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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

James E. Chellis, Master in Equity

Appellate Case No. 2024-000122

U.S. Bank Trust NA, as Trustee for Waterfall Victoria Grantor Trust II, Series G, Appellant,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants,
of which Jamie Singleton is the Respondent.

RECORD ON APPEAL

Volume 1 of 6

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STATE OF SOUTH CAROLINA	IN THE COURT OF APPEALS
	CASE NO.: 2024-000122
U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, Appellant, Appellant, vs. Jamie Singleton and Indigo Pointe Homeowners' Association, Defendants, of which Jamie Singleton is the Respondent, Respondent.	**RECORD ON APPEAL INDEX**

(22350.1.1)

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STATE OF SOUTH CAROLINA RE-RECORDED IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER 2011 AUG 17 AM 11:25 DOCKET NO. 11-CP-18-0871

50 by 50 REO, LLC,

CLERK OF COURT
DORCHESTER COUNTY

Plaintiff,

CONSENT ORDER REMOVING CASE FROM THE ACTIVE DOCKET
(NON-JURY)
Deficiency Judgment Demanded

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

(014978-00008)

It appearing to the Court that this case is currently stayed by the Administrative Order issued by the South Carolina Supreme Court on May 2, 2011, and that the case should be removed from the active roster during the pendency of this stay.

IT IS THEREFORE ORDERED that the above case be stricken from the active roster of pending cases with leave to restore under the same docket number without the necessity of an additional filing fee when the Foreclosure Intervention process has been completed.

Presiding Judge

St. George, South Carolina

8/9, 2011

(CONSENT PAGES TO FOLLOW)

Consent Order Removing Case from the Active Docket
11-CP-18-0871; 50 by 50 REO, LLC v. Jamie Singleton; Indigo Pointe Homeowners Association

I SO MOVE:

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
John P. Fetner (SC Bar #77460)
Vance L. Brabham, III (SC Bar #71250)
220 Executive Center Drive
Columbia, SC 29210
Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Kochler (SC Bar #74935)
Kelsey K. Lipscomb (SC Bar #77519)
Andrew W. Montgomery (SC Bar #79893)
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
July 13, 2011

Consent Order Removing Case from the Active Docket
11-CP-18-0871; 50 by 50 REO, LLC v. Jamie Singleton; Indigo Pointe Homeowners Association

I CONSENT:

William H. Sloan
Sloan Law Firm
Post Office Box 85
Summerville, SC 29484
Phone 843-873-7531
FAX 843-873-7527

Summerville, South Carolina
July 14, 2011

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
MOTION INFORMATION FORM
AND COVER SHEET
CASE NO. 11-CP-18-0871

FILED-RECORDED
2011 AUG 17 AM 11:25
CLERK OF COURT
DORCHESTER COUNTY

50 by 50 REO, LLC ☑ Plaintiff
v.
Jamie Singleton; Indigo Pointe Homeowners Association; ☐ Defendant
Check box above indicating submitting party

name, S.C.Bar no, and address of plaintiff's attorney	name, S.C.Bar no, and address of Defendant's attorney
Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R Powers (SC Bar #16534), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar #74935); John P. Fetner (SC Bar #77460), Kelsey K. Lipscomb (SC Bar #77519); Vance L. Brabham, III (SC Bar #71250); Andrew W. Montgomery (SC Bar #79893) 220 Executive Center Drive, Suite 109, Columbia, SC 29210 telephone: 803-744-4444 fax: 803-343-7013	telephone: fax: email: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☑ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPROSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: Court Reporter Needed: YES/NO

SECTION II: Motion Type

☐ Written motion attached
☑ Form Motion —
I hereby move for relief or action by the court as set forth in the attached proposed order.

H.P. Corley
Signature of Attorney for Plaintiff/~~Defendant~~

July 15, 2011
Date submitted

SECTION III: Motion Fee

☑ PAID —AMOUNT: $ 25.00
☐ EXEMPT:
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

CODE: _____ Date: _____

_____
JUDGE

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (12/2009) 014978-00008

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
DOCKET NO. 11-CP-18-0871

50 by 50 REO, LLC,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

ORDER TO RESTORE
Deficiency Judgment Demanded

FILED - RECORDED
2012 JUN -1 PM 2:55
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

(014978-00008)

The above-captioned Civil Action was removed from the active docket while the mortgagor was evaluated for Foreclosure Intervention pursuant to the South Carolina Supreme Court Administrative Order (Order No. 2011-05-02-01). The foreclosure intervention process has been completed without a modification and the Plaintiff has moved for the case to be restored to the active docket so it may proceed with the foreclosure.

It appears to the Court that the Civil Action should be restored to the Active Roster of pending cases, therefore it is

ORDERED, upon motion of the undersigned attorney for the Plaintiff, that the above-captioned Civil Action is hereby restored to the Active Roster, with a Docket Number 11-CP-18-0871, and it is

SO ORDERED.

Judge

Orangeburg
~~St. George~~, South Carolina

May 30, 2012.

I SO MOVE:

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)
Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar#74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
May 15, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
MOTION INFORMATION FORM AND COVER SHEET
CASE NO. 11-CP-18-0871

1/25 RB

50 by 50 REO, LLC ☑ Plaintiff
v.
Jamie Singleton; Indigo Pointe Homeowners Association; ☐ Defendant
Check box above indicating submitting party

name, S.C.Bar no, and address of plaintiff's attorney	name, S.C.Bar no, and address of Defendant's attorney
Samuel C. Waters (SC Bar #5958); Cheryl H. Fisher (SC Bar #15213); Reginald P. Corley (SC Bar #69453); Jennifer W. Rubin (SC Bar #16727); Ellie C. Floyd (SC Bar #68635); Michael P. Morris (SC Bar #73560); Eve Moredock Stacey (SC Bar #5300); Mary R. Powers (SC Bar #16534); Robert P. Davis (SC Bar #74030); William S. Kochler (SC Bar#74935); Vance L. Brabham, III (SC Bar #71250); Jaclynn B. Goings (SC Bar #77501);Andrew W. Montgomery (SC Bar #79893); Andrew A. Powell (SC Bar #100210) 220 Executive Center Drive, Suite 109, Columbia, SC 29210 telephone: 803-744-4444 fax: 803-343-7013	telephone: fax: email: other:

FILED - RECORDED
2012 JUN -1 PM 2:55
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☑ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPROSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: Court Reporter Needed: YES/NO

SECTION II: Motion Type

☐ Written motion attached
☑ Form Motion —
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ May 15, 2012
Signature of Attorney for Plaintiff/~~Defendant~~ Date submitted

SECTION III: Motion Fee

☑ PAID —AMOUNT: $ 25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other	CODE: _____ Date: _____ JUDGE

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (12/2009) 014978-00008

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

FILED - RECORDED

DOCKET NO. 11-CP-18-0871

2012 JUN -8 PM 1:46

50 by 50 REO, LLC,

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff,

ORDER OF REFERENCE
Hearing Date: June 27, 2012
Hearing Time: 02:00 PM
Deficiency Judgment Demanded

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

(014978-00008)

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 Maite Murphy, as Master in Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master in Equity 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 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.

The hearing shall be held in the Office of the Honorable Maite Murphy, as Master in Equity for Dorchester County, located at:

5200 East Jim Bilton Blvd.
St. George, SC 29477

Cheryl Graham

Circuit Court Judge for Dorchester County or
Clerk of Court for Dorchester County

St. George, South Carolina

6/8, 2012.

FILED - RECORDED
2012 JUN -8 PM 1:47
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-18-0871

50 by 50 REO, LLC,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

CERTIFICATE OF DEFAULT AND NON-MILITARY SERVICE
Deficiency Judgment Demanded

(014978-00008)

The undersigned attorney for Plaintiff asserts that more than thirty (30) days have elapsed since the service of the Summons and Complaint upon the Defendant(s). The following Defendant(s) has/have not answered, plead, or otherwise defended this action, pursuant to Rule 55(a), SCRCP: Indigo Pointe Homeowners Association. Therefore, the Defendant(s) Indigo Pointe Homeowners Association, are in default.

According to Plaintiff's business records, affidavit(s) of service, search(es) of the Department of Defense and any other obtained information, the Defendant(s) Jamie Singleton, is not in the Military Service of the United States as contemplated by the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.
Executed on 6.5.12.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
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Jennifer W. Rubin (SC Bar #16727)
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Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar#74935)
Jaclynn B. Goings (SC Bar #77501)
Andrew A. Powell (SC Bar #100210)

220 Executive Center Drive
Columbia, SC 29210
(014978-00008)

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

50 by 50 REO, LLC,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

(514978-00008 JJH)

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-18-0871

ORDER

FILED-RECORDED
2012 NOV -8 AM 10:51
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This matter came before me at a hearing on October 8, 2012, at 11:30 a.m. on the following motions:

I. Defendant Jamie Singleton's Motion to Disburse Insurance Proceeds;

II. Defendant Jamie Singleton's Motion for More Definitive Statement;

III. Defendant Jamie Singleton's Motion to Dismiss Rule 12-B-6 or Motion to Stay;

IV. Defendant's Motion to Dismiss – Failure to Join Necessary Party;

V. Plaintiff's Motion for Summary Judgment; and

VI. Plaintiff's Motion to Substitute Plaintiff.

John J. Hearn, Esquire, appeared on behalf of Plaintiff 50 by 50 REO, LLC ("Plaintiff"). William H. Sloan, Esquire, appeared on behalf of Defendant Jamie Singleton ("Defendant"). After carefully considering the pleadings and testimony, the court makes the following combined findings of fact and conclusions of law.

BACKGROUND

This case arises out of a standard foreclosure action filed in Dorchester County, South Carolina. On or about January 4, 2006, Defendant made, executed, and delivered a certain Adjustable Rate Note ("Note") in the principal sum of $212,000.00. In order to secure payment under the terms of the Note, Defendant also made, executed, and delivered a real estate mortgage ("Mortgage") covering certain

property as described in the Mortgage. Thereafter, Defendant failed to make monthly installment payments and became in default under the terms of the Note and Mortgage on March 1, 2009.

Before Defendant's default, in February 2009, the Obama Administration introduced the Making Home Affordable Program in order to stabilize the struggling housing market and to help homeowners avoid foreclosure. *See Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages*, Version 4.0 ("MHA Handbook").[1] In March 2009, the United States Treasury Department ("Treasury") issued uniform guidance for loan modifications across the mortgage industry, and it is has continued to update and expand that guidance in a series of policy announcements known as Supplemental Directives. *Id* at 12. As part of Supplemental Directive 12-06, the Treasury issued the latest version of the MHA Handbook providing mortgage servicers with the latest compliance information for the Home Affordable Modification Program ("HMP"). *See* Supplemental Directive 12-06.[2]

In May 22, 2009, the Supreme Court of South Carolina issued an Administrative Order ("Order") discussing the procedural requirements for pursuing a foreclosure in South Carolina in light of HMP and the Supplemental Directives issued by the Treasury.[3] The order establishes enhanced pleading requirements for any foreclosure action filed after May 4, 2009. Thereafter, on April 25, 2011, Plaintiff instituted this mortgage foreclosure action against Defendant to recover the amounts due under the terms of the Note and Mortgage. Both Plaintiff and Defendant have interposed several motions relating to this foreclosure action which are now under consideration by the Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following findings of fact and conclusions of law regarding the motions of both Plaintiff and Defendant.

I. Defendant Jamie Singleton's Motion to Disburse Insurance Proceeds

On September 4, 2012, Defendant filed his Motion to Disburse Insurance Proceeds alleging facts not included in the original pleadings and asserting a claim for monetary relief. Defendant's motion

[1] Available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_40.pdf.
[2] Available at https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/sd1206.pdf.
[3] Available at http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-05-22-01.

contends that this court may decide the motion based on its equitable powers. For the following reasons, Defendant's Motion to Disburse Insurance Proceeds is denied.

A. Because all counterclaims must be asserted in a pleading according to Rule 13 of the *South Carolina Rules of Civil Procedure*, Defendant's motion seeking recovery of insurance proceeds is improper.

The Defendant asks this court to award insurance proceeds governed by the terms of the Note and Mortgage, and thus asserts a counterclaim for breach of contract. "A *pleading* shall state as a counterclaim any claim which at the time of serving the pleader has against any opposing party . . . ." Rule 13(a), SCRCP (emphasis added). A claim arising out of the same transaction or occurrence that is the subject the original action is compulsory, and a claim that does not arise out of the same transaction or occurrence is permissive. Rule 13, SCRCP. Rule 13 requires that both compulsory and permissive counterclaims be submitted in the form of a *pleading*, and there is no language in the rule discussing a method of asserting a counterclaim via motion. *Id.*

Even where a claim matures or is acquired after the time period for amending pleadings has expired, the Rules state that the pleader must present a counterclaim in supplemental pleadings after it secures the permission of the court. Rule 13(e), SCRCP. Thus, regardless of the facts surrounding the claim or when it accrued, a counterclaim must be stated in a pleading[4] according to the rules. Rule 13, SCRCP.

The Court finds that the Defendant's motion states a counterclaim by requesting the disbursement of insurance proceeds governed by the Mortgage contract. The Court further finds that the Defendant's motion violates the plain language of Rule 13, which requires the Defendant to assert all counterclaims in a pleading. Therefore, the Court concludes that the Defendant's Motion to Disburse Insurance Proceeds is improper under Rule 13, SCRCP, and the motion is denied.

[4] A "pleading" and a "motion" are two distinct court documents. *See* Rule 7, SCRCP.

B. Alternatively, because the Defendant has an adequate remedy at law, this court will not grant equitable relief by ordering the Plaintiff to disburse insurance proceeds.

The Defendant's Motion to Disburse Insurance Proceeds asks this court to entertain the motion pursuant to this court's equitable authority. The Court concludes that the Defendant has an adequate remedy at law under the terms of the Mortgage, making any equitable relief improper.

"The court will reserve its equitable powers for situations when there is no adequate remedy at law." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). "An adequate remedy at law is one which is as certain, practical, complete and efficient to attain the ends of justice and its administration as the remedy in equity." *Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (internal citations omitted). Generally, a lawsuit based on contract provides an adequate remedy at law. *See Nutt Corp. v. Howell Rd., LLC*, 396 S.C. 323, 721 S.E.2d 447 (Ct. App. 2011) (holding that contract damages provided an adequate remedy at law); *Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004) (holding equitable relief is inappropriate where golf course failed to establish that it lacked adequate remedy at law to collect damages in breach of contract and negligence suit); and *MailSource, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 588 S.E.2d 635 (Ct. App. 2003) (refusing to order equitable relief where contract provided an adequate remedy at law). Thus, where a party seeking equitable relief does not show that it lacks an adequate remedy at law, the court must refrain from using its equitable powers. *Id.*

The Court finds that the disbursement of the insurance proceeds is governed exclusively by the Mortgage contract. Contract interpretation is a question of law, and the Court finds that any disputes concerning the disbursement of the insurance proceeds are governed by the clear and unambiguous terms of the Mortgage. Defendant asks the court to use its "equitable authority" to order the disbursement of insurance proceeds under the mortgage contract, but states no facts showing he lacks an adequate remedy at law under the terms of the Mortgage. Because Defendant fails to show that he lacks an adequate remedy at law, the Court concludes that Defendant is not entitled to equitable relief. Therefore, Defendant's Motion to Disburse Insurance Proceeds is denied on this additional basis.

II. Defendant Jamie Singleton's Motion for More Definitive Statement

Defendant asks this court to grant a Motion for a More Definite Statement based on the fact that Plaintiff failed to name the servicer and investor in Paragraph 4 of its Complaint. Defendant's motion is denied because the Defendant failed to move the court for a more definite statement before filing his responsive pleading as required by rule 12(e), SCRCP.

"If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to form a responsive pleading, he may move for a more definite statement *before interposing his responsive pleading*." Rule 12(e), SCRCP (emphasis added). As stated in the rule, the purpose of a motion for a more definite statement is to clarify language in a pleading so as to give the responding party the chance to form a coherent response to an ambiguous allegation. Rule 12(e), SCRCP. Accordingly, the motion for a more definite statement is usually employed where a pleading jumbles causes of action together in order to make it unreasonable for the responding party to draft a response. *Henderson v. Gould, Inc.*, 288 S.C. 261, 263, 341 S.E.2d 806, 808 n.2 (Ct. App. 1986). The purpose of the motion is defeated when a party asks for a more definite statement as part of the responsive pleading itself. *Id.* For this reason, the rule requires a party asking for a more definite statement to file its motion *before* interposing its responsive pleading. *Id.*

In this case, the Court finds that Defendant submitted an improper response to Paragraph 4 of the Plaintiff's Complaint in his Answer and concurrently filed an improper Motion for a More Definite Statement. A Motion for a More Definite Statement must be filed *prior* to interposing a responsive pleading. Rule 12(e), SCRCP. Moreover, there is nothing vague or ambiguous in Paragraph 4 of the Complaint to warrant a more definite statement. Paragraph 4 clearly states that the servicer is participating in HMP and that the investor has not given the servicer authority to modify the loan. Even if the Plaintiff stated the names of the servicer and the investor, it would not have any bearing on Defendant's ability to respond to the factual allegations in Paragraph 4 because Defendant has no means to verify the allegation prior to discovery.

The Court concludes that Defendant's Motion for a More Definite Statement is improper because Defendant failed to file his Motion for a More Definite Statement before his responsive pleading and because there is no vague or ambiguous language in the Plaintiff's complaint. The motion is therefore denied.

III. Defendant Jamie Singleton's Motion to Dismiss Rule 12(b)(6) or Motion to Stay

In his Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP, Defendant alleges that Plaintiff failed to comply with the pleading requirements for a foreclosure action as set forth in South Carolina Administrative Order No. 2009-05-22-01 ("Order").[5] The Court finds that Plaintiff has fully complied with the Order and with all Home Affordable Modification Program ("HMP") guidelines; therefore, Defendant's motion is denied.

When considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the court must base its ruling solely on the allegations stated in the complaint. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "If the facts alleged and the inferences reasonably deducible therefrom, viewed in light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Id.* Defendant's Motion to Dismiss focuses on the narrow issue of whether Paragraph 4 of the Complaint complies with the pleading requirements set forth in the Order by stating that the investor in the subject loan has not given authority to modify the loan under HMP.

The Order provides that "[i]n all Mortgage foreclosure actions filed after May 4, 2009, the complaint (or amended) complaint shall contain a short and plain statement of the facts regarding the applicability of the HMP to the matter." Order at 3 (citations omitted). Pursuant to the Order, a complaint must state whether (1) the mortgage is owned, securitized, or guaranteed by a government sponsored enterprise ("GSE"), or (2) whether the servicer is participating in HMP. *Id.* at 4. If yes as to either, then the complaint must state facts showing (1) that the loan is not subject to modification, or (2) that the loan has been considered for modification without resulting in a modification. *Id.* The Defendant alleges that lack

[5] Available at http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2009-05-22-01.

of contractual authority from the investor is an insufficient reason for stating that the loan is not subject to modification. The applicable HMP guidelines, however, specifically allow this justification for HMP denials.

Federal law does not require investors to participate in HMP, and the investor who owns the subject loan must give its express permission in order for a loan to be modified under HMP. MHA Handbook at 21. Loan servicers must maintain "Investor Participation Lists" in order to ascertain which investors have given authority to the servicer to allow modification under the HMP program. *Id.* If no such authority is given, then the loan is not eligible for modification. *Id.* Thus, lack of investor authority is a fact sufficient to show that a loan is not eligible for modification under HMP as contemplated by the Order. *See* Order at 3.

Here, the Court concludes that the Plaintiff complied with the procedural requirements set forth in the Order and states a valid claim for relief. Paragraph 4 of Plaintiff's Complaint states (1) that the servicer is participating in HMP and (2) that the loan is not eligible for modification under HMP because the investor has not given its authority to modify the loan agreement. After considering the applicable state and federal law and viewing the Complaint in a light most favorable to the plaintiff, the Court concludes that Plaintiff's Complaint states a valid claim for relief.

The Defendant's Motion to Dismiss Rule 12-B-6 or Motion to Stay is therefore denied pursuant to Rule 12, SCRCP, and South Carolina Supreme Court Administrative Order No. 2009-05-22-01.

IV. Defendant's Motion to Dismiss – Failure to Join Necessary Party

Mr. Sloan informed the Court that Defendant's Motion to Dismiss – Failure to Join Necessary Party was moot, so that motion was not heard.

V. Plaintiff's Motion for Summary Judgment

Mr. Hearn informed the Court that Plaintiff did not wish to go forward on the Motion for Summary Judgment as it was filed prior to the filing of the Singleton's motions, and additional discovery was pending between the parties. The Court continued this motion as a result

VI. Plaintiff's Motion to Substitute Plaintiff.

Plaintiff moved to allow US Bank, N.A. as Trustee of the FRT 2011-1 Trust be substituted for 50 by 50 REO, LCL as the Plaintiff in this action. Mr. Sloan informed the Court that Defendant consented to Plaintiff's Motion to Substitute Plaintiff.

ORDER

Based upon the foregoing discussion, the Court hereby orders, decrees, and adjudges the following:

Defendant Jamie Singleton's Motion to Disburse Insurance Proceeds is denied;

Defendant Jamie Singleton's Motion for More Definitive Statement is denied;

Defendant Jamie Singleton's Motion to Dismiss Rule 12-B-6 or Motion to Stay is denied;

Defendant's Motion to Dismiss – Failure to Join Necessary Party is withdrawn;

Plaintiff's Motion for Summary Judgment is continued; and

Plaintiff's Motion to Substitute Plaintiff is granted. Future filings in this action shall reflect US Bank, N.A. as Trustee of the FRT 2011-1 Trust as the Plaintiff.

And it is so ordered.

Maite Murphy

Maite Murphy
Master in Equity for Dorchester County

St. George, South Carolina
October 30, 2012

FORM 4

ATE OF SOUTH CAROLINA
)UNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

50 By 50 Reo, Llc	Jamie Singleton	Indigo Pointe Homeowners Association
PLAINTIFF(S)		**DEFENDANT(S)**

Submitted by:	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

FILED-RECORDED
2012 NOV -8 AM 10:50
CAROL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

CPFORM4M
SCCA SCRCP Form 4C (Revised 12/2011)

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount is to be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Kaite Murphy — 3075 — 10/31/2012

Circuit Court Judge | **Judge Code** | **Date**

For Clerk of Court Office Use Only

This judgment was entered on **October 30, 2012**, and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John Patrick Fetner 2550 West Tyvola Road Suite 520 Charlotte, NC 28217
Samuel C. Waters PO Box 100200 Columbia, SC 292023200

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Sloan Jr. PO Box 85 Summerville, SC 29484

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA) DORCHESTER COUNTY))) US BANK, as Trustee, for the) FRT 2011-1 Trust, Plaintiff) Plaintiff,) Vs.) JAMIE SINGLETON AND) INDIGO POINTE HOMEOWNERS) ASSOCIATION, Defendants.)	COURT OF COMMON PLEAS CASE NO. 11-CP-18-871 ORDER TO ADMIT W. JEFF BARNES PRO HAC VICE AS ATTORNEY FOR DEFENDANT SIGNLETON

RECORDED
2013 JUN 25 PM 2:28
CLERK OF COURT
DORCHESTER COUNTY

William H. Sloan, attorney for Singleton, has filed a Motion on or near June 5, 2013 to admit William Jeff Barnes Pro Hac Vice to this case to also represent Mr. Singleton.

I have reviewed Mr. Barnes' application and I find same in Order. He has followed procedure with filing the application and filing fee with the Supreme Court of South Carolina. Further, Defense counsel has conferred with Plaintiff's counsel and he consents to this admission.

THEREFORE, I ORDER that William Jeff Barnes is admitted Pro Hac Vice to this case. ~~b~~ asst Mr. Sloan.

IT IS SO ORDERED!

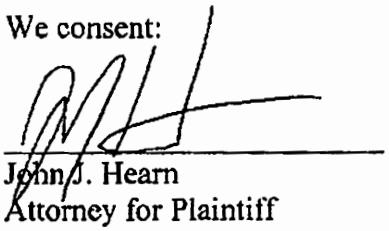
Judge Edgar Dickson
Chief Administrative Judge, First Judicial Circuit
St. George, SC
June__, 2013

We Move:

William H. Sloan
1055-F North Main St.
Summerville, SC 29483
843-873-7531
843-873-7527 fax

June 25, 2013

We consent:



John J. Hearn
Attorney for Plaintiff
Post Office Box 100200
Columbia, SC 29202
803-771-7900
Fax 803-343-7017

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

(514978-00008 JJH)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Docket No.: 2011-CP-18-0871

CONSENT SCHEDULING ORDER

FILED - RECORD
2013 OCT 23 AM 11:04
CHERYL
CLERK OF
DORCHESTER

Based upon the undersigned consent of the parties, and pursuant to Rule 16 of the *South Carolina Rules of Civil Procedure*, the following schedule is established in this case.

1. Discovery shall be completed on or before December 30, 2013. All discovery requests must be served in time for the response thereto to be served within this deadline.

2. While mediation is not required in this matter, any mediation agreed upon by the parties shall be completed on or before December 30, 2013.

3. Should any additional depositions or depositions of parties not previously deposed be necessary, those depositions shall be conducted on or before January 24, 2014.

4. All dispositive motions shall be filed on or before February 7, 2014

5. This case shall be set for trial not before February 26, 2014.

For the purposes of this Consent Scheduling Order only, the scanned or facsimile signatures of the undersigned counsel are deemed sufficient and may be filed with the Clerk of Court.

IT IS SO ORDERED.

James E. Chellis
Master in Equity for Dorchester County

10/17, 2013
St. George, South Carolina

(Signatures are on the following page.)

I CONSENT:

John J. Hearn (SC Bar # 6635)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
john.hearn@rtt-law.com
ATTORNEYS FOR THE PLAINTIFF

Rogers Townsend & Thomas, PC and its staff are debt collectors.

I CONSENT:

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484
(843) 873-7531
sloanlawfirm@yahoo.com

William Jeff Barnes, Esquire
W.J. Barnes, P.A.
9530 Wilshire Blvd.
Beverly Hills, CA 90212
(310) 275-5150
jeff@wjbarneslaw.com

ATTORNEYS FOR DEFENDANT JAMIE SINGLETON

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

(514978-00008 JJH)

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-18-0871

ORDER

FILED
CLERK OF COURT
DORCHESTER COUNTY
2014 MAR 19 P 10:59

This matter came before me at a hearing on January 22, 2014, at 9:30 a.m. on the following motions:

- Plaintiff's Motion for Continuance;
- Defendant Jamie Singleton's Motion for Summary Judgment; and
- Plaintiff's Motion to Amend Responses to Admissions Request.

John J. Hearn, Esquire, appeared on behalf of Plaintiff US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff"). William H. Sloan, Esquire, appeared on behalf of Defendant Jamie Singleton ("Defendant"). After carefully considering the pleadings and testimony, the court has determined that good cause exists to grant a continuance in this matter.

The Court also finds that on September 25, 2013, Plaintiff's counsel informed the Court that the parties had resolved Plaintiff's Motion to Amend Responses to Admissions Request; therefore, Plaintiff's counsel withdrew the motion.

In the interest of judicial economy and expediency, Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment are rescheduled by the Court for a hearing on April 24, 2014, at 9:30 a.m. The Plaintiff's motion shall be heard first.

Based upon the foregoing discussion, the Court hereby orders, decrees, and adjudges the following:

1. Plaintiff's Motion for Continuance is hereby granted.

2. Plaintiff's Motion to Amend Responses to Admissions Request has been withdrawn.

3. Plaintiff's Motion for Summary Judgment and Defendant's Motion for Summary Judgment are scheduled for a hearing before the undersigned on April 24, 2014, at 9:30 a.m.

AND IT IS SO ORDERED.

James E. Chellis
Master in Equity for Dorchester County

St. George, South Carolina
March 17, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-18-0871

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

FILED-RECORDED
2014 MAY 13 AM 10:29
CLERK OF COURT
DORCHESTER COUNTY

This matter came before the Court on April 24, 2014, for a hearing on Defendants Jamie Singleton's ("Defendant") Motion for Summary Judgment. William H. Sloan, Esquire, and W. Jeff Barnes, Esquire, appeared for the Defendant. Erica G. Lybrand, Esquire, appeared for the Plaintiff. The Court denies Defendant's Motion for Summary Judgment.

FACTS

On January 4, 2006 Defendant executed and delivered to People's Choice Home Loan, Inc., a fixed rate note ("Note") in the principal sum of $212,000.00. On the same day, Defendant executed a mortgage ("Mortgage") to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. The Mortgage, as security for the payment of the Note, created a lien on the real property that is the subject property of this foreclosure action. The Mortgage, recorded January 12, 2006, is in Book 5142 at Page 168 in the Office of the RMC/ROD for Dorchester County.[1]

Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., caused to be executed an Assignment of Mortgage on July 14, 2008 to GMAC Mortgage, LLC. This Assignment of Mortgage is in Book 6727 at Pages 330-1 in the Office of the RMC/ROD for Dorchester County.

[1] The recitation of a document, whether recorded or not, in the Facts section of this Order is not a finding of fact construing the document as to its meaning, validity, and effect. Each party maintains its right to submit evidence under the SCRE and argue positions of law, in accord with the SCRCP, concerning construction and effect of all documents that are referred to herein. Orders referred to herein remain the Orders of this Court. Pleadings referred to herein are construed in accord with the SCRCP, and are not evidence of any finding of fact or a conclusion of law in this case by this Court.

On April 25, 2011, 50 by 50 REO, LLC initiated this foreclosure action by filing its Summons, Complaint and Lis Pendens, and ancillary administrative filing requirements then in effect, with the Clerk of this Court.

On May 2, 2011, Chief Justice Toal issued an administrative order, *In Re Mortgage Foreclosure Actions* Administrative Order, 396 S.C. 209, 720 S.E.2d 908 (2011) (hereafter the "Administrative Order").

Defendant filed a Motion to Dismiss on May 24, 2011.

Plaintiff filed its Notice of Foreclosure Intervention on June 15, 2011, pursuant to the Administrative Order.

On July 6, 2011, Defendant filed his notice of intent to fully explore foreclosure intervention.

On August 17, 2011, the parties entered a Consent Order Removing the case from Active Docket.

GMAC Mortgage, LLC, caused to be executed an Assignment of Mortgage on or about August 31, 2011 to 50 by 50, REO, LLC.[2] This Assignment of Mortgage, recorded September 14, 2011, is in Book 8010 at Pages 230-1 in the Office of the RMC/ROD for Dorchester County.

On December 19, 2011, Plaintiff's Counsel filed its Attorney Certification with the Administrative Order.

On June 1, 2012 the parties filed an Order to Restore the case to the active roster.

On June 8, 2013 by Consent Order the parties referred this case to the Master in Equity for Dorchester County.

On June 27, 2012 the Court held a hearing on all pending motions in the case, including Defendant's Motion to Dismiss.. The Court denied Defendant's Motion to Dismiss.[3]

Defendant filed his Answer and Counterclaim on July 10, 2012. Plaintiff Replied on or about August 13, 2012.

50 by 50 REO, LLC, caused to be executed an Assignment of Mortgage on or about

---

[2] Cf. 50 by 50 LLC's initiation of suit April 25, 2011.

[3] A Form 4 Order denying Defendant's Motion to Dismiss was entered on July 26, 2012 and a formal Order denying Defendant's Motion to Dismiss and resolving other motions was entered on November 8, 2012. Defendant filed his Answer and Counterclaim within 15 days of the hearing date, as opposed 15 days of the entry of the Order denying his motion.

September 24, 2012 to US Bank, NA, as Trustee of the FRT 2011-01 Trust. This Assignment of Mortgage, recorded October 2, 2012, is in Book 8483 at Pages 134-5 in the Office of the RMC/ROD for Dorchester County. On June 25, 2013, the parties entered a Consent Order that added W. Jeff Barnes, Esquire, as additional counsel for the Defendant, *pro hac vice*, pursuant to his compliance with Rule 404, SCACR.

Defendant took Plaintiff's 30(b)(6) designee's deposition on July 9, 2013. Plaintiff took Defendant's deposition on July 23, 2013.

Defendant filed his Motion for Summary Judgment on September 26, 2013.

On October 23, 2013, the parties entered a Consent Scheduling Order.

Plaintiff filed its Memorandum in Opposition to Defendant's Motion for Summary Judgment on April 21, 2014. Attached to Plaintiff's Memorandum is an Affidavit of James George, an employee of AMS Servicing, Inc., the servicer of the subject mortgage loan. James George is Plaintiff's 30(b)(6) designee and the same individual whose deposition the Defendant took, July 9, 2013. After a hearing on the merits and due deliberation by this Court, this Order denying Defendant's Motion for Summary Judgment is entered:

STANDARD

Rule 56, South Carolina Rules of Civil Procedure, governs a Motion for Summary Judgment:

> . . . The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. . . .Rule 56 (c), SCRCP, in part.

See also, *Sauner v. Pub. Serv. Auth. of S. Carolina*, 354 S.C. 397, 404, 581 S.E.2d 161,165 (2003), *BPS, Inc. v. Worthy*, 362 S.C. 319, 325-36, 608 S.E.2d 155, 159 (Ct. App. 2005). A summary judgment is a drastic remedy and should be cautiously invoked so as not to deny a litigant the opportunity to present its case to the court. *Id.*

ANALYSIS

Defendant seeks Summary Judgment (MSJ) on the issue of standing, arguing that Plaintiff does not own the Note which is secured by the lien of the mortgage on the subject real property. The Defendant relies on the Plaintiff's 30(b)(6) designee's deposition claiming the

deponent, Plaintiff's designee, fails to establish an unbroken chain of title as to the Note. Specifically, Defendant argues that there was no lawful transfer or negotiation of either the Note or Mortgage and, therefore, Defendant argues that the Plaintiff has no rights in the Note and Mortgage.

Plaintiff argues that title to the note is established by the one who holds the Note. Moreover, as the holder of the Note, Plaintiff possesses the right to enforce the Note. At the hearing, Plaintiff's counsel demonstrated her client possessed the original Note holding it in her hand and referring to it a number of times. Plaintiff, also, argues that it has standing to prosecute the foreclosure of the mortgage pursuant to §36-3-301, et. seq., S.C. Code, as Plaintiff is a holder of the Note and therefore entitled to enforce the mortgage, which derives from the Note the Plaintiff holds.

Defendant's supports his position that no transfer of the Note and Mortgage could have occurred because the initial lender filed bankruptcy. Plaintiff's Affiant contradicts this. Additionally, subsequent assignments of the Note and Mortgage, or the mortgage and its rights raise genuine issues of material facts regarding the ownership of the Note, and the Mortgage, and who has the legal authority to enforce the terms of these instruments.

The Defendant marks his position on the 30(b)(6) deponent's inability to explain how the Note ended up in the Plaintiff's hands asserting the originating lender had filed bankruptcy prior to the initial assignment of the Note. However, as affiant, the same designee explains a transfer of the Note in blank occurred before the originating lender filed its bankruptcy. Thus, the Lender's assignment divested the originating lender of any interest in the Note prior to filing bankruptcy and this explains the absence of the Note as an asset of the Bankrupt's Estate. This Court knows of no limitation on a 30 (b)(6) deponent to make corrective statements in a subsequent affidavit for purposes of defeating a MSJ. At best, the inconsistency goes to the credibility of the deponent/affiant; measurement of which can only be done through trial testimony, witness demeanor, and all other factors that go into deciding the credibility of a witness (See, *Pinckney v. Warren*, 344 S.C. 382, 393, 544 S.E.2d 620, 627 (2001) [The Master, who was in the best position to judge the credibility of the witnesses and the evidence, found Lorraine Lewis and Silas Knight's testimony more persuasive than the birth certificate].)

Moreover, such testimonial evidence may be corroborated by others or with additional documentary evidence.

The Plaintiff has a continuing duty to comply with Defendant's discovery requests under South Carolina law. The Court notes, with disfavor, failure of Plaintiff to offer Affiant's additional evidence to which he referred in his affidavit to the Defendant prior to the hearing. Nonetheless, this Court is not aware of a limitation as suggested by Defendant's counsel that no other authorized agent or agents can testify as to the transfers in question.

CONCLUSION

In this Court's view, taking the evidence before it in the light most favorable to the Plaintiff, genuine issues of material facts exist regarding the ownership of the Note, and the Mortgage; thus judgment as a matter of law cannot be granted to the Defendant. The facts must be brought before the Court such that Plaintiff is afforded the opportunity to prove its case on each issue joined in the pleadings heretofore that have not been admitted. Therefore, Defendant is not entitled to judgment as a matter of law. For the foregoing reasons, the Court finds that the Defendant's Motion for Summary Judgment is **DENIED**; thus,

IT IS SO ORDERED!

St. George South Carolina
May 12, 2014

James E. Chellis
Master in Equity for Dorchester County

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

FILED-RECORDED
2014 MAY 13 AM 10:29
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)	DEFENDANT(S)
J S Bank, N.A., as Trustee of the FRT 2011-1 Trust	Singleton; Indigo Pointe Homeowners Association

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Jerry T. Usher — 3078 — 5/12/2014

Circuit Court Judge | **Judge Code** | **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

5-13-14

This judgment was entered on May 13, 2014, and a copy mailed first class or placed in the appropriate attorney's box on . to attorneys of record or to parties (when appearing pro se) as follows:

Erica Greer Lybrand 220 Executive Center Drive Columbia, SC 29210

William H. Sloan Jr. PO Box 85 Summerville, SC 29484

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA) DORCHESTER COUNTY)))	COURT OF COMMON PLEAS CASE NO. 11-CP-18-871
US BANK, as Trustee of the 2011-1) Trust,) Plaintiff,) Vs.) JAMIE SINGLETON AND) INDIGO POINTE HOMEOWNERS) ASSOCIATION, Defendants.)	CONSENT ORDER TO CONTINUE DEFENDANT SINGLETON'S COMPEL MOTION

FILED - RECORDED
2014 AUG 28 PM 12:08
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

This case was originally scheduled for Defendant Singleton's Motion to Compel against Plaintiff on September 4, 2014. W. Jeff Barnes, Esq., who represents Mr. Singleton, advised the Court of a scheduling conflict. Defense counsel and Erica Lybrand, who represents the Plaintiff agreed to a continuance of this Motion to September 30 at 2pm.

As counsel for Plaintiff and Defendant agree, I therefore, grant Defendant Singleton's Motion for Continuance.

IT IS ORDERED, THEREFORE, that Defendant's Motion to Compel be continued from September 4, 2014 to September 30, 2014 at 2pm.

IT IS SO ORDERED!

Judge James Chellis.
Master-in-Equity Dorchester County
5200 E. Jim Bilton Blvd.
St. George, SC 29477
August 15, 2014

WE CONSENT

William H. Sloan
Bar No. 69630
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Defendant Jamie Singleton
August 7, 2014

s/ Erica Lybrand

Erica Lybrand
Rogers, Townsend and Thomas
Bar No. 79052
Post Office Box 100200
Columbia, SC 29202
803-744-4444
Attorney for Plaintiff
August 7, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

U S Bank, N.A., as Trustee of the FRT 2011-1 Trust	Jamie Singleton	Indigo Pointe Homeowners Association
PLAINTIFF(S)		DEFENDANT(S)

Submitted by: | Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

FILED
DORCHESTER COUNTY
2016 SEP 30 PM 3:07

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Defendant Motion/Compel is denied based on the Plaintiff's Counsel representation to this Court that the Plaintiff does not have possession of the specific documents asserted by the Defendant to be missing from the Plaintiff's answers to Defendant's Request to Produce; Plaintiff cannot produce what it does not have. Notwithstanding, Defendant is granted leave to file a Motion to Amend its Answer and Counter-Claim to bring third-party claims against persons or entities the Defendant asserts are necessary and proper parties to a fair and just determination of the issues before the Court. Defendant's counsel is nonetheless reminded its duties under SCRCP 11. Said Motion must be made within 30 days of this Order.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

James E Chellis, Master in Equity | 3078 Judge Code | 9/30/2014 Date

For Clerk of Court Office Use Only

This judgment was entered on Sept 30, 2014 and a copy mailed first class or placed in the appropriate attorney's box on Sept. 30, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Erica Greer Lybrand
220 Executive Center Drive
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Sloan Jr.
PO Box 85
Summerville, SC, 29484

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham - Clerk of Court

Court Reporter: Molly Newton, Ray Swartz & Assoc. of SC

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
DORCHESTER COUNTY)

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING; NNPL TRUST SERIES 2012-1; NEW PENN FINANCIAL, LLC; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

ORDER GRANTING JAMIE SINGLETON's MOTION TO AMEND COUNTERCLAIM CROSS-CLAIMS

FILED - RECORDED
2015 APR 13 PM 3:17
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

This case came before me on December 15, 2014 for Defendant Jamie Singleton's Motion to Amend Answer and Counterclaim to add several new Defendants Cross-Defendants which Singleton believes are necessary parties for a full and just adjudication of the issues of this case. I granted this Motion at the hearing on December 15, 2014. On January 30, 2015, Singleton filed his Motion which included as an Exhibit, the proposed new Counterclaim and Cross-Claim. A copy of the Motion and the proposed Answer and Counterclaim are included as Exhibit A with this Order.

On February 6, 2015, Erica Lybrand, counsel for the Plaintiff, consented to this Amendment as written, without need to have another Motion hearing.

I therefore, GRANT, Defendant Singleton's Motion to Amend Counterclaim and Cross-Claim as shown in Exhibit A.

Page 1 of 2
11 CP 18 871

IT IS SO ORDERED!

Judge James Chellis
Master in Equity for Dorchester County
5200 E. Jim Bilton Blvd.
St. George, SC 29477
~~March~~ April 7, 2015

Exhibit A

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)

FILED COPY
2015 FEB -2 AM 11:57

US BANK, AS Trustee of the FRT-2011-1 Trust,) CASE NO.

Plaintiff) 2011-CP-18-871

v.) MOTION AND ORDER INFORMATION FORM AND COVER SHEET

JAMIE SINGLETON AND INDIGO POINTE HOMEOWNERS ASSOCIATION.
x Defendants.)

Attorney for Defendant Singleton William H. Sloan, Esq., Bar No. 69630 Address: Post Office Box 85, Summerville, SC 29484 phone: (843) 873-7531 fax: (843) 873-873-7527 e-mail: whs@sloanlawfirm.net other:	Plaintiff's Attorney: Erica Lybrand, Esq., Rogers Townsend and Thomas Bar No. Address: Post Office Box 100200, Columbia, SC 29202 phone: 803-744-444 fax: 803-343-7013 e-mail: other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)xFORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
X PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Answer and Counterclaim of Defendant Singleton
Estimated Time Needed: 30 minutes Court Reporter Needed: x YES / NO

SECTION II: Motion/Order Type

Written motion attached
x Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / xDefendant — January 31, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION Date Filed: Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA **DORCHESTER COUNTY**	**COURT OF COMMON PLEAS** CASE NO: 2011-CP-18-871
US BANK, NA AS TRUSTEE FOR FRT 2011-1, Plaintiff, v. JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION, Defendants.	**JAMIE SINGLETON'S MOTION TO AMEND ANSWER TO ADD COUNTERCLAIM AND TO ADD ADDITIONAL DEFENDANTS** (amended to add additional parties identified since prior hearing on motion)

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys and in view of matters raised before the Court at a hearing on December 15, 2014, files his Motion to Amend his Answer and to Add Additional Defendants which amends the prior motion due to even more parties claiming an interest in the Note and Mortgage just prior to and after December 15, 2014, and as grounds states:

A. Introduction

1. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

2. On January 15, 2009, Mr. Singleton received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by an entity styled DB50 2007-1 Trust. No notice was provided to Mr. Singleton that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

3. Mr. Singleton sought discovery as to, *inter alia*, the history of custody and transfer of his mortgage loan. After having to file a Motion to Compel discovery, Mr. Singleton was finally provided with documents from Plaintiff which claimed that his mortgage loan had been the subject of several conflicting transfers.

4. One of the documents produced was a letter dated January 6, 2006 from Nomura Holdings (hereafter "Nomura") with an attached Mortgage Loan Purchase Agreement (hereafter "MLPA") which sets forth a sale of loans from People's Choice to Nomura. The MLPA required documentary proof in specific form as to the transfer of loans from People's Choice to Nomura, including interim assignments of mortgage and intervening endorsements for the Note. None of this documentation was produced.

5. Another document produced was a purchase agreement whereby Nomura sold loans to an entity known as "50 By 50 REO LLC (hereafter "50 By 50")". There was also a Trust Agreement dated August 28, 2007 between LaSalle Bank and Wilmington Trust Company concerning something called the DB 50 2007-1 Trust. There is no loan schedule which sets forth that the loan the subject of this action was transferred to the DB 50 2007-1 Trust.

6. Plaintiff had previously produced an Assignment of Mortgage by non-party Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

7. There was also produced an Amended and Restated Trust Agreement dated October 31, 2011 involving an entity styled FRT 2001-1 Trust, Fort Asset Funding 2001-1 LLC, US Bank Trust National Association, and Wells Fargo, NA concerning the FRT 2011-1 Trust. No mortgage loan schedules were attached or provided.

