

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper is Petitioner.

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SEP 30 2013

S.C. Supreme Court

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Bank of America, N.A., Respondent,

v.

Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Matthew H. Henrikson, the United States of America, by and through its agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc., Defendants,

Of Whom Todd Draper and Matthew H. Henrikson are the Appellants.

Appellate Case No. 2012-208806

Appeal From Greenville County
Charles B. Simmons, Jr., Master-in-Equity

Opinion No. 5140
Heard March 14, 2013 – Filed June 5, 2013

**AFFIRMED IN PART, REVERSED IN PART, AND
REMANDED**

Matthew Holmes Henrikson, of Henrikson Law Firm, LLC, of Greenville, for Appellants.

Dean Anthony Hayes, of Korn Law Firm, PA, of
Columbia, for Respondent.

KONDUROS, J.: In this mortgage foreclosure action, Todd Draper and Matthew H. Henrikson (collectively, Appellants) appeal the master-in-equity's granting summary judgment to Bank of America (the Bank), arguing the Bank lacked standing because it did not own the loan but was the servicer of the loan. We affirm in part, reverse in part, and remand.

FACTS

On August 25, 2005, Draper executed a promissory note in the amount of \$245,000 to America's Wholesale Lender. To secure the note, Draper gave a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for America's Wholesale Lender encumbering a piece of real estate in Greenville. The note and mortgage state that the lender is America's Wholesale Lender. The mortgage was recorded with the Greenville County Register of Deeds on August 30, 2005. Freddie Mac, a secondary market investor, funded the loan to Draper. MERS assigned the loan to Countrywide Home Loans Servicing, L.P. Countrywide Home Loans Servicing, Countrywide Home Loans, Inc.'s wholly owned subsidiary, serviced the loan. The note has an indorsement in blank made by Countrywide Home Loans, doing business as America's Wholesale Lender. The Bank acquired Countrywide Home Loans and changed the name of Countrywide Home Loans Servicing to BAC Home Loans Servicing, L.P. In August of 2008, Draper stopped making monthly payments.

MERS transferred its rights under the mortgage to BAC Home Loans Servicing, L.P. by an assignment. On December 30, 2010, BAC filed an action for foreclosure against Appellants¹ and others² it asserted had an interest in the

¹ The complaint stated that Henrikson was made a party for any interest he may claim to have in the property by virtue of a private contract dated and recorded August 31, 2009. In his affidavit in opposition to the Bank's motion for summary judgment, Henrikson states he has occupied the property since September 1, 2009, pursuant to a contract with Draper. According to the Bank, Henrikson has a contract to purchase the property from Draper.

² These others were MERS, acting as nominee for American Home Mortgage, its successors and assigns; Shawn Kephart; the United States of America, by and

property seeking a deficiency judgment. Draper filed an answer on March 7, 2011. On April 8, 2011, the matter was referred to the master. In his response to BAC's request for admissions, Draper admitted he defaulted on the payments on the note and mortgage. On July, 1, 2011, BAC merged into the Bank and the Bank became the servicer of the loan.

On October 3, 2011, the Bank moved for summary judgment, arguing no genuine issue of material fact existed. The Bank submitted an affidavit from Lisa M. Byers of the Bank. Attached to the affidavit was the total amount the Bank alleged Draper currently owed, which included itemized charges for grass cutting and inspecting the property. Draper submitted an affidavit in opposition to the Bank's motion for summary judgment stating "the Affidavit of . . . Byers . . . is inaccurate in that numerous expenses claimed by [the Bank] are false and inaccurate, including property inspection fees." Henrikson also filed an affidavit in opposition to the Bank's motion for summary judgment. He stated that he moved into the property in question on September 9, 2009, and no lawn "re-cuts" or "occupied home inspections" had occurred after that date as Byers's affidavit alleged. On October 19, 2011, Henrikson filed a motion for summary judgment, contending the Bank did not own the debt and therefore lacked standing.

The master held a hearing on the motions. The Bank argued it held the note and mortgage and Draper was in arrears in payment on the note in the amount indicated in the affidavit of debt. On January 24, 2012, the master granted the Bank's motion for summary judgment.³ This appeal followed.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When reviewing the grant of a summary judgment motion, this court applies the same standard that governs the trial court under Rule 56(c), SCRCP; summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In

through its agency, the Internal Revenue Service; South Carolina Department of Revenue; Branch Banking and Trust Company; and Linkside III Homeowners Association, Inc.

³ The master denied Henrikson's motion for summary judgment at the hearing.

determining whether a genuine issue of fact exists, the evidence and all reasonable inferences drawn from it must be viewed in the light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial." *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact." *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

LAW/ANALYSIS

I. Standing

Appellants argue the master erred in granting the Bank's motion for summary judgment because the Bank lacked standing to sue. We disagree.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (alteration and internal quotation marks omitted). "Standing is . . . that concept of justiciability that is concerned with whether a particular person may raise legal arguments or claims." *Id.* (alteration in original) (internal quotation marks omitted). "It concerns an individual's sufficient interest in the outcome of the litigation to warrant consideration of [the person's] position by a court." *Id.* (alteration in original) (internal quotation marks omitted). "Standing is a fundamental requirement for instituting an action." *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct. App. 1994).

"Generally, a party must be a real party in interest to the litigation to have standing." *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C. 1, 22, 698 S.E.2d 612, 623 (2010) (internal quotation marks omitted). "A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." *Id.* (internal quotation marks omitted).

Rule 17(a) of the South Carolina Rules of Civil Procedure requires that every action be prosecuted "in the name of the real party in interest" The South

Carolina rule with respect to the real party in interest requirement is patterned after the comparable federal rule, which has been regarded as embodying the concept that an action shall be prosecuted "in the name of the party who, by the substantive law, has the right sought to be enforced." It is ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property.

4 S.C. Jur. *Action* § 23 (1991) (footnotes omitted). "The requirement of standing is not an inflexible one." *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000) (internal quotation marks omitted).

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); *see also* S.C. Code Ann. § 36-3-203(b) (Supp. 2012) (providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); *see also Ballou v. Young*, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note.").

"A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009). "Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *Id.* at 374-75, 684 S.E.2d at 205. "Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *Id.*

Mortgage servicing is "[t]he administration of a mortgage loan, including the collection of payments, release of liens, and payment of property insurance and taxes." *Black's Law Dictionary* 1105 (9th ed. 2009).

[A] servicer is defined as the person responsible for servicing of a loan (including the person who makes or

holds a loan if such person also services the loan). Servicing is defined as receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

Bryant v. Wells Fargo Bank, Nat'l Ass'n, 861 F. Supp. 2d 646, 658 (E.D.N.C. 2012) (citation and internal quotation marks omitted). "A servicer is a party in interest and has standing to move for relief from stay and to file proofs of claim on the owner's behalf." *In re McFadden*, 471 B.R. 136, 176 (Bankr. D.S.C. 2012).

Under South Carolina law one finds the general proposition that the plaintiff in a foreclosure suit should be the real, beneficial owner of the mortgage debt. Despite the statement of the general proposition, it appears that foreclosures and motions for relief from the stay are frequently brought by parties other than the beneficial owner. The court and parties have not found a dispositive case under South Carolina law.

Other jurisdictions tend to favor the view that a loan servicer is a party in interest and a real party in interest. The general rule is that a mortgage servicer has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage. It seems the better view that a loan servicer, with a contractual duty to collect payments and foreclose mortgages in the event of default, has standing to move for relief from stay in the Bankruptcy Court.

In re Woodberry, 383 B.R. 373, 379 (Bankr. D.S.C. 2008) (brackets, citations, and internal quotation marks omitted).

In a recent case, the South Carolina bankruptcy court found:

As in *Woodberry*, there is only a mere assertion by Debtors that the moving party lacks standing, an assertion which is contrary to the entire record of this case. . . . [The loan servicer] is the responsible agent for receiving payment and acting on the mortgage holder's behalf and Debtors are bound by their Plan to pay [the loan servicer] for the mortgage. This record is more than sufficient proof to find that [the loan servicer] has standing to bring the Motion.

In re Burreto, CA 05-07146-JW, 2008 WL 8895361, at *2 (Bankr. D.S.C. July 23, 2008).

In another bankruptcy court case, the court noted "there is a general view, which has been accepted in this jurisdiction and others, that a loan servicer is a 'party in interest' and has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage." *In re Neals*, 459 B.R. 612, 617 (Bankr. D.S.C. 2011) (citing *In re Woodberry*, 383 B.R. at 379; *In re Miller*, 320 B.R. 203, 206 n. 2 (Bankr. N.D. Ala. 2005) (permitting a servicer to litigate motion for relief from stay); *In re O'Dell*, 268 B.R. 607, 618 (N.D. Ala. 2001), *aff'd*, 305 F.3d 1297, 1302 (11th Cir. 2002) ("A servicer is a party in interest in proceedings involving loans which it services"); *Bankers Trust (Delaware) v. 236 Beltway Inv.*, 865 F. Supp. 1186, 1191 (E.D. Va. 1994) (concluding that both lender and servicer have standing to foreclose even if servicer is not the holder of the mortgage); *In re Tainan*, 48 B.R. 250, 252 (Bankr. E.D. Pa. 1985) (finding that a mortgage servicer is a party in interest for purposes of [Rule 17(a), FRCP,] in a relief from stay proceeding)). The court "agree[d] with the general view that a loan servicer has standing to move for relief from stay." *Id.*

Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view. Draper acknowledges the Bank is the servicer of his loan. Accordingly, the master correctly found the Bank had standing to foreclose on the mortgage.

II. Original Note

Appellants maintain the master erred in granting the Bank's motion for summary judgment because the Bank failed to offer any evidence it was the owner or holder of the mortgage note. We disagree.

Section 36-3-301 of the South Carolina Code (Supp. 2012) states:

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

A holder is a person in possession of instrument drawn, issued, transferred, or indorsed to him. S.C. Code Ann. § 36-1-201(20) (2003). "[A]n instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument." S.C. Code Ann. § 36-3-602(a) (Supp. 2012).

"A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Rule 1003, SCRE.

Draper originally executed the note to America's Wholesale Lender. Through a series of transfers and mergers, the Bank became the holder of the note. Appellants do not dispute these transfers and mergers. BAC asserted when it filed the foreclosure action that it was the holder of the note and mortgage. The Bank asserted the same at the summary judgment hearing. The Bank produced a copy of the note, which shows the indorsement by Countrywide Home Loans, Inc. doing business as America's Wholesale Lender. The Bank produced a ledger of payments, prepared on April 6, 2011, showing all transactions on the account beginning on September 1, 2005. Because the evidence indicates the Bank did hold the note, the master did not err in granting summary judgment on this issue.

III. Opposing Affidavits

Appellants argue the master erred in granting the Bank's motion for summary judgment because the Bank's affidavit for damages was contradicted by opposing affidavits thereby creating a question on fact. They maintain the affidavit from Byers was inaccurate because it stated there were property inspection fees and charges for the lawn being recut, which Henrikson disputes because he was living on the property at the time they allegedly occurred. We agree in part.

"The rule governing summary judgment provides that '[s]upporting and opposing affidavits shall be made **on personal knowledge**, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.'" *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003) (quoting Rule 56(e), SCRCP) (alteration and emphasis added by court).

There is a material question of fact but only in regards to the charges in the affidavit that occurred after September 9, 2011, for inspections and lawn cutting. Those charges totaled \$375 for lawn cutting and \$170 for inspections, amounting to \$545. Henrikson lived in the house at the time of the charges and his affidavit indicating those inspections and law cutting did not occur raised an issue of material fact. However, because Appellants have not provided any evidence to dispute the other charges, this does not raise an issue of credibility to the entire amount of charges. Accordingly, the master's grant of summary judgment as to only this part is reversed and remanded for a decision on the charges for grass cutting and inspections after September 9, 2011.

CONCLUSION

The master correctly granted the Bank's motion for summary judgment in regards to the issue of standing and the issue of the original note. However, Appellants raised an issue of material fact as to the amount due to the Bank. Therefore, the master's decision is

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

HUFF and WILLIAMS, JJ., concur.

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Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

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SC Court of Appeals

APPELLANTS' PETITION FOR REHEARING

Appellants petition this Court for a rehearing based on the grounds that the Court overlooked numerous questions of fact in its affirmation of the trial court's grant of summary judgment; that it misapprehended the applicability of cited Bankruptcy Court cases which were clearly distinguishable; and that it failed to consider Appellants' arguments that Respondent was not a holder of the note and that without possession of the original note, the owner of the note must proceed under S.C. Code §36-3-804.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

**I. THE COURT MISAPPREHENDED THE LAW IT CITED AND
OVERLOOKED APPELLANTS' ARGUMENTS THAT RESPONDENT
LACKED STANDING TO SUE**

The Court misapprehended the holdings in *In Re Woodberry*, 383 B.R. 373 (Bankr. D.S.C. 2008) and *In Re Neals*, 459 B.R. 612 (Bankr. D.S.C. 2011) and overlooked Appellants' arguments that those cases were fatally distinguishable from the case at bar and should be limited to their facts. The *Woodberry* and *Neals* bankruptcy cases do not stand for the categorical proposition that a loan servicer has standing to sue

on a note. Instead, those courts applied the UCC's definition of a "person entitled to enforce" the note and determined that the loan servicers met that definition under the facts of those particular cases. In Woodberry the dispositive issue was whether a loan servicer was a party in interest within the meaning of the Bankruptcy Code such that it could seek relief from a bankruptcy stay. The promissory note in that case had been endorsed in blank converting it to a bearer instrument, the original note was delivered to the servicer, and the servicer was in possession of the original note and mortgage. The Woodberry court basically held the loan servicer had standing in that case because it was a "holder" of the note within the meaning of the UCC. In Neals, although the servicer was not the holder of the note because it had not been indorsed to it, possession of the original note had been delivered to the servicer for the purpose of giving it the right to enforce the note. Therefore, the servicer was "a nonholder in possession of the instrument who has the rights of a holder" within the meaning of the UCC. However, unlike the situations in Woodberry and Neals (and in *In Re Burreto*, C/A No. 05-07146-JW, 2008 WL 8895361, ((Bankr. D.S.C. July 23, 2008)) and *In Re McFadden*, 471 B.R. 136 (Bankr. D.S.C. 2012)) also cited by the Court), Respondent did not have the original note and cannot meet the definitions applied in those cases.

Woodberry and Neals and the other bankruptcy cases cited by the Court held only that servicers had the right to move for relief from a stay and to file proof on an owner's behalf, which is not at all the same as finding that servicers have standing to prosecute foreclosure actions in South Carolina state courts. The Court overlooked Appellants' arguments that Respondent's role in as servicer of the note was only a nominal, formal,

or technical interest in, or connection with, the action and not a real, actual, material, or substantial interest.

The Court also overlooked the case cited in Appellants' Reply Brief, *U.S. Bank Trust National Association v. Bell*, 385 S.C. 364, 684 S.E. 2d 199 (Ct. App. 2009) in which this Court observed that "[G]enerally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt" (385 S.C. at 374) and in support of that proposition cited cases from Connecticut and New York which suggest that ownership of the instruments controls the ability to maintain an action for foreclosure:

See, e.g., *Franklin Credit Mgmt. Corp. v. Nicholas*, 73 Conn.App. 830, 812 A.2d 51, 57–58 (2002) ("In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note.") (internal quotations omitted) (internal citations omitted); *Campaign v. Barba*, 23 A.D.3d 327, 805 N.Y.S.2d 86, 86 (N.Y.App.Div.2005) ("To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment.") ... (S.C. 385 at 380).

Moreover, while it was admitted that Respondent was a servicer of the loan, servicing rights originate from a servicing contract which was not in evidence so the scope of respondents rights as service may or may not have included the right to foreclose such that Respondent failed to make a prima facie case that it any right to foreclose deriving from the owner of the note. The Court overlooked the lack of evidence that even as servicer Respondent may or may not have a contractual right to foreclose on behalf of the owner. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

**II. THE COURT DID NOT ADDRESS APPELLANTS' SALIENT ARGUMENTS
REGARDING THE ORIGINAL NOTE ISSUE AND OVERLOOKED THE LACK
OF EVIDENCE TO SUPPORT THE TRIAL COURT'S RULING**

**A. The Court Failed to Address the Applicability of S.C. Code § 36-3-804 and
Misapplied Rule 1003, SCRE**

The Court overlooked and failed to consider Appellants' argument that without the original note in possession of the Plaintiff, the *owner* of the note must proceed under provisions of S.C. Code § 36-3-804. Instead, the Court relied on Rule 1003, SCRE, which does not specifically apply to duplicates of Notes in foreclosure or other commercial paper cases and in any event would not trump a statute. Even in its reliance on 1003, the Court overlooked the provision that 1003 would not apply if a genuine question was raised as to the authenticity of the original and that under the circumstances (i.e. summary judgment as opposed to a full merits hearing) it would be unfair to admit the duplicate. The Court overlooked Appellants' argument that there was no evidence in the record that the duplicate accurately reflected the note at the time of its entry into evidence but only as of the time that the duplicate was rendered (no evidence was offered as to when the duplicate was rendered) leaving open the possibilities of any number of subsequent endorsements and transfers of ownership and that there was no evidence of authenticity of the duplicate offered below other than the bare submission to the Court by counsel. All of which leave genuine issues of material fact on which the grant of summary judgment

was improper. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

B. The Court Misapprehended the Requirements of S.C.Code §36-3-301 as to Who is Entitled to Enforce an Instrument and S.C. Code §36-3-201 as to What Constitutes a Holder

The Court erroneously held that the Respondent did hold the note because it produced a ledger of payments prepared before the hearing showing payments and activities from September 2005. From this the Court concluded that there was evidence that Respondent did hold the note. The Court misapprehended the value of the ledger evidence, which if anything is evidence of servicing the loan, but the producing the ledger and a copy of the note do not establish that Respondent was the holder of the note under S.C Code §36-3-301. The Court cited “a series of transfers and mergers” as a path to Respondent becoming a holder, but overlooked the absence of any such evidence in the record specifically evidence of *delivery* of the note attending transfers as required by S.C Code §36-3-201 and 203 which require “transfer of possession”. The transfer of a note requires negotiation of the note, which involves delivery of possession of the instrument and its indorsement by the holder. Absent possession of the instrument there can be no delivery; without delivery an instrument cannot be transferred. The only evidence established regarding the note’s path to Respondent was that Respondent was in possession of a copy of the note which had been rendered at some unknown time, which does not even establish that Respondent was ever in possession of the original note at any time, but only of a copy. The Court overlooked the complete lack of evidence that Respondent was either the owner of the note, the holder of the note, in possession the

note, or that the note had been lost, destroyed or damaged. Without actual possession of the original note Respondent cannot be a holder. At the very least, questions of fact existed as to whether or not Respondent, admittedly not the owner of the note, was a holder or otherwise had the rights to enforce the note. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

III. SUMMARY JUDGMENT

The Court overlooked the standard for granting summary judgment and failed to take all reasonable inferences from the evidence (or lack thereof) in the light most favorable to the Appellants. Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009). As argued above, there was at the very least a mere scintilla of evidence as to the factual issues surrounding Respondents standing to sue and its status as a holder of the instrument. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

IV. CONCLUSION

Once the Court reconsiders the Appellants' arguments which it overlooked and the law and evidence which it misapprehended, the Court should determine that genuine issues of material fact exist as to the standing and original note issues and the Court should determine that the trial court's grant of summary judgment must be reversed and remanded for a full merits trial.


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June 20, 2013

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SC Court of Appeals

PROOF OF SERVICE

Counsel for the Appellants, hereby certifies that a copy of Appellants' Petition for Rehearing and memorandum in support of Petition for Rehearing has been served on counsel for Respondent by regular U.S. mail, postage prepaid, on this 20th day of June, 2013, addressed as follows:

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Respondent,

v.

Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Mathews H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.,

of whom Todd Draper and Matthew H. Henrikson are

Appellants.

RETURN TO APPELLANTS' PETITION FOR REHEARING

Appellants' petition for rehearing should be denied because in ruling to affirm, in part, the summary judgment, this Court neither misapprehended nor overlooked any salient point of Appellants' argument regarding the issue of Respondent's standing to pursue foreclosure action.

Under South Carolina Rules of Civil Procedure, only a real party in interest may prosecute an action. Rule 17(a), SCRCP. Contrary to Appellants' assertion, this Court's reference to the opinions of the United States Bankruptcy Court for the District of South

Carolina in *In re Woodberry*, 383 B.R. 373 (Bankr. D.S.C. 2008), and *In re Neals*, 459 B.R. 612 (Bankr. D.S.C. 2011), was appropriate, because they expound the term “a real party in interest” in regard to mortgage loan servicers. The fact that the servicers in those cases were parties to bankruptcy proceedings, and not foreclosures, has no bearing on the validity and applicability of the bankruptcy court’s analyses to the case at bar.

In their petition, Appellants contend that “[i]n *Woodberry* the dispositive issue was whether a loan servicer was a party in interest within the meaning of the Bankruptcy Code such that it could seek relief from a bankruptcy stay.” (Appellants’ Memorandum, p. 2). They fail to mention, however, that Rule 7017 of the Federal Rules of Bankruptcy Procedure adopts, for contested matters, Rule 17 of the Federal Rules of Civil Procedure, on which Rule 17, SCRCF, is patterned. See *In re Woodberry*, 383 B.R. at 378. Thus, the distinction that Appellants draw between a contested matter in bankruptcy – motion for relief from stay, – and a foreclosure, is immaterial; both are “actions” under the federal, and the South Carolina, Rule 17(a).

In *Neals*, the court cited the Fourth Circuit Court of Appeals opinion in *Va. Elec. & Power Co. v. Westinghouse Elec. Corp.*, 485 F.2d 78 (4th Cir. 1973), defining a “real party in interest” under Rule 17, as “a ‘person who possesses the right to enforce the claim and who has a significant interest in the litigation.’” *Neals*, 459 B.R. at 617. Similarly, in the instant case, the Court found, quoting South Carolina Jurisprudence, that a real party in interest is the one “who, by substantive law, has the right sought to be enforced.” *Bank of America v. Draper*, Op. No. 5140 (S.C. Ct. App. filed June 5, 2013) (Shearouse Adv. Sh. No. 25 at 53, 57) (quoting 4 S.C. Jur. Action § 23 (1991)). In finding that “a mortgage servicer has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage[.]” *id.* at 59 (quoting *Neals*, 459 B.R. at 617), this Court chose to follow a national trend of recognizing

servicers as real parties in interest, be it in foreclosure actions or contested matters in bankruptcy. This Court cited bankruptcy cases from Alabama and Pennsylvania as well as opinions from the Eleventh Circuit and the U.S. District Court for the Eastern District of Virginia. *Draper*, at 59. See also *CWCapital Asset Mgmt., LLC v. Chi. Props., LLC*, 610 F.3d 497, 500-01 (7th Cir. 2010) (holding that there could be no doubt about a servicer's standing, as it had a personal stake in the outcome of the case because it received a percentage of the proceeds of a defaulted loan).

These cases stand for the proposition that a “[a] servicer is a party in interest in proceedings involving loans which it services.” *In Re O'Dell*, 268 B.R. 607, 618 (N.D. Ala. 2001) *aff'd* 305 F.3d 1297, 1302 (11th Cir. 2002). One's status as a servicer of a loan implies an interest in the outcome of the litigation involving the loan; an interest that is real, substantial, and material. Here, Appellants admitted Respondent's status as the servicer. Accordingly, they cannot question Respondent's having a significant interest in the litigation.

Appellants point to the absence from the record of the servicing agreement between Respondent and Freddie Mac, which they argue, could have provided for Respondent's right to initiate the foreclosure on behalf of the owner of the loan. (Appellants' Memorandum, p. 3). This agreement is irrelevant, however, because Respondent had, by substantive law, the right sought to be enforced in the foreclosure action. Respondent was entitled, under Section 36-3-301 of the South Carolina Code of Laws, to enforce the right to payment embodied in the Draper's note, because Respondent was the holder of that instrument.

While possession of the note bearing specific or in-blank indorsement is the *sine qua non* of one's status as the holder, S.C. Code Ann. § 36-3-301 (Supp. 2010), production of the note is not the *sine qua non* for proving possession and establishing one's right to enforce the note under S.C. Code § 36-3-301(i). Respondent's status as the holder was evidenced by the fact that the

note was issued to Countrywide Home Loans, Inc. (CHL), acting under the trade name America's Wholesale Lender, which was later acquired by Respondent. The payments were collected by Countrywide Home Loans Servicing, LP, a subsidiary of CHL renamed BAC Home Loans Servicing, LP following the acquisition of CHL by Respondent, and later merged into Respondent. Also, the payment of the note was secured by a mortgage held by Respondent. In other words, by virtue of mergers and acquisitions, Respondent was the payee on the note. Respondent exercised right to payment under the note from its origination and was the party that initiated the foreclosure. These facts, coupled with the introduction of the ledger of payments and the duplicate of the note, along with Appellants' failure to question authenticity of the note executed by Draper, or to indicate any circumstances making admission of the duplicate unfair, allowed the master-in-equity, and then this Court, to conclude that there was no genuine issue as to Respondent's status as the holder of the note, and thus, as a party with standing to pursue the foreclosure.

