

RECEIVED

Nov 04 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

The Honorable Shannon M. Phillips, Circuit Court Judge

APPELLATE CASE NO.: 2024-00371

Jamie T. Nesbitt,

Appellant,

v.

Cenlar, FSB; Hancock Mortgage Partners, LLC; AmeriHome Mortgage Company, LLC;
Lakeview Loan Services, LLC and Flagstar Bank, FSB,

Respondent.

RECORD ON APPEAL

JOHNSTON LAW FIRM, LLC

s/Andrew J. Johnston

ANDREW J. JOHNSTON

(SC BAR No. 3064)

184 N. Daniel Morgan Ave.

Spartanburg, S.C. 29306

(864) 591-1093

ajohnston@spartanburglegal.com

Attorney for Appellant

Spartanburg, South Carolina
November 4, 2024

INDEX

DECISIONS

Order dated November 29, 2023 001

Order dated January 24, 2024 003

PLEADINGS

Summons and Complaint (January 4, 2024) 006

Motion for Summary Judgment (September 11, 2023) 015

Plaintiff’s Rule 59(e) Motion to Reconsider, Alter or Amend 025

AFFIDAVITS

Affidavit – Daniel Anderson 031

Affidavit – Timothy Ray, Esq. 032

TRANSCRIPTS

Deposition – Timothy Ray, Esq. 038

November 20, 2023 Transcript of Hearing 045

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

JAMIE T. NESBITT,
Plaintiff,

v.

CENLAR FSB, AMERIHOM
MORTGAGE COMPANY, LLC,
LAKEVIEW LOAN SERVICES, LLC,
and FLAGSTAR BANK, FSB,
Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-42-04184

**ORDER GRANTING
MOTION FOR SUMMARY JUDGMENT**

THIS MATTER is before the Court on the Motion for Summary Judgment filed by Defendants Cenlar FSB, AmeriHome Mortgage Company, LLC, and Lakeview Loan Servicing, LLC (collectively, "Defendants"). Upon review and consideration of the parties' pre-hearing submissions and oral argument held before the Court on November 20, 2023, the Court finds that Defendants' Motion for Summary Judgment should be granted as to all claims asserted by Plaintiff in the above-captioned action.

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is GRANTED and that Judgment shall be entered consistent with this Order.

This the ___ day of _____, 2023.

The Honorable Shannon M. Phillips
Master-In-Equity, Common Pleas
Seventh Judicial Circuit



Spartanburg Common Pleas

Case Caption: Jamie T. Nesbitt VS Cenlar, Fsb , defendant, et al
Case Number: 2021CP4204184
Type: Order/Summary Judgment

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Electronically signed on 2023-11-29 15:54:55 page 2 of 2

ELECTRONICALLY FILED - 2023 Nov 29 4:12 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4204184

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	
JAMIE T. NESBITT,)	
)	FINAL
Plaintiff,)	ORDER REGARDING MOTION
)	FOR RECONSIDERATION
)	
-vs-)	Case No.: 2021-CP-42-04184
)	
CENLAR FSB, AMERIHOM)	
MORTGAGE COMPANY, LLC,)	
LAKEVIEW LOAN SERVICES, LLC)	
and FLAGSTAR BANK, FSB,)	
)	
Defendant(s).)	

A Rule 59(e) SCRCF motion to reconsider and to alter or amend has been filed with the Court. As previously explained to Counsel, pursuant to Rule 59(f), SCRCF, the Court, in its discretion, may decide the motion based on briefs without oral argument. The Court indicated to the parties by prior order that it would decide the issue on written submissions. Further, the Court informed the parties that written submissions were not required by the non-moving party, and that the moving party could rely upon its filings or supplement. The deadline to file written submissions regarding these motions has now passed.

After careful consideration of the able arguments and filings of Counsel and review of the record, the Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or fact not appropriately considered. *See Woodson v. DLI Properties, LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014) (summary judgment order noted evidence considered); SCRCF 52 (“Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)”).

Accordingly, the Motion for Reconsideration made pursuant to Rule 59, SCRCP is DENIED.



Spartanburg Common Pleas

Case Caption: Jamie T. Nesbitt VS Cenlar, Fsb , defendant, et al
Case Number: 2021CP4204184
Type: Order/Other

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087

Electronically signed on 2024-01-24 14:24:05 page 3 of 3

ELECTRONICALLY FILED - 2024 Jan 24 3:06 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4204184

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Jamie T. Nesbitt,
Plaintiff,

SUMMONS

vs.

2021-CP-42-04184

Cenlar, FSB; Hancock Mortgage Partners,
LLC; AmeriHome Mortgage Company, LLC;
Lakeview Loan Services, LLC and Flagstar
Bank, FSB,

Defendants.

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribed, Andrew J. Johnston, PA, at 184 North Daniel Morgan Avenue, Post Office Box 3252, Spartanburg, South Carolina, 29306 within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

ATTORNEY FOR PLAINTIFF:

s/Andrew J. Johnston
ANDREW J. JOHNSTON
SC BAR No. 3064
184 N. Daniel Morgan Ave.
Spartanburg, S.C. 29306
(864) 591-1093
ajohnston@spartanburglegal.com

Spartanburg, South Carolina

January 4, 2022

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Jamie T. Nesbitt,
Plaintiff,

COMPLAINT

vs.

2021-CP-42-

Cenlar, FSB; Hancock Mortgage Partners,
LLC; AmeriHome Mortgage Company, LLC;
Lakeview Loan Services, LLC and Flagstar
Bank, FSB,

Defendants.

COMES NOW, Plaintiff, **Jamie T. Nesbitt** (hereinafter "**NESBITT**"), by and through the undersigned, complaining of the above-named Defendants, **CENLAR, FSB** (hereinafter "**CENLAR**"), **Hancock Mortgage Partners, LLC**, (hereinafter "**HANCOCK**"), **AmeriHome Mortgage Company, LLC** (hereinafter "**AMERIHOM**"), and **Lakeview Loan Services, LLC** (hereinafter "**LAKEVIEW**") and **Flagstar Bank, FSB**, (hereinafter "**FLAGSTAR**").

JURISDICTION AND PARTIES

1. At all times herein mentioned, **NESBITT** was a resident of Spartanburg County.
2. Upon information and belief, and at all times mentioned herein, **CENLAR**, was a Federal Savings Bank organized under the laws of the United States and doing business in Spartanburg County, South Carolina; **HANCOCK**, **AMERIHOM** and **LAKEVIEW** were limited liability companies organized under the laws of one of the states of the United States and doing business in Spartanburg County, South Carolina; and

FLAGSTAR, was a Federal Savings Bank organized under the laws of the United States and doing business in Spartanburg County, South Carolina.

3. Whenever reference is made to a Defendant or defendants collectively, particularly when a Defendant is alleged to have taken an action or made a communication, such reference is intended to include the actions and representations of any employees, agents and/or servants of such Defendant. While not always expressly naming the identity of such persons herein, **NESBITT** will be prepared to do so when requested and at trial.

GENERAL ALLEGATIONS

4. **NESBITT** repeats and realleges each and every foregoing paragraph set forth above and incorporates the same by reference as though fully set forth at length herein.

5. On or about August 8, 2019, as mortgagee, **NESBITT** executed a mortgage upon the subject premises with an address of 355 Bryant Rd., Inman, South Carolina. This mortgage was recorded in the Register of Deeds on August 9, 2019 in Book 5657, Pages 377 – 387. A copy of this mortgage is attached as “**Exhibit A.**”

6. The Spartanburg County Register of Deeds office records do not reflect that there has ever been an assignment of record of this mortgage to any other entity.

7. However, since this mortgage was recorded, **CENLAR**, **AMERIHOME**, and **LAKEVIEW** have all claimed to have assumed responsibility for servicing this mortgage and/or have accepted payments from

NESBITT towards the satisfaction of this mortgage from time to time.

8. Some months later, **NESBITT** desired to refinance this mortgage.
9. A loan closing was held on December 2, 2020 to refinance the mortgage.
10. The loan closing was handled by Attorney Timothy M. Ray, Esquire.
11. Prior to the closing being held, Attorney Ray received a binding payoff letter from **AMERIHOM**E. The letter was dated November 9, 2020 and reflected a payoff amount of \$178,774.37.
12. This letter reflected this payoff was good until December 7, 2020. A copy of this letter is attached hereto as "**Exhibit B.**"
13. On December 7, 2020, the payoff amount was tendered IN FULL by wire transfer by Attorney Ray to **AMERIHOM**E. A copy of the wire transfer is attached as "**Exhibit C.**"
14. Upon information and belief, Attorney Ray followed the instructions in the **AMERIHOM**E payoff letter.
15. The same day, December 7, 2020, the wire transfer was rejected.
16. This wire transfer constituted legal tender of the amount due on the mortgage.
17. The wire transfer was rejected by either **AMERIHOM**E, **CENLAR** or both.
18. The same day as the wire was sent, Attorney Ray's assistant contacted both **AMERIHOM**E and **CENLAR** by phone, wherein she was told by both that supervisors would call her back.
19. Attorney Ray's office never received a call back from either

AMERIHOME or CENLAR.

