business activities.

61. Mr. McCue also sought commercial credit from Huntington National Bank in the Spring of 2007 for the purchase of a farm and faced substantial hurdles and delays in obtaining the same due to the malicious, false and derogatory information on his credit report. It took some three (3) months to secure financing for the purchase of a farm in Greenbrier County, West Virginia. With any prior such purchases, Mr. McCue was able to secure financing in approximately 2 weeks or less. In the case of this farm purchase, Mr. McCue's improperly damaged credit score was the issue that significantly enlarged the time it took for him to secure financing, and resulted in a loan with significantly less favorable terms.

62. As a further result of CFB's deliberate, malicious, intentional and wrongful reporting of credit information it knew to be false and misleading, Mr. McCue suffered a loss of his \$70,000 credit card and credit line through Wells Fargo and an increase in his interest

rate to 15.25% through Wells Fargo.

63. As a further result of CFB's deliberate, malicious, intentional and wrongful reporting of credit information it knew to be false and misleading, Mr. McCue also suffered a massive increase in his interest rate for his Bank of America issued credit card from 6.99% to 18.24%, again due to false, derogatory information on Defendant/Counter Plaintiff's credit report.

64. On or about September 7, 2008, CFB, through its counsel, William McGee, then scheduled Mr. McCue's deposition for September 28, 2008.

65. On September 18, 2008, despite its express knowledge of fraudulent and illegal activity by one or more of CFB's executives and employees in connection with CFB's lending to Charles S. McCue and others, and despite the fact that CFB was expressly aware that Mr. McCue was represented by counsel, CFB's collections department wrote directly to Mr. McCue stating that Mr. McCue "must pay [his] balance in full" in excess of \$300,000 by September 28, 2008 and a failure by Mr. McCue to comply "will result in your account being charged off . . . and reported to the credit reporting agencies," causing further injury and emotional distress to Mr. McCue.

COUNT II
(Fraud)

66. Defendant/Counter Plaintiff McCue, complaining of the Plaintiff, hereby incorporates, by reference, paragraphs 1 through 65 above, and further alleges as follows:

67. On or about January 31, 2006, contemporaneously with the execution of the first mortgage, a document entitled "Carolina First/Mercantile Bank Construction Loan Agreement," was entered into by and between Plaintiff and McCue. A copy of said document is attached hereto and incorporated by reference.

68. Said document provided in pertinent part in paragraph 2 that:

The proceeds of the Loan... are to be disbursed by the Lender... upon an on-the-job inspection of the construction of the Building(s) by a representative of the Lender and upon the basis of the work remaining to be completed as determines by the Lender's inspector.... Ten percent of the Loan proceeds shall be retained by the Lender pending completion certifying completion and acceptance by the Owner(s) and the Lender of the construction of the Building(s)....At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs.

69. Defendant/Counter Plaintiff McCue justifiably relied upon the representations of the lender as they pertained to inspections, specifically, "...At no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of Building(s) on the property and to pay all non construction costs."

70. Plaintiff failed to conduct on-the-job inspections as called for in the Construction Loan Agreement.

71. Plaintiff failed to retain ten percent of the Loan proceeds pending completion certifying completion and acceptance by the Owner(s) and the Lender.

72. Plaintiff failed to ascertain that at no time shall the total undisbursed Loan proceeds be less than the amount necessary to complete the construction of the Building(s).

73. That Defendant/Counter Plaintiff McCue, never executed the Power Of Attorney, dated November 27, 2006.

74. That said document was a forgery.

75. That CFB Vice President and Loan Officer Witkowski participated in the procurement of the forgery of the November 27, 2006 Power of Attorney.

76. That McCue never signed the \$300,000.00 Promissory Note dated November 27, 2006.

77. That McCue never signed the Second Mortgage ("Second Loan") dated November 27, 2006.

78. That said documents were executed by and with the knowledge of Carolina First personnel, including but not limited to CFB Vice President Blair Witkowski, that the Power of Attorney was a forgery.