8. A Sale and Administration Agreement dated October 31, 2011 was also produced which involved the FRT 2011-1 Trust, Fort Asset Funding 2011-1 LLC, numerous "Sellers" (all of whom were owned by the same individual), US Bank National Association as Indenture Trustee, and Montana Drive Mortgage Holdings LLC.

9. Plaintiff had previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

10. There is a second "Assignment of Mortgage" which was filed in the public records by which 50 By 50 REO, LLC (the entity which was the original named Plaintiff in this case) purportedly assigned the Mortgage to the Plaintiff. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Plaintiff.

11. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to 50 By 50 or to the Plaintiff.

12. If Nomura sold the loan to 50 By 50, there was nothing for MERS to assign to GMAC on July 14, 2008; conversely, if MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Nomura did not sell the loan to 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

13. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Nomura to sell to 50 By 50 on September 27, 2007, and nothing for MERS to assign to GMAC on July 14, 2008.

14. If the loan was assigned to GMAC on July 14, 2008 or was in the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust could not have acquired the loan on October 31, 2011.

15. The named Plaintiff in this case is U.S. Bank, National Association as Trustee for FRT-2011-1 (hereafter "USBTE"). It is without dispute that USBTE was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by 50 By 50, which is also not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

16. On July 9, 2013, counsel for Mr. Singleton took the deposition of one James P. George, an employee of AMS. It is without dispute that AMS is not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

17. In view of the matters testified to by Mr. George, Mr. Singleton filed a Motion for Summary Judgment. The Motion was heard before the Court on September 30, 2014.

18. During the course of the hearing, the Court determined that the documents sought by Mr. Singleton as to the alleged transfers were relevant over the objection of counsel for the Plaintiff. When this determination was made, counsel for Plaintiff changed her position by stating that the documents sought were not in the possession or control of her client.

19. The Court then inquired of counsel for Mr. Singleton whether he thus desired to propound non-party discovery or amend his Answer to add the other parties allegedly involved in the claimed transfers as parties to this action. Counsel for Mr. Singleton opted for the latter.

20. Between the time of the hearing and the filing of the prior Motion to Amend, Mr. Singleton was advised by the then current servicer (BSI Financial Services) that the servicing of the loan will be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina, and thus Shellpoint must also be added as a party as it has an interest in the outcome of this action. Shellpoint confirmed this change of servicing by letter to Mr. Singleton dated November 26, 2014.

21. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to an entity styled NNPL Trust Series 2012-1 (identified as the "New Owner") located in Wilmington, Delaware, but that Shellpoint has been hired by this New Owner to service the loan. As such, Shellpoint retained an interest in the loan and must continue to be a party to this action.

22. However, by letter dated December 1, 2014 from Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is an entity styled New Penn Financial, LLC. No address for this new entity is provided in the letter. This directly conflicts with the letter from Shellpoint of October 23, 2014, and there is no document which states that the loan was sold from NNPL Trust Series 2012-1 to New Penn Financial, LLC.

23. By letter from Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to FCI Financial Services, Inc. in Anaheim, California as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again.

24. Mr. Singleton thus formally moves to amend his Answer to add additional party Defendants and a counter-claim and cross-claim for Declaratory Relief.

25. A copy of the proposed Counterclaim and Cross-Claims is appended hereto and incorporated herein by reference.

26. The instant Motion is filed in good faith in view of the matters above and after reasonable inquiry into the facts as revealed by documentation produced by Plaintiff, and as soon as practicable given the only recent discovery of the majority of the information above which was revealed in discovery produced to Mr. Singleton by Plaintiff as a result of a Motion to Compel Discovery, and as a result of the identified correspondence set forth above.

27. The parties have, pursuant to SCRCP 11, previously conferred as to the original Motion. Said counsel objected to the amendment at the hearing on December 15, 2014. The Court overruled the objection and requested counsel for Mr. Singleton to amend the Motion and the proposed Amended Answer and Counterclaim to include all of the newly identified parties claiming any interest in the mortgage loan, which Mr. Singleton has done here.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court grant this Motion and deem the attached Counterclaim and Cross-Claims as filed for the reasons set forth, and for any other and further relief which is just and proper.

William H. Sloan

Attorney for Defendant Singleton

Post Office Box 85

Summerville, SC 29484

843-873-7531

Jan. 30, 2015

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING; NNPL TRUST SERIES 2012-1; NEW PENN FINANCIAL, LLC; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

JAMIE SINGLETON's COUNTERCLAIM AND CROSS-CLAIMS

Counter-Plaintiff JAMIE SINGLETON, by and through his undersigned counsel, files and serves his Counterclaim against Counter-Defendant US BANK, NA AS TRUSTEE FOR FRT 2011-1, a foreign (non-South Carolina incorporated) entity; NOMURA HOLDINGS, INC., a foreign (non-South Carolina incorporated) entity; 50 By 50 REO LLC, a New York limited liability company; DB 50 2007-1 Trust, a New York business trust; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation; SHELLPOINT

MORTGAGE SERVICING, a South Carolina business entity, and DOES 1-10, and sues said parties for Declaratory Relief and other relief, and states:

A. Parties, Jurisdiction and Venue

1. This is an action for Declaratory Relief which is a proper Counterclaim to the main action, and the Cross-Claims are proper within this Court as the operative facts giving rise to the claims for relief arose out of the same series of transactions related to the same mortgage loan and the same borrower (Mr. Singleton).

2. Counter- and Cross-Plaintiff JAMIE SINGLETON is and was at all times material hereto a *sui juris* resident of the State of South Carolina over the age of eighteen (18), and is a Defendant in the main action.

3. Counter-Defendant US BANK NA AS TRUSTEE FOR FRT 2011-1 (hereafter "USB") is and was at all times material a foreign (non-South Carolina incorporated) private equity investment bank which did business in the State of South Carolina and invoked the jurisdiction of this Court by filing the main action which seeks to foreclose on the mortgage loan the subject of both the main action and this action.

4. Cross-Defendant NOMURA HOLDINGS, INC. (hereafter "Nomura") is and was at all times hereto a foreign (non-South Carolina incorporated) subsidiary holding company of Nomura Bank, which is a Japanese banking concern. Nomura claims to have purchased the mortgage loan the subject of this action from the original lender, that being People's Choice, and claims to have sold the loan to Cross-Defendant 50 BY 50 REO LLC.

5. Cross-Defendant 50 By 50 REO LLC (hereafter "50 By 50") is and was at all times material hereto a New York limited liability company which claims to have come into ownership of the mortgage loan the subject of this action.

6. Cross-Defendant DB 50 2007-1 Trust is and was at all times material hereto a New York business trust which claims to have come into ownership of the mortgage loan the subject of this action.

7. Cross-Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter "MERS") is and was at all times material hereto a Delaware corporation with its principal place of business being located in Virginia. MERS regularly conducts business in South Carolina and regularly purports to transfer mortgage loans of South Carolina borrowers and undertake actions to further foreclosure actions in South Carolina.

8. Cross-Defendant SHELLPOINT MORTGAGE SERVICING (hereafter "Shellpoint") is a servicer which will be assuming the servicing of the loan the subject of this action as of November 1, 2014 per written notice from the current servicer. Shellpoint's location has been identified in writing by the current servicer as being located in Greenville, South Carolina.

9. Cross-Defendant NNPL TRUST SERIES 2012-1 (hereafter "NNPL") appears to be a Delaware statutory (business) Trust established under the laws of the State of Delaware and located at c/o Christiana Trust, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

10. Cross-Defendant NEW PENN FINANCIAL LLC (hereafter "New Penn") is a limited liability company whose domicile is unknown as the December 1, 2014 letter from Shellpoint does not identify an address for this entity.

11. Cross-Defendant FCI FINANCIAL SERVICES, INC. (hereafter "FCI") appears to be a California corporation by virtue of Shellpoint's identification of FCI as having a P.O. Box numbered 27370 in Anaheim, California.

12. Cross-Defendants DOES 1-10 are not identified at this point but are reserved in the event that discovery reveals other parties which may be added if any such parties are found or claim to have an interest in the outcome of this action.

13. Cross-Defendants Nomura, 50 By 50, MERS, DB50 2007-1, Shellpoint, NNPL, New Penn, and FCI are subject to the jurisdiction of this Court as they engaged in business in South Carolina by claiming to have acquired and transferred interests in the mortgage loan the subject of this action on which Counter-Defendant USB is attempting to foreclose. The single act of allegedly transferring an interest in the mortgage loan the subject of this and the main action to Plaintiff/Counter-Defendant USB constitutes the type of single act which has caused harm to Counter/Cross-Plaintiff in South Carolina as the foreclosure arises out of and relates to the acts of the Cross-Defendants as set forth below, thus establishing the minimum contacts necessary to hale the Cross-Defendants into this Court.

14. Cross-Defendant Shellpoint is subject to the jurisdiction of this Court as it is located in Greenville, South Carolina and is servicing the loan the subject of this action as of November 1, 2014 as affirmatively represented by the current servicer and Shellpoint's own correspondence referred to hereinbelow.

15. Further, the relief sought is Declaratory relief, which requires the joinder of any party which may have an interest in the outcome of the claim. The State of South Carolina thus has an interest in exercising jurisdiction over the Cross-Defendants, the acts of whom gave rise to the assertion of the foreclosure claim by Counter-Defendant USB. There is no inconvenience for the Cross-Defendants in this action and even if claimed, the inconvenience to Counter/Cross-Plaintiff with any severance of any claim as to any Cross-Defendant greatly outweighs any claim of prejudice to any of the Cross-Defendants. Further, severance of any claim as to any Cross-

Defendant would unduly complicate this litigation and result in the possibility of inconsistent verdicts or orders.

16. All actions of the Counter-Defendant and the Cross-Defendants were directed toward and had their effects in South Carolina, and were intended by the Counter-Defendant and Cross-Defendants to be directed toward South Carolina.

B. Background Facts

17. Counter/Cross-Plaintiff originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

18. On January 15, 2009, Counter/Cross-Plaintiff received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by Cross-Defendant DB50 2007-1 Trust. No notice was provided to Counter/Cross-Plaintiff that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

19. Cross-Defendant Nomura claims to have purchased the mortgage loan the subject of this action as of January 6, 2006 from People's Choice. However, none of the loan transfer documentation required by the Mortgage Loan Purchase Agreement has been produced, including the interim assignments of mortgage and the intervening endorsements for the Note.

20. People's Choice filed for Bankruptcy on March 20, 2007.

21. Cross-Defendant Nomura claims to have sold the mortgage loan the subject of this action to Cross-Defendant 50 By 50.

22. Counter-Defendant had previously produced an Assignment of Mortgage by Cross-Defendant MERS dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

23. Counter-Defendant had previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

24. There is a second "Assignment of Mortgage" which was filed in the public records by which Cross-Defendant 50 By 50 purportedly assigned the Mortgage to the Plaintiff/Counter-Defendant. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Counter-Defendant.

25. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to Cross-Defendant 50 By 50 or to the Counter-Defendant.

26. If Cross-Defendant Nomura sold the loan to Cross-Defendant 50 By 50, there was nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008; conversely, if Cross-Defendant MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy),

Cross-Defendant Nomura did not sell the loan to Cross-Defendant 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

27. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Cross-Defendant Nomura to sell to Cross-Defendant 50 By 50 on September 27, 2007, and nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008.

28. If the loan was assigned by Cross-Defendant MERS to GMAC on July 14, 2008 or was in the inventory of the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust (of which the Counter-Defendant is the claimed "trustee") could not have acquired the loan on October 31, 2011.

29. It is without dispute that Counter-Defendant USB was not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by Cross-Defendant 50 By 50, which is also not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage.

30. Mr. Singleton was advised by the prior servicer (BSI Financial Services) that the servicing of the loan would be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina. Shellpoint confirmed this change of servicing by letter to Mr. Singleton dated November 26, 2014.

31. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to Cross-Defendant NNPL (identified as the "New Owner") located in Wilmington, Delaware, but that Cross-Defendant Shellpoint has been hired by this New Owner

to service the loan. As such, Cross-Defendant Shellpoint retained an interest in the loan and must continue to be a party to this action.

32. However, by letter dated December 1, 2014 from Cross-Defendant Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is Cross-Defendant New Penn. No address for this new entity is provided in the letter. This directly conflicts with the letter from Cross-Defendant Shellpoint dated October 23, 2014, and there is no document which states that the loan was sold from NNPL to New Penn.

33. By letter from Cross-Defendant Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to Cross-Defendant FCI as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again, nor does this letter identify the current owner of the loan. If the loan is owned by Cross-Defendant NNPL, Cross-Defendant Shellpoint was identified as the servicer.

34. As a direct and proximate result of the matters hereinabove, Counter-Plaintiff is in doubt as to his rights under the Note and Mortgage contracts.

COUNT I: DECLARATORY RELIEF

35. Counter/Cross-Plaintiff reaffirms and realleges paragraphs 1 through 34 hereinabove as if set forth more fully hereinbelow.

36. This is an action for Declaratory Relief which is brought pursuant to S.C. Code Ann. sec. 15-53-10 *et seq.* and is a proper counterclaim to the main action.

37. S.C. Code Ann. sec. 15-53-30 provides that any person interested under a deed, will, written contract or other writing constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have

determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

38. It is without dispute that the Note and Mortgage are contracts in which Counter/Cross-Plaintiff has an interest.

39. It is also without dispute that the actions of the Counter-Defendant and Cross-Defendants set forth above have affected the rights of the Counter/Cross-Plaintiff in the Note and Mortgage contracts, and that the claims of the Counter- and Cross-Defendants are conflicting and ambiguous. Further, there is no identification of who Cross-Defendant Shellpoint will be servicing the loan for.

40. S.C. Code Ann. Sec. 15-53-20 provides that courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed, and that no action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. It is without dispute that this Court has jurisdiction over this action for declaratory relief and may grant the relief requested.

41. S.C. Code Ann. sec. 15-53-130 provides that the Declaratory Judgments Act is declared to be remedial with its purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

42. S.C. Code Ann. sec. 15-53-40 provides that a contract may be construed either before or after there has been a breach thereof.

43. S.C. Code Ann. sec. 15-53-80 provides that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. Counter/Cross-Plaintiff has thus joined the Counter-Defendant and the Cross-Defendants who have all claimed an interest in the mortgage loan the subject of this action and the contracts associated therewith.

44. S.C. Code Ann. sec. 15-53-90 provides that when a proceeding for declaratory relief involves the determination of an issue of fact that such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending, and all existing rights to jury trials are preserved.

45. There are numerous issues of material fact as revealed by the facts set forth above, and Counter/Cross-Plaintiff hereby demands trial by jury of all such issues.

46. S.C. Code Ann. Sec. 15-53-100 provides that in any proceeding instituted under the Chapter (for declaratory relief) that the court may make such award of costs as may seem equitable and just.

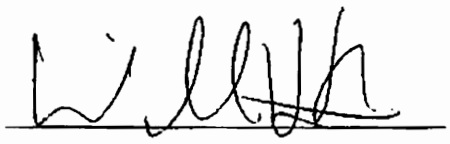
47. As Counter/Cross-Plaintiff has been forced to bring this action to determine his rights under the Note and Mortgage contracts as a result of the actions of the Counter-Defendant and Cross-Defendants, Counter/Cross Plaintiff requests an award of his costs.

48. S.C. Code Ann. Sec. 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. Counter/Cross-Plaintiff reserves the right to amend this claim to request any such additional relief as this matter progresses.

WHEREFORE, Counter/Cross-Plaintiff demands the entry of a Declaratory Judgment declaring his rights and legal relations and status with relation to the Note and Mortgage

contracts, and also requests a declaration that neither the Counter-Defendant nor any of the Cross-Defendants have any rights in and never had any rights or interest in the Note or the Mortgage for the reasons set forth above, and for any other and further relief which this Court deems just and proper.

Dated this 30th day of January, 2015.



William H. Sloan

Attorney for Defendant Singleton

Post Office Box 85

Summerville, SC 29484

843-873-7531

whs@sloanlawfirm.net

Jan. 30, 2015

SLOAN LAW FIRM, PA
Post Office Box 85
SUMMERVILLE, SC 29484
843-873-7531 PH
843-873-7527 FAX
William H. Sloan, Jr.
whs@sloanlawfirm.net

March 10, 2015

The Honorable James Chellis
Master in Equity for Dorchester County
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Re: US Bank, as Trustee vs. Jamie Singleton et al.
Case No. 2011-CP-18-871

Dear Judge Chellis:

Enclosed please find the original and one copy of the Proposed Order granting Defendant Singleton's Motion to Amend Counterclaim. If it meets with your approval, please sign the original, file the original with the Clerk of Court's office and return the copy to us in the return envelope. If you have any questions, please advise. Thank you for your attention to this matter. With kind regards, we are

SLOAN LAW FIRM
Yours Truly,

William H. Sloan

Cc: Rogers, Townsend
Attn: Erica Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29202

DORCHESTER COUNTY CLERK OF COURT
Cheryl Graham, Clerk of Court
5200 East Jim Bilton Blvd.
St. George, SC 29477

Carolyn Ayer
Civil Court Coordinator
Dorchester County
843-832-0108

Bill
Please file the original Amended Counterclaim and Cross-Claims.
Thank you,

Carolyn

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendant(s).

ORDER SUBSTITUTING PLAINTIFF

FILED - RECORDED
2016 MAR -1 PM 4:05
CLERK OF COURT
DORCHESTER COUNTY

(522291-00001 EL1)

This matter came before me for a hearing on February 29, 2016, on Plaintiff's Motion to Substitute Plaintiff. Erica G. Lybrand appeared on behalf of Plaintiff and William H. Sloan, Jr. appeared on behalf of Defendant Jamie Singleton. Based upon the Motion, memorandums submitted by the parties, the arguments of counsel, and the *South Carolina Rules of Civil Procedure*, I hereby GRANT Plaintiff's Motion to Substitute.

IT IS THEREFORE ORDERED that:

(1) Pursuant to Rule 17(a) of the *South Carolina Rules of Civil Procedure*, **US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1** be substituted as Plaintiff in this matter; and

(2) This order amended such caption of the Lis Pendens, Summons and Complaint ab initio so that no re-service of the Summons and Complaint upon the other parties shall be necessary.

IT IS SO ORDERED.

James E. Chellis
Master in Equity for Dorchester County

St. George, South Carolina

Date: 3/1/2016

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-18-00871

RECORDED
2016 MAR -1 PM 4:05
CHERYL ... CLERK OF COURT
DORCHESTER COUNTY

US Bank, NA as Trustee for FRT 2011-1

PLAINTIFF(S)

Jamie Singleton and Indigo Pointe Homeowners Assoc.

DEFENDANT(S)

Submitted by:
Erica G. Lybrand (SC Bar # 79052)
Rogers Townsend & Thomas, PC
PO Box 100200
Columbia, SC 29202
(803) 771-7900
Erica.Lybrand@rtt-law.com
(522291-00001 EL1)

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the

00060

order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Jae

Jamy E Chellis — 3078 — 3/1/2016

~~Cynthia Graham~~ Howe, Master in Equity — Judge Code — Date

JAMES E CHELLIS

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2014, and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Master in Equity emailed the Plaintiff's & Defendant's Counsel the attached Order on 3/1/2016.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Erica G. Lybrand, Esquire
Rogers Townsend & Thomas, PC
P. O. Box 100200
Columbia, SC 29202
(522291-00001)

ATTORNEY(S) FOR THE DEFENDANTS

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

William Jeff Barnes, Esquire
W.J. Barnes, P.A.
9350 Wilshire Blvd.
Beverly Hills, CA 90212

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Jae

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

RECORD

2016 MAR -1 PM 4:05

CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF(S)		DEFENDANT(S)
S Bank, N.A., as Trustee of the FRT 2011-1 Trust	Jamie Singleton	Indigo Pointe Homeowners Association
Submitted by:		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _ _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: **Motion to Withdraw as Counsel for US Bank; Motion Withdrawn by Plaintiff's Counsel on the record on 02/29/2016.**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

James S. Mills

Master in Equity	3078	3/1/2016
	Judge Code	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was ~~entered on 03/ /2016~~, and a copy mailed first class or placed in the appropriate attorney's box on 03/ /2016, to attorneys of record ~~or to~~ parties (when appearing pro se) as follows:

Master in Equity emailed the Plaintiff's & Defendant's Counsel the Form-4 on 3/1/2016.

Erica Greer Lybrand
220 Executive Center Drive
Columbia, SC 29210

William H. Sloan Jr.
PO Box 85
Summerville, SC 29484

William Jeff Barnes, Esquire
9350 Wilshire Blvd
Beverly Hills, CA 90212

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

- Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

PLAINTIFF(S)		DEFENDANT(S)
Bank Trust, National Association, not in its Individual	2016 JUN 20 AM 10:09 CLERK OF COURT DORCHESTER COUNTY	Jamie Singleton; Indigo Pointe Homeowners Association

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: Consent Motion for Continuance is Denied

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Master in Equity	3078 Judge Code	6/13/2016 Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **6-20-2016**, and a copy mailed first class or placed in the appropriate attorney's box on **6-20-2016**, to attorneys of record or to parties (when appearing pro se) as follows:

Erica Greer Lybrand PO Box 100200 Columbia, SC 29202

William H. Sloan Jr. PO Box 85 Summerville, SC 29484
William Jeff Barnes 9530 Wilshire Blvd Beverly Hills, CA 90212

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED - RECORD
2016 AUG 31 PM 3:58
CHERYL HEDGEPATH
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA **COURT OF COMMON PLEAS**
DORCHESTER COUNTY

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

ORDER ON MOTION TO COMPEL AND COMMANDING PRODUCTION OF DOCUMENTS, AND ORDER SETTING STATUS CONFERENCE

THIS CAUSE having come before the Court on Thursday, June 16, 2016 beginning at approximately 2:10 p.m. on the Motion of Defendant JAMIE SINGLETON to compel discovery and as to the status of discovery in view of a trial date, and on further argument on the Motion for Continuance filed by Plaintiff in which Defendant JAMIE SINGLETON joined, and the Court having reviewed the file, heard extensive argument of counsel, posed questions to counsel, reviewed certain documentation presented by counsel for JAMIE SINGLETON, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES as follows:

1. The Motion to Compel be the same and is hereby granted as set forth herein.

2. Counsel for Plaintiff shall produce to counsel for JAMIE SINGLETON (that being William Sloan, Esq. and Jeff Barnes, Esq.), in either charted or spreadsheet or table form, a definitive list of all parties, persons, or entities that owned the mortgage loan the subject of this action by name, address, and telephone number from the date of origination to the present, and also setting forth the identification, by name, address, and telephone number, of all servicers of the loan from origination to the present.

3. Counsel for the Plaintiff shall produce each and every document which actually served to transfer the mortgage loan the subject of this action, and all documents showing the date of

transfer, the transferor, the transferee, and the consideration for each such transfer, whether monetary or otherwise. If the loan was transferred with other loans as part of a pool, all documents shall be produced which identify the pool of loans which contained the mortgage loan the subject of this action and the consideration for such transfer, whether in dollars or otherwise.

4. Counsel for Plaintiff shall produce all documents, including correspondence, memoranda, electronic mails, faxes, or any other writing, relating to the mortgage loan the subject of this action including documents exchanged between any investment bank, investor, holder of any interest in the mortgage loan, or other person or entity which ever, at any time, claimed any interest in either the Note or the Mortgage the subject of this action.

5. If Plaintiff claims that there are any documents the subject of this Order which do not exist, Plaintiff shall file an Affidavit, under oath and subject to the penalties of perjury, that the documents compelled do not exist.

6. Counsel for the Plaintiff shall produce all items set forth in paragraphs 2, 3, 4, and 5 of this Order to counsel for JAMIE SINGLETON by no later than ~~July 29~~ Oct 15, 2016.

7. This Court shall hold a Status Conference at 2:00 p.m. on ~~August~~ Oct 31, 2016, at which counsel may appear via telephone, at which time counsel shall advise the Court of the status of the production identified above and any discrepancies therewith or documents or other items not produced, and as to good-faith efforts of counsel to resolve any such issues.

8. The Court shall, at the ~~August 31~~ Nov 30, 2016 Status Conference, also address the following matters:

(a) any Motion to Substitute the Plaintiff which may be filed;

(b) enter a Scheduling Order which shall set forth:

(i) the deadline to amend pleadings;

(ii) the deadline to disclose expert witnesses;

(iii) the deadline to disclose fact and rebuttal witnesses and documents sought to be introduced into evidence at trial;

(iv) the deadline to complete all discovery (written and any depositions);

(v) the deadline to file dispositive motions;

(vi) the date for the Final Pretrial Conference; and

(vii) a firm date for trial.

9. Counsel for the parties are to have their calendars ready at the ~~August 31~~ Nov 30, 2016 status conference and shall be prepared to notify the Court of any scheduling conflicts at that time.

10. No further Motions shall be entertained at the ~~August 31~~ Nov 30, 2016 Status Conference. If there are pending motions at that time, the Court will schedule a firm date and time for a hearing thereon at the ~~August 31~~ Nov 30, 2016 Status Conference.

11. The dates for the matters set forth in paragraph 8 above, once entered in the Scheduling Order, shall be firm and not subject to amendment by consent or stipulation, and may only be amended by Order of this Court and for good cause shown.

12. Counsel for the parties have read and reviewed the entire contents of this Order and have approved same prior to the submission thereof to this Court.

DONE AND ORDERED in St. George, Dorchester County, South Carolina on this 30 day of ~~July~~ Aug 2016.

The Honorable James Chellis
Dorchester County Master in Equity

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

Bank Trust, National Association, not in its Individual		**Jamie Singleton**	**Indigo Pointe Homeowners Association**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED FOR RECORD
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY
2016 AUG 31 PM 3:58

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Jessamy E. Mitchell

Master in Equity | **3078** **Judge Code** | **8/31/2016** **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 9/ /2016, and a copy mailed first class or placed in the appropriate attorney's box on 9/ /2016, to attorneys of record or to parties (when appearing pro se) as follows:

Erica Greer Lybrand PO Box 100200 Columbia, SC 29202

William H. Sloan Jr. PO Box 85 Summerville, SC 29484
William Jeff Barnes, Esquire 9350 Wilshire Blvd Beverly Hills, CA 90212

Order hand delivered to parties in court on 08/31/2016 by MIE.

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

- Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

9/2

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO. 2011-CP-18-00871
US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants.	**CONSENT CONFIDENTIALITY ORDER**
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1, Counter-Defendant.	

FILED-RECORDED
2017 MAR 16 PM 12:59
CLERK OF COURT
DORCHESTER COUNTY

(513044-00057 EL1)

Whereas, the parties to this Consent Confidentiality Order have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this order, accordingly, it is this 14 day of March, 2017, **ORDERED**:

That the parties and counsel for the parties in the above-captioned litigation (the "Litigation") shall observe the following terms for discovery produced after February 1, 2017:

1. Any documents, deposition testimony, written responses to discovery or other material produced or disclosed orally or in writing during discovery, trial or otherwise in this case (and any and all copies, summaries or abstracts to such material) which the designating party reasonably and in good faith believes to contain or disclose confidential business or financial information and/or confidential or private personal information may be designated as "CONFIDENTIAL MATERIAL" pursuant to this protective order.

2. CONFIDENTIAL MATERIAL of a producing party shall not be made public by the receiving party or divulged to anyone other than the persons permitted to access as set forth therein. No CONFIDENTIAL MATERIAL shall be reproduced or used except in connection with the Litigation.

3. Any party producing CONFIDENTIAL MATERIAL shall label or mark the documents and things deemed to be CONFIDENTIAL MATERIAL with an appropriate legend; CONFIDENTIAL MATERIAL shall be marked "CONFIDENTIAL" or other similar language. The party that inadvertently fails to mark an item as CONFIDENTIAL MATERIAL at the time of production may correct its failure in writing accompanied with substitute copies of each item, container, or folder appropriately marked with the new designation.

4. CONFIDENTIAL MATERIAL shall be treated by each receiving party as confidential unless and until the Court rules to the contrary or the designating party agrees otherwise. Unless and until the Court rules or the designating party otherwise agrees, access to or disclosure of CONFIDENTIAL MATERIAL shall be limited to the following persons:

    a. the Court and those employed by the Court, in which event such information shall be filed under seal (and shall remain under seal until further order of the Court);

    b. the parties in the Litigation including any employees of the parties that receive such material. The parties' employees to whom such material will be disclosed must have a legitimate need to review such material in connection with the Litigation;

    c. the attorneys of record and associated attorneys for the party or parties in the Litigation to whom such material is produced, and the employees, or vendors, and contractors of such attorneys;

    d. court reporters and employees of court reporters engaged by counsel to record and transcribe testimony in the Litigation; and

    e. outside experts and consultants who have been retained by a party or counsel of record in the Litigation for purposes of assisting in the preparation of the Litigation for trial, plus necessary clerical assistants; provided that each such individual who actually reviews any such material must execute an undertaking in the form of Exhibit A; the original executed undertaking shall be maintained by counsel for the party which retained the expert or consultant and his/her employees.

5. Any party may designate its responses to discovery, including responses to requests for production, responses to interrogatories, responses to requests for admission, and depositions, as CONFIDENTIAL at the time of service. In the case of depositions, counsel for a party believes that a portion or all of the deposition contains CONFIDENTIAL MATERIAL, counsel shall so state on the record or in writing sent

within seven (7) business days after his or her subsequent receipt of the transcript. Such correction and notice thereof shall be made in writing to the reporter, with copies to all other counsel, designating the portions of the transcript that constitute CONFIDENTIAL MATERIAL. Until the expiration of the aforesaid seven (7) business day period, all deposition transcripts shall be considered and treated as protected CONFIDENTIAL MATERIAL, unless otherwise agreed on the record at the deposition.

6. No assertion or waiver of confidentiality pursuant to this Protective Order shall affect the assertion or validity of any other claim of confidentiality, privilege or other basis for non-production or withholding any discovery matter from discovery, nor shall this Protective Order require disclosure of such material. This Protective Order shall not preclude any party from moving the Court for an order directing the disclosure of the materials withheld, however, nor prevent a party from applying to the Court for relief therefrom, or from applying to the Court for further or additional protective orders. In the event either party designates any material or testimony as CONFIDENTIAL MATERIAL and the other objects to the designation, the designating party shall, within fifteen (15) days after written receipt of the objection, provide the objecting party with a written description, under oath, of the reason why the material is considered confidential by the party and a full description of the measures taken by the party to maintain the confidentiality of the material, including a description of the personnel, both employee and non-employee, who have had access to the material and any agreements with such persons regarding the confidentiality of the material. If the objecting party still does not agree with the designation, then the objecting party can move the Court for an order removing the confidential designation and the designating party shall have the burden of proof that the material is confidential and that the designating party has taken reasonable steps to maintain its confidential nature.

7. Within thirty (30) calendar days after the final termination of this action, including any appeals, counsel for the receiving party shall return all copies of the CONFIDENTIAL MATERIALS to counsel for the designating party or shall destroy such CONFIDENTIAL MATERIAL and certify in writing the destruction to counsel for the designating party. Notwithstanding the foregoing, counsel of record for each of the parties may retain for their files one copy of all pleadings, briefs, exhibits, deposition transcripts and exhibits, or hearing transcripts and exhibits which contain such information, subject to the ongoing obligation to maintain the confidentiality of such information as set forth in this Protective Order.

AND IT IS SO ORDERED.

This 14 day of March, 2017.

The Honorable James E. Chellis
Master in Equity for Dorchester County

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendants.

ACKNOWLEDGEMENT OF UNDERSTANDING AND AGREEMENT TO BE BOUND

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1,

Counter-Defendant.

(513044-00057 EL1)

CO-RECORDED
2017 MAR 16 PM 12:59
CLERK OF COURT
DORCHESTER COUNTY

The undersigned hereby acknowledges that he/she has read the Consent Confidentiality Order in the above-captioned action, understands the terms thereof, and agrees to be bound by such terms.

{Continued on next page}

The undersigned understands that the terms of said Consent Confidentiality Order obligate him/her to use discovery materials encompassed by this Consent Confidentiality Order solely for the purposes of the above-captioned action, and not to disclose any such confidential information to any other person, firm, or company.

Erica G. Lybrand, Esquire
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor
Columbia, SC 290201
(803) 771-7900
Erica.Lybrand@rtt-law.com

William H. Sloan, Esquire
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

William Jeff Barnes, Esquire
W.J. Barnes, P.A.
9350 Wilshire Blvd.
Beverly Hills, CA 90212

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

FILED-RECORDED

2017 MAR 16 PM 12:59

CLERK OF COURT
DORCHESTER COUNTY

CASE NO. 2011-CP-18-00871

US Bank trust,

☑ Plaintiff

v.

Jamie Singleton; at el,

☐ Defendant

MOTION/ORDER INFORMATION FORM AND COVER SHEET

name, S.C.Bar no, and address of plaintiff's attorney	name, S.C.Bar no, and address of Defendant's attorney
Erica G. Lybrand (SC Bar # 79052) 1221 Main Street, 14th Floor, Columbia, SC 29201 telephone: 803-771-7900 fax: 803-343-7013	telephone: fax: email: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☑ **PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:

SECTION II: Motion Type

☐ Written Motion attached

☑ Form Motion — I hereby move for relief or action by the court as set forth in the attached proposed order.

(SC Bar # 79052) March 6, 2017

Signature of Attorney for Plaintiff Date submitted

SECTION III: Motion Fee

☑ PAID—AMOUNT: $25.00

☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent status
- ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other

CODE: _____ Date: _____

_____

JUDGE

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (12/2009) 513044.00057 ELI

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

RE-RECORDED

Bank Trust National Association John Judson Hearn	FRT 20[illegible] 2017 MAR 16 PM 12:50 CLERK OF COURT DORCHESTER COUNTY	Jamie Singleton Nomura Holdings, Inc. NNPL Trust Series 2012-1 Mortgage Electronic Registration Systems Inc Shellpoint Mortgage Servicing	Indigo Pointe Homeowners Association DB 50 2007-1 Trust FCI Lender Services, Inc. New Penn Financial, LLC

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

James E. Chellis	3078	3/16/2017
Master-in-Equity	**Judge Code**	**Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on **3/16/2017**, and a copy mailed first class or placed in the appropriate attorney's box on **3/16/2017**, to attorneys of record or to parties (when appearing pro se) as follows:

John Patrick Fetner 3800 Arco Corporate Drive Suite 250 Charlotte, NC 28273
Samuel Calvin Waters 742 Albion Road Columbia, SC 29205-1914
John Judson Hearn /Erica Greer Lybrand PO Box 100200 Columbia, SC 29202
William H. Sloan Jr. PO Box 85 Summerville, SC 29484
William Jeff Barnes 9530 Wilshire Blvd Beverly Hills, CA 90212
Emily H. Farr PO Box 11329 Columbia, SC 29211-1329
John Gwilym Tamasitis PO Box 11889 Columbia, SC 29201-1889

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant.

(513044.00057 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

2017 SEP 29 AM 10:55
CLERK OF COURT
DORCHESTER COUNTY

ORDER GRANTING PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF

WHEREAS, US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1 is the current named Plaintiff in the above styled action to foreclose a mortgage lien on property more fully described in the Complaint;

AND WHEREAS, it appearing to the Court that US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1 no longer claims any interest in the subject Note and Mortgage;

AND WHEREAS the interest in the subject Note and Mortgage has been transferred to **Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,**

AND WHEREAS, counsel for the Defendant Jamie Singleton have consented to the Motion to Substitute by Stipulation filed herein,

THEREFORE, IT IS ORDERED, pursuant to Rule 17(a) of the South Carolina Rules of Civil Procedure and for good cause indicated that:

1. **Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1**, shall be and hereby is substituted as Plaintiff in this action and as the real party in interest and that US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series 2014-1 be dismissed from this action without prejudice; and

2. This order amends such caption of the Lis Pendens, Summons and Complaint ab initio so that no re-service of the Summons and Complaint upon the other parties shall be necessary.

AND IT IS ORDERED!

The Honorable James E. Chellis
Master in Equity for Dorchester County

Dorchester, South Carolina
9/28, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF Dorchester)

IN THE COURT OF COMMON PLEAS
C/A No. 2011-CP-18-00871

Wilmington Savings Fund Society, etal
~~US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series, 2014-1,~~

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

~~US Bank, NA as Trustee for FRT 2014-1~~ Wilmington Savings Fund Society, etal
Nomura Holdings, Inc., 50 BY 50 REO, LLC, DB 50 2007-1 Trust, Mortgage Electronic Registration Systems, Inc., Shellpoint Mortgage Servicing, NNPL Trust Series 2012-1, New Penn Financial, LLC, FCI Lender Services, Inc., and Does 1-10,

Counter-Defendant and Cross-Defendants.

ORDER SUBSTITUTING COUNSEL

2017 NOV 15 AM 10:28
SHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY
RECEIVED

The Defendant, Mortgage Electronic Registration Systems, Inc., has moved before the Court for an Order Substituting Counsel in this action. The Court finds that it is appropriate to substitute counsel for Mortgage Electronic Registration Systems, Inc..

IT IS THEREFORE ORDERED that Crawford & von Keller, LLC is substituted for Rogers, Townsend & Thomas, PC as counsel for the Defendant, Mortgage Electronic Registration Systems, Inc..

AND IT IS SO ORDERED.

James E. Chellis, Dorchester County
Master In Equity

Dorchester, South Carolina

WE SO MOVE:

Sara C. Hutchins (SC Bar# 72879)
Crawford & von Keller, LLC
P.O. Box 4216
Columbia, SC 29240
803-790-2626

WE SO CONSENT:

Erica G. Lybrand (SC Bar# 79052)
PO Box 100200
Columbia, SC 29202

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-18-00871

~~US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series, 2014-1~~
Wilmington Savings Fund
Plaintiff,

-vs-

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendant(s)

MOTION INFORMATION FORM AND COVERSHEET

2017 NOV 15 AM 10:28
CHERRY C. COURT
CLERK OF COURT
DORCHESTER COUNTY
RECUR

Plaintiff's Attorney	Defendants Attorney:
B. Lindsay Crawford, III - S.C. Bar No. 6510 Theodore von Keller - S.C. Bar No. 5718 Sara C. Hutchins - S.C. Bar No. 72879 B. Lindsay Crawford, IV – S.C. Bar No.101707 PO Box 4216, Columbia, SC 29240 TELEPHONE: 803-790-2626 FAX: 803-790-1277 EMAIL: SARA@CRAWFORDVK.COM	_____, Bar No.: Address: Phone: _____ Fax:_____ E-mail:_____ Other:_____

- ☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)**
- ■ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
- ☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion Type

- ☐ Written motion attached
- ■ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 10/26/17
Signature of Attorney for ■ Plaintiff / ☐ Defendant Date Submitted

SECTION III: Motion Fee

☐ PAID –AMOUNT:	$_____
☐EXEMPT: (check reason)	☐ Rule to show cause in Child or Spousal Support ☐ Domestic Abuse of Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or reduced to writing from motion and made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order
☐ Other: _____

JUDGE CODE:
Date: _____

CLERK'S VERIFICATION

Collected By: _____ Date Filed: _____
☐ Motion Fee Collected: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF Dorchester Wilmington Savings Fund Society, FSB, Dba Christiana Trust, not in its Individual capacity but solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, Plaintiff, v. Jamie Singleton; Indigo Pointe Homeowners Association; Defendant(s).	IN THE COURT OF COMMON PLEAS C/A No. 2011-CP-18-00871 **ORDER SUBSTITUTING COUNSEL**

FILED-RECORDED
2011 DEC 20 PM 2:39
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, Wilmington Savings Fund Society, FSB, Dba Christiana Trust, not in its Individual capacity but solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1, has moved before the Court for an Order Substituting Counsel in this action. The Court finds that it is appropriate to substitute counsel for ~~US Bank, National Association, not in its Individual Capacity but solely as Owner Trustee of WestVue NPL Trust, Series, 2014-1~~ Plaintiff as stated in the caption above.

IT IS THEREFORE ORDERED that Crawford & von Keller, LLC is substituted for Rogers, Townsend & Thomas, PC as counsel for the Plaintiff, Wilmington Savings Fund Society, FSB, Dba Christiana Trust, not in its Individual capacity but solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1.

AND IT IS SO ORDERED.

James E. Chellis, Dorchester County
Master In Equity

Dorchester, South Carolina

WE SO MOVE:

Sara C. Hutchins
Crawford & von Keller, LLC
P.O. Box 4216
Columbia, SC 29240
803-790-2626

00084

WE SO CONSENT:

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
Post Office Box 100200 (29202)
1221 Main Street, 14th Floor
Columbia, South Carolina 29201
(803)771-7900

October 6, 2017

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Wilmington Savings Fund Society, FSB, Dba Christiana Trust, not in its Individual capacity but solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1
Plaintiff,

-vs-

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-18-00871

MOTION INFORMATION FORM AND COVERSHEET

RECORDED
2017 DEC 20 PM 2:39
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff's Attorney	Defendants Attorney:
B. Lindsay Crawford, III - S.C. Bar No. 6510 Theodore von Keller - S.C. Bar No. 5718 Sara C. Hutchins - S.C. Bar No. 72879 B. Lindsay Crawford, IV – S.C. Bar No.101707 PO Box 4216, Columbia, SC 29240 TELEPHONE: 803-790-2626 FAX: 803-790-1277 EMAIL: SARA@CRAWFORDVK.COM	_____, Bar No.: Address: Phone: _____ Fax:_____ E-mail:_____ Other:_____

- ☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I AND III)**
- ■ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
- ☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion Type

- ☐ Written motion attached
- ■ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 11/16/17
Signature of Attorney for ■Plaintiff / ☐ Defendant Date Submitted

SECTION III: Motion Fee

☐ PAID –AMOUNT: ☐EXEMPT: (check reason)	$_____ ☐ Rule to show cause in Child or Spousal Support ☐ Domestic Abuse of Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or reduced to writing from motion and made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order
☐ Other: _____

JUDGE CODE:
Date: _____

CLERK'S VERIFICATION

Collected By: _____ Date Filed: _____
☐ Motion Fee Collected: $ _____
☐ CONTESTED – AMOUNT DUE: $_____

ELECTRONICALLY FILED - 2018 Jul 17 12:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO. 2011-CP-18-00871
US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association, Defendants.	**SECOND AMENDED SCHEDULING ORDER**
Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1, Counter-Defendant.	

The following deadlines are established by agreement of the parties and this Court in this case:

1. Amendments to pleadings shall be completed on or before July 30, 2018.
2. Discovery, including depositions and any issues as to written or documentary discovery, shall be completed on or before September 30, 2018.
3. Dispositive motions shall be filed on or before November 30, 2018.
4. Mediation, if consented to by all parties, shall be completed on or before November 30, 2018.
5. If this case remains pending after all dispositive motions filed pursuant to paragraph 3 above have been ruled on, then this case shall be set for trial for a date certain with

trial to commence on the date established by this Court at a future Status Conference to be held during December, 2018.

AND IT IS SO ORDERED.

IT IS SO ORDERED!

July ____, 2018

_____

The Honorable James E. Chellis
Master in Equity for Dorchester County
5200 E. Jim Bilton Blvd.
St. George, SC 29477

WE CONSENT:

s/William H. Sloan
William H. Sloan for himself and Jeff Barnes, Esq.
Bar No. 69630
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Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorneys for Jamie Singleton

s/Erica Lybrand, by William H. Sloan with express written consent
Erica Lybrand, Bar No. 79052
Rogers, Townsend and Thomas
Post Office Box 100200
Columbia, SC 29202
803-744-4444
Attorney for FRT Trust

s/Elizabeth R. Polk, by William H. Sloan, with request to file
Elizabeth R. Polk, Bar No. 11673
Stern & Eisenberg Southern, PC
1709 Devonshire Drive
Columbia, SC 29204
Attorney for Plaintiff

ELECTRONICALLY FILED - 2018 Jul 17 12:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2018 Jul 17 12:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

__s/Sara C. Hutchins___
Sara C. Hutchins, Bar No. 72879
Crawford & von Keller, LLC
P.O. Box 4216
Columbia, SC 29240
Attorney for MERS

ELECTRONICALLY FILED - 2018 Jul 17 12:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Scheduling Order

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2018 Jul 30 12:23 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1,

Plaintiff,

ORDER TO SUBSTITUTE COUNSEL

v.

JAMIE SINGLETON; INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendant(s).

The Plaintiff has motioned this Court to substitute Jonathan M. Riddle of Stern & Eisenberg Southern, PC as new counsel for the Plaintiff. Current counsel and prior counsel have both consented to this motion and it appears that no unreasonable delay or prejudice will accrue.

THEREFORE, IT IS HEREBY ORDERED that Jonathan M. Riddle of Stern & Eisenberg Southern, PC shall be and is hereby substituted as Plaintiff's counsel for the above referenced action and that Crawford & Von Keller, LLC is hereby relieved as Plaintiff's counsel.

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2018 Jul 30 12:23 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Substitution Of Counsel

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2018 Aug 17 9:16 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

WILMINGTON SAVINGS FUND SOCIETY, FSB, DBA CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY IN ITS CAPACITY AS CERTIFICATE TRUSTEE FOR NNPL TRUST SERIES 2012-1,

Plaintiff,

v.