20. Attorney Ray then called both **AMERIHOME** and **CENLAR**. He was told at that time that the wire transfer was short in funds. He explained that his office had received a payoff letter with the amount stating it was valid until December 7, 2020. Attorney Ray was then told the problem by both would be addressed and a new letter would be sent with the corrected amount. Such a letter has never been received by Attorney Ray.

21. On December 28, 2020, Attorney Ray sent a follow-up email to **CENLAR** at customerservice@loanadministration.com. There was no response. A copy of this email is attached as “**Exhibit D.**”

22. In accordance with SC Code Ann. § 29-3-320, a written demand was made on March 26, 2021, by the undersigned to enter satisfaction of the original **AMERIHOME** mortgage and demanding that the mortgage be forever discharged and satisfied. A copy of the demand which was sent to **AMERIHOME, LAKEVIEW, HANCOCK** and **CENLAR** is attached hereto as “**Exhibit E.**”

23. Proof of delivery to **LAKEVIEW** is attached as “**Exhibit F.**”

24. Proof of delivery to **HANCOCK** is attached as “**Exhibit G.**”

25. Proof of delivery to **AMERIHOME** is attached as “**Exhibit H.**”

26. Proof of delivery to **CENLAR** is attached as “**Exhibit I.**”

27. SC Code Ann. § 29-3-320 provides: “**Any holder of record of a mortgage having such payment, satisfaction, or tender as aforesaid who shall not, by himself or his attorney, within three months after such certified mail, or other form of delivery, with a proof of delivery, request and tender of fees**

of office, repair to the proper office and enter satisfaction as aforesaid shall forfeit and pay to the person aggrieved a sum of money not exceeding one-half of the amount of the debt secured by the mortgage or twenty-five thousand dollars, whichever is less, plus actual damages, costs, and attorney's fees in the discretion of the court, to be recovered by action in any court of competent jurisdiction within the State. And on judgment or mortgage aforesaid by the clerk, register, or other proper officer whose duty it shall be, on receiving such order, to record it and to enter satisfaction accordingly."

28. **Exhibit E** constitutes legal demand for satisfaction of the mortgage upon **AMERIHOME, LAKEVIEW, HANCOCK** and/or **CENLAR** under SC Code Ann. § 29-3-320.

29. More than 90 days have passed since the demands for satisfaction were delivered.

30. Sometime later, **FLAGSTAR**, began to service the mortgage in question.

31. In accordance with SC Code Ann. § 29-3-320, a written demand dated May 10, 2021, was sent by the undersigned to **FLAGSTAR** to enter satisfaction of the original **AMERIHOME** mortgage and "to forever discharge and satisfy the mortgage." A copy of this demand is attached hereto as "**Exhibit J**."

32. Proof of delivery to **FLAGSTAR** is attached hereto as "**Exhibit K**."

33. **Exhibit J** constitutes legal demand for satisfaction under SC Code Ann. § 29-3-320 upon **FLAGSTAR**.

34. No response was received for this demand and more than 90 days have passed since the demand for satisfaction was delivered to **FLAGSTAR**.

35. Upon information and belief, Attorney Ray has retained the original payoff amount of \$178,774.57 in his escrow account pending a resolution of this matter.

36. NESBITT has suffered actual damages, including but not limited to: higher interest payments and damage to her credit history.

FOR A FIRST CAUSE OF ACTION

37. Each and every allegation set forth above is incorporated herein by reference as fully as if repeated verbatim.

38. SC Code Ann. § 29-3-320 provides for certain relief upon the fulfillment of the conditions precedent therein.

39. Plaintiff is informed and believes that she is entitled to the statutory relief provided for in SC Code Ann. § 29-3-320, to-wit: a judgment for one half of the amount of the debt secured by mortgage or \$25,000, whichever is less and order the Spartanburg County Register of Deeds to mark the mortgage as satisfied.

40. Upon information and belief, NESBITT is informed and believes that she is entitled to the relief provided by statute, to-wit; judgment against the responsible Defendant or Defendants in the amount of:

- (a) one half of the amount of the debt secured by the mortgage or \$25,000, whichever is less;
- (b) other actual damages; and
- (c) attorney's fees and costs.

**FOR A SECOND CAUSE OF ACTION
(BREACH OF FIDUCIARY DUTY)**

41. Each and every allegation set forth above is incorporated herein by

reference as fully as if repeated verbatim.

42. One or more of the Defendants owed a fiduciary duty to **NESBITT**.

43. These fiduciary duties were created by contract in which, **NESBITT**, as borrowee, reposed faith, confidence and trust in the lenders.

44. **NESBITT** is in a position of inequality, weakness, dependence or lack of knowledge regarding the Defendants.

45. One or more of the Defendants have breached their respective fiduciary duties to **NESBITT**.

46. **NESBITT** is informed and believes that she is entitled to actual and punitive damages under this cause of action against one or more of the Defendants.

**FOR A THIRD CAUSE OF ACTION
(NEGLIGENCE)**

47. Each and every allegation set forth above is incorporated herein by reference as fully as if repeated verbatim.

48. **CENLAR, HANCOCK, AMERIHOME, LAKEVIEW** and/or **FLAGSTAR** had a duty of care to Plaintiff to accept the payoff amount that had been quoted and to accurately report to the Spartanburg County Register of Deeds that the mortgage in question was satisfied "in full."

49. In breaching this duty, Defendants, **CENLAR, HANCOCK, AMERIHOME, LAKEVIEW** and/or **FLAGSTAR**, conducted themselves in a negligent, grossly negligent, willful, reckless, and wanton manner.

50. Because this duty was breached by one or more of the Defendants, **NESBITT** was injured to include emotional harm, loss of reputation, humiliation, apprehension, anxiety, stress, depression, embarrassment, shame, fear, and a loss of

enjoyment of life.

51. Upon information and belief, NESBITT is entitled to actual and punitive damages against one or more of the Defendants under this cause of action.

WHEREFORE, Plaintiff prays that this Court take testimony and hear other evidence concerning this matter, and after receiving the same, grant judgment against the responsible Defendants, as requested herein, as well as for the attorney fees and costs of this action, ordering the Spartanburg County Register of Deeds to mark the subject mortgage as satisfied, together with granting Plaintiff such other and further relief as it should deem fit and proper.

ATTORNEY FOR PLAINTIFF:

s/Andrew J. Johnston
ANDREW J. JOHNSTON
SC BAR No. 3064
184 N. Daniel Morgan Ave.
Spartanburg, S.C. 29306
(864) 591-1093
ajohnston@spartanburglegal.com

Spartanburg, South Carolina

December 14, 2021

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF SPARTANBURG) SEVENTH JUDICIAL CIRCUIT

Jamie T. Nesbitt,) Civil Action No. 2021-CP-42-04184
)
 Plaintiff,)
)
 vs.) **Defendant Flagstar Bank, N.A.'s Motion**
) **for Summary Judgment**
)
 Cenlar, FSB; Hancock Mortgage Partners,)
 LLC; AmeriHome Mortgage Company,)
 LLC; Lakeview Loan Services, LLC and)
 Flagstar Bank, FSB,)
)
 Defendants.)
)

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Flagstar Bank, N.A. f/k/a Flagstar Bank, FSB (“Flagstar”) submits this motion for summary judgment on all of Plaintiff Jamie Nesbitt’s (“Plaintiff”) claims. As set forth more fully below, Flagstar is entitled to summary judgment because Plaintiff’s has not sufficiently alleged Flagstar’s involvement with the events giving rise to this case or provided even a scintilla of evidence supporting any impropriety by Flagstar.

In this case, Plaintiff asserts claims for: (1) violation of S.C. Code Ann. § 29-3-320 (the mortgage satisfaction statute), (2) breach of fiduciary duty, and (3) negligence against various entities allegedly involved with the rejection of a payoff of her mortgage loan. Plaintiff, however, does not allege with any specificity that Flagstar, which is the current servicer of her mortgage, committed any wrongful acts. In fact, her Complaint concedes that Flagstar did not become involved until servicing rights were transferred to it several months after the payoff was rejected. As detailed below, each of Plaintiff’s claims fails as a matter of law. Therefore, there are no genuine issues of material fact, and the Court should grant summary judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On August 8, 2019, Plaintiff executed a mortgage in the amount of \$182,532.00 (the “Mortgage”) which was secured by certain real property located at 355 Bryant Road, Inman, South Carolina (the “Property”). The Mortgage was recorded with the Spartanburg County Register of Deeds on August 9, 2019 in book 5657 at page 377. (*See* Compl. ¶ 5.)

Plaintiff alleges that, in connection with a refinance of her mortgage, she received a payoff statement from her servicer, Defendant AmeriHome Mortgage Company, reflecting a payoff amount of \$178,744.37 (the “Payoff”). (*See* Compl. ¶ 11.) On December 7, 2020, Plaintiff’s refinance transaction closed, and the closing attorney wired \$178,774.37 to Amerihome. However, this was rejected as insufficient to satisfy the loan in full. *See* Compl. ¶¶ 13–20.

