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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Presiding Judge

Appellate Case No. 2024-001098

Taylor Brunson,Respondent,

v.

Taylor Brunson, Respondent, v. Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any other unknown minors or persons under disability or in the military service being a class designated as Richard Roe, Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans, Kara Pitchford, and Autumn Skye Properties, LLC, Defendants,

of whom Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans, and Kara Pitchford are the Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL
CIRCUIT

CASE NO.: 2024CP3200179

Taylor Brunson,

Plaintiff,

ORDER OF REFERENCE

vs.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC,

Defendants.

(22408.1.1)

Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

IT IS HEREBY ORDERED, that this action is referred to The Honorable James O. Spence to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCF, and all matters arising from or reasonably related to such action. The Master in Equity/Special Referee shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity/Special Referee shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to

Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

AND IT IS FURTHER ORDERED that any appeal of an Order will be directed to the South Carolina Supreme Court or South Carolina Court of Appeals.

AND IT IS SO ORDERED.

SIGNATURE TO FOLLOW



Lexington Common Pleas

Case Caption: Taylor Brunson VS Zack L. Evans, deceased, & any children & heirs
at law , defendant, et al
Case Number: 2024CP3200179
Type: Order/Referred to Master or Special Referee

So Ordered

Mona Huggins, Deputy Clerk of Court for Lisa
Comer, Clerk of Court

Electronically signed on 2024-06-25 16:45:22 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
2024CP3200179

Taylor Brunson
Plaintiff,

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC
Defendant(s).

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS
COUNTERCLAIMS**

This matter came before the Court on April 9, 2024 on Plaintiff's Motion to Dismiss Defendant Tina L. Evans, individually and as the Personal Representative of the Estate of Zack L. Evans, and Kara Pitchford's Third, Fourth, Fifth, Sixth, and Seventh Counterclaims. Stephanie Trotter Kellahan, Esquire appeared on behalf of Plaintiff. James Edward Bradley, Esquire appeared on behalf of Tina L. Evans and Kara Pitchford (hereinafter "Answering Defendants"). At the hearing, Defendants agreed to dismiss the Fourth Counterclaim and Seventh Counterclaim. For the reasons stated herein, the Third, Fifth, and Sixth Counterclaims are also dismissed.

BACKGROUND

Zack L. Evans owned real property located at 141 Browning Court (hereinafter the “Property”) until his death on May 24, 2023. (Answer, ¶ 3). Upon Mr. Evans’ death, title to the Property devolved to the Answering Defendants in equal shares. (Id.). Prior to his death, in October 2019, Mr. Evans gave a promissory note for \$17,220.00 and a mortgage secured by the Property to Wesley Martin. (Complaint, ¶ 9)¹. After Mr. Evans’ death, Wesley Martin assigned the note and mortgage to Plaintiff. (Complaint, ¶ 12). Plaintiff instituted this action on January 15, 2024 seeking foreclosure of the mortgage alleging the Answering Defendants failed to pay the required installments. In response, the Answering Defendants filed counterclaims alleging the note and mortgage were entered into in violation of the South Carolina Consumer Protection Code (hereinafter “SCCPC”). The SCCPC counterclaims all allege the Answer Defendants are entitled to statutory damages and attorney’s fees and costs. In response, Plaintiff filed a Motion to Dismiss the SCCPC counterclaims pursuant to Rule 12(b)(6).

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6), SCRPC, is properly granted “when the [moving party] demonstrates the [claimant] has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” Rule 12(b)(6), SCRPC. In reviewing a motion to dismiss, the court must accept as true the well-pleaded facts in the complaint. See Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006) (emphasis added). However, the court will not admit inferences drawn by the claimant from such facts, nor will it admit conclusions of

¹The Court may take judicial notice of a matter in the public record that is not subject to reasonable dispute. See Rule 201(b) SCRE. Judicial notice may be taken at any stage of the proceeding. See Sec’y of State for Defence v. Trimble Navigation Ltd., 484 F.3d 700, 705 (4th Cir. 2007) (“in reviewing the dismissal of a complaint under Rule 12(b)(6) we may properly take judicial notice of matters in public record”).

law. See Fireman's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). This requires the claimant “to plead the ultimate facts which will be proved at trial, not evidence which will be used to prove those facts.” Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987). “Ultimate facts fall somewhere between the verbosity of ‘evidentiary facts’ and the sparsity of ‘legal conclusions.’” Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). Legal conclusions “describe a legal status, condition, or legal offense.” Stroud v. Riddle, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973). A Rule 12(b)(6) motion is “directed to the factual and legal sufficiency of the complaint...” Woodell v. Marion School Dist., 307 S.C. 297, 298, 414 S.E.2d 794 (Ct. App. 1992).

ANALYSIS

The SCCPC establishes obligations of creditors in certain consumer transactions. S.C. Code § 37-1-301(13) defines a “Creditor” as the person who grants credit in a credit transaction. While some provisions of the SCCPC also apply to assignees of a creditor, those provisions generally address activities or obligations that arise after the assignment. See Kathleen Goodpasture Smith, The South Carolina Consumer Protection Code, 65 (2001). (“Though assignees take all rights conferred by the SCCPC on creditors, they are liable for the obligations imposed on creditors by [Title 37] only with respect to occurrences after assignment, unless the SCCPC provides otherwise.”)

It is undisputed that Plaintiff was not involved in the original mortgage transaction. Instead, Plaintiff’s involvement began December 7, 2023 when Plaintiff received assignment of the mortgage from the original creditor, Wesley Martin. Because all of the SCCPC counterclaims attack the formation of the original note and mortgage and do not allege Plaintiff took any prohibited action after December 7, 2023, the Answering Defendants cannot state a claim for relief

against Plaintiff for the SCCPC counterclaims. Therefore, the SCCPC counterclaims are hereby dismissed.

A. The Answering Defendants' Third Counterclaim Alleging Violation of the Attorney Preference Statute is Dismissed

Defendants allege that the note and mortgage at issue were entered in violation of the attorney preference provision of S.C. § 37-10-102. Defendants do not dispute that Plaintiff is an assignee of the original lender and was not involved in the original loan transaction. As such, Defendants' Third Counterclaim fails as a matter of law.

1. Plaintiff Cannot Be Held Liable for an Alleged Violation of the Attorney Preference Statute by the Original Lender.

The South Carolina attorney-preference statute requires a creditor to ascertain, prior to closing, the preference of a borrower as to the legal counsel that is employed to represent the debtor in all matters relating to the closing of a mortgage loan. S.C. Code Ann. § 37-10-102. If a creditor violates this provision, the debtor has a cause of action to recover actual damages and also a right “to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars.” *Id.* § 37-10-105.

“Creditor” is defined as “the person who grants credit in a credit transaction or, except otherwise provided, an assignee of a creditor’s right to payment.” S.C. Code § 37-1-301(13). However, the assignee of a debt “takes only the benefits, not the burdens of the assigned obligation.” *Rosemond v. Campbell*, 288 S.C. 516, 522-523, 343 S.E.2d 641, 645 (S.C. Ct. App. 1986). “Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; *he has no common law right to sue the assignee*

affirmatively on a claim against the assignor arising from the underlying obligation.” Id. (emphasis added); see also JPMorgan Chase Bank, N.A. v. Guertin, CA 3:12-2363-MBS, 2012 WL 5550770 (D.S.C. Nov. 15, 2012) (“Defendants cite no authority, nor does the court find any, to support the proposition that a subsequent assignee is imputed with and can be held liable for the wrongful conduct of a promissory note’s original obligee.”). Moreover, the attorney-preference statute specifically limits a debtor’s right to affirmatively recover for an alleged violation of the statute only “from the person violating this chapter.” S.C. Code § 37-10-105(A). Therefore, as a matter of law, Plaintiff cannot be held liable for an alleged violation of the attorney-preference statute by the original lender. Accordingly, the Answering Defendants’ claim for affirmative relief for alleged violation of the attorney-preference statute is dismissed.

B. The Answering Defendants’ Fifth Counterclaim Alleging Violation of the High-Cost and Consumer Home Loans Act is Dismissed

The Answering Defendants allege the note and mortgage at issue were entered in violation of the High-Cost and Consumer Home Loans Act. However, Plaintiff is neither a Lender, Mortgage Broker, nor Originator. Therefore the Answering Defendants’ Fifth Counterclaim is dismissed.

1. S.C. Code § 37-23-30 Does Not Prohibit Charging Fees of 10% of the Loan Balance

The Answering Defendants’ Fifth Counterclaim alleges the subject note and mortgage violate S.C. Code § 37-23-30 because the loan charges fees of 10% of the loan balance. (Am. Answer, ¶ 36(a)). This claim fails as a matter of law and is dismissed because the plain language of S.C. Code § 37-23-30 does not contain any prohibition against charging fees of 10% of the loan balance.

2. Plaintiff is Not A Lender in a High-Cost Home Loan Pursuant to S.C. Code 37-23-40

S.C. Code 37-23-40 contains certain limitations on *lenders* of high-cost home loans. It is undisputed that Plaintiff was not the lender of the subject loan. Therefore, as with Defendants' affirmative claim for violation of the attorney-preference statute, the Answering Defendants' claim for violation of S.C. Code § 37-23-40 fails as a matter of law and is dismissed.

3. Plaintiff is Not a Mortgage Broker or Originator Subject to the Requirements of S.C. § 37-23-45, § 37-23-70 and § 37-23-75.

Where a mortgage transaction involves a mortgage broker, S.C. Code § 37-23-45 requires the mortgage broker give the borrower certain disclosures before closing. S.C. Code § 37-23-70(D) requires a mortgage broker or originator to, at the time of application for a mortgage loan, provide the borrower certain disclosures. Finally, S.C. Code § 37-23-75 requires a mortgage broker to make certain disclosures prior to the scheduled closing of a home loan.

A "mortgage broker" is defined as "a person or organization in the business of soliciting, processing, placing, or negotiating mortgage loans for others." S.C. Code § 37-23-20(3). A "originator" is defined as "an employee of a mortgage broker or mortgage lender whose job is to inform loan applicants of rates, terms, and other aspects of the mortgage. S.C. Code § 37-23-20(12).

Defendants do not allege Plaintiff is a mortgage broker or loan originator in general or acted as either role in this transaction. Additionally, all of these statutes involve some action be taken at or before the closing table. As with the Answering Defendants' claims for violation of the attorney-preference statute, Plaintiff cannot be held liable for the alleged violations of the parties involved in the original transaction. Accordingly, the Answering Defendants' claim for violation of S.C. Code § 37-23-45, § 37-23-70 and § 37-23-75 fail as a matter of law and are dismissed.

C. The Answering Defendants' Sixth Counterclaim Alleging Violation of the Mortgage Lending Licensing Requirements is Dismissed

The Answering Defendants allege this foreclosure suit and the underlying note and mortgage all violate the mortgage licensing provisions of the SCCPC. However, the Answering Defendants have failed to allege that Plaintiff is a Mortgage Lender as defined by S.C. Code § 37-22-110(2). Accordingly, Plaintiff is not required to be licensed by the SCCPC and the Answering Defendants' Sixth Counterclaim is dismissed.

S.C. Code § 37-22-120(A) prohibits a person from acting as a mortgage lender without first obtaining a license pursuant to Chapter 22. A person "acts as a mortgage lender" by engaging the making or servicing of a mortgage loan for compensation or gain. S.C. Code § 37-22-110(2). "Mak[ing] a mortgage loan" is defined as "clos[ing] a mortgage loan, advancing funds, or making a commitment to advance funds to a borrower under mortgage loan." S.C. Code § 37-22-110(27).

The Answering Defendants do not, and cannot, allege that Plaintiff acted as a mortgage lender with regarding to this transaction. Because Plaintiff was not acting as a mortgage lender he was not obligated to be licensed under Section 37-22-120(A). Accordingly, the Sixth Counterclaim alleging violation of the licensing statute is dismissed.

IT IS HEREBY ORDERED THAT the Third Fourth, Fifth, Sixth, and Seventh Counterclaims are dismissed for failure to state a claim upon which relief can be granted.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Lexington Common Pleas

Case Caption: Taylor Brunson VS Zack L. Evans, deceased, & any children & heirs
at law , defendant, et al
Case Number: 2024CP3200179
Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Autumn Skye Properties, LLC,)
)
Plaintiff,)

C/A No. 2023-CP-32-01690

vs.)

Zach L. Evans, deceased, and any children)
and heirs at law, distributees and devisees,)
and if any be deceased then any persons)
entitled to claim under or through them; also)
all other persons unknown claiming any)
right, title, interest, or lien herein, any)
unknown adults being a class designated)
as John Doe; and any unknown minors)
or persons under disability or in the military)
service being a class designated as Richard)
Roe; Tina L. Evans individually and as)
Personal Representative of the Estate of)
Zack L. Evans; and Kara Pitchford,)

Defendants,)

and

Taylor Brunson,)
)
Plaintiff,)

C/A No. 2024-CP-32-00179

vs.)

**ORDER OF CONSOLIDATION
FOR DISCOVERY PURPOSES**

Zack L. Evans, deceased, and any children)
and heirs at law, distributees and devisees,)
and if any be deceased then any persons)
entitled to claim under or through them; also)
all other persons unknown claiming any)
right, title, interest, or lien herein, any)
unknown adults being a class designated)
as John Doe; and any unknown minors)
or persons under disability or in the military)
service being a class designated as Richard)
Roe; Tina L. Evans individually and as)
Personal Representative of the Estate of)
Zack L. Evans; and Kara Pitchford,)

Defendants.)

This matter came before the court by video link at 2:00 p.m. Monday, March 25, 2024. James Edward Bradley appeared on behalf of the Estate of Zack Evans, Tina Evans and Kara Pitchford. Stephanie Kellahan appeared on behalf of Taylor Brunson and Autumn Skye Properties. The Estate of Zack Evans, Tina Evans and Kara Pitchford have moved to consolidate these two cases for the purposes of discovery and trial pursuant to Rule 42.

After hearing the arguments of the attorneys and reviewing the materials presented to the court, the court consolidates these cases for the purposes of discovery only at this time. The court determines that consolidation of the cases for discovery pursuant to Rule 42 serves the interests of judicial efficiency and reducing costs and time for the parties. For this reason, the matters are consolidated for the purposes of discovery. The court finds the request to consolidate for the purpose of trial to be premature at this time. Thus, the court declines the request to consolidate the matters for trial. This decision is made without prejudice such that a request to try these matters together may be made to another judge at a future time as this court makes no finding whatsoever as to the consolidation for trial other than that the request is premature.

Thus, it is ordered these matters are consolidated for the purposes of discovery. As the request to consolidate for trial is premature, this request is denied at this time with leave to make the motion again in the future.

AND IT IS SO ORDERED.



Lexington Common Pleas

Case Caption: Autumn Skye Properties, Llc VS Zack L. Evans Est , defendant, et al

Case Number: 2023CP3201690

Type: Order/Consolidate

It is so Ordered!

s/Diane S. Goodstein

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Presiding Judge

Civil Action No. 2024-CP-32-00179

RECEIVED
Jun 28 2024
SC Court of Appeals

Taylor Brunson,Respondent,

v.

Tina L. Evans individually and as Personal Representative of the
Estate of Zack L. Evans, and Kara Pitchford,..... Appellants.

NOTICE OF APPEAL

Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans and Kara Pitchford appeal the Order Granting Plaintiff’s Motion to Dismiss Counterclaims of the Honorable Roger M. Young, Sr. dated June 10, 2024. Appellants received written notice of entry of the Order on June 10, 2024. The order is attached to this notice as Exhibit A.

Respectfully submitted,

June 28, 2024

s/James Edward Bradley
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Other Counsel of Record:

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*Attorney for Defendants designated as
John Doe and Richard Roe*

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
2024CP3200179

Taylor Brunson
Plaintiff,

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC

Defendant(s).

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS
COUNTERCLAIMS**

RECEIVED
Jun 28 2024
SC Court of Appeals

This matter came before the Court on April 9, 2024 on Plaintiff's Motion to Dismiss Defendant Tina L. Evans, individually and as the Personal Representative of the Estate of Zack L. Evans, and Kara Pitchford's Third, Fourth, Fifth, Sixth, and Seventh Counterclaims. Stephanie Trotter Kellahan, Esquire appeared on behalf of Plaintiff. James Edward Bradley, Esquire appeared on behalf of Tina L. Evans and Kara Pitchford (hereinafter "Answering Defendants"). At the hearing, Defendants agreed to dismiss the Fourth Counterclaim and Seventh Counterclaim. For the reasons stated herein, the Third, Fifth, and Sixth Counterclaims are also dismissed.

BACKGROUND

Zack L. Evans owned real property located at 141 Browning Court (hereinafter the “Property”) until his death on May 24, 2023. (Answer, ¶ 3). Upon Mr. Evans’ death, title to the Property devolved to the Answering Defendants in equal shares. (*Id.*). Prior to his death, in October 2019, Mr. Evans gave a promissory note for \$17,220.00 and a mortgage secured by the Property to Wesley Martin. (Complaint, ¶ 9)¹. After Mr. Evans’ death, Wesley Martin assigned the note and mortgage to Plaintiff. (Complaint, ¶ 12). Plaintiff instituted this action on January 15, 2024 seeking foreclosure of the mortgage alleging the Answering Defendants failed to pay the required installments. In response, the Answering Defendants filed counterclaims alleging the note and mortgage were entered into in violation of the South Carolina Consumer Protection Code (hereinafter “SCCPC”). The SCCPC counterclaims all allege the Answer Defendants are entitled to statutory damages and attorney’s fees and costs. In response, Plaintiff filed a Motion to Dismiss the SCCPC counterclaims pursuant to Rule 12(b)(6).