JAMIE SINGLETON; INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendant(s).

ORDER TO SUBSTITUTE COUNSEL

The Plaintiff has motioned this Court to substitute Jonathan M. Riddle of Stern & Eisenberg Southern, PC as new counsel for MERS, Inc. Current counsel and prior counsel have both consented to this motion and it appears that no unreasonable delay or prejudice will accrue.

THEREFORE, IT IS HEREBY ORDERED that Jonathan M. Riddle of Stern & Eisenberg Southern, PC shall be and is hereby substituted as counsel for MERS, Inc. for the above referenced action and that Crawford & Von Keller, LLC is hereby relieved as Plaintiff's counsel.

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2018 Aug 17 9:16 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption:	Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al
Case Number:	2011CP1800871
Type:	Order/Substitution Of Counsel

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2018 Sep 05 4:41 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER US Bank Trust, National Association, not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1, Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners Association Defendants. Jamie Singleton, Counter-Plaintiff, v. US Bank, NA as Trustee for FRT 2011-1, Counter-Defendant.	IN THE COURT OF COMMON PLEAS DOCKET NO. 2011-CP-18-00871 **THIRD AMENDED SCHEDULING ORDER**

The following deadlines are established by agreement of the parties and this Court in this case:

1. Amendments to pleadings shall be completed on or before July 30, 2018.
2. Discovery, including depositions and any issues as to written or documentary discovery, shall be completed on or before October 31, 2018.
3. Dispositive motions shall be filed on or before December 31, 2018.
4. Mediation shall be completed on or before December 31, 2018.
5. This case shall be set for trial for a date certain with trial to commence on the date established by this Court at a future Status Conference to be held during January, 2019.

AND IT IS SO ORDERED.

Judge James Chellis,
Master-in-Equity Dorchester County
5200 E. Jim Bilton Blvd.
St. George, SC 29477
August __, 2018

WE CONSENT

William H. Sloan for himself and Jeff Barnes, Esq.
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Attorneys for Jamie Singleton

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Rogers, Townsend and Thomas
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Attorney for FRT Trust

Elizabeth R. Polk #11673
Jonathan M. Riddle #101475
Attorney for Plaintiff
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ELECTRONICALLY FILED - 2018 Sep 05 4:41 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2018 Sep 05 4:41 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Scheduling Order

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2019 Feb 07 11:36 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants;

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA, As Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity, but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendant and Cross Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-18-00871

ORDER GRANTING DEFENDANT US BANK, NA, AS TRUSTEE FOR FRT 2011-1'S MOTION FOR SUMMARY JUDGMENT

AND

DISMISSING US BANK, NA, AS TRUSTEE FOR FRT 2011-1 FROM ACTION

This matter came before the Court for a hearing on January 24, 2019, pursuant to Counterclaim/Crossclaim Defendant US Bank, NA, as Trustee for FRT 2011-1's ("FRT Trust") Motion for Summary Judgment. Based upon the Motion, memoranda, and the arguments of counsel presented at the hearing, I find as follows:

ELECTRONICALLY FILED - 2019 Feb 07 11:36 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

1. As to FRT Trust, the relief requested by Defendant and Counter/Crossclaim Plaintiff Jamie Singleton is to have the court determine that FRT Trust does not "have any rights in and never had any rights or interest in the Note or the Mortgage."

2. A duly authorized representative of FRT Trust testified by affidavit filed with its Motion that FRT Trust no longer claims any interest in the subject loan or real estate.

3. Additionally, pursuant to prior filings of FRT Trust, it has shown that it did hold the original note endorsed in blank at the time it was Plaintiff. As a result, and as a matter of law, FRT Trust did previously have an interest in the subject Note and Mortgage and a right to enforce the Note.

4. However, as FRT Trust has since transferred the Note and Mortgage and no longer claims any interest in the subject loan or real estate, it no longer has any interest or rights in the Note and Mortgage.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that FRT Trust's Motion for Summary Judgment be granted.

IT IS ALSO ORDERED, ADJUDGED, AND DECREED that FRT Trust be dismissed as a party from this action as it is no longer a necessary party in light of this ruling.

JUDGE'S SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2019 Feb 07 11:36 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2019 Nov 07 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

ORDER TO SUBSTITUTE COUNSEL

Jamie Singleton,
Counter-Plaintiff,

v.

Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc. and DOES 1-10,
Counter-Defendants.

The Plaintiff has motioned this Court to substitute J. Pamela Price of McMichael Taylor Gray, LLC as new counsel for the Plaintiff. Current counsel and prior counsel have both consented to this motion and it appears that no unreasonable delay or prejudice will accrue.

THEREFORE, IT IS HEREBY ORDERED that J. Pamela Price of McMichael Taylor Gray, LLC shall be and is hereby substituted as Plaintiff's counsel and that Stern & Eisenberg Southern, PC, is hereby relieved as Plaintiff's counsel.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW.

ELECTRONICALLY FILED - 2019 Nov 07 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Substitution Of Counsel

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2019 Dec 31 12:11 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

ORDER FOR EXTENSION OF TIME TO RESPOND TO DEFENDANT'S DISCOVERY REGARDING CONSIDERATION

On or about October 28, 2019, this Court held a status conference in this matter that was attended to by counsel for Plaintiff and counsel for Defendant, Singleton.

At the status conference, this Court recognized that outstanding discovery remained owed to Defendant from Plaintiff. As such, it was ordered that an order be provided reflecting that Plaintiff has until December 16, 2019, to respond to the outstanding discovery.

On the due date of December 16, 2019, Plaintiff sought an extension to comply with this Court's order asking for an additional ten (10) days from December 16, 2019 to respond. As such, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 seeks an order extending their deadline to respond to Defendant's Discovery Requests up and through December 26, 2019;

IT IS THEREFORE ORDERED Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1, respectfully requests that this Court enter an Order granting Plaintiff's motion extending the deadline for Plaintiff to respond to Defendant's Discovery up and through December 26, 2019, and for such other and further relief as is appropriate.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW.

ELECTRONICALLY FILED - 2019 Dec 31 12:11 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2020 Feb 07 2:54 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,
Defendants.

ORDER TO SUBSTITUTE PLAINTIFF

WHEREAS, an action for foreclosure was brought against Jamie Singleton and Indigo Pointe Homeowners Association, bearing Civil Action No.: 2011-CP-18-00871 and captioned as Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 v. Jamie Singleton and Indigo Pointe Homeowners Association.

The Plaintiff moves this Court for an order substituting Plaintiff to reflect the Plaintiff as U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, as shown on the Assignment of Mortgage recorded in the Office of the Register of Deeds for Dorchester County on February 4, 2020 in Book 12313, Page 74.

THEREFORE, pursuant to Rule 17(a) of the South Carolina Rules of Civil Procedure and for good cause indicated,

IT IS HEREBY ORDERED that U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G, shall be and hereby is substituted *ab initio* as Plaintiff and as the real party in interest and that Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 shall be dismissed without prejudice.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW.

ELECTRONICALLY FILED - 2020 Feb 07 2:54 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Substitution of Parties

ORDER DENIED

s/James E. Chellis, Master in Equity, SCJD #3078

ELECTRONICALLY FILED - 2020 Feb 11 8:53 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

Wilmington Savings Fund Society, FSB, DBA Christiana Trust, not in its Individual Capacity but Solely in its Capacity as Certificate Trustee for NNPL Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,

Defendants.

ORDER ON DEFENDANT'S MOTION TO COMPEL; MOTION TO CONTINUE TRIAL; AND MOTION TO DISMISS JAMIE SINGLETON

Jamie Singleton,

Counter-Plaintiff,

v.

Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; FCI Lender Services, Inc. and DOES 1-10,

Counter-Defendants.

This matter came before the Court for a Status Conference on October 28, 2019. Upon a review of the file and as a result of the arguments of the Parties, it is hereby ordered that Defendant's Motion to Dismiss is hereby denied; Defendant's Motion to Continue Trial is hereby granted; and Defendant's Motion to Compel is hereby granted.

Plaintiff shall provide to the Defendant a copy of the Assignment of Mortgage to the current owner, U. S. Bank as Trustee of Waterfall Victoria Grantor Trust II, Series G and shall file a proposed Motion and Order for Substitution of Plaintiff.

In addition the Plaintiff shall provide to the Defendant on or before December 16, 2019, the following:

1. The name of the parties that are the current owners of the note and mortgage, including

their address and telephone number.

2. The document which actually served to transfer the mortgage loan showing the date of transfer, the transferor, the transferee, and the consideration for the transfer, whether monetary or otherwise. If the loan was transferred as part of a pool, all documents shall be produced which identify the pool of loans which contained the mortgage loan and the consideration for such transfer, whether in dollars or otherwise.

3. All documents, including correspondence, memoranda, electronic mails, faxes, or other writing, relating to the transfer of the mortgage loan.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2020 Feb 11 8:53 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2020 Feb 11 8:53 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2020 Aug 05 10:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but Solely in its capacity as Certificate Trustee for NNPA Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendants.

Jamie Singleton,

Counter-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1,

Counter-Defendant.

THIRD AMENDED SCHEDULING ORDER AND ORDER ON CASE STATUS CONFERENCE HELD ON JULY 29, 2020

THIS CAUSE having come before the Court on July 29, 2020 and the Court having conducted a case status conference, and counsel having advised the Court of the current status of the case and the Court being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

A. Status of the Case

1. Plaintiff filed a Motion to Substitute Plaintiff on February 6, 2020. This Court entered an Order denying said Motion on February 7, 2020. Plaintiff never sought reconsideration of this Court's February 7, 2020 Order.

ELECTRONICALLY FILED - 2020 Aug 05 10:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

2. Plaintiff's counsel admitted that the loan the subject of this action has been sold to another entity, that being the U.S. Bank as Trustee entity identified in the February 6, 2020 Motion to Substitute.

3. On request of Mr. Singleton's counsel Jeff Barnes, Esq. and agreement of counsel for Plaintiff, the Rule 30(b)(6) deposition of the designated representative of the Plaintiff will be scheduled and taken pursuant to a date and time to be agreed by counsel.

B. Scheduling Order

1. The Rule 30(b)(6) deposition identified above shall be taken and completed within forty-five (45) days of the date of this Order.

2. Dispositive Motions shall be filed no later than sixty (60) days from the date of this Order.

3. The Bankruptcy schedules filed by the original lender shall be provided to the Court within sixty (60) days of the date of this Order.

4. The Court will, before October 31, 2020, set this matter for trial on a date and time which is available to the Court, counsel, and all witnesses.

AND IT IS SO ORDERED.

WE CONSENT

s/William H. Sloan
s/W. Jeffrey Barnes
William H. Sloan for himself and Jeff Barnes, Esq.
Bar No. 69630
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorneys for Jamie Singleton
August 4, 2020

s/Pamela Price
Pamela Price, Esq.
McMichael Taylor Gray, LLC
Attorney for Plaintiff
6160 South Andrews Road, Suite 2
Columbia, South Carolina 29212
(803) 251-9844
August 4, 2020

JUDGE SIGNATURE PAGE ELECTRONICALLY TO FOLLOW

ELECTRONICALLY FILED - 2020 Aug 05 10:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2020 Aug 05 10:42 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Scheduling Order

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2021 Mar 16 11:30 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-18-00871

Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association,

Defendants.

SCRCP 60(b)(5) ORDER
ORDER DISMISSING (1) PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL
(2) DEFENDANT'S MOTION TO DISMISS COMPLAINT WITH PREJUDICE AND
(3) ORDER ON DEFENDANT'S MOTION FOR ATTORNEY FEES

On November 16, 2020, this Court held a hearing on Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1's ("Plaintiff") Motion for Voluntary Dismissal and Defendant, Jamie Singleton's ("Defendant") Motion to Dismiss with Prejudice. The hearing was attended to by counsel for Plaintiff, Ms. Pamela Price and counsel for Defendant, Mr. William Sloan and Mr. Jeff Barnes, Mr. Barnes appearing *pro hac vice*.

On September 22, 2020, Plaintiff filed its Motion for Voluntary Dismissal. Plaintiff's motion sought dismissal of its own foreclosure action without prejudice because Plaintiff believed the relief sought in the action as framed had become futile. Pursuant to S.C. R. Civ. P. 41(a)(2), if a Plaintiff cannot voluntarily dismiss its case pursuant to S.C. R. Civ. P. 41(a)(1), an action may be dismissed upon order of the court and upon such terms and conditions as the court deems proper. Alleging no legal prejudice being shown or being able to be shown by Defendant, Plaintiff sought dismissal under this this rule.

ELECTRONICALLY FILED - 2021 Mar 16 11:30 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

On November 6, 2020, Defendant filed his Motion to Dismiss Plaintiff's Complaint with Prejudice. Defendant's motion sought dismissal of Plaintiff's action with prejudice. The motion consented to dismissal of Plaintiff's case but only if the dismissal was ordered with prejudice, framing the main issue before the Court.

In support of this position, Defendant argued the two-dismissal rule stating that "a notice of dismissal acts as an adjudication upon the merits by a Plaintiff who has once dismissed in any court of the United States or any state an action based on or including the same claim." Plaintiff's predecessor in interest had filed a prior foreclosure action in 2008, which was dismissed because of a trial modification entered into between the parties. Defendant also argued that Plaintiff's alleged conduct throughout the history of the case prejudiced the Defendant and should not allow for a subsequent action to be brought. Defendant's motion also sought attorney's fees as the prevailing party in the event the case was dismissed whether with or without prejudice.

After contemplation of these motions and review of this Court's Order of February 7, 2020, in which this Court denied Plaintiff's Motion for an Order to substitute U. S. Bank Trust N.A. as Trustee for Waterfall Victoria Grantor Trust II Series G for the Plaintiff Wilmington Savings Fund Society SFB DBA Christiana Trust, not in its individual capacity but Solely and its capacity as Certificate Trustee for NNPL Trust Series 2012-1, this Court determines it made an error. The latter motion should have been granted. Hence, the Order entered February 7, 2020, was entered in error.

SCRCP 60(b)(5) allows a Court to vacate an order upon determination that it is no longer equitable that the judgment should have prospective application. This procedural rule affords equitable relief to a party where fairness demands such. In this case, the error pf this Court must be remedied by a reversal of this Court impediment to proceeding forward by an erroneous

decision. The decision is unfair to the Plaintiff. The decision is equally unfair to the Defendant. Therefore, this court orders that U. S. Bank Trust N.A. as Trustee for Waterfall Victoria Grantor Trust II Series G for the Plaintiff Wilmington Savings Fund Society SFB DBA Christiana Trust, not in its individual capacity but Solely and its capacity as Certificate Trustee for NNPL Trust Series 2012-1 shall be substituted as plaintive.

The Motions heard November 16, 2020, are therefore moot. As such each motion is dismissed without prejudice.

IT IS THEREFORE ORDERED Plaintiff, Wilmington Savings Fund Society, FSB DBA Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 shall be substituted with and by U. S. Bank Trust N.A. as Trustee for Waterfall Victoria Grantor Trust II Series G for the Plaintiff Wilmington Savings Fund Society SFB DBA Christiana Trust, not in its individual capacity but Solely and its capacity as Certificate Trustee for NNPL Trust Series 2012-1. AND FURTHER,

IT IS ORDERED that Wilmington Savings Fund Society FSB filed September 22, 2020 and the Defendant Singleton's Motion to Dismiss, filed November 6, 2020, and Motion for Attorney Fees, filed February 9, 2021, are hereby deemed moot. These Motions are, therefore, dismissed without prejudice.

IT IS SO ORDERED!

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Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2022 Feb 08 2:49 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-18-00871

U.S. Bank Trust N.A. as Trustee for Waterfall Victoria Grantor Trust II Series G,
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association,
Defendant(s).

ORDER DENYING DEFENDANT JAMIE SINGLETON'S MOTION FOR SUMMARY JUDGMENT AND DIRECTING FURTHER DISCOVERY

On January 18, 2022, this Court heard Defendant's Motion for Summary Judgment filed Novemer 2, 2021. The Plaintiff's written return was entered in the court's file January 17th 2022 at 10:22 P.M. The Plaintiff's "response" asserts Plaintiff's counsel is in possession of the original Note on behalf of its client thus impeaching a Plaintiff's 30(b)(6) corporate deponent that admitted he did not know where the original note was. In sum, Defendant's Motion for Summary Judgment is bottomed on the failure of Plaintiff's 30(b)(6) corporate deponent to possess knowledge of the Note and the genesis of a Lost Note Affidavit. Possession of the unsatisfied Note is the most basic element of foreclosure of a mortgage securing the Note.

Plaintiff's counsel is an officer of this Court. Plaintiff however failed to have a supporting affidavit. A court's failure to consider an affidavit in opposition to a motion for smmary judgment is not considered an abuse of discretion. The lack of an affidavit and reliance on Plaintiff's counsels' representation is a sufficient basis for the exercise of this Court's discretion in denying Defendant's present motion especially in a case in equity.

Plaintiff's counsel's representation of being in possession of the Note and her agreement to allow inspection of the Note at Defendant counsel's offices creates a question of fact sufficient to deny the Defendant's motion for smmary judgment. Plaintiff is under this Court's order of August 30, 2016 entered on August 31, 2016. But, Defendant's failure to inspect the Note or move to compel inspection of the Note in light of the August 31, 2016 order prior to the present matter under consideration redoubles support for this discretionary ruling. NOW, THEREFORE,

IT IS HEREBY ORDERED that Defendant Singleton's motion for summary judgment is denied.

IT IS FURTHER ORDERED that Plaintiff deliver for inspection the subject Note at to Defendant's Counsel his Boca Raton, Florida office. The delivery for inspection shall allow sufficient time for Defendant's expert to examine the Note for the purpose of deterinining its

authenticity but without performing any destructive testing. Defendant may take the depositions of a designated corporate witness having knowledge of the chain of custody related to the Note. However, Plaintiff's counsel may satisfy the chain of custody of the Note by providing a newest to oldest chronological itemization of correspondence providing the following:

Date	Sender Authority	Addressee Authority	Date of Receipt /Acknowledgemet of Receipt	Description or Method of Identification of Note	Method of Delivery USPS; UPS, FedEx or Other

together with copies of the correspondence, redacted as necessary to preserve attorney-client privilege from a holder of the note to Plaintiff's Counsel ("Plaintiff's Counsel" shall mean any lawyer previously representing a plaintiff in this proceeding) but sufficiently describing the Note that is the subject of this case.

Nothing in this Order shall be construed to prove the Plaintiff is a "Person entitled to enforce" an instrument pursuant to S.C. Code Ann. § 36-3-301.

Defendant's counsel may depose one or more of the persons identified in the itemization. However, dilatory tactics of deposing persons identified shall be avoided in light of this Court Orders, dated August 30, 2016, July17, 2018, September 5, 2018, February 11, 2020, August 5, 2020[1].

Plaintiff's counsel shall comply with paragraph 3 of the August 5, 2020 Order on or before February 28, 2022. Paragraph 3 provides: "The Bankruptcy schedules filed by the original lender shall be provided to the Court within sixty (60) days of the date of this Order."

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW.

[1] Plaintiff's failure to inspect the original note from the outset of discovery is baffling. No specific motion to compel production of the note for inspection lends itself to an inference that the possession of the Note has never been an issue. I recall discussing the issue of the right to enforce the note with Plaintiff's counsel at the first hearing on the Defendant's motion to compel discovery, which I granted. Defendant's failure to inspect the note itself is much more curious given the broad latitude of discovery given the Defendant in this case. I encourage all lawyers in this case to consider this: "Fisher v. Huckabee, Op. No. 2018-MO-039, 2018 WL 6528119 (S.C. Sup. Ct. filed Dec. 12, 2018) (withdrawn, substituted, and refiled Jan. 16, 2019). In doing so, we observed Respondent "has certainly engaged in abusive litigation tactics that amount to sanctionable conduct" under Rule 11, SCRCP. Id. at 3Id. at 3. Respondent's misconduct resulted in a substantial waste of time, judicial resources, and estate assets." Matter of Fisher, 432 S.C. 488, 490, 854 S.E.2d 613, 614, 2021 WL 264613 (2021).

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Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2022 Nov 21 10:49 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G Plaintiff, v. Jamie Singleton and Indigo Pointe Homeowners' Association, Defendant(s).	IN THE COURT OF COMMON PLEAS CA No.: 2011-CP-18-00871 **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

On October 12, 2022, This Court heard Plaintiff's Motion for Summary Judgment. After consideration of the entire record in this decade old case, specifically including the summary judgment evidence, applicable law, and counsels' arguments, the Court issues the following findings and conclusions. First, the Court summarizes the standards for a grant of summary judgment. Next the Court will discuss its Findings and Conclusions of Law. Finally, the Order follows granting Plaintiff's Motion.

I. SUMMARY JUDGMENT STANDARD

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (S.C. 2001). Summary judgment is appropriate when it is clear from the record that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law pursuant to Rule 56, SCRCP. In determining whether there is any triable fact issue in a case, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Silvester v. Spring Valley Country Club*, 344 S.C. 280, 285, 543 S.E.2d 563, 566 (Ct. App. 2001); *Hedgepath v. A.T. & T.*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001).

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Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Tel. & Tel. Co.*, 410 S.E.2d 537 (S.C. 1991). With respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case. *Id.* (citing *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)). Once the moving party carries its initial burden, the "opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" *Id.* (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). The party opposing summary judgment cannot simply rest on mere allegations or denials contained in the pleadings. *George v. Empire Fire & Marine Ins. Co.*, 545 S.E.2d 500 (S.C. 2001). More than a mere scintilla of evidence is required to overcome summary judgment. *Bravis v. Dunbar*, 449 S.E.2d 495 (S.C. App. 1994).

II. FINDINGS OF FACT

1. On or about January 4, 2006, Defendant Jamie Singleton ("Defendant" or "Singleton") made, executed, and delivered a certain Adjustable-Rate Note (the "Note") in the principal sum of $212,000.00, payable in monthly amortized installments, to People's Choice Home Loans, Inc. **Exhibits A and B to Plaintiff's Motion for Summary Judgment ("Plaintiff's Motion").**

2. To secure payment of the Note, Singleton made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loans, Inc., its successors and assigns, a certain real estate mortgage (the "Mortgage"), encumbering the property located at 5505 Rowsham Place, North Charleston, South Carolina 29418. **Exhibits A and C to Plaintiff's Motion.**

3. The Mortgage is recorded the Dorchester County Register of Deeds Office. **Exhibit C to Plaintiff's Motion.**

4. The Mortgage secures repayment of the Note described in Paragraph 1 above.

5. The Mortgage is a purchase money first lien on the mortgaged premises. ***Id.***

6. Defendant failed to make the January 1, 2010, payment and remained in default of payment thereafter.

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7. The failure to pay the note payment when due is a breach of the terms of the Note.

8. Plaintiff's predecessor exercised its right to declare the entire balance plus interest after Singleton failed to pay its Note in accord with its terms. **See, Complaint, and Exhibit D.**

9. Plaintiff claims, as of the date of the hearing, the total due to it of principal, accrued interest, advances, late charges, costs and disbursements, attorneys' fees, and taxes, a total amount of $552,705.56. **Exhibit D to Plaintiff's Motion.**

10. Plaintiff holds the Note.

11. Plaintiff is a "Person entitled to enforce" the Note and Mortgage because it is the holder of the Note and Mortgage[1]. S.C. Code Ann. § 36-3-301. **Exhibit D to Plaintiff's Motion.**

12. The Plaintiff is not a "holder in due course" pursuant to S.C. Code Ann. § 36-3-302.

13. The Plaintiff unnecessarily protracted this litigation by multiple endorsements of the note after the foreclosure suit began. **Exhibit E to Plaintiff's Motion.**

14. The Plaintiff unnecessarily protracted this litigation by multiple allonges of the note after the foreclosure suit began. **Exhibit E to Plaintiff's Motion.**

15. The Plaintiff unnecessarily protracted this litigation by multiple assignments of the mortgage after the foreclosure suit began. **Exhibit E to Plaintiff's Motion.**

16. The Plaintiff unnecessarily protracted this litigation by multiple substitutions of counsel during the foreclosure proceeding. **Exhibit E to Plaintiff's Motion.**

17. The Plaintiff and its predecessors after commencing the foreclosure practiced unfair business policies by repeatedly changing the holder of the note. **Exhibit F to Plaintiff's Motion.**

18. The Plaintiff and its predecessors after commencing the foreclosure practiced unfair business policies by repeatedly transferring servicing rights to the note despite it being in default. **Exhibit F to Plaintiff's Motion.**

19. Plaintiff and its predecessors' repeated transfers of the Note and assignments of the mortgage, together with its transfers of servicing rights are an abuse of its statutory privileges under the South Carolina Uniform Commercial Code (UCC), the purpose of which the Legislature states, in part, "This title must be liberally construed and applied to promote its

[1] An Assignment of Mortgage to the Plaintiff was recorded in the Office of the Register of Deeds for Dorchester County on February 4, 2020, in Book 12313, Page 74.

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underlying purposes and policies, which are: (1) to simplify, clarify, and modernize the law governing commercial transactions." **S.C. Code Ann. § 36-1-103**.

20. The Plaintiff's post foreclosure actions hardly simplified the purposes and policies of the UCC.

21. The Plaintiff's post foreclosure actions hardly clarified the purposes and policies of the UCC.

22. While the UCC grants liberal construction to promote its purposes and policies, Plaintiff and its predecessors failed to consider the principal of judicial economy in its quest to foreclose Singleton's mortgage utterly disregarding not only the rights of the defendant to a fair and speedy resolution to its claim but also disregarding this Court's resources.

23. With liberal commercial rights and privileges granted by our legislature to businesses that use the commercial benefits of our UCC comes the restraint to act fairly, to simplify commercial transactions, and in this Court's view, to be mindful of the rights and duties of third parties[2], such as the Defendant in its commercial transactions. This self-restraint concept requiring parties in commerce to conduct business fairly and in good faith is greatly magnified once litigation is brought because the Court is another "third-party" whose time, talent and limited resources are affected.

24. Plaintiff's and its predecessors' actions utterly disregarded this Court resources even transferring the loan to avoid appearing in Court to prosecute its case when it was scheduled to be heard in the summer of 2016.

25. Plaintiff's exercise of statutorily authorized commercial purposes are tempered by principals of good faith and fair dealing.

26. Plaintiff and its predecessors' actions during the foreclosure process failed to exhibit good faith.

27. Plaintiff and its predecessors' actions during the foreclosure process failed to exhibit fair dealing.

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[2] I am reminded of the following teaching, which the decision-makers who work for the entities such as the Plaintiff should take heed of the Biblical principal found in Luke 12:48, where the following teaching is found: "For unto whomsoever much is given, of him shall be much required: and to whom men have committed much, of him they will ask the more." KJV.(My Emphasis).

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28. The Plaintiff even lost the Note during the course of the litigation. **Defendant's Bellanti Depo #1, page 50, lines 15-22.**

29. The Plaintiff found the Note prompting additional discovery by the Defendant that took place in the offices of Defendant's counsel in Florida. **Exhibit A to Plaintiff's Motion Defendant's Deposition.**

30. The Plaintiff's holds a lien on the real property of the Defendant.

31. The Defendant owes a debt to the Plaintiff. **Exhibit D to Plaintiff's Motion Defendant's Deposition.**

32. The Plaintiff and its predecessors' actions during the foreclosure require this Court to invoke its equitable powers to prevent injustice to the Defendant.

III. CONCLUSIONS OF LAW

33. Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt. *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009) Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction. *Id.* at 374-75, 684 S.E.2d at 205.

34. In the present case, Singleton admitted, through deposition testimony, the debt's validity, and his payment default. Accordingly, Plaintiff established *prima facie* case for foreclosure and sale of the reap property subject to the lien of the mortgage.

35. The burden shifted to the Defendant to present specific facts that show there is a genuine issue of material fact remaining for trial. *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact." *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

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36. Defendant asserted several defenses to this foreclosure action; however, the Defendant failed to provide any material facts in support of any defense that prevents this Court from granting summary judgment to Plaintiff.

37. Defendant argued that Plaintiff lacks ownership of the Mortgage and thus lacked standing to sue in this case. Defendant's argument fails. Plaintiff proved it holds of the Note. See, "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but ... the assignment of the mortgage alone does not carry with it an assignment of the note." Hahn v. Smith, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also Ballou v. Young, 42 S.C. 170, 176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note.") Bank of Am., N.A. v. Draper, 405 S.C. 214, 220, 746 S.E.2d 478, 481, 2013 WL 2422875 (Ct. App. 2013).

38. As holder of the Mortgage Plaintiff has the right to enforce the Note and foreclose the mortgaged property. *Id.* S.C. Code Ann. § 36-3-301.

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

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

41. Rule 17(a), SCRCP, requires that every action be prosecuted "in the name of the real party in interest." The South Carolina rule is patterned after the comparable federal rule, which has been regarded as embodying the concept that an action shall be prosecuted "in the name of the party who, by the substantive law, has the right sought to be enforced." It is ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property. *See* 4 S.C. Jur. *Action* § 23 (1991) (footnotes omitted). "The requirement of standing is not an inflexible one." *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000) (internal quotation marks omitted).

42. South Carolina courts hold that the holder of a note or mortgage is entitled to bring an action to foreclose upon a mortgage. In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the appellate court affirmed a trial court's order granting summary judgment to a plaintiff who obtained the note via transfer.

43. Regarding "who" is entitled to enforce a debt instrument, the *Draper* court cited Section 36-3-301 of the South Carolina Code (Supp. 2012), which provides:

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

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entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

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

45. In *Draper*, plaintiff produced copies (not originals) of a note and mortgage and was determined to be the holder of the debt instruments, with proper standing, when it filed the foreclosure action. The appellate court ruled that plaintiff's evidence satisfactorily established that it was the holder of the note and had standing to foreclose, and therefore, held that the master did not err in granting summary judgment. *Draper*, 405 S.C. 214, 222, 746 S.E.2d 478, 482.

46. In the present case, Plaintiff proved through uncontested Affidavit that it was the holder of the Note by virtue of a transfer from Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1.

47. In addition, Plaintiff proved by public record an assignment of mortgage from Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1, filed as an Assignment of Mortgage recorded in the Office of the Register of Deeds for Dorchester County on February 4, 2020, in Book 12313, Page 74. **Exhibit E to Plaintiff's Motion.**

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48. Like *Draper*, this undisputed evidence is sufficient to show that Plaintiff is the holder of the Note and Mortgage with standing to foreclose.

49. Defendant's conclusory assertion that Plaintiff is not the "owner" of the Note or Mortgage does not create a genuine issue of material fact.

50. Defendant abandoned its argument of waiver and laches by failing to raise it at the summary judgment hearing. In any case, this argument has no merit and Defendant has no evidence to support it.

51. The equitable doctrine of laches is equivalent to the legal doctrine of waiver, which is the "voluntary and intentional relinquishment or abandonment of a known right." *Strickland v. Strickland,* 375 S.C. 76, 85, 650 S.E.2d 465, 470 (S.C. 2007) (quoting *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (S.C. 1994))." Both laches and waiver require a party to have (1) known of a right, and (2) known that the party was abandoning that right." *Id.* at 85, 650 S.E.2d at 470-71. The party seeking to establish waiver or laches has the burden of proof. *SPUR at Williams Brice Owners Ass'n v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015); *King v. James*, 388 S.C. 16, 28, 694 S.E.2d 35, 41 (Ct. App. 2010). The record in this case is devoid of any evidence that Plaintiff abandoned any rights it has in the Note or Mortgage at any point. Accordingly, there is no material issue of fact presented by Defendant that prevents summary judgment.

52. Defendant argued that Plaintiff brought this case with "unclean hands" and has failed to "act in good faith" with regards to the Administrative Order re: Mortgage Foreclosures dated May 2, 2011, by "offering Defendant a 'take it or leave it' mortgage modification offer." *See* Defendant's Answer, Counterclaim and Crossclaims, ¶ 35. Defendant was questioned

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extensively at his deposition about these defenses and offered no evidence in support of his claims. **Exhibit A to Plaintiff's Motion**. No genuine issue of material fact exists concerning these defenses, and summary judgment should not be denied on this basis.

53. Defendant abandoned its argument on separation of the mortgage and note by failing to raise it at the summary judgment hearing. Nevertheless, the Court finds that this defense is insufficient to withstand summary judgment. Defendant argues that "the note and mortgage have been split forever." *See* Defendant's Answer, Counterclaim and Crossclaims, ¶ 18. The record is devoid of evidence to support this allegation. It is well established that a party pleading an affirmative defense has the burden of proving it. *Pike v. South Carolina Dep't of Transp.,* 343 S.C. 224, 540 S.E.2d 87 (S.C. 2000); *Hoffman v. County of Greenville*, 242 S.C. 34, 129 S.E.2d 757 (S.C. 1963). "When a defendant interposes an affirmative defense, he becomes as to that matter the actor in the suit, and the burden of proof rests upon him to establish his affirmative defense by the preponderance of the evidence." *Lorick & Lowrance, Inc. v. Julius H. Walker & Co.*, 153 S.C. 309, 318, 150 S.E. 789, 792 (S.C. 1929). A party opposing a properly supported motion for summary judgment, however, may not rest on the mere allegations or denials of his pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. In the present case, Defendant has no evidence to support his allegation, and certainly has no evidence to establish a genuine issue of material fact to overcome summary judgment in favor of Plaintiff.

54. Defendant argued in its pleadings that because a previous holder of the Note and Mortgage filed a foreclosure case, and did not seek a deficiency judgment, the present Plaintiff is estopped from claiming a deficiency. Defendant failed to preserve this argument by offering no

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evidence at the summary judgment stage to support it. However, there was not even a scintilla of evidence submitted to support this argument, so it also must fail.

55. Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *Colleton Reg. Hosp. v. MRS Med. Rev. Sys.,* 866 F. Supp. 896, 900 (D.S.C. 1994). The doctrine's purpose is to ensure judicial process integrity, not to protect parties from allegedly dishonest conduct by their adversary. *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (S.C. 2003).

56. Under South Carolina law, a party must prove each of the following five elements for judicial estoppel to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (S.C. 2004).

57. In the present case, there is no evidence before the Court that any previous holder of the Note and Mortgage (1) was successful in maintaining a position on deficiency, (2) received any benefit therefrom, or (3) intentionally misled any court. Accordingly, any defense based upon judicial estoppel is ineffective to overcome summary judgment.

58. "The courts have uniformly applied the principle of equitable set-off with great liberality to prevent injustice even in the cases where elements requisite to legal set-off have been lacking. The facts indicating the injustice of denying the insurance company a set-off in the present case

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have been sufficiently presented. The facts warrant the allowance of a set-off even if it should be conceded, as it is not, that there was no strict mutuality of demands. The courts have repeatedly held that the absence of strict mutuality does not prevent the allowance of an equitable set-off, where justice demands it." *Falconer v. Powe*, Bailey Eq. 156; *Edwards v. Williams*, 39 S. C. 86, 17 S. E. 457; *Scott v. Armstrong*, 146 U. S. 499, 13 S. Ct. 148, 36 L. Ed. 1059; *Merrill v. Cape Ann Granite Co.*, 161 Mass. 212, 36 N. E. 797, 23 L. R. A. 313; *Hughitt v. Hayes*, 136 N. Y. 163, 32 N. E. 706.

59. Plaintiff claims, as of the date of the hearing, the total due to it of principal, accrued interest, advances, late charges, costs and disbursements, attorneys' fees, and taxes, a total amount of $552,705.56.

60. This Court concludes that it should exercise its equitable power to set off the amount due to the extent the Plaintiff is asserting a right to accrued interest and attorneys' fees and cost.

61. Hence, this Court concludes the Defendant owes $552,705.56 equitable offset by the total interest of $278,102.34.

62. The Plaintiff failed to establish reasonableness of the escrow by failing to itemize what constitutes the escrow charges

63. The Plaintiff's "Escrow" charge is denied.

64. The Plaintiff failed to establish the reasonableness of its "corporate advances."

65. The Plaintiff's "Corporate Advances" are denied.

66. The total of "Escrow Charges" and Corporate Advances" of $67,213.56 is denied.

67. The Court concludes each party shall pay their respective attorneys' fees and costs.

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68. The Court concludes that the Total Debt due the Plaintiff is Two Hundred Seven Thousand Three Hundred Eighty-nine And 66/100 Dollars ($207,389.66).

69. The Court grants Plaintiff's Motion for Summary Judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement. NOW, THEREFORE IT IS

70. ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Summary Judgement is granted; and further it is

71. ORDERED, ADJUDGED AND DECREED the Defendant shall pay the Plaintiff on the Note the sum of Two Hundred Seven Thousand Three Hundred Eighty-nine And 66/100 Dollars ($207,389.66) representing the "Total Debt" due Plaintiff. Interest on the Judgment shall accrue at the rate of 10.45% per annum as set forth in the Note. And further it is

72. ORDERED, ADJUDGED AND DECREED that the amount due, the sum of Two Hundred Seven Thousand Three Hundred Eighty-nine And 66/100 Dollars ($207,389.66) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 10.45% per annum. And further it is

73. ORDERED, ADJUDGED AND DECREED That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's Judgment together with interest from the date of this Order to the date of the designated payoff. And further it is

74. ORDERED, ADJUDGED AND DECREED that on default of payment at or before the date of the sale, which shall be requested by the Plaintiff, or in the absence of a request within thirty (30) days of this Order shall be scheduled by the Court, the mortgaged premises described

in the Complaint shall be sold by this Court at public auction at 5200 E. Jim Bilton Blvd., Dorchester County Courthouse, Dorchester County, South Carolina, on some convenient sales day hereafter, on the following terms, that is to say:

FOR CASH (i.e., by Bank Certified Funds): The Master-in-Equity will require a deposit of Five percent (5%) on the amount of the bid at the time of the sale. This deposit will be applied on the purchase price only upon compliance with the bid. But in case of non-compliance within Thirty (30) days the deposit shall be forfeited and applied to the Plaintiff's judgment debt. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 10.45% percent per annum. And further it is

75. ORDERED, ADJUDGED AND DECREED that notwithstanding the foregoing, if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day. And further it is

76. ORDERED, ADJUDGED AND DECREED that the sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record. And further it is

77. ORDERED, ADJUDGED AND DECREED that the Mortgage described herein constitutes a purchase money first lien priority mortgage on the subject property. And further it is

78. ORDERED, ADJUDGED AND DECREED that the Purchaser is to pay for the deed preparation, for Deed Stamps and costs of recording the Deed. And further it is

79. ORDERED, ADJUDGED AND DECREED that if the successful bidder is a third party other than the Plaintiff, interest on the balance of the bid shall be paid to the date of compliance at the rate of 10.45% per annum. And further it is

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80. ORDERED, ADJUDGED AND DECREED that if Plaintiff is the successful bidder at the said sale, Plaintiff may pay to the undersigned Master-in-Equity only the sales commission, the amount of the costs and expenses. The Plaintiff shall, therefore, be credited the balance of the bid on the judgment debt. And further it is

81. ORDERED, ADJUDGED AND DECREED that a personal or deficiency judgment having not been waived, the bidding will remain open after the date of sale for a period of thirty (30) days whereupon this Court shall re-open the bid to knock down the bid to the highest bid amount. And further it is

82. ORDERED, ADJUDGED AND DECREED that that the Master-in-Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Thirty (30) days after date of sale, then the Master-in-Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. And further it is

83. ORDERED, ADJUDGED AND DECREED that the Master-in-Equity will apply the proceeds of the sale as follows: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's judgment debt and interest, or so much thereof as the purchase money will pay on the same. And further it is

84. ORDERED, ADJUDGED AND DECREED any surplus will be held pending further order of the court. And it is further

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85. ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendant in possession, the Sheriff of Dorchester County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.. Service of any writ, rule, or other order issued by this Court concerning ejectment or removal shall be personal but if after reasonable attempts to personally serve is not able to be accomplished this Court deems service is sufficient if performed by posting at the premises in some conspicuous place with proof thereof being similar in form to that required for service of process. Thus, service upon the Defendant of a Writ of Assistance is sufficient for ejectment and removal if made by posting a copy of the Writ of Assistance at the premises. And it is further

86. ORDERED, ADJUDGED AND DECREED that the Defendant and all persons whomsoever claiming under him shall be forever barred and foreclosed of all right, title, interest, equity and right of redemption in the mortgaged premises so sold. And it is further

87. ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and canceled of record. And it is further

88. ORDERED, ADJUDGED AND DECREED that the Deed of conveyance made pursuant to the sale shall contain the names of only the Plaintiff and the first named Defendant. and the name of the Grantee, and the Recorder of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed. And it is further

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89. ORDERED, ADJUDGED AND DECREED the Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance. And it is further

90. ORDERED, ADJUDGED AND DECREED upon issuance of a Master-in-Equity Report on Sale and Disbursements, the Register of Deeds - Dorchester County is directed to release of record the mortgage lien being foreclosed. The Mortgage is described, as follows:

> The Mortgage Jamie Singleton made, executed, and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns. January 12, 2006, the Mortgagee recorded the Mortgage in the ROD for Dorchester County. The Mortgage is found in Mortgage Book 5142 at Page 168.

The following property description of the premises to be sold is:

> All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.
>
> This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165 in the Office of the Register of Mesne Conveyance for Dorchester County.
>
> Property Address: 5505 Rowsham Pl, North Charleston, SC 29418
> TMS# 181-10-06-037-000

THUS, IT IS SO ORDERED!!

JUDGE'S SIGNATURE PAGE TO FOLLOW

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Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2023 Apr 20 10:15 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	)
COUNTY OF DORCHESTER	) DOCKET NO.: 2011-CP-18-00871

U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association,
Defendant(s).

ORDER DENYING DEFENDANT JAMIE SINGLETON'S MOTION FOR SUMMARY JUDGMENT

On March 29, 2023, this Court heard Defendant's Motion for Summary Judgment filed on October 6, 2022. After hearing the parties' arguments, it is this Court's position that there exists a genuine issue as to material facts as to the holder of the Note and Mortgage; therefore,

IT IS ORDERED that the defendant, Jamie Singleton's, motion for summary judgment be and hereby is denied.

IT IS SO ORDERED!

SIGNATURE PAGE TO FOLLOW

ELECTRONICALLY FILED - 2023 Apr 20 10:15 AM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2023 Jul 25 12:35 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK TRUST, NA AS Trustee for Waterfall Victoria Grantor Trust II Series G,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

ORDER GRANTING IN PART JAMIE SINGLETON's MOTION TO RE-OPEN RECORD TO ADMIT NEWLY-DISCOVERED EVIDENCE OR ALTERNATIVELY FOR NEW TRIAL ON ISSUE OF AMOUNT OWED UNDER THE NOTE

THIS CAUSE having come before the Court on the Motion of Jamie Singleton to Re-Open the Record to admit newly-discovered evidence or alternatively for new trial on the issue of amount owed under the Note, and the Court having reviewed the file including the subject Motion and the Affidavit of Jamie Singleton and the Statement from the Servicer attached thereto, hereby FINDS, ADJUDGES, and ORDERS that the Motion be granted to the extent that the Statement of the Servicer is admitted into evidence.

IT IS FURTHER ORDERED that Plaintiff may submit an Affidavit, within ten (10) days of the date of this Order, as to any explanation concerning the Servicer's Statement which is the subject of the aforementioned Motion and which is now admitted into evidence by this Order. In view thereof, Jamie Singleton's Motion for New Trial on Issue of Amount Owed Under the Note is moot and thus denied.

IT IS FURTHER ORDERED that Plaintiff or any servicer of the Plaintiff which allegedly holds the Note is expressly prohibited from contacting Defendant Jamie Singleton in any way except through the attorneys currently representing each respective party. Jamie Singleton is also prohibited from contacting Plaintiff or its Servicer in like manner.

IT IS FURTHER ORDERED that the Plaintiff or any servicer of the Plaintiff is expressly prohibited from transferring the Note that Plaintiff allegedly holds or the Mortgage without an Order from this Court permitting any such transfer. Any transfer made without an Order of this Court permitting such transfer shall render any such transfer null, void, and of no legal effect.

Any party who is found to be in violation of the terms of this Order shall be subject to sanctions to be assessed against the offending party.

DONE AND ORDERED in Dorchester County, South Carolina on this _____ day of July, 2023.

ELECTRONIC SIGNATURE TO FOLLOW

ELECTRONICALLY FILED - 2023 Jul 25 12:35 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2023 Jul 25 12:35 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2023 Dec 12 2:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT
COURT OF COMMON PLEAS
IN THE EQUITY DIVISION

C/A No.: 2011-CP-18-00871

U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association,
Defendant(s).

ORDER DENYING FOECLOSURE and GRANTING JUDGEMENT ON THE NOTE

Presiding Judge: James E. Chellis
Master in Equity, Dorchester County
Trial Conducted on

Monday, June 12, 2023
10:02 a.m. - 4:43 p.m.
Tuesday, June 13, 2023
10:08 a.m. - 4:41 p.m.
Wednesday, June 14, 2023
9:02 a.m. - 3:39 p.m.