Appellants maintain that the Court overlooked their argument that introduction of the duplicate, instead of the original of the note, "le[ft] open the possibilities of any number of subsequent endorsements and transfers of ownership." (Appellants' Memorandum, p. 4). Although this argument could be seen as one raising an issue of fact, it does not create an issue requiring the services of a fact finder. "The issue raised by a party opposing motion for summary judgment must be genuine." *Saluda Motor Lines*, 300 S.C at 45, 386 S.E.2d at 292 (citing *Witt v. Poole*, 182 S.C. 110, 188 S.E. 496 (1937)). "It is not sufficient that evidence create a farfetched inference. . . . Either motion should be granted or denied based on the whole of the evidence, and in making the determination the judge should not select any one morsel of testimony and attach significance to it unless it be genuine or reasonable." *Id.* In light of the

totality of circumstances transpiring from the record, Appellants' argument that an introduction of the duplicate could not eliminate possibilities of there being further indorsements or transfers, constitutes nothing but a "farfetched inference" incapable of precluding summary judgment. In the words of this Court in *Saluda Motor Lines, Inc. v. Crouch*, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct. App. 1989) (quoting 73 Am. Jur. 2d *Summary Judgment* § 27), "the court [was] convinced that the issue [was] not genuine but feigned and that there [was] in truth nothing to be tried."

In view of the foregoing, Respondent asks for denial of Appellants' petition for rehearing.

Respectfully submitted,



Dean A. Hayes
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817
Attorney for Respondent

July 9, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master-in-Equity

Case No. 2010-CP-23-10468

Appellate Case No. 2012-208806

Bank of America, N.A.,

Respondent,

v.

Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Mathews H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.,

of whom Todd Draper and Matthew H. Henrikson are

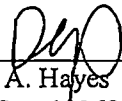
Appellants.

PROOF OF SERVICE

The undersigned attorney for Respondent, Bank of America, N.A., certifies that Return to Appellants' Petition for Rehearing was served on Appellants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Mathew H. Henrikson
P.O. Box 26554
Greenville, SC 29616
Attorney for Appellants

this 9th day of July, 2013



Dean A. Hayes
P.O. Box 12369
Columbia, SC 29211-2369
(803) 252-5817
Attorney for Respondent

July 9, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

RECEIVED
JUL 19 2013
SC Court of Appeals

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

REPLY TO RESPONDENT'S RETURN TO PETITION FOR REHEARING

Appellant restates all arguments set forth in its Memorandum in Support of
Petition for Rehearing. Respondent in its Return did not address the Court's overlooking
the fact that while Respondent is a servicer of the loan, servicing rights originate from a
servicing contract which was not in evidence so the scope of respondents rights as service
may or may not have included the right to foreclose such that Respondent failed to make
a prima facie case that it any right to foreclose deriving from the owner of the note. There
was no evidence presented that even as servicer Respondent may or may not have a

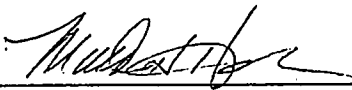
contractual right to foreclose on behalf of the owner. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

Respondent in its Return failed to address the Court's overlooking Appellants' argument that without the original note in possession of the Plaintiff, the *owner* of the note must proceed under provisions of S.C. Code § 36-3-804. Respondent did not address the Court's overlooking Appellants' argument that there was no evidence in the record that the duplicate accurately reflected the note at the time of its entry into evidence but only as of the time that the duplicate was rendered (no evidence was offered as to when the duplicate was rendered) leaving open the possibilities of any number of subsequent endorsements and transfers of ownership and that there was no evidence of authenticity of the duplicate offered below other than the bare submission to the Court by counsel. All of which leave genuine issues of material fact on which the grant of summary judgment was improper. It is not "farfetched" that the ownership of the note may have changed in the years between the rendition of the photocopy and the time of entry into evidence especially in light of the numerous corporate mergers, name changes and transfers as identified by Respondent. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

Respondent did not address the overlooking the absence of any evidence in the record of *delivery* of the note attending transfers as required by S.C Code §36-3-201 and 203 which require "transfer of possession". The transfer of a note requires negotiation of the note, which involves delivery of possession of the instrument and its indorsement by the holder. Absent possession of the instrument there can be no delivery; without delivery an instrument cannot be transferred. The only evidence established regarding the

note's path to Respondent was that Respondent was in possession of a copy of the note which had been rendered at some unknown time, which does not even establish that Respondent was ever in possession of the original note at any time, but only of a copy. The Court overlooked the complete lack of evidence that Respondent was either the owner of the note, the holder of the note, in possession the note, or that the note had been lost, destroyed or damaged. Without actual possession of the original note Respondent cannot be a holder. At the very least, questions of fact existed as to whether or not Respondent, admittedly not the owner of the note, was a holder or otherwise had the rights to enforce the note. The Court should not have affirmed the grant of summary judgment in light of such undeveloped facts.

Once the Court reconsiders the Appellants' arguments which it overlooked and the law and evidence which it misapprehended, the Court should determine that genuine issues of material fact exist as to the standing and original note issues and the Court should determine that the trial court's grant of summary judgment must be reversed and remanded for a full merits trial.



Matthew H. Henrikson
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
Attorney for Appellants

July 19, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

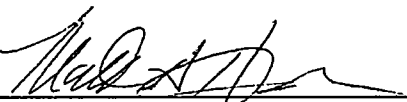
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JUL 19 2013
SC Court of Appeals

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

PROOF OF SERVICE

Counsel for the Appellants, hereby certifies that a copy of Appellants' Reply to
Return to Petition for Rehearing has been served on counsel for Respondent by regular
U.S. mail, postage prepaid, on this 19th day of July, 2013, addressed as follows:

Dean A. Hayes, Esq.
Korn Law Firm
P.O. Box 11264
Columbia, SC 29211



Matthew H. Henrikson (SC Bar No.: 7897)
Henrikson Law Firm, LLC
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
Attorneys for Appellants

The South Carolina Court of Appeals

Bank of America, N.A., Respondent,

v.

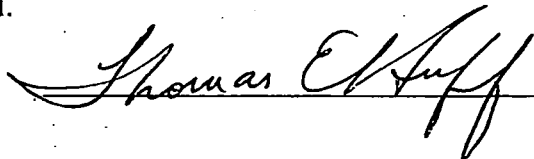
Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Matthew H. Henrikson, the United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc., Defendants,

Of Whom Todd Draper and Matthew H. Henrikson are the Appellants.

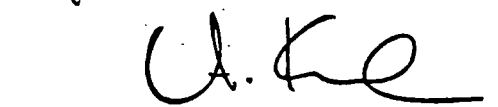
Appellate Case No. 2012-208806

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Dean Anthony Hayes
Matthew Holmes Henrikson

FILED

27 August 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Bank of America, N.A. Respondent,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

AMENDED RECORD ON APPEAL

Matthew H. Henrikson, Esquire
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
Attorney for Appellants

Dean A. Hayes, Esquire
P.O. Box 12369
Columbia, South Carolina 29211
Attorney for the Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a Countrywide Home
Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic Registration Systems,
Inc., acting as nominee for American Home Mortgage, its
successors and assigns, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and through its
Agency, the Internal Revenue Service, South Carolina
Department of Revenue, Branch Banking and Trust
Company, and Linkside III Homeowners Association, Inc.,

Defendants.

F10-06303

2011 SEP 2 PM 1:07 IN THE COURT OF COMMON PLEAS

ORDER AMENDING CAPTION

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2010-CP-23-10468

DEFICIENCY REQUESTED

ENTERED COMPUTER

It appearing to the Court that this action was brought in the name of BAC Home Loans Servicing, LP, f/k/a
Countrywide Home Loans Servicing, LP, and it appearing that a corporate merger has been completed, whereby
BAC Home Loans Servicing, LP, f/k/a Countrywide Home Loans Servicing, LP, has merged into Bank of America,
N.A., and Bank of America, N.A., is the surviving entity, and on motion of the plaintiff's attorney that the caption
be amended to show Bank of America, N.A., as the proper plaintiff and present lienholder,

IT IS HEREBY ORDERED that the caption be amended to show Bank of America, N.A., as plaintiff.

, South Carolina

830 , 2011

Master in Equity for Greenville County

I SO MOVE:

DEAN A. HAYES
Attorneys for Plaintiff

RECEIVED

AUG 31 2011

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a Countrywide Home
Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic Registration Systems,
Inc., acting as nominee for American Home Mortgage, its
successors and assigns, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and through its
Agency, the Internal Revenue Service, South Carolina
Department of Revenue, Branch Banking and Trust
Company, and Linkside III Homeowners Association, Inc.,

Defendants.

F10-06303

IN THE COURT OF COMMON PLEAS

MOTION AND MANDATORY
ORDER OF REFERENCE

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2010-CP-23-10468

DEFICIENCY REQUESTED

2011 APR - 8 P 2:41

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

It appearing pursuant to Rule 53 - SCRPC that this action is one for the foreclosure of a mortgage and as such may be mandatorily referred to Charles B. Simmons, Jr., as Master-in-Equity for the above-entitled county, and that the Master-in-Equity shall have the authority to enter final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules; now, on motion of the undersigned attorney for the Plaintiff,

IT IS ORDERED that this case be referred to Charles B. Simmons, Jr., as Master-in-Equity to direct entry of final judgment in this action under Rule 53(b), SCRPC. Any appeal from the final judgment entered by the Master-in-Equity shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Greenville, South Carolina
April 8, 2011

Paul B. Wickensimmer
CLERK OF COURT

I SO MOVE:

Dean A. Hayes
DEAN A. HAYES
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a Countrywide Home
Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic Registration Systems,
Inc., acting as nominee for American Home Mortgage, its
successors and assigns, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and through its
Agency, the Internal Revenue Service, South Carolina
Department of Revenue, Branch Banking and Trust
Company, and Linkside III Homeowners Association, Inc.,

Defendants.

F10-06303

IN THE COURT OF COMMON PLEAS

ORDER GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2010-CP-23-10468

DEFICIENCY REQUEST

FILED CLERK OF COURT
GREENVILLE, S.C.
JAN 25 2012
ENTERED COMPUTER

On October 24, 2011, a hearing was held on plaintiff's motion for summary judgment. Present at the hearing were Dean A. Hayes, attorney for the plaintiff, and Matthew H. Henrikson, pro se defendant and attorney for the defendant, Todd Draper.

After reviewing the documents submitted by counsel and hearing their respective arguments for and against summary judgment, I find that there is not a genuine issue as to any material fact and that plaintiff is entitled to judgment as a matter of law. Plaintiff is entitled to foreclose on the note and mortgage at issue in this case, and plaintiff is further entitled to judgment for the amount set forth in the affidavit of debt attached to plaintiff's motion for summary judgment. The judgment amount may be updated by a new affidavit submitted by plaintiff.

IT IS HEREBY ORDERED that plaintiff's motion for summary judgment be and hereby is granted.

IT IS SO ORDERED!

January 24, 2012
Greenville, South Carolina

THE HONORABLE CHARLES B. SIMMONS, JR.
MASTER IN EQUITY FOR GREENVILLE COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2010 DEC 30 A 10:53

IN THE COURT OF COMMON PLEAS

SUMMONS

BAC Home Loans Servicing, L.P. f/k/a (NON-JURY MORTGAGE FORECLOSURE)
Countrywide Home Loans Servicing, L.P. f/k/a

C/A NO:

2010-CP-23-10468

PLAINTIFF,

vs.

DEFICIENCY REQUESTED

Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Matthew H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.,

DEFENDANT(S).

F10-06303

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

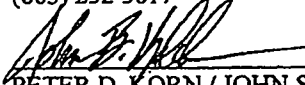
TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the

Plaintiff will move for an Order of Reference of this cause to the Master-in-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master in Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL / MEREDITH S. LEE
Attorneys for Plaintiff

Columbia, South Carolina
December 29, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE 2010 DEC 30 A

IN THE COURT OF COMMON PLEAS

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P. COMPLAINT

PLAINTIFF,

(NON-JURY MORTGAGE FORECLOSURE)

vs.

C/A NO:

2010-CP-23- 10468

DEFICIENCY REQUESTED

Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Matthew H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.,

DEFENDANT(S).

F10-06303

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a limited partnership organized and existing under and by virtue of the laws of the State of New York; and that the Defendants, Todd Draper, Shawn Kephart and Matthew H. Henrikson, are upon information and belief, citizens and residents of the County of Greenville, State of South Carolina. That the Defendant, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, is upon information and belief a corporation organized and existing under the laws of Delaware. That the Defendant, South Carolina Department of Revenue, is a governmental agency organized and existing under the laws of South Carolina. That the Defendant, Branch Banking and Trust Company, is upon information and belief a business organized and existing under the laws of North Carolina. That the Defendant, Linkside III Homeowners Association, Inc., is upon information and belief a corporation organized and existing under the laws of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Greenville, State of South Carolina.

4. That on or about August 25, 2005, for value received, Todd Draper, did execute and deliver to America's Wholesale Lender, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Todd Draper promised to pay to America's Wholesale Lender, the sum of Two Hundred Forty-Five Thousand And 00/100 Dollars (\$245,000.00), together with interest thereon at an adjustable rate pursuant to the terms of the Note.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Todd Draper, did execute and deliver on August 25, 2005 unto Mortgage Electronic Registration Systems, Inc., acting as nominee for America's Wholesale Lender, its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

ALL THAT CERTAIN piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville being shown and designated as Lot 90 at Linkside, Phase 3, Section 4, recorded September 5, 2001, in Plat Book 44-O at Page 20 and having, according to said plat, metes and bounds as shown thereon.

THIS BEING the same property conveyed to Todd Draper by virtue of a Deed from MNJ Properties, LLC, f/k/a Lennar Carolina, LLC, f/k/a Seppala Homes, Inc., dated August 4, 2005 and recorded August 8, 2005, in Book 2159 at Page 321, in the Office of the Register of Deeds for Greenville County, South Carolina.

106 Couples Court, Greenville, SC 29609

TMS# P020070101100

6. Thereafter said mortgage was recorded in Book 4424 at Page 1799 on August 30, 2005 in the Office of the Register of Deeds of Greenville County.

7. Thereafter, by virtue of an assignment to be recorded Mortgage Electronic Registration Systems, Inc., acting as nominee for America's Wholesale Lender, its successors and assigns assigned said mortgage unto BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. making BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. the present lien holder and Plaintiff herein.

8. The above referenced instrument constitutes a first mortgage lien.

9. That the Defendant, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, is made a party by virtue of a Mortgage given by Todd Draper, dated August 22, 2006 and recorded August 29, 2006, in Book 4632 at Page 1476, in the amount of \$50,000.00.

10. That the Defendant, Shawn Kephart, is made a party for any interest he may claim to have in subject property by virtue of a Bond For Title, dated September 1, 2006 and recorded October 17, 2006, in Book 2232 at Page 705, in the Office of the Register of Deeds for Greenville County, South Carolina..

11. That the Defendant, Matthew H. Henrikson, is made a party for any interest he may claim to have in subject property by virtue of a Private Contract, dated August 31, 2009 and recorded August 31, 2009, in Book 2361 at Page 2580 and re-recorded on September 18, 2009, in Book 2362 at Page 1315, in the Office of the Register of Deeds for Greenville County, South Carolina.

12. That the Defendant, The United States of America, by and through its Agency, the Internal Revenue Service, is made a party by virtue of a Notice of Federal Tax Lien, Serial # 727415410 obtained against Todd M. Draper, dated December 2, 2010 and recorded December 10, 2010, in Misc. Book 55 at Page 1596 by the Baltimore, Maryland Internal Revenue Service Office and filed in Greenville County, South Carolina, in the amount of \$10,000.00.

13. That the Defendant, South Carolina Department of Revenue, is made a party by virtue of a State Tax Lien, Tax Lien # 3-50449988-0 obtained against Matthew H. Hendrikson, et al, dated January 9, 2003 and recorded January 21, 2003, in the amount of \$1,909.92.

14. That the Defendant, Branch Banking and Trust Company, s/b/m to Branch Banking and Trust Company of South Carolina, is made a party by virtue of a Transcript of Judgment obtained by Branch Banking and Trust Company of South Carolina against Matthew H. Henrikson, dated August 14, 2001 and recorded August 7, 2002, in the amount of \$54,390.33 and identified as Judgment Roll/Case # 02-CP-23-5417.

15. That the Defendant, Linkside III Homeowners Association, Inc., is made a party to this action by virtue of any homeowners liens or assessments recorded or unrecorded that are due or that may become due in the future.

16. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

17. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

18. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

19. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

20. The monthly payments due on said note and mortgage are in default since August 1, 2008, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of August 1, 2008 the sum of Two Hundred Forty-Two Thousand Two Hundred Thirty-Seven And 85/100 Dollars (\$242,237.85), together with interest at an adjustable rate pursuant to the terms of the Note from July 1, 2008 and also for the costs and disbursements of this action, including attorney's fees.

21. That the Plaintiff does not waive but specifically demands judgment against the Defendant, Todd Draper for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant, Todd Draper for any deficiency in this action remaining after sale of the mortgaged premises.

22. That the servicer is participating in the Home Affordable Modification Program (HMP). The HMP modification process specified by the Guidelines or Supplemental Directive has been completed without resulting in a modification because the borrower failed to respond to the HMP Solicitation.

23. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

24. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

WHEREFORE, having fully set forth its complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and:

(1) That the amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.

(2) That the said Plaintiff's mortgage be declared a first mortgage and that the

said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with attorney's fees as aforesaid, and

Third, the surplus, if any, be distributed according to law.

Fourth, Plaintiff have judgment against the Defendant, Todd Draper for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendant, Todd Draper for any deficiency in this action remaining after sale of the mortgaged premises.

(4) For an Order directing and empowering the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

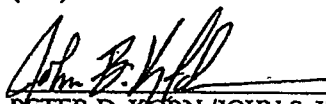
(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For such other and further relief as may be just and proper.

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817


PETER D. KORN / JOHN S. KAY
ALAN M. STEWART / JOHN B. KELCHNER
H. GUYTON MURRELL
Attorneys for Plaintiff

Columbia, South Carolina
December 29, 2010

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601 As Amended

1. The amount of the debt is stated in paragraph 20 of the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
4. If the debtor(s) notify the creditor's law firm in writing within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor(s) by the creditor's law firm.
5. If the creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor(s) makes a written request to the creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor(s) by the creditor's law firm.
6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.
7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No.: 2010-CP-23-10468

BAC Home Loan Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, L.P.,

Plaintiff,

ANSWER OF DEFENDANT TODD DRAPER

vs.

Todd Draper, et al.,

Defendants.

FILED
CLERK OF COURT
GREENVILLE
2011 MAR -7 PM 4:30

The Defendant above-named, Todd Draper, by and through his undersigned attorneys,
answers the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. He denies each and every allegation of the Complaint not hereinafter specifically and unconditionally admitted.

2. Answering the allegations of paragraph 1 Complaint, he admits so much of that paragraph as alleges that this Defendant is a citizen and resident of Greenville County; he has insufficient information to admit or deny the remaining allegations of that paragraph.

3. Answering the allegations of paragraph 2 of the Complaint, that paragraph sets forth legal conclusions which these Defendants are required neither to admit nor deny.

4. He admits the allegations of paragraph 3 of the Complaint.

5. Answering the allegations of paragraph 4 of the Complaint, this Defendant craves reference to the original Note as alleged, as it actually exists.

6. Answering the allegations of paragraph 5 of the Complaint, this Defendant craves reference to the original Mortgage as alleged, as it actually exists.

7. Answering the allegations of paragraphs 6 and 7 of the Complaint, this Defendant craves reference to those records and documents as alleged, as they actually exist.

8. Answering the allegations of paragraphs 8, 9, and 10 of the Complaint, those paragraphs sets forth legal conclusions which this Defendant is required neither to admit nor deny.

9. Answering the allegations of paragraph 11 of the Complaint, this Defendant craves reference to the Private Contract as alleged, as it actually exists.

10. Answering the allegations of paragraph 12 of the Complaint, that paragraph sets forth legal conclusions which this Defendant is required neither to admit nor deny.

11. Answering the allegations of paragraph 13 of the Complaint, this Defendant has insufficient information with which to admit or deny that paragraph.

12. Answering the allegations of paragraphs 14 and 15 of the Complaint, those paragraphs sets forth legal conclusions which this Defendant is required neither to admit nor deny.

13. Answering the allegations of paragraphs 16, 17, 18, and 19 of the Complaint, this Defendant craves reference to those documents as alleged, as they actually exist.

14. He has insufficient information to admit or deny the remaining allegations of paragraph 20 of the Complaint.

15. Answering the allegations of paragraphs 21 and 22 of the Complaint, those paragraphs set forth legal conclusions which this Defendant is required neither to admit nor deny.

16. He denies the allegations of paragraph 23 of the Complaint.

17. He has insufficient information to admit or deny the remaining allegations of paragraph 24 of the Complaint, being the remaining paragraph of the Complaint.

FOR A SECOND DEFENSE

18. Further answering the Complaint and as an additional defense thereto, this Defendant allege and shows that Plaintiff's claim should be barred by the doctrine of laches and the statute of limitations.

FOR A THIRD DEFENSE

19. Further answering the Complaint and as an additional defense thereto, this Defendant alleges and shows that Plaintiff's claim should be barred by equitable estoppel.

FOR A FOURTH DEFENSE

20. Further answering the Complaint and as an additional defense thereto, this Defendant alleges and shows that Plaintiff's claim should be barred by the doctrine of unclean hands.

FOR A FIFTH DEFENSE

21. Further answering the Complaint and as an additional defense thereto, this Defendant allege and shows that pursuant to South Carolina Code 36-3-505, et seq., the Plaintiff should be required to present the original Note and the original Mortgage or the claim should be dismissed.

FOR A SIXTH DEFENSE

22. Further answering the Complaint and as an additional defense thereto, this Defendant alleges and shows that the Complaint should be dismissed pursuant to SCRCF 12(b)(6) for failure to state a cause of action in that the Plaintiff has not alleged presentment of

the original Note and the original Mortgage to the Defendant pursuant to South Carolina Code 36-3-505, et seq.

FOR A SEVENTH DEFENSE

23. Further answering the Complaint and as an additional defense thereto, this Defendant alleges and shows that he is entitled to appraisal rights pursuant to S.C. Code Section 29-3-660 et seq.

FOR AN EIGHTH DEFENSE

24. Further answering the Complaint and as an additional defense thereto, this Defendant alleges and shows that the Plaintiff's Complaint should be dismissed in that the Plaintiff lacks standing to prosecute this action due to non-existent, incomplete, and improper attempted assignments and transfers of the subject debt and security interests.

WHEREFORE, having fully answered the Plaintiff's Complaint, this Defendant prays that the same be dismissed with costs, and for such other and further relief as this Court may deem to be just and proper.



Matthew H. Henrikson (SC Bar #7897)
CLARKSON WALSH TERRELL & COULTER, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Attorneys for Defendant Todd Draper

March 7, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No.: 2010-CP-23-10468

BAC Home Loan Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, L.P.,)

Plaintiff,)

vs.)

Todd Draper, et al.,)

Defendants.)

CERTIFICATE OF SERVICE

2011 MAR -7 PM 4:30

I hereby certify that a true and accurate copy of the Answer of Defendant Todd Draper has been served upon counsel of record in the above-captioned case by depositing a copy in the United States Mail, proper postage affixed thereto, on the 7th day of March, 2011 addressed as follows:

John B. Kelchner, Esq.
Korn Law Firm, P.A.
P.O. Box 11264
Columbia, SC 29211



Matthew H. Henrikson (SC Bar #7897)
CLARKSON WALSH TERRELL & COULTER, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Attorneys for Defendant Todd Draper

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic
Registration Systems, Inc., acting as
nominee for American Home Mortgage, its
successors and assigns, Shawn Kephart,
Matthew H. Henrikson, The United States of
America, by and through its Agency, the
Internal Revenue Service, South Carolina
Department of Revenue, Branch Banking
and Trust Company, and Linkside III
Homeowners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-23-10468

**REPLY TO ANSWER, COUNTERCLAIM,
AND CROSSCLAIMS OF DEFENDANT
HENRIKSON**

TO: MATTHEW H. HENRIKSON, PRO SE DEFENDANT:

The plaintiff, responding to the answer, counterclaim, and crossclaims (hereinafter "answer and counterclaim") of the defendant, Matthew H. Henrikson, respectfully alleges as follows:

1. That each allegation of the defendant's answer and counterclaim not specifically admitted is denied.
2. That no response is required to the allegations contained in paragraphs 1 through 25 of the defendant's answer and counterclaim.

AS A FIRST DEFENSE TO DEFENDANT'S FIRST COUNTERCLAIM

(General Denial)

3. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

4. Plaintiff denies the allegations in paragraph 26 of defendant's answer and

counterclaim.

AS A SECOND DEFENSE TO DEFENDANT'S COUNTERCLAIM

(Dismissal pursuant to SCRPC 12(b)(6))

5. To the extent that they are consistent with the pleadings herein, the above paragraphs are incorporated as if repeated verbatim.

6. That the defendant has failed to state facts sufficient to constitute a cause of action, therefore, the defendant's counterclaim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

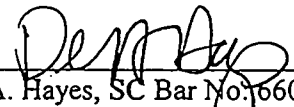
7. That further, by pleading this 12(b)(6) dismissal in their reply herein, the plaintiff does not intend to waive any right to have the Court hear a motion for dismissal. The dismissal herein is included for notice purposes and to preserve the plaintiff's right to move for a dismissal at anytime hereafter and up until trial.

WHEREFORE, having fully responded to the allegations contained in the defendant's answer and counterclaim, the plaintiff prays for the following:

- (a) That the defendant's counterclaim be dismissed with costs;
- (b) That the plaintiff be granted the relief requested in the complaint;
- (c) For such other and further relief as the court may determine to be just and proper.

[Signature Page to Follow]

KORN LAW FIRM, P.A.