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6), SCRCP, is properly granted “when the [moving party] demonstrates the [claimant] has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court.” Rule 12(b)(6), SCRCP. In reviewing a motion to dismiss, the court must accept as true the well-pleaded facts in the complaint. See Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538 (2006) (emphasis added). However, the court will not admit inferences drawn by the claimant from such facts, nor will it admit conclusions of

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law. See Fireman's Ins. Co. of Newark, New Jersey v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). This requires the claimant “to plead the ultimate facts which will be proved at trial, not evidence which will be used to prove those facts.” Clark v. Clark, 293 S.C. 415, 416, 361 S.E.2d 328, 328 (1987). “Ultimate facts fall somewhere between the verbosity of ‘evidentiary facts’ and the sparsity of ‘legal conclusions.’” Watts v. Metro Security Agency, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). Legal conclusions “describe a legal status, condition, or legal offense.” Stroud v. Riddle, 260 S.C. 99, 103, 194 S.E.2d 235, 237 (1973). A Rule 12(b)(6) motion is “directed to the factual and legal sufficiency of the complaint...” Woodell v. Marion School Dist., 307 S.C. 297, 298, 414 S.E.2d 794 (Ct. App. 1992).

ANALYSIS

The SCCPC establishes obligations of creditors in certain consumer transactions. S.C. Code § 37-1-301(13) defines a “Creditor” as the person who grants credit in a credit transaction. While some provisions of the SCCPC also apply to assignees of a creditor, those provisions generally address activities or obligations that arise after the assignment. See Kathleen Goodpasture Smith, The South Carolina Consumer Protection Code, 65 (2001). (“Though assignees take all rights conferred by the SCCPC on creditors, they are liable for the obligations imposed on creditors by [Title 37] only with respect to occurrences after assignment, unless the SCCPC provides otherwise.”)

It is undisputed that Plaintiff was not involved in the original mortgage transaction. Instead, Plaintiff’s involvement began December 7, 2023 when Plaintiff received assignment of the mortgage from the original creditor, Wesley Martin. Because all of the SCCPC counterclaims attack the formation of the original note and mortgage and do not allege Plaintiff took any prohibited action after December 7, 2023, the Answering Defendants cannot state a claim for relief

against Plaintiff for the SCCPC counterclaims. Therefore, the SCCPC counterclaims are hereby dismissed.

A. The Answering Defendants' Third Counterclaim Alleging Violation of the Attorney Preference Statute is Dismissed

Defendants allege that the note and mortgage at issue were entered in violation of the attorney preference provision of S.C. § 37-10-102. Defendants do not dispute that Plaintiff is an assignee of the original lender and was not involved in the original loan transaction. As such, Defendants' Third Counterclaim fails as a matter of law.

1. Plaintiff Cannot Be Held Liable for an Alleged Violation of the Attorney Preference Statute by the Original Lender.

The South Carolina attorney-preference statute requires a creditor to ascertain, prior to closing, the preference of a borrower as to the legal counsel that is employed to represent the debtor in all matters relating to the closing of a mortgage loan. S.C. Code Ann. § 37-10-102. If a creditor violates this provision, the debtor has a cause of action to recover actual damages and also a right "to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars." *Id.* § 37-10-105.

"Creditor" is defined as "the person who grants credit in a credit transaction or, except otherwise provided, an assignee of a creditor's right to payment." S.C. Code § 37-1-301(13). However, the assignee of a debt "takes only the benefits, not the burdens of the assigned obligation." *Rosemond v. Campbell*, 288 S.C. 516, 522-523, 343 S.E.2d 641, 645 (S.C. Ct. App. 1986). "Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; *he has no common law right to sue the assignee*

affirmatively on a claim against the assignor arising from the underlying obligation.” *Id.* (emphasis added); see also JPMorgan Chase Bank, N.A. v. Guertin, CA 3:12-2363-MBS, 2012 WL 5550770 (D.S.C. Nov. 15, 2012) (“Defendants cite no authority, nor does the court find any, to support the proposition that a subsequent assignee is imputed with and can be held liable for the wrongful conduct of a promissory note’s original obligee.”). Moreover, the attorney-preference statute specifically limits a debtor’s right to affirmatively recover for an alleged violation of the statute only “from the person violating this chapter.” S.C. Code § 37-10-105(A). Therefore, as a matter of law, Plaintiff cannot be held liable for an alleged violation of the attorney-preference statute by the original lender. Accordingly, the Answering Defendants’ claim for affirmative relief for alleged violation of the attorney-preference statute is dismissed.

B. The Answering Defendants’ Fifth Counterclaim Alleging Violation of the High-Cost and Consumer Home Loans Act is Dismissed

The Answering Defendants allege the note and mortgage at issue were entered in violation of the High-Cost and Consumer Home Loans Act. However, Plaintiff is neither a Lender, Mortgage Broker, nor Originator. Therefore the Answering Defendants’ Fifth Counterclaim is dismissed.

1. S.C. Code § 37-23-30 Does Not Prohibit Charging Fees of 10% of the Loan Balance

The Answering Defendants’ Fifth Counterclaim alleges the subject note and mortgage violate S.C. Code § 37-23-30 because the loan charges fees of 10% of the loan balance. (Am. Answer, ¶ 36(a)). This claim fails as a matter of law and is dismissed because the plain language of S.C. Code § 37-23-30 does not contain any prohibition against charging fees of 10% of the loan balance.

2. Plaintiff is Not A Lender in a High-Cost Home Loan Pursuant to S.C. Code 37-23-40

S.C. Code 37-23-40 contains certain limitations on *lenders* of high-cost home loans. It is undisputed that Plaintiff was not the lender of the subject loan. Therefore, as with Defendants' affirmative claim for violation of the attorney-preference statute, the Answering Defendants' claim for violation of S.C. Code § 37-23-40 fails as a matter of law and is dismissed.

3. Plaintiff is Not a Mortgage Broker or Originator Subject to the Requirements of S.C. § 37-23-45, § 37-23-70 and § 37-23-75.

Where a mortgage transaction involves a mortgage broker, S.C. Code § 37-23-45 requires the mortgage broker give the borrower certain disclosures before closing. S.C. Code § 37-23-70(D) requires a mortgage broker or originator to, at the time of application for a mortgage loan, provide the borrower certain disclosures. Finally, S.C. Code § 37-23-75 requires a mortgage broker to make certain disclosures prior to the scheduled closing of a home loan.

A "mortgage broker" is defined as "a person or organization in the business of soliciting, processing, placing, or negotiating mortgage loans for others." S.C. Code § 37-23-20(3). A "originator" is defined as "an employee of a mortgage broker or mortgage lender whose job is to inform loan applicants of rates, terms, and other aspects of the mortgage. S.C. Code § 37-23-20(12).

Defendants do not allege Plaintiff is a mortgage broker or loan originator in general or acted as either role in this transaction. Additionally, all of these statutes involve some action be taken at or before the closing table. As with the Answering Defendants' claims for violation of the attorney-preference statute, Plaintiff cannot be held liable for the alleged violations of the parties involved in the original transaction. Accordingly, the Answering Defendants' claim for violation of S.C. Code § 37-23-45, § 37-23-70 and § 37-23-75 fail as a matter of law and are dismissed.

C. The Answering Defendants' Sixth Counterclaim Alleging Violation of the Mortgage Lending Licensing Requirements is Dismissed

The Answering Defendants allege this foreclosure suit and the underlying note and mortgage all violate the mortgage licensing provisions of the SCCPC. However, the Answering Defendants have failed to allege that Plaintiff is a Mortgage Lender as defined by S.C. Code § 37-22-110(2). Accordingly, Plaintiff is not required to be licensed by the SCCPC and the Answering Defendants' Sixth Counterclaim is dismissed.

S.C. Code § 37-22-120(A) prohibits a person from acting as a mortgage lender without first obtaining a license pursuant to Chapter 22. A person "acts as a mortgage lender" by engaging the making or servicing of a mortgage loan for compensation or gain. S.C. Code § 37-22-110(2). "Mak[ing] a mortgage loan" is defined as "clos[ing] a mortgage loan, advancing funds, or making a commitment to advance funds to a borrower under mortgage loan." S.C. Code § 37-22-110(27).

The Answering Defendants do not, and cannot, allege that Plaintiff acted as a mortgage lender with regarding to this transaction. Because Plaintiff was not acting as a mortgage lender he was not obligated to be licensed under Section 37-22-120(A). Accordingly, the Sixth Counterclaim alleging violation of the licensing statute is dismissed.

IT IS HEREBY ORDERED THAT the Third Fourth, Fifth, Sixth, and Seventh Counterclaims are dismissed for failure to state a claim upon which relief can be granted.

AND IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Lexington Common Pleas

Case Caption: Taylor Brunson VS Zack L. Evans, deceased, & any children & heirs
at law , defendant, et al
Case Number: 2024CP3200179
Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134

Electronically signed on 2024-06-10 16:32:40 page 8 of 8

ELECTRONICALLY FILED - 2024 Jun 28 3:49 PM - LEXINGTON - COMMON PLEAS - CASE#2024CP3200179
ELECTRONICALLY FILED - 2024 Jun 10 4:37 PM - LEXINGTON - COMMON PLEAS - CASE#2024CP3200179

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Taylor Brunson

SUMMONS

Plaintiff,

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC

Defendant(s).

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 4500 Fort Jackson Blvd, Suite 335, Columbia, South Carolina 29209, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

s/ Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd., Suite 335
Columbia, SC 29209
Office: (803) 724-5000
Fax: (803) 724-5001

Email: stephanie.kellahan@mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

Columbia, SC
January 15, 2024

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

Taylor Brunson

Plaintiff,

**COMPLAINT
(NON-JURY FORECLOSURE OF
MORTGAGE)**

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC

Defendant(s).

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

1. Plaintiff is an individual residing in Lexington County, South Carolina.
2. Upon information and belief, before his death on May 24, 2023, Defendant Zack L. Evans was a resident of Lexington County, South Carolina, and owned real property located at 141 Browning Court.
3. The real property that is the subject of this suit is located in Lexington County.
4. Upon information and belief, on May 24, 2023 Defendant Zack L. Evans died intestate, leaving his wife, Tina L. Evans, and daughter, Kara Pitchford, as his legal heirs.
5. Tina L. Evans has been appointed Personal Representative of the Estate of Zack Lloyd Evans in case 2023ES3201052.
6. Upon information and belief, upon Defendant Zack L. Evans' death, title to the subject Property devolved to Tina L. Evans and Kara Pitchford in equal shares.

7. Autumn Skye Properties, LLC is a limited liability company organized under the laws of the State of South Carolina. Autumn Skye Properties, LLC is made a party by virtue of that Lis Pendens filed in at 2023LP3200268 and that certain executory sales contract described in civil action number 2023CP3201690. Such interest is junior to that of Plaintiff.

8. Jurisdiction and venue are proper in this Court.

9. On or about October 29, 2019, for value received, Zack L. Evans, did execute and deliver to Wesley Martin, a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby Zack L. Evans promised to pay Wesley Martin \$17,220.00, together with interest thereon at the rate of 15% per annum.

10. In order to better secure the payments of the said note and debt, and in accordance with the terms and conditions thereof, Zack L. Evans did execute and deliver on October 29, 2019 unto Wesley Martin a mortgage covering the following described property:

All that certain piece, parcel, or lot of land with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Tract "B", containing 3.28 acres on a plat prepared for Cheri N. Evans-Sowers and Zack L. Evans by Douglas E. Platt, Sr., Inc. dated March 18, 2016 and recorded in the Lexington County ROD Office in Book 18293 at Page 59; and having such metes and bounds as shown on said plat.

This is a portion of the property conveyed to Cherie Evans and Zack Evans from the Estate of Carl L. Evans by Deed of Distribution recorded on January 20, 2011 in the Lexington County ROD in Book 14683 at Page 157. Thereafter, Cherie Evans conveyed her interest to Zack L. Evans by deed dated April 1, 2016 and recorded in the Lexington ROD in Book 18293 at Page 64.

**Tax Map Reference No.: 005598-01-092
141 Browning Court Lexington SC 29073**

11. Thereafter said mortgage was recorded on November 1, 2019 in Book 20842 at Page 4928 in the Lexington County Register of Deeds.

12. Thereafter, by virtue of an assignment dated December 7, 2023 and recorded December 15, 2023 in Book 21086 at page 2309 in the Lexington County Register of Deeds, Wesley Martin assigned said note and mortgage unto Taylor Brunson.

13. Plaintiff is the holder in due course of the subject note.

14. Pursuant to South Carolina law, Plaintiff is entitled to enforce the terms of the subject note and mortgage.

15. According to the terms and conditions of said note and mortgage, it is provided that in the event of default in the payment of any installment when due, 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 said mortgage as a part of the debt secured thereby.

16. 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. Such sums were to accrue interest at a rate of 6% per annum.

17. 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.

18. The monthly payments due on said note and mortgage are in default since February 1, 2023. Therefore, 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. There is due on said note and mortgage as of December 1, 2023 the principal sum of \$17,552.52, interest at the current rate of 15% per annum from December 1, 2023 and costs of collection associated with this action, including attorney's fees. Additionally, there is due on said note and mortgage, as of December 1, 2023 an escrow balance of \$8,908.09 and interest at the rate of 6% per annum from December 1, 2023.

19. The notice of consumer's right to cure, as contemplated under South Carolina law, 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 said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action;

(2) That Plaintiff's mortgage be declared a lien of first priority 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.

(4) For an Order directing and empowering the Sheriff of Lexington 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 reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

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

s/ Stephanie Trotter Kellahan

Stephanie Trotter Kellahan (SC Bar 77680)

McCabe Trotter & Beverly, PC

4500 Fort Jackson Blvd., Suite 335

Columbia, SC 29209

Office: (803) 724-5000

Fax: (803) 724-5001

Email: stephanie.kellahan@mccabetrotter.com

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
January 15, 2024

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Taylor Brunson

Plaintiff,

v.

LIS PENDENS

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC
Defendant(s).

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant for foreclosure of a mortgage. Said action shall affect the following property:

All that certain piece, parcel, or lot of land with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Tract "B", containing 3.28 acres on a plat prepared for Cheri N. Evans-Sowers and Zack L. Evans by Douglas E. Platt, Sr., Inc. dated March 18, 2016 and recorded in the Lexington County ROD Office in Book 18293 at Page 59; and having such metes and bounds as shown on said plat.

This is a portion of the property conveyed to Cherie Evans and Zack Evans from the Estate of Carl L. Evans by Deed of Distribution recorded on January 20, 2011 in the Lexington County ROD in Book 14683 at Page 157. Thereafter, Cherie Evans conveyed her interest to Zack L. Evans by deed dated April 1, 2016 and recorded in the Lexington ROD in Book 18293 at Page 64.

Tax Map Reference No.: 005598-01-092

/s Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd., Suite 250
Columbia, SC 29209
Office: (803) 724-5000
Fax: (803) 724-5001
Email: stephanie.kellahan@mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

January 15, 2024

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Autumn Skye Properties, LLC

Plaintiff,

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; and Kara Pitchford

Defendant(s).

IN THE COURT OF COMMON PLEAS

2023CP3201690

AMENDED SUMMONS

FILED
2023 JUL 14 PM 2:46
LISA M. COHER
CLERK OF COURT
LEXINGTON SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 4500 Fort Jackson Blvd, Suite 250, Columbia, South Carolina 29209, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

/s Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
D. Ryan McCabe (SC Bar 16977)
McCabe Trotter & Beverly, PC

4500 Fort Jackson Blvd., Suite 250
Columbia, SC 29209
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Email: stephanie.kellahan@mccabetrotter.com
Ryan.mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

July 11, 2023

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Autumn Skye Properties, LLC
Plaintiff,

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; and Kara Pitchford

Defendant(s).

IN THE COURT OF COMMON PLEAS

AMENDED COMPLAINT

FILED
2023 JUL 14 PM 2:46
LISA H. COHER
CLERK OF COURT
LEXINGTON SC

Plaintiff Autumn Skye Properties, LLC, complaining of the Defendants, would respectfully show unto this Honorable Court that:

1. Plaintiff is a Limited Liability Company organized and existing under the laws of the State of South Carolina, with its principal place of business in Lexington County.
2. Upon information and belief, before his death on May 24, 2023, Defendant Zack L. Evans was a resident of Lexington County, South Carolina, and owned real property located at 141 Browning Court.
3. The real property that is the subject of this suit is located in Lexington County.
4. Jurisdiction and venue are proper in this Court.

FACTUAL ALLEGATIONS

5. Plaintiff incorporates by reference its previous paragraphs as if repeated herein verbatim.

6. As of April 21, 2023, Defendant Zack L. Evans was the owner of real property located at 141 Browning Court in Lexington, South Carolina and bearing Tax Map Number 005598-01-092 (the "Property").

7. On or about April 21, 2023 Plaintiff and Defendant Zack L. Evans entered into a binding contract wherein Defendant Zack L. Evans agreed to sell the Property to Plaintiff for a purchase price of \$62,000 (the "Contract"). A copy of the Contract is attached hereto and incorporated herein as Exhibit A.

8. Pursuant to the Contract, Plaintiff paid Defendant Zack L. Evans \$1,000 earnest money.

9. The Contract required the parties close the sales transaction by June 21, 2023.

10. The Contract further required Plaintiff to make bi-weekly payments of \$1,000 to Defendant Zack L. Evans starting May 5, 2023 until the transaction closed. In exchange for these payments, Defendant Zack L. Evans agreed to make progress cleaning the house and yard. Plaintiff and Defendant Zack L. Evans agreed that the yard and house would be clean prior to closing.