APPEARANCES:
For the Plaintiff,

January Taylor, Esq.
Ms. January N Taylor
McMichael Taylor Gray, LLC
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And,
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For the Defendant, Jamie Singleton

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ELECTRONICALLY FILED - 2023 Dec 12 2:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

INTRODUCTION

On July 8, 2012, the Clerk of Court for Dorchester County referred this matter to this Court pursuant to Rule 53 SCRCP. The Order of Reference provides for this Court to take testimony and to direct entry of final judgment in this action under Rule 53(b) SCRCP and all matters arising from or reasonably related to such action. Once referred, this Court shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. Rule 53(c). Also, any appeal from this Order shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. SCRCP 53(d).

This case involves a contested foreclosure lawsuit. The history of the filings in this case demonstrates just how contentious the case has been. On several occasions the case was scheduled for trial but was delayed by either the endorsement of the defaulted note to another entity or its servicing entity changed. The Plaintiff is the fifth substituted party-plaintiff. Multiple lawyers from different law firms have represented the Plaintiff's predecessors. The Defendant, who filed a timely answer[1], has been represented by a member of the Dorchester County Bar, who very early in the litigation recognized the need to engage co-council. As with most complex cases, the facts presented reduce the case to relatively simple application of law to the facts as presented. Since Plaintiff seeks foreclosure of a mortgage, it properly came before this Court in its due course at the pleading stage[2].

[1] The Defendant initially sought dismissal. Upon denial of that Motion, he filed his answer, which was once amended.

[2] At the outset of the case, the Honorable Maite´ Murphy held the position of Master in Equity for Dorchester County. On July 1, 2013, I was appointed to this Court. Since that appointment, I have been appointed for 2 successive terms. Thus, I've had the honor and privilege of serving as Master in Equity for Dorchester County since July 1, 2013.

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The trial of this case occurred over a three day period. From the testimony of Plaintiff's witness, Giovani Amaya, and the testimony of the Defendant, whom Plaintiff called in its case in chief, together with the documentary evidence presented, this Court makes the following findings of fact. After extensively deliberating over the facts, as this Order will bear out, this Court made conclusions of law consistent with those facts. Since foreclosure actions sound in equity, this Court considered applicable law and maxims and principals of equity to come to a just decision supported by the facts as they were presented. In sum, the Plaintiff produced loads of evidence in support of its position. But for the reasons explained in this Order, the Plaintiff did not produce sufficient evidence on many facts resulting in a failure to persuade this Court with sufficient evidence to sway it to award much of its claim.

Findings of Fact

1. Plaintiff called Giovani Amaya as its only friendly witness. Plaintiff did call the Defendant, as an adverse witness.

2. Mr. Amaya is a Second Assistant Vice President of Default Management for Specialized Loan Servicing (SLS). 12/23[3].

3. Mr. Amaya's described his job duties to "include review of business records on loans that are in default. I am also a records custodian, and I will go and verify the possession of original documents. I am a – I have execution authority and will execute documents on -- case-by-case [sic, basis,] if there's anything that needs to be signed either by SLS for SLS, or by SLS for any of the investors that we service for. That's the majority of it, but I also communicate with counsel, pull business records for counsel, and provide them to counsel whenever needed on any lega- -- litigating matters before or after litigation begins." 13/10-24

4. SLS began servicing the loan in December 2022. 17/22

5. A loan servicer maintains a loan. This includes communication with borrowers, whether telephonic, written, sending and receiving letters, sending and receiving payments, tracking the debits and credits applied on loans, maintaining the business records or original collateral files in safe locations. The overall day-to-day maintenance of a loan. 15/1-10

6. Mr. Amaya states he is familiar with the Defendant's loan. 17/21

[3] References to the Transcript represented as "page number/line number." Here, transcript page 12, line 23.

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7. Mr. Amaya states the SLS business records include "anything that is incorporated to [sic, into] our business record from prior servicers." 17/25

8. Mr. Amaya's testimony did not specify what records from prior servicers SLS had except the account records of SLS. Mr. Amaya's testimony did include references to many records related to the loan, including the Adjustable Rate Note, 8 endorsements of the Note, the Mortgage, five assignments of record in Dorchester County, and two account statements, all of which will be discussed below.

9. Statebridge serviced the loan prior to SLS. 16/25

10. The Plaintiff received all prior servicers' information. 236/22-24

11. The Plaintiff, however, did not produce all prior servicers records for trial. 239/11-13

12. The Plaintiff produced insufficient evidence authorizing any agent to sign any documents on behalf of any holder of the Note or the Mortgage. 245/18

13. Plaintiff did not produce any contractual arrangements between the various holders of the Note or any contractual arrangements between any holder of the Note or its servicers. This failure to produce sufficient evidence of this kind has significance relative to the Court's finding that the Mortgage remains with the bankruptcy estate of the original lender. This issue is discussed in detail below.

The Mortgage

14. The Defendant granted a mortgage lien on Lot 69, shown on a plat of Indigo Pointe at Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina. The mortgage lien is further identified, as follows:

a. The mortgage is recorded in the Register of Deeds for Dorchester County (ROD) in Book 5142, at page 168.

b. The mortgage is dated January 4, 2006.

c. The mortgage was recorded January 12, 2006.

d. The mortgage is signed by Jamie Singleton, before two witnesses.

e. The mortgage grants a lien upon the real property described as:

> All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South

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Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165[4] in the Office of the Register of Mesne Conveyance for Dorchester County.

f. The real property's address is 5505 Rowsham Place, North Charleston, SC 29418

g. The mortgage lien is granted to Mortgage Electronic Registration Systems, as nominee for People's Choice Home Loans, Inc.

Exhibit 1[5]

15. Plaintiff produced no evidence of the relationship between People's Choice Home Loans, Inc., and Mortgage Electronic Registration Systems. Hence, this Court has no evidence from which to adjudge the power or authority of Mortgage Electronic Registration Systems (MERS) to act in any manner on behalf of People's Choice Home Loans, Inc. The Court notes this here to foreshadow the purported assignment by MERS of the Note and Mortgage discussed below.

16. Mortgage Electronic Registration Systems is "nominee of People's Choice Home Loans, Inc." Exhibit 1, Definitions, (C).

17. People's Choice Home Loan filed for bankruptcy March 20, 2007. SCRE 201(b)(2) 262/14

18. Upon People's Choice Home Loans, Inc., filing of its bankruptcy MERS had no authority to take any action on behalf of the Debtor, People's Choice Home Loans, Inc.

Analysis of Mortgage Assignments

19. Exhibit 2 is the First of Five purported Mortgage Assignments.

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[4] The conveyance cites the consideration as $265,000.00.

[5] The term Exhibit means Plaintiff's Exhibits unless I designate the Exhibit as a Defendant's Exhibit.

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20. By reference to Exhibit 2, the Court finds the following facts:

a. Mortgage Electronic Registration Systems (MERS), as nominee, for People's choice Home Loans, Inc., purports to assign the Mortgage, together with the Note. Court's Emphasis. (*Infra*, Exhibit 7)

b. The purported assignment is dated July 14, 2008.

c. The purported assignee is to GMAC Mortgage, LLC.

d. The purported assignment is recorded in the ROD in Book 6727, at page 331.

e. The purported assignment was recorded on July 22, 2008.

f. Plaintiff produced no evidence MERS had authority to assign the Mortgage, together with the Note after the Lender (People's Choice Home Loans, Inc.) filed bankruptcy. Court's Emphasis. 270/14

21. Plaintiff produced no evidence that Notice of the Assignment had been given to the Defendant as required under Paragraph 20 of the Mortgage.

22. GMAC purportedly held the Note and Mortgage until August 31, 2011. Cf., Exhibit 16 analysis below.

23. Exhibit 3 is the Second of Five purported Mortgage Assignments.

24. By reference to Exhibit 3, this Court finds the following facts:

a. GMAC Mortgage, LLC., purports to assign the Mortgage (Exhibit 1).

b. The purported assignment is dated August 31, 2011.

c. The purported assignee is to 50 by 50 REO, LLC, c/o AMS Servicing, LLC[6].

d. The purported assignment is recorded in the ROD in Book 8010, at page 231.

e. The purported assignment was recorded on September 14, 2011.

f. Plaintiff produced no evidence of the authority of the signatory to the assignment, Exhibit 3.

25. Plaintiff produced no evidence that Notice of the Assignment to 50 by 50 REO, LLC, had been given to the Defendant as required under Paragraph 20 of the Mortgage.

26. On Father's Day of June 2012, a kitchen fire damaged Defendant's real property. 588/ 24-589/9

[6] Plaintiff produced no evidence from this servicer.

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27. The Mortgage states, Borrower shall keep the improvements now existing or hereafter directed on the property insured against loss by fire, . . . 45/5-7 Paragraph 5, Exhibit 1.

28. Defendant paid the insurance premium for the period that covered the risk of fire at the time of the fire[7]. 570/5

29. Defendant filed a claim with Liberty Mutual. 589/13

30. Defendant gave prompt notice of the claim to the loan servicer at that time, AMS. 589/17

31. Defendant, AMS[8], and the Liberty Mutual settled the insurance claim after which Defendant and his wife endorsed the claims proceeds check and sent it to AMS via Mr. Sloan.

32. AMS did not return the proceeds to Defendant or pay the proceeds to Defendant's contractor. 590/21

33. Mr. Singleton had no agreement with the holder of the Note or its servicer for the proceeds to be used to pay the Note payments[9]. 591/2

34. October 2, 2012, Rogers, Townsend, Thomas[10] filed Exhibit 4 with the ROD. The document is in proper form. The document is filed in Book 8483, pages 135 through 136.

35. Exhibit 4 is the Third of Five purported Assignments of the Mortgage.

36. By reference to Exhibit 4, this Court finds the following facts:

a. 50 By 50 REO, LLC, purports to assign the Mortgage (Exhibit 1).

b. The purported assignment is dated September 24, 2012.

c. The purported assignee is U.S. Bank NA, as Trustee for the FRT 2011-1 Trust, c/o AMS Servicing, LLC.

d. The purported assignment is recorded in the ROD in Book 8483, at page 136.

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[8] AMS is a loan servicer. See, Paragraph 34 (g). Plaintiff did not provide the loan servicing history of AMS in its case in chief. Plaintiff's failure to provide all of the loan servicers records is addressed below.

[9] The application of the insurance proceeds will be addressed below.

[10] A lawyer with this firm initiated the lawsuit. 6 different lawyers from this one firm made appearances in this case. The clerk of court's file shows that different lawyers from at least 3 other law firms made appearances for Plaintiffs in this case. Very early in my oversight of this case (hearing on Defendant's Motion for Summary Judgment, 2014), I sternly admonished the Plaintiff, through its counsel at the time, that the assignments of the mortgage during the pendency of a contested foreclosure action significantly hinders judicial economy. Moreover, as the case demonstrates, it also detrimentally affects the efficiency of trial counsel for both parties and is particularly unfair to the Defendant.

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e. The purported assignment was recorded on October 2, 2012.

37. Plaintiff produced no evidence of the authority of the signatory to the assignment, Exhibit 4.

38. Plaintiff produced no evidence that Notice of the Assignment to U.S. Bank NA, as Trustee for the FRT 2011-1 Trust, had been given to the Defendant as required under Paragraph 20 of the Mortgage.

39. On March 7, 2016, Rogers, Townsend, & Thomas filed Exhibit 5 with the ROD. The document is in proper form. Exhibit 5 is filed in the ROD in Book 10126, at pages 197 through 199.

40. Exhibit 5 is the Fourth purported Assignment of the Mortgage.

41. By Reference to Exhibit 5, the Court makes the following findings:

a. U.S. Bank NA, as Trustee of the FRT 2011- Trust, purports to assign the Mortgage (Exhibit 1).

b. The purported assignment is dated February 8, 2016.

c. The purported assignee is the trust "Wilmington Savings Fund Soc for NNPL Trust Series 2012-1."

d. The purported assignment is recorded in the ROD in Book 10126, at page 198

g. The purported assignment was recorded on March 7, 2016. Exhibit 5

42. Plaintiff produced no evidence of the authority of the signatory to the assignment, Exhibit 5.

43. Notably, this purported assignment is not to a Trustee of Wilmington Savings Fund Soc for NNPL Trust Series 2012-1.

44. Plaintiff produced no evidence that Notice of the Assignment to Wilmington Savings Fund Soc for NNPL Trust Series 2012-1 had been given to the Defendant as required under Paragraph 20 of the Mortgage.

45. On February 4, 2020, Plaintiff's counsel of McMichael Taylor Gray, LLC from Peachtree Corners, Ga., filed Exhibit 6 with the ROD. The document is in proper form. The document is filed in the ROD in Book 12313, at pages 75.

46. Exhibit 6 is the Fifth of Five purported Assignments of the Mortgage.

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47. By Reference to Exhibit 6, the Court makes the following findings:

a. Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity, but solely in its capacity as Certified Trustee for NNPL Trust Series 2012-1 a/k/a Wilmington Savings Fund Soc for NNPL Trust Securities 2012-1 purports to assign the Mortgage (Exhibit 1).

b. The purported assignment is dated February 8, 2016 (the Court notes this trustee had never received the assignment).

c. The purported assignee is U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G.

d. The purported assignment is recorded in the ROD in Book 12313, at pages 75.

e. The purported assignment was recorded on March 7, 2016.

48. Plaintiff did not produce sufficient evidence to establish the authority of the signatory Exhibits 6.

49. Plaintiff produced no evidence that Notice of the Assignment to U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G had been given to the Defendant as required under Paragraph 20 of the Mortgage.

50. From March 20, 2007, until July 14, 2018, the provenance of the Note is unclear from the trial record. (See, infra, Paragraphs 59-155).

51. Plaintiff produced no evidence when the Note was sold initially by People's Choice Home Loan. 260/1213

52. Plaintiff presented no evidence of an endorsement of the Note dated prior to March 20, 2007, the date People's Choice Home Loans, Inc., filed bankruptcy.

53. Plaintiff presented no evidence of an assignment of the Mortgage dated prior to March 20, 2007, the date People's Choice Home Loans, Inc., filed bankruptcy.

54. The Mortgage is subject to Applicable Law. Applicable Law means all controlling applicable federal, state, and local statutes, regulations, ordinances, and administrative role -- rules, and others that have the effect of law, as well as all applicable final, non-appealable judicial opinions. 27/8-11

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55. The Court gave both parties 30 days to supplement the record with specific documents in the People's Choice Home Loan, Inc., bankruptcy proceedings to which the Court would take judicial notice. Each party were to send the documents to the Court, the Court Reporter, and each other. 460/14

56. Neither party provided this Court with any specific documents pertaining to People's Choice Home Loans, Inc., bankruptcy proceedings.

57. The Court finds the Mortgage remains in the Bankruptcy Estate of People's Choice Home Loan, Inc.

58. Hence, each of the purported five assignments of the Mortgage have no force or affect. Notwithstanding, Plaintiff and its predecessors use of the mortgage and its terms will be further examined to evaluate Plaintiff's credibility. The Court also uses this evidence to examine Plaintiff's conduct under the "clean hands" doctrine.

Analysis of the Note

59. Plaintiff states Exhibit 7 is "the original note in question." 78/20 (Court's emphasis, hereinafter the Note). The Note is a promissory note:

a. People's Choice Home Loans, Inc., is the Lender. 79/7

b. The Note identifies the borrower as Jamie Singleton. 79/9

c. The execution date is January 4, 2006. 79/12

d. The principal amount is $212,000.00. 79/16

e. The loan number is 10281247. 79/22

f. The initial interest rate of the Note is 10.45%. 80/12

g. The Note is an "Adjustable-Rate Note."

h. The Note is signed. 80/13-14

60. This Court admitted Exhibit 7 pursuant to SCRE 902 (9). 80/19-20

61. Mr. Amaya states "SLS obtained the Note" when the service transferred through the possession of SLS' custodian. Court's emphasis[11]. 80/4

[11] I am aware that servicers have standing to bring a foreclosure action. Nonetheless, the servicer is not a holder of a note. When a servicer speaks of possession of the note in a contested foreclosure case, it is not clear the servicer is meaning possession for purposes of servicing or possession as the holder. The lack of clarity is troublesome. Nonetheless, I have accepted these Mr. Amaya's testimony as statements by the Plaintiff as servicer.

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62. Mr. Amaya states the custodian was Mr. Hayes' law firm. 83/23-24

63. The Court addresses custodian issues below.

64. A signature is placed on a line above the typed name, JAMIE SINGLETON, - Borrower. Page 4 of 4 of Exhibit 7

65. The INTEREST provision of the Note states "Interest will be charged on the unpaid principal until the full amount of the Principal has been paid. I [borrower] will pay interest at the yearly rate of 10.45%. The interest Rate I will pay may change in accordance with Section 4 of this Note."

66. Section 4 of the Note provides that the interest rate and monthly payments change over the course of time the Note remains outstanding. Hence, the Note is an adjustable rate note as explained in the next paragraph.

67. The interest rate is the sum of 6% plus the index rate. The index is the LIBOR[12] rate published in the Wall Street Journal (WSJ). The first change is on the anniversary of the Note, thereafter the rate adjusts every six months, by adding 6% to the LIBOR rate published in the WSJ 45 days prior to the change date. At the first change date, the interest rate is capped at 13.45% or by 3% points. At each change date thereafter the interest rate cannot increase more than 1% point. Over the life of the loan the interest rate cannot exceed 16.45% per annum. Essentially the interest rate is capped at 6% above the initial interest rate. But the interest rate shall never be less than 10.45% per annum. Section 4, Exhibit 7.

68. The Plaintiff did not produce sufficient evidence of the LIBOR rate 45 days before each change date. As such the interest rate calculations throughout the limited records produced result in a finding that the interest rate accruing on the loan, and ultimately claimed by

[12] The average of interbank produced rates for six month U.S. dollar-denominated deposits in the London Market. As broadly reported, the LIBOR rate came under significant scrutiny in 2008. Ultimately criminal investigations were launch that led to massive fines. See, https://www.imf.org/external/pubs/ft/fandd/basics/54-london-interbank-produced-rate.htm LIBOR expired on June 30, 2023, as part of a transition that has been planned for several years. https://www.consumerfinance.gov/about-us/blog/adjustable-rate-loans-are-changing-widely-used-interest-rate-index-expires-in-june/ . On July, 25, 2023, I issued an Order on Defendant's Motion for a New Trial, granting Defendant the limited right to submit an affidavit regarding a letter he received after the trial from Plaintiff's servicer, SLS, giving notice of a rate change to the Note. The Order also gave Plaintiff the right to file a counter-affidavit. The rate change notice did not provide the index upon which the rate change was based. This evidence is simply not sufficient evidence as it fails credibility. Moreover, it is not persuasive of the actual unliquidated calculation upon which the interest rate is determined.

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the Plaintiff, results in Plaintiff's failure to produce sufficient evidence to prove the interest due on the loan. Since Plaintiff did not produce sufficient evidence, the Court finds the Plaintiff did not produce sufficient evidence to persuade the Court of the interest due on the loan.

69. Mr. Amaya testified by "best recollection" the Note "was requested and sent" to a law firm at the time of the initial Complaint. He then testifies at page 285, as follows:

6 . . .. Then there was a transfer to
7 another law firm, I believe at that point it
8 was supposed to be transferred again to a
9 different law firm, where it could not be
10 found. And then it was located again and
11 returned to, if I'm not mistaken, it was the
12 custodian -- no, the collector, the individual
13 that was hired to find the document or track
14 the collateral that then sent it back to
15 counsel and it ended up at the current law firm
16 as our custodial -- as our current custodian,
17 who they brought in here for -- for trial, as
18 a custodian for the plaintiff and as the law
19 firm [the Court's emphasis].

70. Mr. Amaya delivered this answer hesitatingly, and in short phrases that the written transcript does not show. Mr. Amaya, hedges his response with indefinite pronouns, "there" and "it"; he uses passive verb tense, as in "was supposed", "was a transfer", "was located", "was hired"; he qualifies his answer with "I believe", "if I'm not mistaken"; and he fails to provide decisive descriptions for "custodian", collector", "individual", and even "our current law firm." Mr. Amaya merely believes Plaintiff holds the Note. This recitation of the provenance of the Note arouses the suspicion of this Court as to the authenticity of the Note purported to be held by the Plaintiff through SLS.

Factual Analysis of Suspicion of the Authenticity of the Note

71. The Note was lost and then purportedly found. 287/9-12

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72. Plaintiff could not identify the entity that had possession of the Note, in its original form, when it was lost. 287/21-25

73. Plaintiff produced no evidence of the circumstances as to how, where, and when the loss of the Note occurred. 288/11-15

74. Plaintiff relies solely on the testimony of Mr. Amaya to establish the Note was found but produced insufficient evidence of who found it. 289/13-17

75. Plaintiff produced no documentary evidence to support the Note was found by the Plaintiff or its servicer.

76. Mr. Singleton stated he did not know if Exhibit 7 was the original note. 474/25

77. Mr. Singleton states he reviewed a note in Florida. 475/13

78. Mr. Singleton states that the note produced for him to review in Florida, "does not look like what [Exhibit 7] I'm looking at now."

79. Mr. Singleton states the signature on the Mortgage (Exhibit 1) is his signature. 498/5

80. Mr. Singleton states he cannot be 100% certain that the signature on Exhibit 7 is the note he originally signed. 501/5-7

81. Mr. Singleton compared his signature on the Mortgage (Exhibit 2) to the signature on Exhibit 7. Mr. Singleton states he cannot be 100% certain it is the same signature.

82. Mr. Singleton states the document he viewed in Florida[13] as the note "looked just like you would print off on regular white paper. No age at all on that document. Not at all." 598/8-10

83. Mr. Singleton stated he did not see a stamp on the note presented to him in Florida to review.

84. Mr. Singleton states the note he viewed in Florida was different in terms of signs of wear and tear, punch holes, tears and paper quality than the Note (Exhibit 7). 599/11-12

85. The copy of the note on Exhibit 32 does not have the stamped blank endorsement. 600/5

[13] After February 8, 2022. See Order dated February 8, 2022.

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86. Exhibit 41, which was marked for identification, has a copy of a note as Exhibit 1. Mr. Singleton stated it does not have a stamped endorsement in blank on it. 600/23

87. Mr. Amaya stated SLS obtained the Adjustable-Rate Note "[w]hen the service transferred through the possession of our custodian."

Analysis of Endorsements to the Note

88. On the back of the 4th page of the Note is a rubber hand-stamped endorsement that states, "Pay to the Order _____ without recourse. Peoples' Choice Home Loans, Inc., a Wyoming Corporation by [a signature] on a signature line above the name Dana Lantry, Title: Asst. Vice President." SCRE 801 (9). Exhibit 7.1

89. The endorsement in blank is not dated. Exhibit 7.1

90. Plaintiff produced no evidence of the authority by which the signatory executed the endorsement.

91. The Plaintiff produced no evidence of the authority in general of a Title Assistant Vice President working for People's Choice Home Loan, Inc.

92. Plaintiff produced no evidence of delivery of the Note pursuant to the Exhibit 7.1 endorsement to a bearer.

93. Plaintiff produced no documentary evidence of the person or entity that held possession of the Note with the blank endorsement.

94. The Plaintiff admits Exhibit 7.1:

a. Is not dated,

b. Is not witnessed,

c. Has no notary jurat; 291/ 3-8

95. Plaintiff produced no evidence of the time when the blank endorsement stamp was placed on the Note or when the blank endorsement was signed.

96. Exhibits 7.1 through Exhibit 13 were admitted into evidence pursuant to SCRE 902(9).

97. Exhibit 8 is an "Allonge to Note." This attached document purports to endorse the Note, as follows: "pays to the order of 50 by 50 REO, LLC. Without recourse and without representation or warranty except as set forth in that certain assignment of note and mortgage

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dated of even -- even date herewith for -- from Jamie Singleton in favor of GMAC Mortgage, LLC. . . Without recourse and without representation or warranty except as set forth in that certain Assignment of Note and Mortgage dated of even date herewith from Jamie Singleton in favor of 50 by 50 REO, LLC." 100/17-21.

98. By reference to Exhibit 3, August 11, 2011, is the date of the purported endorsement. Exhibit 8 is dated, Hence, of "even date," with Exhibit 3 is August 11, 2011. See, paragraph 22 b., above.

99. Plaintiff admits Exhibit 8:

a. Has no Notary Jurat;

b. Has no date as to when it was created;

c. "Signed in the presence of," GMAC Mortgage, LLC, infers the endorsement is signed in the presence of a witness.

d. No witness signed the endorsement.

100. A third purported endorsement of the Note by Allonge of 50 by 50 REO, LLC states "Pay to the order of US Bank, N.A. as Trustee of the FRT 2011-1 Trust." 107/5-6. Exhibit 9.

101. Plaintiff admits it does not know the date the Allonge to Note [Exhibit 9] was created or attached to the Note. 276/13-14. 293/3-4

102. Plaintiff admits Exhibit 9

a. Has no Notary Jurat;

b. "Signed in the presence of," 50 by 50 REO, LLC, infers the endorsement is signed in the presence of a witness.

c. No witness signed the endorsement. 292/22-25

103. On September 24, 2012, 50 By 50 REO, LLC, signed an Assignment of Mortgage to US Bank, N.A. as Trustee of the FRT 2011-1 Trust. Exhibit 4.

104. Plaintiff admits this assignment (Exhibit 4) does not include "language specifically assigning the [N]ote." 274/17-18.

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105. A fourth purported endorsement of the Note by Allonge of US Bank, N.A. as Trustee of the FRT 2011-1 Trust states, "pay to the order of FRT 2013-1 Investor LLC, without recourse." Exhibit 10. 107/14-15.

106. Exhibit 10 is dated 4th day of September 2014.

107. A fifth purported endorsement of the Note by Allonge of FRT 2013-1 Investor LLC states, "Pay to the order of _____, without recourse" 111/10-11. Exhibit 11.

108. On February 8, 2016, US Bank, NA, as Trustee of FRT 2011-1 Trust purports to assign the Mortgage (Exhibit 7) together with the Note (Exhibit 2) to Wilmington Savings Fund Soc for NNPL Trust Series 2012-1. 274/10. Exhibit 5.

109. Plaintiff admits that the Exhibit 5 "transfer is not a physical kind." 278/15.

110. Plaintiff states Exhibit 5 is "a transfer of indebtedness." 278/16

111. Plaintiff fails to establish Exhibit 5 operated to transfer the Note from its then purported holder, US Bank, NA, as Trustee of FRT 2011-1 Trust, to the purported holder, Wilmington Savings Fund Soc for NNPL Trust Series 2012-1. 278/20-21. 279/10.

112. Exhibit 5 fails to transfer the Note or the Mortgage to a Trustee of Wilmington Savings Fund Soc for NNPL Trust Series 2012-1. 280/6-11 (Court's Emphasis). See paragraph 124 below.

113. Exhibit 6 fails to transfer the Note or the Mortgage because the Trustee of Wilmington Savings Fund Soc for NNPL Trust Series 2012-1 never had any right, title or interest in the Note or the Mortgage. 280/12-19

114. Plaintiff fails to establish Exhibit 6 operated to transfer the Note from its then purported holder, Wilmington Savings Fund Soc for NNPL Trust Series 2012-1, to the purported holder the Plaintiff. 281/19-283/4

115. Plaintiff admits the Note was lost. 286/2-4

116. Plaintiff admits it knows what a lost Note affidavit is. 286/7

117. Plaintiff's witness claims the scope of his review did not include searching for a lost note affidavit. 286/11

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118. When asked if a lost note affidavit is in the file, Mr. Amaya, states: "It would -- I'm not saying it's not in there, I personally did not pull it and I don't want to perjure myself to say it is or isn't if I have not personally reviewed it."

119. A Lost Note Affidavit is in the file of the Plaintiff or its servicer. 287/10-12

120. Plaintiff admits it cannot sell what it does not own. 298/4

121. Plaintiff's witness admits Exhibits 11 and 12 purport to be Allonges to Note that purport to endorse the Note to two different entities.

122. Exhibit 11 purports to be an Allonge to Note:

a. Endorsing the Note in blank; 298/11
b. Is dated September 4, 2014; 298/14
c. Signed by an authorized signatory of FRT 2013-1 Investor, LLC. 298/11 Exhibit 11

123. Exhibit 12 purports to be an Allonge to Note:

a. Is not dated;
b. Identifies the Borrower as Jamie Singleton;
c. Identifies the property address as 5505 Rowsham Place, North Charleston, SC;
d. Endorses the Note to Waterfall Victoria Grantor Trust II, Series G;
e. Identifies the Loan WAM ID: 109010289 and by SMS ID: 578125938 neither of which identifying numbers correspond to any loan number on the Note nor did Plaintiff offer any evidence to explain this anomaly;
f. Identifies Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1 by New Penn Financial d/b/a Shellpoint Mortgage Servicing as attorney in fact as assignee; and
g. Is attached to the Note (Exhibit 7) between Exhibit 11 and Exhibit 13. Exhibit 7 and 7.1 with attachments Exhibits 8 – 13.

124. The endorsement is <u>not</u> to a Trustee of Waterfall Victoria Grantor Trust II, Series G. (Court's Emphasis). (1) The extent of the capacity of a corporation to take and hold property in trust is the same as that of a natural person except as limited by law. (2) The extent of the

capacity of a corporation to administer a trust depends upon the extent of the powers conferred upon it by law. Restatement (Second) of Trusts § 96 (1959)

125. Plaintiff claims it is a holder of the Note (But, Mr. Amaya testified, "My business records show an assignment of mortgage, and I did review Waterfall, and I did call Waterfall for their sales agreement, Purchase and Sales Agreement, which they provided to me to show that they're the current owners and holders, so they would've been the last ones to have possession of it, and not this final one."). 300/21-301/3

126. Exhibit 13 purports to be an Allonge to Note

a. Is not dated;

b. Identifies the Borrower as Jamie Singleton;

c. Identifies the property address as 5505 Rowsham Pl;

d. Identifies the loan as loan # 555850755;

i. Endorsing the Note

ii. To the Order of WestVue NPL Trust II;

e. Is signed by Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-34;

127. The endorsement is not to a Trustee of WestVue NPL Trust II.

128. Plaintiff admits the signature line states Cynthia M Brock on both Exhibit 12 and Exhibit 13 and that the signatures "look different." 301/25 Exhibit 11 and Exhibit 12

129. The chain of endorsements are defect.

Court's Physical Examination of the Exhibits 7 through 14

130. Exhibits 7 shows a loan number in typed print as Loan Number: 10281247

131. Exhibit 7 has three alterations in handwriting showing 3 different numbers.

132. The Plaintiff did not produce sufficient evidence to explain the basis for alteration of the Note.

133. The hand-written alterations are not reliable as they do not provide sufficient identifying information as to who placed the alteration on the Note, and the date the alteration was put on the Note (Exhibit 7).

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134. Exhibit 7 on visual and tactile examination by this Court has multiple staple holes in it at the top left-hand corner inferring the Note and its attached purported allonges have been stapled, unfastened and stapled together multiple times.

135. Plaintiff did not produce sufficient evidence to explain the reason the Note had been disassembled and reassembled multiple times. This together with the undated endorsements raises the question of whether some of the allonges are chronologically not in correct order.

Plaintiff's Baillee Documentary Evidence

136. Plaintiff's Exhibit 14 is a two-page document.

a. Page one is letterhead of "Crawford & von Kellar," dated April 20, 2018.

b. It references Wilmington Savings Bank v Jamie Singleton, Case No.: 2011CP1800871, the case number of the present lawsuit.

c. The letter states "Enclosed please find the original note, mortgage, and CD from Rogers, Townsend & Thomas." Below the signature of a paralegal from Crawford & von Kellar is a receipt that states: "I confirm that Crawford & von Kellar has released the original note, mortgage and CD to our office[sic] and it is now in our possession."

d. A signature line follows above which is a signature and below which is handwritten, "Alexis Dickey." The receipt otherwise does not identify the recipient. Plaintiff did not offer evidence to identify Alexis Dickey.

137. Page 2 of Exhibit 14 is entitled, "Statebridge Inventory Checklist-Collateral Documents.

138. The checklist identifies Loan Number 147395, Borrower "Kaney," dated 9/18/19. Exhibit 14. The Crawford & von Kellar letter and attached checklist, fails to show sufficiently the Note, Mortgage and CD were transferred to either Plaintiff's attorneys, or the Plaintiff.

139. Exhibit 15 is entitled "Bailee Letter." Exhibit 15 has three pages. The Bailee Letter is not dated.

140. Plaintiff does not know when Exhibit 15 was created. 304/4

141. The Bailee Letter is addressed to Marc B. Ledesma, Waterfall Asset Management, LLC, 1251 Avenue of the Americas – 50th fl, New York, NY, 110020

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142. The Bailee Letter references Servicer loan number 43608, Borrower Name: Singleton, Jamie Singleton, Property Address 5505 Rowsham Pl, North Charleston, SC

143. The Bailee Latter states, "SitusAMC has been engaged for Bailee oversight on behalf of Waterfall Asset Management, LLC, the owner of the loan referenced above." Exhibit 15

144. Exhibit 15 purports to attach:

a. Original Note
b. Original Lost Note Affidavit
c. Original Endorsements describing Exhibits 7.1 through 13.
d. Original unrecorded Assignments
    i. FRT 2011-1 Trust to FRT 2013-11 Investor, LLC
    ii. FRT 2013-1 Investor, LLC to Wilmington Savings Fund Society, FSB d/b/a Christiana Trust, not in its individual capacity but solely in its capacity as Certificate Trustee for NNPL Trust Series 2012-1
    iii. Cascade Funding Mortgage Trust 2017-1 to US Bank Trust, N.A. as Trustee for Cascade Funding Mortgage Trust 2017-1
    iv. Original Title Policy

145. The third page of Exhibit 15 has a signature above a line under which the name Tomika Cromer is typed.

146. Aside the signature line is the date 10/27/2020 with the notation in parenthesis "received 10/20/2020."

147. Under these dates is the company name McMichael Taylor Gray, LLC.

148. Plaintiff did not produce sufficient evidence to explain origin of the unrecorded Cascade Funding Mortgage Trust 2017-1 to US Bank Trust, N.A. as Trustee for Cascade Funding Mortgage Trust 2017-1 assignment referred to in the Bailee Letter. 316/11

149. Plaintiff claims Tomika Cromer signed it on behalf of Waterfall Asset Management LLC. 309/18

150. But Plaintiff also claims Tomika Cromer is signing on behalf of the law firm. 309/9

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151. Further Plaintiff claims that Tomika Cromer is counsel for Waterfall. 309/12

152. Plaintiff admits no purported assignments are to Waterfall Asset Management, LLC. 309/20

153. Plaintiff claims that Waterfall Victoria Grantor Trust II Series G is not an actual entity. 310/25 -311/1.

154. Mr. Amaya testifies that he did not review the Lost Note Affidavit the second item marked in the Bailee Letter, Exhibit 15, explaining it was beyond the scope of his review. 317/4-5 Again repeating "It was beyond the scope of my review. I have not seen it. I have not looked for it." 318/8-9

155. On the issue of the Lost Mortgage Affidavit, this Court finds that Mr. Amaya's testimony is less than compelling as the Lost Note Affidavit is marked in the Bailee Letter received by McMichael Taylor Gray, LLC, Plaintiff's lawyer. Moreover, Mr. Amaya's testimony fails to acknowledge that the collateral file was in the possession of the Plaintiff's lawyer. He is not forthright about this point which casts considerable doubt on his credibility. He testifies as if he looked at these documents at his own offices when, in fact, the collateral file is in possession of Plaintiff's lawyer. Exhibit 15. He should have examined the Lost Note Affidavit, its origin, and the circumstances upon which it was purportedly found.

156. Mr. Amaya did not look for the Lost Note Affidavit or into the basis for it because he relied upon being told by the Plaintiff's lawyers that they had the Note, and the Note was in the original collateral file. 332/ 14-17

157. Taking the evidence set forth in the record of the bailee documentary evidence, Plaintiff fails to show a by a preponderance of evidence that Plaintiff received by an ordinary course of action the Note, the Mortgage, or the following loan history documentary evidence.

Servicing History Analysis

158. Plaintiff admits the loan was serviced by multiple different servicers.

159. Plaintiff admits it did not provide the servicing records of all the servicers. 239/10-13 In a case of this nature, the Court finds this incredulous and raises a significant issue of Plaintiff's credibility.

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160. The Plaintiff admitted servicing records of three of the numerous servicers as Exhibits 16, 17 and 18 under the business records exception to the hearsay rule without objection. But the testimony of Mr. Amaya as to Exhibit 16, admitted without objection, is a "payment history from prior servicers for the loan in question." 140/17-19

161. Exhibits 16, 17, and 18 are servicing histories of the Defendant's loan with GMAC, Statebridge, and SLS, respectively, whom Plaintiff identifies as servicers. GMAC was a purported holder as well. Cf., Exhibit 2 and Exhibit 8.

162. Notably, Plaintiff did not specify the evidentiary purpose for which these three exhibits were produced.

163. The Defendant did elicit some evidence from the Plaintiff that raised the question of the credibility of Mr. Amaya and these three exhibits.

164. Nonetheless, this documentary evidence speaks to the Court. Although these documents are hearsay, each admissible under SCRE 802 and Uniform Business Records as Evidence Act. S.C. Code Ann. § 19-5-510, evaluation of the credibility of the documentary evidence or some of it must be made by this Court as the trier of facts even if some of it is not contradicted.

165. These business records produced by the Plaintiff together with Mr. Amaya's testimony are admissible hearsay to prove the truth of the amount Defendant owes the Plaintiff.

166. The evidence is nonetheless subject to examination for credibility by this Court. Hence, first, the Court will find what the evidence is. Thereafter, the Court will evaluate its credibility for truthfulness. Since these are documents contain voluminous data, this Court will pick some specific transactions and will group some transaction to make the credibility determination. Hence, the Court's analysis will be micro, as to certain data points, and the findings will be a macro analysis as to some of those that are commonly described and lend themselves to findings in common.

Exhibit 16 Analysis

167. Exhibit 16 is a payment history of the loan with GMAC. 142/11-12. It is not Bate stamped (the way to apply a unique number to each page of each case document to quickly review and retrieve specific pages).

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168. Exhibit 16 contains 25 pages. Plaintiff's Counsel submitted it into evidence in paper form. Each page of paper on this exhibit contains copies of the payment history on its front and back. Hence, the first page contains pages 1 and 2 of Exhibit 16, the second page is pages 3 and 4, and so forth.

169. A payment history is "Debits and credits applied to a loan. The payment history shows any payments that are sent out or any payments that are received, a debit or credit. It's an accounting of monies received or paid out for a specific loan." 142/15-19.

170. These servicing records come in different formats:

a. Data digital, which information is computerized information.

b. Imaged information, image documents.

c. Original documents, actual physical documents.

d. Some documents come in multiple formats both digital and imaged, and

e. Imaged documents can be printed in different formats depending on the type of document that it is. 143/1-11

171. The format of a payment history is "digital data and imaged" when a printed format is created. 143/18-20

172. SLS receives prior servicing files that are incorporated into its business records. 145/18-19

173. The Plaintiff did not explain what it meant by incorporated. By review of the following Exhibits 17 and 18, the files seem to retain original formatting which implies such files are independently retained as digital data files that can be imaged and printed. The record does not suggest incorporation means by reference.

174. Exhibit 16 has several components:

a. Page 1 of 25 is entitled, "Global/Pay Corporate Advances," dated June 30, 2009: Description is BPO/Inspection Fee.

b. Page 2 of 25 is entitled, "Global/Pay Corporate Advances," dated June 30, 2009: Description is Lender Placed Insurance.

c. Page 1 of 25 and page 2 of 25 are "print screens" from the corporate advance payment history of GMAC. 146/18-21.

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d. Page 3 of 25 is entitled, "2009 Detail by Transaction" that continues on Page 4 & 5 of 25.

e. Page 6 of 25 is entitled, "2008 Detail by Transaction" that continues on Page 7 & 8 of 25

f. Page 9 of 25 is entitled, "2007 Detail by Transaction."

g. Pages 3 of 25 through 9 of 25 are a printed archived payment history of GMAC. 146/13-15

175. Pages 10 of 25 through 25 0f 25 are not titled.

176. As to Page 1 of 25, Plaintiff did not produce sufficient evidence to explain how these corporate advance payments are incorporated into its current servicer's records. Hence, the Court tried to reconcile these entries with the other records within Exhibit 16.

177. The first entry on Page 1 of 25 is compared to the transaction history for GMAC in 2008. Page 1 of 25 states a transaction described as "BPO/Inspection Fee" payment of $85.00 was made March 24, 2008. The payment is denoted expense code 41. Pages 6 and 7 of 25 are GMAC Mortgage, LLC's "2008 Detail by Transaction." According to the 2008 Detail by Transaction on March 24, 2008, a transaction described as "Corp Adv 3 D" of $85.00 was posted. Thereafter, on March 26, 2008, a transaction described as "Prop Inspect" for $11.25 is recorded. These are inconsistencies that call into question the credibility of Exhibit 16.

178. As to page 2 of 25, this evidence states that on September 4, 2008, a payment of $2,432.00, described as "Lender Placed Insu", was paid. Page 6 of 25 shows a "Corp Adv 2 E, posted September 4, 2008, of $2,432.00, then a Reversal of , $2,432.00, followed by a Corporate Adv 2 E of $2,432.00 on September 5, 2008, posted under the Column "Lt Charge/Fees. "The next column, "Escrow After," shows a negative increase by the amount of $2,432.00. The Plaintiff did not explain this transaction. Hence, the Court infers the descriptive "Corporate Adv 2 E" is an insurance payment from the escrow account. The problem, however, is the Exhibit does not show persuasive evidence of where the $2, 432.00 derived since Defendant's testimony is he paid all insurance premiums since inception of the loan. Cf. 560/14

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179. Another unexplained statement on Page 2 of 25 is the report of a total paid of "1305200.25." Plaintiff did not explain this entry but as evidence before the Court it furthers the Court finding of a lack of credibility of this page.

180. Page 3 of 25 is titled "2009 Detail By Transaction." Under the moniker of GMAC Mortgage, naming Defendant by name and address. The transactions appear to be sorted ascending by date posted, i.e., earliest to latest. The Post Dates range from 1/1/2009 to 11/9/2009.

181. The 12 columns on Page 3 of 25, Exhibit 16, are:

Transaction Description	Transaction Amount	Last Paid	Post Date	Principal Paid	Interest Paid

Continuing laterally,

Escrow Paid	Cr Life/Dissab	Late Charge Fees	Principal Bal After Tran	Escrow Bal After Tran	Unappl Funds After Trans

Exhibit 16

a. Under the column "Transaction Description," the various Transaction Descriptions are:
   i. "Prop Inspection,"
   ii. "Corp Adv 3 D,"
   iii. "Expense Adva,"
   iv. "Misc Receipt,"
   v. "SpeedPay Fee" and
   vi. "Escrow Deposit," in various rows, Exhibit 16.
b. Plaintiff produced no evidence explaining these items under the Column, "Transaction Descriptions."
c. Plaintiff did not produce sufficient evidence to provide evidence of the necessity of the items under the Column, "Transaction Descriptions," designated "Prop Inspect," "Corp Adv 3 D," "Expense Adva," and "Speedpay Fee."
d. Plaintiff did not produce sufficient evidence to provide evidence of the reasonableness of the items described in the immediately preceding paragraph under the Column, "Transaction Descriptions."

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e. Plaintiff fails to explain a transaction a late fee of $606.79 posted on March16 (3/16) that reduced an "Unapplied Funds Balance" by the same amount. Exhibit 16.

f. Plaintiff did not produce sufficient evidence to explain what the term "Unapplied Funds" means.

g. Plaintiff did not produce sufficient evidence to explain the necessity of "Unapplied Funds."

h. Plaintiff did not produce sufficient evidence to explain the reasonableness of "Unapplied Funds."

182. Plaintiff did not produce sufficient evidence to explain Prop Inspect of $11.25 and Lt Charge/Fees of $11.25 on March 8, 2009. A similar failure of explanation is the Prop Inspect of $11.25 with corresponding Lt Charge/Fees all posted on the date of March 16, 2009. These transactions posted are just 12 of the 25 transactions reportedly posted on the exact same day.

183. On July 1, 2009, a transaction described as "Serv Rel" shows principal paid of $209,656.89.

184. The transaction does not say by whom the payment is made or to whom the distribution is made. See Page 5 of 25, "07/1"

185. Thereafter 9 transactions described as Expense Adva posted on July 1, 2008. Plaintiff did not explain the reasons for these payments or to whom they were made.

186. The last posted transaction in 2009 is $4.18 described as a "Misc Receipt" that appears to derive from "unapplied funds." The transaction is not explained by the Plaintiff. Nor does this money appear to have been paid to the Defendant. The failure to explain this transaction adds to the lack of credibility this Court gives to Exhibit 16.

187. The P & I payment (principal and interest) is $2,134.48.

188. The ending principal balance of November 7, 2009, appears to be $209,656.89.

189. Pages 6 of 25 to 8 of 25 are the 2008 Detail by Transaction reported by GMAC Mortgage, LLC for the loan of the Defendant at his address.