Dean A. Hayes, SC Bar No: 66066
Tara C. Sullivan, SC Bar No: 79806
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

March 23, 2011
Columbia, South Carolina
N:PDF10-06303

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting as nominee for American
Home Mortgage, its successors and assigns, Shawn
Kephart, Matthew H. Henrikson, The United States
of America, by and through its Agency, the Internal
Revenue Service, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A No.: 2010-CP-23-10468

CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S REPLY TO ANSWER, COUNTERCLAIM, AND CROSSCLAIMS OF DEFENDANT HENRIKSON** was served on Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Matthew H. Henrikson
106 Couples Court
Greenville, South Carolina 29609
PRO SE DEFENDANT

this 24th day of March, 2011.

KORN LAW FIRM, P.A.



Elizabeth A. Perkins
Paralegal to Dean A. Hayes

Columbia, South Carolina
N:\PDI\10-06303

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BAC Home Loans Servicing, LP, f/k/a)
Countrywide Home Loans Servicing, LP,)

C/A No.: 2010-CP-23-10468

Plaintiff,)

v.)

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION**

Todd Draper, Mortgage Electronic)
Registration Systems, Inc., acting as)
nominee for American Home Mortgage, its)
successors and assigns, Shawn Kephart,)
Matthew H. Henrikson, The United States)
of America, by and through its Agency, the)
Internal Revenue Service, South Carolina)
Department of Revenue, Branch Banking)
and Trust Company, and Linkside III)
Homeowners Association, Inc.,)

Defendants.)

TO: MATTHEW H. HENRIKSON, ATTORNEY FOR DEFENDANT TODD DRAPER:

YOU WILL PLEASE TAKE NOTICE, that pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff requests that you admit or deny the truth of the following matters of fact within 30 days after service hereof. Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, a matter will be deemed admitted unless, within 30 days of service hereof, you serve a written answer or objection to the matter on the undersigned attorney at the Korn Law Firm, P.A., P.O. Box 12369, Columbia, South Carolina 29211-2369. If an objection is made, the reasons for the objection shall be stated. An answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you shall specify so much of it as is true and qualify or deny the remainder. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information readily obtainable by you is insufficient to enable you to admit or deny.

APR 20 2011

1. Admit or deny that the document attached and incorporated as **Exhibit A** is a true and accurate copy of the Note signed in connection with the subject loan.
2. Admit or deny that the document attached and incorporated as **Exhibit B** is a true and accurate copy of the Mortgage signed in connection with the subject loan.
3. Admit or deny that the document attached and incorporated as **Exhibit C** accurately reflects your payment history on the subject loan.
4. Admit or deny that you have failed to make the payments in accordance with the terms of the subject loan.
5. Admit or deny that you have failed to cure the default in accordance with the terms of the subject loan.

If any of the above Requests for Admission are denied, please state with particularity the reason for your denial.

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No. 66066
1300 Pickens Street (29201)
Post Office Box 12369
Columbia, South Carolina 29211-2369
(803) 252-5817
dhayes@kornlawfirm.com

ATTORNEY FOR PLAINTIFF

April 18, 2011
Columbia, South Carolina

InterestFirstSM ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published in *The Wall Street Journal*) - Rate Caps)

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE AND FOR CHANGES IN MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

AUGUST 25, 2005
(Date)

(City)

SOUTH CAROLINA
(State)

106 COUPLES CT, GREENVILLE, SC 29609
(Property Address)

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 245,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is AMERICA'S WHOLESALE LENDER. I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note, Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.875 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the first day of every month, beginning on OCTOBER 01, 2005. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on SEPTEMBER 01, 2035, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 660694, Dallas, TX 75266-0694 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,199.48 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

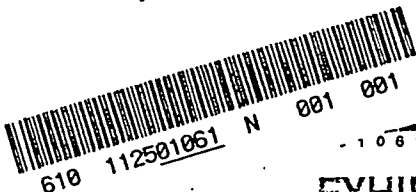
4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of SEPTEMBER, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The

CONV

• MULTISTATE InterestFirst ADJUSTABLE RATE NOTE - ONE YEAR LIBOR INDEX
2D781-XX (04/03)(9) Page 1 of 4



Initial

date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market (LIBOR), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.875 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.875 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

Before the effective date of any change in my interest rate and/or monthly payment, the Note Holder will deliver or mail to me a notice of such change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date of my monthly payments unless the Note Holder agrees in writing to those changes. If the partial Prepayment is made during the period when my monthly payments consist only of interest, the amount of the monthly payment will decrease for the remainder of the term when my payments consist of only interest. If the partial Prepayment is made during the period when my payments consist of principal and interest, my partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of FIFTEEN calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

EXHIBIT A PAGE 2 OF 4

Initials:

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

(A) Until my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in it is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

(B) When my initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section 4 above, Uniform Covenant 18 of the Security Instrument described in Section 11(A) above shall then cease to be in effect, and Uniform Covenant 18 of the Security Instrument shall instead read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

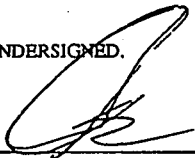
EXHIBIT A PAGE 3 OF 4

LOAN #: 112501061

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.



TODD DRAPER (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

PAY TO THE ORDER OF

WITHOUT RECOURSE
Countrywide Home Loans, Inc., a New York Corporation
Doing Business as America's Wholesale Lender

BY 
David A. Spector
Managing Director

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
ELSA ALMESTICA

[Space Above This Line For Recording Data]

DRAPER
(Escrow/Closing #)

00011250106108005
(Doc ID #)

MORTGAGE

MIN 1000157-0005715268-4

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated AUGUST 25, 2005, together with all Riders to this document.
(B) "Borrower" is
TODD DRAPER

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is

AMERICA'S WHOLESALE LENDER

Lender is a CORPORATION

organized and existing under the laws of NEW YORK

Lender's address is

P.O. Box 660694, Dallas, TX 75266-0694

(E) "Note" means the promissory note signed by Borrower and dated AUGUST 25, 2005. The

Note states that Borrower owes Lender

TWO HUNDRED FORTY FIVE THOUSAND and 00/100

Dollars (U.S. \$ 245,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than SEPTEMBER 01, 2035.

SOUTH CAROLINA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

Page 1 of 11

VMP 6A(SC) (0409)

CHL (10/04)(d) VMP Mortgage Solutions, Inc. (800)521-7291

Form 3041 1/01



* 2 3 9 8 1 *



* 1 1 2 5 0 1 0 6 1 0 0 0 0 2 0 0 8 A *

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|---|--|---|
| ☒ Adjustable Rate Rider | ☐ Condominium Rider | ☐ Second Home Rider |
| ☐ Balloon Rider | ☒ Planned Unit Development Rider | ☐ 1-4 Family Rider |
| ☐ VA Rider | ☐ Biweekly Payment Rider | ☐ Other(s) [specify] |

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

COUNTY of GREENVILLE
(Type of Recording Jurisdiction) (Name of Recording Jurisdiction)
 SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: p020070101100

106 COUPLES CT, GREENVILLE

(Street/City)

South Carolina

29609
(Zip Code)

("Property Address"):

VMP -SA(SC) (04/09)

CHL (10/04)

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Form 3041 1/01

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item.

Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all

sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the

notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

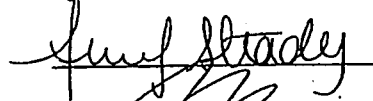
24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

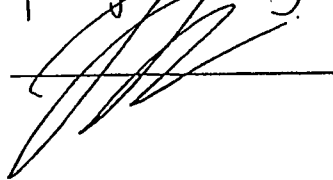
Signed, sealed and delivered in the presence of:



TODD DRAPER

(Seal)

-Borrower



(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

STATE OF SOUTH CAROLINA,

Greenville

DOC ID #: 00011250106108005

County ss:

do hereby certify that

I,

James W. Fayssoux

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this

25th

day of

August, 2005

Notary Public for South Carolina

My Commission Expires:

1/3/3

EXHIBIT A

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville being shown and designated as Lot 90 of Linkside, Phase 3, Section 4, recorded in Plat Book 44-O at Page 20 and having, according to said plat, metes and bounds as shown thereon.

This being the same property acquired by Mortgagor(s) by deed of MNJ Properties, LLC recorded in Deed Book 2159 at Page 321 on August 8, 2005

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EXHIBIT B PAGE 12 OF 19

[Space Above This Line For Recording Data]

FIXED/ADJUSTABLE RATE RIDER
(LIBOR One-Year Index (As Published In The Wall Street Journal) - Rate Caps)

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC..
MS SV-79 DOCUMENT PROCESSING
P.O. Box 10423
Van Nuys, CA 91410-0423

Prepared By:
ELSA ALMESTICA

DRAPER
[Escrow/Closing #]

00011250106108005
[Doc ID #]

THIS FIXED/ADJUSTABLE RATE RIDER is made this TWENTY-FIFTH day of
AUGUST, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage,
Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned
("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to
AMERICA'S WHOLESALE LENDER
("Lender") of the same date and covering the property described in the Security Instrument and located at:
106 COUPLES CT, GREENVILLE, SC 29609
[Property Address]

CONV
• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family INTEREST FIRST
2U795-XX (04/02)(d) Page 1 of 4

WITNESSES: 



THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 5.875 %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of SEPTEMBER, 2012, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in the *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO & ONE-QUARTER percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.875 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 10.875 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.



B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

1. Until Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument shall read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

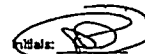
2. When Borrower's initial fixed interest rate changes to an adjustable interest rate under the terms stated in Section A above, Uniform Covenant 18 of the Security Instrument described in Section B1 above shall then cease to be in effect, and the provisions of Uniform Covenant 18 of the Security Instrument shall be amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

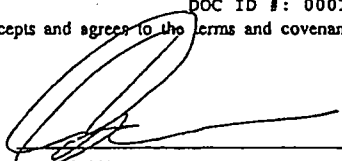
To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender also may require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.



DOC ID #: 00011250106108005

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.



TODD DRAPER (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

CONV
• MULTISTATE FIXED/ADJUSTABLE RATE RIDER - WSJ One-Year LIBOR - Single Family - INTEREST FIRST
2U795-XX (04/02) Page 4 of 4

PLANNED UNIT DEVELOPMENT RIDER

After Recording Return To:
COUNTRYWIDE HOME LOANS, INC.
MS SV-79 DOCUMENT PROCESSING
P.O.Box 10423
Van Nuys, CA 91410-0423

Prepared By:
ELSA ALMESTICA

DRAPER
[Escrow/Closing #]

00011250106108005
[Doc ID #]

THIS PLANNED UNIT DEVELOPMENT RIDER is made this TWENTY-FIFTH day of AUGUST, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to AMERICA'S WHOLESALE LENDER

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

106 COUPLES CT
GREENVILLE, SC 29609
[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

VMP -7R (0405)

CHL (06/04)(d)

Page 1 of 3

Initials LOD

VMP Mortgage Solutions, Inc. (800)521-7291

Form 3150 1/01



* 23991 *



* 112501061000002007R *

other such parcels and certain common areas and facilities, as described in
THE COVENANTS, CONDITIONS, AND RESTRICTIONS FILED OF RECORD
THAT AFFECT THE PROPERTY

(the "Declaration"). The Property is a part of a planned unit development known as
LINKSIDE

{Name of Planned Unit Development}

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then: (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

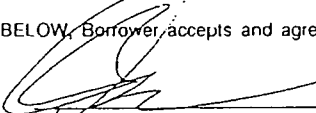
E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to: (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain; (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the

DOC ID #: 00611250106108005

express benefit of Lender; (iii) termination of professional management and assumption of self-management of the Owners Association; or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider.



TODD DRAPER (Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower

(Seal)
- Borrower



Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				245,000.00		.00				.00
09/01/2005	MISC. POSTING	78.86	09/2005	.00	78.86	.00	.00	.00	.00	.00
				245,000.00		.00			.00	.00
09/01/2005	INITIAL INS DEP	192.57	09/2005	.00	.00	192.57	.00	.00	.00	.00
				245,000.00		192.57			.00	.00
09/01/2005	FHA INS CREDIT	106.17	09/2005	.00	.00	106.17	.00	.00	.00	.00
				245,000.00		298.74			.00	.00
09/01/2005	INITIAL TAX DEP	1,503.24	09/2005	.00	.00	1,503.24	.00	.00	.00	.00
				245,000.00		1,801.98			.00	.00
09/16/2005	PMI PMT MONTHLY	-95.96	09/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		1,706.02			.00	.00
09/30/2005	REGULAR PAYMENT	1,529.84	10/2005	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,036.38			.00	.00
10/14/2005	PMI PMT MONTHLY	-95.96	10/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		1,940.42			.00	.00
10/28/2005	REGULAR PAYMENT	1,529.84	11/2005	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,270.78			.00	.00
11/15/2005	PMI PMT MONTHLY	-95.96	11/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,174.82			.00	.00
11/30/2005	REGULAR PAYMENT	1,529.84	12/2005	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,505.18			.00	.00
12/14/2005	PMI PMT MONTHLY	-95.96	12/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,409.22			.00	.00
12/21/2005	COUNTY TAX PMT	-598.87	12/2005	.00	.00	-598.87	.00	.00	.00	.00
				245,000.00		1,810.35			.00	.00
12/30/2005	REGULAR PAYMENT	1,529.84	01/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,140.71			.00	.00
01/13/2006	PMI PMT MONTHLY	-95.96	01/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,044.75			.00	.00
01/30/2006	REGULAR PAYMENT	1,529.84	02/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,375.11			.00	.00

EXHIBIT C PAGE 1 OF 11

048 Bank of America



Home Loans

Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Page 4

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Unapplied Optional	Buydown	Late Charges Total	Unapplied Total
02/15/2006	PMI PMT MONTHLY	-95.96	02/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,279.15	.00		.00	.00
02/28/2006	REGULAR PAYMENT	1,529.84	03/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,809.51	.00		.00	.00
03/14/2006	PMI PMT MONTHLY	-95.96	03/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,513.55	.00		.00	.00
03/30/2006	REGULAR PAYMENT	1,529.84	04/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,843.91	.00		.00	.00
04/14/2006	PMI PMT MONTHLY	-95.96	04/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,747.95	.00		.00	.00
04/28/2006	REGULAR PAYMENT	1,529.84	05/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		3,078.31	.00		.00	.00
04/28/2006	OVERAGE REFUND	-2,088.61	05/2006	.00	.00	-2,088.61	.00	.00	.00	.00
				245,000.00		889.70	.00		.00	.00
05/16/2006	PMI PMT MONTHLY	-95.96	05/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		883.74	.00		.00	.00
05/30/2006	REGULAR PAYMENT	1,409.53	06/2006	.00	1,199.48	210.05	.00	.00	.00	.00
				245,000.00		1,103.79	.00		.00	.00
05/30/2006	MISC. POSTING	120.31	06/2006	120.31	.00	.00	.00	.00	.00	.00
				244,879.69		1,103.79	.00		.00	.00
06/14/2006	PMI PMT MONTHLY	-95.96	06/2006	.00	.00	-95.96	.00	.00	.00	.00
				244,879.69		1,007.83	.00		.00	.00
07/05/2006	REGULAR PAYMENT	1,408.94	07/2006	.00	1,198.89	210.05	.00	.00	.00	.00
				244,879.69		1,217.88	.00		.00	.00
07/05/2006	MISC. POSTING	120.90	07/2006	120.90	.00	.00	.00	.00	.00	.00
				244,758.79		1,217.88	.00		.00	.00
07/14/2006	PMI PMT MONTHLY	-95.91	07/2006	.00	.00	-95.91	.00	.00	.00	.00
				244,758.79		1,121.97	.00		.00	.00

EXHIBIT C PAGE 2 OF 11

CRPRDNRBS58b

4/6/2011 10:10:09 AM PAGE 4/013 Fax Server

Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
07/21/2006	HAZARD INS PMT	733.18	07/2006	00	00	733.18	00	00	00	00
				244,758.79		388.79			00	00
08/01/2006	REGULAR PAYMENT	1,408.35	08/2006	00	1,198.30	210.05	00	00	00	00
				244,758.79		598.84			00	00
08/15/2006	PMI PMT MONTHLY	95.86	08/2006	00	00	95.86	00	00	00	00
				244,758.79		502.88			00	00
08/31/2006	REGULAR PAYMENT	1,408.35	09/2006	00	1,198.30	210.05	00	00	00	00
				244,758.79		713.03			00	00
08/31/2006	MISC. POSTING	61.65	09/2006	61.65	00	00	00	00	00	00
				244,897.14		713.03			00	00
09/15/2006	PMI PMT MONTHLY	95.86	09/2006	00	00	95.86	00	00	00	00
				244,897.14		817.17			00	00
09/25/2006	REGULAR PAYMENT	1,408.05	10/2006	00	1,198.00	210.05	00	00	00	00
				244,897.14		827.22			00	00
09/25/2006	MISC. POSTING	91.95	10/2006	91.95	00	00	00	00	00	00
				244,805.19		827.22			00	00
10/12/2006	PMI PMT MONTHLY	95.84	10/2006	00	00	95.84	00	00	00	00
				244,805.19		731.38			00	00
10/30/2006	REGULAR PAYMENT	1,407.60	11/2006	00	1,197.55	210.05	00	00	00	00
				244,805.19		941.43			00	00
10/30/2006	MISC. POSTING	92.40	11/2006	92.40	00	00	00	00	00	00
				244,512.79		841.43			00	00
11/15/2006	PMI PMT MONTHLY	95.80	11/2006	00	00	95.80	00	00	00	00
				244,512.79		845.63			00	00
11/24/2006	REGULAR PAYMENT	1,407.14	12/2006	00	1,197.09	210.05	00	00	00	00
				244,512.79		1,055.68			00	00
11/24/2006	MISC. POSTING	92.86	12/2006	92.86	00	00	00	00	00	00
				244,419.93		1,055.68			00	00

DEBIT C PAGE 3 OF 11

Bank of America



Home Loans

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Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
12/14/2006	PMI PMT MONTHLY	-95.77	12/2006	00	00	-95.77	00	00	00	00
				244,410.83		959.91			00	00
12/22/2006	COUNTY TAX PMT	-4,668.74	12/2006	00	00	-4,668.74	00	00	00	00
				244,410.83		3,708.83			00	00
12/26/2006	REGULAR PAYMENT	1,406.69	01/2007	00	1,196.64	210.05	00	00	00	00
				244,410.83		3,498.78			00	00
12/26/2006	MISC. POSTING	93.31	01/2007	93.31	00	00	00	00	00	00
				244,326.62		3,498.78			00	00
01/16/2007	PMI PMT MONTHLY	-95.73	01/2007	00	00	-95.73	00	00	00	00
				244,326.62		3,594.51			00	00
01/25/2007	REGULAR PAYMENT	1,406.23	02/2007	00	1,196.18	210.05	00	00	00	00
				244,326.62		3,384.48			00	00
01/25/2007	MISC. POSTING	93.77	02/2007	93.77	00	00	00	00	00	00
				244,232.85		3,384.48			00	00
02/15/2007	PMI PMT MONTHLY	-95.69	02/2007	00	00	-95.69	00	00	00	00
				244,232.85		3,480.15			00	00
02/26/2007	REGULAR PAYMENT	1,405.77	03/2007	00	1,195.72	210.05	00	00	00	00
				244,232.85		3,270.10			00	00
02/26/2007	MISC. POSTING	94.23	03/2007	94.23	00	00	00	00	00	00
				244,138.62		3,270.10			00	00
03/15/2007	PMI PMT MONTHLY	-95.66	03/2007	00	00	-95.66	00	00	00	00
				244,138.62		3,365.78			00	00
03/26/2007	REGULAR PAYMENT	1,405.31	04/2007	00	1,195.26	210.05	00	00	00	00
				244,138.62		3,155.71			00	00
03/26/2007	MISC. POSTING	94.69	04/2007	94.69	00	00	00	00	00	00
				244,043.93		3,155.71			00	00
04/06/2007	REGULAR PAYMENT	1,404.85	05/2007	00	1,194.80	210.05	00	00	00	00
				244,043.93		2,945.68			00	00

EXHIBIT C PAGE 4 OF 11

Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
04/06/2007	MISC. POSTING	5.15	05/2007	5.15	00	00	00	00	00	00
				244,030.78		-2,945.66			00	00
04/09/2007	MISC. POSTING	-5.15	05/2007	-5.15	00	00	00	00	00	00
				244,043.93		-2,945.66			00	00
04/09/2007	PAYMENT REVERSAL	1,404.85	04/2007	00	-1,194.80	210.05	00	00	00	00
				244,043.93		-3,155.71			00	00
04/13/2007	PMI PMT MONTHLY	-95.62	04/2007	00	00	-95.62	00	00	00	00
				244,043.93		-3,251.33			00	00
04/25/2007	REGULAR PAYMENT	1,404.85	05/2007	00	-1,194.80	210.05	00	00	00	00
				244,043.93		-3,041.28			00	00
04/25/2007	MISC. POSTING	95.15	05/2007	95.15	00	00	00	00	00	00
				243,948.78		-3,041.28			00	00
05/15/2007	PMI PMT MONTHLY	-95.58	05/2007	00	00	-95.58	00	00	00	00
				243,948.78		-3,136.86			00	00
05/24/2007	REGULAR PAYMENT	2,271.78	06/2007	00	-1,194.33	1,077.45	00	00	00	00
				243,948.78		-2,059.41			00	00
05/24/2007	MISC. POSTING	22	06/2007	22	00	00	00	00	00	00
				243,948.56		-2,059.41			00	00
06/14/2007	PMI PMT MONTHLY	-95.55	06/2007	00	00	-95.55	00	00	00	00
				243,948.56		-2,154.88			00	00
06/26/2007	REGULAR PAYMENT	2,271.78	07/2007	00	-1,194.33	1,077.45	00	00	00	00
				243,948.56		-1,077.51			00	00
06/26/2007	MISC. POSTING	22	07/2007	22	00	00	00	00	00	00
				243,948.34		-1,077.51			00	00
07/13/2007	PMI PMT MONTHLY	-95.55	07/2007	00	00	-95.55	00	00	00	00
				243,948.34		-1,173.06			00	00
07/18/2007	HAZARD INS PMT	-445.01	07/2007	00	00	-445.01	00	00	00	00
				243,948.34		-1,618.07			00	00

EXHIBIT C PAGE 5 OF 11



Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
07/26/2007	REGULAR PAYMENT	2,271.78	08/2007	00	1,194.33	1,077.45	00	00	00	00
				243,948.34		540.62			00	00
07/26/2007	MISC. POSTING	22	08/2007	22	00	00	00	00	00	00
				243,948.12		540.62			00	00
08/14/2007	PMI PMT MONTHLY	95.55	08/2007	00	00	95.55	00	00	00	00
				243,948.12		636.17			00	00
08/24/2007	REGULAR PAYMENT	2,271.78	09/2007	00	1,194.33	1,077.45	00	00	00	00
				243,948.12		441.28			00	00
08/24/2007	MISC. POSTING	22	09/2007	22	00	00	00	00	00	00
				243,947.90		441.28			00	00
09/14/2007	PMI PMT MONTHLY	95.55	09/2007	00	00	95.55	00	00	00	00
				243,947.90		345.73			00	00
09/26/2007	REGULAR PAYMENT	2,048.45	10/2007	00	1,194.33	854.12	00	00	00	00
				243,947.90		1,199.85			00	00
09/26/2007	MISC. POSTING	223.55	10/2007	223.55	00	00	00	00	00	00
				243,724.35		1,199.85			00	00
10/12/2007	PMI PMT MONTHLY	95.55	10/2007	00	00	95.55	00	00	00	00
				243,724.35		1,104.30			00	00
10/25/2007	REGULAR PAYMENT	2,047.35	11/2007	00	1,193.23	854.12	00	00	00	00
				243,724.35		1,058.42			00	00
10/25/2007	MISC. POSTING	224.65	11/2007	224.65	00	00	00	00	00	00
				243,499.70		1,058.42			00	00
11/16/2007	PMI PMT MONTHLY	95.46	11/2007	00	00	95.46	00	00	00	00
				243,499.70		1,862.00			00	00
11/27/2007	REGULAR PAYMENT	2,046.25	12/2007	00	1,192.13	854.12	00	00	00	00
				243,499.70		2,717.08			00	00
11/27/2007	MISC. POSTING	225.75	12/2007	225.75	00	00	00	00	00	00
				243,273.95		2,717.08			00	00

Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
12/14/2007	PMI PMT MONTHLY	-95.37	12/2007	00	00	-95.37	00	00	00	00
				243,273.95		2,821.71			00	00
12/26/2007	REGULAR PAYMENT	2,045.15	01/2008	00	1,191.03	854.12	00	00	00	00
				243,273.95		3,475.83			00	00
12/26/2007	MISC. POSTING	226.85	01/2008	226.85	00	00	00	00	00	00
				243,047.10		3,475.83			00	00
12/26/2007	COUNTY TAX PMT	-1,943.88	01/2008	00	00	-1,943.88	00	00	00	00
				243,047.10		1,531.85			00	00
01/15/2008	PMI PMT MONTHLY	-95.28	01/2008	00	00	-95.28	00	00	00	00
				243,047.10		1,436.87			00	00
01/24/2008	REGULAR PAYMENT	2,044.04	02/2008	00	1,189.92	854.12	00	00	00	00
				243,047.10		2,290.79			00	00
01/24/2008	MISC. POSTING	227.96	02/2008	227.96	00	00	00	00	00	00
				242,819.14		2,290.79			00	00
02/14/2008	PMI PMT MONTHLY	-95.19	02/2008	00	00	-95.19	00	00	00	00
				242,819.14		2,195.60			00	00
03/14/2008	REGULAR PAYMENT	2,042.92	03/2008	00	1,188.80	854.12	00	00	00	00
				242,819.14		3,049.72			00	00
03/14/2008	MISC. POSTING	7.08	03/2008	7.08	00	00	00	00	00	00
				242,812.06		3,049.72			00	00
03/14/2008	PMI PMT MONTHLY	-95.10	03/2008	00	00	-95.10	00	00	00	00
				242,812.06		2,954.62			00	00
04/14/2008	PMI PMT MONTHLY	-95.10	03/2008	00	00	-95.10	00	00	00	00
				242,812.06		2,859.52			00	00
04/16/2008	REGULAR PAYMENT	2,042.89	04/2008	00	1,186.77	854.12	00	00	00	00
				242,812.06		3,713.64			00	00
04/16/2008	MISC. POSTING	7.11	04/2008	7.11	00	00	00	00	00	00
				242,804.95		3,713.64			00	00

Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address
106 COUPLES CT
GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
05/01/2008	OVERAGE REFUND	2,425.65	04/2008	00	00	2,425.65	00	00	00	00
				242,804.88		1,207.80			00	00
05/13/2008	PMI PMT MONTHLY	95.10	04/2008	00	00	95.10	00	00	00	00
				242,804.88		1,192.89			00	00
05/16/2008	REGULAR PAYMENT	1,482.90	05/2008	00	1,180.73	294.17	00	00	00	00
				242,804.95		1,497.08			00	00
05/16/2008	MISC. POSTING	567.10	05/2008	567.10	00	00	00	00	00	00
				242,237.85		1,487.08			00	00
06/12/2008	PMI PMT MONTHLY	95.10	05/2008	00	00	95.10	00	00	00	00
				242,237.85		1,391.88			00	00
06/16/2008	REGULAR PAYMENT	1,480.13	06/2008	00	1,185.96	294.17	00	00	00	00
				242,237.85		1,808.13			00	00
07/15/2008	PMI PMT MONTHLY	94.88	06/2008	00	00	94.88	00	00	00	00
				242,237.85		1,581.25			00	00
07/24/2008	HAZARD INS PMT	458.88	06/2008	00	00	458.88	00	00	00	00
				242,237.85		1,132.37			00	00
07/30/2008	REGULAR PAYMENT	1,480.13	07/2008	00	1,185.96	294.17	00	00	00	00
				242,237.85		1,428.54			50.30	00
08/15/2008	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		1,331.88			50.30	00
09/15/2008	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		1,236.79			50.30	00
10/14/2008	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		1,141.80			60.30	00
11/13/2008	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		1,047.02			80.30	00
12/12/2008	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		952.14			50.30	00

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Bank of America



Home Loans

Page 1.1

Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
12/19/2008	COUNTY TAX PMT	5,031.49	07/2008	00	00	5,031.49	00	00	00	00
				242,237.85		4,079.35			59.30	00
01/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,174.23			59.30	00
02/12/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,269.11			59.30	00
03/13/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,363.99			59.30	00
04/14/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,458.87			59.30	00
05/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,553.75			59.30	00
06/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,648.63			59.30	00
07/14/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,743.51			59.30	00
07/29/2009	HAZARD INS PMT	527.16	07/2008	00	00	527.16	00	00	00	00
				242,237.85		5,270.67			59.30	00
08/13/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,365.55			59.30	00
09/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,460.43			59.30	00
10/16/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,555.31			59.30	00
11/09/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,650.19			59.30	00
12/16/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,745.07			59.30	00

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BANK OF AMERICA



Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied
12/16/2009	COUNTY TAX PMT	2,015.33	07/2008	00	00	2,015.33	00	00	00	00
				242,237.85		7,780.40			58.80	00
01/19/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		7,855.28			58.80	00
02/16/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		7,930.16			58.80	00
03/12/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,005.04			58.80	00
04/14/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,080.92			58.80	00
05/14/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,155.80			58.80	00
06/14/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,230.68			58.80	00
07/19/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,305.56			58.80	00
07/26/2010	HAZARD INS PMT	550.56	07/2008	00	00	550.56	00	00	00	00
				242,237.85		8,380.44			58.80	00
08/16/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,455.32			58.80	00
09/16/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,530.20			58.80	00
10/15/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,605.08			58.80	00
11/15/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,680.96			58.80	00
12/15/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,755.84			58.80	00

Bank of America



Home Loans

Page: 13

Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied
12/23/2010	COUNTY TAX PMT	2,089.72	07/2008	00	00	2,089.72	00	00	00	00
				242,237.85		11,835.24			59.30	00
01/13/2011	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		11,834.12			59.30	00
02/15/2011	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		11,729.00			59.30	00
03/14/2011	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		11,823.88			59.30	00

EXHIBIT C PAGE 11 OF 11

4/6/2011 10:10:09 AM PAGE 13/13 FAX SERVICE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BAC Home Loans Servicing, LP, f/k/a)
Countrywide Home Loans Servicing, LP,)
)
Plaintiff,)

C/A No.: 2010-CP-23-10468

v.)

CERTIFICATE OF SERVICE

Todd Draper, Mortgage Electronic)
Registration Systems, Inc., acting as)
nominee for American Home Mortgage, its)
successors and assigns, Shawn Kephart,)
Matthew H. Henrikson, The United States)
of America, by and through its Agency, the)
Internal Revenue Service, South Carolina)
Department of Revenue, Branch Banking)
and Trust Company, and Linkside III)
Homeowners Association, Inc.,)

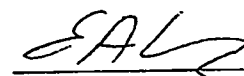
Defendants.)

I, Elizabeth A. Perkins, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** was served on counsel for Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Matthew H. Henrikson, Esq.
Clarkson Walsh Terrell & Coulter, P.A.
Post Office Box 6728
Greenville, SC 29606
ATTORNEY FOR DEFENDANT TODD DRAPER

this 17th day of April, 2011.

KORN LAW FIRM, P.A.


Elizabeth A. Perkins
Paralegal to Dean A. Hayes

Columbia, South Carolina
File #: F10-06303

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
BAC Home Loans Servicing, LP, f/k/a	)	C/A No.: 2010-CP-23-10468
Countrywide Home Loans Servicing, LP,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT TODD DRAPER'S
	)	RESPONSE TO PLAINTIFF'S FIRST
	)	REQUESTS FOR ADMISSIONS
Todd Draper, Mortgage Electronic	)	
Registration Systems, Inc., acting as	)	
nominee for American Home Mortgage, its	)	
successors and assigns, Shawn Kephart,	)	
Matthew H. Henrikson, The United States	)	
of America, by and through its Agency, the	)	
Internal Revenue Service, South Carolina	)	
Department of Revenue, Branch Banking	)	
and Trust Company, and Linkside III	)	
Homeowners Association, Inc.,	)	
	)	
<u>Defendants.</u>	)	

Defendant Todd Draper, by and through his undersigned attorneys, hereby responds to Plaintiff's First Request for Admissions dated April 19, 2010, as follows:

1. Admit or deny that the document attached and incorporated as **Exhibit A** is a true and accurate copy of the Note signed in connection with the subject loan.

RESPONSE: This Defendant denies this request on the grounds that the Plaintiff has failed to provide the original Note for inspection so that the Defendant can accurately admit that Exhibit "A" is a true and accurate copy.

2. Admit or deny that the document attached and incorporated as **Exhibit B** is a true and accurate copy of the Mortgage signed in connection with the subject loan.

RESPONSE: This Defendant denies this request on the grounds that the Plaintiff has failed to provide the original Mortgage for inspection so that the Defendant can accurately admit that Exhibit "B" is a true and accurate copy.

3. Admit or deny that the document attached and incorporated as **Exhibit C** accurately reflects your payment history on the subject loan.

RESPONSE: This Defendant admits that Exhibit "C" accurately reflects his payment

BAC Home Loans v. Draper
C.A. No.: 2010-CP-23-10468

history on the subject loan.

4. Admit or deny that you have failed to make the payments in accordance with the terms of the subject loan.

RESPONSE: This Defendant admits that he has not made any payment toward the subject loan as reflected by Exhibit "C."

5. Admit or deny that you have failed to cure the default in accordance with the terms of the subject loan.

RESPONSE: This Defendant admits that he has not made any payment toward the subject loan as reflected by Exhibit "C."



Matthew H. Henrikson (SC Bar #07897)
CLARKSON, WALSH, TERRELL & COULTER, P.A.
Attorneys for Defendant Todd Draper
1164-A Woodruff Road (29607)
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400

Dated: 6-20-11
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BAC Home Loans Servicing, LP, f/k/a)
Countrywide Home Loans Servicing, LP,)
)
Plaintiff,)

C/A No.: 2010-CP-23-10468

v.)

**PLAINTIFF'S FIRST SET OF
REQUESTS FOR ADMISSION**

Todd Draper, Mortgage Electronic)
Registration Systems, Inc., acting as)
nominee for American Home Mortgage, its)
successors and assigns, Shawn Kephart,)
Matthew H. Henrikson, The United States)
of America, by and through its Agency, the)
Internal Revenue Service, South Carolina)
Department of Revenue, Branch Banking)
and Trust Company, and Linkside III)
Homeowners Association, Inc.,)
)
Defendants.)

TO: MATTHEW H. HENRIKSON, PRO SE DEFENDANT:

YOU WILL PLEASE TAKE NOTICE, that pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff requests that you admit or deny the truth of the following matters of fact within 30 days after service hereof. Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, a matter will be deemed admitted unless, within 30 days of service hereof, you serve a written answer or objection to the matter on the undersigned attorney at the Korn Law Firm, P.A., P.O. Box 12369, Columbia, South Carolina 29211-2369. If an objection is made, the reasons for the objection shall be stated. An answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify your answer or deny only a part of the matter of which an admission is requested, you shall specify so much of it as is true and qualify or deny the remainder. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information readily obtainable by you is insufficient to enable you to admit or deny.

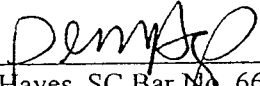
1. Admit or deny that the document attached and incorporated as **Exhibit A** accurately reflects the payment history on the subject loan.

2. Admit or deny that the payments have not been made in accordance with the terms of the subject loan.

3. Admit or deny that the default has not been cured in accordance with the terms of the subject loan.

If any of the above Requests for Admission are denied, please state with particularity the reason for your denial.

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No. 66066
1300 Pickens Street (29204)
Post Office Box 12369
Columbia, South Carolina 29211-2369
(803) 252-5817
dhayes@kornlawfirm.com

ATTORNEY FOR PLAINTIFF

April 18, 2011
Columbia, South Carolina

Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE, SC 29609

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Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
Beginning Balance				245,000.00		.00				.00
09/01/2005	MISC. POSTING	78.86	09/2005	.00	78.86	.00	.00	.00	.00	.00
				245,000.00		.00			.00	.00
09/01/2005	INITIAL INS DEP	192.57	09/2005	.00	.00	192.57	.00	.00	.00	.00
				245,000.00		192.57			.00	.00
09/01/2005	FHA INS CREDIT	106.17	09/2005	.00	.00	106.17	.00	.00	.00	.00
				245,000.00		298.74			.00	.00
09/01/2005	INITIAL TAX DEP	1,503.24	09/2005	.00	.00	1,503.24	.00	.00	.00	.00
				245,000.00		1,801.98			.00	.00
09/16/2005	PMI PMT MONTHLY	-95.96	09/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		1,706.02			.00	.00
09/30/2005	REGULAR PAYMENT	1,529.84	10/2005	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,036.38			.00	.00
10/14/2005	PMI PMT MONTHLY	-95.96	10/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		1,940.42			.00	.00
10/28/2005	REGULAR PAYMENT	1,529.84	11/2005	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,270.78			.00	.00
11/15/2005	PMI PMT MONTHLY	-95.96	11/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,174.82			.00	.00
11/30/2005	REGULAR PAYMENT	1,529.84	12/2005	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,505.18			.00	.00
12/14/2005	PMI PMT MONTHLY	-95.96	12/2005	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,409.22			.00	.00
12/21/2005	COUNTY TAX PMT	-598.87	12/2005	.00	.00	-598.87	.00	.00	.00	.00
				245,000.00		1,810.35			.00	.00
12/30/2005	REGULAR PAYMENT	1,529.84	01/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,140.71			.00	.00
01/13/2006	PMI PMT MONTHLY	-95.96	01/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,044.75			.00	.00
01/30/2006	REGULAR PAYMENT	1,529.84	02/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,375.11			.00	.00

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Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE, SC 29609

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Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
02/15/2006	PMI PMT MONTHLY	-95.96	02/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,279.15			.00	.00
02/28/2006	REGULAR PAYMENT	1,529.84	03/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,809.51			.00	.00
03/14/2006	PMI PMT MONTHLY	-95.96	03/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,513.55			.00	.00
03/30/2006	REGULAR PAYMENT	1,529.84	04/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		2,843.81			.00	.00
04/14/2006	PMI PMT MONTHLY	-95.96	04/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		2,747.85			.00	.00
04/28/2006	REGULAR PAYMENT	1,529.84	05/2006	.00	1,199.48	330.36	.00	.00	.00	.00
				245,000.00		3,078.31			.00	.00
04/28/2006	OVERAGE REFUND	-2,088.61	05/2006	.00	.00	-2,088.61	.00	.00	.00	.00
				245,000.00		889.70			.00	.00
05/16/2006	PMI PMT MONTHLY	-95.96	05/2006	.00	.00	-95.96	.00	.00	.00	.00
				245,000.00		883.74			.00	.00
05/30/2006	REGULAR PAYMENT	1,409.53	06/2006	.00	1,199.48	210.05	.00	.00	.00	.00
				245,000.00		1,103.79			.00	.00
05/30/2006	MISC. POSTING	120.31	06/2006	120.31	.00	.00	.00	.00	.00	.00
				244,879.69		1,103.79			.00	.00
06/14/2006	PMI PMT MONTHLY	-95.96	06/2006	.00	.00	-95.96	.00	.00	.00	.00
				244,879.69		1,007.83			.00	.00
07/05/2006	REGULAR PAYMENT	1,408.94	07/2006	.00	1,198.89	210.05	.00	.00	.00	.00
				244,879.69		1,217.88			.00	.00
07/05/2006	MISC. POSTING	120.90	07/2006	120.90	.00	.00	.00	.00	.00	.00
				244,758.79		1,217.88			.00	.00
07/14/2006	PMI PMT MONTHLY	-95.91	07/2006	.00	.00	-95.91	.00	.00	.00	.00
				244,758.79		1,121.67			.00	.00

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Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
07/21/2006	HAZARD INS PMT	733.18	07/2006	244,758.79	00	733.18	00	00	00	00
08/01/2006	REGULAR PAYMENT	1,408.35	08/2006	244,758.79	1,198.30	210.05	00	00	00	00
08/15/2006	PMI PMT MONTHLY	95.86	08/2006	244,758.79	00	95.86	00	00	00	00
08/31/2006	REGULAR PAYMENT	1,408.35	09/2006	244,758.79	1,198.30	210.05	00	00	00	00
09/31/2006	MISC. POSTING	61.65	09/2006	244,697.14	00	61.65	00	00	00	00
09/15/2006	PMI PMT MONTHLY	95.86	09/2006	244,697.14	00	95.86	00	00	00	00
09/25/2006	REGULAR PAYMENT	1,408.05	10/2006	244,697.14	1,198.00	210.05	00	00	00	00
09/25/2006	MISC. POSTING	91.05	10/2006	244,605.19	00	91.05	00	00	00	00
10/12/2006	PMI PMT MONTHLY	95.84	10/2006	244,605.19	00	95.84	00	00	00	00
10/30/2006	REGULAR PAYMENT	1,407.60	11/2006	244,605.19	1,197.55	210.05	00	00	00	00
10/30/2006	MISC. POSTING	92.40	11/2006	244,512.79	00	92.40	00	00	00	00
11/15/2006	PMI PMT MONTHLY	85.80	11/2006	244,512.79	00	85.80	00	00	00	00
11/24/2006	REGULAR PAYMENT	1,407.14	12/2006	244,512.79	1,197.09	210.05	00	00	00	00
11/24/2006	MISC. POSTING	92.86	12/2006	244,419.93	00	92.86	00	00	00	00

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Bank of America



Home Loans

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Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
12/14/2006	PMI PMT MONTHLY	-95.77	12/2006	00	00	-95.77	00	00	00	00
				244,419.83		859.81				00
12/22/2006	COUNTY TAX PMT	-4,668.74	12/2006	00	00	-4,668.74	00	00	00	00
				244,419.83		3,708.83				00
12/26/2006	REGULAR PAYMENT	-1,406.69	01/2007	00	1,196.64	-210.05	00	00	00	00
				244,419.83		3,488.78				00
12/26/2006	MISC. POSTING	-93.31	01/2007	93.31	00	00	00	00	00	00
				244,326.62		3,488.78				00
01/16/2007	PMI PMT MONTHLY	-95.73	01/2007	00	00	-95.73	00	00	00	00
				244,326.62		3,394.51				00
01/25/2007	REGULAR PAYMENT	-1,406.23	02/2007	00	1,196.18	-210.05	00	00	00	00
				244,326.62		3,394.48				00
01/25/2007	MISC. POSTING	-93.77	02/2007	93.77	00	00	00	00	00	00
				244,232.85		3,394.48				00
02/15/2007	PMI PMT MONTHLY	-95.69	02/2007	00	00	-95.69	00	00	00	00
				244,232.85		3,480.15				00
02/26/2007	REGULAR PAYMENT	-1,405.77	03/2007	00	1,195.72	-210.05	00	00	00	00
				244,232.85		3,270.10				00
02/26/2007	MISC. POSTING	-94.23	03/2007	94.23	00	00	00	00	00	00
				244,138.62		3,270.10				00
03/15/2007	PMI PMT MONTHLY	-95.68	03/2007	00	00	-95.68	00	00	00	00
				244,138.62		3,365.70				00
03/26/2007	REGULAR PAYMENT	-1,405.31	04/2007	00	1,195.26	-210.05	00	00	00	00
				244,138.62		3,155.71				00
03/26/2007	MISC. POSTING	-94.69	04/2007	94.69	00	00	00	00	00	00
				244,043.93		3,155.71				00
04/06/2007	REGULAR PAYMENT	-1,404.85	05/2007	00	1,194.80	-210.05	00	00	00	00
				244,043.93		2,945.68				00

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Account Number: 112501061
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 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
04/06/2007	MISC POSTING	5.15	05/2007	15.15	00	00	00	00	00	00
				244,038.78		2,945.66			00	00
04/09/2007	MISC POSTING	5.15	05/2007	5.15	00	00	00	00	00	00
				244,043.93		2,945.66			00	00
04/09/2007	PAYMENT REVERSAL	1,404.85	04/2007	00	1,194.80	210.05	00	00	00	00
				244,043.93		3,155.71			00	00
04/13/2007	PMI PMT MONTHLY	95.62	04/2007	00	00	95.62	00	00	00	00
				244,043.93		3,251.33			00	00
04/25/2007	REGULAR PAYMENT	1,404.85	05/2007	00	1,194.80	210.05	00	00	00	00
				244,043.93		3,041.28			00	00
04/25/2007	MISC POSTING	95.15	05/2007	95.15	00	00	00	00	00	00
				243,948.78		3,041.28			00	00
05/15/2007	PMI PMT MONTHLY	95.58	05/2007	00	00	95.58	00	00	00	00
				243,948.78		3,138.86			00	00
05/24/2007	REGULAR PAYMENT	2,271.78	06/2007	00	1,194.33	1,077.45	00	00	00	00
				243,948.78		2,059.41			00	00
05/24/2007	MISC POSTING	22	06/2007	22	00	00	00	00	00	00
				243,948.56		2,059.41			00	00
06/14/2007	PMI PMT MONTHLY	95.55	06/2007	00	00	95.55	00	00	00	00
				243,948.56		2,154.86			00	00
06/26/2007	REGULAR PAYMENT	2,271.78	07/2007	00	1,194.33	1,077.45	00	00	00	00
				243,948.56		1,077.51			00	00
06/26/2007	MISC POSTING	22	07/2007	22	00	00	00	00	00	00
				243,948.34		1,077.51			00	00
07/13/2007	PMI PMT MONTHLY	95.55	07/2007	00	00	95.55	00	00	00	00
				243,948.34		1,173.08			00	00
07/18/2007	HAZARD INS PMT	445.01	07/2007	00	00	445.01	00	00	00	00
				243,948.34		1,618.07			00	00

Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
07/26/2007	REGULAR PAYMENT	2,271.78	08/2007	243,848.34	1,194.33	1,077.45	00	00	00	00
07/26/2007	MISC. POSTING	22	08/2007	243,848.12	00	540.02	00	00	00	00
08/14/2007	PMI PMT MONTHLY	95.55	08/2007	243,848.12	00	95.55	00	00	00	00
08/24/2007	REGULAR PAYMENT	2,271.78	09/2007	243,848.12	1,194.33	1,077.45	00	00	00	00
08/24/2007	MISC. POSTING	22	09/2007	243,847.90	00	441.28	00	00	00	00
09/14/2007	PMI PMT MONTHLY	95.55	09/2007	243,847.90	00	95.55	00	00	00	00
09/26/2007	REGULAR PAYMENT	2,048.45	10/2007	243,847.90	1,194.33	854.12	00	00	00	00
09/26/2007	MISC. POSTING	223.55	10/2007	243,724.35	00	1,199.85	00	00	00	00
10/12/2007	PMI PMT MONTHLY	95.55	10/2007	243,724.35	00	95.55	00	00	00	00
10/25/2007	REGULAR PAYMENT	2,047.35	11/2007	243,724.35	1,193.23	854.12	00	00	00	00
10/25/2007	MISC. POSTING	224.65	11/2007	243,499.70	00	1,958.42	00	00	00	00
11/16/2007	PMI PMT MONTHLY	95.46	11/2007	243,499.70	00	95.46	00	00	00	00
11/27/2007	REGULAR PAYMENT	2,046.25	12/2007	243,499.70	1,192.13	854.12	00	00	00	00
11/27/2007	MISC. POSTING	225.75	12/2007	243,273.95	00	2,717.08	00	00	00	00

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Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
12/14/2007	PMI PMT MONTHLY	95.37	12/2007	00	00	95.37	00	00	00	00
				243,273.95		2,821.71				00
12/26/2007	REGULAR PAYMENT	2,045.15	01/2008	00	1,191.03	854.12	00	00	00	00
				243,273.95		3,475.83				00
12/26/2007	MISC. POSTING	226.85	01/2008	226.85	00	00	00	00	00	00
				243,047.10		3,475.83				00
12/26/2007	COUNTY TAX PMT	1,943.88	01/2008	00	00	1,943.88	00	00	00	00
				243,047.10		1,531.85				00
01/15/2008	PMI PMT MONTHLY	95.28	01/2008	00	00	95.28	00	00	00	00
				243,047.10		1,436.87				00
01/24/2008	REGULAR PAYMENT	2,044.04	02/2008	00	1,189.92	854.12	00	00	00	00
				243,047.10		2,280.79				00
01/24/2008	MISC. POSTING	227.96	02/2008	227.96	00	00	00	00	00	00
				242,819.14		2,280.79				00
02/14/2008	PMI PMT MONTHLY	95.19	02/2008	00	00	95.19	00	00	00	00
				242,819.14		2,195.60				00
03/14/2008	REGULAR PAYMENT	2,042.92	03/2008	00	1,188.80	854.12	00	00	00	00
				242,819.14		3,049.72				00
03/14/2008	MISC. POSTING	7.08	03/2008	7.08	00	00	00	00	00	00
				242,812.06		3,049.72				00
03/14/2008	PMI PMT MONTHLY	95.10	03/2008	00	00	95.10	00	00	00	00
				242,812.06		2,854.62				00
04/14/2008	PMI PMT MONTHLY	95.10	03/2008	00	00	95.10	00	00	00	00
				242,812.06		2,859.52				00
04/16/2008	REGULAR PAYMENT	2,042.89	04/2008	00	1,188.77	854.12	00	00	00	00
				242,812.06		3,713.64				00
04/16/2008	MISC. POSTING	7.11	04/2008	7.11	00	00	00	00	00	00
				242,804.95		3,713.64				00

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Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
05/01/2008	OVERAGE REFUND	2,425.65	04/2008	0.00	0.00	2,425.65	0.00	0.00	0.00	0.00
				242,804.85		1,287.80			0.00	0.00
05/13/2008	PMI PMT MONTHLY	95.10	04/2008	0.00	0.00	95.10	0.00	0.00	0.00	0.00
				242,804.85		1,192.80			0.00	0.00
05/16/2008	REGULAR PAYMENT	1,482.90	05/2008	0.00	1,188.73	294.17	0.00	0.00	0.00	0.00
				242,804.85		1,487.06			0.00	0.00
05/16/2008	MISC. POSTING	567.10	05/2008	567.10	0.00	0.00	0.00	0.00	0.00	0.00
				242,237.85		1,487.06			0.00	0.00
06/12/2008	PMI PMT MONTHLY	95.10	05/2008	0.00	0.00	95.10	0.00	0.00	0.00	0.00
				242,237.85		1,391.96			0.00	0.00
06/16/2008	REGULAR PAYMENT	1,480.13	06/2008	0.00	1,185.96	294.17	0.00	0.00	0.00	0.00
				242,237.85		1,686.13			0.00	0.00
07/15/2008	PMI PMT MONTHLY	94.88	06/2008	0.00	0.00	94.88	0.00	0.00	0.00	0.00
				242,237.85		1,591.25			0.00	0.00
07/24/2008	HAZARD INS PMT	458.88	06/2008	0.00	0.00	458.88	0.00	0.00	0.00	0.00
				242,237.85		1,132.37			0.00	0.00
07/30/2008	REGULAR PAYMENT	1,480.13	07/2008	0.00	1,185.96	294.17	0.00	0.00	0.00	0.00
				242,237.85		1,426.54			59.30	0.00
08/15/2008	PMI PMT MONTHLY	94.88	07/2008	0.00	0.00	94.88	0.00	0.00	0.00	0.00
				242,237.85		1,331.66			59.30	0.00
09/15/2008	PMI PMT MONTHLY	94.88	07/2008	0.00	0.00	94.88	0.00	0.00	0.00	0.00
				242,237.85		1,236.78			59.30	0.00
10/14/2008	PMI PMT MONTHLY	94.88	07/2008	0.00	0.00	94.88	0.00	0.00	0.00	0.00
				242,237.85		1,141.90			59.30	0.00
11/13/2008	PMI PMT MONTHLY	94.88	07/2008	0.00	0.00	94.88	0.00	0.00	0.00	0.00
				242,237.85		1,047.02			59.30	0.00
12/12/2008	PMI PMT MONTHLY	94.88	07/2008	0.00	0.00	94.88	0.00	0.00	0.00	0.00
				242,237.85		952.14			59.30	0.00