11. Upon information and belief, after executing the Contract with Plaintiff, Defendant Zack L. Evans received an offer to purchase the Property for more than \$62,000 from a third-party and Defendant Zack L. Evans indicated that he did not intend to perform his obligations under the Contract.

12. Defendant Zack L. Evans denied Plaintiff access to the Property in order to determine whether Defendant Zack L. Evans performed his obligation to clean the yard and house.

13. After execution of the Contract, Defendant Zack L. Evans stopped responding to telephone calls or text messages from Plaintiff, thereby preventing Plaintiff from performing its obligations under the Contract.

14. Plaintiff initiated this action by Summons and Complaint filed May 3, 2023.

15. Upon information and belief, on May 24, 2023 Defendant Zack L. Evans died intestate, leaving his wife, Tina L. Evans, and daughter, Kara Pitchford, as his legal heirs.

16. Tina L. Evans has been appointed Personal Representative of the Estate of Zack Lloyd Evans in case 2023ES3201052.

17. Upon information and belief, upon Defendant Zack L. Evans' death, title to the subject Property devolved to Tina L. Evans and Kara Pitchford in equal shares.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

18. Plaintiff incorporates by reference its previous paragraphs as if repeated herein verbatim

19. Plaintiff and Defendant Zack L. Evans entered into a binding, valid contract.

20. Before his death, Defendant Zack L. Evans impermissibly repudiated the Contract such that Plaintiff is entitled to bring suit as for a total breach.

21. Defendant Zack L. Evans' impermissible repudiation and breach have damaged Plaintiff by depriving it of the benefit of its bargain.

22. Pursuant to the Contract, Plaintiff is also entitled to attorney's fees and costs actually incurred as a result of Defendant Zack L. Evans' impermissible repudiation and breach.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

23. Plaintiff incorporates by reference its previous paragraphs as if repeated herein verbatim.
24. Plaintiff and Defendant Zack L. Evans entered into a binding, valid contract.
25. Plaintiff began performance of the agreement by paying Defendant Zack L. Evans \$1,000 in earnest money.
26. Plaintiff is able and willing to perform its obligations under the contract.
27. Plaintiff is entitled to an order compelling Defendants to perform their obligations under the Contract and consummate the sale of the Property to Plaintiff.

WHEREFORE, Plaintiff prays this Honorable Court for judgment against the Defendants as follows:

- a. Actual and consequential damages;
- b. Specific enforcement of the sales contract;
- c. An award of costs expenses, and attorneys' fees of litigating this proceeding; and
- d. For such other and further relief as this Honorable Court deems just and proper.

/s Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
D. Ryan McCabe (SC Bar 16977)
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd., Suite 250
Columbia, SC 29209
Office: (803) 724-5000
Fax: (803) 724-5001
Email: stephanie.kellahan@mccabetrotter.com
Ryan.McCabe@mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

July 11, 2023



Zack Evans
803-570-6344

Wesley Martin
803-245-4307



CONTRACT OF SALE RESIDENTIAL

Revised December 2016



THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. PARTIES: This Contract of Sale is entered into on April 21, 2023
between Buyer(s) Autumn Skye Properties/Taylor Brunson (hereinafter called "Buyer"),
and Seller(s) Zack Evans (hereinafter called "Seller").

[Signature] acknowledges receipt of the Disclosure of Brokerage Relationships form, and Client Customer service in this transaction.

SELLER (name: _____) Date: _____ acknowledges receipt of the Disclosure of Brokerage Relationships form, and Client Customer service in this transaction.

2. PROPERTY: Seller agrees to sell and Buyer agrees to buy the following real property with improvements and fixtures thereon:

Lot _____ Block _____ Phase _____ Subdivision _____
Address 141 Browning Court Unit # _____ City Lexington Zip 29073
TMS# 00559801092 County of Lexington, State of South Carolina.

3. PRICE: The purchase price is \$ 62,000.00

4. EARNEST MONEY:

A. \$ 1,000.00 Earnest money is paid by: Check Cash Other

B. \$ Section 18 Additional earnest money (hereinafter referred to as earnest money) to be delivered on or before _____

C. Earnest money to be held in trust by _____ (Escrow Agent).

D. Escrow Agent does not guarantee payment of funds accepted as earnest money. All earnest money received will be deposited as required by South Carolina law and the South Carolina Real Estate Commission's rules and regulations. If earnest money is returned because it is a fraudulent instrument or due to insufficient funds, the Agent holding earnest money will immediately notify the other Agent and Contract may be voided at the Seller's option. Buyer agrees to and understands that earnest money may be deposited in an interest-bearing escrow account and that he has the right to ownership of any interest accrued. Buyer, through this written agreement, relinquishes ownership of the accrued interest to Escrow Agent as consideration for the expenses incurred in maintaining the account. Earnest money deposited in an escrow account will not be released to either Party until confirmation is received that funds have cleared the bank. If a dispute arises between Buyer and Seller concerning entitlement to and disposition of an earnest money deposit, the deposit will be retained in Escrow Agent's escrow account until Escrow Agent has obtained a written release signed by Buyer and Seller consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. See S.C. Code, Section 40-57-136 (E). If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs. The court may also award the prevailing parties treble damages (defined as three times the amount of Earnest Money).

FILED
2023 JUL 14 PM 2:55
LISAM M. CONER
CLERK OF COURT
LEXINGTON, SC

ROA 000039

BUYER [Signature] Date: 4/21/23 SELLER [Signature] Date: 4/21/23

5. **TRANSACTION COSTS:** Buyer's Transaction Costs include but are not limited to all closing costs, pre-paid items, insurance (mortgage, lender/owner title, flood, hazard), discount points, all costs to obtain information from or pertaining to any owners association, interest, title fees, FHA/VA allowable costs, fees and expenses of Buyer's attorney, deed recording costs, and the cost of any inspector, appraiser, or surveyor. Seller's Transaction Costs include but are not limited to deed preparation, deed stamps/tax, all costs necessary to deliver marketable title and payoff satisfactions of mortgages/liens, property taxes pro-rated to the day of closing, real estate brokerage fees, and expenses of Seller's attorney.

Buyer's and Seller's Transaction Costs will be paid at closing as follows: (Select, initial and date only one of the options below)

A. BUYER (TB) (4/21/23) SELLER (JL) (4/21/23) Buyer will provide or pay for all Buyer's Transaction Costs and Seller will provide or pay for all Seller's Transaction Costs as well as pay for Buyer's non-allowable costs if the financing type selected Paragraph 6(A) is either VA or FHA.

OR

B. BUYER () () SELLER () () Seller will pay Buyer's Transaction Costs not exceed \$ _____ which includes non-allowable costs first (for VA or FHA financing) and then allowable costs. Buyer is responsible for any Buyer's Transaction Costs exceeding this amount. If the amount Seller has agreed to pay toward Buyer Transaction Costs exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all Seller's Transaction Costs.

6. **FINANCING:** Buyer's obligation under this Contract is is not contingent on Buyer obtaining financing. Buyer and Seller acknowledge that all financing contingencies herein automatically expire five (5) Business Days prior to and not including the closing date set forth in Paragraph 7, and this Contract will become non-contingent on financing unless otherwise agreed to in writing. If Buyer subsequently fails to close because of the inability to obtain financing, the Buyer will be in default of this Contract and earnest money will be released to Seller. See Paragraph 4(D).

BUYER (TB) (4/21/23) SELLER (JL) (4/21/23)

A. **FINANCING TYPE.** Financing type will be: Conventional FHA VA USDA SC Housing FHA
SC Housing Conventional Seller Cash (no financing required) Other

Buyer or Buyer's Agent will immediately notify Seller or Seller's Agent if financing type changes. If the change in financing type modifies the terms of this Contract, then Seller will have the option of agreeing with the change or voiding this Contract. If Seller elects to void the Contract, earnest money will be released to the Buyer. See Paragraph 4(D).

Note: If Buyer utilizes FHA or VA financing, a lender required FHA/VA Addendum will be signed by Buyer and Seller. All parties agree to execute this document as required. Utilizing FHA or VA financing will require Seller to pay upon closing for certain loan-related closing costs termed "non-allowable costs", which for VA financing may also include the termite inspection (CL-100).

B. **APPLICATION FOR FINANCING.** If Lender financing is being used, Buyer will have five (5) Business Days from the date of Contract acceptance to apply for financing from Lender of their choice. Application will include advancement of any funds required by Lender and providing Lender's identity to Seller or Seller's Brokers. Buyer will also furnish Lender all documentation required for the processing of this loan in a diligent and timely manner.

1. Should Buyer fail to apply for the loan within five (5) Business Days, Buyer will be in default of this Contract and Seller will have the option of voiding this Contract with earnest money being released to Seller. Should the loan be denied while subject to a financing contingency, Contract will be voided and earnest money will be released to Buyer. See Paragraph 4(D).

2. If loan is rejected by initial lender or subsequent lenders, Buyer or Buyer's Agent must give written notice of each occurrence to the Seller or Seller's Agent immediately, and Seller will then have the option of continuing with or voiding the Contract. If Seller elects to void the Contract, the earnest money will be released to Buyer, provided it is not within (5) business days prior to closing. See Paragraph 4(D).

3. If Buyer elects to make any material change to their financial condition after Contract acceptance that negatively affects their ability to close the transaction, Buyer will be in default and earnest money will be released to Seller. See Paragraph 4(D).

4. Buyer gives permission to Lender to disclose any allowable pertinent information concerning Buyer's loan to any attorney representing Buyer or Seller and to the Buyer's and Seller's Brokers.

BUYER (TB) (4/21/23) SELLER (JL) (4/21/23)
RGA 000040

C. SELLER FINANCING. If Seller financing is included in the financing of this Property, Buyer's and Seller's Brokers make no representations as to the creditworthiness of Buyer and suggest that Seller determine whether Buyer's credit is satisfactory. The terms of Seller financing should be noted in Paragraph 18 of this Contract or in a separate Addendum to this Contract.

D. CASH TRANSACTION. In a cash transaction, Buyer agrees to provide Seller or Seller's Broker, within five (5) Business Days of acceptance of this Contract, written verification of availability of funds from the source(s) of those funds. If Buyer fails to comply with the above requirement, then Seller will have the option of voiding this Contract and earnest money will be released to Seller. See Paragraph 4(D).

E. APPRAISAL CONTINGENCY. This Contract is is not contingent on lot or parcel with building and improvements thereon, if any, appraising according to Lender's appraisal, or other appraisal as agreed by Buyer and Seller for non-Lender financed transactions, for the selling price or more. If contingent, and lot or parcel with building and improvements thereon appraises for less than the selling price, the Buyer will have three business days after notification of the results of the appraisal to proceed with the consummation of this sale without regard to the appraised value or attempt to renegotiate this Contract. If after the three business day period, the Parties are unable to reach agreement on a renegotiated Contract then either party can terminate this Contract by providing written notification to the other. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D).

F. SELLER'S MORTGAGE PAYOFF. SELLER (JB) (4/21/23) Seller gives permission to Closing Attorney to obtain Seller's mortgage payoff information.

7. CONVEYANCE DATE OF CLOSING/POSSESSION: Conveyance will be made subject to all easements and covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and to have prepared a general warranty deed, if applicable, free of encumbrances, except as herein stated. The deed will be prepared in the name(s) of Autana Skye or TBD LLC, or as otherwise stipulated by Buyer, and delivered to stipulated place of closing. The deed will be held in trust by the Closing Attorney until sales proceeds have been disbursed to Seller, at which time the Closing Attorney shall be authorized to record the deed. This transaction will be closed on or before June 21, 2023, unless extended pursuant to Paragraph 7(B) or by mutual agreement.

A. BUYER (TB) (4/21/23) SELLER (JB) (4/21/23) Seller will be obligated to vacate and give possession of the Property (free of debris and in a clean condition) to Buyer: at closing , 24 hours after closing , 48 hours after closing , or in accordance with attached agreement .

B. If Buyer has provided written loan commitment without additional conditions, or in a cash transaction Buyer has met the terms and conditions of Paragraph 6(D), but has not closed within the stipulated time limit of this Contract, both Parties agree to extend this Contract for a period not to exceed five (5) Business Days from the original closing date.

8. RIGHT OF BUYER TO INSPECT/RE-INSPECT PROPERTY: Buyer, or Inspectors selected by Buyer at Buyer's expense, will have the right to enter Property to inspect, examine and test the Property. For the purposes of this Contract, the term "Inspector" is defined as a person or company, licensed or certified where required by law, with specific, professional expertise or knowledge in property inspections, or in an item, building product or condition contained therein for which the Inspector is inspecting, examining or testing. Seller will make the Property available for all inspections and will have all utilities operational for the inspections, any re-inspections, appraisals and final walk through. Seller agrees to allow Buyer, or Inspectors selected by Buyer, the right to re-inspect the Property at Buyer's expense to determine if agreed upon repairs and/or replacements have been made. Buyer will also be allowed to perform a walk-through prior to closing to confirm that the Property has been maintained in compliance with Paragraph 11, if applicable, and that any personal Property to be transferred or conveyed is on the premises. Buyer agrees to hold Seller and all Brokers harmless from all claims, injuries and damages arising out of, or related to, the exercise of these rights and will repair any damages resulting from same.

9. PROPERTY SOLD SUBJECT TO DUE DILIGENCE PERIOD:
(If Property being sold "As-Is" proceed to Paragraph 10 PROPERTY SOLD "AS-IS")

A. DUE DILIGENCE PERIOD INSPECTIONS: Buyer will have a ten (10) Business Day Due Diligence Period beginning at time of final Contract acceptance, as defined in Paragraph 29(B), to conduct, at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. This will include, but is not limited to, conducting a risk assessment/test for lead-based paint and lead-based paint hazards, testing for environmental hazards, inspecting the heating and air (HVAC) system, and inspecting for active infestations of and/or damage from termites, other wood destroying organisms, fungi and for any drainage problems (CL-100 inspection). Any re-inspections that may be required will also be at Buyer's expense.

ROA 000041

B. DUE DILIGENCE PERIOD EXTENSION: Notwithstanding other provisions to the contrary, in the event an Inspector, in a written report provided to Seller or Seller's Broker prior to the expiration of the Due Diligence Period, recommends any additional study, inspection or evaluation of any product, item or condition in the Property, or the results of any tests conducted cannot be completed or produced prior to the expiration of the Due Diligence Period, then the Due Diligence Period may be extended by mutual agreement of Buyer and Seller through a written Addendum to this Contract. If Buyer and Seller cannot agree on an extension to the Due Diligence Period, then Buyer may proceed under the terms of Paragraph 9(C) based on available inspection reports or void this Contract and earnest money will be released to Buyer. See Paragraph 4(D).

C. INSPECTION OPTIONS: Buyer will have the following options during the Due Diligence Period:

1. Buyer can accept Property as inspected.
2. If Buyer, in his sole discretion or as a result of any inspection, examination or test conducted, determines property to be unsatisfactory, Buyer may terminate this Contract by providing entire copies of all inspection reports, if any, and written notice of termination to Sellers or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed upon extension to this period and the earnest money will be released to Buyer. See Paragraph 4(D). If Buyer fails to give such notice prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligations to make any repairs or replacements to the Property and Buyer being obligated to proceed with the transaction in accordance with the terms of this Contract.
3. If Buyer requests Seller make repairs and/or replacements to the Property, Buyer must submit complete copies of any inspection reports and an Inspection Repair Addendum, signed by the Buyer, identifying specific defects Buyer wants corrected, to Seller or Seller's Broker prior to the expiration of the Due Diligence Period or any mutually agreed extension to this period. If Buyer fails to submit complete copies of these reports and the Addendum to Seller or Seller's Broker prior to the expiration of the Due Diligence Period and any extension, Buyer will be deemed to have accepted the Property "As-Is" with Seller having no obligation to make any repairs or replacements to the Property, and Buyer will be obligated to proceed with the transaction in accordance with the terms of this Contract. If reports and Addendum are submitted within the Due Diligence Period and any extension, Buyer and Seller will then have five (5) Business Days from expiration of Due Diligence Period to negotiate the defects to be corrected by Seller, at Seller's expense, and sign the Addendum. If Buyer and Seller have not reached agreement on the Addendum by the end of this negotiation period:
 - a. Buyer and Seller may mutually agree to extend the negotiating period through written Addendum to this Contract, or;
 - b. Buyer will have two business days after the end of the negotiation period, or any extension to the period, to accept Property "As-Is" in current state with no repairs or replacements made by Seller by providing written notice to Seller or Seller's Broker, or;
 - c. If the negotiating period is not extended and Buyer does not accept Property "As-Is" within the time frame prescribed in the above Paragraph, then either party can terminate this Contract by providing written notice of termination to the other and earnest money will be released to Buyer. See Paragraph 4(D). Seller's failure to respond to the Inspection Repair Addendum within the five (5) Business Day period will be deemed to be a refusal to do repairs/replacements.

D. FHA/VA APPRAISAL INSPECTIONS: If Buyer uses FHA or VA financing, the Property may be inspected by an Appraiser appointed by Lender. This inspection is not subject to time limitations or other requirements of the Due Diligence Period outlined above. If Appraiser identifies repairs to be made as a condition of loan approval and Seller elects not to make them, Buyer will have the option of paying for and completing the repairs prior to closing or voiding this Contract, with earnest money being released to Buyer. See Paragraph 4(D).