190. These pages are organized the same as those found on Pages 3, 4, and 5 of 25.

191. In 2008 Plaintiff admits receipt of regular payments from the Defendant.

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192. Plaintiff fails similarly to explain the following transactions under Transaction Description:

a. Prop Inspect
b. Misc. Receipt
c. SpeedPay Fees
d. Reversal
e. Payoff State
f. Corp Adv 2 E
g. Serv Rel
h. Expense Adva

193. The Plaintiff fails to the explain the necessity of these entries.

194. The Plaintiff fails to the explain the reasonableness of charges related to these item.

195. Pages 10 through 25 of Exhibit 16 have no title. The entity for whom or by whom the data recorded is made is indirectly tied to GMAC because these records are included with those of GMAC Mortgage LLC.

196. In order to piece together the puzzle of these 15 pages, the Court aligned pages 10, 12, 14, 16, 18, 20, 22, and 24 of 25 alongside each other.

197. At the top of each page is a row that describes columns, below which data is recorded.

198. The following are the columns:

HistoryCounter	LoanID	TransactionDate	SysDateTime	EffectiveDate
TransactionCode	TransactionAmt	PrincipalAmount	InterestAmount	EscrowAmt
OtherFundsAmt	LateChargeAmt	AssistanceAmt	EndPrincipalBalance	EndEscrowBal
EndOthFundsBal	EndAssistanceBal	EndLostDraftBal	EndUnappliedBal	EndLCAccrBalance
BatchchID	CheckNumber	MoneyType	PayeeID	ReversaCode
ReversalFlag	Username	EscrowCounter	AssmRecCounter	PartialPaid
AdvPmyRuleCode				

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199. The rows are numbered descending 88 to 41, page 10 of 25, and 40 to 1, page 11 of 25. Hence, the odd numbered pages align vertically to even numbered pages, as follows: Page 10 of 25 to page to 11 of 25, Page 12 of 25 to page 13 of 25, Page 14 of 25 to page to 15 of 25, Page 16 of 25 to page to 17 of 25, 18 of 25 to 19 of 25, Page 20 of 25 to page to 21 of 25 and Page 22 of 25 to page to page 23 of 25, and then, page 25 of 25. These transactions are reported in descending date order.

200. The 88th transaction under the column HistoryCounter on Exhibit 16, page 10 of 25, is dated October 27, 2010, and shows an ending principal balance of $208,818.11.

201. The 1st transaction under the column HistoryCounter on Exhibit 16, page 10 of 25, is dated July 7, 2009, and shows a beginning principal balance of $209,656.89.

202. This principal balance is consistent with that described on page 5 of 25, dated July 1, 2009.

203. Plaintiff submits the last regular payment made by the Defendant was made on 9/15/2010 in the amount of $1,978.73. 340/22-23. See, also, transaction 87 on Exhibit 16.

204. On page 12 of 25 the 88th transaction is described as "3rd Party Recov Fees Pmt." On page 14 of 25, the 88th transaction shows a transaction amount of $0.50 (October 27, 2010).

205. Plaintiff does not offer any testimony to explain this aberrant transaction. The Court traces this transaction across pages 10, 12, 14, 16, 18, 20, 22, and 24. The $0.50 derives from a BatchID 5256. Notably, the PayeeID column for CounterHistory transaction 88 is blank.

206. Similar transactions are found through-out these pages, however, corresponding disbursements of $0.50 are observed. Plaintiff gave no explanation for these entries, described as, "3rd Party Recov Fees Pmt." This calls into question the credibility of Exhibit 16, as well.

207. Exhibit 16, page 14 of 25 shows regular payments entries of $1,978.73 HistoryCounter transactions #87, #75, #69, #61, and regular payments of $2,134.48 #56 and #46.

208. At transaction #56 and #46, the interest rate is reported as .1175000.

209. The date of #56 is August 1, 2008.

210. According to the Terms of the Note, August 1, 2008, is an interest rate change date.

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211. The Plaintiff did not produce sufficient evidence to offer any evidence of the LIBOR rate for June 17, 2008 (the 45th day prior to the change date).

212. The most recent transaction, the 88th, dated October 27, 2010, shows the outstanding principal balance as $208,818.11.

213. Plaintiff, however, fails to explain the following transactions, described as "unapplied payments" of History Counter transactions # 85 of $688.93, #84 of $1,000.00, #80 of $688.93, #79 of $1,000.00, #73 of $1,000.00, #72 of $688.93, #67 of 688.93 #66 of $1,000.00, #59 of $1,000.00, #58 of $688.93 #54 of $1000.00 #53 of $1000.00, #48 of $700.00, and #44 $680.00 all of which are shown on pages 10, 12, and 14. Plaintiff's failure to explain these unapplied funds leaves the Court to find these transactions lack credibility and raise a question whether the Plaintiff has in fact properly accounted for all payments made by the Defendant.

214. Plaintiff did not produce sufficient evidence to explain similar transactions shown on pages 11, 13, 15, 17, 19, and 21 of 25 as described in the immediately preceding paragraph History Counter transactions # 40 through 1.

Court's Analysis of Exhibit 17

215. Exhibit 17 is entitled "Shellpoint Mortgage Servicing Loan History Summary."

216. Exhibit 17 has 9 pages. Plaintiff presented this exhibit the same as Exhibit 16 with copies of the produced information on the front and back of each page. The presentation is cumbrous.

217. Similar to Exhibit 16, twelve columns of data are described across the top of the page (under the title of which is designated Loan ID 0578125938, Borrower, Jamie Singleton).

218. The twelve columns are:

Trans Date Eff Date	Due Date	Trans Desc	Rev Code Flag	Principal Amount Balance	Escrow Amount Balance	Late Charge Amount	Balance	Unappl. Balance	Money Type

219. The Transaction Dates on Exhibit 17 cover the period of March 15, 2018, back to February 6, 2015.

220. This leaves a gap in time between the recorded payment history from Exhibit 16 ending on October 27, 2010, to the beginning of the recorded payment history of February 6, 2015 on Exhibit 17.

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221. 4.28 years of the recorded payment history is not produced in the trial before this Court.

222. Plaintiff did not produce sufficient evidence of names of servicers during this period.

223. The failure to produce all the recorded payment history raises the Court's suspicion as to the trustworthiness of the business records admitted under the exceptions to the rule against hearsay.

224. The "Transaction Desc" column of Exhibit 17 has descriptions that include "Prop Inspection," "Inv Loan Purchase," "Investor Loan Sale," "Attorney Cost Dish," "Filing Cost Disb," "County Tax Bill 1," "Certified Mail Cost Disb," "BPO Disb," and "Late Charge Assess."

225. The purported ending principal balance of the Note on Exhibit 16 and the purported beginning principal balance of the Note on Exhibit 17 do not match. 157/3-8.

226. The loan identification number on Exhibit 17 does not match the loan identification number on Exhibit 16. Plaintiff produced no explanation for this difference.

227. A troubling occurrence is documented on page 8 of Exhibit 17. The Plaintiff's predecessor applied $19,330.30 to the loan August 8, 2016. Ten transactions are described as "Regular Payments" of $1,933.03 of which the Plaintiff Plaintiff's predecessor paid itself $18,118.96 interest and applied $1,211.34 to Principal. 158/7 & 360/1-361/3 [Court's calculation].

228. Mr. Amaya incredulously states "some kind of an insurance incident, and something around $19,000.00 were paid out to the borrower."159/16-18

229. Mr. Amaya testified, "if I'm not mistaken, I believe during the case, they had asked for the monies to be applied towards the loan."159/19-21 Mr. Amaya does not describe to whom the pronoun "they" refers. The Plaintiff produced no corroborating evidence to this statement. The Court finds the statement lacks credibility.

230. Mr. Amaya contradicts himself on cross examination by the Defendant stating, "never sai- -- as I said, I found the money from the insurance, so at this point, I do not know where those $19,000 came from." 361/10-12.

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231. To further contradict the application of the ten payments, its source, and method applied to the loan, Mr. Amaya states, "the SLS payment history shows that we still have $19,000 in the bucket." 362/19-21.

232. Mr. Amaya further contradicts his direct testimony on cross examination as to the application of the $19,330.30 stating "incorrect" that "So, that insurance money was applied, most of it, towards interest and a little bit to principal, correct?" 363/5-7

233. Plaintiff, nonetheless, according to Mr. Amaya: "I have determined that the unapplied funds that are in the insurance bucket are still there." 363/21-23

234. The Plaintiff lacks credibility concerning the receipt and application of the insurance proceeds.

235. A Plaintiff's predecessor through its servicer, Shellpoint, pocketed the insurance proceeds due to Defendant to cover the repair costs from his kitchen fire. See paragraph 24.

236. Then the Plaintiff's servicer with disdainful pride and without the slightest justification or explanation, out of the proverbial "thin air," puts $19,000 back in a bucket! And, when asked why by this Court? Mr. Amaya states:

> A: We did, it's -- it -- it doesn't -- I don't know why we did it, but it's to the borrower's benefit. It's $19,000 less.359/3-5

237. The SLS accounting for this issue is incredulous. It is arbitrary. It is unconscionable. Moreover, the Court finds Plaintiff is hiding behind its servicer's accounting, which is doubly troublesome. Mr. Amaya cannot explain this. So, his superiors have him testify. It's atrocious attempt to correct Shellpoint's equally appalling act multiplies the unreliability of the Shellpoint records and the significantly undermine the credibility of the SLS records. See, below.

The Court's Analysis of the Loan Servicing by Statebridge, Exhibit 18

238. Exhibit 18 is a payment history from the servicer, "Statebridge," a loan servicer that the Plaintiff states serviced the loan immediately prior to the Plaintiff's servicer, SLS.

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239. Exhibit 18 consists of 120 pages. Like Exhibits 16 and 17, the payment history is printed on the front and back of each page. It is not Bate-stamped but rather numbered in-hand 1 through 120. This presentation is cumbrous, too.

240. Exhibit 18 does not identify the name of the servicer. Exhibit 18 does identify a loan number 0000043608. This number does not appear elsewhere in the plaintiff's exhibits or any other identifying information on any page.

241. By placing page 1 and page 3 alongside each other the Court can see Exhibit 18 has 21 columns of information.

242. The loan identification number on Exhibit 18 does not match the loan identification number on Exhibits 16 and 17. Plaintiff produced no explanation for this difference.

243. Similar to Exhibits 16 and 17, Columns of data are described across the top of the page 1 and page 3.

244. The Columns on Page 1 are:

Loan Id	History counter	Effective date	Transaction date	Transaction Description	Fee Description	Reversal Code	Reversal Flag	Transaction amount	Money Type

And, the Columns on Page 3 are:

Principal Balance	End Principal Balance	Interest Amount	Escrow Amt	End Escrow Bal	Late Charge Amt	End LC ACCR Bal	Assistance Amt	Check Number	Payee	Batch ID

245. The payment history begins on April 6, 2018. 171/23. On that date,

a. The beginning principal balance was $207,389.70 172/1

b. The last transaction from the Shellpoint records is March 15, 2018.

c. The ending principal balance on the Shellpoint history is $207,389.66. 174/15

d. The difference of $0.04 is not explained.

e. The Escrow balance on April 6, 2018, is -$4,956.36. 173/3

f. The late charge balance on April 6, 2018, is $5,439.78. 173/10

g. The ending escrow balance is $27,821.70. 175/4

h. The late charge balance at the end of the period November 2022 is $5,704.78. 175/16

246. Under the column entitled "Transaction Description," the descriptives are:

a. "3rd Party Recover Fees Assess,"

b. "Legal Fees Disb,"

c. "Tax Bill 1 Disb,"

d. "Other Fees Disb,"

e. "Insurance Premium Disb,"

f. "Late Charge."

247. The plaintiff fails to produce sufficient evidence explaining items a., b., d., e. and f.

248. Plaintiff provides no evidence of necessity for these 5 items.

249. Further, Plaintiff fails to provide any evidence of the reasonableness of these items.

250. The Column entitled, "Fee Description," includes the following descriptives:

a. "Imaging,"

b. "Inspections,"

c. "Vendor Management,"

d. "FC Attorney Fee,"

e. "Lien Cost/Recording,"

f. "Miscellaneous (Inv),"

g. "Litigated,"

h. "BPO,"

i. "Postage Costs,"

j. "Winterization,"

k. "Tax search,"

l. "Overnight,"

m. "Travel Expense,"

n. "Mediation/Trial."

251. On direct examination Mr. Amaya gave no explanation of these various transactions or their corresponding fee descriptions.

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a. On cross examination Mr. Amaya explained that on page 69, the entry "Third Party Recover Fees Assess" meant attorneys' fees. 367/15-16

b. On page 109, the Mr. Amaya cannot explain the transaction description, Travel Expenses of $1,147.16. 368/17-21; 370/14-16; 372/6

c. Mr. Amaya testified that Clear Capital Com, Inc., was paid $100.00 for a BPO.

d. Mr. Amaya testified that Safeguard Properties Management, LLC was paid an inspection fee of $15.00 but he offers no evidence of its necessity or it's reasonableness.

e. Mr. Amaya testified that Security Connections, Inc., was paid an imaging fee of $1.99 but he offers no evidence of its necessity or it's reasonableness.

f. Mr. Amaya testified that Cyprexx, LLC, was paid an inspection fee of $15.00 but he offers no evidence of its necessity or it's reasonableness.

g. Mr. Amaya testified that SLK Global Solutions America was paid a tax search fee of $0.80 but he offers no evidence of its necessity or it's reasonableness.

h. Mr. Amaya testified that Lereta LLC was paid a tax search fee of $0.95 but he offers no evidence of its necessity or its reasonableness.

252. But Plaintiff offers no evidence of the necessity or the reasonableness of these transaction. Hence, Plaintiff fails to provide sufficient evidence that any of these expenses are recoverable from the Defendant under any provision of the Note or the Mortgage.

An Analysis of Exhibit 19

253. Exhibit 19 is SLS's "Payment History All Details." It appears in the form of a spreadsheet.

254. This Exhibit covers the time of December the 9th, 2022, to May 5th, 2023.

255. The Columns on this one page document are:

A	B	C	D	E	F	G
Account Number	Trans action Date	Effective Date	Principal Amt	Interest Amt	Escrow Amt	Late Charge Amt
H	I	J	K	L	M	N

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Unapplied Funds Amt	Uncollected Or Shortage Amt	Transaction Amt	Transaction Type	Balance Principle	Balance Escrow	Paid Through Date
O	P	Q	R			
Transaction Code	Transaction Desc	User ID	Trans Batch #			

The rows have been lettered by the Court for ease in referencing. The Exhibit has only 15 rows. The first row shows the column designations. The row numbers are added by the Court, too, for ease in referencing.

256. Exhibit 19 shows:

a. a principal balance due of $207,389.66. 181/25 Column L/row 12

b. an unapplied funds amount of $19,183.89 Column H, Row 12

c. the code SR. Column K, Row 12

d. $19,183.89 Column J, Row 13 shows.

e. the code UFL Column K, Row 13

f. ($25,881.94) Column J, Row 14

g. the code SRO Column K, Row 14

h. $1,939.75 Column J, Row 15 shows

i. The code UFU. Column K, Row 15

257. The code SR stands for "Senior Review." 353/4

258. UFL stands for "unapplied funds" title in the L bucket for unapplied funds" 255/16-17

259. The L bucket is not explained.

260. The code SRO stands for "Senior in cashiering," at the loan "start up." 354/2-5 and 354/10

261. The code UFU stands for "unapplied –basically incomplete." 353/22

262. The Plaintiff fails to explain with sufficient clarity the transactions described in paragraphs 256-261. As Mr. Amaya testified, "so it just shows me that those two transactions were created by someone that was reviewing the unapplied funds in the bucket. They pulled it out and had to pull it back in." 359/5-9

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263. Mr. Amaya then admits, "With all honesty, Your Honor, as far as I can tell, the $19,000 were credited --- . . . --- I do not know where they came from. I'm showing that we still have those $19,000 in unapplied." 358/3-8

264. Hence, Plaintiff is able to manipulate the accounting.

265. The senior review, senior cashiering, unapplied funds (incomplete) accounting entries show the invention of $19,183.89 and $1,939.75 are arbitrary, capricious and unconscionable conduct by the Plaintiff[14].

266. This evidence lacks credibility.

Analysis of Exhibit 20

267. This exhibit was admitted with the exception that the initial letters in the title were redacted.

268. Exhibit 20 is entitled, "XXXXX [redacted] Good Through 6/12/2023" is 2 pages. Plaintiff produced Exhibit 20 to "show[s] a payoff and standard breakdown by category of the total amounts by their categories." 187/8-10 Exhibit 17

269. The Loan Number for Exhibit 20 is 1031270127 and is consistent with Exhibit 19.

270. This number is inconsistent with the loan numbers reported on Exhibits 16, 17, and 18.

271. Exhibit 20 shows what Plaintiff claims as the amounts due on the Note secured by the Mortgage through June 12, 2023:

a.	Unpaid Principal	$207,389.66
b.	Interest 12/1/2009 to 6/12/2023	$293,228.37
c.	Escrow Advanced	$27,821.69
d.	Late Charges	$5,704.78
e.	Property Inspection	$565.00
f.	Other Fees & Cost	$17,112.27
g.	Attorney Fees & Cost	$32,403.50
h.	Suspense	-$1,939.75

272. Plaintiff claims the total due through June 12, 2023, is $582,285.52. 187/23

[14] An analysis of the handling of the insurance proceeds is found below.

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273. Mr. Amaya testified that the "Other Fees & Cost" are "broker price opinions." 377/3

274. Plaintiff fails to establish the necessity for the items d., e., f., g., and h.

275. Plaintiff fails to establish the reasonableness of the items d., e., f., g., and h.

276. Exhibit 20, moreover, does not account for the unapplied funds of $19,183.89 as shown on Exhibit 19. Cf., 358/3-8

An Analysis of Exhibit 21

277. Exhibit 21 is Plaintiff's "breakdown of the escrow advances." 192/7

278. Plaintiff claims that it has expended $27,821.69 for county tax and homeowner insurance on behalf of the Defendant.

a. Prior Servicer Taxes advanced are $4,956.36. 194/2-25
    i. County taxes $2,657.29 from a prior servicer
    ii. County tax bill of $2,299.07, posted 11/27/17. 196/4-6
    iii. Plaintiff's Tax advances are $13,103.36 (Court calculated) Exhibit 21
    iv. Total Tax Advanced are $18,059.72.
b. Homeowner insurance from 2019 through 2022 of $9,761.67. 195/4-10

279. Plaintiff produced no documentary evidence that it had notified the Defendant that it was placing insurance on the property. 380/2

280. Mr. Amaya testified he did not know that the Defendant had been paying homeowners insurance on the property since 2006. 378/24

281. The claim of homeowner insurance advances fails for Plaintiff's lack of sufficient evidence insurance premiums paid were necessary.

282. Plaintiff did not produce sufficient evidence of the reasonableness of the premiums paid by it.

283. Moreover, Mr. Singleton paid insurance premiums on his property since 2010. 560/14

284. The Plaintiff fails to persuade this Court that the homeowner insurance premiums are due from the defendant.

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No Acceleration Letter

285. The Plaintiff did not produce sufficient evidence when the loan initially went into default for non-payment.

Late Charges

286. Exhibit 27, a Notice of Denial of Foreclosure Intervention was filed in this Case on December 19, 2011.

287. The Complaint alleges a default in payment as of March 1, 2009.

288. Notwithstanding, Plaintiff did not produce sufficient evidence to establish the exact date the Defendant defaulted on the Note. 334/14-15.

289. With the denial of foreclosure intervention, the Plaintiff's predecessor would only accept the payment of the full amount of the Note due secured by the Mortgage.

290. Nonetheless, Plaintiff continued to accrue late charges.

291. Plaintiff produces some evidence of what each monthly principal and interest payment was.

292. But the Plaintiff fails to produce sufficient evidence to persuade this court of what each monthly payment of principal and interest due was because it did not produce sufficient evidence of the LIBOR index rate upon which the interest rate is determined.

293. Hence, Plaintiff did not produce sufficient evidence to persuade the Court that the late charges have been properly calculated.

294. Hence, this Court finds the late charges are denied.

Analysis of Exhibit 25

295. Exhibit 25 is an imaged document from a prior servicer. The servicer is not identified. The court admitted it under the business records exception to hearsay, however, the Court gives it no credibility. It is not an original document of SLS. The document refers to account 339522797. It is dated June 30, 2009. This account number is not consistent with any other account or loan number produced into evidence by the Plaintiff. Exhibit 25 is not reliable.

296. Exhibits 31, 32, 33, 34, 35, 36, 37, 38, and 40 were entered into evidence. They relate to Defendant's Bankruptcy initiated in February 2009. Since each of these documents predate the filing of the case, the Court gives these exhibits little weight. Moreover, the Court

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gives little weight to Mr. Singleton's testimony concerning these 9 exhibits. This evidence was entered apparently to produce evidence of Defendant's non-compliance with agreements made during a personal bankruptcy case. Weighed against the utter failure of the Plaintiff to demonstrate sufficient evidence to persuade this Court on every amount claimed except the principal balance, the Defendant's conduct does demonstrate he made efforts to get the loan in a performing condition but the Plaintiff's predecessor at this time did not exercise good faith and fair dealing with the Defendant. 546/15-555/23

297. Moreover, to the extent that Plaintiff introduction of Exhibits 31, 32, 33, 34, 35, 36, 37, 38, and 40 were attempts by the Plaintiff to impeach the credibility of the Defendant, such evidence is impermissible since the Defendant is Plaintiff's witness.

298. Plaintiff offered Exhibit 22, public records of Dorchester County. This Court published into the record Exhibit 22, as follows, "real estate inquiries from the Delinquent Tax Collector for Dorchester County, The Honorable Sidney B. Jones, III, of taxes due on the property at 5505 Rowsham Place, North Charleston, South Carolina 29418. The TMS Number for the property is 181-10-06-037 [sic]. Levy Year 2015, levy year 2016, levy year 2017, levy year 2018, levy year 2019, levy year 2020, levy year 2021, levy year 2022, and a separate document entitled Tax Activity Screen has a date of June 12th, 2023. Time 9:23:22. This is a receipt, having a number R20170006033500." 204 17-205/3.

299. Mr. Amaya testified the tax amounts on Exhibit 22 matched the payment shown on Exhibit 21. 206/1-208/5

300. Exhibit 23, consisting of 4 pages, is a summary of Plaintiff's advances related to the property. These include other fees, property inspection fees, attorneys' fees and costs. 209/22-23

301. The Exhibit 23 advances total $17,112.27. 210/1

302. Mr. Amaya admitted that one charge on Exhibit 23 is $10.00 coded as a BPO. 383/6-7

303. The Plaintiff provided no sufficient evidence to support payment of $85.00 to $100.00 for broker price opinions.

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304. The Plaintiff only explanation for the difference in Legal Attorney Fees and FC Attorney Cost is "it's the coding." 384/4

305. These explanations do not meet the Plaintiff's burden of production much less its burden of persuasion.

The Court's Scrutiny Of The Insurance Proceeds

301. The Plaintiff's and Plaintiff's prior holders', including servicers receipt and application of the insurance proceeds, especially the failure to pay these sums to the Defendant in order to repair his house after a fire, demonstrate an utter failure to follow the implied covenants of good faith and fair dealing.

302. In terms of equity, the Plaintiff comes into this Court with unclean hands.

303. The Court has found the Plaintiff holds only the Note and cannot possess the Mortgage, since it is held by the bankruptcy estate of People's Choice Home Loans, Inc. Then alternatively, the Court finds that since

a) The Defendant returned the insurance proceeds check to his then servicer,
b) the possession of the insurance proceeds were then held by a predecessor servicer that subsequently transferred to the Plaintiff;
c) Plaintiff through its servicer received all rights of its predecessors through the purported mortgage assignments; and
d) Plaintiff admits it processes of $19,183.89 "in the insurance bucket"
e) Then Plaintiff's possession of the $19,183.89 is the Defendant's insurance proceeds for which these proceeds are
    i. a benefit conferred by the Defendant upon the Plaintiff;
    ii. a realization of that benefit by the Plaintiff; and
    iii. retention of the benefit by the Plaintiff under circumstances set forth above (Mr. Amaya says it's to the Plaintiff's benefit) that make Plaintiff's retention inequitable for it to retain the insurance proceeds without paying its value to the Defendant.

304. In short, Plaintiff retention of the insurance proceeds is an unjust enrichment of the Plaintiff.

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305. Moreover, this Court must scrutinize the conduct of the Plaintiff with the utmost care, to ascertain it has done everything which ought to have been done to secure the action requested, i.e., collection of a Note that Plaintiff purports it possesses a validly enforceable mortgage lien. This maxim in equity has at times guided courts in equity to relieve a party from the consequences of accident, mistake, and fraud.

306. This Court scrutinizes the insurance proceeds conduct, as follows:

a. Defendant acted in good faith. He cooperated (dealt fairly) with the then Note Holder and Servicer to settle the claim.

b. The Defendant and his wife endorsed the insurance proceeds check payable to him and the servicer and immediately turned it over to the Plaintiff's predecessor servicer with the expectation that the proceeds would be returned to him for the repair of his damaged kitchen (Defendant's conduct shows a continuum of good faith and fair dealing).

c. Defendant's hands are clean!

d. The then Note holder's servicer retained the proceeds. The Court infers this conduct was a tactic to gain as much leverage over the Defendant it could at the time. The inference this Court finds is the then servicer was using unfair leverage to make demands of payment on the Note or modification of the Note with incorrect calculations as the Defendant discovered, to which the servicer gave the proverbial "shrug of the shoulders" and mistakenly retained the insurance proceeds, albeit an undeniably egregious mistake (violating the implied covenant of good faith and fair dealing owed the homeowner).

e. The Note Holder and its servicer had unclean hands!

f. Thereafter a Note Holder endorsed the Note to another, whose servicer was Shellpoint[15].

g. Shellpoint doubled down, and mistakenly applied the insurance proceeds to the loan in ten separate payments to maximize the Note holder's return and minimize the Defendant's benefit from the insurance proceeds, which was unreasonable,

[15] Shellpoint serviced the loan at different times. 241/21

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and arbitrary, and by any measure of civil conduct, conduct that exposes the failure of the servicer to act in good faith and deal with fairness.

h. The multiplier of this arbitrary conduct evolves from Plaintiff's mistaken manipulation of the accounting.

i. In summary, the original retention of the insurance proceeds violated the implied covenant of good faith and fair dealing, with this conduct alone the Court must relieve the Defendant of the plaintiff's predecessor's aberrant and misguided exertion of leverage – a strong arm tactic - between powerful, commercial entities, the Note holder and its servicer, and a powerless residential homeowner consumer, whose only ability to equalize the lop-sided relationship is through protracted litigation.

f) The misguided application of the insurance proceeds to the loan in "regular payments" giving the then holder $18,118.96 interest and applying $1,211.34 to Principal — doubled down against the Defendant. Hence, this servicer's egregious mistake continues the breach of the implied covenant of good faith and fair dealing.

g) Finally, the Plaintiff's manipulation of the accounting shown in the payment history of the current servicer of the Note Holder, SLS, simply goes to show that when closely scrutinized the conduct of the Plaintiff and its predecessors is a continuum of mistaken, arbitrary conduct that calls out for justice in equity by awarding the Defendant the these long over-due insurance proceeds. Hence, the Plaintiff must return the insurance proceeds of $19,183.89 to the Defendant.

The Unexplained Suspense account of $1,939.75

307. In Paragraph 258(h) & 261 above the Court found that an accounting entry of $1,939.75 was arbitrary. In paragraph 262 above Plaintiff admits this amount is a credit owing the Defendant. These sums, too, shall be awarded to the Defendant bottomed on findings as stated above. Hence, these findings justify the Court's application of the two maxims of equity described in **The Court's Scrutiny Of The Insurance Proceeds** above.

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Summary of the Facts

308. Plaintiff did not produce sufficient evidence of the loan servicing history because it did not produce the entire servicing history of the Note and Mortgage.

309. The failure to produce sufficient evidence of the full servicing history demonstrates Plaintiff's lack of credibility.

310. The confusing documentary presentation of the payment histories demonstrate Plaintiff's lack of credibility.

311. The Plaintiff did not produce sufficient evidence establishing necessity and reasonableness of expenditures, except tax payments. This too demonstrates Plaintiff's lack of credibility.

312. Multiple inconsistencies in the demonstrative evidence produced demonstrates Plaintiff's lack of credibility.

313. The Plaintiff's and Plaintiff's prior holders' failure to pay the insurance proceeds over to the Defendant to rehabilitate the property following the Defendant's Father's Day 2012 kitchen fire demonstrates arbitrary, unreasonable, and unconscionable conduct. Hence, this documented conduct supports finding Plaintiff's and Plaintiff's prior holders lack of credibility.

314. Defendant admits he received notices when he was delinquent in paying the amount due under the Note. Defendant does not identify what notices he received. 506/25

315. On August 5, 2020, this Court entered a scheduling order by which it ordered the parties to provide this Court with the original lender's (People's Choice Home Loan, Inc.) Bankruptcy Schedules within 60 days. The Original Lender's bankruptcy schedules have never been provided to this Court.

316. The Plaintiff holds Defendant's Note.

317. The Plaintiff is not a holder in due course.

318. The Plaintiff failed to prove the amount of interest due according to the terms of the Note.

319. Plaintiff produced no sufficient evidence of the contractual relationships between the original Lender and any subsequent holder of the Note.

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320. The Plaintiff produced no sufficient evidence that it, or the various predecessor holders of the Note, held the Note, the Mortgage, or any instrument in segregated accounts. See finding above regarding what a servicer does. The Plaintiff did not produce sufficient evidence to persuade this Court that the Plaintiff holds these funds in segregated accounts.

321. Plaintiff fails to produce any evidence it is a participant in the national secondary mortgage market.

322. Plaintiff fails to produce any evidence the Note possesses any protections afforded by law as those laws relate to Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, and Federal National Mortgage Association.

323. The Current principal balance on the Note is $207,389.66.

324. The Plaintiff made payments for ad valorem property taxes of $18,059.72 on the mistaken belief it had an enforceable mortgage lien on the Defendant's real property.

325. Moreover, Defendant has been unjustly enriched by Plaintiff's payment of Defendant's ad valorem taxes.

326. The Mortgage remains an assets of the People's Choice Home Loan, Inc.'s bankruptcy estate[16].

327. Plaintiff does not know what consideration was paid for the transfers of the Note or Mortgage. 331/20; Cf., Order, dated August 5, 2020.

328. The Plaintiff's and Plaintiff's prior holders', including servicers, receipt and application of the insurance proceeds, especially the failure to pay these sums to the Defendant in order to repair his house after a fire, demonstrate an utter failure to follow the implied covenants of good faith and fair dealing.

329. The Plaintiff's lack of credibility justifies a finding that the Plaintiff comes into this Court with unclean hands.

330. Moreover, the Plaintiff's lack of credibility on many issues evolves into a finding that the Plaintiff comes into this Court without sufficient evidence for this Court to do equity on its equitable claim for foreclosure of a mortgage.

331. Plaintiff is not entitled to recover attorney's fees on the foreclosure action.

[16] See, this Court's order entered March 28, 2023.

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332. The Note does not provide for payment of attorney's fees in the event the collection of the Note is placed in the hands of an attorney for collection. Hence, the Plaintiff has no right to the collection of attorneys' fees on the Note.

333. Judgment should be given in favor of the Plaintiff in the amount of $225,449.38.

334. Plaintiff must return to the Defendant $21,123.64 it holds on behalf of the Defendant.

335. The $21,123.64 held by the Plaintiff may be off-set by the judgment due the Plaintiff.

336. All the foregoing Findings of Fact may be construed as Conclusions of Law. All the following Conclusions of Law may be construed as Findings of Fact.

Conclusions of Law

I. This Court has jurisdiction over this matter. (An action for foreclosure adjudicates and cuts off the mortgagor's interest in real property. It is a proceeding *in personam* as well as *in rem*). Perpetual Building & Loan Association v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978); Anderson v. Pilgram, 30 S.C. 499, 9 S.E. 587 (1889). Bartles v. Livingston, 282 S.C. 448, 454, 319 S.E.2d 707, 711 (Ct. App. 1984))

II. Plaintiff has the burden of production and the burden of persuasion. (Generally, there are two types of burdens: burden of production and burden of persuasion. Burden of production refers to a party's responsibility to introduce sufficient evidence on a contested issue to have that issue decided by the fact-finder, rather than decided against the party in a preemptory decision such as directed verdict. Pike v. S.C. Dep't of Transp., 343 S.C. 224, 231, 540 S.E.2d 87, 91 (2000). Burden of persuasion is concerned with a party's obligation to sway the fact-finder to view the facts in a way that favors that party. *Id.*, Smith v. Barr, 375 S.C. 157, 161, 650 S.E.2d 486, 489, 2007 WL 2178433 (Ct. App. 2007). In civil cases, the burden of persuasion rests with the plaintiff to prove his or her case, usually, by a preponderance of the evidence. Smith v. Barr, 375 S.C. 157, 161, 650 S.E.2d 486, 489, 2007 WL 2178433 (Ct. App. 2007))

III. Plaintiff is a holder of a Note and is entitled to enforce it. "Person entitled to enforce" an instrument means "(i) the holder of the instrument." S.C. Code Ann. § 36-3-301

IV. A note is a written instrument, and in computing the amount due thereon in principal and interest the computation must be made in accordance with the terms of said note. Citing Tate v. Lenhardt, 110 S. C. 569, 96 S. E. 720. *Rhodus v. Goins*, 129 S.C. 40, 123 S.E. 645, 645 (1924)

V. A mortgage foreclosure is an action in equity." Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997)

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VI. Where the Plaintiff fails to produce sufficient evidence that the assignment of the Note preceded the bankruptcy of the original lender, as holder of the Note, the Plaintiff has not met its burden of production. The assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but the assignment of the mortgage alone does not carry with it an assignment of the note. Bank of America, N.A. v. Draper (S.C.App. 2013) 405 S.C. 214, 746 S.E.2d 478.

VII. Even if the Plaintiff's Exhibit 7.1 were considered sufficient evidence that the Note was held by an entity other than the original lender before it filed bankruptcy, because Exhibit 7.1 is an endorsement in blank, albeit undated and without any proof of it being transferred to another, Plaintiff's failure to produce all of the business records setting out who held the Note and the payment histories of all of the holders' and their respective servicers' of the Note, fails to persuade this Court that the endorsement in blank of the Note secured by the Mortgage carried with it the assignment of the Mortgage. *Id.*

VIII. "Arbitrary conduct is readily definable and includes acts which are unreasonable, capricious or nonrational; not done according to reason or judgment; depending on will alone. *Black's Law Dictionary.*" Taylor v. Nix, 307 S.C. 551, 555, 416 S.E.2d 619, 621, 1992 WL 71149 (1992)

IX. The doctrine of unclean hands "precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Ingram v. Kasey's Assocs.,* 340 S.C. 98, 107 n. 2, 531 S.E.2d 287, 292 n. 2, (2000) (emphasis added) Aaron v. Mahl, 381 S.C. 585, 594, 674 S.E.2d 482, 487, 2009 WL 499356 (2009)

X. A court of equity should scrutinize the conduct of the plaintiff with the utmost care, to ascertain he has done everything which ought to have been done to secure the action requested. *Corbus v. Alaska Treadwell Gold Mining Co.,* 187 U.S. 455, 465, 23 S.Ct. 157, 47 L.Ed. 256 (1903). This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. *Camp v. Boyd,* 229 U.S. 530, 559, 33 S.Ct. 785, 57 L.Ed. 1317 (1913). "The rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties." *Good v. Jarrard,* 93 S.C. 229, 239, 76 S.E. 698, 702 (1912). *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 254, 715 S.E.2d 348, 355, 2011 WL 2535549 (Ct. App. 2011)

XI. The finding of fact that Defendant shall reimburse Plaintiff for advances of the ad valorem taxes exemplifies the maxim in equity that this Court should relieve Plaintiff from the consequences of its mistaken belief that it had a valid mortgage lien when in fact the mortgage lien remained in the bankruptcy estate of the original lender. Moreover, since the Plaintiff does not possess or hold the Mortgage, the rule that equity considers as done that which should be done cannot be invoked to create a right contrary to the agreement of the parties is not applicable because the Note alone does not provide contractual mechanisms authorizing advancements for ad valorem taxes. Court's emphasis.

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XII. The finding of fact that Defendant shall reimburse Plaintiff for advances of the ad valorem taxes also follows the from the doctrine of unjust enrichment. "Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff." *Regions Bank,* 394 S.C. at 256–57, 715 S.E.2d at 356. One seeking to recover for unjust enrichment must show: "(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." 477 *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach,* 341 S.C. 1, 8–9, 532 S.E.2d 868, 872 (2000). Chase Home Fin., LLC v. Risher, 405 S.C. 202, 212, 746 S.E.2d 471, 476–77, 2013 WL 3929965 (Ct. App. 2013)

XIII. Hence, the Plaintiff must pay to the Defendant $19,183.89 it holds on behalf of the Defendant to avoid the unjust enrichment of the Plaintiff and to correct the tripart mistake explained under the section of this order entitled, The **Court's Scrutiny Of The Insurance Proceeds.**

XIV. Likewise, as explained in the section of this Order entitled, **The Unexplained Suspense account of $1,939.75,** the court concludes these sums, too, shall be awarded to the Defendant bottomed upon findings as stated in **The Court's Scrutiny Of The Insurance Proceeds** section of the findings. These findings justify the Court's application of the two maxims of equity described in the insurance proceeds analysis. The maxims of equity require the Plaintiff to deliver over to the Defendant this suspense account item to avoid an unjust enrichment to the Plaintiff and to pay to the Defendant what is an unexplained sum of money held for the credit of the Defendant, thus inferring some mistake in the accounting exists that must be corrected and avoid an unjust enrichment.

XV. It is well known that equity follows the law. C & S Nat'l Bank v. Modern Homes Constr. Co., 248 S.C. 130, 133, 149 S.E.2d 326, 327 (1966).

XVI. This Court has the authority to determine the facts of this case. ([The fact finder] will have to pass upon the conflicting evidence and the inferences growing thereout. Calder v. Com. Cas. Ins. Co., 182 S.C. 240, 188 S.E. 864, 866 (1936) In a bench trial, the judge, as the finder of fact, may believe all, some, or none of the testimony, even when it is not contradicted. Cf. Ross v. Paddy, 340 S.C. 428, 434, 532 S.E.2d 612, 615 (Ct. App. 2000) Lollis v. Dutton, 421 S.C. 467, 483, 807 S.E.2d 723, 731, 2017 WL 4942848 (Ct. App. 2017)).

XVII. The business records of the Plaintiff were admissible hearsay. "Hearsay is an out-of-court statement produced in court to prove the truth of the matter asserted. Rule 801(c), SCRE. Hearsay is inadmissible unless an exception or an exclusion applies. Rule 802, SCRE. One such exception is the business records exception, which states: "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that

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business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness....Rule 803(6), SCRE." *State v. Thompson*, 420 S.C. 386, 396–97, 803 S.E.2d 44, 49, 2017 WL 2569863 (Ct. App. 2017)

XVIII. "Hearsay is an out-of-court statement produced in court to prove the truth of the matter asserted." *Jackson v. Speed*, 326 S.C. 289, 304, 486 S.E.2d 750, 758 (1997). *Bojilov v. Bojilov*, 425 S.C. 161, 178, 819 S.E.2d 791, 800, 2018 WL 4476247 (Ct. App. 2018)

XIX. Nonetheless, the trustworthiness of business records is a question for this Court to decide. The mere production of a business record under as an exception to hearsay does not obviate an examination by this Court, as fact-finder, of their trustworthiness. The failure of the Plaintiff to produce all of the loan record history raises the suspicion of this Court sufficient to examine the trustworthiness of the business records submitted. Moreover, the credibility findings raise the suspicion of this Court sufficient for this Court to evaluate the trustworthiness of the Plaintiff's business records. (The United States Court of Appeals for the Tenth Circuit has also considered the reliability of business records involving double hearsay. *See United States v. Ary*, 518 F.3d 775, 787 (10th Cir. 2008) ("The essential component of the business records exception is that each actor in the chain of information is under a business duty or compulsion to provide accurate information. If any person in the process is not acting in the regular course of business, then an essential link in the trustworthiness chain fails[.]" (internal quotations omitted)).State v. Jordan, No. 2014-002554, 2018 WL 1180563, at 4 (S.C. Ct. App. Mar. 7, 2018)) Here, the case involves at least 5 levels of hearsay, and undoubtedly more as the Plaintiff admitted it did not produce all of the servicing records of all of the holders of the Note, and their respective servicers.

XX. The Plaintiff called the Defendant as a witness. Nonetheless any evidence he used to impeach him was improper. (While a party who calls [sic] his adversary as a witness makes him his witness to the same extent that he makes any other person whom he calls as a witness, still he is no more concluded by the testimony of his adversary than he would be by the testimony of any other witness whom he might call. But just as in the case of any other witness, having called him, he may not impeach him or contradict him; but he may prove the facts to be otherwise than as he testifies them to be. *State v. McKay*, 89 S. C. 234, 71 S. E. 858. Benbow v. Harvin, 92 S.C. 180, 75 S.E. 414, 417 (1912)).

XXI. "[A] requisite for the admissibility of business records is that entries therein must have been made at or near the time of the transactions to which they relate. The purpose of this mandate is to aid in establishing that the record was honestly and fairly kept. 30 Am.Jur.2d Evidence § 938 (1967)." S.C. Nat. Bank v. Jones, 302 S.C. 154, 155, 394 S.E.2d 323, 324, 1990 WL 110321 (1990)

XXII. Under Rule 401, SCRE ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.").

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XXIII. Under Rule 801(c), SCRE ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, produced in evidence to prove the truth of the matter asserted."); Rule 803(6), SCRE ("A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness; provided, however, that subjective opinions and judgments found in business records are not admissible." (first emphasis added)); Stevens v. Allen, 336 S.C. 439, 455, 520 S.E.2d 625, 633 (Ct. App. 1999), aff'd, 342 S.C. 47, 536 S.E.2d 663 (2000) ("[U]nder Rule 803(6), SCRE, a proper foundation must be laid for admittance of the evidence, and this includes a chain of custody."); Briggs v. State, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017) ("[I]mproper bolstering testimony is inadmissible."); id. at 325, 806 S.E.2d at 718 ("[N]o witness may give an opinion as to whether [another witness] is telling the truth."); State v. Jennings, 394 S.C. 473, 479, 716 S.E.2d 91, 94 (2011) ("When credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to other testimony is not harmless.").

XXIV. The Bankruptcy Code construes property broadly and specifically notes that the estate should include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541 (a)(1). "Such property interests include non-bankruptcy causes of action that arose out of events occurring prior to the filing of the bankruptcy petition." Wilson v. Dollar Gen. Corp., 717 F.3d 337, 342 (4th Cir. 2013). Nolan v. Saxon Mortg., Inc., No. GJH-16-1163, 2017 WL 655399, at 3 (D. Md. Feb. 15, 2017)

XXV. The Plaintiff is not protected by 11 U.S.C. § 541 (a)(1). See, *In re Cambridge Mortg. Corp.*, 92 B.R. 145, 152, Bankr. L. Rep. P 72349, 1988 WL 117631 (Bankr. D.S.C. 1988) (FHLMC has demonstrated that the 64 notes and mortgages are not "property" of the estate within the meaning of 11 U.S.C. § 541. FHLMC has also demonstrated that $136,213.27 of the $137,213.27 on deposit in Southern National Bank Account No. 791518707 constitutes principal, interest and escrow payments held by Cambridge in trust for FHLMC and, as such, the $136,213.27 does not constitute "property" of the estate within the meaning of 11 U.S.C. § 541).

XXVI. Plaintiff did not produce sufficient evidence of the Bankruptcy Schedule of Assets as ordered by this Court on August 5, 2020, and renewed in my Order dated February 8, 2022. See, also, "where a Plaintiff's claims were not properly scheduled, any claims remain the property of the bankruptcy estate, even after the bankruptcy case has closed. Thus, Plaintiff lacks standing to pursue these claims. *Nicholas*, 173 F. Supp. 3d at 255 ("[t]he debtor lacks standing to bring an unscheduled, and thus never abandoned, pre-petition claim even if the

debtor was not aware of a legal basis for bringing that claim at the time the bankruptcy petition was filed." (citing *Miller*, 287 B.R. at 51.)).[8] Because Plaintiff lacks standing, the Court does not have subject-matter jurisdiction over these claims. Thus, the Court grants Defendant Saxon Mortgage's Motion to Dismiss. ECF No. 35.9 Nolan v. Saxon Mortg., Inc., No. GJH-16-1163, 2017 WL 655399, at 4 (D. Md. Feb. 15, 2017)" Footnote 8 above states, "See also *Borlo*, 458 B.R. at 234 n.8 (D. Md. 2011) (citing *Miller*, 287 B.R. at 50 ("Even a cause of action that the debtor, when filing the petition, did not know the law granted belongs to the estate. Property of the debtor does not escape the bankruptcy estate merely because the debtor is unaware of its existence.")).