Account Number: 112501061
Statement Period: 01/1986 - 04/2011
Date Prepared: 04/06/2011

Property Address:
106 COUPLES CT
GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges Total	Unapplied Total
12/19/2008	COUNTY TAX PMT	5,031.49	07/2008	00	00	5,031.49	00	00	00	00
				242,237.85		4,076.35			59.30	00
01/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,174.23			59.30	00
02/12/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,269.11			59.30	00
03/13/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,363.99			59.30	00
04/14/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,458.87			59.30	00
05/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,553.75			59.30	00
06/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,648.63			59.30	00
07/14/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		4,743.51			59.30	00
07/29/2009	HAZARD INS PMT	527.16	07/2008	00	00	527.16	00	00	00	00
				242,237.85		5,270.07			59.30	00
08/13/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,365.55			59.30	00
09/15/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,460.43			59.30	00
10/16/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,555.31			59.30	00
11/09/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,650.19			59.30	00
12/16/2009	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		5,745.07			59.30	00

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Account Number: 112501061
 Statement Period: 01/1986 - 04/2011
 Date Prepared: 04/06/2011

Property Address:
 106 COUPLES CT
 GREENVILLE SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
12/16/2009	COUNTY TAX PMT	2,015.33	07/2008	00	00	2,015.33	00	00	00	00
				242,237.85		7,780.40			58.00	00
01/19/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		7,855.28			58.00	00
02/16/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		7,930.16			58.00	00
03/12/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,005.04			58.00	00
04/14/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,079.92			58.00	00
05/14/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,154.80			58.00	00
06/14/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,229.68			58.00	00
07/19/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,304.56			58.00	00
07/26/2010	HAZARD INS PMT	550.56	07/2008	00	00	550.56	00	00	00	00
				242,237.85		8,379.12			58.00	00
08/16/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,453.00			58.00	00
09/16/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,527.88			58.00	00
10/15/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,602.76			58.00	00
11/15/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,677.64			58.00	00
12/15/2010	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		8,752.52			58.00	00

073

Bank of America



Home Loans

Page 13

Account Number: 112501061

Statement Period: 01/1986 - 04/2011

Date Prepared: 04/06/2011

Property Address:

106 COUPLES CT
GREENVILLE, SC 29609

Transaction Date	Description	Total Payment	PMT/Mo	Principal Balance	Interest	Escrow Balance	Optional	Buydown	Late Charges	Unapplied Total
12/29/2010	COUNTY TAX PMT	2,089.72	07/2008	00	00	2,089.72	00	00	00	00
				242,237.85		11,839.24			59.30	00
01/13/2011	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		11,834.12			59.30	00
02/15/2011	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		11,728.00			59.30	00
03/14/2011	PMI PMT MONTHLY	94.88	07/2008	00	00	94.88	00	00	00	00
				242,237.85		11,823.88			59.30	00

BIT A PAGE 11 OF 11

4/6/2011 10:10:09 AM

PAGE 13/013

Fax Server

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

BAC Home Loans Servicing, LP, f/k/a)
Countrywide Home Loans Servicing, LP,)
)
Plaintiff,)

C/A No.: 2010-CP-23-10468

v.)

CERTIFICATE OF SERVICE

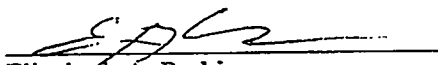
Todd Draper, Mortgage Electronic)
Registration Systems, Inc., acting as)
nominee for American Home Mortgage, its)
successors and assigns, Shawn Kephart,)
Matthew H. Henrikson, The United States)
of America, by and through its Agency, the)
Internal Revenue Service, South Carolina)
Department of Revenue, Branch Banking)
and Trust Company, and Linkside III)
Homeowners Association, Inc.,)
)
Defendants.)

I, Elizabeth A. Perkins, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION** was served on Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Matthew H. Henrikson, Esq.
106 Couples Court
Greenville, SC 29609
PRO SE DEFENDANT

this 17th day of April, 2011.

KORN LAW FIRM, P.A.


Elizabeth A. Perkins
Paralegal to Dean A. Hayes

Columbia, South Carolina
File #: F10-06303

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

BAC Home Loans Servicing, LP, f/k/a)
Countrywide Home Loans Servicing, LP,)

Plaintiff,)

v.)

Todd Draper, Mortgage Electronic)
Registration Systems, Inc., acting as)
nominee for American Home Mortgage, its)
successors and assigns, Shawn Kephart,)
Matthew H. Henrikson, The United States)
of America, by and through its Agency, the)
Internal Revenue Service, South Carolina)
Department of Revenue, Branch Banking)
and Trust Company, and Linkside III)
Homeowners Association, Inc.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-23-10468

**DEFENDANT HENRIKSON'S
RESPONSE TO PLAINTIFF'S FIRST
REQUESTS FOR ADMISSIONS**

Defendant Matthew H. Henrikson hereby responds to Plaintiff's First Request for Admissions dated April 19, 2010, as follows:

1. Admit or deny that the document attached and incorporated as **Exhibit A** is a true and accurate copy of the Note signed in connection with the subject loan.

RESPONSE: This Defendant denies this request on the grounds that the Plaintiff has failed to provide the original Note for inspection so that the Defendant can accurately admit that Exhibit "A" is a true and accurate copy.

2. Admit or deny that the document attached and incorporated as **Exhibit B** is a true and accurate copy of the Mortgage signed in connection with the subject loan.

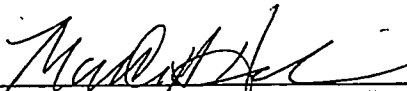
RESPONSE: This Defendant denies this request on the grounds that the Plaintiff has failed to provide the original Mortgage for inspection so that the Defendant can accurately admit that Exhibit "B" is a true and accurate copy.

3. Admit or deny that the document attached and incorporated as **Exhibit C** accurately reflects your payment history on the subject loan.

RESPONSE: This Defendant admits upon information and belief that Exhibit "C"

BAC Home Loans v. Draper
C.A. No.: 2010-CP-23-10468

accurately reflects the Defendant Drapers payment history on the subject loan.



Matthew H. Henrikson (SC Bar #07897)
CLARKSON, WALSH, TERRELL & COULTER, P.A.
1164-A Woodruff Road (29607)
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400

June 20, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

BAC Home Loan Servicing, LP,
f/k/a. Countrywide Home Loans
Servicing, L.P.,)

Plaintiff,)

vs.)

Todd Draper, et al.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10468

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Defendant Draper's and Defendant Henrikson's Responses to Plaintiff's First Request for Admissions has been served upon counsel of record in the above-captioned case by depositing a copy in the United States Mail, proper postage affixed thereto, on the 20th day of June, 2011, addressed as follows:

Dean Hayes, Esq.
Korn Law Firm, P.A.
P.O. Box 11264
Columbia, SC 29211



Matthew H. Henrikson (SC Bar #7897)
CLARKSON WALSH TERRELL & COULTER, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Attorneys for Defendant Todd Draper

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	
	)	
BAC Home Loans Servicing, LP, f/k/a	)	C/A No.: 2010-CP-23-10468
Countrywide Home Loans Servicing, LP,	)	
	)	
Plaintiff,	)	
	)	DEFENDANT HENRIKSON'S
v.	)	AMENDED RESPONSES TO
	)	PLAINTIFF'S REQUESTS
	)	FOR ADMISSIONS
Todd Draper, Mortgage Electronic	)	
Registration Systems, Inc., acting as	)	
nominee for American Home Mortgage, its	)	
successors and assigns, Shawn Kephart,	)	
Matthew H. Henrikson, The United States	)	
of America, by and through its Agency, the	)	
Internal Revenue Service, South Carolina	)	
Department of Revenue, Branch Banking	)	
and Trust Company, and Linkside III	)	
Homeowners Association, Inc.,	)	
	)	
Defendants.	)	

Defendant Matthew H. Henrikson hereby amends his responses to Plaintiff's First Request for Admissions dated April 19, 2010, as follows:

1. Admit or deny that the document attached and incorporated as **Exhibit A** accurately reflects your payment history on the subject loan.

RESPONSE: This Defendant admits upon information and belief that **Exhibit "A"** accurately reflects the Defendant Draper's payment history on the subject loan.

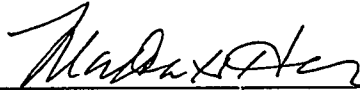
2. Admit or deny that you have failed to make the payments in accordance with the terms of the subject loan.

RESPONSE: This Defendant admits upon information and belief that **Exhibit "A"** accurately reflects the Defendant Draper's payment history on the subject loan.

3. Admit or deny that the default has not been cured in accordance with the terms of the subject loan.

RESPONSE: This Defendant admits upon information and belief that **Exhibit "A"** accurately reflects the Defendant Draper's payment history on the subject loan.

BAC Home Loans v. Draper
C.A. No.: 2010-CP-23-10468



Matthew H. Henrikson (SC Bar #07897)
CLARKSON, WALSH, TERRELL & COULTER, P.A.
1164-A Woodruff Road (29607)
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400

June 2, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C.A. No.: 2010-CP-23-10468

BAC Home Loan Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, L.P.,)

Plaintiff,)

vs.)

Todd Draper, et al.,)

Defendants.)

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Defendant Draper's and Defendant Henrikson's Amended Responses to Plaintiff's First Request for Admissions has been served upon counsel of record in the above-captioned case by depositing a copy in the United States Mail, proper postage affixed thereto, on the 21th day of June, 2011, addressed as follows:

Dean Hayes, Esq.
Korn Law Firm, P.A.
P.O. Box 11264
Columbia, SC 29211


Matthew H. Henrikson (SC Bar #7897)
CLARKSON WALSH TERRELL & COULTER, P.A.
Post Office Box 6728
Greenville, South Carolina 29606
Phone: (864) 232-4400
Attorneys for Defendant Todd Draper

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic
Registration Systems, Inc., acting as
nominee for American Home Mortgage, its
successors and assigns, Shawn Kephart,
Matthew H. Henrikson, The United States of
America, by and through its Agency, the
Internal Revenue Service, South Carolina
Department of Revenue, Branch Banking
and Trust Company, and Linkside III
Homeowners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A NO.: 2010-CP-23-10468

**PLAINTIFF'S RESPONSES TO THE FIRST
SET OF INTERROGATORIES OF THE
DEFENDANT TODD DRAPER**

**TO: MATTHEW H. HENRIKSON, ESQUIRE, ATTORNEY FOR DEFENDANT TODD
DRAPER:**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiff responds to Defendants' Interrogatories as follows:

1. Please state the names and addresses of persons known to the Plaintiff or counsel to be witnesses concerning the facts of the case, and indicate whether written or recorded statements have been taken from the witnesses, and, if so, indicate the name and contact information for the person having possession of such statements.

RESPONSE: Plaintiff has not taken written or recorded statements from witnesses at this time. Plaintiff reserves the right to designate witnesses at a later time. If the Defendant wishes for Plaintiff to designate a witness for a specific purpose, Plaintiff will do so within ten (10) days of the Defendants making such a request.

2. Please set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE: Please see the attached plats.

3. Please list the names and addresses of any expert witnesses the Plaintiff proposes to use as a witness at the trial of the case.

RESPONSE: Plaintiff does not plan to use any expert witnesses at the trial of the case, but Plaintiff reserves the right to call on an expert and will inform Defendants, in compliance with the Rules of Civil Procedure.

4. For each person known to the Plaintiff or counsel to be a witness concerning the facts of the case, please either set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

RESPONSE: Plaintiff reserves the right to designate witnesses at a later time. If the Defendant wishes for Plaintiff to designate a witness for a specific purpose, Plaintiff will do so within ten (10) days of the Defendants making such a request.

5. Excluding Plaintiff's current attorneys in this matter, please identify the names and addresses of each employee or contractor who has participated on Plaintiff's behalf in any decision making regarding the subject loan, the servicing of the subject loan, and/or the initiation of foreclosure proceedings, and any person who has handled any aspect of the loan servicing and/or initiation of foreclosure proceedings on Plaintiff's behalf.

RESPONSE: Please see the attached loan servicing comments screenshots indicating names of employees who have assisted with loan servicing. They are agents of the plaintiff, BAC Home

Loans Sercicing, L.P., with the address of 8501 Fallbrook Avenue, West Hills, CA 91304.

6. If the note or the debt which is the subject of this action has been sold, assigned, or transferred to any other party at any time, please set forth the names of the persons or entities to whom the note or debt was sold, assigned, or transferred, the date of the sale, assignment or transfer, and the consideration for the sale, assignment, or transfer.

RESPONSE: Please see the attached Assignment of Mortgage.

7. Please set forth a detailed and itemized list of all amounts claimed to be owed to the Plaintiff by Defendant Todd Draper, including principal, interest, fees, costs and expenses.

RESPONSE: Please see the attached account information statement providing a breakdown of these figures. Plaintiff objects to providing a breakdown of attorney fees and costs at this stage of litigation as a premature request that would be best addressed at the conclusion of litigation.

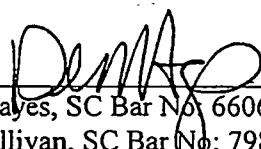
8. For all fees (including but not limited to attorney's fees), costs, expenses and other amounts claimed other than principal and/or interest, please set forth each individual item of fees, costs, expenses or other amounts, broken down to the actual individual amount, and for each such individual amount, please set forth the date that each was incurred.

RESPONSE: Please see the attached loan history showing debits and credits to the account and the attached account information statement. Plaintiff objects to providing a breakdown of attorney fees and costs at this stage of litigation as a premature request that would be best addressed at the conclusion of litigation.

Plaintiff will supplement these responses as additional information and documentation is obtained and as required by the South Carolina Rules of Civil Procedure.

[SIGNATURE PAGE TO FOLLOW]

KORN LAW FIRM, P.A.


Dean A. Hayes, SC Bar No. 66066
Tara C. Sullivan, SC Bar No. 79806
1300 Pickens Street
Post Office Box 12369
Columbia, SC 29211-2369
Telephone: (803) 231-2022
Facsimile: (803) 231-2060
ATTORNEYS FOR PLAINTIFF

April 18, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting as nominee for American
Home Mortgage, its successors and assigns, Shawn
Kephart, Matthew H. Henrikson, The United States
of America, by and through its Agency, the Internal
Revenue Service, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A No.: 2010-CP-23-10468

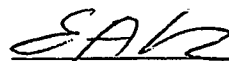
CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S RESPONSES TO THE FIRST SET OF INTERROGATORIES OF TODD DRAPER** were served on Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Matthew H. Henrikson
106 Couples Court
Greenville, South Carolina 29609
PRO SE DEFENDANT

this 19th day of April, 2011.

KORN LAW FIRM, P.A.



Elizabeth A. Perkins
Paralegal to Dean A. Hayes

Columbia, South Carolina
N:APDV10-06303

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic
Registration Systems, Inc., acting as
nominee for American Home Mortgage, its
successors and assigns, Shawn Kephart,
Matthew H. Henrikson, The United States of
America, by and through its Agency, the
Internal Revenue Service, South Carolina
Department of Revenue, Branch Banking
and Trust Company, and Linkside III
Homeowners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-23-10468

**PLAINTIFF'S RESPONSES TO THE FIRST
SET OF REQUESTS FOR PRODUCTION OF
THE DEFENDANT TODD DRAPER**

**TO: MATTHEW H. HENRIKSON, ESQUIRE, ATTORNEY FOR DEFENDANT TODD
DRAPER:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Plaintiff responds to
Defendants' Requests for Production as follows:

1. The original note upon which the alleged debt which is the subject of this action is
based.

RESPONSE: A copy of the original note is attached. The original will be made available
for inspection at a time and place mutually agreeable to the parties.

2. The original mortgage upon which the foreclosure action in the above-referenced case
is based.

RESPONSE: A copy of the original mortgage is attached. The original will be made available for inspection at a time and place mutually agreeable to the parties.

3. Any and all documents regarding the servicing of the subject loan, initiation of foreclosure proceedings, and any other matters connected to the subject loan which were generated or created by any person on behalf of the Plaintiff, including but not limited to any and all internal and external e-mails, exclusive of those covered by the attorney-client privilege (for which a privilege log is required) and all electronically stored data responsive to this request.

RESPONSE: Please see the attached loan history and loan comments screenshots.

4. Any and all guidelines and policies of the Plaintiff regarding the servicing of the subject loan and the initiation of the foreclosure proceedings in the subject loan.

RESPONSE: Plaintiff objects to this Request on the basis that the information sought is commercially sensitive and protected by trade secret privileges.

5. Any and all documents which reflect any fees, costs or expenses as identified in interrogatories numbers 7 and/or 8.

RESPONSE: Please see the attached account information statement and the attached complete loan history.

6. Any and all documents referred to or identified in Plaintiff's answers to interrogatories in this matter.

RESPONSE: Please see the following attached documents:

- a) Assignment of mortgage;
- b) Plats;
- c) Account Information Statement;
- d) Loan History; and
- e) Loan Comments Screenshots.

7. Any and all written or recorded statements made by any witness, party or person having relevant information or knowledge of any fact or circumstance in this action.

RESPONSE: None.

8. Any and all photographs, sketches, transparencies, and/or drawings of any person, party, or other object or thing, any videos, CDs or DVDs, as well as any other recorded device, which are relevant to the incident referred to in the Complaint or the Plaintiff's claims in the subject matter thereof.

RESPONSE: Please see the attached plats.

9. Any and all reports or notes written or otherwise recorded by any expert(s) whom the Plaintiff expects to call as an expert witness at the trial of this case.

RESPONSE: None.

10. Any and all documents, records, or other things which the Plaintiff intends to use as evidence at the trial of this matter.

RESPONSE: Please see the following attached documents:

- f) Note;
- g) Mortgage;
- h) Assignment of mortgage;
- i) Plats;
- j) Account Information Statement;
- k) Loan History; and
- l) Loan Comments Screenshots.

11. Any and all other documentation which in any way relates to any damages that the Plaintiff may claim in this action.

RESPONSE: None at this time.

KORN LAW FIRM, P.A.



Dean A. Hayes, SC Bar No. 66066
Tara C. Sullivan, SC Bar No. 79806
1300 Pickens Street (29201)
Post Office Box 12369
Columbia, South Carolina 29211-2369
(803) 252-5817
dhayes@kornlawfirm.com

ATTORNEYS FOR PLAINTIFF

April 18, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

Plaintiff,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting as nominee for American
Home Mortgage, its successors and assigns, Shawn
Kephart, Matthew H. Henrikson, The United States
of America, by and through its Agency, the Internal
Revenue Service, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A No.: 2010-CP-23-10468

CERTIFICATE OF SERVICE

I, Elizabeth A. Perkins, an employee of the Korn Law Firm, P.A., attorneys for Plaintiff in the above-captioned action, certify that **PLAINTIFF'S RESPONSES TO THE FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS OF TODD DRAPER** were served on Defendant by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Matthew H. Henrikson
106 Couples Court
Greenville, South Carolina 29609
PRO SE DEFENDANT

this 19th day of April, 2011.

KORN LAW FIRM, P.A.



Elizabeth A. Perkins
Paralegal to Dean A. Hayes

Columbia, South Carolina
N:\PDI\10-06303

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) COURT OF COMMON PLEAS
3)
4 BAC Home Loans Servicing, L.P.,) Case No.: 10-CP-23-10468
5 f/k/a Countrywide Home Loans)
6 Servicing L.P.,) TRANSCRIPT OF TESTIMONY
7)
8 Plaintiff,) October 24th, 2011
9 vs.) Greenville, South Carolina
10)
11 Todd Draper, Mortgage)
12 Electronics Registration)
13 Systems, Inc., acting as)
14 nominee for American Home)
15 Mortgage, its successors and)
16 assigns, Shawn Kephart, Matthew)
17 H. Henrikson, The United States)
18 of America, by and through its)
19 Agency, the Internal Revenue)
20 Service, South Carolina)
21 Department of Revenue, Branch)
22 Banking and Trust Company, and)
23 Linkside III Homeowners)
24 Association, Inc.,)
25 Defendant,)

18 B E F O R E:

19 The Honorable Charles B. Simmons, Jr.
20 Master in Equity for Greenville County

21 A P P E A R A N C E S:

22 Dean A. Hayes, Esquire
23 Attorney for Plaintiff

24 Matthew H. Henrikson, Esquire, Pro Se

25 Ann Dickey Campbell, CVR
Court Reporter

GREENVILLE COUNTY COURTHOUSE

1 BY THE COURT: This is 2010-10468, BAC Home Loans
2 versus Draper and others. We are here today on, there are cross-
3 motions for summary judgment, one by Plaintiff, one by Defendant
4 Henrikson. There are also multiple other motions that have been
5 filed by Mr. Henrikson. So at this point, let's proceed with the
6 respective motions for summary judgment, and then we will
7 address whether the other motions are ripe for hearing at this
8 point.

9 So, Mr. Hayes, I will be glad to hear from you. And again,
10 we've been off the record for probably five or ten minutes, and
11 prior to coming in the courtroom I have reviewed the file and
12 the motions, so I know what the facts are.

13 MR. HAYES: Okay, Your Honor, this is on the Motion for
14 Summary Judgment, Plaintiff's Motion for Summary Judgment,
15 correct?

16 BY THE COURT: Yes, sir.

17 MR. HAYES: Your Honor, I have attached to the Motion
18 for Summary Judgment an Affidavit from my client which sets
19 forth the debt amount, and the unpaid principal balance is
20 \$242,237.85; accrued interest is \$45,378.40; late charges,
21 \$177.90; we've advanced a total of --- well, the escrow advances
22 are \$12,891.60; the property inspection fees, \$1,485.00. This is
23 according to the Affidavit of Debt, Your Honor.

24 I served Requests for Admissions on Mr. Draper, Your Honor.
25 I have his Response to the Request for Admissions, along with

GREENVILLE COUNTY COURTHOUSE

1 the original Requests for Admissions, and I am going to pass
2 them up to the Court, Your Honor. Excuse me, Your Honor, I think
3 I was about to give you the copy. Here you are.

4 BY THE COURT: All right.

5 MR. HAYES: Attached to the Requests for Admissions is
6 a payment history. Mr. Draper admits the payment history is
7 correct, admits he's defaulted on the payments of the note and
8 mortgage. The payment history sets forth the principal balance.
9 At the very end you can see the principal balance is
10 \$242,237.85, which matches the principal balance set forth in
11 the Affidavit of Debt, Your Honor.

12 BY THE COURT: All right.

13 MR. HAYES: And the interest calculation is just the
14 amount of interest due from the date of last payment at the
15 contract rate, Your Honor. The note has an adjustable rate,
16 adjustable rate of interest, and the accrued interest is the
17 amount of interest due since the date of last payment.

18 Basically, that's it, Your Honor. I mean, they've admitted
19 the default. They've admitted the payment history. We've
20 attached to our Motion for Summary Judgment an Affidavit of Debt
21 that sets forth the debt amount. There's really nothing, no
22 material issue of fact in this case, Your Honor.

23 BY THE COURT: All right, Mr. Henrikson, let me hear
24 from you on Plaintiff's Motion for Summary Judgment.

25 MR. HENRIKSON: Yes, sir, and before I do that, I

GREENVILLE COUNTY COURTHOUSE

1 think, so I don't waive anything, part of what we talked about
2 off the record is that I think that the case was improperly
3 referred, and I can recite all that.

4 BY THE COURT: You can go ahead and do that, just to
5 protect the record.

6 MR. HENRIKSON: Very briefly, there was a --- I
7 brought, on behalf of myself, Henrikson Defendant, I brought a
8 legal counterclaim for declaratory judgment to determine the
9 relative rights and responsibilities of all parties arising out
10 of my prior contract, which was filed of record after the
11 mortgage was filed but prior to the foreclosure action. I
12 requested a jury trial for the d.j. action. I realize that I'm
13 not entitled to a jury trial on a foreclosure action, but when I
14 received notice of a Request for Reference, I filed an objection
15 in the courthouse personally that day. That was never
16 considered. There was a referral, I think that was signed by the
17 Clerk or a designee of the Clerk. I was not given notice that
18 the case was referred until I received a Motion for Summary
19 Judgment, and then a hearing before this Court, and I called
20 Plaintiff's counsel and expressed my concern that I wasn't aware
21 that the case had been referred, that I thought it was still in
22 the Circuit Court. I was told that it was referred, and at that
23 point I was given the material. I filed a Motion to Reconsider
24 the Referral. Again, because I don't want to waive any rights I
25 have on my counterclaim, which I believe is a properly brought

GREENVILLE COUNTY COURTHOUSE

1 compulsory counterclaim because it is logically related to the
2 action, which is the DAV court case language, and it is
3 compulsory for that reason, and it does flow back to the
4 Plaintiff, who I believe is trying to acquire and assert rights
5 to the property, and in doing so subjects themselves to the
6 counterclaim, I think, a counterclaim like this.