10. PROPERTY SOLD "AS-IS": (If Selected, Terms of Paragraph 9 do not apply) (Initial and date only one of the options below if applicable)

A. BUYER (_____) (Date _____) SELLER (_____) (Date _____)

PROPERTY SOLD "AS-IS" WITH DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is" with all defects including, but not limited to, lead-based paint, lead-based paint hazards, environmental hazards, active infestations of and/or damage from termites, other wood destroying organisms or fungi and for any drainage problems (CL-100). Buyer will have a ten (10) Business Day Due Diligence Period to conduct at Buyer's sole expense, whatever non-destructive inspections, examinations and testing of the Property that Buyer deems appropriate and necessary. Seller will have no obligation to make any repairs or replacements to the Property identified as a result of inspections. Buyer may proceed under the terms of this Contract or void this Contract by providing written notice to Seller or Seller's Broker, prior to the expiration of the Due Diligence Period, with the earnest money released to Buyer. See Paragraph 4(D). Failure to provide notice of voiding this Contract prior to the expiration of the Due Diligence Period will be deemed Buyer's acceptance of the Property in "As-Is" condition with no Seller repairs or replacements.

B. BUYER (_____) (Date 4/21/23) SELLER (_____) (Date 4/21/23) ^{OR}

PROPERTY SOLD "AS-IS" - NO DUE DILIGENCE PERIOD

All Parties agree that Property is being sold "As-Is", Seller will make no repairs or replacements, and Buyer elects not to have a Due Diligence Period. Buyer retains the right to inspect, examine and test the Property but waives both the right to request repairs or replacements and the right to void this Contract based on inspection results.

BUYER (_____) (Date 4/21/23) SELLER (_____) (Date 4/21/23)

11. **CONDITION OF PROPERTY:** Except for Property being sold "As-Is" per terms of Paragraph 10, after any inspections by Buyer and after repairs or replacements, if any, made as a result of any such inspections, Seller agrees to maintain the Property (including but not limited to, lawn, shrubbery, grounds and fixtures, equipment and systems that convey with the Property) and all improvements thereon in similar condition until the day of closing or the day possession is given, whichever occurs first. Seller warrants that to the best of his knowledge, information, and belief there are no conditions in the Property which would adversely affect the value when conditions are hidden by furniture, fixtures or window treatments currently in place in the Property.

12. **PROPERTY CONDITION DISCLOSURE STATEMENT:** (Select, initial and date only one of the options below)

A. BUYER (Initials JB | Date 4/21/23) SELLER (Initials JE | Date 4/21/23) Buyer and Seller agree that a Residential Property Condition Disclosure Statement, as required by S.C. Code, as amended, Section 27-50-10, et. seq., has been provided to Buyer by Seller prior to the final acceptance of this Contract. If Seller discovers, after his delivery of the Disclosure Statement to Buyer, any material inaccuracy in the Disclosure Statement or the Disclosure Statement is rendered inaccurate, misleading, incomplete or false in a material way by the occurrence of some event or circumstance, Seller will promptly make reasonable repairs needed to eliminate the deficiency and repair the damage caused by the occurrence or correct the inaccuracy by delivering a corrected disclosure statement to Buyer before closing. Buyer understands and agrees that Seller's Property Condition Disclosure Statement is not intended to replace inspections of the Property.

B. BUYER (Initials JB | Date 4/21/23) SELLER (Initials JE | Date 4/21/23) OR Buyer and Seller agree that Seller will not complete nor provide a Residential Property Condition Disclosure Statement in accordance with S.C. Code, as amended, Section 27-50-30, Paragraphs (1-13).

13. **LEAD-BASED PAINT:** Buyer is advised that if this Property was built prior to 1978, it may contain lead-based paint and that a "Disclosure of Information and Acknowledgement Lead-Based and/or Lead-Based Paint Hazards" form is hereby made an Addendum to this Contract and will be signed by both Buyer and Seller and their Agents.

14. **HOME WARRANTY COVERAGE:** Buyer and Seller agree that a home warranty providing at least twelve (12) months of coverage for the Buyer will will not be provided at closing. If applicable, the warranty premium will be paid by Buyer Seller in the amount of \$ _____, provided by _____ (home warranty company) and written by the Buyer's Agent Seller's Agent . If the price of the warranty exceeds the dollar amount entered in this paragraph, Buyer shall be responsible for the difference at closing.

15. **PROPERTY DOCUMENTATION:** (Buyer to complete information in Paragraphs A-E, and Seller to confirm)

Buyer's and Seller's Brokers strongly recommend Buyer review existing Property documentation to include the most current plat, Covenants and Restrictions, and Seller's Property Condition Disclosure Statement before entering into this Contract. The Buyer's and Seller's Brokers also recommend that prior to closing on this Contract, Buyer have a survey of the subject Property made to verify land size/boundary dimensions, measure existing structures to verify square footage, have an examination as to the title to the Property, obtain owner's title insurance and the Buyer obtain appropriate hazard, flood, earthquake and wind/hail damage insurance coverage effective at the time of closing.

BUYER (Initials JB | Date 4/21/23) SELLER (Initials JE | Date 4/21/23) Buyer acknowledges and Seller represents the following:

A. This sale is is not subject to approval by a Third Party (i.e. bank in the case of a short sale, corporation, or relocation company.)

B. The Property is: Connected to: public/community sewer system septic tank Lett system Other
Connected to: public/community water system well system Other No water

C. To the best of Seller's knowledge, the Property is is not partly or entirely located within a designated Special Flood Hazard Area (flood zone). If Seller's response indicates that it is in a flood zone, Buyer understands that it may be necessary to purchase flood insurance in order to obtain a loan. If Seller's response indicates that the Property is not in a flood zone and, subsequent to Contract acceptance, it is determined that permanent improvements to the Property are within a flood zone causing Lender to require Buyer to purchase flood insurance as a condition of loan approval, then Buyer can terminate this Contract. Buyer will have three (3) Business Days after receipt of Notice from Lender to provide written Notice to Seller of the decision to terminate. Upon termination, earnest money will be released to Buyer. See Paragraph 4(D). Buyer's failure to provide written Notice to Seller within the three (3) Business Day period will be deemed Buyer's agreement to purchase flood insurance to close the transaction.

D. The Property is is not subject to a mandatory association fee (i.e. homeowner's association/regime or otherwise). If the Property is subject to a mandatory association fee, the fee is \$ _____ per _____ and is payable to _____

E. The Property is is not subject to a special assessment of any governing body, including, but not limited to, a homeowner's association/regime or otherwise. The special assessment fee is \$ ROA 000043

16. ADDITIONAL CONTINGENCIES: (Buyer's failure to disclose the existence of Contingency A or B will constitute a default of this Contract and earnest money will be released to Seller. See paragraph 4(D). Initial and date Paragraph C if other contingencies apply.)

A. SALE AND CLOSING CONTINGENCY ADDENDUM is is not attached to and part of this Contract of Sale.

B. CLOSING CONTINGENCY ADDENDUM is is not attached to and part of this Contract of Sale.

C. OTHER CONTINGENCIES: BUYER (initials) _____ Date _____ SELLER (initials) _____ Date _____ This Contract is contingent on:

17. FIXTURES AND PERSONAL PROPERTY: This sale includes all fixtures, equipment and improvements of any kind which now exist and are attached to or planted on the premises such as, but not limited to: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, storage sheds, playsets, lawn irrigation system and all related equipment, pool and spa equipment, TV wall mounts and brackets, window and door screens, storm windows and doors, garage door openers and remotes, satellite dishes, Seller-owned security systems, smoke detectors, gas logs, central vacuum system and equipment, landscape lighting, curtain/drapery rods, ceiling fans and remotes, attached or hanging bathroom vanity mirrors, light bulbs, switch plates, heating and air system registers, and built-ins, such as equipment, appliances, cabinets, furniture and shelves, unless otherwise agreed herein. Items of personal property other than those above may be sold separately by Bill of Sale.

18. OTHER TERMS: If conflicting with pre-printed portions of this Contract, the following terms will control:

1. \$62,000 with \$1,000 paid cash today and \$1,000.00 every other Friday until closing the payments come off the closing price.

2. Contingent on the well percing.

3. Every other week when \$1,000 payment is made progress must be made toward house and yard being clean. Prior to closing it must be clean.

TB

JL

19. ADJUSTMENTS: Real estate taxes, homeowner association/regime fees, and rents when applicable, will be adjusted as of the date of closing. Unless otherwise agreed to in writing by the Parties in this Contract, tax prorations pursuant to this Contract are to be based on the most current tax bill and prorated on that basis. Buyer will be responsible for applying for any applicable tax exemptions. Buyer is also responsible for any tax increases due to change in ownership. Unless otherwise agreed, Seller will pay all regular and special homeowner's association assessments and all governmental assessments levied prior to closing and Buyer will pay for those assessments levied after closing. All prorations are final.

20. FIRE OR CASUALTY: In case the Property herein is damaged wholly or partially by fire or other casualty prior to delivery of deed, Buyer will have the right for ten (10) Business Days after notice of such damage to terminate this Contract. Upon such termination, earnest money will be released to Buyer and neither party will have any further rights hereunder. See Paragraph 4(D). If Buyer elects not to terminate this Contract or fails to provide timely Notice of Termination, the Parties will proceed according to its terms.

BUYER (TB) _____ Date 12/21/23

SELLER (JL) _____ Date 12/21/23



21. **DEFAULT:** If Buyer or Seller fails to perform any of the terms of this Contract, the other may elect to seek any remedy provided by law including, but not limited to, attorney fees and actual costs incurred or terminate this Contract with written notice. Actual costs incurred will include all costs and expenses incurred or obligated for by Buyer, Seller or Brokers in an effort to consummate this sale. Such costs will include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, attorney's fees and real estate brokerage fee for this sale. If Contract is terminated, both Parties will execute a written release of the other from this Contract and both will hold Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or a court of competent jurisdiction dictates legal disposition. If a court action is brought by Escrow Agent or Party to the Contract seeking the release of earnest money, the non-prevailing party in the action will be responsible for the prevailing Party's and Escrow Agent's attorney's fees and court costs.
22. **MEDIATION:** Any dispute or claim arising out of or relating to this Contract, the breach of this Contract or the services provided in relation to this Contract, shall be submitted to mediation in accordance with the rules and procedures of the dispute resolution system of the National Association of REALTORS®. Disputes will include representations made by Buyer, Seller or any real estate Broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the Property to which this Contract pertains, including, without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreements signed by the Parties pursuant to the mediation conference will be binding. S.C. Code, Ann. Section 15-48-10 et. seq. shall not apply to this Contract.
23. **ENTIRE BINDING CONTRACT:** The Parties agree that this written Contract expresses the entire agreement between the Parties, that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract will be binding on both Parties, their principals, heirs, personal representatives, successors and assigns as state law permits.
24. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of S.C. Code, Section 12-8-580 (as amended) regarding tax withholding requirements of Sellers who are not residents of South Carolina as defined in said statute.
25. **EXPIRATION OF OFFER:** This offer from Buyer will be withdrawn at _____ o'clock _____ M. (Eastern Time) on _____ unless accepted or countered by Seller in written form prior to such time.
26. **TIME IS OF THE ESSENCE:** Time is of the essence with respect to all provisions of this Contract that stipulate a specific period of time for performance. Failure of Buyer or Seller to complete any provision of this Contract within the stipulated period of time for completion of the provision will constitute, where applicable, a default of this Contract.
27. **NOTICE AND DELIVERY:** Notice means a unilateral communication, including offers, counteroffers and associated Addenda from one Party to this Contract to the other. Notice to a Broker or affiliated Agent representing a Party to this Contract will be deemed to be Notice to that Party. All Notices required under this Contract will be in writing and will be effective as of Delivery. Delivery methods may include hand-carried, sent by professional courier service, by United States mail, or by facsimile (fax) or e-mail transmission. A faxed or e-mailed signature of a Party to this Contract will constitute an original signature binding upon that Party. The Parties agree that Delivery will be deemed to have occurred either on the day and at the time Notice is delivered by hand, by a professional courier service, or by United States mail (return receipt requested) or on the day and at the time Notice is sent by facsimile or e-mail transmission provided written confirmation of receipt is received by deliverer. No Party to this Contract will refuse Delivery in order to delay or extend any deadline established in the Contract.
28. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after closing, it will survive the closing and remain binding upon and for the Parties hereto until fully observed, kept or performed.
29. **DEFINITIONS:**
- A. A single Business Day is defined as a twenty-four (24) hour period beginning at 8AM of any week day (Monday through Friday). A Business Day may not begin or end on a Saturday, Sunday or Federal legal holiday. For the purposes of this Contract, the first Business Day will begin at 8AM of the Business Day following final Contract acceptance. All deadlines/timelines set forth in the Contract will begin at 8AM of the first Business Day following the date of final Contract acceptance unless otherwise agreed to by Buyer and Seller.
 - B. Successful negotiation of this offer will have been completed when one of the Parties to the negotiation places the final, required signatures and/or initials on this offer. Contract acceptance will occur at the date and time when this Party subsequently delivers a copy of this executed document to the other Party. The Party receiving the executed document will be responsible for filling in the final Contract acceptance date and time on the last page of this Contract. If a Party is unrepresented, they will assume responsibility for filling in the required information.
 - C. In this Contract, closing is defined as the date and time that the Closing Attorney disburses funds.
 - D. The term Broker is also deemed to include affiliated Agent(s) of the Buyer's and Seller's Brokers.
30. **SETTLEMENT STATEMENT RELEASE:** Seller and Buyer authorize the Closing Attorney to furnish to Buyer's and Seller's Brokers copies of a Settlement Statement for the transaction.
31. **MEGAN'S LAW:** Buyer and Seller agree that the Buyer's and Seller's Brokers and all affiliated Agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry and that no course of action may be brought against the Buyer's and Seller's Agents and all affiliated Agents for failure to obtain or disclose such information. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information which may be obtained from appropriate law enforcement officials.

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BUYER (Initials) JB Date 12/16/23 SELLER (Initials) JE Date 12/16/23

32. NON-RELIANCE CLAUSE: Both Buyer and Seller execute this Contract freely and voluntarily without reliance upon any statements, representations, promises or agreements by the Buyer's and Seller's Brokers except as set forth in this Contract. Buyer and Seller acknowledge that the Buyer's and Seller's Brokers are being retained solely as Real Estate Agents and not as an attorney, tax advisor, lender, appraiser, surveyor, structural engineer, mold or air quality expert, home inspector or other professional service provider. Buyer and Seller are legally competent to enter into this Contract and to fully accept responsibility for it. This is a legally binding Contract. Buyer and Seller should seek legal advice prior to entering into this Contract if, after having read it, its contents and provisions are not understood. Both Buyer and Seller acknowledge receipt of a copy of this Contract and acknowledge receiving, reading and understanding South Carolina Real Estate Commission's Agency Disclosure Brochure.

33. DISCLAIMER: Buyer and Seller acknowledge that Buyer's and Seller's Brokers give no warranty of any kind, expressed or implied, as to: (1) physical condition of the Property or as to condition of or existence of improvements, services or systems including but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage/septic, electrical systems or to structure; (2) condition of the Property, any matters which would be reflected by a current survey of the Property or the accuracy of the square footage heated or unheated; (3) title to the Property including the existence or absence of easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like; (4) fitness for a particular purpose of the Property or improvements; (5) Property being purchased being in compliance with necessary zoning ordinances and restrictions; (6) projected income, value, or other possible benefits to Buyer.

	(L.S.)	<u>Autumn Skye</u>	<u>4/21/23</u>
Buyer's Signature		Buyer's Printed or Typed Name	Date
_____	(L.S.)	_____	_____
Buyer's Signature		Buyer's Printed or Typed Name	Date
	(L.S.)	<u>Zack Evans</u>	<u>4/21/23</u>
Seller's Signature		Seller's Printed or Typed Name	Date
_____	(L.S.)	_____	_____
Seller's Signature		Seller's Printed or Typed Name	Date

Buyer's Agent/ Company _____ Buyer's Agent License# LLR Office Code _____

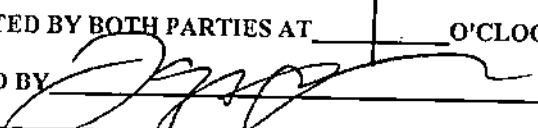
Buyer's Agent's Email Address _____ Buyer's Agent's Telephone Number _____

Seller's Agent/ Company _____ Seller's Agent License# LLR Office Code _____

Seller's Agent's Email Address _____ Seller's Agent's Telephone Number _____

This section is not to be completed until the conditions of paragraph 29B are fulfilled

CONTRACT ACCEPTED BY BOTH PARTIES AT _____ O'CLOCK P M (ET) ON 4/21/23 DATE

ACCEPTANCE ENTERED BY  (AGENT)

NOTE: Once the above Contract acceptance date and time are filled in a copy of this Contract in its entirety should be promptly forwarded to the other Party.

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STATE OF SOUTH CAROLINA
COUNTY OF Lexington

IN THE COURT OF COMMON PLEAS

Autumn Skye Properties, LLC

Plaintiff,

v.

Zack L. Evans

Defendant(s).

LIS PENDENS

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant for Breach of Contract and Specific Performance of Real Estate Contract. Said action shall affect the following property:

All that certain piece, parcel, or lot of land with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Tract "B", containing 3.28 acres on a plat prepared for Cheri N. Evans-Sowers and Zack L. Evans by Douglas E. Platt, Sr., Inc. dated March 18, 2016 and recorded in the Lexington County ROD Office in Book 18293 at Page 59; and having such metes and bounds as shown on said plat.