XXVII. Each Conclusion of Law may also be construed as a Finding of Fact. NOW, THEREFORE, IT IS

ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment on the Note in the amount of $207,389.66 AND, FURTHER, it is

ORDERED, ADJUDGED AND DECREED that the Defendant shall pay the Plaintiff $18,059.72 for advances mistakenly made on the belief it held an enforceable mortgage. AND, FURTHER, it is

ORDERED, ADJUDGED AND DECREED that the Defendant shall be given judgment in its favor for the sum of $21,123.64, which sum may be off-set against the total judgment in favor of the Plaintiff, which sum is $225,449.38. AND, FURTHER, it is

ORDERED, ADJUDGED AND DECREED that the foreclosure of the mortgage is denied.

THUS, IT IS SO ORDERED!

Electronic signature of the Master-in-Equity follows on a separate page.

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

U.S. Bank Trust NA		**Jamie Singleton**	**Indigo Pointe Homeowners Association**

PLAINTIFF(S) **DEFENDANT(S)**

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

_____

_____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor	**Jamie Singleton**	**225,449.38**

Jamie Singleton	**U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor**	**21,123.64**

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

	3078	12/12/2023
Master in Equity	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

- Clerk of Court

Court Reporter:

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E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2023 Dec 12 2:38 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

ELECTRONICALLY FILED - 2023 Dec 29 2:27 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

FIRST JUDICIAL CIRCUIT
COURT OF COMMON PLEAS
IN THE EQUITY DIVISION

C/A No.: 2011-CP-18-00871

U.S. Bank Trust NA as Trustee for Waterfall Victoria Grantor Trust II, Series G
Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners' Association,
Defendant(s).

ORDER GRANTING PLAINTIFF'S MOTION TO AMEND IN PART AND DENYING PLAINTIFF'S MOTION TO AMEND IN PART THE ORDER DATED 12/12/2023

Presiding Judge: James E. Chellis
Master in Equity, Dorchester County
Trial Conducted on

Monday, June 12, 2023
10:02 a.m. - 4:43 p.m.
Tuesday, June 13, 2023
10:08 a.m. - 4:41 p.m.
Wednesday, June 14, 2023
9:02 a.m. - 3:39 p.m.

APPEARANCES:

For the Plaintiff,

January Taylor, Esq.
Ms. January N Taylor
McMichael Taylor Gray, LLC
3550 Engineering Drive Suite 260
Peachtree Corners, GA 30092
jtaylor@mtglaw.com
(404) 474-7149
And,
Dean Hayes, Esq.
Mr. Dean Anthony Hayes
McCabe, Trotter & Beverly, P.C.
4500 Fort Jackson Blvd. Suite 250
Columbia, SC 29209
dean.hayes@mccabetrotter.com
(803) 724-5000

For the Defendant, Jamie Singleton

William H. Sloan, Esq.
Mr. William H. Sloan, Jr.
Sloan Law Firm, PA
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whs@sloanlawfirm.net
(843) 873-7531
And,
Pro Hac Vice
Jeff Barnes, Esq.
1515 North Federal Highway, Suite 300
Boca Raton, Florida 33432
jeff@wjbarneslaw.com

ELECTRONICALLY FILED - 2023 Dec 29 2:27 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

On December 22, 2023, Plaintiff filed with this Court a Motion pursuant to SCRCP 59(e). On December 12, 2023, the Court issued an Order Denying Foreclosure and Granting Judgment on the Note ("12/12/23 Order"). Plaintiff request the Court to reconsider, alter, or amend certain findings of fact and conclusions of law, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, in this Order. The Motion is timely. The Motion raises certain errors made by this Court. This Order corrects those errors to extent addressed herein. If a specific issue raised by the Plaintiff's Motion is not addressed herein, the Court denies the Plaintiff's Motion as to those issues. If a specific issue addressed by the Motion is addressed in this Order, then the Motion is granted as to that limited purpose.

1. Paragraph 55, which states, "Neither party provided this Court with any specific documents pertaining to People's Choice Home Loans, Inc., bankruptcy proceedings[.]" is amended, as follows:

55. On July 12, 2023, Plaintiff's counsel forwarded to the Court, defendant's counsel and the Court Reporter, an email. Plaintiff attached to the email an Order referred to by Plaintiff's counsel during the trial at page 456:

> 3 MR. HAYES: I would also like, in the same
> 4 bankruptcy case, to take judicial notice of the
> 5 Order issued in the -- the case allowing
> 6 People's Choice to sell their assets -- to sell
> 7 or transfer of their assets.
> 8 THE COURT: I think you mentioned that yesterday.
> 9 MR. HAYES: Okay. I didn't know if I did or not,
> 10 Your Honor.
> 11 THE COURT: You know, to the extent it's in there,
> 12 I'm going to trust you. I have -- if you want
> 13 to submit the Order as part of the record, I'll
> 14 be glad to -- to have it made part of the
> 15 record since we've mentioned it.

The Order, dated April 19, 2007, is entitled, "ORDER RE DEBTORS' MOTION FOR ORDER (A) AUTHORIZING BULK SALE OF MORTGAGE LOANS OWNED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS; AND (B) AUTHORIZING DEBTORS TO SELL LOANS HELD BY OR FINANCED BY THIRD PARTY WAREHOUSE LENDERS UPON TERMS AND CONDITIONS TO BE NEGOTIATED AND FURTHER DISCLOSED." Paragraph 2 of this

ELECTRONICALLY FILED - 2023 Dec 29 2:27 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Bankruptcy Order provides: "Debtors are authorized, but not required, to sell in one or more bulk sales in the ordinary course of business, mortgage loans owned by the debtors." Further, paragraph 3 of the Bankruptcy Order provides, "the Debtors shall provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order." And further, paragraph 6 of the Bankruptcy Order orders, "The debtors shall provide an accounting to the Committee of all sales consummated."

A. Plaintiff fails to provide sufficient evidence that the Note was sold pursuant to this April 19, 2007 Bankruptcy Order.

B. Plaintiff fails to produce sufficient evidence Note was within the provisions of the Bankruptcy Order that required the Debtor to "provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order."

C. Plaintiff failed produce sufficient evidence that the Note was accounted for pursuant to the provisions of the order that "The debtors shall provide an accounting to the Committee of all sales consummated."

2. Paragraph 332 of the Order, which states, "The Note does not provide for payment of attorney's fees in the event the collection of the Note is placed in the hands of an attorney for collection. Hence, the Plaintiff has no right to the collection of attorneys' fees on the Note[.]" is amended, as follows:

332. The Note specifically states: "If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees." Hence, the Plaintiff shall have ten (10) days from the date of this Order to move before this Court for an award of its costs and expenses, including reasonable attorney's fees as provided in the Note.

4. The Court strikes paragraph 297 of the Order.

5. The Court strikes Conclusion of Law XX. NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Paragraph 55 of the 12/12/2024 Order is deleted, and, in its place, the following Finding of Fact is substituted:

ELECTRONICALLY FILED - 2023 Dec 29 2:27 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

55. On July 12, 2023, Plaintiff's counsel forwarded to the Court, defendant's counsel and the Court Reporter, an email. Plaintiff attached to the email an Order referred to by Plaintiff's counsel during the trial at page 456:

> 3 MR. HAYES: I would also like, in the same
> 4 bankruptcy case, to take judicial notice of the
> 5 Order issued in the -- the case allowing
> 6 People's Choice to sell their assets -- to sell
> 7 or transfer of their assets.
> 8 THE COURT: I think you mentioned that yesterday.
> 9 MR. HAYES: Okay. I didn't know if I did or not,
> 10 Your Honor.
> 11 THE COURT: You know, to the extent it's in there,
> 12 I'm going to trust you. I have -- if you want
> 13 to submit the Order as part of the record, I'll
> 14 be glad to -- to have it made part of the
> 15 record since we've mentioned it.

The Order, dated April 19, 2007, is entitled, "ORDER RE DEBTORS' MOTION FOR ORDER (A) AUTHORIZING BULK SALE OF MORTGAGE LOANS OWNED BY THE DEBTORS IN THE ORDINARY COURSE OF BUSINESS; AND (B) AUTHORIZING DEBTORS TO SELL LOANS HELD BY OR FINANCED BY THIRD PARTY WAREHOUSE LENDERS UPON TERMS AND CONDITIONS TO BE NEGOTIATED AND FURTHER DISCLOSED." Paragraph 2 of this Bankruptcy Order provides: "Debtors are authorized, but not required, to sell in one or more bulk sales in the ordinary course of business, mortgage loans owned by the debtors." Further, paragraph 3 of the Bankruptcy Order provides, "the Debtors shall provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order." And further, paragraph 6 of the Bankruptcy Order orders, "The debtors shall provide an accounting to the Committee of all sales consummated."

A. Plaintiff fails to provide sufficient evidence that the Note was sold pursuant to this April 19, 2007 Bankruptcy Order.
B. Plaintiff fails to produce sufficient evidence Note was within the provisions of the Bankruptcy Order that required the Debtor to "provide to the Committee and financial advisors a list of all loans being considered for sale under the terms of the order."

C. Plaintiff failed produce sufficient evidence that the Note was accounted for pursuant to the provisions of the order that "The debtors shall provide an accounting to the Committee of all sales consummated." AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Paragraph 332 in the 12/12/2023 Order is deleted, and in its place the following is substituted:

332. The Note specifically states: "If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees." Hence, the Plaintiff shall have ten (10) days from the date of this Order to move before this Court for an award of its costs and expenses, including reasonable attorney's fees as provided in the Note. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Paragraph 297 of the 12/12/2023 Order is deleted. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that Conclusion of Law XX of the 12/12/2023 Order is deleted. AND, IT IS FURTHER,

ORDERED, ADJUDGED AND DECREED that all other issues not specifically addressed herein but raised by the Plaintiff in its December 22, 2023 Rule 59 (e) Motion to Alter or Amend are denied.

THUS, IT IS SO ORDERED!

Electronic signature of the Master-in-Equity follows on a separate page.

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ELECTRONICALLY FILED - 2023 Dec 29 2:27 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: US Bank Trust N A , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP1800871

FILED-RECORDED
2012 JUL 26 PM 3:06
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

50 By 50 Reo, Llc	Jamie Singleton	Indigo Pointe Homeowners Association
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:
Defendant's motion to dismiss filed May 24, 2011, is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

CPFORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

INFORMATION FOR THE PUBLIC INDEX

Complete this section when the judgment affects title to real or personal property or if any amount should be indexed. If not applicable or no information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Maite'Murphy	3075	7/10/2012
Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

John Fetner Rogers Townsend & Thomas P. O. Box 100200 Columbia, SC 29210
Samuel C. Waters Rogers Townsend & Thomas, PC P.O. Box 100200 Columbia, SC 29202-3200

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Sloan Jr. Sloan Law Firm 1055-F North Main St. Summerville, SC 29483

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham - Clerk of Court

Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011CP1800871

Wilmington Savings Fund Society FSB et al
PLAINTIFF(S)

Jamie Singleton et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

This Court's Order granting Summary Judgment to the Plaintiff entered November 21, 2022, is set aside. After revisiting the facts arising from Plaintiff's Motion to Amend that Order, filed December 1, 2022, the Court revisited the original note, mortgage, and initial assignment of the mortgage. The Court again recognized that a peculiar disconnect is apparent in the propriety of the initial recorded assignment of the note and mortgage. A peculiar question arises. The original Lender had filed bankruptcy in March 2007. The initial Lender's nominee, Mortgage Electronic Registration Systems, purported to assign the note and mortgage to a third party in June 2008. Hence, this crucial oversight by this Court requires the Court to set aside its Order dated November 21, 2022. Since the Order is set aside, Plaintiff's Motion to Amend that Order is moot.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/28/2023 .

DB 50 2007-1 Trust
50 by 50 REO LLC
Nomura Holdings Inc.
NNPL Trust Series 2012-1
William Jeff Barnes for Jamie Singleton
Indigo Pointe Homeowners Association
Certificate Trustee for NNPL Trust Series 2012 1
Christiana Trust

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2023 Mar 28 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The Court will proceed to hear Defendant's Motion for Summary Judgment, filed October 6, 2022, but not styled a cross motion for summary judgment.

ELECTRONICALLY FILED - 2023 Mar 28 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

ELECTRONICALLY FILED - 2023 Mar 28 4:39 PM - DORCHESTER - COMMON PLEAS - CASE#2011CP1800871

Dorchester Common Pleas

Case Caption: Wilmington Savings Fund Society FSB , plaintiff, et al VS Jamie Singleton , defendant, et al

Case Number: 2011CP1800871

Type: Order/Electronic Form 4

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

50 by 50 REO, LLC,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-821

LIS PENDENS
Deficiency Judgment Demanded

FILED - RECORDED
2011 APR 25 AM 11:01
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

(014978-00008)

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(s) for the foreclosure of a certain mortgage of real estate given by Jamie Singleton to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) dated January 4, 2006, and recorded in the Office of the RMC/ROD for Dorchester County on January 12, 2006, in Mortgage Book 5142 at Page 168. This Mortgage was subsequently assigned to GMAC Mortgage, LLC by assignment dated July 14, 2008 and recorded July 22, 2008 in Book 6727 at Page 330.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165 in the Office of the Register of Mesne Conveyance for Dorchester County.

Property Address: 5505 Rowsham Pl
North Charleston, SC 29418

TMS# 181-10-06-037-000

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Shawn R. Willis (SC Bar #71155)
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Vance L. Brabham, III (SC Bar #71250)
220 Executive Center Drive
Columbia, SC 29210

Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Benjamin J. Powell (SC Bar #77205)
Kelsey K. Lipscomb (SC Bar #77519)
Andrew W. Montgomery (SC Bar #79893)
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
April 22, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

50 by 50 REO, LLC.)
Plaintiff(s))

vs.)

Jamie Singleton; Indigo Pointe Homeowners Association;)
Defendant(s))

CIVIL ACTION COVERSHEET

2011-CP-18-871

Submitted By: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar# 74030), William S. Koehler (SC Bar# 74935), Shawn R. Willis (SC Bar # 71155), Benjamin J. Powell (SC Bar #77205), John P. Fellner (SC Bar # 77460), Kelsey K. Lipscomb (SC Bar # 77519), Vance L. Brabham, III (SC Bar #71250), Andrew W. Montgomery (SC Bar #79893)
Attorneys for the Plaintiff
014978-00008

Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rtt-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

FILED - RECORDED
2011 APR 25 PM 1:01
CHERYL H. FISHER
CLERK OF COURT
DORCHESTER COUNTY

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts
- ☐ Construction (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20 _-CP-____-_____

- ☐ Notice/File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☒ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex/Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of-State Deposition (650)
- ☐ Motion to Quash Subpoena in An Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** 4/22/2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals;

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

014978-00008

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT FOR THE
	)	FIRST
DORCHESTER COUNTY	)	JUDICIAL CIRCUIT
	)	
50 by 50 REO, LLC,	)	
Plaintiff	)	
	)	CERTIFICATE OF EXEMPTION
vs.	)	FROM ADR
	)	
Jamie Singleton; Indigo Pointe Homeowners Association;	)	DOCKET NO. 2011-CP-18-871
Defendant.	)	

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus of prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☑ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

FILED - RECORDED
2011 APR 25 AM 11:01
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff/Attorney(s) for Plaintiff(s)

Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar #5300), Mary R. Powers (SC Bar #16534), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar #74935), Shawn R. Willis (SC Bar #71155), Benjamin J. Powell (SC Bar #77205), John P. Fetner (SC Bar # 77460), Kelsey K. Lipscomb (SC Bar #77519),, Vance L. Brabham, III (SC Bar #71250), Andrew W. Montgomery (SC Bar #79893)
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: April 22, 2011

014978-00008

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO.
50 by 50 REO, LLC,	2011-CP-18-821
Plaintiff,	SUMMONS AND NOTICES (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Demanded
v.	
Jamie Singleton; Indigo Pointe Homeowners Association;	
Defendant(s).	

(014978-00008)

FILED - RECORDED
2011 APR 25 AM 11 01
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

TO THE DEFENDANT(S) 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, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer 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.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by 50 by 50 REO, LLC.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Shawn R. Willis (SC Bar #71155)
John P. Fetner (SC Bar #77460)
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Cheryl H. Fisher (SC Bar #15213)
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Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar #74935)
Benjamin J. Powell (SC Bar #77205)
Kelsey K. Lipscomb (SC Bar #77519)
Andrew W. Montgomery (SC Bar #79893)
220 Executive Center Drive
Columbia, SC 29210
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
April 22, 2011

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO. 2011-CP-18-821
50 by 50 REO, LLC,	
Plaintiff,	COMPLAINT (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Demanded
v.	
Jamie Singleton; Indigo Pointe Homeowners Association;	
Defendant(s).	

(014978-00008)

FILED - RECORDED
2011 APR 25 AM 11:01
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Dorchester County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the investor has not given the contractual authority to the servicer to modify this loan.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about January 4, 2006, Jamie Singleton made, executed and

delivered a certain Adjustable Rate Note ("Note") in the principal sum of $212,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Jamie Singleton made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., its successors and assigns (MIN 100273900102812475) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, situate, lying and being in the City of North Charleston, County of Dorchester, State of South Carolina and shown and designated as Lot 69, on a Plat of Indigo Point At Indigo Fields Subdivision, Phase V-A, located in the City of North Charleston, Dorchester County, South Carolina, prepared by Trico Engineering Consultants, Inc., on February 1, 1999, revised February 16, 1999 and recorded in the RMC Office for Dorchester County on March 15, 1999 in Plat Book J at Page 128. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Jamie Singleton by deed of James D. Wilson dated January 4, 2006 and recorded January 12, 2006 in Book 5142 at Page 165 in the Office of the Register of Mesne Conveyance for Dorchester County.

Property Address: 5505 Rowsham Pl
North Charleston, SC 29418

TMS# 181-10-06-037-000

9. The Mortgage was signed, witnessed and probated January 4, 2006; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Dorchester County on January 12, 2006, in Mortgage Book 5142 at Page 168. This Mortgage was subsequently assigned to GMAC Mortgage, LLC by assignment dated July 14, 2008 and recorded July 22, 2008 in Book 6727 at Page 330.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the mortgaged premises.

11. Any notice required by the terms of the Note and Mortgage or by state or federal laws has been given to the applicable Defendant(s).

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for March 1, 2009, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of March 1, 2009, the principal sum of $208,601.00, with interest from February 1, 2009, advances, late charges, and also for the costs and disbursements of this

action, including attorney's fees.

13. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

14. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Indigo Pointe Homeowners Association, by virtue of a Notice of Lien against Jamie Singleton in the amount of $330.00, dated June 23, 2010, and recorded June 25, 2010 in Book 7542 at Page 241.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a purchase money first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or

exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale 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, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Dorchester County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

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

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
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Andrew W. Montgomery (SC Bar #79893)
220 Executive Center Drive
Post Office Box 100200 (29202)
Columbia, SC 29210
(803) 744-4444

Columbia, South Carolina
April 22, 2011

NOTICE

1. As of April 21, 2011, you owe $275,974.11. Because of interest, late charges, attorney fees and other charges that vary from day to day, the amount due on the day you pay may be greater.

2. 50 by 50 REO, LLC is the Creditor to whom the debt is owed. AMS Servicing, LLC is the servicing agent for the Creditor to whom the debt is owed.

3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Consumer, within thirty (30) days after the receipt of this notice, dispute the validity of the debt or any portion thereof.

4. If you, the Consumer, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Consumer, by the Creditor's law firm.

5. If the Creditor named in this notice is different from the original Creditor, and if you, the Consumer, make a written request to the Creditor's law firm within the (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.

6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you dispute the debt or any portion thereof or if you request the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.

7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time at which you must answer the complaint. The summons attached to the complaint is a command from the court, not from the Creditor's law firm, and you must follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.

8. This is an attempt to collect a debt, and any information obtained will be used for that purpose. The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

Affidavit of Service

DOCKET NUMBER: 11-cp-18-0871 FILE NUMBER: 014978-00008
COURT OF COMMON PLEAS FOR DORCHESTER COUNTY, SC
CASE STYLE:
PLAINTIFF 50 BY 50 REO, LLC; et seq.
vs.
DEFENDANT JAMIE SINGLETON; et al.
SERVICE OF PROCESS ON: **JAMIE SINGLETON**

METHOD OF SERVICE: **A true and correct copy of the above-described papers were served on the below-named party in the following manner:**

(x) **(PERSONAL)** By personally delivering a copy into the hands of the person to be served.

PLACE OF SERVICE: **5505 ROWSHAM PLACE**
NORTH CHARLESTON, SC 29418

Is the place of service the dwelling house or usual place of abode for the party being served ? (x) Yes ( ) No

DATE OF SERVICE: **04/25/2011** TIME OF SERVICE: **7:30 PM**

TYPE OF DOCUMENTS: (x) SUMMONS & COMPLAINT (x) LIS PENDENS
( ) OTHER:

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:
Sex **MALE** ; Race **BLACK** ; Facial Hair **NO** ;
Age(prox.) **36-40** ; Height(prox.) **5'5"** ; Weight(prox.) **200**

MARITAL STATUS: ( ) Single ( ) Married ( ) Separated (x) Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
( ) WAS ( ) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE (x) UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A MOBILE HOME? ( ) YES ( ) NO ( ) MOBILE HOME VIN NOT VISIBLE
VIN #:

COMMENTS:

FILED - RECORDED
2011 APR 26 PM 12:20
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: J. A. COX

Signature of Process Server 4/25/11 Date

STATE OF SC
COUNTY OF Charleston

Sworn and subscribed before me this 25 day of APRIL, in the year of 2011.
____ Personally known to me or ____ identified by the following document:
Type: _____ Number/Reference: _____

Notary Public for South Carolina
Notary Public (Legal Signature)
Commission Expiration 3/20/2012

Amended

Affidavit of Service

DOCKET NUMBER: 11-cp-18-0871 FILE NUMBER: 014978-00008
COURT OF COMMON PLEAS FOR DORCHESTER COUNTY, SC
CASE STYLE:
PLAINTIFF 50 BY 50 REO, LLC; et seq.
vs.
DEFENDANT JAMIE SINGLETON; et al.
SERVICE OF PROCESS ON: **JAMIE SINGLETON**

METHOD OF SERVICE: **A true and correct copy of the above-described papers were served on the below-named party in the following manner:**

(x) **(PERSONAL)** By personally delivering a copy into the hands of the person to be served.

PLACE OF SERVICE: **5505 ROWSHAM PLACE**
NORTH CHARLESTON, SC 29418

Is the place of service the dwelling house or usual place of abode for the party being served ? (x) Yes ( ) No

DATE OF SERVICE: **04/25/2011** TIME OF SERVICE: **7:30 PM**

TYPE OF DOCUMENTS: (x) SUMMONS & COMPLAINT (x) LIS PENDENS
( ) OTHER:

DESCRIPTION OF PARTY RECEIVING DOCUMENTS: The person receiving the documents is described as follows:

Sex **MALE** ; Race **BLACK** ; Facial Hair **NO** ;
Age(prox.) **36-40** ; Height(prox.) **5'5"** ; Weight(prox.) **200**

MARITAL STATUS: (_) Single (_) Married (_) Separated (x) Unknown

MILITARY STATUS: PER MY INVESTIGATION, SAID PERSON
(_) WAS (_) WAS NOT ENGAGED IN THE U.S. MILITARY AT THE TIME OF SERVICE (x) UNKNOWN
MILITARY BRANCH, IF APPLICABLE:

IS THE SUBJECT PROPERTY A MOBILE HOME? (_) YES (x) NO (_) MOBILE HOME VIN NOT VISIBLE
VIN #:

COMMENTS:

FILED - RECORDED
2011 APR 28 AM 11:07
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Signature of Process Server: The undersigned declares, under penalty of perjury, that the foregoing is true and correct and that the deponent is over the age of 18 and is not a party to nor interested in this action.

NAME: J. A. COX

D. A. Cox 4/27/11
Signature of Process Server Date

STATE OF SC
COUNTY OF Charleston

Sworn and subscribed before me this 27 day of APRIL, in the year of 2011.
✓ Personally known to me or ____ identified by the following document:
Type: _____ Number/Reference: _____

A. M. Lenard
Notary Public for South Carolina
Notary Public (Legal Signature)
Commission Expiration 3/20/2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
DORCHESTER COUNTY	)	CASE NO. 11-CP-18-871
	)	MOTION TO DISMISS
	)	OF JAMIE SINGLETON
50 BY 50 REO, LLC,	)	RULE 12-B-7
Plaintiff,	)	SCRCP
Vs.	)	
JAMIE SINGLETON AND	)	
INDIGO POINTE HOMEOWNERS)		
ASSOCIATION, Defendants		

FILED - RECORDED
2011 MAY 24 AM 11:41
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Comes now the Defendant, Jamie Singleton, through his undersigned attorney, to dismiss this case against said Plaintiff pursuant to Rule 12 (b) (7) of the South Carolina Rules of Civil Procedure based on the following:

PARTIES THAT NEED TO BE JOINED FOR THIS CASE:

I. **DB50 2007-1 Trust**- Defendant craves reference of this Court to Exhibit A which is a Loan Modification Agreement sent to Defendant where DB 50 2007-1 Trust claims to be "owner."

II. **People's Home Choice Home Loan, Inc. and Mortgage Electronic Registration System, Inc. -MERS, Inc.**

Exhibit B is a mortgage securitization audit obtained by Mr. Singleton by Linda Zimmerman, Certified Forensic Loan Auditor. No. 5 of the audit on Pages 2-3 of the Audit detail the errors and/or fraud in the Assignment of Mortgage of 2008 from MERS, Inc. on behalf of People's Choice Home Loan, Inc. to GMAC Mortgage, LLC , GMAC Mortgage Corp. which make it void or, at the very least, dubious as far as validity of the Assignment of Note and Mortgage. A copy of The Assignment of Mortgage is Exhibit C.

Exhibit C also purports to assign the Note. A MERS assignment of Note is completely invalid since MERS is never listed on the Note and Plaintiff has no exhibits nor anything on the public records where People's Choice Home Loan, Inc. authorized MERS to transfer its ownership of the Note.

III. **GMAC Mortgage, LLC GMAC Mortgage Corp.** - Assuming that Exhibit C is valid, Plaintiff has filed this action without recording an assignment of Mortgage from these entities to Plaintiff. Plaintiff has presented no Exhibits with its Complaint, nor any documents on the public record which show Plaintiff has any interest or ownership of the Note.

All of the non-parties mentioned in this Motion are necessary parties pursuant to Rule 19 (a) (2) (ii), SCRCP, as failure to join these parties will cause Defendant Singleton to face multiple obligations for the same ownership of the note and mortgage of this case. Defendant Singleton requests that this Court make an inquiry as to whether it is feasible to join all of the parties listed. If all of the parties listed are feasible to join, Defendant Singleton requests that they be joined. If any of the parties are unfeasible to be joined, Defendant Singleton moves that this case be dismissed. Defendant also moves for any other relief that this Court deems prudent, just and proper!

William H. Sloan
Sloan Law Firm, PA
Post Office Box 85
Summerville, SC 29484
(843) 873-7531
Attorney for Defendant Jamie Singleton
May 20 2011

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

50 by 50 REO, LLC,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

(014978-00008)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-18-0871

NOTICE OF FORECLOSURE INTERVENTION

Deficiency Judgment Demanded

FILED-RECORDED
2011 JUN 15 AM 9:19
CLERK OF COURT
DORCHESTER COUNTY

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you must communicate with and otherwise deal with the Plaintiff through its law firm, Rogers Townsend & Thomas, PC.

Rogers Townsend & Thomas, PC represents the Plaintiff in this action. Our law firm does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration to Rogers Townsend & Thomas, PC within 30 days from the date you are served with this Notice. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, THE FORECLOSURE ACTION MAY PROCEED.**

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
John P. Fetner (SC Bar #77460)
Vance L. Brabham, III (SC Bar #71250)
Cheryl H. Fisher (SC Bar #15213)
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Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Kochler (SC Bar #74935)
Kelsey K. Lipscomb (SC Bar #77519)
Andrew W. Montgomery (SC Bar #79893)
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Columbia, SC 29210
(803) 744-4444

Columbia, South Carolina
June 8, 2011
13

FILED - RECORDED
2011 JUL -6 PM 1:36
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

SLOAN LAW FIRM, PA
Post Office Box 85
SUMMERVILLE, SC 29484
843-873-7531 PH
843-873-7527 FAX
William H. Sloan, Jr.

July 6, 2011

Robert Davis, Esq.
Rogers Townsend and Thomas
Post Office Box 100200
Columbia, SC 29202

Re: 50 by 50 REO, LLC vs. Jamie Singleton et al.
Case No. 2011-CP-18-871

Dear Mr. Davis:

I am in receipt of your Notice of Foreclosure Intervention of June 13 in this matter. I wish to respond in the affirmative that Mr. Singleton wishes to fully explore Foreclosure Intervention in this case that is required by the 2011 Administrative Order. You may communicate with me on behalf of Mr. Singleton to explore all of these possibilities.

If you have any questions, please advise. Thank you for your attention to this matter. With kind regards, we are

SLOAN LAW FIRM
Yours Truly,

William H. Sloan

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
50 by 50 REO, LLC,
Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;
Defendant(s).

(014978-00008)

IN THE COURT OF COMMON PLEAS
DOCKET NO. 11-CP-18-0871

ATTORNEY CERTIFICATION
Deficiency Judgment Demanded
(Mortgagor Denied)

FILED-RECORDED
2011 DEC 19 PM 4:41
CHERYL L. [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Pursuant to Supreme Court Administrative Order 2011-05-02-01 ("the Order"), and upon information and belief, the undersigned attorney hereby certifies the following:

1) That the Mortgagor, as defined by the Order, has been served with notice of required foreclosure intervention;

2) That Plaintiff or its designated agents have received and examined all records and documents (if any) submitted by the Mortgagor to evaluate the loan for foreclosure intervention;

3) That the Mortgagor has been given a full and fair opportunity to submit any additional information pertaining to the subject loan to Plaintiff or its agents for consideration;

4) That after a complete review of all available information, Plaintiff has determined, as of December 13, 2011 that the Mortgagor does not qualify for any foreclosure intervention options as contemplated by the Order;

5) That on December 16, 2011, a Notice of Foreclosure Intervention Denial was served on the Mortgagor(s) as required by the Order and Plaintiff has not entered into any other settlement agreements with the Mortgagor(s) as of the date stated in Plaintiff's Notice of Foreclosure Intervention Denial.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Mordecai Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
John P. Fetner (SC Bar #77460)
Andrew W. Montgomery (SC Bar #79893)
Andrew A. Powell (SC Bar #100210)
220 Executive Center Drive
Columbia, SC 29210
Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
William S. Koehler (SC Bar#74935)
Jaclynn B. Goings (SC Bar #77501)
Kelsey K. Lipscomb (SC Bar #77519)
Taryn M. Zange (SC Bar #70357)
Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
December 16, 2011

16

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO. 11-CP-18-0871
50 by 50 REO, LLC, Plaintiff, v. Jamie Singleton; Indigo Pointe Homeowners Association; Defendant(s).	NOTICE OF MOTION AND MOTION OF THE PLAINTIFF FOR SUMMARY JUDGMENT Deficiency Judgment Demanded

(014978-00008)

FILED - RECORDED
2012 JUN 14 AM 11:39
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

TO: WILLIAM H. SLOAN, ESQ., ATTORNEY FOR JAMIE SINGLETON, DEFENDANT

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service hereof or as soon thereafter as counsel may be heard, the plaintiff, 50 by 50 REO, LLC, will move before this Honorable Court for an Order granting its motion for summary judgment pursuant to Rule 56, SCRCP. Specifically, based on the pleadings, the memorandum in support of this motion and the affidavits which will be filed in support of this motion, the Defendants have raised no genuine issue as to any material fact contained in the Plaintiff's pleadings and Plaintiff is therefore entitled to summary judgment as a matter of law.

Respectfully submitted,

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)
Reginald P. Corley (SC Bar #69453)
Ellie C. Floyd (SC Bar #68635)
Eve Moredock Stacey (SC Bar #5300)
Robert P. Davis (SC Bar #74030)
Vance L. Brabham, III (SC Bar #71250)
Andrew W. Montgomery (SC Bar #79893)
Cheryl H. Fisher (SC Bar #15213)
Jennifer W. Rubin (SC Bar #16727)
Michael P. Morris (SC Bar #73560)
Mary R. Powers (SC Bar #16534)
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220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
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Columbia, South Carolina
June 12, 2012

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO. 11-CP-18-0871
50 by 50 REO, LLC, Plaintiff, v. Jamie Singleton; Indigo Pointe Homeowners Association; Defendant(s).	NOTICE OF HEARING ON MOTION OF THE PLAINTIFF FOR SUMMARY JUDGMENT Deficiency Judgment Demanded

FILED - RECORDED
2012 JUN 14 AM 11:36
CHERYL CHRISTMAN
CLERK OF COURT
DORCHESTER COUNTY

(014978-00008)

TO: WILLIAM H. SLOAN, ESQ., ATTORNEY FOR JAMIE SINGLETON, DEFENDANT

YOU WILL PLEASE TAKE NOTICE that a Motion for Summary Judgment hearing has been scheduled in the above-referenced matter for **June 27, 2012 at 2:00 PM**. Said hearing is to be held before Maite Murphy, Master in Equity for Dorchester County, located at **5200 East Jim Bilton Blvd. St. George, SC 29477**. Pursuant to S.C. Code Ann. § 14-11-110 (as amended), if the court grants Plaintiff's motion for summary judgment, its counsel will submit written testimony on behalf of the Plaintiff regarding the amount of the debt and other matters contained in the complaint at the hearing listed above.

Occupants who are tenants under a valid lease agreement dated on or before May 20, 2009 may be entitled to protections under The Protecting Tenants at Foreclosure Act (Title VII, S.896). If the occupant believes this Act applies, then occupant should attend the hearing listed above to present supporting documentation.

(SIGNATURE PAGE FOLLOWS)

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
Samuel C. Waters (SC Bar #5958)
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Columbia, South Carolina
June 12, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

50 by 50 REO, LLC,

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendant(s).

(014978-00008)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 11-CP-18-0871

AMENDED NOTICE OF HEARING

2012 JUN 21 PM 1:07
CLERK OF COURT
DORCHESTER COUNTY

TO: WILLIAM H. SLOAN, ESQ., ATTORNEY FOR JAMIE SINGLETON, DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the Defendant's Motion for Dismissal has been scheduled in the above-referenced matter for **June 27, 2012 at 2:00 PM**. Said hearing is to be held before Maite Murphy, Master in Equity for Dorchester County, located at **5200 East Jim Bilton Blvd. St. George, SC 29477**. The Plaintiff's Motion for Summary Judgment, originally scheduled to be heard at this time, will be rescheduled.

Occupants who are tenants under a valid lease agreement dated on or before May 20, 2009 may be entitled to protections under The Protecting Tenants at Foreclosure Act (Title VII, S.896). If the occupant believes this Act applies, then occupant should attend the hearing listed above to present supporting documentation.

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF
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Columbia, South Carolina
June 20, 2012

STATE OF SOUTH CAROLINA DORCHESTER COUNTY	))	COURT OF COMMON PLEAS CASE NO. 11-CP-18-871
50 BY 50 REO, LLC, Plaintiff, Vs. JAMIE SINGLETON AND INDIGO POINTE HOMEOWNERS) ASSOCIATION, Defendants.	)))))	ANSWER AND COUNTERCLAIM OF JAMIE SINGLETON

FILED - RECORD
2012 JUL 11 PM 1:54
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Comes now, Defendant Jamie Singleton, to first Answer the Complaint against him and file a Counterclaim against Plaintiff as follows:

Any item that is not specifically and fully admitted is denied.

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

1. Defendant (Singleton only) admits No. 1 of complaint.
2. Defendant denies No. 2 of Complaint and demands strict proof thereof.
3. Defendant denies No. 3 of Complaint.
4. Defendant requires a more definitive statement to No. 4 of Complaint before it can answer. Defendant does not know who the servicer is and does not know the investor mentioned in No. 4. Further, No. 4 of Complaint as it is states is a violation of the ***Administrative Order of Chief Justice Toal dated May 22, 2009 RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)***

No. 4 of Complaint states that Modification attempts cannot be completed and have not been completed per the requirements of the ***Administrative Order*** mentioned above. Therefore, because of the defects admitted in No. 4 of Complaint, the Complaint states a claim where relief cannot be granted and this case should be dismissed under Rule 12-b-6, SC Rules of Civil Procedure and/or this case should be stayed per the said ***Administrative Order*** until the investor gives the servicer the authority to negotiate and actually does negotiate a mortgage modification in this case.

5. Defendant admits No. 5 of Complaint.
6. With regards to No. 6 of Complaint, Defendant admits Defendant Indigo Pointe may have a lien on the subject property. Defendant Singleton does not admit the validity of any such lien filed on his property by Co-Defendant Indigo Pointe.
7. Defendant admits that he signed such a promissory Note as mentioned in No. 7. To non-party People's Choice Home Loans, Inc. Defendant does not admit the validity of such Note or that the Plaintiff has any right to enforce said Note.

8. Defendant admits that he signed a Mortgage in favor of Non-parties MERS, Inc. and People's Choice Home Loan, Inc. as noted in No. 8 of Complaint. Defendant denies the validity of Plaintiff to enforce such Mortgage.
9. Defendant admits No. 9 that all the documents were recorded as such. Defendant denies the remainder of No. 9 as far as validity of all the documents.
10. Defendant denies No. 10 of Complaint.
11. Defendant requests a more definitive statement as to No. 11 of Complaint as No. 11 of Complaint does not actually state whether Plaintiff or its agents sent any Notices to the Defendant.
12. Defendant is without information and belief sufficient to admit or deny No. 12 of Complaint, and therefore, denies same, and demands strict proof thereof.
13. Defendant denies No. 13 of Complaint that Plaintiff has the right to demand such deficiency balance. Defendant need not admit or deny No. 13 of Complaint as it is a prayer for relief. Plaintiff's predecessor in interest, GMAC Mortgage, LLC, waived its right to a deficiency against Mr. Singleton in this Court in case number 2008-CP-18-871. Therefore, judicial estoppel should apply in this case.
14. Plaintiff admits No. 14 of Complaint that counsel has been hired by the servicer. Defendant denies the remainder of No. 14 of Complaint.
15. Defendant lacks information sufficient to answer No. 15 of Complaint as Plaintiff has not specified any such payments made for taxes or insurances that they have made.
16. No. 16 of Complaint is a prayer for relief and Defendant need not respond to same and Defendant denies that they are entitled to same.
17. Defendant admits No. 17 of Complaint that Defendant Indigo may have an interest in property. Defendant denies the validity of such liens filed by Indigo.

II. MOTION FOR MORE DEFINITIVE STATEMENT

18. Defendant repeats §1-17 of the Answer as if they were repeated verbatim right here.
19. Defendant Singleton cannot respond to No. 4 of Complaint and requests a more definitive statement.
20. With regards to No. 4, Plaintiff has failed to state the investor that must approve a modification and has failed to mention the servicer. Defendant requests that Plaintiff identify the servicer and the investor that must approve any modification in this case before Defendant can respond to it.

III. MOTION TO DISMISS RULE 12-B-6 OR MOTION TO STAY

21. Defendant repeats §1-20 of Answer as if they are repeated verbatim right here.
22. No. 4 of Complaint claims the mortgage that is the subject of this case is not subject for modification because the investor has failed to give permission to the servicer to negotiate a modification.
23. This is not sufficient reason for the investor of the Mortgage to deny the Defendant a modification as mentioned in No. 1 of ***Administrative Order*** of 2009 mentioned in No. 4 of this Answer. The Plaintiff admitted that it is participating

in the applicable Home Affordable Modification Program, "HMP". The ***Administrative Order*** is applicable for this loan as this loan was originated before 2009 and is the primary residence of the Defendant.

24. Therefore, the Plaintiff has failed to state a cause of relief where relief can be granted at this time and this case should be dismissed per Rule 12-b-6, SCRCP or the Court should order the case be stayed until attempts at HMP Modification have been completed per the aforementioned ***Administrative Order.***

IV. MOTION TO DISMISS- FAILURE TO JOIN NECESSARY PARTY

25. Defendant repeats §1-24 of this Answer as if repeated verbatim right here.
26. On November 23, 2011, the alleged servicer of this Mortgage, AMS Servicing, LLC, sent Mr. Singleton a letter, Exhibit A, stating that US Bank, NA, as Trustee, for FRT 2011-1, is now the owner of his mortgage. AMS Servicing, LLC has claimed to be the servicer for the Plaintiff as well.
27. This letter should therefore, force an inquiry by this Court to determine the interests of US Bank, NA, as Trustee for FRT 2011-1
28. Failure to join US Bank, NA, as Trustee for FRT 2011-1 will potentially cause Mr. Singleton to face double liability in this case from them and the Plaintiff.
29. Therefore, Defendant Singleton moves before this Court to either join US Bank, NA, as Trustee for FRT 2011-1 as a party to this case or to dismiss this case if it is not feasible or possible to join them as a party to this case.

V. AFFIRMATIVE DEFENSE- LACK OF STANDING

30. Defendant repeats §1-29 of this Answer as if repeated verbatim right here.
31. Defendant purports to have standing to bring this action based on an assignment of Mortgage from People's Choice Home Loan, Inc., the original creditor via Mortgage Electronic Registration Systems. Inc. "MERS" to GMAC Mortgage, LLC and then a subsequent assignment to the Plaintiff from said GMAC.
32. MERS, Inc. has no authority to assign the mortgage that is the subject of this case. There is no Power of Attorney in this matter recorded which allows MERS, Inc. to assign the mortgage of this case. Therefore, the chain of custody of the Mortgage in this case has been broken the Plaintiff lacks the ownership of the Mortgage and the standing to sue in this case.

VI. AFFIRMATIVE DEFENSE- INSURANCE

33. Defendant repeats §1-32 of this Answer as if repeated verbatim right here.
34. Defendant asserts assert that that is mortgage is a securitized mortgage loan trust, and that in connection with the formation thereof and pursuant to applicable rules and regulations of the Securities and Exchange Commission, one or more insurances was/were placed on the loan the subject hereof in connection

therewith. Such insurances, and other credit enhancements available to the securitized mortgage loan trust, provide benefits on default by the borrower with no recourse or subrogation against the borrower. To the extent that any benefits were paid on default as a result of available credit enhancements or other insurances, Defendant is entitled to a setoff as to any amounts claimed due by Plaintiff herein.

VII. AFFIRMATIVE DEFENSE- UNCLEAN HANDS

35. Defendant repeats §1-34 of this Answer as if repeated verbatim right here.
36. Plaintiff has brought this case forward with unclean hands and should be barred from relief under the equitable doctrine of unclean hands.

VIII. AFFIRMATIVE DEFENSE- WAIVER AND LACHES

37. Defendant repeats §1-36 of this Answer as if repeated verbatim right here.
38. Defendant asserts the defense of waiver and laches in this case, especially with regards for the right of Plaintiff to recover a deficiency balance in this case. GMAC Mortgage, LLC, alleged former holder and owner of the Note and Mortgage the subject of this case, waived a deficiency balance on the Note and Mortgage in this case when they sued Defendant Singleton before this Court in 2008 in case number 2008-CP-18-871. This waiver should be held in this equity court against the Plaintiff in this matter.

IX. BAD FAITH AND UNFAIR DEALING RE: ADMINISTRATIVE ORDER

39. Defendant repeats §1-38 of this Answer as if repeated verbatim right here.
40. Defendant alleges that Plaintiff has failed to act in good faith that is required in the foreclosures of primary residences with regards to the ***Administrative Order Re: Mortgage Foreclosures*** dated May 2, 2011. Plaintiff offered a Defendant a "take it or leave it" mortgage modification offer and, as a result, the Defendant believes Plaintiff has failed to act in good faith as required by the ***Administrative Order***. Defendant requests that the Court makes an inquiry into this case and determine whether or not Plaintiff has acted in bad faith or not. This case is applicable to the said ***Administrative Order*** as this is a foreclosure for a property that is the primary residence of the Defendant.

X. AFFIRMATIVE DEFENSE- MORTGAGE UNENFORCEABLE AS THE NOTE AND MORTGAGE HAVE BEEN SEPARATED

41. Defendant repeats §1-40 of this Answer as if repeated verbatim right here.
42. The Note that is the subject of this matter was signed in favor of non-party People's Choice Home Loans, Inc. The Mortgage that is the subject of this action was assigned to non-party Mortgage Electronic Registration Systems, Inc. and then assigned from MERS to Plaintiff.
43. Ownership of the Note and Mortgage have been split forever and therefore, the Mortgage is unenforceable. Per ***Carpenter v. Longan, 16 Wall. 271, 83 U.S. 271, 275, 21 L.Ed. 313 (1872)*** the mortgage, the Security Instrument follows the Note, the Debt Instrument. Therefore, this Note is unsecured and separated from the Note keeping the Plaintiff from validly foreclosing on the Mortgage.