During his deposition, the closing attorney confirmed that he did not have any dealings with Flagstar in connection with the closing or initial payoff rejection. (*See* Deposition of Timothy Ray 88:1-25, excerpts attached as **Exhibit A**.) He agreed that Flagstar only became involved at a later date. (*Id.*)

On March 26, 2021, Plaintiff sent written correspondence pursuant to S.C. Code Ann. § 29-3-320 to Defendants Cenlar, FSB, Hancock Mortgage Partners, LLC, AmeriHome Mortgage Company, LLC, and Lakeview Loan Services, LLC demanding that the Mortgage be deemed forever discharged and satisfied. (*See* Compl. ¶¶ 22–26.) Plaintiff alleges that over 90 days elapsed without any of these entities filing a satisfaction in violation of the mortgage satisfaction statute. (*See* Compl. ¶ 25.)

Plaintiff’s complaint acknowledges that Flagstar did not become involved until “sometime later” when it began to service her mortgage. (*See* Compl. ¶ 30.) Flagstar’s records reflect that, in fact, it did not become involved until May 4, 2021 – nearly five months after the payoff

rejection. (See Notice of Servicing Transfer, attached as **Exhibit B**.) Plaintiff alleges that on May 10, 2021, she sent written correspondence pursuant to S.C. Code Ann. § 29-3-320 demanding Flagstar enter satisfaction of the original loan. (See Compl. ¶ 31.) Plaintiff alleges that over 90 days elapsed without Flagstar filing a satisfaction in violation of the mortgage satisfaction statute. (See Compl. ¶ 34.)

Plaintiff filed this action on January 4, 2022, asserting the following causes of action: (1) violation of S.C. Code Ann, § 29-3-320; (2) breach of fiduciary duty; and (3) negligence. As detailed below, Plaintiff has not identified even a scintilla of evidence demonstrating a genuine issue of fact for trial on her claims against Flagstar and, therefore, Flagstar is entitled to summary judgment.

STANDARD OF REVIEW

A motion for summary judgment should be granted where the Court is satisfied that “there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. A party opposing a motion for summary judgment must “do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a *genuine issue for trial*.’” *Hedgepath v. AT&T Co.*, 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct. App. 2001) (quoting *Baughman v. AT&T Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991)) (emphasis in original). “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Id.* at 355, 559 S.E.2d at 336. Reliance on allegations in a pleading is insufficient to overcome a motion for summary judgment. Rule 56(e), SCRPC.

ARGUMENT

I. Flagstar is not the holder of record of the mortgage under § 29-3-320.

Plaintiff alleges that she is entitled to the statutory relief provided for in S.C. Code Ann. § 29-3-320, along with statutory penalties and attorney's fees, for all of the Defendants' alleged improper refusal to file a satisfaction of mortgage. *See* Compl. ¶¶ 38-40. Plaintiff offers no additional facts or allegations supporting this claim or how it relates to Flagstar. She does not allege that she attempted to make a payoff to Flagstar which was rejected and has not identified any evidence supporting that she paid the outstanding balance such that Flagstar should have entered a satisfaction. However, even if she had, Flagstar cannot be liable under § 29-3-320 as it is not the "holder of record" of the Mortgage.

S.C. Coded Ann. § 29-3-320 creates a cause of action against "[a]ny holder of record of a mortgage" that does not timely record the mortgage satisfaction within three months of receiving full payment for a mortgage loan and a request to satisfy the mortgage on the public record. Prior to a 1999 amendment, the statute applied to "any person" who received payment and a request for entry of satisfaction. *See* 1999 S.C. Act No. 67. In the 1999 amendment, the General Assembly restricted the statute by, among other things, reducing the penalty and limiting its application to the "holder of record" rather than "any person." *Id.* Thus, the current statutory scheme requires the satisfaction request to be sent to the "holder of record" and only creates a cause of action against the "holder of record." S.C. Code Ann. §§ 29-3-310 and -320

The Supreme Court has recognized that "Section 29-3-310 and 320 are penal statutes" and "must be strictly construed." *Dykeman v. Wells Fargo Home Mortg., Inc.*, 381 S.C. 333, 337, 673 S.E.2d 804, 806 (2009). "A request, to trigger the statutory penalty, may not be implied or

inferred.” *Id.* at 338, 673 S.E.2d at 807. “The request must affirmatively convey *to the mortgagee* that a recording of the satisfaction is sought.” *Id.* (emphasis added).

When Plaintiff sent her original satisfaction requests in March 2021 (before Flagstar had even begun servicing the loan, the holder of record of the subject mortgage was Lakeview Loan Services, LLC, as shown by the Assignment of Real Estate Mortgage recorded with the Spartanburg Registry of Deeds on December 21, 2021 in book 6279 at page 21. (See Compl. ¶ 22.) Flagstar was assigned sub-servicing rights only, not the mortgage itself. (See Exhibit B.) There has never been an assignment making Flagstar the “holder of record.” Nevertheless, months after sending the satisfaction requests to the holder of record, Plaintiff sent an additional satisfaction request to Flagstar who, again, was merely the loan servicer. See Compl. ¶¶ 30–34.

Because Flagstar is not the “holder of record,” as required by the statute and South Carolina Supreme Court precedent, Plaintiff cannot establish a violation of Section 29-3-310. See *Dykeman*, 381 S.C. at 338, 673 S.E.2d at 807. The 1999 amendment limited the scope of Section 29-3-320 so that it only creates a cause of action against the “holder of record,” and the statute does not create a cause of action against mere loan servicer. See S.C. Code Ann. § 29-3-320. Therefore, Plaintiff’s claim against Flagstar for violation of this statute fails as a matter of law.

II. Plaintiff’s claim for breach of fiduciary duty fails as a matter of law.

Plaintiff’s second cause of action alleging a breach of fiduciary duty also fails as a matter of law because Flagstar owed no fiduciary duty to Plaintiff and because Plaintiff has not alleged any specific facts supporting a breach of any fiduciary duty. To establish a claim for breach of fiduciary duty, the Plaintiff “must prove (1) the existence of a fiduciary duty, (2) a breach of that duty owned to the plaintiff by the defendant, and (3) damages proximately resulting from the

wrongful conduct of the defendant.” See *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 335–36 (2012).

Plaintiff’s complaint only makes a vague allegation that the Defendants owed her a fiduciary duty without specifying any facts indicating which Defendant(s) have a legal duty to her and why. Plaintiff’s Complaint merely states that “[o]ne or more of the Defendants owed a fiduciary duty to [Plaintiff] . . . These fiduciary duties were created by contract, in which, [Plaintiff], as borrowee, reposed faith, confidence, and trust in the lenders . . . One or more of the Defendants have breached their respective fiduciary duties to [Plaintiff].” (See Compl. ¶¶ 42–46.)

Plaintiff definitively states that this duty was created by contract but, as a loan servicer, Flagstar is not in contractual privity with the borrower. See *Englert v. Nationstar Mortg., Inc.*, No. 1:15-cv-303-GBL-MSN, 2015 WL 9275662, at *4 (E.D. Va. Dec. 18, 2015) (“As the loan servicer, Nationstar acts on behalf of BONY to collect payments on the loan; but lacking evidence of a contract creating legal obligations between Plaintiff and Nationstar, Nationstar is not in contractual privity with Plaintiff”); *Edwards v. Ocwen Loan Serv., LLC*, 24 F. Supp. 3d 21, 28 (D.D.C. 2014) (“Judges around the country . . . have held that a loan servicer, as a lender’s agent, has no contractual relationship or privity with the borrower”).

Even if Plaintiff could assert that she had a contractual relationship with Flagstar, Plaintiff has not alleged a special relationship sufficient to create a duty under South Carolina law. South Carolina law is well-established on this point, providing that the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature. See *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003) (stating that the “normal relationship between the bank and its customer is one of creditor-debtor and not fiduciary in nature”); *Burwell v. S. Carolina Nat. Bank*, 288 S.C. 34, 40, 340 S.E.2d 786, 790 (1986) (“The

normal bank-depositor arrangement creates a creditor-debtor relationship rather than a fiduciary one.”) (citing *National Loan And Exchange Bank v. New York Life Insurance Company*, 149 S.C. 378, 147 S.E. 322 (1929)).

Therefore, South Carolina law does not recognize a general common law duty owed by a loan servicer to a mortgagor. Plaintiff has not set forth any evidence that would establish any sort of special relationship to support the existence of a legal duty. Because Plaintiff has alleged only a normal bank-customer relationship in the context of loan servicing, Plaintiff’s breach of fiduciary duty claim fails. The Court should grant summary judgment on this claim as well.