79. That Plaintiff failed to administer the second mortgage funds in accordance with Construction Loan Agreement in force between the parties and intentionally violated said Agreement.

80. That between December 1 and December 6, 2007, the second mortgage funds were fraudulently transferred by CFB Vice President Blair Witkowski without authorization to Account Number 8102687098 and then debited out of said account almost immediately thereafter.

81. CFB failed to properly administer the proceeds from the initial loan.

82. CFB paid the proceeds of second loan, based on forged documents, in a fraudulent scheme concocted by its Vice President, Blair Witkowski.

83. That said proceeds were not used for the completion of the property for which the loan(s) were initially sought.

84. That on or about December 1, 2006, CFB Vice President Blair Witkowski converted some \$40,000.00 of the loan proceeds for his own use by transferring funds to his personal account, number 8102870523, and improperly distributing and transferring other proceeds to the accounts of Empire Construction to further his fraudulent scheme.

85. Upon information and belief, CFB was expressly aware and had been given notice of the negligence and/or criminal activities of its employee(s), including but not limited to Vice President Witkowski prior to the second loan.

86. Upon information and belief, at the time CFB filed its verified foreclosure action in October of 2007 in the Court of Common Pleas of Beaufort County, it was expressly aware that its own executives and agents, acting within the scope of their employment with the bank, had been involved in defrauding not only Mr. McCue, but many other CFB customers and/or borrowers in similar circumstances.

87. That CFB, despite having been put on notice that forged documents were relied upon by the Bank, furnished false and misleading credit information concerning McCue to CRAs TransUnion, Experian and Equifax.

88. Thereafter, CFB filed a verified complaint on October 25, 2007 in the Court of

Common Pleas after Mr. McCue reported to the bank in writing that he had been a victim of fraud.

89. Defendant/Counter Plaintiff McCue seeks actual damages for loss of creditworthiness, actual damages for slander of his more than 35 year history of previously unblemished credit, common law fraud damages, exemplary damages for the willful and deliberate damage done to Defendant/Counter Plaintiff's credit by CFB and all other lawfully available damages, including but not limited to attorneys' fees and costs.

90. Defendant/Counter Plaintiff McCue seeks pain and suffering, embarrassment, fright, shame, mortification, humiliation, physical injury, and emotional distress damages as a result of the willful and deliberate conduct of CFB as alleged in this Counterclaim.

91. Defendant/Counter Plaintiff McCue has incurred and continues to incur attorney's fees in connection with attempting to repair his slandered credit and in defending the improper and ill founded lawsuit brought by CFB after CFB was expressly placed on notice of the fraud associated with the McCue loans and CFB's express knowledge of a vast net of mortgage fraud perpetrated by CFB's own executives and employees. These special and general damages are continuing in nature and will increase to the extent additional personal funds are spent by Defendant/Counter Plaintiff McCue on the Rose Hill property and obstacles/increased costs are encountered in his normal business affairs.

92. Defendant/Counter Plaintiff is further seeking 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. Defendant/Counter Plaintiff McCue also seeks repayment of all interest and late fees paid by him on each of the subject loans. Moreover, Defendant/Counter Plaintiff McCue seeks reimbursement for closing costs, property taxes, homeowner's insurance and homeowner's assessments paid by Defendant/Counter Plaintiff and indemnification from CFB for all outstanding liens on the subject property.

WHEREFORE, Defendant/Counter Plaintiff Charles S. McCue prays for the following relief:

- a. Rescission of both notes and mortgages related to the subject property, with Plaintiff taking title to the real estate.
- b. Reimbursement of closing costs on each loan.
- c. Repayment of interest paid on each loan.
- d. Reimbursement of property taxes paid.
- e. Reimbursement of insurance and homeowners assessments paid by Defendant/Counter Plaintiff.
- f. Payment of all outstanding liens of the subject property by Plaintiff.
- g. Attorneys fees and costs associated with both the loan closing and the defense and prosecution of this matter.
- h. Compensation for damage done to Defendant/Counter Plaintiff's credit reputation.
- i. Exemplary damages.