XI. AFFMIRMATIVE DEFENSE-LACK OF VALID NOTICE OF ACCELERATION

44. Defendant repeats §1-43 of this Answer as if repeated verbatim right here.
45. §22 of the Mortgage requires any notice of acceleration come directly from the Lender. Defendant has received no Notice of same from People's Home Choice Home Loan, Inc. the lender listed on the Mortgage, nor MERS, its nominee listed on the Mortgage.
46. Therefore, the Plaintiff lacks the right to accelerate the Note and Mortgage in this case.

XII. AFFIRMATIVE DEFENSE- JUDICIAL ESTOPPEL

47. Defendant repeats §1-46 of this Answer as if repeated verbatim right here.
48. In A 2008 case for foreclosure, Plaintiff's predecessor in interest, GMAC, LLC filed a waiver of deficiency on the mortgage that is the subject of this action.

Judicial estoppel should be applied preventing Plaintiff from demanding a deficiency balance in this case.

XIII. AFFIRMATIVE DEFENSE- RESERVATION OF DEFENSES

49. Defendant repeats §1-46 of this Answer as if repeated verbatim right here.
50. Defendant reserves all other defenses that have not come to light at this time.

COUNTERCLAIM-QUIET TITLE

The answering Defendants, Jamie Singleton, as Counter-Plaintiff, counterclaim against the Counter-Defendant 50 by 50 REO LLC, for Declaratory and Injunctive Relief, and state as follows in support thereof:

A. Parties and Jurisdiction

1. This is an action for declaratory and injunctive relief which is properly within the jurisdiction of this Court as provided by applicable statutes and rules of court.
2. Counter-Plaintiff is and was at all times material *sui juris* residents of the State of South Carolina over the age of eighteen (18) and who are the legal owners of the residential real property the subject of this action located at located at 5505 Rowsham Place, North Charleston, South Carolina 29418 Dorchester County, (hereafter the "Property").
3. Counter-Defendant, 50 by 50 REO, LLC is and was at all times material hereto an entity whose corporate structure is unknown and which purports to be in an alleged trust relationship with an LLC owned and controlled by a Wall Street banking institution, which has subjected itself to the jurisdiction of this Court through the filing of the main action herein.

4. All transactions and occurrences material hereto took place in or were substantially intended to effect real property within Dorchester County, South Carolina making jurisdiction and venue proper.

B. Material Facts Common to All Counts

5. On or about January 4, 2006, Counter-Plaintiffs executed a note and mortgage in favor of non-party People's Choice Home Loan, Inc., (hereafter the "mortgage loan").

6. At some point in time unknown to the Counter-Plaintiffs, the mortgage loan was sold, in parsed fashion, to one or more third parties.

7. On or about April 25, 2011, Counter-Defendant instituted the instant foreclosure action.

8. Counter-Defendant admitted in its Complaint that it did not have an assignment of the Note and Mortgage when the Complaint was filed. The assignment of Mortgage from non-party GMAC to Plaintiff occurred in August 2011, months after the filing of this Complaint.

9. Following the filing of the Counter-Plaintiffs' Motion to Dismiss, Counter-Defendant produced an alleged "Assignment of Mortgage" by which non-party GMAC purported to assign the Note and Mortgage to Plaintiff. In addition, there is an Assignment of the Note and Mortgage from original creditor People's Choice Home Loan, Inc. by Mortgage Registrations Systems, Inc. ("MERS"), as nominee for People's Choice Home Loan, Inc. to GMAC which purported to assign the Mortgage and Note in the first place.

10. The purported Assignment of Mortgage from People's Choice Home Loan, Inc. to GMAC is defective as a matter of law as MERS has no legal authority, as "nominee", to transfer anything, and thus the true owner and holder of the Note and Mortgage are unknown. Rule 17(a), South Carolina Rules of Civil Procedure require that "every action shall be prosecuted in the name of the real party in interest."

COUNT I: DECLARATORY RELIEF

11. Counter-Plaintiffs reallege and reaffirm paragraphs 1 through 10 hereinabove as if set forth more fully hereinbelow.

12. This is an action for declaratory relief which is brought pursuant to SC Code. 15-53-10 *et seq.*

13. Pursuant to SC Code 15-53-20, this Court has the power and authority to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

14. Pursuant to SC Code 15-53-30, any person interested under, *inter alia*, a deed or written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a contract may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder.

15. SC Code 15-53-130 provides that the chapter is declared to be remedial and its purpose to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

16. Counter-Plaintiffs and Counter-Defendant are "persons" within the meaning of SC Code 15-53-30.

17. Counter-Plaintiff is a person who have an interest under a deed to the Property and the mortgage loan contract and whose rights and status have been affected by the Counter-Defendant's actions. Counter-Plaintiff is thus entitled to have determined the question of their rights and status as to the Property and in connection with the mortgage loan, and obtain a declaration of rights and status with respect thereto.

18. SC Code 15-53-60 provides that the enumeration in SC Code 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in SC Code 15-53-20 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove the uncertainty.

19. Counter-Plaintiff has requested further relief in the form of injunctive and other relief. SC Code 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper, and that the application for such relief shall be made to a court having jurisdiction to grant the relief. This Court has such jurisdiction.

20. As set forth above, Counter-Plaintiff's rights and legal status as to the Property and under the mortgage loan contract have been affected by the Counter-Defendant's actions in seeking to foreclose on the Property through a legally faulty and ineffective "Assignment".

21. Counter-Plaintiff thus requests that this Court issue and decree that Counter-Defendant has no legal interest in either the note or the mortgage, and that thus

Counter-Defendant does not possess the requisite legal standing to institute a foreclosure.

22. As the disposition of this claim necessarily involves the determination of an issue of fact, SC Code 15-53-90 provides that such issue and determination may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in this Court.

23. Counter-Plaintiff also requests, pursuant to SC Code 15-53-100, that they be awarded their costs as are equitable and just.

WHEREFORE, having Answered Plaintiff's Complaint, Defendant Singleton moves before this Court for the following:

A. Dismissal of this action with prejudice.
B. A declaration that the Plaintiff is not the holder in due course nor a valid holder for the note and/or the mortgage or the real party in interest and therefore, not legally entitled to foreclose on the property the subject of this action.
C. Costs of this action awarded to these Defendants.
D. Any other such relief this Court deems prudent, just and proper.

WHEREFORE, Counter-Plaintiffs having fully complained of Counter-Defendants herein, Counter-Defendants pray from this Court:
A decree that the Counter-Defendant has no legal interest in either the note or the mortgage, and that thus Counter-Defendant does not possess the requisite legal standing to institute a foreclosure, with Counter-Plaintiffs requesting such relief for the reasons set forth, and for any other and further relief which is just and proper including any attorneys' fees and costs as permitted or provided by law.

William H. Sloan
Attorney for Defendant Singleton
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
July 10, 2012

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	DOCKET NO.: 2011-CP-18-0871
50 by 50 REO, LLC, Plaintiff, vs. Jamie Singleton; Indigo Pointe Homeowners Association, Defendants.	REPLY

FILED-RECORDED
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CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

(514978-00008 JJH)

The Plaintiff 50 by 50 REO, LLC, by way of Reply to the Counterclaim of Defendant Jamie Singleton ("Defendant") herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE TO ALL COUNTERCLAIMS
(Qualified General Denial)

1. That each and every allegation contained in the Answer and Counterclaim which is not specifically admitted or otherwise qualified is denied.

2. Paragraphs 1 through 3 do not require a response. To the extent that a response is required, they are denied.

3. Paragraph 4 is denied.

4. Paragraphs 5 through 17 do not require a response. To the extent that a response is required, they are denied.

5. No response to Paragraphs 18 through 31 is necessary, but to the extent a response is deemed required, they are denied.

6. Paragraph 32 is denied.

7. No response to Paragraphs 33 is necessary, but to the extent a response is deemed required, it is denied.

8. Paragraph 34 is denied.

9. No response to Paragraph 35 is necessary, but to the extent a response is deemed required, it is denied.

10. Paragraph 36 is denied.

11. No response to Paragraph 37 is necessary, but to the extent a response is deemed required, it is denied.

12. Paragraph 38 is denied.

13. No response to Paragraph 39 is necessary, but to the extent a response is deemed required, they are denied. it is denied.

14. Paragraph 40 is denied.

15. No response to Paragraph 41 is necessary, but to the extent a response is deemed required, it is denied.

16. Paragraphs 42 and 43 are denied.

17. No response to Paragraph 44 is necessary, but to the extent a response is deemed required, it is denied.

18. Paragraph 45 is denied.

19. Paragraph 46 is denied.

20. No response to Paragraph 47 is necessary, but to the extent a response is deemed required, it is denied.

21. Paragraph 48 is denied.

22. No response to Paragraphs 49 and 50 are necessary, but to the extent a response is deemed required, they are denied.

As to the Counterclaim-Quiet Title

23. Plaintiff is without information sufficient to admit or deny paragraphs 1 through 4

and therefore denies same.

24. Paragraph 5 is admitted.

25. Plaintiff is without information sufficient to admit or deny paragraph 6 and therefore denies same.

26. Paragraph 7 is admitted.

27. Paragraph 8 is denied insomuch as Plaintiff 50 by 50 REO, LLC did not allege in the complaint that it did not have an assignment of the Note and Mortgage at the time the Complaint was filed. The remaining allegations in paragraph 8 are admitted.

28. Paragraph 9 is admitted to the extent the allegations are consistent with the public records of Dorchester County, and the remainder of paragraph 9 is admitted upon information and belief, subject to Plaintiff's review of the documents referenced therein.

29. Paragraph 10 is denied.

30. No response to Paragraphs 11 through 23 are necessary, but to the extent a response is deemed required, they are denied.

31. The subsequent allegations and/or the prayers for relief as set forth in the Answer and Counterclaim following the "WHEREFORE" provision are denied.

FOR A SECOND DEFENSE AS TO ALL COUNTERCLAIMS
(Failure to State a Claim)

32. Defendant's counterclaim fail to state facts sufficient to constitute a cause of action upon which the Court can grant relief.

FOR A THIRD DEFENSE AS TO ALL COUNTERCLAIMS
(Holder in Due Course)

33. Plaintiff or its agent has possession of the Note, which is endorsed in blank, and of an Allonge from GMAC Mortgage, LLC to 50 by 50 REO, LLC. Plaintiff is therefore the

holder of the Note. Plaintiff or its agents purchased and took possession of the Note for value, in good faith, and without notice that the Note would be subject to Defendant's claims or defenses when defendant defaulted on the Note. Therefore, as a holder in due course, Plaintiff took the Note free of Defendant's claims and defenses.

FOR A FOURTH DEFENSE AS TO ALL COUNTERCLAIMS
(Right to Recoupment and to Repayment)

34. Plaintiff's predecessor-in-interest advanced a sum of money to Defendant, which sum Defendant promised to repay in full, with interest at the rate the parties agreed upon. If the Court were to grant Defendant the relief they seek in their counterclaims, Plaintiff would be entitled to the repayment of the sums advanced, plus interest and other relief allowed by the Note and Mortgage.

FOR A FIFTH DEFENSE AS TO ALL COUNTERCLAIMS
(Failure to Mitigate Damages)

35. Defendant failed to mitigate his damages, and this failure bars Defendant from recovering those damages that he could have prevented by the exercise of reasonable care.

FOR A SIXTH DEFENSE AS TO ALL COUNTERCLAIMS
(Liability/Remedy Limitations)

36. Defendant's counterclaims and remedies are limited, restricted, or excluded by the provisions of the loan documents, including the Note and Mortgage. Further, Plaintiff's liability, if any, may be limited, restricted, or excluded by the rights, responsibilities, and liability of Defendant and/or third parties, either by contract, statute, or equity.

FOR A ELEVENTH DEFENSE AS TO ALL COUNTERCLAIMS
(Non-waiver)

37. Plaintiff reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Reply to the Answer and Counterclaim, Plaintiff prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss the counterclaims;
2. Grant Plaintiff judgment on its Complaint;
3. Award to Plaintiff reasonable attorney's fees and costs in accordance with the terms of the Note and Mortgage; and
4. Award to Plaintiff such other and further relief as may be just and proper.

John J. Hearn (SC Bar # 6635)
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ATTORNEYS FOR THE PLAINTIFF

August 9, 2012

STATE OF SOUTH CAROLINA DORCHESTER COUNTY	))	COURT OF COMMON PLEAS CASE NO. 11-CP-18-871
	)	Motion to Disburse Insurance
50 BY 50 REO, LLC, Plaintiff, Vs. JAMIE SINGLETON AND INDIGO POINTE HOMEOWNERS) ASSOCIATION, Defendants.	)))))	Proceeds

FILED - RSCCH
2012 SEP -6 PM 2:40
CHERYL ... CLERK OF ... DORCHESTER ...

Comes now Jamie Singleton, moving before this Court as follows:

1. The property that is the subject of this matter is insured with Liberty Mutual Insurance.
2. On June 17, 2012, the property suffered damage to the kitchen which totaled approximately $21,901.00.
3. Plaintiff's agent, AMS Servicing, Inc., sent documents to Defendant to facilitate the agreement for disbursement of insurance proceeds to the contractor picked by Defendant which is Benjiman C. Crawford, Crawford Construction.
4. Defendant, upon information and belief, is under the understanding that Liberty Mutual Insurance has already approved the disbursement proceeds for this case as evidenced by sending Mr. Singleton the check for the loss minus Mr. Singleton's deducible. Mr. Singleton endorsed this check and sent it to Plaintiff's agent, AMS Servicing for disbursement to Crawford Construction.
5. Plaintiff, through its agent, has acted in bad faith to facilitate the disbursement of the settlement proceeds to the contractor to the detriment of Defendant. Crawford needs a certain amount of money up front to complete the rebuilding of the kitchen as he will explain at the hearing on this Motion.
6. Further, if Defendant failed to obtain estimates for the repair of this property and file this Motion, Defendant would violate No. 7 of the Mortgage which requires the Borrower to not allow the property to deteriorate.
7. Defendant maintains the position that any excess funds from this insurance payment shall go to the real party in interest that owns the note in this case. It would be a severe financial hardship for the Defendant to pay for the costs of the repairs upfront.
8. This Court has the authority to order the timely disbursement of the proceeds with its equitable authority.
9. Exhibits of this agreement between the parties will be included prior to the hearing of this Motion which includes why the contractor needs a certain amount of money up front to complete the job.
10. Counsel consulted with Plaintiff's counsel and filed the Motion when it was obvious that it became necessary and believes he complied with Rule 11.

WHEREFORE, Defendant Singleton moves for the following relief before this Court:

A. Disbursement of the Insurance Proceeds consistent with the wishes of the contractor.
B. Any other relief that this Court deems prudent, just and proper.

William H. Sloan
Sloan Law Firm
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Defendant Singleton
September 4, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

50 by 50 REO, LLC,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

(506263-02419 JJH)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-0871

PLAINTIFF'S MOTION TO SUBSTITUTE PLAINTIFF

RE-RECORDED
2012 SEP 25 AM
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff 50 by 50 REO, LLC respectfully moves the court for an Order substituting US Bank, N.A., as Trustee of the FRT 2011-1 Trust for 50 by 50 REO, LLC as the Plaintiff in this action, and further requests that this motion be heard together with the motions previously scheduled in this matter on October 8, 2012 at 11:30 a.m.

On September 22, 2012, the undersigned counsel emailed Plaintiff with an Assignment of Mortgage from 50 by 50 REO, LLC to US Bank, N.A., as Trustee of the FRT 2011-1 Trust as well as an Allonge to the Note at issue in this case. Counsel has instructed Plaintiff to review, confirm, and properly execute the Assignment and Allonge, and to return those documents to counsel. On receipt, the Assignment will be promptly recorded in the Office of the Register of Deeds for Dorchester County

As US Bank, N.A., as Trustee of the FRT 2011-1 Trust will be the holder of the Note upon execution of the Allonge, I respectfully request that US Bank, N.A., as Trustee of the FRT 2011-1 Trust be substituted for 50 by 50 REO, LLC as the Plaintiff in this action.

John J. Hearn (SC Bar # 6635)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR THE PLAINTIFF

Rogers Townsend & Thomas, PC and its staff are debt collectors.

September 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-18-0871

FD-RECORD
2013 JUL -8 AM 11:22
CLERK OF COURT
DORCHESTER COUNTY

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

PRIORITY MATTER

PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

(514978-00008 JJH)

TO: WILLIAM H. SLOAN, ESQUIRE, AND W. JEFF BARNES, ESQUIRE, ATTORNEYS FOR DEFENDANT JAMIE SINGLETON

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the court, the Plaintiff US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff") will move the court for the issuance of a protective order limiting the deposition of James George pursuant to Rule 26(c) of the *South Carolina Rules of Civil Procedure*. This motion is designated as a priority matter pursuant to Rule 40 (a)(2), SCRCP. Plaintiff seeks a hearing at the court's earliest opportunity pursuant to Rule 40(h), SCRCP.

The grounds for this motion are as follows:

1. On June 7, 2013, Defendant Jamie Singleton's counsel served a Notice of Taking Deposition of Plaintiff's Designated Representative, James George. This deposition is set for July 9, 2013, at 11:00 a.m. The notice for this deposition is attached hereto as Exhibit A. An unsigned amended version of the Notice of Taking Deposition of Plaintiff's Designated Representative was served via email to the undersigned counsel on July 1, 2013 and is attached as Exhibit B ("Notice").
2. The Notice is impermissibly overbroad and beyond the scope of a proper Rule 30(b)(6), SCRCP request.

3. Specifically, Plaintiff objects to the following topics as improper:

   A. Paragraph 4, which seeks 30(b)(6) testimony regarding "[a]ll facts and circumstances evidencing, relating to or concerning the origination of the mortgage transaction which is the subject of this action."

Plaintiff did not originate this loan. This testimony is beyond the scope of the deponent's knowledge and the deponent's ability to testify on this topic is limited. Additionally, Plaintiff submits that such testimony, if it were available, is not reasonably calculated to result in the discovery of admissible evidence.

   B. Paragraph 5, which seeks 30(b)(6) testimony regarding "[t]he history of the transfer of the Note and Mortgage from the original lender identified on the Note and Mortgage to any entity at any time."

Plaintiff is not the original lender. Plaintiff is the current holder of the Note, which is specially endorsed to Plaintiff. Plaintiff is the assignee of record of the Mortgage. The deponent can offer only limited testimony on the history of the Note and Mortgage before it was acquired by Plaintiff. Additionally, Plaintiff submits that such testimony, if it were available, is not reasonably calculated to result in the discovery of admissible evidence.

   C. Paragraph 6, which seeks 30(b)(6) testimony regarding "[a]ll facts and circumstances relating to or concerning each and every assignment or transfer of the note and mortgage which are the subject of this action, including all related documents such as but not limited to powers of attorney, corporate authorizations, and other documents regarding the grant of any authority for such assignment or transfer."

Again, Plaintiff is not the original lender. Plaintiff is the current holder of the Note, which is specially endorsed to Plaintiff. Plaintiff is the assignee of record of the Mortgage. The deponent can offer only limited testimony on the history of the Note and Mortgage before it was acquired by Plaintiff. Additionally, Plaintiff submits that such testimony, if it were available, is not reasonably calculated to result in the discovery of admissible evidence.

   D. Paragraph 7, which seeks 30(b)(6) testimony regarding "Mortgage Electronic Registration Systems, Inc.'s ("MERS") terms and conditions, and limitations on MERS' authority."

Plaintiff is not MERS. Plaintiff's deponent has neither authority from MERS nor any knowledge that would allow him to testify in any way regarding this topic. Additionally, Plaintiff submits that such testimony, if it were available, is not reasonably calculated to result in the discovery of admissible evidence.

E. Paragraph 8, which seeks 30(b)(6) testimony regarding "[t]he terms and conditions for the transfer of mortgage loans from the originating lender to the Plaintiff, including but not limited to:

(a) Timing of transfer of loans per the Trust documents, including but not limited to the Pooling and Servicing Agreement (hereafter "PSA");

(b) Restrictions on transfer of non-performing (a/k/a "toxic") loans to the Trust.

(c) Timing of loan transfer relative to borrower's initial mortgage payment.

(d) Chain of indorsemnts and assignments including not only evidence of the physical delivery of the note and mortgage but also interim assignments of mortgage in recordable form and interim indorsements of the note.

(e) Occurrence of a "True Sale" under IRS Rule 860 including evidence of actual consideration exchanged for purchase and assignment of the loan.

(f) Compliance with New York Trust Law as applicable to PSA and related securitized mortgage loan trusts."

Plaintiff is not the original lender. Plaintiff is the current holder of the Note, which is specially endorsed to Plaintiff. Plaintiff is the assignee of record of the Mortgage. The deponent can offer only limited testimony on the history of the Note and Mortgage before it was acquired by Plaintiff. Additionally, Plaintiff submits that such testimony, if it were available, is not reasonably calculated to result in the discovery of admissible evidence. Plaintiff further submits that this topic is impermissibly vague. Finally, Plaintiff's deponent is not a lawyer and has no special knowledge of "New York Trust Law."

F. Paragraph 9, which seeks 30(b)(6) testimony regarding "[a]ll credit default swaps, credit enhancements, reserve pools, insurances, or other sources of funds available to the Plaintiff to absorb losses on mortgage loans transferred or assigned to the Trust, and including claims procedures, reservations of rights, triggering events for payment, and any subrogation provisions."

Plaintiff's representative can offer only limited testimony regarding these documents. This request is both impermissibly vague and overreaching. Additionally, to the extent such documents as requested actually exist, Defendants are not in any way beneficiaries of those instruments. Accordingly, Plaintiff submits that such testimony, if it were available, is not reasonably calculated to result in the discovery of admissible evidence.

AFFIRMATION OF COUNSEL

The undersigned attorney has not communicated with Defendant Jamie Singleton's counsel as this is a foreclosure action exempt from the consultation provisions of Rule 11,

SCRCP. Additionally, the undersigned believes a consultation would serve no useful purpose.

John J. Hearn (SC Bar # 6635)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
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(803)771-7900
john.hearn@rtt-law.com
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

July 5, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA DORCHESTER COUNTY	))	COURT OF COMMON PLEAS CASE NO. 11-CP-18-871
US Bank, NA, as Trustee, for FRT 2011-1, Plaintiff, Vs. JAMIE SINGLETON AND INDIGO POINTE HOMEOWNERS) ASSOCIATION, Defendants.	)))))	**NOTICE OF TAKING DEPOSITION OF PLAINTIFF's DESIGNATED REPRESENTATIVE** DATE TIME AND PLACE AGREED BY COUNSEL

2013 JUL -8 AM 11:22
CLERK OF COURT
DORCHESTER COUNTY
CO-RECORDER

To: John J. Hearn, Esq.
Rogers, Townsend and Thomas
Post Office Box 100200
Columbia, SC 29202

YOU ARE HEREBY NOTIFIED that the undersigned will take the deposition, for purposes of discovery and trial, of the designated representative of the Plaintiff, as follows:

Name: James George
Date: July 9, 2013
Time: 11:00am.
Location: 3374 Walden Ave Depew, NY 14043, Offices of AMS Servicing

The deposition will be taken pursuant to Rule 30-b-6 of the South Carolina Rules of Civil Procedure and the inquiry and testimony will be recorded by a Notary Public or other suitable officer to be determined of the State of New York which has no interest, whether financial or otherwise, in the outcome of this action. The deposition will continue from hour to hour until completed and is expected to last about 2 hours. The deponent will be questioned as to all matters in the Pleadings any responses from Plaintiff to Singleton's discovery, all matters concerning the formation and operation of the Trust that is the Plaintiff in this case, and U.S. Bank National Association's duties, responsibilities, and involvement as Trustee for the Trust named as the Plaintiff.

In addition, the Defendant's attorneys will question the witness on the following:

All matters addressed by the interrogatories to Plaintiff from Singleton including answers and objections thereto.

2. All matters addressed by Singleton's Request for Admissions to Plaintiff, including responses and objections thereto.

3. All matters concerning or relating to Singleton's Request for Production of Documents to Plaintiff (hereafter the "Request for Production", including but not limited to:

   a. Each of Plaintiff's objections and/or responses in Plaintiff's Response to the Request for Production;

   b. Each document produced by Plaintiff in response to the Request for Production;

   c. Each document responsive to the Request for Production but withheld or not produced by Plaintiff for any reason;

   d. The legal and factual bases claimed, asserted or relied upon by Plaintiff in withholding or not producing any document responsive to the Request for Production;

   e. The identity of each and every custodian of records who had or has care, custody or control of any document responsive to the Request for Production, at or after the service date thereof, including each such custodian's name, address, telephone number, job title and relationship to Plaintiff.

   f. The identity of each and every person who participated in the review of documents in connection with the production of documents in response to the Request for Production, including each such person's name, address, telephone number, job title and relationship to Plaintiff;

   g. The identity of each and every person who determined which documents would be produced in response to the Request for Production, including each such person's name, address, telephone number, job title and relationship to Plaintiff;

   h. The location or locations of each original of the documents reviewed by or on behalf of Plaintiff in response to the Request for Production; and

   i. The location or locations of each original of the documents produced by or on behalf of Plaintiff in response to the Request for Production.

4. All facts and circumstances evidencing, relating to or concerning the origination of the mortgage transaction which is the subject of this action.

5. The history of the transfer of the Note and Mortgage from the original lender identified on the Note and Mortgage to any entity at any time.

6. All facts and circumstances relating to or concerning each and every assignment or transfer of the note and mortgage which are the subject of this action, including all related documents such as but not limited to powers of attorney, corporate authorizations, and other documents regarding the grant of any authority for such assignment or transfer.

7. Mortgage Electronic Registration Systems, Inc.'s ("MERS") terms and conditions, and limitations on MERS' authority.

8. The terms and conditions for the transfer of mortgage loans from the originating lender to the Plaintiff, including but not limited to:

(a) Timing of transfer of loans per the Trust documents, including but not limited to the Pooling and Servicing Agreement (hereafter "PSA");

(b) Restrictions on transfer of non-performing (a/k/a "toxic") loans to the Trust.

(c) Timing of loan transfer relative to borrower's initial mortgage payment.

(d) Chain of indorsements and assignments including not only evidence of the physical delivery of the note and mortgage but also interim assignments of mortgage in recordable form and interim indorsements of the note.

(e) Occurrence of a "True Sale" under IRS Rule 860 including evidence of actual consideration exchanged for purchase and assignment of the loan.

(f) Compliance with New York Trust Law as applicable to PSA and related

securitized mortgage loan trusts.

9. All credit default swaps, credit enhancements, reserve pools, insurances, or other sources of funds available to the Plaintiff to absorb losses on mortgage loans transferred or assigned to the Trust, and including claims procedures, reservations of rights, triggering events for payment, and any subrogation provisions.10.

The deposition will be conducted either by William H. Sloan via telephone or W.J. Barnes, Esq., in person if he is admitted pro hac vice to this case.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing has been forwarded, via regular mail to John J. Hearn, Esq., Rogers Townsend, counsel for Plaintiff, at Post Office Box 100200, Columbia, SC 29202 on this 7th day of June, 2013.

William H. Sloan
Attorney for Defendant Singleton
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527

June 7, 2013

EXHIBIT B

STATE OF SOUTH CAROLINA) DORCHESTER COUNTY))	COURT OF COMMON PLEAS) CASE NO. 11-CP-18-871
US Bank, NA, as Trustee, for FRT 2011-1,) Plaintiff,) Vs.) JAMIE SINGLETON AND) INDIGO POINTE HOMEOWNERS) ASSOCIATION, Defendants.)	**NOTICE OF TAKING DEPOSITION OF PLAINTIFF's DESIGNATED REPRESENTATIVE** DATE TIME AND PLACE AGREED BY COUNSEL

2013 JUL -8 AM 11:22
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

To: John J. Hearn, Esq.
Rogers, Townsend and Thomas
Post Office Box 100200
Columbia, SC 29202

YOU ARE HEREBY NOTIFIED that the undersigned will take the deposition, for purposes of discovery and trial, of the designated representative of the Plaintiff, as follows:

Name: James George
Date: July 9, 2013
Time: 11:00am.
Location: 3374 Walden Ave Depew, NY 14043, Offices of AMS Servicing

The deposition will be taken pursuant to Rule 30-b-6 of the South Carolina Rules of Civil Procedure and the inquiry and testimony will be recorded by a Notary Public or other suitable officer to be determined of the State of New York which has no interest, whether financial or otherwise, in the outcome of this action. The deposition will continue from hour to hour until completed and is expected to last about 2 hours. The deponent will be questioned as to all matters in the Pleadings any responses from Plaintiff to Singleton's discovery, all matters concerning the formation and operation of the Trust that is the Plaintiff in this case, and U.S. Bank National Association's duties, responsibilities, and involvement as Trustee for the Trust named as the Plaintiff.

EXHIBIT B

In addition, the Defendant's attorneys will question the witness on the following:

All matters addressed by the interrogatories to Plaintiff from Singleton including answers and objections thereto.

2. All matters addressed by Singleton's Request for Admissions to Plaintiff, including responses and objections thereto.

3. All matters concerning or relating to Singleton's Request for Production of Documents to Plaintiff (hereafter the "Request for Production", including but not limited to:

   a. Each of Plaintiff's objections and/or responses in Plaintiff's Response to the Request for Production;

   b. Each document produced by Plaintiff in response to the Request for Production;

   c. Each document responsive to the Request for Production but withheld or not produced by Plaintiff for any reason;

   d. The legal and factual bases claimed, asserted or relied upon by Plaintiff in withholding or not producing any document responsive to the Request for Production;

   e. The identity of each and every custodian of records who had or has care, custody or control of any document responsive to the Request for Production, at or after the service date thereof, including each such custodian's name, address, telephone number, job title and relationship to Plaintiff.

   f. The identity of each and every person who participated in the review of documents in connection with the production of documents in response to the Request for Production, including each such person's name, address, telephone number, job title and relationship to Plaintiff;

   g. The identity of each and every person who determined which documents would be produced in response to the Request for Production, including each such person's name, address, telephone number, job title and relationship to Plaintiff;

   h. The location or locations of each original of the documents reviewed by or on behalf of Plaintiff in response to the Request for Production; and

   i. The location or locations of each original of the documents produced by or on behalf of Plaintiff in response to the Request for Production.

4. All facts and circumstances evidencing, relating to or concerning the origination of the mortgage transaction which is the subject of this action.

EXHIBIT B

5. The history of the transfer of the Note and Mortgage from the original lender identified on the Note and Mortgage to any entity at any time.

6. All facts and circumstances relating to or concerning each and every assignment or transfer of the note and mortgage which are the subject of this action, including all related documents such as but not limited to powers of attorney, corporate authorizations, and other documents regarding the grant of any authority for such assignment or transfer.

7. Mortgage Electronic Registration Systems, Inc.'s ("MERS") terms and conditions, and limitations on MERS' authority.

8. The terms and conditions for the transfer of mortgage loans from the originating lender to the Plaintiff, including but not limited to:

(a) Timing of transfer of loans per the Trust documents, including but not limited to the Pooling and Servicing Agreement (hereafter "PSA");

(b) Restrictions on transfer of non-performing (a/k/a "toxic") loans to the Trust.

(c) Timing of loan transfer relative to borrower's initial mortgage payment.

(d) Chain of indorsements and assignments including not only evidence of the physical delivery of the note and mortgage but also interim assignments of mortgage in recordable form and interim indorsements of the note.

(e) Occurrence of a "True Sale" under IRS Rule 860 including evidence of actual consideration exchanged for purchase and assignment of the loan.

(f) Compliance with New York Trust Law as applicable to PSA and related

securitized mortgage loan trusts.

9. All credit default swaps, credit enhancements, reserve pools, insurances, or other sources of funds available to the Plaintiff to absorb losses on mortgage loans transferred or assigned to the Trust, and including claims procedures, reservations of rights, triggering events for payment, and any subrogation provisions.10.

The deposition will be conducted by W.J. Barnes, Esq., who has been admitted pro hac vice to this case and is affiliated with Sloan Law Firm, PA in this case.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing has been forwarded, via regular mail to John J. Hearn, Esq., Rogers Townsend, counsel for Plaintiff, at Post Office Box 100200, Columbia, SC 29202 on this __ day of June, 2013.

_____

William H. Sloan
Attorney for Defendant Singleton
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 2011-CP-18-0871

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have on served a copy of the foregoing document upon counsel of record by U.S. Mail, postage prepaid, on July 5, 2013, at the following address:

Document Served:

Plaintiff's Motion for Protective Order

Counsel Served:

William H. Sloan, Esquire (via U.S. Mail and email to sloanlawfirm@yahoo.com)
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

W. Jeff Barnes, Esquire (via email only to jeff@wjbarneslaw.com)

John J. Hearn (SC Bar # 6635)

ED-RECORDED
2013 JUL -8 AM 11:22
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-18-0871

MOTION INFORMATION FORM AND COVER SHEET

FILED - RECORDED
2013 JUL -8 AM 11:22
CLERK OF COURT
DORCHESTER COUNTY

US Bank, NA as Trustee of the FRT 2007-1 Trust, ☐ Plaintiff
v.
Jamie Singleton; Indigo Pointe Homeowners Association ☐ Defendant
(Check box above indicating submitting party)

name, S.C.Bar no, and address of plaintiff's attorney	name, S.C.Bar no, and address of Defendant's attorney
John J. Hearn (SC Bar # 6635) Rogers Townsend & Thomas, PC 220 Executive Center Drive (29210) P.O. Box 100200 Columbia, SC 29202-3200 (803) 771-7900 tel. # (803) 343-7017 fax #	telephone: fax: email: other:

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Protective Order
Estimated Time Needed: _____ Court Reporter Needed: YES/NO

SECTION II: Motion Fee

☑ PAID —AMOUNT: $ 25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent status
- ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act
- ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication
- ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

SECTION III: Motion Type

☑ Written motion attached
☐ Form Motion —
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____
Signature of Attorney for Plaintiff/Defendant

July 5, 2013
Date submitted

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

_____
JUDGE
CODE:_____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by:_____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (11/2003) 513943-00025

FILED - RECORD
2013 SEP 12 PM 12:29
CHERYL
CLERK
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER US Bank, NA as Trustee of the FRT 2011-1 Trust, Plaintiff, vs. Jamie Singleton; Indigo Pointe Homeowners Association, Defendants. (514978-00008 JJH)	IN THE COURT OF COMMON PLEAS OF THE FIRST JUDICIAL CIRCUIT DOCKET NO.: 2011-CP-18-0871 PLAINTIFF'S MOTION TO AMEND RESPONSES TO ADMISSIONS REQUEST

TO: WILLIAM H. SLOAN, ESQUIRE, AND W. JEFF BARNES, ESQUIRE, ATTORNEYS FOR DEFENDANT JAMIE SINGLETON

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the court, the Plaintiff US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff") will move the court for the issuance of an order pursuant to Rule 36(b) of the *South Carolina Rules of Civil Procedure* allowing Plaintiff to amend its responses to the "Requests to Admit of Jamie Singleton to Plaintiff Third." Plaintiff's proposed amended response is attached.

AFFIRMATION OF COUNSEL

The undersigned attorney has communicated with Defendant Jamie Singleton's counsel to seek his consent to this relief, but has not yet received a response.

John J. Hearn (SC Bar # 6635)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
john.hearn@rtt-law.com
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

September 10, 2013

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Docket No.: 2011-CP-18-0871

US Bank, NA as Trustee of the FRT 201 [illegible]

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

FILED - RECORDED
2013 SEP 12 PM 12:29
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

PLAINTIFF'S AMENDED ANSWERS TO DEFENDANT JAMIE SINGLETON'S THIRD SET OF REQUEST FOR ADMISSIONS

(514978-00008 JJH)

TO: WILLIAM L. SLOAN, ESQUIRE, ATTORNEY FOR DEFENDANT JAMIE SINGLETON

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff US Bank, NA as Trustee of the FRT 2011-1 Trust, by and through its undersigned counsel, submits the following Answers to Defendant Jamie Singleton's Third Set of Request for Admissions.

REQUESTS

1. Admit that the Plaintiff is not a holder in due course.

ANSWER: Admitted.

2. Admit that the Defendant did not receive a right of attorney preference per §37-10 et seq., SC Code of Laws 3 days or more prior to the closing date.

ANSWER: Denied. Defendant Jamie Singleton testified at his deposition that he did not remember whether he received this document or not. (Deposition of Jamie Singleton, page 107, line 4.)

John J. Hearn (SC Bar # 6635)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR THE PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

September 10, 2013

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

JAMIE SINGLETON'S MOTION FOR SUMMARYJUDGMENT

FILED - RECORD
2013 SEP 26 PM 3:41
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys, files his Motion for Summary Judgment and requests that Final Summary Judgment be entered in his favor, and as grounds states:

A. Introduction and Undisputed Material Facts

1. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007. This Court may take judicial notice of the People's Choice Bankruptcy pursuant to SCRE Rule 201(b)(2), as the subject bankruptcy filing is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and its accuracy may be ascertained by reference to readily available sources of indisputable reliability. *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App. 2002) citing *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct.App. 1966).

2. The Note and Mortgage pertain to residential real property located at 5505 Rowsham Place, North Charleston, South Carolina (hereafter the "Property").

3. On January 15, 2009, Mr. Singleton received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property

was owned by an entity styled DB50 2007-1 Trust. A copy of the subject letter is attached hereto marked Exhibit "A" and incorporated herein by reference.

4. The named Plaintiff in this case is U.S. Bank, National Association as Trustee for FRT-2011-1 (hereafter "USBTE"). It is without dispute that USBTE was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by an entity styled 50 by 50 REO, LLC, which is also not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

5. There is an "Assignment of Mortgage" which has been recorded in the public records by which an entity known as Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") purported to assign the Mortgage "together with the Note" to GMAC Mortgage, LLC. A copy of this purported Assignment is attached hereto marked Exhibit "B" and incorporated herein by reference.

6. This Assignment is dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, and was executed by one Jeffrey Stephan, a known "robo-signer" who has testified, under oath, that he has no personal knowledge of the thousands of documents he signed on a weekly basis.

7. MERS is not named in the Note; was not the lender; did not extend Mr. Singleton any credit; and never had any interest in the Note.

8. GMAC filed for Bankruptcy on May 14, 2012. As with the People's Choice Bankruptcy filing, this Court may take judicial notice of the GMAC Bankruptcy pursuant to SCRE Rule 201(b)(2), as the subject bankruptcy filing is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, and its

accuracy may be ascertained by reference to readily available sources of indisputable reliability. *Bowers v. Bowers*, 349 S.C. 85, 94, 561 S.E.2d 610, 615 (Ct.App. 2002) citing *Eadie v. H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct.App. 1966).

9. Some time after November 23, 2011, Mr. Singleton received a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC (copy attached hereto marked Exhibit "C" and incorporated herein by reference) which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice), or GMAC, to the FRT 2011-1 Trust.

10. There is a second "Assignment of Mortgage" which was filed in the public records by which 50 by 50 REO, LLC (the entity which was the original named Plaintiff in this case) purportedly assigned the Mortgage to USBTE. A copy of this purported Assignment is attached hereto marked Exhibit "D" and incorporated herein by reference. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note.

11. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to 50 by 50 REO, LLC.

12. On July 9, 2013, counsel for Mr. Singleton took the deposition of one James P. George, an employee of an entity styled AMS Servicing located at 3374 Walden Avenue, Suite 120, Depew, New York (hereafter "AMS"). It is without dispute that AMS is not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. The original transcript of the deposition of Mr. George has been filed together with this Motion.

13. Mr. George testified that he does not deal with USBTE (deposition, page 9, lines 22-23), and that AMS assumed the servicing of the mortgage loan from another entity, that being Wealthbridge Mortgage (deposition, page 12, lines 9-24).

14. Mr. George testified that he had been designated by the named Plaintiff (USBTE) as the representative of the Plaintiff (USBTE), UNDER RULE 30-B-6, SOUTH CAROLNA RULES OF CIVIL PROCEDURE, but that he does not have any dealings with USBTE in his day-to-day operations or job duties (deposition, page 15, lines 7-17).

15. Mr. George testified that he has no knowledge of the alleged assignment from the bankrupt People's Choice to GMAC (deposition, pages 10-14); that he does not know the person who signed the assignment (deposition page 28, lines 5-7); he does not know whether the person who signed the assignment had the authority to do so (deposition, page 26, line 25 and page 27, lines 1-3); and does not know whether or not the assignment was signed before or after the People's Choice bankruptcy (deposition, page 27, lines 4-7).

16. Mr. George testified that he has never seen an order from the bankruptcy court having jurisdiction over the People's Choice bankruptcy which permitted the assignment of the Singleton loan out of the People's Choice bankruptcy estate (deposition, page 27, lines 18-23).

17. Mr. George testified that he did not know whether the Singleton loan was in the inventory of GMAC when it filed bankruptcy in May of 2012 (deposition, page 28, lines 15-18), and he has never seen an Order from the Bankruptcy court having jurisdiction over the GMAC bankruptcy permitting the transfer of the Singleton loan out of the GMAC bankruptcy estate to yet another entity (deposition, page 27, lines 19-25 and page 29, line 1).

18. Mr. George testified that the next transfer was from GMAC to an entity known as 50 by 50 REO, but that he did not know whether the person who signed the assignment from

GMAC to 50 by 50 had the authority to do so when it was signed nor did he know the date when the assignment was signed (deposition, page 29, lines 18-25 and page 30, lines 1-3).

19. Mr. George testified that he has no knowledge as to how the named Plaintiff in this action changed to USBTE, and has no knowledge as to whether the Singleton loan was sold from 50 by 50 to USBTE (deposition, page 32, lines 2-8).

20. Mr. George testified that he has no knowledge as to whether the assignments he testified to claimed to assign the mortgage document or the Note or both (deposition, page 35, lines 5-9).

21. Mr. George testified that he did not participate in the transfer of any documents from any party to USBTE (deposition, page 47, lines 7-11).

B. Applicable Law and Argument

22. SC Code sec. 36-3-203(b), which governs the transfer of instruments and rights acquired by transfer, provides in pertinent part that transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument.

23. SC Code sec. 36-3-203(d) expressly provides that if the transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur and the transferee obtains no rights under the statute and has only the rights of a partial assignee.

24. In South Carolina, the assignment of a mortgage alone does not carry with it an assignment of the Note. *Hahn v. Smith*, 157 S.C. 157, 164, 154 S.E. 112, 115 (1930), cited in *Bank of America, et al. v. Draper*, No. 2012-208806, Opinion No. 5140 (Ct.App. June 5, 2013) and citing SC Code sec. 36-3-203(b).

25. The Statute and the decisional law clearly provide that the transfer of an instrument vests in the transferee any rights the transferor had, and that an assignment of a mortgage alone does not carry with it an assignment of the Note.

26. There is no law which permits a non-lender third party (in this case, MERS) to "assign" an interest of a bankrupt lender. Where there is no law from the appellate courts of South Carolina on a particular issue, the Courts of this state look to their own general principles of law as well as the law of other jurisdictions for instruction. *State v. Williams*, 624 S.E.2d 443, 446, 367 S.C. 192 (SC 2006); *Simmons v. Tuomey Regional Medical Center*, 341 SC 32, 44, 533 S.E.2d 312 (S.C. 2000); *Heilker v. Zoning Bd. of Appeals*, 346 S.C. 401, 407, 552 S.E.2d 42 (S.C. App. 2001); *Hardin Construction Group, Inc. v. Carlisle Construction Company*, 388 S.E.2d 794, 300 S.C. 456 (S.C. 1989).

27. The general principles of law in South Carolina which are set forth in both statutory and decisional law as to what interests, if any, result from an assignment are cited above. The closest case as to the alleged effect of an assignment of an interest in a mortgage by an out-of-business original lender is explained in *Drouin v. American Home Mortgage Servicing, Inc.*, No. 11-cv-596-JL (D. New Hampshire, May 18, 2012). A copy of *Drouin* is attached hereto.

28. In *Drouin*, American Home Mortgage and Wells Fargo claimed to possess an assignment of the homeowners' mortgage from Sand Canyon Corporation, the successor-in-interest to the original lender (Option One). The homeowners claimed that Sand Canyon could not have assigned the mortgage to Wells Fargo because the assignor (Sand Canyon) ceased holding any mortgages years before the assignment. There was evidence presented that Sand Canyon ceased business operations in 2008, yet purportedly assigned the homeowners' mortgage to Wells Fargo on March 24, 2011, with Wells Fargo thereafter instituting foreclosure.

29. The New Hampshire Federal Court relied on New Hampshire case law which provides that a debtor may raise defenses to an assignment and the lack of a plaintiff's title or right to sue, and Section 336 of the Restatement (Second) of Contracts (1981) which provides that by an assignment the assignee acquires a right against the obligor only to the extent that the obligor is under a duty to the assignor; and if the right of the assignor would be voidable by the obligor *or unenforceable against him if no assignment had been made*, the right of the assignee is subject to the infirmity. (emphasis supplied)

30. Applying the general principles of law and the Restatement of Contracts, the Federal Court found that the homeowners had standing to pursue their claim that since the assigning party did not hold their mortgage, it could not have been assigned to Wells Fargo. The Court cited from the opinion in *Newitt v. Wells Fargo Bank, N.A.*, No. 213-2011-CV-00173 (N.H. Super. July 14, 2011), which held that "[t]he assignment from Sand Canyon to Wells Fargo of an interest which Sand Canyon did not possess" was no more effective to assign the mortgage "than the lack of any assignment at all".