7 Now, having said that, I think that the Motion for Summary
8 Judgment is not ripe today because I think, in my opinion, we
9 still have to go back to, I guess, the Circuit Court level and
10 talk about and decide whether it's properly referred under the
11 posture of there being a legal counterclaim or what has to be
12 done, so it's my position that my Motion to Reconsider the
13 Referral sort of takes us back to the Circuit Court, and that's
14 something that has to be decided before we go forward on the
15 summary judgment.

16 As to the summary judgment, so without waiving any of that,
17 I will proceed with the Plaintiff's Motion for Summary Judgment,
18 and in that case, the summary judgment is based, the only thing
19 in the record is this Motion, this Affidavit which was signed by
20 Lisa Byers, who does not --- oh, and I believe this Affidavit in
21 and of itself is insufficient to establish ownership of the
22 debt, the right to sue and the debt itself, and the reason I
23 believe that is because Ms. Byers does not allege any personal
24 knowledge of this case or, apparently all she did was someone
25 sent her some records, she looked at them and said, "Yeah, it

GREENVILLE COUNTY COURTHOUSE

1 looks like Bank of America records. We keep these records."
2 That's insufficient to establish what the Plaintiff has to
3 establish with evidence in the record.

4 Additionally, the Affidavit itself was inaccurate because
5 there are, as pointed out in the Affidavit in Opposition to
6 Motion for Summary Judgment, the Affidavit, or the, I guess the
7 attachment to the Affidavit which sets for the payments and the
8 fees and all that contained some inaccuracies, which I think
9 create a scintilla of evidence that the Affidavit is inaccurate
10 in total. If part of it is inaccurate, I think that's a
11 scintilla of evidence that the Affidavit is inaccurate, and
12 without an accurate Affidavit in this case, I think that summary
13 judgment should fail.

14 Additionally, the summary ---

15 BY THE COURT: All right,, I'm sorry, specifically,
16 point out to me where the inaccuracies are.

17 MR. HENRIKSON: The inaccuracies that I'm aware of are
18 with the property inspection fees. There are several hundred
19 dollars' worth of, for instance, occupied inspection fees and
20 lawn re-cuts. I can testify that after I moved in, in September
21 of 2009, Bank of America was not cutting my yard. I was cutting
22 my yard. And I know those are small things, Judge, but those are
23 things that they are claiming they did, and they're claiming
24 money for, and they didn't happen. And I was there, living in
25 the house, and they didn't do those things. And that creates a

GREENVILLE COUNTY COURTHOUSE

7
1 scintilla of evidence and doubt, and I think it reflects on the
2 entire Affidavit, because if there are some inaccuracies, and we
3 don't have any counter-affidavits of somebody who says they came
4 and, you know, cut my grass during this period, but I believe
5 that that's enough to defeat summary judgment at this stage,
6 because the Affidavit does contain errors as are set forth in
7 the opposing Affidavit. I think that if you have, even, albeit
8 admitted minor inaccuracies, under our summary judgment standard
9 today, that's a scintilla of evidence that the Affidavit is
10 incorrect.

11 The other thing, Your Honor, is that the Affidavit does not
12 establish that this Plaintiff is the owner of this debt and has
13 the right to foreclose, and I requested a copy of the original
14 note so that I could see. And the reason the original note is
15 important is because when you have a copy of a note, that
16 freezes that note in time at the time the copy is made. It's
17 important to have the original to look at because that's the
18 only way that you can make sure to see where this has been
19 assigned, where the endorsements are, who actually owns the
20 note. The Affidavit also indicated that Mr. Draper was told that
21 the Plaintiff in this case did not own the note. I have not been
22 made aware of any assignments or anything like that. Nothing
23 like that is in the record, and I think that the opposing
24 Affidavit raised, at the very least, a scintilla of evidence
25 that would be enough to defeat summary judgment at this stage.

GREENVILLE COUNTY COURTHOUSE

1 BY THE COURT: All right, Mr. Hayes, first, establish
2 ownership or a right to proceed by Plaintiff.

3 MR. HAYES: Your Honor, the Plaintiff is the holder of
4 the note and mortgage. We state that in the Affidavit of Debt,
5 Your Honor. We have given, attached to the --- also attached to
6 the Request for Admissions is a copy of the original note. It is
7 endorsed in blank.

8 BY THE COURT: All right, and is there an assignment of
9 record of this mortgage into the current Plaintiff?

10 MR. HAYES: Your Honor, the original note --- Your
11 Honor, the original note was given to America's Wholesale
12 Lender, which was a division of Countrywide Home Loans, which
13 was taken over by Bank of America, named BAC Home Loans
14 Servicing, which has now been changed to the Bank of America,
15 N.A. So the original, basically there's no assignment, because
16 Bank of America is the original holder of the note and mortgage
17 by virtue of their buying out Countrywide Home Loans.

18 BY THE COURT: Okay.

19 MR. HAYES: And, Your Honor, going back to the
20 reference issue, he has talked about this being a declaratory
21 judgment action. Your Honor, a declaratory judgment action can
22 be legal or equitable based on the relief that's requested. In
23 this case, he has no legal rights with the Plaintiff. His legal
24 rights are a contract with his co-Defendant, Draper. Any rights
25 that he has with the Plaintiff are equitable, which, even if

GREENVILLE COUNTY COURTHOUSE

1 that counterclaim was against us, would make this an equitable
2 action that should be referred to the Master in Equity.

3 BY THE COURT: All right, here's what I am going to do,
4 and Mr. Henrikson, I hear your argument. You make a good
5 argument.

6 I am going to deny your Motion and defenses for the
7 following reasons: first, I think it's just purely a priority
8 issue. The mortgage that's being foreclosed was of record at the
9 time this contract between you and Mr. Draper was entered into,
10 so I think at that point, that sets the stage, that sets the
11 foundation, and that's the only analysis that the Court can look
12 into. I think, clearly, you have rights against Mr. Draper. But
13 as far as any type of basis to preclude Plaintiff from
14 proceeding, at this point, I just don't think the same exists,
15 so I am going to grant Mr. Hayes' Motion.

16 And, Mr. Hayes, if you would do an Order, and Mr.
17 Henrikson, of course, you have a right to file that appeal and
18 am completely fine with that, sir.

19 MR. HENRIKSON: I don't want to argue with the Court,
20 but if could just raise one thing for the record ---

21 BY THE COURT: Oh, yes, sir, and again, I want you to
22 protect the record, protect yourself for appeal purposes.

23 MR. HENRIKSON: As set forth in the Affidavit in
24 Opposition to the Motion for Summary Judgment, the Plaintiff
25 wrote a letter to Mr. Draper, and in the letter, they said, "The

GREENVILLE COUNTY COURTHOUSE

1 owner of this loan is Freddie Mac. Bank of America services the
2 loan." So the only evidence in the record is that the current
3 Plaintiff does not own this note. If anything, it's a question
4 of fact, and I think that would be the basis for my Motion for
5 Summary Judgment, which I guess is being denied by virtue of
6 your granting this one. There is no evidence in the record here
7 that this Plaintiff owns this note and has a right to foreclose
8 on this mortgage.

9 BY THE COURT: Mr. Hayes, how do you respond to that?

10 MR. HAYES: Your Honor, I respond to that by saying
11 Bank of America can be the servicer and can maintain the action.
12 There's a recent Fourth Circuit case, Horvath v Bank of New
13 York, 641 F. 3d 617. It's a May 19th, 2011 case. I've previously
14 given a copy to Mr. Henrikson.

15 MR. HENRIKSON: A few minutes ago. I haven't had a
16 chance to look at it, Your Honor. I don't think it's a South
17 Carolina case.

18 BY THE COURT: Mr. Henrikson, I don't know, in all
19 candor, if that issue has ever been firmly addressed by our
20 appellate courts.

21 MR. HENRIKSON: I can tell you, I researched it, and I
22 agree with you, I don't think it has.

23 BY THE COURT: But that's a wonderful issue for appeal,
24 and this may be the case to go up on.

25 MR. HAYES: Your Honor, it has been addressed by the

GREENVILLE COUNTY COURTHOUSE

1 Fourth Circuit, and it has been addressed in Bankruptcy Court. I
2 have another copy of a case. It's issued on October the 6th, and
3 it directly addresses a servicer's right, ability to maintain
4 the.---

5 BY THE COURT: And I'm aware of that as well, but I
6 don't think our Court of Appeals or Supreme Court has ever
7 squarely addressed the issue.

8 MR. HAYES: No, I agree, they haven't squarely
9 addressed it; otherwise, I wouldn't be submitting these cases.

10 BY THE COURT: All right, for the reasons I've stated
11 as well as the fact that the Request for Admissions, if you
12 would prepare an Order.

13 MR. HAYES: Yes, sir.

14 BY THE COURT: Send a courtesy copy to Mr. Henrikson.

15 MR. HAYES: Yes, sir.

16 BY THE COURT: And, Mr. Henrikson, assuming that things
17 do continue, then, you know, in all likelihood you would be
18 entitled to rights under the Protecting Tenants in Foreclosure
19 Act. That would be a later issue for a later day, but at this
20 point, I see I have no option but to grant the motion.

21 Is there anything else you need on the record?

22 MR. HENRIKSON: Just one thing. To the extent that this
23 would be, I guess, just so I can understand, you're also denying
24 my Motion for Summary Judgment?

25 BY THE COURT: Yes, sir.

GREENVILLE COUNTY COURTHOUSE

1 MR. HENRIKSON: Okay. To the extent that the Court is
2 relying on the Answers to Requests to Admit, those were Draper's
3 responses to admit. I was not asked to admit those things.

4 BY THE COURT: Oh, I understand.

5 MR. HENRIKSON: They're not binding on me.

6 BY THE COURT: Absolutely. I agree with that a hundred
7 percent.

8 MR. HENRIKSON: Thank you, Judge.

9 BY THE COURT: Yes, sir.

10 ----- END OF TRANSCRIPT -----

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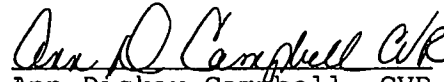
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GREENVILLE COUNTY COURTHOUSE

1 I, the undersigned Ann D. Campbell, Court Reporter, Office
2 of Master in Equity for Greenville County, South Carolina, do
3 hereby certify that the foregoing is a true, accurate and
4 complete transcript of record of all the proceedings had and
5 evidence introduced in the hearing of the captioned case,
6 relative to appeal, before The Honorable Charles B. Simmons,
7 Jr., as Master in Equity for Greenville County, South Carolina,
8 on the 24th day of October, 2011.

9 I do further certify that I am neither of kin, counsel, nor
10 any interest to any parties hereto.

11 March 14th, 2012

12
13 
14 Ann Dickey Campbell, CVR
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GREENVILLE COUNTY COURTHOUSE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

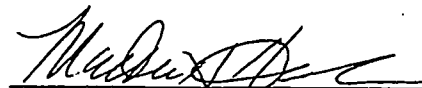
v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

CERTIFICATION OF COUNSEL

Pursuant to SCACR 210(g), counsel for Appellants I hereby certifies that the
Record on Appeal contains all of the material proposed to be included by the parties and
not any other material:


Matthew H. Henrikson
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

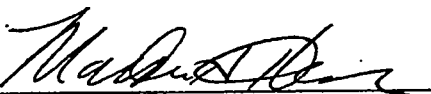
Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

PROOF OF SERVICE

Counsel for the Appellants, hereby certifies that one copy of the Record on
Appeal has been served on counsel for the Respondent via regular U.S. mail, postage
prepaid, on this 11th day of September, 2012, addressed as follows:

Dean A. Hayes, Esq.
Korn Law Firm
P.O. Box 11264
Columbia, SC 29211


Matthew H. Henrikson

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2011 APR -7 PM 12:59 C.A. No.: 2010-CP-23-10468

**BAC Home Loan Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, L.P.,**

FILED-CLERK OF CO.
GREENVILLE CO-S.
PAUL B. WICKENHILL

Plaintiff,

OBJECTION TO REFERENCE

VS.

Todd Draper, et al.,

(JURY TRIAL REQUESTED)

Defendants.

The Defendant, Matthew H. Henrikson, objects to the Reference of the above-captioned matter in that he has asserted legal counter-claims and cross-claims for a declaratory judgment of his rights under the Private Contract as alleged in the Complaint to which he is entitled to a jury trial, as requested, pursuant to SCRCP 38. The issues of this Defendant's rights under the Private Contract are inseparable from the issues regarding the foreclosure and the rights of the Plaintiff and other parties to the property. Plaintiff's letter to the Clerk of Court submitting a proposed Order of Reference incorrectly states that no legal counterclaims have been asserted.

Matthew H. Henrikson
106 Couples Court
Greenville, South Carolina 29609
(864) 672-7106
mhenrikson@clarksonwalsh.com

April 7, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
BAC Home Loan Servicing, LP,)
f/k/a Countrywide Home Loans)
Servicing, L.P.,)
)
Plaintiff,)
)
vs.)
)
Todd Draper, et al.,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10468

CERTIFICATE OF SERVICE

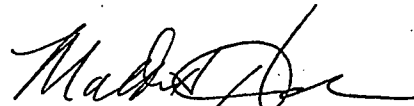
I hereby certify that a true and accurate copy of the Objection to Reference of Defendant Matthew H. Henrikson has been served upon counsel of record in the above-captioned case by depositing a copy in the United States Mail, proper postage affixed thereto, on the 7th day of April, 2011 addressed as follows:

Dean A. Hayes, Esq.
Korn Law Firm, P.A.
P.O. Box 11264
Columbia, SC 29211

Peter A. Rutledge, Esq.
Smith Moore Leatherwood
P.O. Box 87
Greenville, SC 29602

A. Lance Crick, Esq.
105 N. Spring Street
Greenville, SC 29601

Milton G. Kimpson, Esq.
P.O. Box 12265
Columbia, SC 29211



Matthew H. Henrikson
106 Couples Court
Greenville, South Carolina 29609
(864) 672-7106
mhenrikson@clarksonwalsh.com

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

PLAINTIFF,

vs.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting solely as nominee for
American Home Mortgage, its successor and
assigns, Shawn-Kephart, Matthew H. Henrikson,
The United States of America, by and through
its Agency, the Internal Revenue Service, South
Carolina Department of Revenue, Branch
Banking and Trust Company, and Linkside III
Homeowners Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-23-10468

**NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

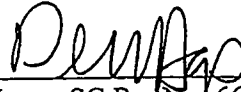
F10-06303

TO: MATTHEW H. HENRIKSON, ATTORNEY FOR DEFENDANT TODD DRAPER

YOU WILL PLEASE TAKE NOTICE that the attorney for Plaintiff will, on the 10th day after service hereof, or as soon thereafter as counsel may be heard, move before the this Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting the plaintiff summary judgment on plaintiff's cause of action that it is entitled to foreclosure on the property at issue in this case against the defendants Todd Draper, Mortgage Electronic Registration Systems, Inc., acting solely as nominee for American Home Mortgage, its successor and assigns, Shawn Kephart, Matthew H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.

This motion is made on the grounds there is no genuine issue as to any material fact and

the plaintiff is entitled to judgment as a matter of law. This motion is based on the attached affidavit of debt, pleadings in this case, and applicable South Carolina case and/or statutory law.



Dean A. Hayes, SC Bar No. 66066
Keller C. Foster, SC Bar No: 79640
Korn Law Firm, P.A.
Post Office Box 12369
Columbia, South Carolina 29211-2369
(803) 252-5817
Dean.Hayes@kornlawfirm.com
Keller.Foster@kornlawfirm.com
ATTORNEY FOR PLAINTIFF

September 29, 2011
Columbia, South Carolina
FILE # F10-06303

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Bank of America, N.A.,

PLAINTIFF,

vs.

Todd Draper, Mortgage Electronic
Registration Systems, Inc., acting solely as
nominee for American Home Mortgage, its
successor and assigns, Shawn Kephart,
Matthew H. Henrikson, The United States of
America, by and through its Agency,, South
Carolina Department of Revenue, Branch
Banking and Trust Company, and Linkside III
Homeowners Association, Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2010-CP-23-10468

F10-06303

AFFIDAVIT

BEFORE ME an officer authorized to take oaths this day personally appeared
Lisa M. Byers of Bank of America, N.A. (BANA) who being first duly sworn,
deposes and says:

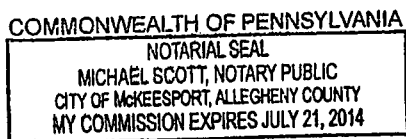
1. I am authorized to sign this affidavit on behalf of plaintiff, Bank of America, N.A. (BANA), as an officer of BANA.
2. BANA maintains records for the Loan, owed by Todd Draper, in the ordinary course of its business. As part of my job responsibilities for BANA, I am familiar with the type of records maintained by BANA in connection with the Loan.
3. The information in this affidavit is taken from BANA's business records. I have personal knowledge of BANA's procedures for creating these records. They are: (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of BANA's regularly conducted business activities; and (c) it is the regular practice of BANA to make such records.
4. The business record attached, which I have reviewed, is a true and correct copy that is part of the business records described above and the amount stated in the attached record is owed on the Loan.

FURTHER AFFLIANT SAYETH NAUGHT.

Lisa M. Byers
Name Lisa M. Byers
Assistant Vice President

STATE OF Pennsylvania
COUNTY OF Allegheny

SWORN TO and subscribed before me this 21st day of September, 2011, by
Lisa M. Byers, as an Assistant Vice President of Bank of America, N.A. He~~(s)~~he~~(s)~~()
is personally known to me or () produced Drivers License as identification.



Michael Scott
Notary Public
My commission expires July 21st 2014

Bank of America, N.A.
Account Information Statement
Account#(last four digits): 1061

Borrower Name : TODD DRAPER

Good Through Date:09/09/2011 Paid to Date:07/01/2008 Based on Date:08/11/2011

Unpaid Principal Balance				242,237.85	
Interest				45,378.40	
Change Date	Interest Rate(%)	No of Days			
07/01/2008	5.875	1166			
Payment Due Total				56,446.22	
From Date	To Date	No of Payments Due	Amount(\$)		
08/01/2008	05/01/2010	22	1,480.13		32,562.86
06/01/2010	09/01/2011	16	1,492.71		23,883.36
Late Charges				177.90	
Accrued Late Charges				118.60	
Accrued Date		Amount(\$)			
08/01/2008		59.30			
09/01/2008		59.30			
Uncollected Late Charges				59.30	
Advances Total				14,406.60	
Escrow Advances				12,891.60	
Taxes			8,184.40		
Date Paid	Description	Actual(\$)	Anticipated(\$)		
12/16/2009	COUNTY TAX PMT	2,015.33			
12/23/2010	COUNTY TAX PMT	2,089.72			
12/19/2008	COUNTY TAX PMT	4,079.35			
MIP/PMI			2,941.28		
Date Paid	Description	Actual(\$)	Anticipated(\$)		
10/16/2009	PMI PMT MONTHLY	94.88			
11/09/2009	PMI PMT MONTHLY	94.88			
12/16/2009	PMI PMT MONTHLY	94.88			
01/19/2010	PMI PMT MONTHLY	94.88			
02/16/2010	PMI PMT MONTHLY	94.88			
03/12/2010	PMI PMT MONTHLY	94.88			
04/14/2010	PMI PMT MONTHLY	94.88			
05/14/2010	PMI PMT MONTHLY	94.88			
06/14/2010	PMI PMT MONTHLY	94.88			
07/19/2010	PMI PMT MONTHLY	94.88			
08/16/2010	PMI PMT MONTHLY	94.88			
09/16/2010	PMI PMT MONTHLY	94.88			
10/15/2010	PMI PMT MONTHLY	94.88			
11/15/2010	PMI PMT MONTHLY	94.88			
12/15/2010	PMI PMT MONTHLY	94.88			
01/13/2011	PMI PMT MONTHLY	94.88			
02/15/2011	PMI PMT MONTHLY	94.88			
03/14/2011	PMI PMT MONTHLY	94.88			
04/15/2011	PMI PMT MONTHLY	94.88			
05/13/2011	PMI PMT MONTHLY	94.88			
06/15/2011	PMI PMT MONTHLY	94.88			
07/15/2011	PMI PMT MONTHLY	94.88			
01/15/2009	PMI PMT MONTHLY	94.88			
02/12/2009	PMI PMT MONTHLY	94.88			
03/13/2009	PMI PMT MONTHLY	94.88			
04/14/2009	PMI PMT MONTHLY	94.88			
05/15/2009	PMI PMT MONTHLY	94.88			
06/15/2009	PMI PMT MONTHLY	94.88			
07/14/2009	PMI PMT MONTHLY	94.88			
08/13/2009	PMI PMT MONTHLY	94.88			
09/15/2009	PMI PMT MONTHLY	94.88			
Hazard Insurance				1,765.92	
Date Paid	Description	Actual(\$)	Anticipated(\$)		

EXHIBIT A

PAGE 1 OF 2

EXHIBIT A PAGE 1 OF 2

Bank of America, N.A.
Account Information Statement
Account#(last four digits): 1061

Borrower Name : TODD DRAPER

Good Through Date:09/09/2011 Paid to Date:07/01/2008 Based on Date:08/11/2011

07/26/2010	HAZARD INS PMT	550.56		
07/25/2011	HAZARD INS PMT	688.20		
07/29/2009	HAZARD INS PMT	527.16		
			1,515.00	
Fee Due,Advances				
Foreclosure Fees			0.00	
Tran Date	Description	Actual(\$)	Anticipated(\$)	
Bankruptcy Fees			0.00	
Tran Date	Description	Actual(\$)	Anticipated(\$)	
Property Inspection Fees			1,485.00	
Tran Date	Description	Actual(\$)	Anticipated(\$)	
11/05/2009	LAWN RE-CUT	125.00		
11/05/2009	PHOTOS	10.00		
11/12/2009	PHOTOS	10.00		
11/12/2009	LAWN RE-CUT	125.00		
11/25/2009	INSPECTION-OCCUPIED	15.00		
12/03/2009	INSPECTION-OCCUPIED	15.00		
12/31/2009	INSPECTION-OCCUPIED	15.00		
02/01/2010	INSPECTION-OCCUPIED	15.00		
03/03/2010	INSPECTION-OCCUPIED	15.00		
04/05/2010	INSPECTION-OCCUPIED	15.00		
05/03/2010	INSPECTION-OCCUPIED	15.00		
06/04/2010	INSPECTION-OCCUPIED	15.00		
05/12/2011	INSPECTION-OCCUPIED	10.00		
06/10/2011	INSPECTION-OCCUPIED	10.00		
11/05/2008	INSPECTION-VACANT	15.00		
12/05/2008	INSPECTION-VACANT	15.00		
01/20/2009	INSPECTION-VACANT	15.00		
02/06/2009	INSPECTION-VACANT	15.00		
03/11/2009	INSPECTION-VACANT	15.00		
04/17/2009	INSPECTION-OCCUPIED	15.00		
04/23/2009	INITIAL LAWN CUT	300.00		
04/23/2009	PHOTOS	10.00		
05/04/2009	INSPECTION-VACANT	15.00		
06/03/2009	INSPECTION-VACANT	15.00		
06/08/2009	LAWN RE-CUT	80.00		
06/08/2009	PHOTOS	10.00		
07/01/2009	INSPECTION-VACANT	15.00		
07/01/2009	LAWN RE-CUT	80.00		
07/01/2009	PHOTOS	10.00		
07/16/2009	LAWN RE-CUT	80.00		
07/16/2009	PHOTOS	10.00		
08/03/2009	INSPECTION-VACANT	15.00		
08/04/2009	LAWN RE-CUT	80.00		
08/04/2009	PHOTOS	10.00		
08/19/2009	LAWN RE-CUT	80.00		
08/19/2009	PHOTOS	10.00		
09/03/2009	INSPECTION-VACANT	15.00		
09/16/2009	LAWN RE-CUT	125.00		
09/16/2009	PHOTOS	10.00		
09/24/2009	INSPECTION-OCCUPIED	15.00		
Others			30.00	
Tran Date	Description	Actual(\$)	Anticipated(\$)	
09/02/2008	EXPEDITED PO SVC FEE	30.00		
Credits				
Date Paid	Description	Actual(\$)	Anticipated(\$)	
Total Amount Owed			302,200.75	

EXHIBIT A PAGE 2 OF 2

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

BAC Home Loans Servicing, L.P. f/k/a
Countrywide Home Loans Servicing, L.P.,

PLAINTIFF,

vs.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting solely as nominee for
American Home Mortgage, its successor and
assigns, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by
and through its Agency, the Internal Revenue
Service, South Carolina Department of
Revenue, Branch Banking and Trust Company,
and Linkside III Homeowners Association,
Inc.,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A No.: 2010-CP-23-10468

CERTIFICATE OF SERVICE

I, Elizabeth Perkins, an employee of the Korn Law Firm, P.A., attorneys for plaintiff in the above-captioned action, certify that **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT** was served on counsel for the defendants by causing a copy of the same to be deposited into the United States Mail, addressed as follows:

Matthew H. Henrikson, Esq.
106 Couples Court
Greenville, South Carolina 29609
PRO SE DEFENDANT

Matthew H. Henrikson, Esq.
Clarkson Walsh Terrell & Coulter, P.A.
P.O. Box 6728
Greenville, South Carolina 29606
ATTORNEY FOR TODD DRAPER

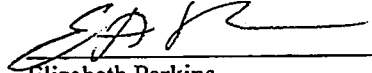
Peter A. Rutledge, Esq.
Leatherwood Walker Todd & Mann, P.C.
P.O. Box 87
Greenville, South Carolina 29602
ATTORNEY FOR SHAWN
KEPHART

Milton G. Kimpson, Esq.
S.C. Department of Revenue
P.O. Box 12265
Columbia, SC 29211
ATTORNEY FOR SOUTH CAROLINA
DEPARTMENT OF REVENUE

A. Lance Crick, Esq.
U.S. Attorney's Office
105 N. Spring Street, Suite 200
Greenville, South Carolina 29601
ATTORNEY FOR THE UNITED STATES OF AMERICA

this 29th day of September, 2011.