COUNT III
(VIOLATION OF THE FAIR CREDIT REPORTING ACT)

93. Defendant/Counter Plaintiff, Charles S. McCue, complaining of the Plaintiff, Carolina First Bank, by counsel, and hereby incorporates, by reference, paragraphs 1 through 92, above, and further alleges as follows:

94. Defendant/Counter Plaintiff is an adult resident citizen of Greenbrier County, West Virginia.

95. Jurisdiction is properly laid in this Court as 15 U.S.C. § 1681 confers concurrent jurisdiction of Fair Credit Reporting Act (hereinafter "FCRA") claims in the State and Federal Courts.

96. This claim arises from Plaintiff Carolina First Bank's (hereinafter "CFB") violation of the requirements of the Fair Credit Reporting Act (15 U.S.C. § 1681 et seq). The Plaintiff has willfully and negligently failed to follow reasonable procedures to assure maximum possible accuracy of the information concerning the Defendant/Counter Plaintiff's credit report, as required by 15 U.S.C. § 1681e(b).

97. CFB is a "furnisher" within the meaning of the FCRA.

98. TransUnion, Equifax and Experian are all "Consumer Reporting Agencies" (hereinafter "CRAs") within the meaning of the FCRA.

99. CFB has deliberately, and with malice, furnished and then failed to delete and suppress erroneous and knowingly false negative information on McCue's credit report, as is

more fully described above.

100. CFB had a duty to conduct a reasonable investigation under the FCRA of the disputed information and deliberately failed to do so.

101. On or about October 25, 2007, CFB sued Charles S. McCue in the Court of Common Pleas for Beaufort County, South Carolina, Civil Action Number 07-CP-07-03027, seeking foreclosure on debts known to CFB to be fraudulent.

102. In the Counterclaim to that Complaint (Count I herein), McCue detailed the fraudulent CFB HELOC account, thereby giving further notice to CFB of the inaccuracy of information furnished to CRAs by CFB regarding the fraudulent account.

103. At the time of that Counterclaim, the CFB HELOC loan and construction loan were appearing on the McCue credit report as delinquent.

104. When the parties discussed this matter, CFB agreed to suppress the alleged loan delinquency data and to contact the CRAs with instructions to take whatever steps necessary to assure that the offending delinquencies did not reappear on McCue's credit file. CFB breached this agreement, deliberately, willfully, and/or out of gross negligence.

105. CFB's conduct in filing a verified foreclosure complaint in the Court of Common Pleas after Mr. McCue reported to the bank in writing that he had been a victim of fraud was, in itself, fraudulent, and demonstrates malice.

106. At the time the bank filed its verified foreclosure action, it was expressly aware that its own executives and agents, acting within the scope of their employment with the

bank, had been involved in defrauding not only Mr. McCue, but many other CFB customers and/or borrowers in similar circumstances.

107. CFB wrote directly to Charles S. McCue, despite the fact that CFB knew he was represented by counsel, by letter dated September 18, 2008 threatening to report a known fraudulent account as a "write-off" and contained the same false, erroneous information and adverse data regarding McCue.

108. The information which CFB transmitted to CRAs contained adverse, false, fraudulent and erroneous CFB account information concerning McCue's accounts. CFB's publication of this false and adverse report was in willful and negligent non-compliance with the FCRA.

109. Plaintiff applied for credit with Wells Fargo in March of 2008.

110. Wells Fargo bank denied McCue's credit application based in whole or in part on the false information reported by Carolina First Bank.

111. Defendant/Counter Plaintiff McCue suffered other difficulties with credit as more fully described in the facts section above.

112. As a result of CFB's negligent and willful non-compliance with the Fair Credit Reporting Act, it again reported to CRAs the false, fraudulent and adverse mortgage and HELOC accounts.