III. Plaintiff’s claim for negligence fails as a matter of law.

Finally, Plaintiff’s claim for negligence fails as a matter of law because she has not established any duty in negligence owed by Flagstar as a loan servicer either. To recover for a negligence claim, the Plaintiff must establish: “(1) a duty of care owed by the defendant; (2) a breach of that duty by negligent act or omission; and resulting in damages to the plaintiff; and (4) the damages proximately resulted from the breach of duty.” *See Thomasko v. Poole*, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). Plaintiff generally states that “Cenlar, Hancock, Amerihome, Lakeview and/or Flagstar had a duty of care to Plaintiff to accept the payoff amount that had been quoted and to accurately report to the Spartanburg County Register of Deeds that the mortgage in question was satisfied ‘in full.’” (*See* Compl. ¶¶ 48–51.)

South Carolina law requires a special relationship between the claimant and the alleged tortfeasor that gives rise to a recognized duty in law. *Andrade v. Johnson*, 356 S.C. 238, 245, 588 S.E.2d 588, 592 (2003) (“It is essential to liability for negligence that the parties have some relationship recognized by law to support the duty owed by the tort-feasor.”). Absent a special relationship, no duty exists.

Plaintiff's negligence claim fails because, as discussed *supra*, South Carolina does not recognize any duty between a bank and its customer that could give rise to liability in tort. *See Regions Bank*, 354 S.C. at 671, 582 S.E.2d at 422; *see Burwell*, 288 S.C. at 40, 340 S.E.2d at 790. Plaintiff's allegations in the Complaint focus on Flagstar's alleged actions during the course of servicing the Loan and in conducting its regular course of business. These are the same acts that South Carolina courts acknowledge do not give rise to a duty of care by a financial institution. *See Regions Bank*, 354 S.C. at 671, 582 S.E.2d at 444. As such, Flagstar does not owe the Plaintiff any special duty of care that it could have allegedly breached.

Furthermore, there is no evidence that Flagstar acted negligently. The payment history indisputably reflects that the loan had not been paid in full at the time servicing rights were transferred to Flagstar. (*See* Payment History, attached as **Exhibit C** (showing that the loan balance was \$179,158.85 on May 4, 2021, the date servicing was transferred to Flagstar).) Flagstar could only act in accordance with the information it received at the time of the servicing transfer (*i.e.*, that the loan was outstanding), and it did not act negligently by refusing to enter a satisfaction where Plaintiff never attempted to make payment in full to Flagstar.

For all these reasons, Plaintiff's claim for negligence also fails, and the Court should grant summary judgment on this claim as well.

CONCLUSION

As set forth above, there is no genuine issue of material fact as to any of Plaintiff's claims against Flagstar. Therefore, Flagstar respectfully requests that the Court grant its Motion for Summary Judgment and enter an Order dismissing the claims against Flagstar, with prejudice.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH, LLP

s/ Blake T. Williams

Matthew D. Patterson (#68316)

Blake T. Williams (#100794)

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

matt.patterson@nelsonmullins.com

blake.williams@nelsonmullins.com

Counsel for Defendant Flagstar Bank, FSB

Columbia, South Carolina

September 11, 2023

ELECTRONICALLY FILED - 2023 Sep 11 12:25 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4204184

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT
)	
JAMIE T. NESBITT,)	
)	
Plaintiff,)	CASE NO.: 2021 – CP – 42 – 04184
)	
v.)	
)	
CENLAR FSB, AMERIHOM)	MOTION TO RECONSIDER
MORTGAGE COMPANY, LLC,)	
LAKEVIEW LOAN SERVICES, LLC)	
and FLAGSTAR BANK, FSB,)	
)	
Defendants.)	

Plaintiff, through her undersigned attorney, hereby moves for reconsideration of the Order Granting Summary Judgments to Defendants, dated November 29, 2023.

This motion is timely made. Plaintiff incorporates all arguments made at any time during the pendency of this action, including arguments made in her earlier Bench Memorandum with its supporting Affidavits, as well as any Exhibits to this motion.

This motion is made pursuant to Rule 59 of the South Carolina Rules of Civil Procedure and interpreting case law. A motion for reconsideration is proper when (1) a party seeks reconsideration of issues and arguments, (2) a party wants to call the court's attention to a possible misapprehension of an argument, (3) a party wants to afford a court to correct errors, and (4) a party asks the court to rule on a matter not contained in its order. *Elam v. S.C. Dep't of Transportation*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004).

Plaintiff respectfully requests the court reconsider its order granting summary judgment for several reasons. First, the court erred because it relied on a ground that was neither included in the motion nor argued before the court. The order dismissed "all claims asserted by Plaintiff." Yet, Defendant Cenlar, AmeriHome and Lakeview's Motion for

Summary Judgment address *only* Plaintiff's Statutory Claims under SC Code Ann. Section 29-3-320. Plaintiff asserted two other causes of action in her complaint, Breach of Fiduciary Duty and Negligence.

These causes of action were not referenced in these Defendants' Motion for Summary Judgment, nor were they argued in the Motion hearing. Second, the court erred because its order fails to address Plaintiff's evidence, which is contrary to the court's obligation to view all evidence in the light most favorable to Plaintiff. Third, the order is entirely conclusory and does not weigh the evidence against the standard for granting Summary Judgment.

ARGUMENT

The court erred because it relied on grounds that were neither included in the motion nor argued before the court.

"A court may not grant relief beyond the limits or scope of such notice," except if the issue was argued addressed sufficiently during oral arguments. *Turberville v. Floyd*, 288 S.C. 171, 174, 341 S.E.2d 651, 652-53 (Ct. App. 1986). Case law clearly shows that granting summary judgment on this ground is improper. *Id.*; *Friedberg v. Goudeau*, 279 S.C. 561, 309 S.E.2d 758 (1983) (reversing the court's granting of summary judgment on a ground not properly before the court); *Griffin v. Capitol Cash*, 310 S.C. 288, 423 S.E. 2d 143 (Ct. App. 1992) (reversing trial court because error of law for court to decide motion on a ground not raised by either party).

Rule 56 of the South Carolina Rules of Civil Procedure requires the circuit court to consider the submitted pleadings, along with depositions, answers to interrogatories, admissions, and affidavits, when ruling on summary judgment.

The Plaintiff submitted two affidavits which bore directly upon the issues of fact and law. The court erred because its orders fail to address Plaintiff's evidence, which is contrary to the court's obligation to view all evidence in the light most favorable to Plaintiff.

The court's order fails to discuss any fact, despite the requirement that the facts and circumstances must be viewed in the light most favorable to the Plaintiff, as she is the non-moving party. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Laurens Emergency Med. Specialists v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 108-09, 584 S.E.2d 375, 377 (2003) (holding that summary judgment should be denied even when there is no dispute as to evidentiary facts, if there is dispute as to conclusions to be drawn therefrom); *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980); *Redwend Ltd. P'ship v. Edwards*, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003); *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 280, 573 S.E.2d 830, 835 (Ct. App. 2002); *Hall v. Fedor*, 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002); *Glasscock, Inc. v. United States Fid. & Guar. Co.*, 348 S.C. 76, 557 S.E.2d 689 (Ct. App. 2001).

Below is some of the evidence offered by Plaintiff the court did not consider in its order.

- Defendants deny that Plaintiff tendered the complete payoff of the Mortgage.
- Defendants assert that that because the tender was insufficient, that Plaintiff did not tender the full payoff of the Mortgage, Plaintiff's cause of action for failure to satisfy the mortgage must fail.

- The entire basis of this contention is that Defendants paid the real property taxes and that the tender was insufficient as a result.
- Plaintiff presented two Affidavits reflecting that it was the Plaintiff who paid the real property taxes in question and that Defendants had actual or constructive knowledge that the taxes had been paid. The evidence even included canceled checks and registers showing that the taxes were paid by Plaintiff out of closing. (Affidavits of Timothy Ray, Esq., and Crystal Phillips, filed November 12, 2023.)
- Defendants' evidence shows that they did nothing more than send money to a third-party escrow type company with which to pay the taxes, and is totally devoid of proof that the taxes were paid to the county authorities by this escrow company or that Defendants were not fully reimbursed after that fact.

The court did not address Plaintiff's evidence, nor explain why it excluded reference to it from its order, even though it has an obligation to view all the evidence in the light most favorable to the non-moving party.

Had the order included Plaintiff's evidence, it would have been difficult, if not impossible, to reach the conclusion that summary judgment should have been granted to Defendants because Plaintiff presented much more than the quantum of evidence that would permit a reasonable inference to have been drawn, such that issues of fact would have been created as issues of fact for trial. *Kitchen Planners, LLC v. Friedman*, 440 S.C. 460-61, 892 S.E.2d 297,300 (2023). Even if the order excluded Plaintiff's evidence because the court disagreed with Plaintiff's analysis and drew different conclusions or inferences, it would still be error to grant summary judgment to Defendants. Even when there is no dispute as to

evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.