KORN LAW FIRM, P.A.

A handwritten signature in dark ink, appearing to be 'EPK', written over a horizontal line.

Elizabeth Perkins

Paralegal to Dean A. Hayes and
Keller C. Forster

Columbia, South Carolina
mk\ F10-06303

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
BAC Home Loan Servicing, LP,)
f/k/a Countrywide Home Loans)
Servicing, L.P.,)
Plaintiff,)
vs.)
Todd Draper, et al.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
2011 OCT 19 P 3: 56
C.A. No.: 2010-CP-23-10468

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
WICKENSIMMER

**AFFIDAVIT IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

Personally appeared before me, the undersigned authority, Todd M. Draper, who, after having been duly sworn, deposes and says:

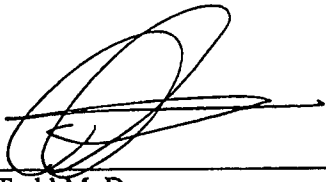
1. That the Affidavit of Lisa M. Byers notarized on September 21, 2011 is inaccurate in that numerous expenses claimed by the Plaintiff are false and inaccurate, including property inspection fees.

2. That upon information and belief, the Plaintiff is not the owner of the Note or the owner of the debt upon which the foreclosure has been based, and in fact the affiant has been informed by the Plaintiff that Freddie Mac is the owner of the debt. See Exhibit 1 hereto.

3. That through Interrogatories and a Request for Production the affiant requested the Plaintiff to produce the original Note and original Mortgage for the purposes of inspection to see who actually owns the debt and who has standing to bring the foreclosure action; the Plaintiff has failed to make the original Note and/or original Mortgage available for inspection in order that the true owner of the debt may be verified.

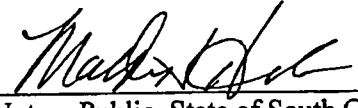
4. That the affiant is informed and believes that the Plaintiff does not have standing to bring this foreclosure action.

Further affiant sayeth not.



Todd M. Draper

Sworn to and subscribed before me this 19th day of October, 2011.



Notary Public, State of South Carolina
My commission expires: _____

Bank of America

Home Loans

Customer Service Department, CA6-919-01-41
450 American Street
Simi Valley, CA 93065-6298

March 22, 2010

Todd Michael Draper
P.O. Box 201
Greer, SC 29652

Re: Bank of America Home Loan account ending: 1061
Property Address: 106 Couples Ct, Greenville, SC 29609

Dear Mr. Draper:

Thank you for contacting our office with your correspondence dated February 9, 2010. Although your correspondence purports to serve as a "qualified written request," the information requested in your correspondence goes well beyond that which is available through a qualified written request made under 12 U.S.C. §2605(B) ("QWR").

As you may be aware, a QWR is written correspondence, which includes a statement of specific reasons why the borrower believes that their account is in error and which provides sufficient detail to allow the servicer of the loan to review the borrower's account to determine whether there were errors made in connection with the account, and to either make appropriate corrections where errors were made, or to explain to the borrower why the servicer believes the account is accurate. A QWR is not a vehicle for obtaining information regarding the lender's general business practices, its relationship with government sponsored entities, its mortgage servicing and accounting computer systems, its trade secrets or any other proprietary information, nor can it be used to support a phishing expedition for documents that may support a claim or as a pretext designed to force the lender to accept a modification request rather than incur the expense of responding. This is especially true where, as is the case with your "QWR", the only reason given for the request are vague references to your general concerns regarding "potential fraudulent and deceptive practices," without reference to a single specific issue of concern regarding the loan.

Although your "QWR" is overly broad, unduly burdensome and not in conformity with 12 U.S.C. §2605, we did review our file documents in an attempt to obtain information responsive to those of your inquiries which were consistent with 12 U.S.C. §2605. The results of this review of your loan files are set forth below and in the documents attached hereto. Below, I have provided a summary of the subject loan. Please note that all other requests are declined as they seek documentation that goes beyond that which is available through a Qualified Written Request made under 12 U.S.C. §2605(B).

Your allegations of violations of the Real Estate Settlement Procedure Act ("RESPA") and/or Truth-in-Lending Act ("TILA") are very vague. Bank of America is unable to research these allegations until such time that further clarification is provided. Signed copies of the available documents pertaining to the origination of the subject loan will be sent under a separate cover. The signatures on these documents confirm the borrowers received, read, understood, and agreed to the terms and conditions contained within each document. If the borrowers had concerns or were not in agreement to the terms and conditions, they were under no obligation to sign the loan documents or continue the loan process.

Letter to Todd Michael Draper
March 22, 2010
Page Two (2)

As you know, Countrywide/Bank of America did not originate the subject loan (please refer to the loan documents provided under separate cover). As the purchaser of a closed loan, Countrywide/Bank of America is not responsible for any misunderstanding or lack of communication between you and the originating entity.

A *Loan Transaction History Statement* was also mailed to you under separate cover that provided a detailed outline of transactions associated with this loan. Please note that the statement provided pertinent information on payments received, tax and insurance payments disbursed, funds in the suspense/unapplied funds balance, and late fees assessed and paid. The *Loan Transaction History Statement* is designed to be user-friendly and there are no codes or terms used that require specific definitions. Additionally, I have enclosed a breakdown of fees assessed to the subject loan since inception. Please note that paid late charges will be reported to the IRS as interest paid.

Our records reflect that the subject loan is presently due for the August 2008 through March 2010 installments, Please contact the Home retention Department at 1.800.669.0102 for the amount to bring the account current.

Please refer to the documents mailed under separate cover for details regarding the assessment of late charges, forced placed insurance and inspection fees.

The owner of this loan is Freddie Mac, whose address is 8609 Westwood Center, Vienna, VA 22183. Bank of America services the loan on behalf of the owner.

For information regarding the Mortgage and Assignments, you may contact Mortgage Electronic Registration Systems, Inc. ("MERS") directly at 1.888.679.6377, or you may visit the MERS website at www.mers-servicerid.org. Please see the *Mortgage* for details.

Annual escrow statements are issued to customers as scheduled. Copies of the issued statements are not retained; however, the information is available in electronic format for associates to discuss with our customers during customer service telephone or correspondence inquiries, or when customers view their loan information on the website. Below, I have provided a breakdown of the most recent escrow analysis completed on April 27, 2009, effective with your June 1, 2009, installment:

<u>Description</u>	<u>Amount</u>
Principle and Interest	\$1,185.96
County Tax Payment	\$419.29
Homeowners Insurance Payment	\$38.24
Mortgage Insurance Payment	\$94.88
Projected Shortage	\$133.95
Reserve Requirement (16.6%)	<u>\$75.95</u>
Total	\$1,948.27

This confirms that force placed insurance has not been purchased in association with this loan.

Letter to Todd Michael Draper
March 22, 2010
Page Three (3)

In the event you would like Bank of America to review your loan for the possibility of payment assistance, the following items are required:

- Evidence of income (2 most recent pay stubs)
- Bank statements (2 most recent)
- Last year's tax returns
- Monthly expenditure information
- Letter of hardship

Please forward the required information to our Home Retention Division by fax at 1.866.619.4249. You may also contact our Home Retention Division directly at 1.800.262.4218. It is important for you to know that assistance is not guaranteed and is dependent on several factors, but Bank of America will look at every option in an effort to assist you.

Please note that a credit block was placed while the issues in your letter were addressed. However, as of the date of this letter, the block has been removed. Further as a member of the credit granting community, Bank of America, like most creditors, relies on the accuracy and validity of the information obtained from the various reporting agencies. Therefore, we will not remove the negative credit reporting from your credit file.

Please be advised that, in providing the above response, Bank of America is not limiting or waiving any rights or remedies it may now or hereafter have, whether arising under your loan documents, at law or in equity, all of which rights and remedies are expressly reserved.

In the event you require further assistance, please contact our Customer Service Department at 1.800.669.6607, Monday to Friday, 6 a.m. to 6 p.m., Pacific. Thank you for this opportunity to be of service.

Sincerely,

Customer Service

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
BAC Home Loan Servicing, LP,)
f/k/a Countrywide Home Loans)
Servicing, L.P.,)
)
Plaintiff,)
vs.)
)
Todd Draper, et al.,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10468

**AFFIDAVIT IN OPPOSITION TO
MOTION FOR SUMMARY JUDGMENT**

Personally appeared before me, the undersigned authority, Matthew H. Henrikson, who,
after having been duly sworn, deposes and says:

1. That the Affidavit of Lisa M. Byers notarized on September 21, 2011 is
inaccurate in that numerous expenses claimed by the Plaintiff are false and inaccurate, including
claimed property inspection fees- several "lawn re-cuts" and "occupied home inspections" are
claimed to have occurred after 9/1/09 and none occurred as alleged in the affidavit.

2. That he moved in on 9/1/09 and has occupied the property pursuant to the Private
Contract with Todd Draper since then and that no such "lawn re-cuts" or "occupied home
inspections" occurred after that date as alleged in the Byers affidavit.

3. That if those inaccuracies are present in BANA's business records, then the entire
record is suspect as to whether they refer to the subject property or some other property.

4. That upon information and belief, Lisa M. Byers has no personal knowledge of
the facts which she alleges in the affidavit (Exhibit A) and is simply relying on inaccurate
business records.

5. That upon information and belief, the Plaintiff is not the owner of the Note or the owner of the debt upon which the foreclosure has been based, and in fact the affiant has been informed by the Plaintiff that Freddie Mac is the owner of the debt. See Exhibit 1 to Draper's Affidavit.

6. That through Interrogatories and a Request for Production the affiant requested the Plaintiff to produce the original Note and original Mortgage for the purposes of inspection to see who actually owns the debt and who has standing to bring the foreclosure action; the Plaintiff responded but has failed and continues to fail to make the original Note and/or original Mortgage available for inspection in order that the true owner of the debt may be verified.

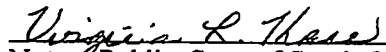
7. That the affiant is informed and believes that the Plaintiff does not have standing to bring this foreclosure action.

8. That more than a scintilla of evidence exists that the Byers affidavit contains inaccurate allegations and that the Plaintiff lacks standing to maintain this foreclosure action.

Further affiant sayeth not.


Matthew H. Henrikson

Sworn to and subscribed before me this 19th day of October, 2011.


Notary Public, State of South Carolina
My commission expires: _____

Virginia L. Kane
Notary Public, South Carolina
My commission expires: 5/19/2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
BAC Home Loan Servicing, LP,)
f/k/a Countrywide Home Loans)
Servicing, L.P.,)
)
Plaintiff,)
vs.)
)
Todd Draper, et al.,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10468

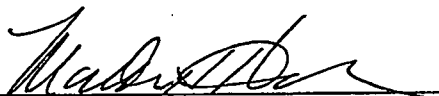
MOTION FOR SUMMARY JUDGEMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
OCT 19 2 34 PM

2011 OCT 19 P 3:46

To: All parties and counsel of record

PLEASE TAKE NOTICE that Defendant Henrikson, at such time and place as counsel may be heard, will move the Court for an Order granting Summary Judgment in this matter. This motion is based on the fact that the Plaintiff is not the owner of the alleged debt upon which the foreclosure action is based and that it lacks standing to bring the action. Also, the Plaintiff has failed to produce the original Note and Mortgage as part of the foreclosure action as required by South Carolina Code 36-3-505, et seq. This motion is also based on the Affidavits of Todd M. Draper and Matthew H. Henrikson filed in Opposition to Plaintiff's Motion for Summary Judgment and served on counsel, and will be further based on such other affidavits or memoranda as may be filed with the Court.


Matthew H. Henrikson
P.O. Box 26554
Greenville, South Carolina 29616
(864) 672-7106

October 19, 2011
Greenville, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
BAC Home Loan Servicing, LP,)
f/k/a Countrywide Home Loans)
Servicing, L.P.,)
)
Plaintiff,)
vs.)
)
Todd Draper, et al.,)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10468

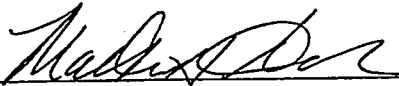
**MOTION TO RECONSIDER
ORDER OF REFERENCE**

To: All parties and counsel of record

PLEASE TAKE NOTICE that Defendant Henrikson, at such time and place as counsel may be heard, will move the Court for an Order reconsidering the automatic reference of this matter to the Master in Equity. This Defendant raised a legal counterclaim to the foreclosure in the nature of a declaratory judgment action arising out of this Defendant's Private Contract filed on record prior to the filing of the foreclosure action and requested a jury trial on the legal counterclaim. Moreover, on the very day that this Defendant received Plaintiff's motion for reference, he filed an objection to the reference which was not considered prior to the reference, or if it was, the reference was improvidently granted because of the legal issue involved. This Defendant timely filed an objection to the reference, and referral without consideration of the objection is a violation of due process. This motion will be further based on such affidavits or memoranda as may be filed with the Court.

FILED-CLERK OF COURT
GREENVILLE, S.C.
WITH R. WICKESHAFF

2011 OCT 19 PM 3:07



Matthew H. Henrikson
P.O. Box 26554
Greenville, South Carolina 29616
(864) 672-7106

October 19, 2011
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

CERTIFICATE OF COUNSEL

Pursuant to SCACR 210 (g), counsel for Appellants hereby certifies that the
Amended Record on Appeal contains all of the material proposed to be included by the
parties and not any other material.



Matthew H. Henrikson

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

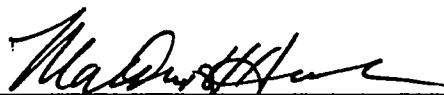
Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

PROOF OF SERVICE

Counsel for the Appellants, hereby certifies that one copy of the Amended Record
on Appeal has been served on counsel for the Respondent via regular U.S. mail, postage
prepaid, on this 21st day of September, 2012, addressed as follows:

Dean A. Hayes, Esq.
Korn Law Firm
P.O. Box 11264
Columbia, SC 29211


Matthew H. Henrikson

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

Todd Draper, Mortgage Electronic Registration
Systems, Inc., acting, Shawn Kephart, Matthew H.
Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

FINAL BRIEF OF APPELLANTS

Matthew H. Henrikson
Post Office Box 26554
Greenville, South Carolina 29616
864-672-7106
Attorney for Appellants

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Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009).	2
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Northwestern Bank v. Neal, 271 S.C. 544, 546–47, 248 S.E.2d 585, 586 (1987).....	5
Richbourg’s Shoppers Fair, Inc. v. Stone, 249 S.C. 278, 153 S.E.2d 895 (1967).....	4
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STATEMENT OF ISSUES ON APPEAL

1. SHOULD THE TRIAL COURT HAVE GRANTED THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT ?

STATEMENT OF THE CASE

This is a mortgage foreclosure action arising out a Note and Mortgage executed in August 2005, by Todd Draper for residential property in Greenville County, South Carolina. The lower court, Greenville County Master in Equity granted Respondent's motion for summary judgment. The Appellant Draper admits that he is in default on the Note, but denies that Respondent has the right to prosecute the foreclosure action and asserts that Respondent failed to present any evidence which would entitle it to summary judgment.

FACTS

On August 25, 2005, Todd Draper (Draper) executed a Note to America's Wholesale Lender in the amount of \$245,000.00 which was secured by a Mortgage given on the same date by Draper to Mortgage Electronic Registrations Systems, Inc. (MERS). The Mortgage was recorded in the Greenville County Register of Deeds office at Book 4424 at Page 1799 on August 30, 2005. BAC Home Loans Servicing, L.P., f/k/a Countrywide Home Loans Servicing, L.P. (BAC) filed suit on December 30, 2010 against Appellants and others with an alleged interest in the property seeking a deficiency judgment. Appellant Draper filed an Answer on March 7, 2011. On April 8, 2011 the case was referred to the Master in Equity for Greenville County. Thereafter the Master signed an Order changing the Plaintiff from BAC to Bank of America, N.A.

(Respondent). After some written discovery between the parties respondent filed a motion for summary judgment (R.p. 108) based on an affidavit of Lisa M. Byers, an employee of Bank of America, N.A. (R.p. 110). In documents produced in discovery Respondent disclosed that it was the Respondent was only a servicer of the loan which was owned by another entity, Freddie Mac. The Appellants filed and served a motion for Summary Judgment (R.p. 123) and affidavits in opposition to the Respondent's motion on October 19, 2011 (R.p. 116 and R.p. 121). The motions were heard by the Master on October 24, 2011 and the Master granted the Respondent's motion and Denied Appellants' motion in an Order dated January 24, 2012. The Appellants filed their Notice of Intent to Appeal on February 28, 2012.

STANDARD OF REVIEW

Summary Judgment

Summary judgment is appropriate only where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

Mortgage Foreclosures

A mortgage foreclosure is an action in equity. The appellate scope of review of a case heard by a master who enters a final judgment is to determine facts in accordance with the appellate court's view of the preponderance of the evidence. *E. Sav. Bank, FSB v. Sanders*, 373 S.C. 349, 354, 644 S.E.2d 802, 805 (2007) (quoting *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)).

Arguments

- I. THE TRIAL COURT ERRED IN GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE RESPONDENT LACKS STANDING TO SUE, FAILED TO OFFER ANY EVIDENCE THAT IT WAS THE OWNER OR HOLDER OF THE SUBJECT MORTGAGE NOTE, AND ITS AFFIDAVIT FOR DAMAGES WAS CONTRADICTED BY OPPOSING AFFIDAVITS THEREBY CREATING A QUESTION OF FACT.

A. Lack of Standing to Sue

The Appellants contend that the lower court erred in granting Respondents' motion for summary judgment because the Respondent failed to offer any evidence that it was the owner of the subject Note or Mortgage and accordingly it lacked standing to bring the foreclosure action. and because the affidavit upon which the Respondent's motion was based was controverted by affidavits in opposition to the motion. (R.p. 116 and R.p. 121). Respondent is not the real party in interest and as such lacks standing to

maintain the foreclosure action. Standing to sue is a fundamental requirement in instituting an action. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). No justiciable controversy is presented unless the plaintiff has standing to maintain the action. *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). To have standing, a party must have an interest in the subject matter of the action. *Furman University v. Livingston*, 244 S.C. 200, 136 S.E.2d 254 (1964). In South Carolina, a party must also be the "real party in interest." S.C.Code of Laws Section 15-5-70 (1976); *Richbourg's Shoppers Fair, Inc. v. Stone*, 249 S.C. 278, 153 S.E.2d 895 (1967); 59 Am.Jur.2d Parties Section 38 at 394 (1971); see S.C.R.CIV.P. 17(a) and 86. "A real party in interest ... ordinarily is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." 67A C.J.S. Parties Section 18 at 673-74 (1978); 59 Am.Jur.2d Parties Section 40 at 397 (1971). *Dockside Ass'n, Inc. v. Detyens, et al.* 285 S.C. 585, 330 S.E. 2d 537 (Ct.App. 1985).

By its own admission, Respondent is not the owner of the loan, debt, or Note. In a letter to Appellant Draper dated March 22, 2010, respondent advises that "[T]he owner of the note is Freddie Mac..... Bank of America services the loan on behalf of the owner." (R.p. 119). As servicer, Respondent merely receives payments from a mortgagor on a loan owned by another entity, it's interest is not real, actual, material, or substantial but rather is only nominal, formal, or technical. Respondent did not offer any evidence of its connection with the subject debt other than to state that it did not own the loan but that it

“serviced” the loan for the actual owner. Its role as servicer or any other connection with the loan or owner of the loan was not developed in the record.

B. Original Note and Mortgage

Even if Respondent has standing to bring the suit, it failed to offer any evidence that it was the holder or owner of the Note and failed to present the original Note at the hearing. Through discovery, Appellants requested that the Respondent produce for inspection the original Note and Mortgage. The originals were never produced (R.p. 87) and were not offered at the hearing or put in the record. Respondent has never asserted that it is in possession of the original Note or Mortgage nor has it ever asserted that the original documents have been lost, destroyed or stolen.

The Note is a negotiable instrument subject to the UCC. At the time of the closing and issuance of the Note and Mortgage, the former version of the UCC, S.C. Code § 36–1–101 (2003) et seq. (“Former Article 3”), was the applicable law and should be applied to this case. Former Article 3 governs commercial paper, see S.C. Code § 36–3–101 (2003), which includes a note secured by a mortgage on real property. *Swindler v. Swindler*, 355 S.C. 245, 251, 584 S.E.2d 438, 441 (Ct.App.2003) (“Thus, even when executed simultaneously with a mortgage, a note remains subject to the provisions of Article 3.” (citing *Northwestern Bank v. Neal*, 271 S.C. 544, 546–47, 248 S.E.2d 5)). Under Former Article 3, “The holder of an instrument whether or not he is the owner may transfer or negotiate it and ... discharge it or enforce payment in his own name.” S.C. Code § 36–3–301 (2003). A holder of a negotiable instrument is defined as “a person

who is in possession of ... an instrument ... drawn, issued, or indorsed to him or to his order or to bearer or in blank.” S.C. Code § 36-1-201(20) (1976).

S.C. Code § 36-3-804 (2003) provides that *the owner* of an instrument which is lost destroyed or stolen may maintain an action “in his own name” with proof of ownership and facts which prevent the production of the instrument and its terms. The Official Comment to that Section observes that such an owner is not a holder because he is not in “possession of the paper”. Logically, as the General Assembly clearly intended, in order to be a holder of a Note, one must be in possession of the *original* paper. In the absence of the production of the original note by a holder, then the owner of the Note must proceed as required by 36-3-804 (2003) by affirmatively ownership and right to recover.

Respondent offered no evidence that it was either the owner of the Note, the holder of the Note, in possession the Note, or that the Note had been lost, destroyed or damaged. The affidavit of Respondent employee Lisa M. Byers (R.p. 110) makes no claim that Respondent owns the Note, holds the Note, is in possession of the Note or is otherwise connected to the Note in any way except that Respondent maintains records from which the affiant can determine what is owed at a particular point in time on the subject loan. The record is devoid of any evidence that Respondent is the owner or holder of the Note and granting summary judgment was in error.

C. Opposing Affidavits

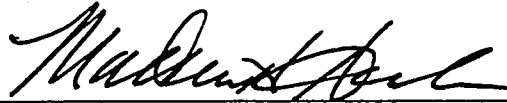
Appellants submitted affidavits in opposition to Respondent’s motion for summary judgment and the Byers affidavit in particular. Admittedly, the inaccuracies

identified in the Byers affidavit are not related to the Note but rather are related to charges for expenses claimed to have been incurred by Respondent. Respondent claims numerous expenses for "occupied inspection" and "lawn cuts". (R.p. 113) The affidavits specifically refute that those events occurred thereby creating a question of fact as to the accuracy of the Byers affidavit, which was the sole factual basis upon which the amount claimed by respondent was made. The existence of factual inaccuracies, however minor, related to expenses claimed by Respondent cast doubt on the entirety of the affidavit, which was clearly sworn to by someone with no personal knowledge of the actual facts alleged.

With no live witnesses to be cross examined, and sole reliance on the factual assertions in an affidavit to prove its damages case, Respondent should be held to a strict requirement of accuracy and *any* questions of fact as were created by the opposing affidavits should defeat summary judgment as a scintilla of evidence as to the inaccuracy of the affidavit and thus Respondent's prima facie case.

CONCLUSION

For the reasons set forth above, this Court should reverse the lower court's grant of summary judgment.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Greenville County
Charles B. Simmons, Jr., Master in Equity

Docket No.: 2010-CP-23-10468

Bank of America, N.A. Respondent,

v.

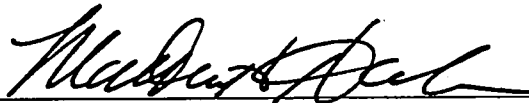
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Henrikson, The United States of America, by and
Through its Agency, South Carolina Department of
Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

September 27, 2012



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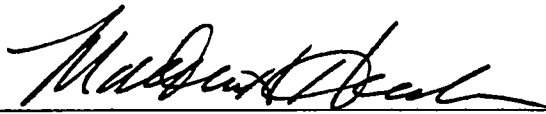
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Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

PROOF OF SERVICE

Counsel for the Appellants, hereby certifies that a copy of the Final Brief of
Appellants has been served on all parties of record by regular U.S. mail, postage prepaid,
on this 27th day of September, 2012, addressed as follows:

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A handwritten signature in black ink, appearing to read "Matthew H. Henrikson", written over a horizontal line.

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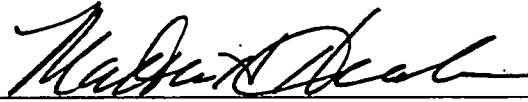
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Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

PROOF OF SERVICE

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Appellants has been served on all parties of record by regular U.S. mail, postage prepaid,
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master-in-Equity

Case No. 2010-CP-23-10468

Bank of America, N.A.,

Respondent,

v.

Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Mathew H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.,

of whom Todd Draper and Matthew H. Henrikson are

Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE ON APPEAL

Did the lower court properly grant the Respondent's motion for summary judgment because the Respondent, as the mortgage servicer, is the real party in interest with standing to maintain a foreclosure action?

STATEMENT OF THE CASE

On December 30, 2010, the Respondent initiated a foreclosure of its mortgage on the property located in Greenville County. (Am.R. p. 7). The Summons and Complaint listed BAC Home Loan Servicing, LP f/k/a Countrywide Home Loans Servicing, LP, as the plaintiff. (Am.R. pp. 5, 7). Following the service of process on all the parties involved and the filing of the responsive pleadings by the defendants - Todd Draper, Matthew H. Henrikson, Shawn Kephart, South Carolina Department of Revenue, the United States of America - and the Respondent, the Respondent moved for order referring the case to master-in-equity for final adjudication. (Am.R. p. 3). The circuit court referred the case to the Honorable Charles B. Simmons, Jr., Master-in-Equity for Greenville County. (Id.).