This is a portion of the property conveyed to Cherie Evans and Zack Evans from the Estate of Carl L. Evans by Deed of Distribution recorded on January 20, 2011 in the Lexington County ROD in Book 14683 at Page 157. Thereafter, Cherie Evans conveyed her interest to Zack L. Evans by deed dated April 1, 2016 and recorded in the Lexington ROD in Book 18293 at Page 64.

Tax Map Reference No.: 005598-01-092

/s Stephanie Trotter Kellahan
Stephanie Trotter Kellahan (SC Bar 77680)
D. Ryan McCabe (SC Bar 16977)
McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd., Suite 250
Columbia, SC 29209

Office: (803) 724-5000
Fax: (803) 724-5001
Email: stephanie.kellahan@mccabetrotter.com
Ryan.mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

May 3, 2023

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Taylor Brunson,)
)
Plaintiff,)

C/A No. 2024-CP-32-00179

vs.)

Zack L. Evans, deceased, and any children)
and heirs at law, distributees and devisees,)
and if any be deceased then any persons)
entitled to claim under or through them; also)
all other persons unknown claiming any)
right, title, interest, or lien herein, any)
unknown adults being a class designated)
as John Doe; and any unknown minors)
or persons under disability or in the military)
service being a class designated as Richard)
Roe; Tina L. Evans individually and as)
Personal Representative of the Estate of)
Zack L. Evans; and Kara Pitchford,)
)
Defendants.)

**AMENDED ANSWER
AND COUNTERCLAIMS OF
TINA L. EVANS INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ZACK L.
EVANS AND KARA PITCHFORD
(JURY TRIAL REQUESTED)**

The defendants Tina L. Evans individually and as personal representative of the estate of Zack L. Evans and Kara Pitchford (“Defendants”) hereby amend their answer to the Complaint and counterclaim as follows:

FOR A FIRST DEFENSE

1. Unless specifically admitted in this answer, the defendants deny each and every allegation of the Complaint.

FOR A SECOND DEFENSE

2. The defendants reallege their previous allegations and denials as fully as if set forth verbatim.

3. The defendants admit the allegations in paragraphs 1, 2, 3, 4, 5, and 6.

4. The defendants deny the allegations in paragraph 7.

5. The defendants admit the allegations in paragraph 8.
6. The defendants deny the allegations in paragraph 9.
7. The defendants deny the allegations in paragraph 10.
8. The defendants deny the allegations in paragraph 11.
9. The defendants deny the allegations in paragraph 12.
10. The defendants deny the allegations in paragraph 13.
11. The defendants deny the allegations in paragraph 14.
12. The defendants deny the allegations in paragraph 15.
13. The defendants deny the allegations in paragraph 16.
14. The defendants deny the allegations in paragraph 17.
15. The defendants deny the allegations in paragraph 18.
16. The defendants deny the allegations in paragraph 19.

FOR A THIRD DEFENSE

17. The defendants reallege their previous allegations and denials as fully as if set forth verbatim.

18. The terms of the mortgage and note are in violation of the South Carolina Consumer Protection Code, and the defendants plead the South Carolina Consumer Protection Code as an affirmative defense in this matter.

FOR A FOURTH DEFENSE AND FIRST COUNTERCLAIM

19. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

20. Any contract entered into by Zack Evans is unenforceable as a result of a lack of capacity.

21. Mr. Evans had a long history of alcoholism and drug dependency including psychiatric hospitalizations resulting from brain damage.

22. As a result, Mr. Evans had a lack of capacity to enter into the documents alleged in this matter, and the defendants plead lack of capacity as a full and complete defense to the note and mortgage alleged in this matter.

23. In addition, pursuant to the South Carolina Declaratory Judgments Act, the defendants seek a declaratory judgment from this Court finding that the note and mortgage alleged in this matter are unenforceable.

FOR A FIFTH DEFENSE AND SECOND COUNTERCLAIM

24. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

25. The note and mortgage alleged in the Complaint is unconscionable and should not be enforced for that reason.

FOR A SIXTH DEFENSE AND THIRD COUNTERCLAIM

26. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

27. The note and mortgage alleged in this matter were entered in violation of the attorney preference statute Section 37-10-102.

28. The Defendants are entitled to recover the remedies set forth in the Consumer Protection Code including but not limited to cancellation of the mortgage and note, a penalty of \$7,500.00, all finance charges, double the finance charges and attorneys' fees and costs.

FOR A SEVENTH DEFENSE AND FOURTH COUNTERCLAIM

29. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

30. The note and mortgage sought to be enforced are supervised loans as defined in the South Carolina Consumer Protection as they charge as rate and intent in excess of 12%.

31. Neither the Plaintiff nor the assignor of the note are listed as supervised lenders by the State of South Carolina.

32. As a result, the alleged note and mortgage were entered in violation of the South Carolina Consumer Protection Act.

33. The Defendants are entitled to an order of this court for relief including but not limited to cancellation of the note and mortgage, a penalty of \$7,500.00, return of all finance charges, return of double finance charges and attorneys' fees and costs.

FOR AN EIGHTH DEFENSE AND FIFTH COUNTERCLAIM

34. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

35. The note and mortgage alleged are consumer home loans under the South Carolina High Cost and Consumer Loans Act.

36. This note and mortgage were entered in violation of the South Carolina High Cost and Consumer Loans Act including but not limited to, the following ways:

- a. In charging defendant fees of 10% of the loan balance in violation of Code Section 37-23-30
- b. Entering the loans without a written certification from a credit counselor as required by Code Section 37-23-40
- c. Lender had no reasonable belief or knowledge that the obligor was capable of repaying the loan as required by Code Section 37-23-40

- d. Failing to provide the disclosures required by Code Section 37-23-45
- e. Failing to provide disclosures required by Code Section 37-23-70; and
- f. Failing to provide the disclosure required by Code Section 37-23-75.

37. As a result, the defendants are entitled to a Court Order canceling the note and mortgage, awarding the loans finance charges with double the loan finance charges, awarding actual damages and \$7,500 as allowed by the Act and awarding them attorneys' fees and costs.

FOR A NINTH DEFENSE AND SIXTH COUNTERCLAIM

38. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

39. This action, and the mortgage and note alleged in it are brought in violation of the mortgage licensing requirements of the South Carolina Consumer Protection Code.

40. In particular, neither the plaintiff, nor the party alleged to have originated the note and mortgage are licensed as mortgage lenders as required by Code Section 37-22-120.

41. This lawsuit, the underlying note and mortgage, are also in violation of the prohibited activities in the Consumer Protection Code Section 37-22-190.

42. These violations are criminal actions as set forth in Code Section 37-22-230.

43. As a result, the defendants are entitled to an order canceling the note and mortgage, awarding \$7,500.00 and actual damages, return of finance costs, return of double finance costs and costs and attorneys' fees.

FOR A TENTH DEFENSE AND SEVENTH COUNTERCLAIM

44. The defendants reallege their previous allegations and denials as if fully set forth verbatim.

45. The note and mortgage are unenforceable as set forth in Section 37-5-108 of the Consumer Protection Code.

46. As a result, the defendants are entitled to cancellation of the note and mortgage, return of the finance fees, return of double finance fees, actual damages and \$7,500 damage award, and attorneys' fees and costs.

WHEREFORE, the defendants having amended their answers to the allegations of the Complaint and counterclaimed ask that the Complaint be dismissed with prejudice, for the relief sought in the counterclaims, and for such other relief as the Court deems fair and equitable.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: s/James Edward Bradley
James Edward Bradley, SC Bar # 66130
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P.O. Box 5709
West Columbia, SC 29171
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Attorney for Defendants Tina L. Evans,
Individually and as Personal Representative
of the Estate of Zack L. Evans, and Kara
Pitchford

West Columbia, South Carolina
February 15, 2024

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Autumn Skye Properties, LLC,)
)
Plaintiff,)

C/A No. 2023-CP-32-01690

vs.)
)

Zack L. Evans, deceased, and any children)
and heirs at law, distributees and devisees,)
and if any be deceased then any persons)
entitled to claim under or through them; also)
all other persons unknown claiming any)
right, title, interest, or lien herein, any)
unknown adults being a class designated)
as John Doe; and any unknown minors)
or persons under disability or in the military)
service being a class designated as Richard)
Roe; Tina L. Evans individually and as)
Personal Representative of the Estate of)
Zack L. Evans; and Kara Pitchford,)
)
Defendants.)

**MOTION FOR CONSOLIDATION
PURSUANT TO RULE 42**

AND

Taylor Brunson,)
)
Plaintiff,)

C/A No. 2024-CP-32-00179

vs.)
)

Zack L. Evans, deceased, and any children)
and heirs at law, distributees and devisees,)
and if any be deceased then any persons)
entitled to claim under or through them; also)
all other persons unknown claiming any)
right, title, interest, or lien herein, any)
unknown adults being a class designated)
as John Doe; and any unknown minors)
or persons under disability or in the military)
service being a class designated as Richard)
Roe; Tina L. Evans individually and as)
Personal Representative of the Estate of)
Zack L. Evans; and Kara Pitchford,)
)
Defendants.)

YOU WILL PLEASE TAKE NOTICE THAT the defendants Tina L. Evans, Kara Pitchford, and the Estate of Zack L. Evans hereby move to consolidate these cases pursuant to Rule 42. Rule 42(a) provides that “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action”

These two lawsuits relate to a home which was owned by Zack L. Evans. Mr. Evans passed away as a result of electrocution in May 2023. Since that time, Taylor Brunson has brought two lawsuits against Mr. Evans’ estate to acquire Mr. Evans’ home. The first is brought by Mr. Brunson’s wholly owned limited liability corporation Autumn Skye. In that lawsuit, Mr. Brunson alleges he had a contract to purchase Zack Evans’ home for approximately \$60,000 though the house appraised for approximately \$200,000. Mr. Evans had been in and out of psychiatric care at the time he is alleged to have signed the contract to sell the house for between 25% and 30% of its appraised value. After bringing this lawsuit, Mr. Brunson acquired a note alleged to have been signed by Zack L. Evans which is alleged to be secured by a mortgage on the same home. He has brought a foreclosure action on that home. As these two matters concern the same property, the same defendants, and an individual plaintiff as well as a LLC wholly owned by that individual plaintiff, the Defendants believe they should be consolidated such that the issues involved in both cases can be decided in one proceeding rather than in two.

(Signature block on following page.)

Respectfully submitted,

s/James Edward Bradley
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West Columbia, South Carolina
February 16, 2024

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2024CP3200179

Taylor Brunson

Plaintiff,

v.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC

Defendants.

(22408.1.1)

**PLAINTIFF'S MOTION TO DISMISS
COUNTERCLAIMS**

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through the undersigned counsel will move before the Court to dismiss Defendants' Counterclaims pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. The grounds for this motion are as follows:

1. Defendants' Third Counterclaim alleges violation of S.C. Code § 37-10-102. A debtor has three years from the date of the alleged violation to bring an action for damages. S.C. Code § 37-10-105(A). The alleged violation occurred in October 2019 before the closing. Therefore, an action under S.C. Code § 37-10-102 had to be brought by October 2022. Accordingly, Defendants' Third Counterclaim should be dismissed as untimely. Defendants' Third Counterclaim should also be dismissed because Plaintiff was not the person who violated the attorney preference statute because Plaintiff is an assignee of the original creditor.

**THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY
INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

2. Defendants' Fourth Counterclaim should be dismissed because S.C. Code § 37-3-105 excludes a first lien on real property from the definition of a "consumer loan." Because the subject loan is not a "consumer loan," the loan is not a supervised loan as defined by the South Carolina Consumer Protection Code. Therefore, Defendants' claim for violation of the supervised loan provisions must be dismissed.
3. Defendants' Fifth Counterclaim must be dismissed because the High Cost and Consumer Loan Acts do not apply to Plaintiff.
 - a. S.C. Code § 37-23-30 does not prohibit charging the debtor fees of 10% of the loan balance;
 - b. S.C. Code § 37-23-40 prohibits a "lender" from making a loan without first making certain disclosures or assurances. Plaintiff did not loan any money to the debtor so he is not a "lender" as defined by the South Carolina Consumer Protection Code.
 - c. S.C. Code §37-23-45 requires a "mortgage broker" make certain disclosures to a debtor. Defendants have not alleged that Plaintiff is in the business of soliciting, process, placing or negotiating loans for others. Therefore Defendants have failed to allege the facts necessary to state a claim for violation of S.C. Code § 37-23-45. Further, it is undisputed that Plaintiff, as assignee of the original creditor, did not make the loan at issue. Therefore, pursuant to S.C. Code § 37-23-50(A), Defendants cannot recover for any alleged violations from Plaintiff.
 - d. S.C. Code §37-23-70(D) requires a "mortgage broker" make certain disclosures to a debtor at the time the debtor applies for the loan. Defendants have not alleged that Plaintiff is in the business of soliciting, process, placing or negotiating loans for others. Therefore Defendants have failed to allege the facts necessary to state a claim for violation of S.C. Code § 37-23-70(D). Further, it is undisputed that Plaintiff, as assignee of the original creditor, did not make the loan at issue. Therefore, pursuant to S.C. Code § 37-23-70(F), Defendants cannot recover for any alleged violations from Plaintiff.
 - e. S.C. Code §37-23-75 requires a "mortgage broker" make certain disclosures to a debtor before closing. Defendants have not alleged that Plaintiff is in the business

THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

of soliciting, process, placing or negotiating loans for others. Therefore Defendants have failed to allege the facts necessary to state a claim for violation of S.C. Code § 37-23-75. Further, it is undisputed that Plaintiff, as assignee of the original creditor, did not make the loan at issue. Therefore, pursuant to S.C. Code § 37-23-70(F), Defendants cannot recover for any alleged violations from Plaintiff.

4. Defendants' Sixth Counterclaim should be dismissed because Defendants have failed to allege that Plaintiff is the maker or servicer of the subject loan. S.C. Code § 37-22-120 requires any person acting as a "Mortgage Lender" to first obtain a license. S.C. Code § 37-22-190 prohibits certain actions in the course of "Mortgage Loan Origination." Defendants have not, and cannot, allege that Plaintiff has made, originated, or serviced any loan as defined by the South Carolina Consumer Protection Code. Therefore, Defendants' Sixth Counterclaim must be dismissed for failure to state a claim.
5. Defendants' Seventh Counterclaim should be dismissed because S.C. Code § 37-3-105 excludes a first lien on real property from the definition of a "consumer loan." Chapter 5 of the South Carolina Consumer Protection Code only applies to "consumer loans." Therefore, Defendants' claim for unconscionability under S.C. Code § 37-5-105 must be dismissed.

This Motion is supported by the pleadings on file with this Court, both federal and state laws and statutes, and whatever memoranda of law or certified documents that may be submitted to this Court.

/s/ Stephanie Trotter Kellahan
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 McCabe Trotter & Beverly, PC
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ATTORNEYS FOR PLAINTIFF

March 1, 2024
 Columbia, South Carolina

THIS COMMUNICATION IS FOR THE PURPOSE OF COLLECTING A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

CASE NO.: 2024CP3200179

Taylor Brunson,

Plaintiff,

vs.

Zack L. Evans, deceased, and any children and heirs at law, distributees and devisees, and if any be deceased then any persons entitled to claim under or through them; also all other persons unknown claiming any right, title, interest, or lien herein, any unknown adults being a class designated as John Doe; and any unknown minors or persons under disability or in the military service being a class designated as Richard Roe; Tina L. Evans individually and as Personal Representative of the Estate of Zack L. Evans; Kara Pitchford; and Autumn Skye Properties, LLC,

Defendants.

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO CONSOLIDATE**

(22408.1.1)

COMES NOW Taylor Brunson, Plaintiff, and submits this Memorandum in Opposition to Defendant Tina Evans, Kara Pitchford, and the Estate of Zack Evans' (hereinafter "Moving Defendants") Motion to Consolidate.

FACTUAL BACKGROUND

On or about April 11, 2016, Defendant Zack Evans obtained sole title to the property located at 141 Browning Court ("Property"). Mr. Evans failed to pay property taxes on the Property and it was sold at tax sale in 2018. The redemption period for the Property was set to expire in November 2019. In order to redeem the Property, Mr. Evans executed a Note and Mortgage in favor of Wesley Martin. Thereafter, Mr. Evans made monthly payments to Mr. Martin

for approximately three years, until January 2023 when payments stopped. In April 2023 Mr. Evans began efforts to sell the Property. On or about April 21, 2023, Mr. Evans signed a contract to sell the Property to Autumn Skye Properties, LLC (“Company”). Shortly thereafter Mr. Evans stopped corresponding with the Company, leading the Company to file suit to enforce the sales contract (“2023 Case”). Unfortunately, Mr. Evans suffered a fatal accident May 15, 2023. Thereafter, the Company amended the 2023 Case to include the Moving Defendants as Mr. Evans’ intestate heirs. Ms. Evans also serves as the Personal Representative for Mr. Evans’ estate. The Moving Defendants responded by asking the court to declare the sales contract invalid due to Mr. Evans’ alleged incapacity and the alleged unconscionability of the contract.

Approximately nine months after filing the 2023 Case, the Company learned that Mr. Evans’ estate had not made any mortgage payments on the Property and the lienholder intended to foreclose the mortgage on the Property. In order to protect his interest in the Property, Taylor Brunson, the sole member of the Company, purchased the note and mortgage from Mr. Martin. After making demand for payment on Mr. Evans’ estate and receiving no response, Mr. Brunson filed suit to foreclose the mortgage on the Property (“2024 Case”). The Moving Defendants responded by filing counterclaims against Mr. Brunson for alleged violations of the S.C. Consumer Protection Code (“SCCPC”). This Motion for Consolidation followed.