CONCLUSION

Plaintiff respectfully requests the court reconsider its order granting summary for the reasons aforesaid.

s/Andrew J. Johnston

ANDREW J. JOHNSTON

Bar No.: 3064

Johnston Law Firm, LLC

184 N. Daniel Morgan Ave.

Spartanburg, SC 29304

Phone: (864) 591 - 1093

Spartanburg, SC

November 20, 2023

Payoff Statement”) to the same number as the November 9 Payoff Statement (864-412-2690) reflecting the increased payoff amount that resulted from the tax disbursement. A true and correct copy of the December 4 Payoff Statement is attached hereto as **Exhibit 6**.

18. On December 7, 2020, Cenlar faxed another updated payoff statement (“December 7 Payoff Statement”) to the same number as the November 9 Payoff Statement (864-412-2690) reflecting the increased payoff amount to \$180,321.97, as a result of the December 3, 2023 the tax disbursement. A true and correct copy of the December 7 Payoff Statement is attached hereto as **Exhibit 7**.

19. On December 7, 2020, Cenlar received a wire of \$178,774.37 from Ms. Nesbitt. This wire was rejected because it was short of the amount necessary to pay off the Loan, which increased to \$180,137.83 on December 3, 2020 when funds in the escrow account were used to pay Ms. Nesbitt’s property taxes.

20. Between November 5, 2020 and the short payoff on December 7, 2020, neither Ms. Nesbitt nor anyone on her behalf contacted Cenlar to confirm the payoff amount or to notify Cenlar that the property taxes would be paid by another party.

21. On December 8, 2020, Cenlar informed Ms. Nesbitt the payoff had been rejected because it was short due to the property tax payment, and the payoff funds were returned.

22. On December 9, 2020, Ms. Nesbitt’s escrow attorney, Timothy Ray (“Mr. Ray”), called Cenlar and requested a payoff quote good through December 20, 2020. On December 11, 2020, an updated payoff statement (“December 11 Payoff Statement”) was generated and faxed to Mr. Ray at 864-585-0068. A true and correct copy of the December 11 Payoff Statement is attached hereto as **Exhibit 8**.

23. On December 19, 2020, Cenlar requested that Spartanburg County refund the \$1,363.46 property tax payment made on December 3, 2020, because Cenlar was informed Ms. Nesbitt and Mr. Ray would make the payment themselves.

24. On December 30, 2020, an updated payoff statement (“December 30 Payoff Statement”) was generated and faxed to Mr. Ray at 864-585-0068. A true and correct copy of the

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Jamie T. Nesbitt)
)
)
PLAINTIFF,)
)
V.)
)
Cenlar, FSB; Hancock Mortgage)
Partners, LLC; AmeriHome Mortgage)
Company, LLC; Lakeview Loan Services,)
LLC and Flagbank, FSB,)
)
DEFENDANT.)

IN THE COURT OF COMMON PLEAS
FOR THE
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2021-CP-42-04184

AFFIDAVIT

The Deponent, being duly sworn, deposes and says:

1. My name is Timothy Ray.
2. I know the facts stated in this affidavit are true, or believe the facts to be true, based upon information and belief after a reasonable inquiry.
3. I am competent to testify to the matters set forth herein.
4. As to the attached documents, I am the custodian of these records and am competent to authenticate them.
5. I am a licensed attorney in the State of South Carolina. I acted as the closing attorney for Plaintiff Jamie Nesbitt, in the closing that resulted in the litigation referenced in the above caption.
6. Attached hereto is Exhibit One. Exhibit One has two pages, which are the front and back of one of my trust account checks (account number redacted), specifically check number 11969. This check was made payable to the order of Spartanburg County on December 7, 2020, in the amount of One Thousand Three Hundred Sixty-Two dollars and Forty- Six Cents. This specific check

was issued by me as part of the loan refinance for Ms. Nesbitt. The bank account number has been redacted. The check was payment *in full* for the real property taxes on this property for tax year 2020.

- 7. On the second page of Exhibit One, it shows that check 11969 was deposited by Spartanburg County. According to my bank records, which are shown in Exhibit Two, (account number redacted) check number 11969 cleared my account on December 11, 2020.
- 8. This payment satisfied Ms. Nesbitt's real property taxes for the tax year 2020 *in full*. The payment of the 2020 taxes was a lender requirement as part of Ms. Nesbitt's closing.
- 9. Further, the deponent sayeth not.

SWORN TO BEFORE ME ON THIS
14 DAY OF NOVEMBER 2023.


TIMOTHY RAY


NOTARY PUBLIC FOR SOUTH
CAROLINA

Commission Date: 12/02/32

ELECTRONICALLY FILED - 2023 Nov 14 4:41 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4204184

TIMOTHY H RAY ATTORNEY AT LAW
 TRUST ACCOUNT
 1011 W. HARRIS ST. SPARTANBURG, SC 29303-4341

PAY TO THE ORDER OF: Hspwiring Co, Inc
 \$ 1,362.46
 ONE THOUSAND THREE HUNDRED SIXTY TWO AND 40/100 DOLLARS

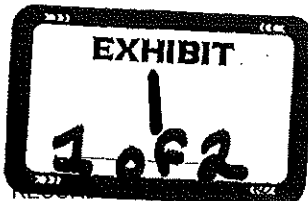
MEMO: Hspwiring Co, Inc
 PAYEE # 2-12-00 003188

170110-20-23

11669

CHECK#: 11969

\$1,362.46





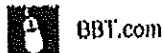
087-01-03-40 10270 221 C 001 20 \$ 55 904
TIMOTHY M RAY ATTORNEY AT LAW
IOLTA ACCT
184 N DANIEL MORGAN AVE
SPARTANBURG SC 29306-2321

ELECTRONICALLY FILED - 2023 Nov 14 4:41 PM - SPARTANBURG - COMMON PLEAS - CASE#2021CP4204184

Your account statement

For 12/31/2020

Contact us



(800) BANK-BBT or
(800) 226-5220

IOLTA CHECKING

Account summary

Your previous balance as of 11/30/2020	\$295,084.78
Checks	- 930,008.00
Other withdrawals, debits and service charges	- 2,808,395.83
Deposits, credits and interest	+ 3,597,491.15
Your new balance as of 12/31/2020	= \$354,173.12

Checks

DATE	CHECK #	AMOUNT(\$)
12/15	9572	39,839.44
12/08	*10508	333.60
12/07	*10701	213.75
12/30	*10820	29.50
12/08	*10973	400.00
12/08	*11210	300.00
12/08	*11263	223.60
12/08	*11285	254.00
12/08	*11311	293.20
12/08	*11318	258.80
12/08	*11325	117.60
12/08	*11478	141.20
12/08	*11487	256.60
12/08	*11609	289.20
12/08	*11619	426.40
12/08	*11631	413.20
12/08	*11648	303.20
12/08	*11683	316.20
12/08	*11883	117.00
12/08	*11890	149.60
12/04	*11707	35.00
12/08	*11712	40.00
12/08	*11728	318.40
12/23	*11745	67.71
12/08	*11747	430.40
12/03	*11751	35.00
12/08	*11774	289.20
12/08	*11780	128.00

DATE	CHECK #	AMOUNT(\$)
12/08	*11705	166.00
12/08	*11804	60.80
12/07	*11811	612.67
12/08	*11813	325.60
12/16	*11819	1,225.00
12/09	*11830	2,179.94
12/08	*11835	508.40
12/08	*11847	327.60
12/03	*11854	1,063.00
12/08	*11860	304.40
12/03	*11870	280.00
12/08	*11872	288.00
12/08	*11878	66.40
12/07	*11881	1,022.00
12/03	*11883	843.00
12/01	11884	590.00
12/04	*11886	29.50
12/01	11887	235.00
12/09	11888	75.00
12/08	*11890	766.00
12/04	11891	949.16
12/01	11892	4,500.00
12/04	11893	125.00
12/11	11894	300.00
12/01	11895	800.00
12/08	11896	299.20
12/08	11897	716.00
12/08	11898	125.00

DATE	CHECK #	AMOUNT(\$)
12/01	11899	533.80
12/08	*11902	832.68
12/01	*11904	5,350.75
12/04	*11906	716.90
12/01	11907	890.00
12/08	11908	314.40
12/03	11909	770.50
12/07	11910	125.00
12/01	11911	656.60
12/07	*11913	1,208.00
12/04	11914	1,634.63
12/03	11915	75.00
12/15	*11918	220.00
12/18	11919	35.00
12/01	*11921	890.00
12/08	11922	410.00
12/02	11923	1,161.80
12/01	11924	712.00
12/08	*11927	899.51
12/03	11928	1,077.38
12/03	*11931	75.00
12/04	11932	399.00
12/01	*11938	925.00
12/08	11937	302.40
12/04	11938	726.10
12/01	11939	538.60
12/03	*11944	1,722.17
12/04	11945	647.73

continued



IOLTA CHECKING (continued)