In late August 2011, the attorney for the Respondent moved for amendment of the caption to correctly reflect the name of the plaintiff as Bank of America, N.A.; the Respondent was the surviving entity of the merger with BAC Home Loan Servicing, LP. (Am.R. p. 2). The master-in-equity granted the motion and the caption was amended accordingly. (Id.).

On October 3, 2011, after completion of discovery, the Respondent moved for summary judgment on its cause of action on the grounds that no genuine issue existed as to the fact that it held note and mortgage and that the Appellant Todd Draper (Draper) was in arrears in payments on the note, owing the amount indicated in the Affidavit of Debt. (Am.R. pp. 4, 108-13). On October 19, 2011, the Appellant Mathew H. Henrikson (Henrikson) filed a motion for summary

judgment arguing that the Respondent did not own the debt and therefore lacked standing. (Am.R. p. 123).

Judge Simmons heard both motions on October 24, 2011. (Am.R. pp. 91-103). The Respondent's motion was granted while Henrikson's was denied. (Am.R. p. 99, line 6-p. 101, lines 23-5). The Order Granting Plaintiff's Motion for Summary Judgment is now being appealed to this Court.

STATEMENT OF THE FACTS

On August 25, 2005, Draper executed and delivered to America's Wholesale Lender, a division of Countrywide Home Loans, Inc., a promissory note for \$245,000.00 (Note). (Am.R. pp. 24-7). In order to secure the payment of the Note, Draper delivered to Mortgage Electronic Registration Systems, Inc., acting as nominee for America's Wholesale Lender, a mortgage encumbering a piece of real estate located at 106 Couples Court in Greenville, South Carolina (Mortgage). (Am.R. pp. 28-46). The Mortgage was recorded in Book 4424 at Page 1799 of the Greenville County Register of Deeds. (Am.R. p. 8).

The loan extended to Draper by America's Wholesale Lender in exchange for the Note and Mortgage, was funded by Freddie Mac, a secondary market investor. The Note bears an in-blank indorsement made by Countrywide Home Loans, Inc. (CHL), a New York corporation doing business as America's Wholesale Lender. (Am.R. p. 27).

Before acquisition of CHL by the Respondent, Draper's loan had been serviced by CHL's wholly owned subsidiary, Countrywide Home Loans Servicing, LP. Once the Respondent acquired CHL, Countrywide Home Loans Servicing, LP was renamed BAC Home Loans Servicing, LP, and, on July 1, 2011, merged into the Respondent. (Am.R. p. 2).

On December 29, 2010, Mortgage Electronic Registration Systems, Inc., acting as nominee for America's Wholesale Lender, transferred its rights under the Mortgage to BAC Home Loans Servicing, LP, by virtue of the assignment recorded on January 4, 2011 in Book 5106 at Page 4766. (Am.R. p. 8). Because of the merger with BAC Home Loans Servicing, LP, the Respondent became both the mortgagee and the servicer of the loan.

In August 2008, Draper stopped making monthly payments as scheduled under the Note and Mortgage. (Am.R. p. 54). Because Draper failed to cure the default, the Respondent chose to accelerate the debt and commenced the foreclosure action. (Am.R. p. 5).

ARGUMENT

On appeal from summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure, the Court reviews the trial court's decision de novo. Rule 56, SCRPC; see Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999). "Summary judgment is properly upheld when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Id. (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)); Rule 56(c), SCRPC. In determining whether any issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Id. at 95, 518 S.E.2d at 610, 611 (citing Summer v. Carpenter, 328 S.C. 36, 492 S.E.2d 55 (1997)). "To justify departure from the course of the trial of an issue of fact and the award of summary judgment, the court must be convinced that the issue is not genuine but feigned and that there is in truth nothing to be tried. . . . The fact that there is a factual dispute is not enough to preclude a summary judgment." Saluda Motor Lines, Inc. v. Crouch, 300 S.C. 43, 46, 386 S.E.2d 290, 292 (Ct. App. 1989) (quoting 73 AM. JUR. 2D Summary Judgment § 27). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is

only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” Hancock v. Mid-South Management Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

I. THE MASTER-IN-EQUITY PROPERLY GRANTED THE RESPONDENT’S MOTION FOR SUMMARY JUDGMENT BECAUSE THERE WAS NO TRIABLE ISSUE OF FACT REGARDING THE RESPONDENT’S STATUS AS THE SERVICER OF THE LOAN, AND BECAUSE, AS A MATTER OF LAW, THE SERVICER HAD THE RIGHT TO PURSUE THE FORECLOSURE ACTION IN ITS OWN NAME.

There is no genuine issue as to the fact that the Respondent is the servicer of the mortgage loan at issue in this case. Draper admitted in his response to the Respondent’s requests for admissions, that the payment history provided by the Respondent correctly reflected the status of his account. (Am.R. pp. 59-60). This admission constitutes a tacit acknowledgement on his part that the Respondent serviced the loan. Furthermore, the Appellants rely in their argument on the Respondent’s answer to Draper’s Qualified Written Request under 12 U.S.C. § 2605(e)(1)(B). (Am.R. p. 118-20). The Respondent’s letter to Draper states that it “services the loan on behalf of the owner.” (Am.R. p. 119). Accordingly, the fact that the Respondent is the servicer of Draper’s loan on behalf of Freddie Mac is beyond dispute in this case.

A. The Respondent, as the Servicer of the Mortgage Loan, is the Real Party in Interest under Rule 17(a), SCRC¹, and has Standing to Pursue the Foreclosure Action.

¹ Rule 17(a) of the South Carolina Rules of Civil Procedure provides that [e]very action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the State. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

Rule 17(a), SCRC¹.

Neither this Court, nor the South Carolina Supreme Court, has precisely addressed the issue of a mortgage servicer's status as the real party in interest under Rule 17 of the South Carolina Rules of Civil Procedure, and whether it is entitled to prosecute foreclosure actions in its own name for the ultimate benefit of the secondary market investors, such as Freddie Mac or Fannie Mae. However, the South Carolina Supreme Court has implicitly acknowledged servicers' role in foreclosures of mortgages securing loans owned by other entities. See, e.g., In re Mortg. Foreclosure Actions, 396 S.C. 209, 720 S.E.2d 908 (2011) (discussing implications of the Home Affordable Modification Program for mortgage foreclosures and a need for addressing the breakdown in communications between the lender-servicers and the debtors; defining servicer – “any party acting on behalf of the owner and holder of the note and mortgage for the purpose of receiving payments, dealing with the mortgagor, or administering the loan evidenced by the note and mortgage, and any party seeking foreclosure of the subject mortgage, or otherwise acting as the agent of the owner and holder of the note in connection with the loan or the foreclosure of the note and mortgage,” as “mortgagee” for the purposes of the order).

According to Black's Law Dictionary, mortgage servicing involves “administration of a mortgage loan, including the collection of payments, release of liens, and payment of property insurance and taxes [and is] usually performed by the lender or the lender's agent, for a fee.” Black's Law Dictionary 1034 (8th ed. 2004). Oftentimes, servicers “are responsible for handling defaulted loans, including prosecuting foreclosures and attempting to mitigate investors' losses.” Adam J. Levitin & Tara Twomey, Mortgage Servicing, 28 Yale J. on Reg. 1, 23 (2011).

Status of a mortgage servicer as the real party in interest has been thoroughly discussed by courts in the bankruptcy context. In In re Woodberry, 383 B.R. 373 (Bankr. D.S.C. 2008), the

United States Bankruptcy Court for the District of South Carolina surveyed the law of other jurisdictions, concluding that they “tend to favor the view that a loan servicer is a ‘party in interest’ and a ‘real party in interest.’” Id. at 379. According to the court, the general rule seems to be “that a mortgage servicer has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage.” Id. The court cited, inter alia, Bankers Trust v. 236 Beltway Inv., 865 F. Supp. 1186, 1191 (E.D. Va. 1994), which held that a servicer has standing to foreclose even if it does not hold the mortgage, and a 2002 decision of the United States Court of Appeals for the Eleventh Circuit, concluding that a “loan servicer is a ‘real party in interest’ with standing to conduct, through licensed counsel, the legal affairs of the investor relating to the debt that it services.” Greer v. O’Dell, 305 F.3d 1297, 1299 (11th Cir. 2002). More recently, the United States Bankruptcy Court for the District of South Carolina again expressed an opinion that “there is general view in this jurisdiction and others, that a loan servicer is a ‘party in interest’ and has standing” In re Neals, 459 B.R. 612, 617 (Bankr. D.S.C. 2011).

The Bankruptcy Court for the Eastern District of Pennsylvania in In re Tainan, 48 B.R. 250 (Bankr. E.D. Pa. 1985), addressed the servicer’s standing to seek relief from a bankruptcy stay where the mortgage sought to be foreclosed was owned by Fannie Mae. The court concluded that finding the servicer to be the real party in interest accords with the purpose of Rule 17(a) of the Federal Rules of Civil Procedure, that is, “to protect individuals from the harassment of suits by persons who do not have the power to make final and binding decisions concerning prosecution, compromise and settlement.” Id. at 252. Thus, according to the court, the purpose of the rule would imply that an action did not have to be brought in the name of the entity that would ultimately benefit from the recovery, such as the owner of the loan, but rather by the entity that is entitled to enforce the right. Id. (citing 6 Wright & Miller, Federal Practice

and Procedure § 1543 (1971 2d reprint 1984)). The discussion of purpose of the federal rule is relevant in the instant case because South Carolina adopted federal rules and the language of the Rule 17(a), SCRCP, mirrors the language of its federal counterpart. See, e.g., Hagy v. Pruitt, 339 S.C. 425, 430 n.6, 529 S.E.2d 714, 717 n.6 (2000).

The Seventh Circuit's opinion in CWCapital Asset Mgmt., LLC v. Chi. Props., LLC, 610 F.3d 497 (7th Cir. 2010), illustrates the proposition that servicers of loans owned by other entities can pursue actions in their own name. CWCapital involved a mortgage loan bought from its originator, pooled with a number of other loans and then securitized. Id. The loan was owned by a securitization trust, whose trustee, Bank of America, N.A., delegated servicing to CWCapital Asset Management, LLC. Id. Judge Posner, writing for the court, held that the "servicer is much like an assignee for collection, who must render to the assignor the money collected by the assignee's suit on his behalf (minus the assignee's fee) but can sue in his own name without violating Rule 17(a)." Id. at 500-01 (citing Sprint Communications Co. v. APCC Services, Inc., 554 U.S. 269, 128 S. Ct. 2531 (2008)). The court found that there could be no doubt about the servicer's standing, as it had a personal stake in the outcome of the case because it received a percentage of the proceeds of a defaulted loan that it serviced. Id. According to Judge Posner, it is

the servicer, under the [Pooling and Servicing Agreement], who has the whip hand; he is the lawyer and the client, and the trustee's duty, when the servicer is carrying out his delegated duties, is to provide support. The securitization trust holds merely the bare legal title; the Pooling and Servicing Agreement delegates what is effectively equitable ownership of the claim . . . to the servicer.

Id. at 501.

Though the instant case does not involve a securitized mortgage loan, the Seventh Circuit's analysis of the relationship of the servicer and the trustee appears to be highly relevant.

The relationship of Freddie Mac, as the owner of the loan, and the Respondent, as its servicer, is analogous to the one of CWCapital Asset Management, LLC and Bank of America, N.A. in the CWCapital case. Thus, even though Freddie Mac owns the subject loan, the Respondent has, in the Seventh Circuit's words, an "equitable ownership of the claim," and, therefore, standing to pursue it.

- B. The Issue of the Original Note was not Genuine Because the Note has Remained with a Single Entity Since the Origination of the Loan and the Respondent had a Right, Under the Rules of Evidence, to Rely on its Photocopy, Thus the Grant of Summary Judgment was Proper.

The South Carolina Commercial Code provides that in order to collect on the note one has to be either the holder of the note, a nonholder in possession of the note, or a person in possession who nonetheless is entitled to enforce it. S.C. Code Ann. § 36-3-301 (1976). Respondent is the holder of the note. (Am.R. p. 10). Therefore, it had the right to prosecute the foreclosure of the mortgage securing its payment.

Though the Respondent did not produce the original of the Note, the fact of its possessing it cannot be genuinely questioned. The Respondent presented a copy of the Note to Draper; it was attached to the plaintiff's requests for admissions. (Am.R. pp. 22-7). The Respondent asked Draper to admit or deny that the attached copy was an accurate copy of the Note. (Am.R. p. 23). Draper responded that he was unable to admit or deny without seeing the original. (Am.R. pp. 59). The Appellants maintain that it is "important to have the original to look at because that's the only way that you can make sure where this has been assigned, where the endorsements are, who actually owns the note." (Am.R. p. 97, lines 17-20). According to the Appellants, the importance of the original lies in the fact that a copy "freezes that note in time the copy is made." (Am.R. p. 97, line 16).

This argument is hardly genuine in light of the fact that Draper delivered the Note to America's Wholesale Lender, a division of Countrywide Home Loans, Inc., which was then acquired by the Respondent. (Am.R. pp. 2, 24-7). The Note remained with one entity, while only the entity's name and ownership changed. (Am.R. p. 2). More importantly, the Appellants' argument has no merit because producing the original of the Note would establish the Respondent's right to enforce the Note notwithstanding the type and number of indorsements. Production of the original would be the ultimate proof of possession, thus allowing the Respondent to enforce the Note pursuant to S.C. Code Ann. § 36-3-301 (1976), as the holder of the Note – if indorsed in blank, or, if indorsed to Freddie Mac or other entity, as the nonholder in possession.

Under the South Carolina Rules of Evidence, the Respondent had a right to rely on a photocopy of the note in pursuing this action. According to Rule 1001(4) of the South Carolina Rules of Evidence, a photocopy of a document constitutes its duplicate, which, pursuant to Rule 1003 "is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Rule 1003, SCRE. The Appellants, however, did not question the authenticity of the Note itself, the copy of which was presented to them with the requests for admission. (Am.R. pp. 22-7). The Appellants merely state in their response, that they would need to see the original in order to "accurately admit that the Exhibit 'A' [- a copy of the note], is a true and accurate copy." (Am.R. pp. 59, 75).

The second condition of non-admissibility of duplicates under Rule 1003 is also not met in this case.

Unfairness requires some infirmity of the duplicate itself. [For instance u]se of an incomplete copy may be unfair because it may omit a vital part of the original or

may change the meaning of the original because the copied portion is taken out of context. However, minor omissions that do not really affect the contents of the original are usually not unfair. The determination whether use of the duplicate is unfair is for the trial court, and its decision will not be reversed except for abuse of discretion.

Danny R. Collins, South Carolina Evidence, 415 (2d ed. 2000) (citations omitted). In the case at bar, there were no circumstances which would render admission of the duplicate unfair to the Appellants, nor did the Appellants indicate any.

According to the South Carolina Supreme Court, the issue raised by a party opposing motion for summary judgment must be genuine. Saluda Motor Lines, 300 S.C at 45, 386 S.E.2d at 292 (citing Witt v. Poole, 182 S.C. 110, 188 S.E. 496 (1937)). "It is not sufficient that evidence create a farfetched inference. . . . Either motion should be granted or denied based on the whole of the evidence, and in making the determination the judge should not select any one morsel of testimony and attach significance to it unless it be genuine or reasonable." Id. In light of the Appellants' admissions that Draper was in default in payments and the presented payment history was correct, and the fact that the Respondent is the assignee of the mortgage securing the payment of the loan, the grant of summary judgment was proper.

Furthermore, Appellants did not submit any admissible evidence that Respondent did not have the right to maintain the action. In opposition to Respondent's motion for summary judgment, Appellants submitted two affidavits - an affidavit by the borrower, Todd Draper, and an affidavit by the defendant, Matthew Henrikson. (Am.R. pp. 116-22). In paragraph 2 of Draper's affidavit and in paragraph 5 of Henrikson's affidavit is the statement "[t]hat upon information and belief, the Plaintiff is not the owner of the Note or the owner of the debt upon which the foreclosure has been based, and in fact the affiant has been informed by the Plaintiff that Freddie Mac is the owner of the debt." (Am.R. pp. 116, 122). Paragraph 4 of Draper's

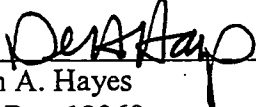
affidavit and in paragraph 7 of Henrikson's affidavit contains the statement "[t]hat the affiant is informed and believes that the Plaintiff does not have standing to bring this foreclosure action." (Id.).

These statements in the affidavits cannot be considered in opposition to Respondent's motion for summary judgment, as "[a]llegations made upon information and belief do not meet the 'personal knowledge' requirements of Rule 56(e)" of the South Carolina Rules of Civil Procedure. Dawkins v. Field, 354 S.C. 58, 68, 580 S.E.2d 433, 438 (2003) (citing Scheinkopf v. Stone, 957 F.2d 1259 (1st Cir. 1991); Fowler v. Southern Bell Tel. & Tel. Co., 343 F.2d 150 (5th Cir. 1965); Seay v. Allstate Ins. Co., 59 N.C. App. 220, 296 S.E.2d 30 (1982)). "[U]ltimate or conclusory facts and conclusions of law, as well as statements made on . . . 'information and belief' cannot be utilized on a summary judgment motion." 10B CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE §2738 (3d ed. 1998). Thus, Appellants have submitted no evidence in opposition to Respondent's right to maintain this action as servicer of the loan and holder of the note.

CONCLUSION

For the reasons stated above, this Court should affirm the Order Granting Summary Judgment.

Respectfully submitted,


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October 5, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Master-in-Equity

Case No. 2010-CP-23-10468

Bank of America, N.A.,

Respondent,

v.

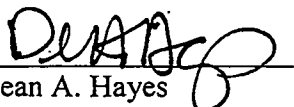
Todd Draper, Mortgage Electronic Registration Systems, Inc., acting as nominee for American Home Mortgage, its successors and assigns, Shawn Kephart, Mathew H. Henrikson, The United States of America, by and through its Agency, the Internal Revenue Service, South Carolina Department of Revenue, Branch Banking and Trust Company, and Linkside III Homeowners Association, Inc.,

of whom Todd Draper and Matthew H. Henrikson are

Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.


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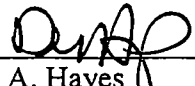
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PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on Appellants, Matthew H. Henrikson and Todd Draper, by depositing a copy of it in the United States Mail, postage prepaid, on October 5, 2012, addressed to their attorney of record, Mathew H. Henrikson, Post Office Box 26554, Greenville, South Carolina 29616.



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Revenue, Branch Banking and Trust Company, and
Linkside III Homeowners Association, Inc.,

Of Whom Todd Draper and Matthew H. Henrikson are Appellants.

FINAL REPLY BRIEF OF APPELLANTS

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SC Court of Appeals

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I. THE RESPONDENT, AS SERVICER AND NON-HOLDER AND NON-OWNER OF THE NOTE, LACKS STANDING TO MAINTAIN THE FORECLOSURE ACTION IN ITS NAME.

Respondent correctly cites that neither this Court nor the South Carolina Supreme Court has precisely addressed the issue of whether a mortgage loan servicer who is not the owner or holder of the note has the right to maintain a foreclosure action which derives from the note that it does not own or hold. Appellants concede that Respondent is the servicer of the subject mortgage and Respondent appears to concede in its Brief (p.4) that is not the owner of the note but rather that Freddie Mac is the owner.

Respondent argues that the Supreme Court has implicitly acknowledged servicers' role in foreclosures by defining "servicer" in the Administrative Order In Re Mortgage Foreclosure Actions, 396 S.C 209. 720 S.E. 2d 908 (2011). (Brief of Respondent p.5) The Order does not define servicer or outline any rights of the servicer in foreclosures, rather it expands the definition of Mortgagee to include parties "acting on behalf of the owner and holder of the note and mortgage" for the purposes of the Administrative Order and actually distinguishes servicers from owners and/or holders of the note.

The only South Carolina Court to make reference to a requirement of note ownership in order to foreclose was this Court in U.S. Bank Trust National Association v. Bell, 385 S.C. 364, 684 S.E. 2d 199 (Ct. App. 2009) when observing that "[G]enerally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt" (385 S.C. at 374). In support of that proposition, the Court in footnote "9" cites cases from Connecticut and New York which suggest that ownership of the instruments controls the ability to maintain an action for foreclosure:

See, e.g., Franklin Credit Mgmt. Corp. v. Nicholas, 73 Conn.App. 830, 812 A.2d 51, 57–58 (2002) ("In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note.") (internal quotations omitted) (internal citations omitted); Campaign v. Barba, 23 A.D.3d 327, 805 N.Y.S.2d 86, 86 (N.Y.App.Div.2005) ("To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment.") ... (S.C. 385 at 380).

Respondent cites several out of state cases, including cases in Bankruptcy Court which are relying on the law of states other than South Carolina. Citation of the holding in In re Tainan, 48 B.R. 250 (Bankr. E.D. Pa. 1985) that a servicer's standing to seek relief from the stay is in accord with Rule 17(a) of the Federal Rules of Civil Procedure is unpersuasive because in the case at bar there was no evidence offered as to what rights, duties, or responsibilities Respondent had in its service/debt owner relationship with Freddie Mac other than to collect monthly checks from the mortgagor. The citation of CWCapital v. Chi. Props., LLC, 610 F.3d 497 (7th Cir. 2010) is likewise unpersuasive in the face of a complete lack of evidence of any servicer agreement in the record.

Respondent's reliance on the two South Carolina Bankruptcy Court cases which it cites, In Re Woodberry, 383 B.R. 373 (Bankr. D.S.C. 2008) and In Re Neals, 459 B.R. 612 (Bankr. D.S.C. 2011) is also misplaced. In each of those cases, the issue involved standing to request relief from a stay, not specifically to prosecute the foreclosure of a mortgage, which presumably would be done in state court pursuant to state law upon the lift of the stay. Moreover, Woodberry and Neals are easily distinguishable from the facts in the case at bar because in each of those cases (Woodberry at 383 B.R. 376 and Neals at 459 B.R. 614) the servicer produced the original note and thus by definition under S.C Code Ann. 36-3-301 (1976) it became at least a non-holder in possession of the note and had the right to collect on the note.

II. FAILURE TO PRODUCE THE ORIGINAL NOTE IS A GENUINE ISSUE OF MATERIAL FACT; A PHOTOCOPY UNDER THE RULES OF EVIDENCE DOES NOT SUFFICE

Respondent admits that it failed to introduce the original note or mortgage into the record and instead offered copies. By simply having a copy of the original note, Respondent argues, its possession of the original cannot be questioned. However, Appellants requested an inspection of the original nearly a year before the summary judgment hearing (R.p. 86) and the response was that Respondent would make

the original available but it never did (R.p. 87). When the original was not even produced into evidence at the hearing, there arose a genuine question as to the authenticity or even existence of the original and accordingly of whom may be in possession or ownership of it as contemplated by South Carolina Rules of Evidence Rule 1003. Rule 1002 states that an original document is required to prove the contents thereof unless otherwise provided for by the Rules of Evidence or statute. There was no evidence that the duplicate accurately reflected the note at the time of its entry into evidence but only as of the time that the duplicate was rendered, which was not reflected on the duplicate and which leaves open the possibilities of any number of subsequent endorsements and transfers of ownership. Moreover, the Appellants' discovery responses did not admit to the authenticity of the duplicate (R.p. 59) and there was no evidence of authenticity of the duplicate offered below other than the bare submission to the Court by counsel.

Even if a duplicate satisfied Rule 1003, the law in South Carolina requires presentation of the original note upon demand for collection or in the alternative, the *owner* of the note must proceed under S.C. Code § 36-3-804 (2003) which provides that the owner of an instrument which is lost destroyed or stolen may maintain an action "in his own name" with proof of ownership and facts which prevent the production of the instrument and its terms. As argued in the Brief of Appellant, the Official Comment to that Section observes that such an owner is not a holder because he is not in "possession of the paper". As the General Assembly clearly intended, in order to be a holder of a note, one must be in possession of the original paper. In the absence of the production of the original note by a holder, then the owner of the note must proceed as required by 36-3-804 (2003) by affirmatively proving ownership and right to recover. Respondent argues that the note stayed with "one entity, while only the entity's name and ownership changed" but if so, where is it, or at least why was the procedure proscribed by S.C. Code § 36-3-804 (2003) not complied with? Ownership has been transferred somehow to Freddie Mac, but without the original note true ownership cannot be verified by the Appellant only guessed at based on information provided by Respondents which amounts to a failure of proof. There is no evidence in the

record nor does Respondent offer any explanation in its Brief as to why without the original note it did not comply with S.C. Code § 36-3-804 (2003).

Lastly, Affidavits of Draper and Henrikson do create a question of fact as to ownership of the note, although that fact seems to have been admitted by Respondent in its Brief. The standing issue is a derivative of the note ownership issue in that it is a legal issue based upon facts which have either been admitted to by Respondent or not yet properly developed. While it is true that an issue does not defeat summary judgment simply because it is a novel issue, Appellants contend that the facts are not developed enough and the record was not developed enough for summary judgment to have been properly granted in this case.

III. CONCLUSION

For the reasons stated above, the Court should reverse the lower Court's grant of summary judgment.



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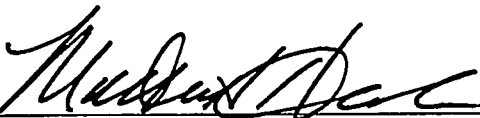
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b),
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