LEGAL STANDARD

Rule 42(a), SCRPC provides that a court may consolidate multiple actions that involve “a common question of law or fact.” Conversely, the court has broad discretion to order separate trials “in furtherance of convenience or to avoid prejudice, or when separate trials may be conducive to expedition and economy.” Rule 42(b), SCRPC. “The moving party has the burden

of persuading the court that consolidation is desirable.” Keels v. Pierce, 315 S.C. 339, 342, 433 S.E.2d 902, 904 (Ct. App. 1993).

ARGUMENT

While the two actions proposed for consolidation both center around the Property and similar parties, the commonalities end there. Each cases involves completely different types of alleged misconduct and the Moving Defendants have asserted drastically different defenses and counterclaims in each case. There is no indication that consolidation would expedite resolution of the matters or that consolidation would lessen the costs to the parties. For those reasons, Plaintiff respectfully request this Court deny the Moving Defendants’ Motion.

A. The Two Cases Do Not Involve Common Issues of Law or Fact¹

Common questions of law or fact exist when “claims, brought against the same defendant, rely on the same witnesses, allege[] the same misconduct, and [were] answered with the same defense.” Walters v. Science Applications International, 2020 WL 12765188 at *1 (D.S.C., 2020)².

1. Alleged Misconduct and Witnesses

The 2023 Case is an equitable action seeking specific enforcement of a sales contract executed in 2023. Because the Moving Defendants have raised issues regarding Mr. Evans’ capacity to enter into the sales contract, all evidence and arguments are centered around the events of April 2023. In addition to the parties herein, Plaintiff expects the parties will call two other witnesses, Jason Brown and Bill Brady.

The 2024 Case seeks enforcement of the note and mortgage executed in 2019. The Moving Defendants’ counterclaims center around Mr. Evan’s capacity and Mr. Martin’s actions leading up

¹ Plaintiff has summarized the following factors in Table 1, attached hereto.

² Because Rule 42, SCRCF is identical to its federal counterpart, federal law is persuasive in interpreting the rule. Garrison v. Target Corp., 429 S.C. 324, 838 S.E.2d 18 (Ct. App. 2020).

to the execution of the note and mortgage. Accordingly, all evidence and arguments are centered around the events of October 2019, four years before the relevant time frame for the 2023 Case. In addition to the parties herein, Plaintiff expects that Wesley Martin and G. Lee Miller, Esquire will serve as witnesses.

The factual issues in the two cases are mostly unique and distinct. Mr. Evans' capacity in 2019 in a transaction with Wesley Martin will involve different facts than those necessary to determine Mr. Evans' capacity in 2023 in a transaction with the Company. Similarly, the facts the Moving Defendants must reply upon to prove their counterclaims in the 2024 Case have no relevance to the issues to be considered by the fact finder in the 2023 Case. Accordingly, the misconduct and witnesses involved in the two cases are so separate and unique as to render consolidation inappropriate.

2. Defense and Counterclaims

In the 2023 Case, the Moving Defendants have alleged that Zack Evans lacked capacity to execute the sales contract and that the proposed purchase price renders the contract unconscionable. The Moving Defendants are not seeking any damages from Plaintiff; their recovery is limited to an order that the contract is unenforceable.

In the 2024 Case, the Moving Defendants have asserted a multitude of counterclaims against Mr. Brunson seeking to declare the note and mortgage unenforceable as well as to recover monetary damages, attorney's fees and costs.

The 2023 Case does not require any consideration of the SCCPC and its consolidation with the 2024 Case only serves to increase the scope of issues to be tried. The Plaintiffs of each action stand to suffer prejudice by consolidation by having the alleged bad acts of each other and of

Wesley Martin unduly prejudice a jury or fact finder. These factors all weight against consolidation.

B. Consolidation Would Not Further Judicial Economy or Costs to the Parties

“The purpose of consolidation is to prevent the multiplicity of litigation, to save the parties unnecessary costs, to conserve court time and space and to clear congested court dockets.” Alcorn v. Ford Motor Co., 276 S.C. 180, 182, 276 S.E.2d 925, 926 (1981). The court considers the following factors in determining whether to consolidate: “whether the specific risks of prejudice and possible confusion [are] overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.” Arnold v. Eastern Air Lines, Inc., 681 F.2d 186, 193 (4th Cir. 1982).

The pleadings have closed and discovery is complete in the 2023 Case and the parties are scheduled to mediate the 2023 Case next month. Thereafter, the 2023 Case will be ready for trial. The 2024 Case is still in the initial pleading stage. Plaintiff’s Motion to Dismiss the Moving Defendants’ Counterclaims is currently pending. Should the Moving Defendants’ counterclaims survive that motion, Plaintiff expects extensive discovery will be necessary including multiple depositions. The different procedural posture means that the Company stands to suffer undue delay in resolution of the 2023 Case while the parties conduct discovery in the 2024 Case on issues completely irrelevant to the 2023 Case. Consolidation “does not permit parties to forestall trial in an earlier case. Walters v. Sci. Applications Int’l, at *2.

CONCLUSION

For the reasons argued more fully herein, Plaintiff respectfully requests the Court deny the Motion to Consolidate.

s/ Stephanie Trotter Kellahan
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Email: stephanie.kellahan@mccabetrotter.com
ATTORNEYS FOR PLAINTIFF

Columbia, SC
March 15, 2024

TABLE 1 CLAIMS AGAINST DEFENDANTS		
	2023 Case	2024 Case
Witnesses	<ul style="list-style-type: none"> • Taylor Brunson/Autumn Skye Properties, LLC • Jason Brown • Bill Brady • Tina Evans 	<ul style="list-style-type: none"> • Wesley Martin • G. Lee Miller, Esquire • Tina Evans • Taylor Brunson
Misconduct	Failure to perform under 2023 sales' contract.	Failure to make requirements payments under 2019 note and mortgage.
Defenses	<ul style="list-style-type: none"> • Lack of capacity to make sales contract • Insufficient consideration of sales contract 	<ul style="list-style-type: none"> • Lack of capacity to make mortgage • Mortgage is unconscionable • Violations of SCCPC <ul style="list-style-type: none"> ○ Violation of Attorney Preference Statute ○ Violation of Supervised Loan Statute ○ Violation of High Cost and Consumer Loan Acts ○ Violation of Licensing Statute ○ Violation of Unconscionability Statute

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	
Taylor Brunson,)	
)	TRANSCRIPT OF RECORD
Plaintiff,)	2024-CP-32-00179
)	
-vs-)	
)	
Zack L. Evans, deceased,)	
and any children and heirs)	
at law, distributees and)	
devisees, and if any be)	
deceased, then any persons)	
entitled to claim under or)	
through them; also all other)	
persons unknown claiming any)	
right, title, interest, or)	
lien herein, any unknown)	
adults being a class)	
designated as John Doe; and)	
any unknown minors or persons)	
under disability or in the)	
military service being a)	
class designated as Richard)	
Roe; Tina L. Evans)	
individually and as Personal)	
Representative of the Estate)	
of Zack L. Evans; Kara)	
Pitchford; and Autumn Skye)	
Properties, LLC)	
)	April 9, 2024
_____ Defendants.)	Lexington, South Carolina

B E F O R E:

HONORABLE ROGER M. YOUNG, SR., JUDGE

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

STEPHANIE TROTTER KELLAHAN, ESQUIRE
Attorney for the Plaintiff

JAMES EDWARD BRADLEY, ESQUIRE
Attorney for the Defendants

Transcribed by Amy Pennica, from Webex

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INDEX

(WHEREUPON, there were no exhibits marked or testimony taken during this hearing.)

(MOTIONS AND MATTERS)

1 THE COURT: All right. Ms. Kellahan, this is your motion.

2 MS. KELLAHAN: Yes, Your Honor.

3 THE COURT: All right. Go right ahead.

4 MS. KELLAHAN: Thank you, Your Honor. May it please the
5 Court. Judge, this is a foreclosure action, and I want to give
6 you a little bit of background to try to understand the various
7 parties. Mr. Brunson is the sole member of an LLC called Autumn
8 Skye Properties. Autumn Skye was under contract to purchase a
9 piece of property in Lexington when the property owner, Mr. Zack
10 Evans, died in May of 2023. Mr. Evans's heirs are contesting the
11 validity of the contract, and there's a related case, a 2023 case
12 pending here in Lexington. While that case was ongoing at the
13 end of 2023, Mr. Brunson learned that the senior lien holder, a
14 gentleman named Wesley Martin, intended to foreclose the property
15 because he was not receiving any loan payments. Mr. Brunson made
16 the decision in order to protect his investment to purchase that
17 note and mortgage -- or purchase the note, and he received an
18 assignment of the mortgage. Mr. Brunson reached out to the
19 defendants to seek payment. He didn't get a response, and so
20 he's initiated this foreclosure suit. The defendants have
21 responded by asserting various counterclaims alleging the note
22 and mortgage violate the South Carolina Consumer Protection Code.
23 Notably, all of these allegations center around the closing of
24 the loan, the extension of the credit by Mr. Martin, and the
25 activities that happened either leading up to or at the closing

(MOTIONS AND MATTERS)

1 table. There is no allegation in the counterclaims that
2 Mr. Brunson extended credit to Mr. Evans or that he was involved
3 in that 2019 transaction. We brought this motion to dismiss the
4 defendants' third, fourth, fifth, sixth, and seventh
5 counterclaims because they fail to allege the plaintiff,
6 Mr. Brunson, was a creditor, lender, mortgage maker, or mortgage
7 broker as required by the various statutes cited in the
8 counterclaims, or that he took any action that violated the
9 Consumer Protection Code. Instead, the counterclaims just
10 generally allege that the note and mortgage violate the code.
11 Additionally, the third counterclaim is barred by the statute of
12 limitations. And the fourth and seventh counterclaims should be
13 dismissed because this note and mortgage are not consumer loans
14 as required by the relevant statutes.

15 While a motion to dismiss is supposed to be based solely on
16 the allegations set forth in the complaint, Rule 10(c) does
17 provide that statements in one pleading may be adopted by
18 reference in a separate pleading. The counterclaims here refer
19 to the note and mortgage alleged in each of the subject
20 counterclaims; and, therefore, I think the Court should look to
21 the plaintiff's complaint and the allegations therein regarding
22 the details of that note and mortgage. Additionally, our Supreme
23 Court in Brazell versus Windsor held in when considering a motion
24 on 12(b)(6), the Court can consider documents referenced in the
25 counterclaim but not attached because to hold otherwise would

(MOTIONS AND MATTERS)

1 allow the defendants to survive a motion to dismiss by
2 intentionally omitting documents upon which their claims are
3 based. And, finally, Your Honor, Rule 8 requires the defendants
4 plead the ultimate facts necessary to state a cause of action,
5 and where the pleader merely states that a legal conclusion, such
6 pleading falls below the Rule 8 standard and should be dismissed.
7 And that was our Court of Appeals in RoTec Services versus
8 Encompass Services.

9 I'm going to run through these counterclaims very quickly,
10 Your Honor. The third counterclaim alleges violation of the
11 attorney preference statute. That statute requires a creditor,
12 prior to closing, to ascertain whether a borrower has preference
13 of the legal counsel that he wants to represent him in that
14 transaction. The counterclaim as pled does not allege that the
15 plaintiff was a creditor and doesn't allege that the plaintiff
16 violated the attorney preference statute. Additionally,
17 South Carolina Code 37-10-105(A) requires an action for violation
18 of the attorney preference statute be brought within three years
19 of the violation. This note and mortgage are dated October of
20 2019, as referenced in our complaint, which is more than four
21 years ago, so that counterclaim would be barred by the statute of
22 limitations. The fourth counterclaim is violation of the
23 supervised loans statute. The counterclaim does not allege that
24 the plaintiff did anything in violation of the supervised loan
25 statute. Further, a supervised loan is a consumer loan, and

(MOTIONS AND MATTERS)

1 South Carolina Code 37-3-105 excludes, from the definition of a
2 consumer loan, those loans that are secured by a first lien on
3 real property, which is -- the note and mortgage here is a first
4 lien on the property. So the fourth counterclaim must fail. The
5 fifth counterclaim is violation of the High-Cost and Consumer
6 Loan Act. Again, the defendants have failed to allege the
7 plaintiff violated the Act. They have failed to allege plaintiff
8 made a loan to the defendants as required by the statute to
9 constitute a violation of 37-23-40. The defendants have failed
10 to allege plaintiff is a mortgage broker, as required to
11 constitute a violation of 37-23-45 subsection 70(D) and
12 subsection 75. Additionally, the fifth counterclaim alleges that
13 South Carolina Code 37-23-30 prohibits charging the debtor fees
14 in excess of 10 percent of the loan balance, but that language
15 does not appear in the statute. The sixth counterclaim alleges
16 violations of the mortgage licensing provision. The defendants
17 have failed to allege the defendant is a mortgage lender, as
18 required to constitute a violation of 37-22-120, and they've also
19 failed to allege that the plaintiff engaged in mortgage loan
20 origination, as required to constitute a violation of 37-22-190.
21 Finally, the defendants' seventh counterclaim is for violation of
22 South Carolina Code 37-5-108, which is the general
23 unconscionability provision of the Consumer Protection Code.
24 That chapter, chapter 5, only applies to consumer loans under
25 37-5-102. And 37-3-105, again, excludes a first lien on real

(MOTIONS AND MATTERS)

1 property from the definition of a consumer loan. There are
2 exceptions to that, but chapter 5 is not an exception; and,
3 therefore, the seventh counterclaim should fail. So for those
4 reasons, Your honor, we would request that the Court dismiss the
5 third through seventh counterclaim of the defendants' pleadings.

6 THE COURT: All right. So the mortgagee in this case -- he
7 was -- how did he end up with this mortgage?

8 MS. KELLAHAN: He purchased the note and received an
9 assignment of mortgage in late 2023.

10 THE COURT: And he did that to protect the loan he had
11 already made?

12 MS. KELLAHAN: He was under contract to purchase the
13 property. So if the original mortgage holder, Mr. Wesley Martin,
14 had foreclosed on the property, then Mr. Brunson stood to lose
15 the potential profit that he would make if the sale contract was
16 to be consummated.

17 THE COURT: So he had nothing to do with the original
18 mortgage?

19 MS. KELLAHAN: He had nothing to do -- he didn't know
20 Mr. Evans in 2019. He was not involved in the original extension
21 of credit or closing or anything.

22 THE COURT: Was the original mortgagee -- was he in the
23 lending business, or was this just a business between -- or a
24 deal between two people?

25 MS. KELLAHAN: I'm not sure, Your Honor. He was an

(MOTIONS AND MATTERS)

1 individual. I think he had given loans to other people, but I'm
2 not sure how Mr. Martin and Mr. Evans got in touch with each
3 other. I do know that there has been some testimony in other
4 depositions that the loan was sought because Mr. Evans was about
5 to lose the property at tax sale, and so the money -- it was
6 about \$17,000 that was extended, and most of that was used to
7 redeem the property from tax sale.

8 THE COURT: And how much is the amount of the mortgage now?

9 MS. KELLAHAN: I believe the balance owed now is around
10 \$25,000.

11 THE COURT: Okay. All right. Mr. Bradley.

12 MR. BRADLEY: Thank you, Judge. And thank you for your
13 time. Thank you, Ms. Kellahan. I want to fill in a few facts,
14 and then if it pleases The Court, I will go through the motion to
15 dismiss in the order that it's written out, Judge, just to make
16 it easy for all of us to keep up with all the different parts of
17 the motion. This lawsuit is further attempt for Mr. Brunson to
18 take Zack Evans's home, and here's what happened. Last year,
19 Mr. Evans is mentally ill -- or was; he's deceased now -- and had
20 an extensive substance abuse problem. He signed a contract -- or
21 it's alleged that he signed a contract with Mr. Brunson to sell a
22 house that was worth about \$250,000 for \$60,000 and then he
23 electrocuted himself. He, Mr. Brunson, brought a lawsuit against
24 Mr. Evans's wife as his (inaudible). And that's where we are on
25 that original lawsuit. It turns out that there's an allegation

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1 that there was a loan made prior to this to another person who is
2 a lender of some sort. We haven't developed all this, but
3 apparently Mr. Brunson says that he bought this loan and now he's
4 seeking to foreclose this loan against the family in addition to
5 attempting to force them to sell this house that's, you know,
6 according to their appraisal, 220-, \$250,000 for \$60,000. So
7 that's what's going on with this lawsuit, to fill in the blanks.

8 I'll go and I'll start with number one. The first
9 allegation in the motion to dismiss is that the attorney
10 preference statute cannot be used as a defense for a counterclaim
11 because it's been more than three years since the closing. There
12 is a statute of limitations on it. But the actual code section,
13 Judge, doesn't say what has been represented. It's 37-10-105(A),
14 and that code section says this subsection does not bar a debtor
15 from asserting a violation of this chapter in an action to
16 collect a debt which was brought more than three years from the
17 date of the occurrence of the violation as a matter of defense by
18 recoupment or set off in such action. So I'm just reading the
19 exact language from the statute 37-10-105(A), which says
20 essentially that a debtor can assert that statute as a defense to
21 a debt collection action. Doesn't have anything to do with
22 whether or not the person attempting to sue the debtor was the
23 person who originated the loan. It has to do with whether the
24 loan was originated improperly in violation of the Consumer
25 Protection Code. So they have a statutory right to allege this

(MOTIONS AND MATTERS)

1 as a defense, and it's written there in 37-10-105. So --

2 THE COURT: It has to relate back to the making of the
3 original mortgage, not where the guy bought it from the assignee
4 from the original mortgagee.