DATE	CHECK #	AMOUNT(\$)
12/01	11046	725.00
12/08	11047	101.20
12/03	11048	20.50
12/01	11049	326.80
12/01	11050	5,980.00
12/10	*11053	804.36
12/08	11054	1,047.13
12/11	11055	117.42
12/07	11056	890.00
12/07	*11058	748.30
12/07	11059	547.60
12/07	11060	500.00
12/10	11061	280.98
12/07	11062	854.50
12/14	*11064	240.70
12/07	11065	242.80
*12/11	*11069	1,362.46
12/07	11070	726.00
12/09	*11072	29.50
12/07	11073	286.20
12/09	11074	973.01
12/16	*11076	1,224.50
12/11	*11070	6,973.00
12/10	11079	7,477.00
12/14	11080	275.00
12/11	11081	860.00
12/16	*11083	974.00
12/14	11084	544.00
12/11	11085	639.40
12/14	11086	6,987.58
12/10	11087	232,209.78
12/10	*11090	17,584.30
12/11	11090	839.00
12/15	*11092	153.75
12/11	11093	197.20
12/10	*11095	1,330.32
12/22	*11097	862.91
12/21	11098	6,372.50
12/23	*12000	890.00
12/16	*12002	992.50
12/23	12003	647.20
12/29	*12007	617.00
12/30	12008	1,143.06
12/21	12009	5,287.00
12/11	12010	880.00
12/23	*12012	702.05

DATE	CHECK #	AMOUNT(\$)
12/11	12013	529.60
12/22	*12016	490.00
12/14	12017	2,355.00
12/16	12018	1,355.00
12/17	12019	495.00
12/30	12020	131.93
12/16	*12023	339.45
12/23	12024	367.00
12/23	12025	410.00
12/16	*12027	29.50
12/23	12028	268.60
12/21	*12033	32.76
12/23	*12035	15.00
12/30	12036	1,102.18
12/23	*12039	580.00
12/28	*12041	29.50
12/23	12042	283.00
12/24	*12046	526.00
12/22	12046	5,140.00
12/18	12047	7,710.00
12/23	12048	75.00
12/24	12049	618.00
12/23	12050	160.00
12/23	*12052	890.00
12/28	*12054	899.90
12/23	12055	650.20
12/28	*12057	889.03
12/30	12058	231.61
12/30	12059	2,250.00
12/31	12060	1,188.04
12/24	12061	2,643.41
12/23	12062	819.00
12/31	*12064	317.50
12/23	12065	350.50
12/18	12066	2,046.46
12/20	*12068	1,761.00
12/23	*12070	6,070.00
12/29	12071	525.00
12/23	12072	890.00
12/20	*12074	896.30
12/23	12075	608.20
12/18	12076	34,080.44
12/20	12077	34,060.44
12/30	*12079	41.71
12/30	*12084	5,997.00
12/30	12085	525.00

DATE	CHECK #	AMOUNT(\$)
12/10	12086	500.00
12/23	12087	890.00
12/23	*12090	563.00
12/29	*12098	1,332.00
12/31	*12100	757.00
12/31	*12102	3,965.00
12/21	12103	2,633.00
12/21	*12105	136,306.01
12/23	12106	860.00
12/23	*12110	480.20
12/10	12111	65,944.88
12/28	*12113	200.00
12/29	*12115	826.00
12/22	*12118	6,367.11
12/30	*12120	580.00
12/23	*12122	920.00
12/28	*12124	1,020.25
12/23	*12126	659.20
12/31	*12129	3,000.00
12/29	*12132	460.00
12/29	12133	37.10
12/29	12134	115.00
12/23	*12136	660.00
12/23	*12139	657.80
12/23	*12143	3,450.00
12/22	12144	3,450.00
12/23	*12147	890.00
12/28	*12149	474.50
12/23	12150	435.40
12/24	12151	30,416.93
12/28	12152	1,411.83
12/21	12153	22,170.71
12/20	12154	13,965.00
12/31	*12158	938.00
12/23	*12160	925.00
12/28	*12162	881.50
12/23	12163	601.80
12/22	*12165	80,170.64
12/22	12166	613.00
12/23	12167	590.00
12/23	*12170	288.00
12/31	*12174	25.00
12/31	*12177	780.00
12/29	*12181	230.64
12/10	*120350	15.00
Total checks		= \$930,006.98

* Indicates a skip in sequential check numbers above this item

Other withdrawals, debits and service charges

DATE	DESCRIPTION	AMOUNT(\$)
12/01	REPETITIVE PC BOOK TRANSFER WIRE REF# 20201201-00001253 CDT ACCT: XXXXXXXXX0502	6,400.00
12/02	PC BOOK TRANSFER WIRE REF# 20201202-00004068 CDT ACCT: XXXXXXXXX0757	55,759.64
12/02	PC WIRE TRANSFER WIRE REF# 20201202-00005258	80,221.90
12/07	PC WIRE TRANSFER WIRE REF# 20201207-00007992	178,774.37
12/08	PC WIRE TRANSFER WIRE REF# 20201208-00004367	138,189.13
12/10	PC WIRE TRANSFER WIRE REF# 20201210-00008530	14,105.48
12/11	PC WIRE TRANSFER WIRE REF# 20201211-00012374	103,291.83
12/11	PC WIRE TRANSFER WIRE REF# 20201211-00013250	136,226.72
12/11	REPETITIVE PC BOOK TRANSFER WIRE REF# 20201211-00013380 CDT ACCT: XXXXXXXXX0602	6,372.50
12/11	PC WIRE TRANSFER WIRE REF# 20201211-00013380	60,592.35
12/11	PC WIRE TRANSFER WIRE REF# 20201211-00013380	104,102.84



continued

1 Page 3 of this document, and if I could just
2 direct your attention to the very top. As you can
3 see, there's a series of asterisks with notes
4 written next to them. Would you be willing to
5 read back the very first asterisk at the top
6 there?

7 A All payoff figures provided are subject to
8 clerical error, correction, and final audit.

9 Q Could you read the -- one moment. So
10 going to the very bottom of that page, could you
11 read the very last asterisk?

12 A Please note the required payoff amount may
13 change if a payment is returned or if fees or
14 advances occur on or after the effective date of
15 this statement.

16 Q And are the words "may change" in all
17 capital letters?

18 A They are.

19 Q I think we're going to go to -- we can go
20 to a different section. Just give me a second. I
21 am now going to Page 4 and I just wanted to ask if
22 you could read -- it's actually not an asterisk.
23 I'm just going to highlight it for you for your
24 reference. If you could just read the text that I
25 highlighted.

1 A Since amounts may change, we recommend you
2 contact our office to verify payoff figures prior
3 to remitting funds.

4 Q I am now going to delete that so we don't
5 get confused, and I'm just going to highlight
6 another asterisk and ask you if you would mind
7 reading it.

8 A If we collect escrow funds for payment of
9 real estate taxes and hazard or flood insurance,
10 we will continue to make required disbursements
11 from the escrow account until our application of
12 the payoff funds to the account. Once a loan is
13 paid in full, no further disbursements will be
14 made for escrowed items.

15 Q Thank you. And then one last one, I'm
16 just going to highlight it for you. It's actually
17 right below the one you just read.

18 A Caution, If an escrow disbursement creates
19 a shortage in the escrow account and causes us to
20 advance our funds, the amount of the advance will
21 be added to the amount due and must be paid at the
22 time of payoff.

23 Q Thank you. That's all I wanted you to
24 read. Thanks for bearing with me. Would you say
25 that these sections are standard language in a

1 payoff statement?

2 A Generally you see something to that
3 effect, yes.

4 Q Based on those statements, would you say
5 that the figure shown as the total due is subject
6 to change from the time that this statement was
7 generated?

8 A I think that that is in there as a way to
9 try to cover themselves if they were to pay
10 something or if some sort of previous payment was
11 rejected. Generally when you get a payoff
12 statement, that's a firm statement from a lender.
13 I've never had one come back and change it. The
14 only issue generally would be if some money was
15 applied to the account that was a returned check
16 or something like that, but I don't remember ever
17 a payoff statement changing. I think they put
18 that in there as kind of a catch-all to say, hey,
19 you know, there could be a clerical error or we're
20 going to pay taxes when they are due so that might
21 change things, but I don't think -- generally when
22 you get this, it's a firm statement. And that is
23 not actually what happened in this case, so either
24 way I don't even think that applies.

25 Q Yeah. We can definitely talk about what

1 due?

2 A If they had advanced that money and paid
3 the taxes, it would have changed, but it would
4 have not affected the bottom line of the
5 transaction. The problem here is they took client
6 money out of their escrow that the client gave
7 them permission to open and sent that to what we
8 were informed was a third party, not even their
9 company. So they are taking basically money they
10 have a fiduciary duty to protect, sent it to a
11 third party, didn't pay the taxes with it because
12 we paid the taxes. They sent that money to a
13 third party, had it holding. I don't know if they
14 put it in an interest-bearing account and they are
15 collecting money on customer money. I don't know
16 what they are doing with it. It seems to me like
17 it's a breach of their fiduciary duty. But they
18 sent that money that they would still have control
19 over to a third party. They did not advance it
20 for payment of taxes, because we paid the taxes.