113. CFB maintains and distributes credit data files on Charles S. McCue's credit. CFB has willfully violated the provisions of the Fair Credit Reporting Act by refusing to take

steps to correct this known false data and its failure to follow reasonable procedures to assure maximum possible accuracy of McCue's credit information. Due to its willful failure to comply with the requirements of the Fair Credit Reporting Act, McCue is entitled to actual and punitive damages for Carolina First Bank's willful non-compliance with the Fair Credit Reporting Act.

114. All of CFB's acts and omissions alleged herein are in violation of the Fair Credit Reporting Act which requires CFB to follow reasonable procedures to assure maximum possible accuracy of the information concerning McCue's borrowing and credit files, and which requires CFB to re-investigate and delete false or inaccurate information from McCue's credit file.

115. As a result of CFB's acts and omissions, McCue has suffered actual and compensatory damages. McCue has suffered a reduction in credit, a denial of credit, mental anxiety, emotional suffering, worry, and humiliation and mental distress, as well as physical manifestations of such anxiety and distress. In addition, McCue has incurred and continues to incur litigation expenses and attorneys' fees which, but for the acts and omissions of CFB alleged herein, would not have been necessary. Further, CFB's acts and omissions are willful and demonstrative of a reckless disregard for McCue's rights. Carolina First Bank is, therefore, liable for punitive damages pursuant to 15 U.S.C. § 1681 et seq.

116. Charles S. McCue respectfully requests injunctive relief. This Court should enjoin Carolina First Bank to cease and desist from reporting and maintaining false data on

McCue's credit file.

117. Due to Carolina First Bank's continued and willful and/or negligent failure to abide by its obligations and agreements, this suit is necessary to enforce compliance with the Fair Credit Reporting Act.

WHEREFORE, Charles S. McCue respectfully demands damages of and from Carolina First Bank in the amount of \$1,000,000.00 as actual and compensatory damages and further demands judgment for punitive damages in such amounts as the jury may determine appropriate to deter this conduct in the future and as allowed by law. Further, Charles S. McCue requests all relief afforded pursuant to the Fair Credit Reporting Act, including litigation expenses and attorneys' fees.

**COUNT IV
(Defamation)**

118. Defendant/Counter Plaintiff, Charles S. McCue, complaining of the Plaintiff, Carolina First Bank, by counsel, and hereby incorporates, by reference, paragraphs 1 through 117, above, and further alleges as follows:

119. Plaintiff CFB published false information about Defendant/Counter Plaintiff McCue by reporting false account information to CRAs TransUnion, Equifax and Experian on accounts CFB knew or should have known was created or opened by fraudulent means and/or used for fraudulent purposes by one of CFB's own bank employees and was used to defraud Charles S. McCue, so as to continue having such credit reporting agencies publish

defamatory information.

120. The credit reporting agencies published the account to others, such as existing and potential creditors, who read the false information regarding the account and attributed it to Charles McCue, which injured his credit reputation with respect to such subscribers.

121. Said reporting by CFB was done maliciously, without privilege, and with a willful intent to injure McCue, in that CFB was aware that the information it was reporting was false.

WHEREFORE Charles S. McCue claims compensatory damages in the amount of \$1,000,000.00, punitive damages as allowed by law, litigation expenses related to this action and attorneys' fees.

2009 MAY 27 AM 10:54
LIVAN E. SMITH
CLERK OF COURT
BEAUFORT COUNTY, S.C.

CLABAUGH LAW OFFICES, P.A.
ATTORNEYS FOR DEFENDANT/COUNTER
PLAINTIFF

By: FRANK CLABAUGH
Frank H. Clabaugh, Esquire
Post Office Box 6131
Hilton Head Island, SC 29938

May 27, 2009

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 27 day of MAY, 2009
FRANK H. CLABAUGH
FRANK H. CLABAUGH, ESQUIRE