5 MR. BRADLEY: I'm happy to talk about that, Judge. The
6 assignment that they have alleged here actually says that they
7 assigned all the obligations and the money due together with the
8 notes and the obligations therein described and the money due, so
9 as the assignee, according to the assignment they rely on here,
10 they are assigned the obligations under the note, which is an
11 obligation to comply with the Consumer Protection Code. The fact
12 that it was assigned doesn't get them around the violation which
13 is with its origination. They can't come out and say: Hey, we
14 didn't originate; we bought it from someone else. You can't wash
15 the violation, the Consumer Protection Code, out with the
16 origination of the loan by signing it.

17 THE COURT: First of all, if it applies to this
18 transaction -- but it does relate back to the making of the
19 original note.

20 MR. BRADLEY: Yes, sir.

21 THE COURT: And she says it incurred in 2019?

22 MR. BRADLEY: Yes, sir. And what I'm saying is the actual
23 statute itself says that the statute of limitations is not a bar
24 to asserting it as an affirmative defense or a setoff. It says
25 it in the statute.

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1 THE COURT: It doesn't make sense that it would say you
2 can't bring a claim more than three years but then you can.

3 MR. BRADLEY: Well, what I think it says is this, Judge.
4 And maybe it doesn't make sense. I don't know. I'm just reading
5 what it says. I've read plenty of statutes that don't make sense
6 to me as to why it's that way. But this statute says you can't
7 bring a lawsuit -- essentially, a claim -- to recover a monetary
8 penalty for it if you're outside three years, but you can assert
9 it as a defense. If you just look at the sections
10 37-10-105(A) --

11 THE COURT: How is it a defense?

12 MR. BRADLEY: Because you're entitled to the defense and the
13 offset if the loan was originated improperly, Judge. I'm just
14 reading what the statute says. Violations, civil actions -- this
15 subsection -- and this is the section that has to do with
16 attorney preference violations -- this subsection does not bar a
17 debtor from asserting a violation of this chapter in an action to
18 collect a debt which was brought more than three days -- three
19 years from the date of occurrence of the violation as a matter of
20 defense by recoupment or setoff in such action. So they're
21 allowed to bring that as a defense, as a recoupment or setoff to
22 the claims that are made.

23 THE COURT: If it applied or if it hadn't run, then you
24 would be able to use that as a setoff, but if it had run, then
25 you don't get to bring the action in the first place.

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1 MR. BRADLEY: Right. But you can still use it as a setoff
2 from the collection. That's what the statute says. I know it
3 sounds weird, Judge. I'm not arguing that it doesn't sound
4 weird. If you'll look at it, I think you'll see exactly what I'm
5 talking about.

6 THE COURT: Which section is it?

7 MR. BRADLEY: Yes, sir. It's 37-10-105(A).

8 THE COURT: All right. I've got it right here.

9 MR. BRADLEY: And it does say what Ms. Kellahan said it
10 said, that you can't bring an action if it's been more than three
11 years since the closing, essentially. But then it goes on and
12 says what I read to you.

13 THE COURT: And which section are you saying -- which
14 subsection are you referencing?

15 MR. BRADLEY: 37-10-105(A), Judge. The last sentence of
16 that subsection. And up above it, it does say what Ms. Kellahan
17 said, but then below it says what I read that it says. I agree
18 it sounds strange, but that's what it says.

19 THE COURT: All right. But it applies to an action for a
20 recoupment or a setoff, not just you get -- so if the plaintiff
21 owed some money to the defendant and the defendant had the right
22 to say: Oh, wait a minute. You owe me money, and I know I owe
23 you some, so I have a right to have a recoupment or setoff on
24 that, in that case that section would apply. But unless there is
25 a recoupment or a setoff in the action, it doesn't apply, and

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1 you're barred by the three-year statute of limitations.

2 MR. BRADLEY: Right. But I'm pleading that there's a setoff
3 as a result of the violation, Judge.

4 THE COURT: What is your setoff?

5 MR. BRADLEY: The setoff is the statutory fees for violation
6 of the section.

7 THE COURT: That can't be the basis of the setoff or it
8 would just mean the statute of limitations doesn't apply at all.
9 It would be some other kind of setoff in which case you could
10 then argue this money should be an adjustment in that. But say
11 you didn't follow these other statutory requirements and I get to
12 bring those in as defenses or a counterclaim, it doesn't make any
13 sense that you would then just say: Well, why even have a
14 statute of limitations?

15 MR. BRADLEY: I mean, I can answer that question if you
16 want, and it's because the difference is this: There are two
17 ways you could do this. You could bring a lawsuit when you don't
18 have a foreclosure in place and say: Hey, I'm entitled to this
19 money because you violated this statute. In fact, that's what
20 happened under this statute in a bunch of class actions which
21 were started by the Green Tree case, which you may be familiar
22 with. It was probably 15, maybe 20 years ago. Another way that
23 you can use this statute is a defense or a setoff against amounts
24 owed. The first way is limited by statute of limitations to
25 three years, but the second way is not. And that's how I read

(MOTIONS AND MATTERS)

1 the statute. And that's the claim we've made. Otherwise, the
2 way I think Ms. Kellahan wants you to read it, that last
3 sentence, makes no sense at all because it would never apply.
4 The only time it's going to apply is when you're asserting this
5 section as a setoff, which is what we're doing, and so for that
6 reason, this last sentence has got to mean the penalty as a
7 setoff, which you can do, which is not barred by the statute of
8 limitations to carve out. The distinction being the first
9 section, the three year limitations, could apply. I agree, and
10 I'm not arguing that we couldn't just go sue them for this
11 violation, but we can assert it as a defense, so that's what that
12 last sentence means. We can't bring an independent lawsuit for
13 the violation even though it occurred, but what we can do is
14 assert the violation as a defense. That's what makes sense to me
15 as the most common sense reading of this section. To read it
16 otherwise either way cuts out one or the other sentence. So
17 that's why we believe it's appropriate to assert it as a defense.

18 THE COURT: What about the claim that this whole statutory
19 violations doesn't apply to an arm's-length transaction between
20 two people that aren't in the business -- one of them isn't in
21 the business of regularly making loans?

22 MR. BRADLEY: First of all, that's a factual inquiry whether
23 or not there an arm's-length transaction, and for that very
24 reason, it shouldn't be granted at this point. Second, whether
25 they're in the business of making loans is another factual

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1 question, which is not in evidence, and so it wouldn't be
2 appropriate at this time. It's my belief that the original
3 originator of this paper is in the business of making loans. I
4 don't know whether or not Ms. Kellahan's client is in the
5 business of making loans or not. I do know that he's a property
6 speculator, and he could be. So whether he is or is not is a
7 factual question and would be inappropriate to decide at this
8 stage in the pleadings. The argument that you can sell the paper
9 and thereby defeat a provision of the Consumer Protection Code
10 that applies the origination of the paper -- if that is true, if
11 it works that way, then you've completely neutered the Consumer
12 Protection Code. I don't know of any law that says: Hey, you
13 can violate the Consumer Protection Code, sell the paper and the
14 obligation under which the violation occurred, and then whoever
15 you sold it to can enforce it. I understand for commercial paper
16 it works that way, but I don't understand any situation that
17 there's any law that backs up that argument. And the Consumer
18 Protection Code certainly doesn't say that you can do that. I
19 don't know why in the world you'd be able to because if you
20 could, every time there was a problem with any -- whether or not
21 someone filed a Consumer Protection Code or not, they'd just sell
22 the note to somebody else. So that's why we believe that's an
23 improper argument. Do you want me to move on to the next, or do
24 you have other questions, Judge?

25 THE COURT: No. Go ahead.

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1 MR. BRADLEY: All right. I'm going to number 1 of the
2 motion, which asks about -- which talks about being a supervised
3 loan. After reading back through the statute that Ms. Kellahan
4 cited, I agree that this is not a supervised loan because it's
5 secured by mortgage, so at least for the argument labeled 2 on
6 her motion,, I don't contest that. Okay. Number 3 --

7 MS. KELLAHAN: Is that the fourth counterclaim?

8 MR. BRADLEY: It says in your motion defendants' fourth
9 counterclaim, and it's under -- the 2 that I'm referencing is
10 paragraph 2 in your motion.

11 MS. KELLAHAN: Okay. Thank you. I'm sorry.

12 MR. BRADLEY: It's fine with me as long as it's okay with
13 the judge.

14 MS. KELLAHAN: Sorry, Judge.

15 MR. BRADLEY: I'm trying to get to the bottom of things and
16 speak clearly. The third paragraph in Ms. Kellahan's motion
17 talks about the High-Cost and Consumer Loan Acts. They allege
18 that these acts do not apply to them, but I don't know on what
19 basis they make that allegation. The motion says plaintiff did
20 not loan any money to the debtor, so he is not a lender as
21 defined by the South Carolina Consumer Protection Code. I don't
22 know anywhere that says that, and there's certainly no citation
23 to any authority. Nothing in the Consumer Protection Code says
24 an assignee is not a lender. Generally, in these situations, the
25 assignee takes with any defenses that the consumer has, so I

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1 don't know of any authority anywhere to support that statement.
2 If there is some, I'd like to look at it, but I don't know of
3 anything that says that. What the High-Cost and Consumer Loan
4 Act says is if you're charging excessive interest, which this
5 loan does, you're required to make certain disclosures about it
6 and enter into credit counseling, which they did not do. So that
7 applies to the actual origination of the obligation to pay. And
8 it goes back to 37-23-50, which talks about that if there's
9 violation when making a high-cost home loan -- violates the
10 article, the borrower has a right of action other than a class
11 action to assert a violation of this article as a defense to the
12 debt. So I don't know of any argument that says if you can
13 assign the debt to someone, the defense is no good. That's what
14 37-23-50 says. It even says that if the Court finds that the
15 agreement or transaction violates the Consumer Protection Code
16 for high-cost loans, it can refuse to enforce the agreement,
17 which is consistent with South Carolina law that illegal
18 contracts aren't enforced. So I think that answers the questions
19 about whether or not it really goes to the arguments under
20 paragraph 3 of B, C, and D and E regarding the disclosures that
21 have to be made under the High-Cost Consumer Loan Act. It's
22 required of lenders because of the very high interest rate that's
23 charged here. So all of those statutes say the borrower can
24 assert a violation of the home -- High-Cost Home Loan Act as a
25 defense to a collection action. And there's nothing that exempts

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1 it if the paper's been transferred. I'm talking about 37-23-50
2 that says that. 37-23-70 says the same thing, that those are
3 defenses that can be asserted by the borrower to a note that
4 violates the High-Cost Consumer Loan Act. So I don't know of any
5 argument, any law, any statute that says you can assert that
6 defense because the note's been sold. And these statutes don't
7 say that it's limited to when the note's not sold against the
8 original lender. It says that if there's a violation, you can
9 assert it as defense, and that's what we are doing. And that
10 should take care of all of number 3. I've just given you the
11 code sections.

12 Number 4 on their motion, talking about mortgage lender and
13 whether or not they're licensed and whether the loan's properly
14 originated, I don't think there's any question these people
15 weren't licensed to do what they were doing. The question is
16 whether that's a legitimate basis to not enforce the loan.
17 Generally, South Carolina courts don't enforce a legal
18 contract -- contracts that are entered illegally. And the case
19 of that is Jackson versus Bi-Lo, which is 437 S.E.2d 168. They
20 even cite -- that's a 1993 case from the Court of Appeals -- they
21 cite the United States Supreme Court saying the authorities from
22 the earliest times to present unanimously hold that no Court will
23 lend its assistance in anyway towards carrying out the terms of
24 an illegal contract. So these notes that are alleged here were
25 entered in violation of the Consumer Protection Code. As illegal

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1 contracts, they're not enforceable in the court system. That's
2 the common law authority for the argument for that fact that you
3 weren't licensed to do what you did, that you didn't give the
4 disclosures to do what you did under a code section that's
5 supposed to protect consumers of the High-Cost Consumer Loan
6 Acts, and that makes the loan unenforceable. Number 5 on their
7 motion talks about an unconscionability section of the Consumer
8 Protection Code that has to do with the consumer loan. After
9 reading what Ms. Kellahan sent me, I agree with her argument on
10 number 5, that that section of the Consumer Protection Code
11 doesn't apply here because this is a loan secured by an interest
12 on property, which is excluded as a consumer loan.

13 So just to quickly recap, I know I've been over a lot of
14 mind-numbing statutes here, Judge. Her paragraph number 1, I
15 agree that we can't bring an independent claim on the attorney
16 preference code, but I believe it can be asserted as a defense
17 based on the code section that we reviewed together, and that's
18 37-10-102(a). The second argument has to do with supervised loan
19 that's under paragraph 2 of Ms. Kellahan's motion. I agree with
20 her. This is not a supervised loan, so she's right. Paragraph
21 3, the High-Cost and Consumer Loan Act do apply to them because
22 they apply to all note holders of high-cost consumer loans.
23 That's the way the Act is written, and if it were written in any
24 other way, it would be of no consequence whatsoever because every
25 lender could just violate it and then turn around and assign the

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1 notes to someone else and the violations wouldn't be able to be
2 asserted as a defense. And there's nothing in the Consumer
3 Protection Code that says an assignment is a defense. And the
4 code sections themselves, which I went through, 37-23-50 and
5 37-23-70 indicate that the borrower can bring these violations as
6 a defense to enforcing a loan entered in violation of the
7 High-Cost and Consumer Loan Acts, making no reference whatsoever
8 to who is actually bringing the action. For those reasons, we
9 believe the arguments laid out in the paragraph numbered 3 of
10 Ms. Kellahan's motion are improper and should not be granted.
11 Paragraph number 4 has to do with whether they're properly
12 licensed to loan money in this way. There is not a clear penalty
13 section under that requirement. On that we rely on the common
14 law doctrine of South Carolina in which courts refuse to enforce
15 contracts that are entered in violation of law requiring this
16 licensure, and as a result, under the Jackson versus Bi-Lo case I
17 referenced earlier, they should not be allowed to collect on a
18 note that was entered in violation of the act. Finally,
19 paragraph 5 of Ms. Kellahan's motion -- it talks about
20 unconscionability of consumer loans under that particular section
21 of the code 37-5-105. I agree that she's right because the code
22 excludes a first mortgage from that section. That's my argument,
23 Judge, unless you have further questions.

24 THE COURT: Nope. Ms. Kellahan, did you want to respond?

25 MS. KELLAHAN: Briefly, Your Honor. I believe the case of

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1 Rosemond versus Campbell -- that's 288 S.C. 516 -- is helpful in
2 this case. It is a similar situation where an assignee was being
3 sued for violation of the Consumer Protection Code, and that case
4 said that the -- that those claims do not transfer to the
5 assignee because there's nothing that Mr. Brunson could do to
6 comply with the statute. Judge Cooper also heard a similar
7 argument, specifically on the attorney preference statute, and
8 issued an order in 2021. Just -- I know it's not binding on the
9 Court; it's not appellate law, but just to make the Court aware,
10 it's 2019-CP-42-00270 where he cites -- Judge Cooper sites
11 Rosemond for the position that the assignee cannot be charged
12 with violation of a statute that they never had any chance to
13 comply with because they weren't involved in the original
14 origination of the loan. In that order Judge Cooper points out
15 that the attorney preference statute says a creditor must do
16 certain things. And section 37-1-301(13) defines creditor as a
17 person who grants credit in a credit transaction. And so -- and
18 the order goes on to analyze how that means the attorney
19 preference statute doesn't apply to an assignee. And Judge
20 Cooper says it much better than I ever could, so I'd point the
21 Court in that direction.

22 To Mr. Bradley's argument that, hey, if you can't assert
23 these claims against an assignee of a mortgage, then what's the
24 point of them? Well, the point of them is you can always go
25 assert them against the original creditor, the creditor who did

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1 the bad thing. So if Wells Fargo is out here granting loans
2 willy-nilly, violating the Consumer Protection Code and then
3 immediately assigning them to someone new, they're not escaping
4 liability under the South Carolina Consumer Protection Code.
5 There's still an action that can be brought against the
6 originator of the loan. Additionally, I think it's important to
7 look at the specific statutes because the statutes themselves
8 referred to words of art, for a lack of a better word. It will
9 refer to a mortgage lender; it'll refer to making a high-cost
10 loan; and those are all defined terms within the statutes
11 themselves. So with respect to the licensing issue, the statute
12 requires that a broker or -- I'm sorry -- that a mortgage lender
13 must first obtain a license, but mortgage lender is defined as
14 the business of making or servicing a mortgage loan. And there's
15 no allegation in the counterclaims that Mr. Brunson made this
16 loan or serviced this loan. Notably, service means to collect
17 payments for others and to distribute those payments to another
18 person. So even if Mr. Brunson has collected a payment on this,
19 it would be collecting it for himself as the holder of the note
20 and the assignee of the mortgage. Mr. Bradley several times said
21 there's nothing that says the South Carolina Consumer Protection
22 Code doesn't apply to a noteholder. Well, if they wanted to use
23 the word "noteholder," they would have used it, but they didn't.
24 They refer to makers of loans, creditors, brokers, all of which
25 they bothered to define, and none of those refer to the assignee.

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1 Your Honor, I think that that -- I think that addresses all of
2 the points that Mr. Bradley made that I would like to address.