21 Q Why do you think that they did not pay the
22 taxes as well?

23 MR. JOHNSTON: Objection. That would call
24 for speculation. You may answer.

25 THE WITNESS: We paid the taxes. Our

1 Q When you say third party, you are not
2 referring to the tax authority?

3 A No. Apparently we were informed in our
4 discussions with folks at Lakeview or Cenlar that
5 they sent the money to some other party who will
6 then pay the taxes with the county for the lender.

7 Q In your experience is that format unusual?

8 A It happens. I don't think it's
9 appropriate. I think it's improper because of
10 issues like this. But I think it's improper to
11 take money you are trusted with and send it to a
12 third party that is not the party who should be
13 receiving the money.

14 Q I see.

15 A If I did that with my trust account, it
16 would be a big problem.

17 (Exhibit 4 was marked for identification
18 and attached to the transcript.)

19 Q Understood. I'm going to go to an exhibit
20 that I have marked as Exhibit 4. Hopefully I'm
21 still sharing my screen and you can now see a
22 document I have marked as Exhibit 4, December 4th
23 payoff statement. Do you see it?

24 A I do.

25 Q And have you seen this document before?

1 But when you are sending it to a third party and
2 the money is just sitting there in their account
3 for some reason, that's not an appropriate debit
4 on an escrow account.

5 Q All right. We can move on a little bit.

6 MR. WILLIAMS: Can we take a quick break,
7 Ben, if you don't mind?

8 MR. WHITE: Of course.

9 (A recess was taken at this time.)

10 BY MR. WHITE:

11 Q So moving on a little bit, I wanted to
12 talk about what happened after the payoff was
13 attempted. Mr. Ray, were you in contact with
14 anyone regarding the payoff on the day of?

15 A I think it was the next day we saw that
16 the wire we sent was rejected. At that point my
17 paralegal, Patty Sanders, let me know she had
18 called the lender and was told that someone would
19 be calling us back, which they never did.

20 Q And, to clarify, she called the day after
21 the payoff was submitted?

22 A I believe it was the day after because
23 that's when the wire came back.

24 Q Then would you say you became aware the
25 payoff came back the day after it was tendered?

1 A Yeah. If I remember correctly, it was the
2 day after. Yes.

3 Q And why was it -- why did it come back?

4 A It came back with a note that was
5 something in the effect of it was the wrong
6 amount. I don't remember the exact words. I
7 don't have that document in front of me.

8 Q Why was it the wrong amount?

9 A Well, after we didn't get a call back and
10 I called a couple of different times -- and, like
11 I said, you guys should have recordings of those
12 conversations -- basically it was to the effect
13 the person that I spoke with didn't really know at
14 first why, and she said, We'll get you another
15 payoff number with the corrected amount, and I
16 didn't get anything. I didn't get another payoff
17 at that time.

18 So after a couple of calls and finally I
19 called again and spoke with someone who spoke to a
20 supervisor, and then they said, Well, here's what
21 happened is we sent the money from the escrow out
22 of the account. So that left a higher amount owed
23 and, again, discussed the issue of here's what
24 your payoff said, we've paid those taxes.

25 And at some point they wanted us to send

I N D E X

	Page No.
Exhibits.....	3
Proceedings.....	4
Certificate of the Court Reporter.....	17

I N D E XE X H I B I T S

There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began at
2:47 p.m.)

THE COURT: The next case I have is Case Number 2021-CP-42-04184, Nesbitt versus Cenlar and others. Who is present on this matter?

MR. JOHNSTON: Andrew Johnston for the plaintiff, Your Honor.

THE COURT: Thank you.

MR. FARLEY: Good afternoon, Your Honor. Will Farley. I'm here on behalf of Cenlar, AmeriHome, and Lakeview. But I also have with me Benjamin White, who's from my firm and is admitted pro hac for this case. He'll be arguing the motion today for our defendants.

MR. WILLIAMS: And, Your Honor, Blake Williams on behalf of Flagstar.

THE COURT: Thank you. Anyone else?

ATTORNEYS: (No response.)

THE COURT: Okay. The first motion I have is Flagstar's motion for summary judgment.

MR. WILLIAMS: Your Honor, Mr. Johnston emailed earlier today. He has agreed to dismiss that claim with prejudice against Flagstar, so I'm going to circulate a stipulation of dismissal. If he could -- I'll get him to confirm that on the record. But if you would just hold

1 off on ruling, what I'd prefer to do is enter that
2 stipulation, and then we'll file a notice of withdrawal
3 on that motion.

4 MR. JOHNSTON: Your Honor, that representation by Mr.
5 Williams is correct. We are agreeing to dismiss with
6 prejudice against his client alone.

7 THE COURT: Anyone else wish to be heard on that motion?

8 MR. FARLEY: Nothing, Your Honor.

9 THE COURT: Thank you. The next motion I have is
10 Cenlar's motion for summary judgment. So Mr. White, is
11 it?

12 MR. WHITE: Yes, Your Honor. Thank you. For this
13 summary judgment motion, the key issue is whether
14 plaintiff tendered the amount due on the loan. Just for
15 a little bit of background, Plaintiff took out a loan, a
16 mortgage, for about \$182,000 in 2019. Looks like she
17 wanted to refinance in 2020 and requested a payoff quote.
18 The new refinance lender would be Movement (phonetic), I
19 think, and the escrow attorney handling it is Mr. Timothy
20 Ray. At this point, the loan was serviced by AmeriHome
21 and Cenlar and -- who we represent, the defendants.

22 We provided a payoff quote dated November 9th, 2020.
23 This quote was for \$178,000 and some change. It plainly
24 warrants the quote -- plainly warranted this amount to be
25 confirmed before tendering the funds, especially if the

1 lender paid certain expenses on behalf of the borrower,
2 such as property tax insurance, which was the case here.
3 The payoff total, it assumed a certain positive balance
4 in that escrow account, so it needed that balance to
5 remain what it was to keep that payoff figure. And here
6 in this case, as I said, (inaudible) regularly pay taxes
7 from the escrow account.

8 On December 3rd, that escrow account was used to pay
9 property taxes to Spartanburg County. These taxes became
10 due in September of 2020. And you can see on the payment
11 history that we provided, these funds went out of the
12 account December 3rd. And then on December 7th,
13 Plaintiff tendered the 178,000. This payment was short,
14 because the tax payment changed. It increased the amount
15 due on the loan. And so, this tendered payment was not
16 enough.

17 Plaintiff -- at no point did Plaintiff confirm the
18 payoff amount, which is what she was instructed to do.
19 And also, she never signaled her intent to pay off the
20 charges on her end. And that made the payment short.
21 And then to try to resolve the situation, Defendants
22 provided additional payoff quotes, which her escrow agent
23 admitted to have received, including one on December
24 11th. However, they wanted to keep the original number,
25 and that just wasn't the number anymore; and then the

1 amount increased.

2 And the original payoff statement was only good
3 through December 7th. So after December 7th, there was
4 further interest. And that figure was also another
5 reason why that figure wasn't good anymore. And so we
6 argue, Plaintiff simply cannot show that she ever
7 tendered payment in full, which is what's required by the
8 statute she's invoking for this lawsuit and can't create
9 any dispute of fact about effect.

10 THE COURT: Mr. Johnston?

11 MR. JOHNSTON: Yes, ma'am.

12 THE COURT: Would you like to respond?

13 MR. JOHNSTON: Yes, ma'am, I would. Thank you.

14 Your Honor, all my client did was to try and
15 refinance a loan that she had with the defendants in this
16 case. She found a lender, and she found an attorney to
17 handle the transaction. On her attorney -- in any
18 affidavits that I've provided to you, it's clear that the
19 plan was always for the closing attorney to pay the 2020
20 real property taxes for my client. That was always the
21 plan. That was what was in the proposed closing
22 statement. That is what her realtor says was conveyed to
23 the lender that -- or not to the lender, but to the
24 defendants in this case, that she did not want them to
25 pay the real property taxes, because they were going to

1 be funded out of the loan transaction.

2 Now, in this situation, the full amount of what was
3 believed to be the full amount of the payoff that had
4 been received in writing by the closing attorney was sent
5 by wire, which we consider to be a tender, sent by wire
6 to the defendants in this case. They claim, however,
7 that the amount of the payoff had changed. There's
8 several problems with that position.

9 The first position is that while they were entitled
10 by contract to pay the real property taxes on behalf of
11 Ms. Nesbitt, they didn't actually -- and to be
12 compensated for that if they paid it. Mr. White said
13 that the money for that went out of the account, and
14 that's true. It did go out of the account, but it didn't
15 go to pay the taxes. It did not go to Spartanburg County
16 to pay the taxes. What this money did, if anything, it
17 was sent to some third-party escrow agent. So it was
18 never used to pay the taxes on this case or in this
19 matter. So they didn't expend any money that they
20 couldn't get back, yet they maintain then, they maintain
21 now that they're still owed the money for these taxes.
22 As I read their accounting, they've already gotten that
23 money back, yet they've always refused to satisfy this
24 mortgage.