3 THE COURT: All right. Well, here's what I want y'all to
4 do. Both sides submit me a proposed order within 15 days. And
5 if you've got some, you know, circuit judge opinion that you
6 think is helpful, attach it. And so I'll take it under
7 advisement today, and we will see what we can come up with for
8 enlightenment on this most interesting issue.

9 MS. KELLAHAN: Thank you, Judge.

10 THE COURT: Okay. Two weeks. Both sides submit proposed
11 orders.

12 MR. BRADLEY: Thank you, Judge.

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2023044475 BK: 21086 PG: 2309 - 2310
MORTGAGE ASST
Rec: \$10.00 Cnty: \$0.00 State: \$0.00
December 15, 2023 03:55:42 PM
FILED IN LEXINGTON COUNTY, SC

2 PGS

Prepared By

McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd. Suite 250
Columbia, SC 29209

Tina Querry

After Recording Return To

McCabe Trotter & Beverly, PC
4500 Fort Jackson Blvd. Suite 250
Columbia, SC 29209

ASSIGNMENT OF NOTE AND MORTGAGE

For value received, the undersigned holder of a Mortgage known as:

Assignor: Wesley Martin, an individual, with a mailing address of PO Box 591, Effingham, SC 29541 (“Assignor”), does hereby grant, sell, assign, transfer, and convey unto:

Assignee: Taylor Brunson, an individual, with a mailing address of 408 Jericho Ct., Lexington, SC 29072 (“Assignee”), a mortgage described as the following:

A certain Mortgage and Promissory Note dated October 29, 2019, made and executed by Zack L. Evans (“Borrower”) upon the following described property (“Property”) situated in Lexington County, State of South Carolina:

All that certain piece, parcel or lot of land with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Tract B, containing 3.28 acres on a plat prepared for Cherie N. Evans-Sowers and Zack L. Evans by Douglas E. Platt, Sr., Inc. dated March 18, 2016 and recorded in the Lexington County ROD Office in Book 18293 at Page 59. Reference is had to said plat for a more complete and accurate description.

LESS & EXCEPT that certain piece, parcel, lot or tract of land with improvements thereon, if any, containing 0.11 acre, situate, lying and being shown on a plat prepared for George L. Hutto, III and Patricia B. Hutto by Douglas E. Platt, Sr., SCPLS #4041 dated February 23, 2018 and recorded in the office of the ROD for Lexington County in Book 19916 at Page 312. Reference should be had to said plat for a more complete and accurate description.

Street Address: 141 Browning Street, Lexington, SC 29073

Such Mortgage having been given to secure an original principal amount of \$17,220.00, which Mortgage is of record Book 20842, at Page 4928 in the office of the Register of Deeds for Lexington County, together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage.

TO HAVE AND TO HOLD the same unto the Assignee, his heirs and assigns forever, subject only to the terms and conditions of the Mortgage.

So long as any of the indebtedness secured hereby and by the Note shall remain unpaid, the fee title and any other estate in the Property as hereinbefore described shall not merge, but shall always be kept separate and distinct, notwithstanding the union of said estate either in the Assignee or in any tenant or in a third party by purchase or otherwise.

TO HAVE AND TO HOLD the same unto Assignee, his heirs and assigns, forever, subject only to the terms and conditions of the above-described Mortgage and Promissory Note without recourse.

Albie Yarborough
Witness 1

ASSIGNOR:
Wesley Martin
Wesley Martin

Coit YJ
Witness 2

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF FLORENCE

I, Ray Coit Yarborough, Jr., Notary Public for the State of South Carolina, do hereby certify that Wesley Martin, personally appeared before me this day and acknowledged the due execution and sealing of the foregoing instrument.

SWORN to before me this
7th day of December, 2023

Ray Coit YJ (L.S.)
Notary Public for South Carolina
My Commission Expires: 5-13-2024



2019050314 BK: 20842 PG: 4928 - 4937 10 PGS
 MORTGAGE
 Rec: \$25.00 Cnty: \$0.00 State: \$0.00
 November 1, 2019 11:26:00 AM
 FILED IN LEXINGTON COUNTY, SC

Tina Quarry

G. LEE MILLER, ESQUIRE, P.C.
 2231 W. PALMETTO STREET
 SUITE 101 2019-493
 FLORENCE, SC 29501

-----**(Space above this line for recording data)**-----

MORTGAGE

THIS MORTGAGE (“Security Instrument”) is given on **October 29, 2019**. The mortgagor(s) is **Zack L. Evans**. This Security Instrument is given to **Wesley Martin**, whose address is **P.O. Box 591, Effingham, SC 29541**. Borrowers owe Lender the principal sum of **Seventeen Thousand Two Hundred Twenty Dollars and 00/100 Dollars (U.S. \$17,220.00)**. This debt is evidenced by Borrower’s Note dated the same dated as this Security Instrument (“Note”), which provides for monthly payments, with the full debt. If not paid earlier, due and payable on **December 01, 2026**. This Security Instrument secures to Lender (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower’s covenants and agreements under this Security Instrument and Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender’s successors and assigns the following described property located in Lexington County, South Carolina.

SEE “EXHIBIT A” ATTACHED

Having the address of **141 Browning Court, Lexington, SC 29703**

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TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter created 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 COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey 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 encumbrance 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 and Interest:** Prepayment and Late Charges.

Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance.** Subject to applicable law or to a written

waiver by Lender. Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over the Security Instrument as a lien on the property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender in accordance with the provisions of paragraph 8 in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time. 12 U.S.C. Section 2601 et. Seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditure of future Escrow Items or otherwise in accordance with the 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 such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account or verifying the Escrow Items, unless Lender pay Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting services used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to


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be paid. Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower may 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 showing credits and debits to the funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security by this Security Instrument.

If the Funds held by Lender exceed the amount permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the escrow items when due, Lender may so notify Borrower in writing and in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender sole discretion.

Upon payment in full of all sums secured by the Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. As under paragraph 21. Lender shall acquire or sell the property. Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by the Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied first, to any prepayment charges due under the Note; second, to amount payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges, Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributed to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner. Borrower shall pay them on time directly to the person owed payments. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If writing to the payments of the obligations secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien in; or, (c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to this Security Instrument. If the Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the Lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of giving notice.

5. **Hazard or 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 floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with Paragraph 7.


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All insurance policies and renewals shall be acceptable to the Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give the Lender all receipts of paid premiums and renewal notices. 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, insurance proceeds shall be applied to restoration or repair of the Property damaged. If the restoration or repairs is 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 any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, the Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due dated of the monthly payments referred to in paragraph 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by the Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Lease Holds. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty 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 be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lenders security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or fail to provided Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merge in writing.



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7. **Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's right in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorney's fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amount disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement of the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

8. **Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly use and retain these payment as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage agreement between Borrower and Lender or applicable law.

9. **Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

10. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before taking unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fractions: (a) the total amount of the sums secured immediately before taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender

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otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or 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 proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument whether or not the sums are due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 and 2 or change the amount of such payments.

11. Borrower Not Released; Forbearance By Lender Not a Waiver.

Extensions of the time for payment or modification of amortization of the sum secured by this Security Instrument granted by Lender to any successors in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's Successor in interest. Lender shall not be required to commence proceedings against any successor in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of Paragraph 17. Borrower's covenants and agreements shall be joint and several. Any borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower'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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent

13. Loan Charges. If the loan secured by this Security Instrument 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 and that law is finally interpreted so that the interest or other loan charges 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 refundable to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to the Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

14. Notices. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument

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shall deemed to have been given to Borrower or Lender when given as provided in this paragraph.

15. **Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflict with applicable law, such conflict shall not affect other provision of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of the Security Instrument and the Note are declared to be severable.

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

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a Beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) 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 as of the date of this Security Instrument.

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 delivered or mailed 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.

18. **Borrower's Right To Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify the reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) 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 attorney's fees; and (d) takes such action as Lender may reasonably require to assure that the lien of the Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Installment and the 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 paragraph 17.

19. **Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may 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

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notice of the change in accordance with paragraph 14 above and applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

20. **Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substance on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The Proceeding 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.

Borrower shall promptly give Lender written notice of 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. If Borrower learns, or is notified by any governmental or regulatory authority, 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.

As used in paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances 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. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the property is located that relate to health, safety or Environmental protection.

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

21. **Accelerations; 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 paragraph 17 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 give 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 not-existence of a default or any other defense of Borrower to the acceleration and foreclosure. If the default is not cured on or before the specified date 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 paragraph 21, including, but not limited to, reasonable attorney's fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

22. **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 without charge to the Borrower. Borrower shall pay any recordation costs.

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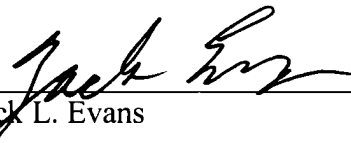
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23. **Waivers.** Borrower waives all rights of homestead exemption in the Property.

24. **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 one hundred fifty percent (150%) of the original principal amount of the Note plus interest thereon, attorney's fees and court costs.


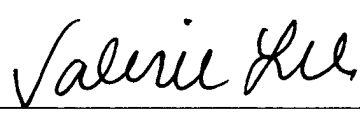
25. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

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



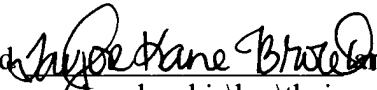
Zack L. Evans

Signed, Sealed and Delivered in the presence of:

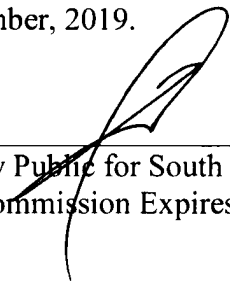
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STATE OF SOUTH CAROLINA


Florence County

Before me personally appeared  and made oath that he\she saw the within named Borrower sign, seal and as his\her\their act and deed, deliver the within written Mortgage; and he\she with the other witnessed the execution thereof.

Sworn to before me this 29th day of December, 2019.



(Seal)
Notary Public for South Carolina
My Commission Expires: 10/25/27



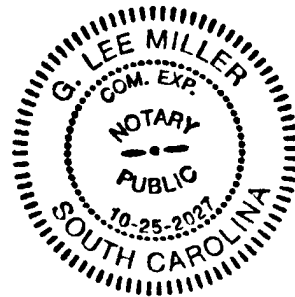


Exhibit A Legal Description

All that certain piece, parcel or lot of land with any improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, being shown and designated as Tract B, containing 3.28 acres on a plat prepared for Cherie N. Evans-Sowers and Zack L. Evans by Douglas E. Platt, Sr., Inc. dated March 18, 2016 and recorded in the Lexington County ROD Office in Book 18293 at Page 59. Reference is had to said plat for a more complete and accurate description.

LESS & EXCEPT *that certain piece, parcel, lot or tract of land with improvements thereon, if any, containing 0.11 acre, situate, lying and being shown on a plat prepared for George L. Hutto, III and Patricia B. Hutto by Douglas E. Platt, Sr., SCPLS #4041 dated February 23, 2018 and recorded in the office of the ROD for Lexington County in Book 19916 at Page 312. Reference should be had to said plat for a more complete and accurate description.*

This being a portion of the property conveyed to Zack L. Evans by deed of Cherie N. Evans-Sowers, f/k/a Cherie Evans dated April 1, 2016 and recorded April 11, 2016 in the office of the ROD for Lexington County in Deed Book 18293 at Page 64.

TMS# 005598-01-092

Property Address: 141 Browning Court, Lexington, SC 29703



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Taylor Brunson,)
)
Plaintiff,)

C/A No. 2024-CP-32-00179

vs.)

**ORDER DENYING IN PART AND
GRANTING IN PART
PLAINTIFF’S MOTION TO STRIKE
DEFENSES**

Zack L. Evans, deceased, and any children)
and heirs at law, distributees and devisees,)
and if any be deceased then any persons)
entitled to claim under or through them; also)
all other persons unknown claiming any)
right, title, interest, or lien herein, any)
unknown adults being a class designated)
as John Doe; and any unknown minors)
or persons under disability or in the military)
service being a class designated as Richard)
Roe; Tina L. Evans individually and as)
Personal Representative of the Estate of)
Zack L. Evans; and Kara Pitchford,)
Defendants.)

INTRODUCTION

This matter came before the court by videoconference link on Tuesday, April 9, 2024. The court was assigned to hear cases out of Lexington County, South Carolina. Stephanie Kellahan appeared on behalf of the Plaintiff Taylor Brunson. James Edward Bradley appeared on behalf of the Defendants Estate of Zack L. Evans, Tina L. Evans and Kara Pitchford. After considering the Plaintiff’s motion, the court denies in part the motion and grants in part the motion as set forth in this order. As an initial matter, the Plaintiff’s motion is styled as a motion to dismiss counterclaims but addresses counterclaims and affirmative defenses set out in the Defendants’ case. As the motion only asks to dismiss counterclaims, this court is dismissing only the counterclaims in the pleadings. The affirmative defenses are not dismissed.

DISCUSSION

This matter concerns a mortgage foreclosure. In short, the Plaintiff asserts that he has purchased a mortgage and note from a third-party which was executed by the decedent Zack L. Evans in 2019. The Defendants answered the complaint and asserted a series of defenses and counterclaims. In return, the Plaintiff moved to dismiss counterclaims. The court will address each counterclaim in the order set forth in the Plaintiff's motion for purposes of clarity as follows:

1. Defendants' Third Counterclaim for Violations of Attorney Preference Requirements S.C. Code § 37-10-105

The Plaintiff moves to dismiss Defendants' third counterclaim on the basis that it was brought more than three years from the date of the alleged violation. S.C. Code § 37-10-105(A) requires that a cause of action to recover under the statute must be brought within three years of the date the violation occurred. As a result, the court dismisses this counterclaim. S.C. Code § 37-10-105 also indicates that:

This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

As a result, this affirmative defense remains, but the counterclaim is dismissed. In addition, the motion does not seek to dismiss affirmative defenses. Therefore, the affirmative defense of failure to comply with this statute remains, but the counterclaim is dismissed.

2. **Defendants' Fourth Counterclaim for Violations of the Supervised Loan Provisions of S.C. Consumer Protection Code**

The Plaintiff's motion moves to dismiss the Defendants' fourth counterclaim which alleges violations of the supervised lending provisions of the South Carolina Consumer Protection Code on the basis that the note alleged in this matter is secured by a mortgage and is thus not a consumer loan pursuant to the supervised loan provisions of the South Carolina Consumer Protection Code. Counsel for the Defendants acknowledged the Plaintiff's argument on this point. As a result, the court dismisses the Defendants' fourth counterclaim in this matter.

3. **Defendants' Fifth Counterclaim for Violations of the High Cost and Consumer Loan Act**

Paragraph Three of Plaintiff's motion asks that Defendants' fifth counterclaim be dismissed on the basis the High Cost and Consumer Loan Act does not apply to the Plaintiff. Plaintiff argues that because it is an assignee of the note, it is not subject to the High Cost and Consumer Loan Act. The Plaintiff does not point to any provision of the code or case law that indicates an assignee is exempt from the requirements of the High Cost and Consumer Loan Act. In addition, the assignment referenced by the Plaintiff indicates that the Plaintiff is assigned the mortgage "together with the note(s) and obligations therein described and the money due and to become due thereon with interest, and all rights accrued or to accrue under such Mortgage."

As a result, the Plaintiff has been assigned all obligations of the Note and Mortgage which include compliance with the South Carolina Consumer Protection Code and the High Cost and Consumer Loan Act. In addition, no

court will lend its assistance in any way toward carrying out the terms of an illegal contract. “In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.” *Jackson v. Bi-Lo Stores, Inc.* 313 S.C 272, 437 S.E.2d 168 (1993) (quoting *McMullen v. Hoffman*, 174 U.S. 639 (1899)).

This matter is still in the pleading stages. The Plaintiff has not submitted any case law or statutory law indicating that as an assignee it is exempt from the High Cost and Consumer Loan Act. As a result, the court denies Paragraph Three of the Plaintiff’s motion to dismiss the Defendants’ fifth counterclaim.

4. **Defendants’ Sixth Counterclaim for Violations of the Mortgage Lender/Servicer Provisions of the South Carolina Consumer Protection Code**

Paragraph Four of the Plaintiff’s motion asks to dismiss the Defendants’ sixth counterclaim alleging violations of the South Carolina mortgage licensing requirements by the original lender.

Plaintiff’s motion does not cite to any law which indicates an assignee is exempt from claims made based on the origination of a consumer mortgage. Likewise, Plaintiff’s counsel does not cite to any case law indicating that Plaintiff is exempt as an assignee for claims based upon the origination of the mortgage. Furthermore, the assignment itself conveys the obligations from the note. Finally, South Carolina courts do not enforce illegal contracts. *See, Jackson v. Bi-Lo Stores, Inc.* 313 S.C. 272, 437 S.E.2d 168 (1993).

As a result, the court denies Paragraph Four of the Plaintiff’s motion at this stage.

5. **Defendants' Seventh Counterclaim for Violations of South Carolina Code § 37-5-108**

Paragraph Five of the Plaintiff's motion asks that the Defendants' seventh counterclaim be dismissed pursuant to South Carolina Code § 37-5-108.

At the hearing, counsel for the Defendants conceded that this section does not apply because the alleged note is secured by a real estate mortgage exempting it from the definition of a consumer loan under the South Carolina Consumer Protection Code. *See*, S.C. Code § 37-3-105.

As a result, the court grants Paragraph Five of the Plaintiff's motion and dismisses the Defendants' seventh counterclaim.

AND IT IS SO ORDERED.