25 In our memo, we cite the statute upon which our

1 claim is based. Basically, it works like this: If you
2 send the holder of a mortgage a notice -- in this case,
3 we did by certified mail, return receipt requested --
4 and ask them to satisfy the mortgage, because tender has
5 been made of the full payoff, they are required to do so,
6 and if they fail to do so, they can be liable for up to
7 \$25,000.

8 As we sit here today, even though they have received
9 our notice, our demand for the satisfaction of the
10 mortgage, Cenlar got it on May the 5th of 2021. Hancock
11 (phonetic) got it on May 5th of 2021, and Lakeview got it
12 on April 5th of 2021. Now, AmeriHome is also known as
13 Cenlar, but no action has been taken to satisfy the
14 mortgage or even to contact us until we filed the suit in
15 this case, which was December 16th, 2021. So they're
16 saying we didn't make a full tender, because we didn't
17 pay the taxes; they paid the taxes.

18 Well, I've provided the Court with an affidavit from
19 the closing attorney. He provided the copy of his
20 canceled check dated December 7th of 2020. It also shows
21 in his trust account records that that check cleared in
22 favor of Spartanburg County on, I believe, December the
23 11th. So the taxes have been paid by Ms. Nesbitt since
24 December 11th of 2020, yet they've maintained throughout
25 this process that full tender hasn't been made, because

1 they haven't been repaid for the taxes. All they did was
2 shuffle money that could have been used for taxes from
3 one person to another. It was never paid. Apparently,
4 again, is what I can read, the escrow agent has returned
5 that money to them or certainly should have.

6 They've also -- we've also outlined from the Court
7 that in the affidavits of the attorney and the loan
8 officer in this case, the numerous attempts to try to get
9 this matter resolved and how unreasonable these lenders
10 have been throughout this process and how they continue
11 to be unreasonable now. All my client tried to do was to
12 satisfy the mortgage. They would have been entitled to
13 the tax money had they paid it, but they didn't pay it.
14 So the wire transfer that was sent to them in full was a
15 full tender, and they have not satisfied the mortgage.

16 So we think, Your Honor, at a minimum, there is a
17 genuine issue of material fact. There's also some
18 discussions in their affidavit about various faxes that
19 were sent, but there's no -- the person who signs the
20 affidavit is some type of "records custodian" type of
21 person it seems to me. They don't have any evidence that
22 these faxes were actually made, who sent them. We don't
23 have copies of the faxes, and we don't have the name of
24 the person and the date, who sent them, nor do we have
25 what I always get when I send a fax, which is a facsimile

1 receipt showing that something was actually filed. So
2 none of that is present in the record in this case. And
3 so, we would also argue that summary judgment must be
4 denied, because they have not shown that further inquiry
5 into the facts of the case would not be desirable to
6 clarify the application of the law.

7 And finally, Your Honor, they have not shown
8 how they are entitled to judgment as a matter of law. I
9 ask you to deny the motion for summary judgment and let
10 this matter proceed to trial.

11 THE COURT: Anyone else wish to be heard on this motion
12 before Mr. White replies?

13 ATTORNEYS: (No response.)

14 THE COURT: Mr. Williams or Mr. Farley?

15 MR. WILLIAMS: No, Your Honor.

16 THE COURT: Okay. Mr. White?

17 MR. FARLEY: Nothing, Your Honor.

18 MR. WHITE: Thank you, Your Honor. I'll just address
19 various points made by Mr. Johnston. I guess the first
20 point would be, you know, he says that this was always
21 the plan. It was always the plan that Plaintiff intended
22 to pay the property taxes on her end. And that may well
23 have been the case, but it was not communicated to
24 Defendants. In fact, we have the escrow agent handling
25 this on behalf of Plaintiff, Tim Ray. We have him in his

1 deposition saying that he never notified Defendants that
2 they are going to pay it. I'm not sure how our clients
3 could have been on notice to not proceed with the payment
4 as they've always done for the previous few years when
5 they hadn't received any notice to that effect.

6 There is also evidence that this payment went to the
7 accountant. We have the payment history. This is a
8 business record of the escrow account showing the funds
9 going out of the account earmarked for Spartanburg
10 County, and we have a refund coming back in in March of
11 2021 cut from the County, which was then credited back to
12 the account. Just because they received a refund in
13 March doesn't mean that the amount is now back to, you
14 know, status quo ante. This is a loan, right? So
15 there's been interest accruing all along.

16 Plaintiff's position seems to have been that
17 everything should just go back to what was on the
18 statement and wouldn't accept anything different. And
19 it's just that that amount changed, not only because of
20 the tax payment, but because of accrued interest after
21 December 7th. We argue that tender was never paid.
22 Therefore, they were under no obligation to satisfy their
23 mortgage.

24 There simply is no dispute. I can see that
25 Plaintiff can show that she made the payment to the

1 County for taxes on her end, but that doesn't factually
2 dispute that our client did as well. There could have
3 been redundant payments, and that redundant payment would
4 have increased the payoff. There is no dispute of fact
5 as to that. I can see that there is in an affidavit
6 from the new lender that she contacted the County, and
7 they said they didn't receive our client's payment, but
8 that simply is not enough. I mean, that's just hearsay.
9 It's actually double hearsay, which, you know, Rule 56
10 for summary judgment says that you need admissible
11 evidence to create the dispute of fact, and that's just
12 not going to cut it. I mean, we have appellate, you
13 know, precedent to that effect that, you know, hearsay
14 cannot create a dispute of fact.

15 And while they may be able to show that they made
16 the payment on their end, they can't create a dispute of
17 fact that we did on our end. And fundamentally, that's
18 what matters, because that's what increased the payoff
19 amount, and that's what made the tender short. And
20 therefore, they haven't met their burden.

21 And we also -- with regard to the faxes, which were
22 sort of like our client's subsequent attempts to show how
23 much was due at that point, we have Plaintiff's escrow
24 attorney, Tim Ray, admitting that he received the
25 December 11th and then another one at the end of December

1 with the updated amounts. He had received them. He said
2 he received them, and his position was that it wasn't
3 accurate, but we certainly sent them out. And
4 unfortunately, their position was that the number should
5 stay what it was when legally that just wasn't the case.
6 Therefore, we argue that Plaintiff simply cannot create a
7 dispute of fact as to whether she tendered the correct
8 amount and whether we, our clients, advanced the taxes on
9 December 3rd of 2020. And therefore, we asked that
10 summary judgment be granted.

11 THE COURT: Anything further, Mr. Johnston?

12 MR. JOHNSTON: Yes, ma'am. I think everyone agrees that
13 a wire in the amount of the original payoff was sent by
14 Mr. Ray and was rejected by the defendants in this case.

15 In reference to the fax, what I think is not the F-
16 A-X fax, not F-A-C-T-S, in reference to the fax we were
17 talking about, for -- I think it's the key fax is not the
18 fax that was sent to Mr. Ray, which was after the
19 situation where they were claiming that the taxes had
20 already been paid by them. Mr. Ray knew that he'd paid
21 the taxes. What I think is significant was the fax that
22 they say was dated December 4th, and it was not sent to
23 Mr. Ray according to their own documents. It was sent
24 to, apparently, someone at the lender, which would not be
25 sufficient notice to take into account of the closing.

1 Again, we don't have any evidence that they paid the
2 taxes. Whether or not they tried to pay the taxes, I
3 don't know. What we have evidence of is they provided
4 some money to an escrow agent who was supposed to pay the
5 taxes, but the taxes had already been paid.

6 Again -- so by the time that this matter came along
7 later when we made a demand for the mortgage to be
8 satisfied, instead of responding to us, oh, well, we need
9 the interest, or admitting that they had not paid the
10 taxes, which, again, if you read their motion for summary
11 judgment, that's still the basis for their summary
12 judgment that they said they paid the taxes and the
13 amount changed. Well, yes, it's possible interest
14 accrued, but the reason interest accrued is because they
15 didn't accept the payoff, which means that, as far as I'm
16 concerned, the interest belongs to them or the
17 responsibility for the interest belongs to them, and that
18 will conclude my remarks.

19 THE COURT: Thank you. Mr. Williams, anything else for
20 the record?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Well, thank you, gentlemen. I appreciate
23 your arguments. I'll take this matter under advisement
24 and let you all know something shortly. I hope that you
25 have a good afternoon.

1
2
3
4
5

(Whereupon, the within hearing was
concluded at 3:09 p.m.)

(*This transcript may contain quoted material.
Such material is reproduced as read or quoted by the
speaker.)

STATE OF SOUTH CAROLINA)

)

CERTIFICATE

COUNTY OF SPARTANBURG)

I, Amber Payne, Court Reporter for the Master-in-Equity Office of Spartanburg County, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina on November 20th, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.

Amber Payne

Amber J. Payne, CVR

Date: April 5, 2024

Notary public for South Carolina

My commission expires August 12, 2029