31. South Carolina courts regularly rely upon the principles of the Restatement (Second) of Contracts. *See, e.g., Electro Lab of Aiken v. Sharp Const.*, 357 S.C. 363, 369, 593 S.E.2d 170 (S.C.App. 2004); *Holler v. Holler*, 364 S.C. 256, 612 S.E.2d 469, 475 (SC, 2005); *Collins Entertainment Corporation v. Coats and Coats Rental Amusement*, 629 S>E.2d 635, 637 368 S.C. 410 (S.C. 2006).

32. Applying South Carolina general law, the New Hampshire Federal decision, and the principles of the Restatement (Second) of Contracts to the undisputed facts of this case, the Plaintiff, USBTE, has no interest to enforce. The first Assignment was executed over a year after the original lender was out of business and had filed Bankruptcy, and thus MERS, as the alleged

"nominee" of the bankrupt People's Choice, had nothing to assign. Significant in this regard is that there is no law or evidence which provides that MERS may act on behalf of a bankrupt entity.

33. Compounding that infirmity is the fact that there is no evidence that such assignment was permitted by the Bankruptcy Court having jurisdiction over the bankruptcy of the original lender, and no evidence of any lawful transfer of either the Note or the Mortgage from the bankrupt People's Choice to the DB50 2007-1 Trust or any other entity as alleged in the January 15, 2009 letter to Mr. Singleton from MHLCC.

34. There is also no evidence of any transfer of either the Note or the Mortgage from the DB50 2007-1 Trust to any person or entity, and the January 15, 2009 letter from MHLCC is in direct contradiction to the purported first Assignment of July 14, 2008 which could not have assigned the Singleton loan from the bankrupt original lender to GMAC as a matter of law.

35. There is no evidence that the bankrupt GMAC had any interest to assign to 50 by 50 REO LLC, or that 50 by 50 had any interest in either the Note or the Mortgage to transfer following the GMAC bankruptcy, and thus nothing was transferred by the second Assignment dated September 24, 2012.

36. Further, the second Assignment contains no language whatsoever as to the transfer of the Note, and as such, the Note was never transferred to the Plaintiff.

37. Given the undisputed facts, lack of evidence, and applicable law, there was no lawful transfer or negotiation of either the Note or the Mortgage at any time, and thus the named Plaintiff (USBTE) has no rights in either the Note or the Mortgage and is precluded, as a matter of law, from prosecuting this action.

38. The purpose of summary judgment in South Carolina is to expedite disposition of cases which do not require the services of a factfinder, and is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *D.R. Horton, Inc. v. Westcott Land Co.*, 730 S.E.2d 340, 347, 398 S.C. 528 (S.C. App. 2012), citing SCRCP Rule 56(c).

39. There is no genuine issue of material fact that there was not and could not have been any transfer of any interest in either the Note or the Mortgage from the bankrupt original lender, People's Choice, to any person or entity. There is also no genuine issue of material fact that there was not and could not have been any transfer of any interest in either the Note or the Mortgage from the bankrupt GMAC, which transfer could only have occurred if GMAC had any interest to transfer, which it did not. There is further no genuine issue of material fact that neither the FRT 2011-1 Trust nor 50 by 50 REO LLC had any interest in either the Note or the Mortgage to transfer, and there is no genuine issue of material fact that the second assignment contains no language transferring the Note and thus no such interest was or could have been transferred.

40. The alleged assignments were prepared and executed in violation of applicable Bankruptcy law and, in view of the lack of any evidence from the Bankruptcy Court in either the People's Choice or GMAC Bankruptcies which would permit a transfer of the Singleton loan out of either the People's Choice or GMAC Bankruptcy estates, the alleged Assignments were fraudulent. The law in South Carolina is well-established that no person is permitted to acquire a right of action from their own unlawful act, and that one who participates in an unlawful act cannot recover damages for the consequences of that act, and further that these rules apply at both law and in equity and whether the cause of action is in contract or tort. *Wachovia Bank, NA*

v. Coffey, 389 S.C. 68, 698 S.E.2d 244, 248 (S.C. App. 2010) (affirming summary judgment in favor of homeowner on foreclosure filed by Wachovia), citing *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276-77, 437 S.E.2d 168, 170-71.

41. Mr. Singleton is thus entitled to judgment in his favor as a matter of law.

C. Conclusion

42. There is no genuine issue of material fact that no interest in either the Note or the Mortgage was ever transferred from the bankrupt original lender to any person or entity. There is no genuine issue of material fact that the purported Assignments transferred nothing. USBTE, which claims its alleged "rights" based on fraudulent documents, is precluded by South Carolina precedent from recovering anything or prosecuting this action. Final Summary Judgment should thus be entered in favor of Mr. Singleton.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court enter Final Summary Judgment in his favor for the reasons set forth herein, determine him to be the "prevailing party" under the mortgage documents for purposes of attorneys' fees and costs, and that this Court reserve jurisdiction to enter a Judgment in favor of JAMIE SINGLETON for his attorneys' fees and costs to be assessed against Plaintiff, with such relief being requested for the reasons set forth and for any other and further relief which is just and proper.

William H. Sloan
Bar No. 69630
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Plaintiff
September 26, 2013
~~Attorney for~~ Defendant

Exhibit A

JAMES P. GEORGE

ORIGINAL

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS
CASE NO. 11-CP-18-871

US BANK, NA, as Trustee, for
FRT 2011-1,

Plaintiff,

- vs -

JAMIE SINGLETON and
INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

RECORD
2013 SEP 26 PM 3:41
CHERYL S. ... CLERK OF COURT DORCHESTER COUNTY

Examination before trial of JAMES P. GEORGE, taken pursuant to the Federal Rules of Civil Procedure, AMS Services, 3374 Walden Avenue, Depew, New York, on July 9, 2013, commencing at 11:03 a.m., before WENDY J. BENZEE, Notary Public.

APPEARANCES:

ROGERS, TOWNSEND & THOMAS, P.C.,
By JOHN J. HEARN, ESQ.,
Synergy Business Park,
220 Executive Center Drive,
Columbia, South Carolina 29210,
(803)771-7900,
john.hearn@rtt-law.com,
Appearing for the Plaintiff.

LAW OFFICES OF JEFFREY BARNES,
By W. JEFFREY BARNES, ESQ.,
1515 N. Federal Highway, Suite 300,
Boca Raton, Florida 33432,
(561)864-1067,
jeff@wbarneslaw.com,
Appearing for the Defendant
and
SLOAN LAW FIRM,
By WILLIAM H. SLOAN, ESQ.,
1055 North Main Street,
Suite F,
Summerville, South Carolina 29483,
(843)873-7531,
info@sloanlawfirm.com,
Appearing for as South Carolina
Counsel for the Defendant,
via telephone.

(STIPULATIONS: Waive filing and signing of the transcript, waive Oath of the Referee, reserve all objections until trial, with exception of objections as to form.)

TODD OLIVAS & ASSOCIATES 888-566-0253

MR. HEARN: Bill, there's something up here apparently. The first thing they have to do up front is put down who's ordering what, so I've signed a piece of paper that we're ordering the original and a compressed with any exhibits.

MR. SLOAN: Okay.

MR. BARNES: Acceptable?

MR. SLOAN: Yes.

MR. HEARN: And I've ordered an e-transcript for the plaintiff.

J A M E S P. G E O R G E, 3374 Walden Avenue, Suite 120, Depew, New York 14043, after being duly called and sworn, testified as follows:

EXAMINATION BY MR. BARNES:

Q. Okay. Mr. George, my name is Jeff Barnes. I represent Mr. Singleton in this case together with Mr. Sloan. I've been assigned the job today of asking you some questions.

Before we get started, there's just a couple things I want to go over with you and I'm sure you've probably been through this exercise before, but I need to say these things anyway.

What we're going to do here this morning is I'll ask you questions and you give me answers on what's called personal knowledge. By that I mean, if you don't know the answer to my question, tell me, I don't know. If you don't recall something because it happened several years ago, tell me, I don't recall. I only want to know what you know.

Now, what you're doing with your head, once we get started you can't do that.

A. Okay.

Q. You have to say yes or no. You can't do gestures of the hand, nods of the head or mm-mmm because we don't know if that's a yes or no. One of us, if you inadvertently do that, which we all do from time to time, will say, is that a yes or no, sir.

A. Okay.

Q. This is not meant to be an endurance contest. If you need to take a break at any time, please feel free to raise your hand and say I need to take a break. However, on the breaks, you're not really permitted to talk to your -- the attorney to ask him how to answer questions or anything like that. If any of my questions are unclear, say so.

A. Okay.

Q. Mr. Barnes, I don't know what you're talking about, I don't understand a question, can you rephrase it, because I want us to be on the same page.

A. Okay.

Q. And we'll do some things at the end called reading and waiving, but that is a procedural thing we'll get to at the end of this deposition.

I don't expect this to go more than two hours, but again, it depends on what comes out as we go along.

Now, you mentioned that we are here at 3374 Walden Avenue, Suite 120 in Depew, New York. What is this physical building?

A. It's a mortgage servicing office.

Q. Okay. Is it AMS Servicing?

A. Yes.

Q. What does AMS stand for?

A. It doesn't stand for anything.

Q. And AMS is in the mortgage servicing business?

A. Yes.

Q. And when we say mortgage servicing, you

mean mortgage loans?

A. Yes.

Q. AMS doesn't originate any mortgage loans, correct?

A. Correct.

Q. What is your current position with the company?

A. I'm an asset manager.

Q. Could you please describe for us what your day-to-day duties and responsibilities are?

A. I'm responsible to oversee a portfolio of loans. Responsible for any collections, any servicing issues and primarily loss mitigations.

Q. First, you said, oversee portfolio loans. For the benefit of somebody listening to this who may not know what that means, that's a term of art. What are portfolio loans?

A. It's basically a pool of loans where an investor assigns loans to our servicer. Within our group, I'm responsible for, you know, a certain number of loans or I'm the direct contact for the customer.

Q. Okay. You said where an investor assigns loans to the servicer. Did you mean assign the servicing rights?

A. Yes.

Q. Or the actual loan itself?

A. Assign the servicing rights.

Q. Okay. And how do investors come to choose or select AMS to do this or perform these servicing functions?

A. That, I'm not sure of.

Q. Okay. Now, and you also said portfolio loans. You said that's a pool of loans, a pool being a group of loans?

A. Yes.

Q. And how are these loans grouped, if you know?

A. That, I don't know.

Q. Okay. Now, you say collections. I would assume that's collecting monthly payments?

A. Correct.

Q. Okay. Would that also include instituting foreclosure proceedings?

A. Yes.

Q. Does AMS do that in its own name?

A. No, in the investor's entity.

Q. In the name of the investor?

A. Correct.

Q. No matter what state it's in?

A. Correct.

Q. Okay. Do you know what the difference between a judicial foreclosure state and nonjudicial foreclosure state is?

A. I understand the term as far as -- actually, no, I don't.

Q. Do you know what a deed of trust is?

A. Yes.

Q. Okay. Do you know what a security deed is?

A. Not in particular, no.

Q. Now, you said servicing issues. What sort of servicing issues do you deal with?

A. Anything dealing with property taxes, hazard insurance. If there's disputes over payments, any general customer inquiries.

Q. And would that also include -- or does AMS offer loan modifications, because you mentioned loss mitigation at the end of your description?

A. Yes.

Q. Okay. Does AMS have authority from the investors to offer loan modifications?

A. Yes, we do.

Q. Okay. Subject to investor approval, I would imagine?

A. Correct.

Q. Before we get to loss mitigations, I want to talk about the investors for a minute. What do you mean by an investor in your day-to-day parlance?

A. The actual owner of the mortgage.

Q. Okay. Of the mortgage loan?

A. Correct.

Q. And that would include the note and the security instrument, whether it be a deed of trust or a mortgage?

A. Yes.

Q. Are there specific investors who you deal with?

A. Yes, there is.

Q. Okay. Could you tell me who they are?

A. I particularly deal with a company, Fortress. I'm not sure of the exact name. The company is Fortress Investments, I believe.

Q. Anyone else?

A. No.

Q. So you don't deal with US Bank?

A. No, I don't.

Q. The plaintiff in this case is US Bank, NA, as Trustee, for FRT 2011-1. So you do not deal

with US Bank, NA, as Trustee, for this entity?

A. I deal with FRT.

Q. What is FRT?

A. That's the -- part of the investor. That's the investor, because the entity they use or the trust that they use.

Q. Do you know what FRT stands for in this particular instance?

A. No.

Q. So how do you know that FRT is somebody you deal with?

A. It's an investor pool, so the loan is in that investors pool and we service for that investor.

Q. And who is the investor?

A. The investor is Fortress.

Q. So FRT has some association with Fortress?

A. Yes.

Q. Okay. Do you know what that association is?

A. They're the owner. I know when they assign mortgages, it's named in the -- FRT is the name of the entity -- the trust that it's named in.

Q. So F would be Fortress, we don know

what R is yet, T would be trust, 2011-1?

A. That, I don't know.

Q. Okay. So let's go back for a second before we get back into this. You also said you do primarily loss mitigations. What do you mean by that?

A. Once the loan comes over, we have a customer service collections unit who makes telephone calls, takes payments over the phone and handle general customer service. If the borrower goes into default and not something that can be resolved just by the general collections unit, it gets escalated to myself.

My job is to basically see if there's other alternatives to foreclosure that we could possibly work out with the borrower based on their affordability, and then if there's not, we offer our service for foreclosure. If those options don't work then we would move forward to foreclosure.

Q. Well, this case is already in foreclosure. Is it fair for me to assume whatever non-foreclosure opportunities were available, that those have been explored and they've not been able to come to fruition, sort to speak?

A. No, because we can still work out loss mitigation options while the loan is in foreclosure.

Q. I'm going to refer to this Singleton loan as, this file. Do you know whether or not when this file came under your jurisdiction, whether or not the foreclosure case had already been filed?

A. Yes, it had already been filed.

Q. Did AMS take over the servicing for a prior servicer on this loan, if you know?

A. Yes.

Q. Who did they take it over from?

A. From Wealth Bridge Mortgage.

Q. Who?

A. Wealth Bridge.

Q. Spell it, please?

A. W-E-A-L-T-H B-R-I-D-G-E.

Q. Wealth Bridge?

A. Correct.

Q. Mortgage?

A. Yes.

Q. They were a servicer?

A. Yes.

Q. Where are they?

A. I don't know. I don't think they're in existence anymore.

Q. Okay. Do you know whether or not the investor at the time this loan was being serviced by Wealth Bridge, was the same investor as the current investor?

A. Yes, it was.

Q. And that's this Fortress entity?

A. Correct.

Q. All right. I want to take a few minutes and talk about your background. How long have you been employed in your current position?

A. My current position, for seven years.

Q. Okay. And prior to that, what was your employment position?

A. Prior to that I worked for Bank of America for 12 years. Still in mortgage servicing, but several different aspects of the servicing.

Q. When you were with BOA, did you do any foreclosure work?

A. In a small capacity, yes.

Q. What do you mean by that?

A. I handled some paperwork. I did -- I was in the unit that kind of bounced around and handled processing of documents.

Q. Why did you leave BOA?

A. After 12 years there was no more room for advancement. It was at the time when things started to fall apart for them.

Q. So you went directly from them to this company, AMS?

A. Yes.

Q. Okay. Which BOA office had you worked out of?

A. Getzville, New York.

Q. G-E-T-Z ville?

A. Yes.

Q. Okay. And just real quick, college degree?

A. I don't have any college degrees. I did attend college for four years.

Q. Where is that?

A. Canisius College of Buffalo, New York.

Q. Spell it, please?

A. C-A-N-I-S-I-U-S.

Q. Here?

A. Yes.

Q. Did you declare a major?

A. I was a marketing and management.

Q. And did you go directly from Canisius

to BOA?

A. Yes.

MR. BARNES: Off the record.

(Discussion off the record.)

MR. BARNES: Back on the record.

BY MR. BARNES:

Q. Mr. George, you have been designated by the plaintiff in this case as what's called the representative of the plaintiff. And the plaintiff in this case is US Bank, NA, as Trustee, for FRT 2011-1. Are you aware that you have been so designated?

A. Yes.

Q. Okay. Now, in your day-to-day operations and your day-to-day job duties, do you have any dealings with US Bank, NA, as Trustee?

A. I do not.

Q. Okay. And you mentioned earlier that the investor slash owner of this loan is this Fortress entity. What facts lead you to believe that they are the actual owner of this mortgage loan?

A. Based on service -- the servicing agreement that we have with them. I've seen the servicing agreement. I worked directly with a

representative from the investor who any time I have proposals for loss mitigation he makes the final decision.

Q. Who's that?

A. His name is Dave Jenkins, J-E-N-K-I-N-S.

Q. Do you know where he is?

A. He's located in Utah.

Q. Okay.

A. He works directly for Fortress.

Q. And is there anybody else you report to or deal with other than Mr. Jenkins?

A. There is not.

Q. Okay. Do you know who the originating lender on this loan was?

A. I believe Peoples Choice Home Loans.

Q. Did you review any documents in preparation for today's deposition?

A. I did.

Q. Tell me what you reviewed.

A. I reviewed the mortgage note. I reviewed the deed of trust.

Q. Okay.

A. I reviewed the loan histories, documents in the servicing notes. Additionally,

I've reviewed some of the correspondence between the attorneys and the borrower that was either sent to us, AMS, or sent to prior services.

Q. Okay. Did you at any time ever gather any documents in response to what's called a request for production of documents which was sent by Mr. Sloan's firm on behalf of Mr. Singleton?

A. I myself did not.

Q. Do you know if anyone at AMS did?

A. Yes.

Q. Who was that?

A. One of my counterparts, Shawn Miller.

Q. S-H-A-W-N?

A. Correct.

Q. Is it Mister?

A. Yes.

Q. What does Mr. Miller do?

A. He's also an asset manager on the same portfolio.

Q. And how would it have come to pass that Mr. Miller would have gathered the documents and not you?

A. If I was not available.

Q. So it's simply an availability question?

A. Correct.

Q. Did you ever have an occasion to review a request for production of documents at Mr. Sloan's office sent on behalf of Mr. Singleton?

A. I have reviewed those.

Q. Okay. Did you discuss that at all with Mr. Miller?

A. Yes, I did.

Q. And at any time, did you or Mr. Miller make a decision not to produce any documents in their request for production?

A. No.

Q. Did you or Mr. Miller make a decision to object to any of the requests?

A. Did not.

Q. So neither you nor Mr. Miller objected to or decided not to produce anything that was asked for?

A. Correct.

Q. Okay. In reviewing that request for production, did you notice whether or not in response to any of the categories certain documents were not available or did not exist to your knowledge?

A. Nothing to my knowledge.

Q. So to your knowledge, everything in the request for production did exist and was available?

A. Correct.

Q. Now, when you say is available, is it available here at AMS or somewhere else?

A. Both in our actual documents that we have imaged and in the original servicing file.

Q. Okay.

A. Or collateral file.

Q. What do you mean? Collateral file is another name for servicing file?

A. It's got the original signed documents.

Q. So that would be the documents from the closing?

A. Correct.

Q. The note, the deed of trust, the appraisal, the HUD-1, that sort of thing?

A. Yes.

Q. And you said there's another file other than this collateral file?

A. There's documents -- once we acquire the mortgage --

Q. You mean the servicing rights?

A. Right. We will take the documents and image those so they're readily available.

Q. Where do those documents come from?

A. Those are -- that, I don't know.

Q. Okay. So you don't know if they come from the investor?

A. Right.

Q. Once you get them you image them?

A. Correct.

Q. And they are put into the particular files relating to that particular borrower?

A. Correct.

Q. So in reviewing these files -- and again, there's a collateral file and then the other one's a servicing file, is that what you called it?

A. Servicing file or servicing images.

Q. Other than the servicing images and the collateral file which contains the loan origination documents, are there any other files maintained on this particular loan?

A. No.

Q. Okay. Tell me what, to the best of your knowledge, are the contents of the servicing image file?

A. Mortgage note, mortgage -- the actual mortgage deed of trust, the HUD-1, the appraisals or brokers price opinions. There's servicing notes

from prior servicers if they're available and correspondence that we have received or prior servicers have received.

Q. That sounds like the things you told me were in the collateral file. My understanding from your testimony was there's a servicing file and a collateral file, two different files.

A. Right. The servicing file, it's not a physical document.

Q. I understand. When I said review documents, I meant either in paper form or image form. I just want to understand how these things work. The collateral file you told me is the origination documents including the note, the DOT, the HUD-1, BPO, servicing notes, et cetera?

A. Correct.

Q. Now, I want to know what's in the other file, the servicing file?

A. All the same documents and then some additional as far as histories and prior notes from prior servicers.

Q. Okay. In the request for production there was a request for documents relating to -- do you know what a securitized mortgage loan trust is?

A. No, I don't.

Q. Okay. Do you know what a securitization prospectus is?

A. No.

Q. Do you know what a credit default is?

A. I do not.

Q. Do you know what a mezzanine policy is?

A. I do not.

Q. Do you know what an eagle nine policy is?

A. I do not.

Q. Do you know what an LPMI policy is?

A. I have a general idea of that.

Q. Tell me what your general understanding is of an LPMI policy?

A. Kind of a lender's insurance policy that's placed on a loan that's -- has a good chance of default and it's usually done -- it's paid into at the beginning or origination of a mortgage and it kind of insures the owner or investor of the mortgage against default or loss.

Q. Now, you said when the loan has a good chance of default but it's done at origination?

A. So high risk.

Q. So is it your understanding then that LPMI policies are placed on a loan to protect the

ultimate owner of the loan, whether it be an investor or the originator from what is anticipated to be an expected default?

A. Yes.

Q. Okay. Do you know if there was LPMI placed on this loan?

A. Not to my knowledge.

Q. Okay. Do you know whether LPMI is placed on a loan any time after origination, for example, when it's sold off to an investor?

A. To my knowledge, I don't think they do that.

Q. Well, remember what I said up front, if you don't know, you don't know and that's a fair answer. When you say, I don't think so, it sounds like you're guessing.

A. So no, I don't know.

Q. Okay. Do you have any knowledge of any other types of insurances that are placed on mortgage loans when they are sold to an investor?

A. No, I don't.

Q. Okay. All right. Let's get back to the -- I'm sorry for jumping around.

A. It's all right.

Q. You said Peoples Choice was the

original lender.

A. Correct.

Q. And you obviously learned that from reviewing the note?

A. Correct.

Q. Do you know if Peoples Choice is still in business?

A. I don't know.

Q. Okay. So you have no knowledge that they filed for bankruptcy on March 20th of 2007?

A. Correct.

Q. Okay. Do you know of or have you ever heard of an entity known as Mortgage Electronic Registration Systems, Inc., otherwise known as MERS, M-E-R-S?

A. Yes.

Q. Tell me what you know about MERS?

A. It's kind of a registration system where once the mortgage is originated the loan is assigned a MERS number. And even though the loan may be sold to different entities, it's still registered with MERS so that the loan can be identified just in case the mortgage servicer goes out of business they're still nominated as trustee.

MR. BARNES: Read that last portion back to

me, please.

(The above-requested testimony was then read by the reporter.)

BY MR. BARNES:

Q. Who is still nominated as trustee?

A. MERS.

Q. MERS is still nominated as what?

A. Trustee for the mortgage.

Q. And what does that mean?

A. That, I don't know.

Q. So how do you know that MERS is nominated as a trustee for the mortgage?

A. I only know that from documentation that I've seen referencing MERS as trustee.

Q. So it's just because of something you read?

A. Correct.

Q. Okay. Do you have any personal knowledge as to how this mortgage loan, which was originated by a lender which went bankrupt in 2007 wound up with this Fortress entity?

A. I know there was a chain from when the loan went from Peoples Choice, it was assigned to GMAC and then at some point GMAC assigned it to 50 by 50 REO which is an entity of Fortress of the

investor.

Q. That was a lot, so let's break that up. You said first there was a chain where the loan went from Peoples Choice to GMAC. How did that transfer take place, if you know?

A. Through an assignment.

Q. Okay. When you say assignment, are you talking about an action, a document or both?

A. Both.

Q. Okay. And tell me what you know about this assignment of the loan from Peoples Choice to GMAC?

A. I particularly have no knowledge of that.

Q. So what would lead you to believe that the loan went from Peoples Choice to GMAC?

A. From the chain of assignments that I've seen.

Q. So you've actually seen a physical assignment?

A. Correct.

Q. Do you know who the assignment was signed by?

A. No, I don't.

Q. Do you know whether or not the person

who signed the assignment had the authority to do that when it was signed?

A. I do not.

Q. Okay. Do you know whether or not that assignment was signed before or after Peoples Choice filed bankruptcy?

A. That, I do not know.

Q. Have you ever seen an order from the bankruptcy court having jurisdiction over the Peoples Choice bankruptcy which permitted the assignment of that loan out of the bankruptcy state?

A. No.

Q. Did you take any part whatsoever in filing any documents or attending any hearings in the Peoples Choice bankruptcy?

A. I did not.

Q. Okay. So if I understand your testimony then, the scope of your knowledge as to this transfer of the loan, the Singleton loan, from Peoples Choice to GMAC was based upon your review of a paper assignment?

A. Correct.

Q. How many pages was that assignment?

A. The actual assignment document was one

page.

Q. And did you view that in an electronic form or paper form or both?

A. Both.

Q. And I think I asked you this earlier, you don't know the person who signed it, right?

A. Correct.

Q. Okay. Let's talk about the next transfer from -- well, actually let's talk about GMAC. Are you aware that GMAC filed bankruptcy on May 12th, 2012?

A. I am not aware.

Q. Or May 16th or May 19th, somewhere around there.

Do you know whether or not the Singleton loan was in the inventory of GMAC when it filed for bankruptcy?

A. That, I don't know.

Q. Okay. I'm going to ask you this same question I asked you about the Peoples Choice bankruptcy. Have you ever seen an order from the bankruptcy court having jurisdiction over the GMAC bankruptcy permitting the transfer of the Singleton loan out of the GMAC bankruptcy to this 50 by 50 entity?

A. I have not.

Q. So you testified earlier that the next transfer in the chain was GMAC to 50 by 50 REO, right?

A. Correct.

Q. And 50 by 50 REO, as you said, is an entity of Fortress?

A. Yes.

Q. Are they a subsidiary, what are they, if you know?

A. They're owned by -- I don't know.

Q. Okay. And was your understanding of this transfer also based upon one of these assignment documents?

A. Yes.

Q. Okay. One page?

A. Yes.

Q. Okay. Same series of questions. Do you know whether or not the person who signed the assignment of the Singleton loan from GMAC to 50 by 50 had the authority to do so when it was signed?

A. I do not.

Q. Okay. Do you know when that assignment was signed, do you know the date of it?

A. No.

Q. Okay. And obviously then you wouldn't know the person who signed the assignment, right?

A. Right.

Q. Okay. And do you know how it was that GMAC -- well, let me ask you this: You never worked for GMAC, right?

A. Correct.

Q. You never worked for 50 by 50?

A. Correct.

Q. You never worked for Peoples Choice?

A. Correct.

Q. So you have no knowledge, I guess the driving force behind it or the reason why GMAC would choose to assign this loan to 50 by 50?

A. Right.

Q. Going back to the -- I'm sorry for jumping around. When the first assignment took place from Peoples Choice to GMAC, do you know if the loan was in default?

A. I do not know.

Q. Same question as to the assignment from GMAC to 50 by 50. Do you know if the loan was in default at that time?

A. Yes, it was.

Q. Okay. Did you ever have any dealings

with anybody at 50 by 50?

A. No.

Q. Okay. And how do you know 50 by 50 is affiliated or owned by Fortress?

A. By speaking with the investor I know that they're -- that's how AMS acquired it is through the investor who owns 50 by 50.

Q. How do you know that AMS -- I'm sorry, you said AMS owns 50 by 50?

A. No, Fortress.

Q. How do you know that Fortress owns 50 by 50 other than talking to somebody?

A. Speaking with the investor.

Q. Would that be this --

A. Dave Jenkins.

Q. Jenkins?

A. Right.

Q. He told you that?

A. Yes.

Q. At one point in time, the plaintiff in this case that we're talking about -- and by the way, this is Dorchester County, South Carolina Court of Common Pleas case number 11-CP18-18-871. Was 50 by 50 LLC?

A. Yes.

Q. You did know that.

Do you know how it came to pass that the plaintiff changed to US Bank, as Trustee, for FRT 2011-1?

A. I have no knowledge.

Q. Okay. Do you know if this loan was sold from 50 by 50 to US Bank?

A. I have no knowledge of that.

Q. Do you deal with any entities or have you dealt with any entities or investors in your tenure here with AMS who are bank serving as trustees for trusts?

A. No.

Q. Okay. Other than Fortress, do you deal with any other investors?

A. No, I don't.

Q. Okay. So you only deal with Fortress?

A. Correct.

Q. And how long has that been the situation?

A. About five years.

Q. Okay. So whatever agreements or understandings may be between Fortress and US Bank, you would not have any knowledge of those?

A. Correct.

Q. And I think I asked you earlier, this FRT 2011-1, you don't know what that is, right?

A. Correct.

Q. Give me a minute, please. When this -- these various transfers occurred from Peoples Choice to GMAC, GMAC to 50 by 50, do you have any knowledge of what the amount was that the loan was sold for?

A. No, I don't.

Q. Okay. And also, I think you testified that you would have no knowledge of any other insurances that may have been placed on this loan to protect Fortress or any other entity from a risk of default by Mr. Singleton?

A. No.

Q. No, you have no knowledge?

A. Correct.

Q. And the reason I ask that, some of the things we asked for in the request for production were documents concerning insurances on the loan including the ones I mentioned earlier.

So you told me in your earlier testimony that there was nothing, that all those documents were available, correct?

A. To my knowledge, yes.

Q. So where would I get those, because you're telling me you don't have any knowledge of the insurances, but yet in reviewing the request for production the documents apparently do exist. Where would I get those from? Where are they?

A. I would assume in the mortgage collateral file.

Q. Which would be the origination file?

A. Correct.

Q. After the loan was originated you said it was transferred at least twice.

A. Correct.

Q. I'm talking about insurances along the way, all the way to the end of this FRT which I'm going to represent to you is a securitization chart. Documents concerning insurances, where would I get those from?

A. I don't know.

Q. Okay. You don't know?

A. Correct.

Q. To your knowledge, has AMS produced all of the documents responsive to the request for production that it has custody, care and control of?

A. That, I don't know.

Q. Okay. In reviewing the note, can you tell me whether or not there was -- do you know what an endorsement is on a note?

A. Not in particular, no.

Q. Okay. And in these assignment documents you told me you reviewed, do you know whether or not they claimed to assign the deed of trust, the note or both?

A. I don't know.

Q. Okay. Do you know whether or not any sort of loss mitigation or loan modification was ever offered to Mr. Singleton?

A. Yes.

Q. Okay. Tell me about those efforts.

A. When AMS acquired the mortgage from Wealth Bridge --

Q. You mean the servicing rights?

A. Correct. The borrower had already been in a forbearance to modification agreement with Wealth Bridge which carried over to us. The borrower was due for one more payment when we acquired it and completed that final payment, at which point we started to review the mortgage for a modification and offered a modification to the borrower.

Q. Now, was this a review for a permanent modification or another temporary or trial period?

A. Would have been a permanent modification, but some of the stipulations on the modification may have been temporary.

Q. Such as?

A. I think there was some money that was being deferred and there was a performance waiver whereas if the borrower didn't have any defaults some of the deferred amounts would be waived after a certain period of time.

Q. What do you mean by deferred amounts?

A. Past due arrears that the borrower owed would be put to the end of the mortgage.

Q. You're talking the arrearages on the back end?

A. Right.

Q. I think you said in connection with the Wealth Bridge mod, when you got it, there was one payment due which was made. So all the payments as far as payment requirements on the mod had been made?

A. That was just a forbearance agreement.

Q. I'm sorry. Those had been made?

A. Correct.

Q. So he was then considered for a permanent mod?

A. Correct.

Q. What happened with that?

A. We offered mod terms. The borrower was not happy with some of the capitalization of some of the arrears applying the arrears back to the loan which would have increased the balance.

Q. Didn't accept it?

A. Correct.

Q. Do you know whether or not, what the capitalization of the arrears, the payment on the permanent mod would have been more than the payment of the original loan?

A. It would have been more -- I think it was slightly less.

Q. When you say slightly, what do you mean?

A. Within $50.

Q. One way or the other?

A. I think it was less $50.

Q. And do you understand that when somebody asks for a loan modification it's because they're representing that they're not able to afford the current payment?

A. Yes.

Q. So would you agree with me then that this offer really was something that Mr. Singleton could not afford?

MR. HEARN: Object to the form of the question.

MR. BARNES: You can answer.

THE WITNESS: I would disagree.

BY MR. BARNES:

Q. Okay. If he couldn't afford the payment on the original loan, and this was only $50 less than that, what would lead you to believe that he could afford this payment?

A. Because the payment would be less the principal interest payment was reduced, but the modified payment added in an escrow which is something that he would still have to have paid regardless if the loan was modified or not.

Q. I'm just going on what you told me. You said the monthly payment on the loan modification would have been just $50 less than what he was paying before?

A. Correct.

Q. He applied for the loan mod because he couldn't afford the payment before, right?

A. Not necessarily.

Q. Let's assume he did. Let's assume he asked for a loan mod because he could not meet the debt service on the original loan payment schedule.

A. Okay.

Q. Would you agree with me that most people ask for a loan modification because they can't meet the debt service on the original payments?

MR. HEARN: Object to the form.

THE WITNESS: Not necessarily.

BY MR. BARNES:

Q. Would you agree that at least 50 percent of people apply for a loan mod because they can't meet the debt service on the original loan?

MR. HEARN: Object to the form.

THE WITNESS: Not necessarily.

BY MR. BARNES:

Q. What percentage would you attribute to applications for a loan modification because people say I can't afford the payment I have now?

A. That, I can't answer.

Q. You have no idea?

A. No.

Q. Let's assume for purposes of my

questions here that Mr. Singleton applied for a loan modification because he could not afford the original loan debt service amount.

So if that's true, then if the loan mod payment was only $50 less, what would lead AMS to believe that he would be able to afford that payment?

A. Because our knowledge of his default was not because he couldn't afford the payment, because he had a situation that caused him to fall behind because of two car accidents.

Q. So he can't meet the debt services?

A. He couldn't pay the mortgage for a certain period and fell into arrears.

Q. Through apparently no fault of his own?

A. Correct.

Q. But he can't meet the debt service so he needs a modification?

A. Correct.

Q. Do you know whether or not he was able to return to work and make the same amount of money he was making before the car accident?

A. That, I don't know.

Q. Okay. So again, my question becomes, what would lead AMS to believe if Mr. Singleton

wasn't able to meet the payments because of the car accident that he could make a payment which was only $50 less than what he couldn't meet to begin with?

A. The payment was reduced as far as the monthly principal interest payment.

Q. I understand that. But what you're telling me is that the total payment with escrows was only $50 less than the original payment, right?

A. Correct.

Q. $50. And we're talking about a monthly payment, so that's $12.50 a week, right?

A. Correct.

Q. So he couldn't afford the payment that he had, what would lead AMS to believe that he could afford essentially the same payment minus $12.50 a week?

A. Based on the financial information that the borrower provided.

Q. And who made the ultimate decision to offer whatever the loan modification from AMS was?

A. The investor.

Q. Okay. That would have been the Fortress entity?

A. Correct.

Q. So essentially AMS is just a conduit?

A. Correct.

Q. As a general proposition, when someone -- when a borrower asked their servicer, AMS in this case, for a loan modification, is that request passed onto the investor?

A. Yes and no.

Q. What would be the determining criteria?

A. Based on -- we would take their financial information and do an evaluation as to what options they would qualify for. If they qualify for just a general repayment plan or some in-house adjustment, we are authorized by the investors to handle that in-house.

If we review and it's determined that they would need some type of adjustments to the actual loan terms, then that's escalated and proposed to the investor who will either accept it or deny it or make adjustments to the proposals.

MR. BARNES: Off the record.

(Discussion off the record.)

BY MR. BARNES:

Q. You went through a -- kind of a lot of stuff there. You said when someone requests a loan mod, you take their information and you first see

what options they qualify for, right?

A. Correct.

Q. What options are available for a loan modification, in general, through AMS?

A. Are you -- specifically of a loan modification, because it may not be a loan modification they're approved for.

Q. You're right. I know there's these lay down agreements, consent judgements, 60 days to move out, that's not what I'm talking about.

I'm talking about a loan modification of some sort.

A. Okay.

Q. You said you see what options they qualify for which would be things like HAMP and that sort of thing. Does AMS consider HAMP or is HAMP an option through AMS?

A. Through AMS, yes.

Q. So then you would see whether or not the borrower would qualify for HAMP?

A. In this particular case this investor opted out of HAMP.

Q. So --

A. So AMS is a HAMP servicer.

Q. So HAMP's not an issue. So what other

options would Mr. Singleton have possibly qualified for, not did in the end of the day?

A. As far as loss mitigations options, might have been a repayment plus where the borrower pays his regular payment plus additional to catch up the past payments.

Q. Arrearages?

A. Correct. The only other option would be a fresh start, but in this particular case that would not be an option because the loan was in foreclosure.

Q. So what is this fresh start you're talking about?

A. It's kind of a mini modification where we would take up to three months of payments and put those to the end of the mortgage.

Q. I'm sorry, take three payments and do what?

A. Push those to the end of the mortgage to make the loan current.

Q. So once a foreclosure case is filed that option is gone?

A. Correct.

Q. So as far as AMS is concerned, Fortress had opted out of HAMP, there was no fresh start

available because the case is in foreclosure, so the only thing that would have been available to Mr. Singleton would be this regular payment plus a payment to catch up on arrearages?

A. Correct.

Q. As far as the in-house?

A. Correct.

Q. So let's talk about any other options that Fortress had over and above these options from AMS, if any?

A. That would be the loan modification and then liquidation options, short sale or deed in lieu of foreclosure.

Q. And I would assume that Mr. Singleton did not express any interest in either a DIL or short sale?

A. Correct.

Q. So the loan mod was the only thing being pursued?

A. Correct.

Q. And you said he did submit financial documentation?

A. Yes.

Q. And that was reviewed by AMS?

A. Correct.

Q. And the investor?

A. Correct.

Q. And the investor was the one who made the decision to come up with whatever this payment schedule was?

A. Correct.

Q. Not AMS?

A. Correct.

Q. Okay. AMS as the conduit simply passed it through?

A. Yes.

Q. And again, this was done during the course of the time when this case was in foreclosure?

A. Correct.

Q. Do you know who the plaintiff was when this was going on?

A. I don't know.

Q. Okay. I'm going to ask you a series of questions that you already probably know the answers to. You told me earlier in your testimony that you did not know what a securitization trust or a securitized trust was, right?

A. Correct.

Q. So then you would have no knowledge of

any restrictions on the transfer of mortgage loans in this trust by the trust documents?

A. Correct.

Q. You would not have participated in the drafting of the trust documents?

A. Correct.

Q. You would not have participated in the transfer of any documents from whatever party to the securitization trustee, in this case US Bank?

A. Correct.

Q. You would not have had any negotiations with US Bank as to accomplishing these transfers?

A. Correct.

Q. You would not have had any involvement with respect to transferring documents under any time sensitive schedule?

A. Correct.

Q. You would not have any knowledge about any sort of sources to protect the investor in the event of default which are not related to insurance, such as interest rate cap reserves, excess reserves, collateralization reserves or any of those sorts of things?

A. Correct.

Q. AMS doesn't get involved with TARP at all, does it?

A. No.

Q. Do you know -- I know you don't, but do you know if AMS does have any relationships with banks serving as trustees for securitization trusts?

A. I don't know.

Q. Okay. Your world is Fortress?

A. Right.

Q. For lack of a better word?

A. Correct.

Q. Since AMS acquired this, the servicing rights to this loan when this case was already in foreclosure, is it safe to say that AMS acquired the servicing rights to this loan sometime after or during 2011?

A. It's prior to 2011.

Q. Okay. Because the case number is 11-CP-18-871 which indicates to me that it was a 2011 filing. And you told me earlier in your testimony that the case was already in foreclosure. Now, that might be my fault. By in foreclosure, I mean litigation.

A. Right. It was in foreclosure, but not

litigation.

Q. Okay. See, sometimes because of the worlds we live in we understand things differently. So in your mind, the loan was in the foreclosure process somewhere?

A. Correct.

Q. You just didn't know where at that point?

A. It was suspended. Once they did the forbearance agreement, that suspended the foreclosure activities on the condition the borrower follow the forbearance agreement.

Q. But the foreclosure process doesn't necessarily mean that the case is in litigation at that point?

A. Correct.

Q. There could be default and cure letters being sent out, acceleration letters, that sort of thing?

A. Correct.

Q. Do you know if AMS sent out the acceleration letters in this case?

A. They did not.

Q. So the case was not actively had been filed as a court foreclosure when AMS acquired

these servicing rights?

A. Repeat the question.

Q. When AMS acquired the servicing rights to this loan, to your knowledge, an actual court foreclosure case had not yet been filed?

A. That's not correct.

Q. It had been filed?

A. Yes.

Q. That was why I asked the question before about when AMS acquired it, because the case number is 11-CP, that's a 2011 filing, and you said oh, no, it was before that.

A. Correct.

Q. So the -- it seems to be is that this case went into a court foreclosure at or about the time that AMS acquired it?

A. I believe it was definitely prior. We acquired it in active foreclosure.

Q. Active foreclosure being in the court?

A. Correct.

Q. So I think that clears up the confusion, and just so we have that right, at the time AMS acquired the servicing rights to this loan, a court foreclosure case had already been filed?

A. Yes.

Q. Okay. Which is the reason why the one option was not available?

A. Correct.

Q. Okay. The fresh start, I think you called it?

A. Right.

Q. Do you know if Mr. Jenkins was ever employed by 50 by 50?

A. It's hard to answer because they're part of his employer which is Fortress.

Q. But you don't have any direct knowledge?

A. Do not.

Q. Okay. We have been going about an hour. I'd like to take a short break and just speak to Mr. Sloan alone.

(A recess was then taken.)

BY MR. BARNES:

Q. Mr. George, I had asked you earlier about one discovery item that we had sent out called the request for production documents. Are you also aware there were a series of questions signed called interrogatories?

A. No.

Q. Okay. Are you aware that there was something called a request for missions sent?

A. No.

Q. Okay. Mr. Hearn was kind enough last November to send us back answers to some interrogatories which are written questions we had sent to the plaintiff, and I just want to ask you about some of the answers even though you said you didn't see the interrogatories. Obviously you didn't participate in answering the interrogatories?

A. Correct.

Q. Okay. First question was to give the names and addresses of parties, persons known to the party or counsel who will be witnesses concerning the facts of the case.

And the answer was, a representative of AMS Servicing, LLC is expected to testify regarding the facts and circumstances, et cetera. That's obviously you?

A. Correct.

Q. Okay. Do you know if this case goes to trial whether you will be the person testifying at the trial?

A. I believe so, yes.

Q. Okay. Do you know -- this question I'm going to ask you and let me ask you first before you answer. The question is: Have you discussed today's deposition in terms of questions, answers or subject matter with anyone other than counsel because any questions, any communications you had with the lawyer I can't ask you about?

A. No.

Q. You have not?

A. Correct.

Q. Other than the fact that, hey, I got to do this and I'm not going to be at my desk, kind of thing?

A. Correct.

Q. Now, some of the questions I had asked you earlier in this exercise you told me that you did not know as far as certain things. Do you know of anybody else in AMS who would have knowledge of anything I've asked you about so far?

A. Yes.

Q. Who?

A. John Mallaber.

Q. Spell the last name?

A. M-A-L-L-A-B-E-R.

Q. And who is he?

A. He's the asset manager. He's the direct asset manager when we first acquired the mortgage. He was the one that worked with the borrower regarding the proposed modification, but he is no longer on this portfolio for Fortress.

Q. So his knowledge then would be limited to whatever happened with the loan mod negotiations?

A. Correct.

Q. That's it?

A. Correct.

Q. Okay. Essentially, now this loan is under your jurisdiction?

A. Correct.

Q. Okay. Do you know what an allonge is, A-L-L-O-N-G-E?

A. I've seen it, but I don't know specifically what that is.

Q. Okay. You've seen a document that says allonge but you don't know what it is?

A. Correct.

Q. Have you seen one in this case?

A. Yes.

Q. Are you a certifying officer of MERS?

A. No.

Q. Is anyone at AMS a certifying officer of MERS?

A. Yes.

Q. Who?

A. John Mallaber, Kelly Marling, M-A-R-L-I-N-G.

Q. Okay.

A. James Mikoley, M-I-K-O-L-E-Y.

Q. Okay.

A. And Tim Hapeman, H-A-P-E-M-A-N.

Q. Who's Kelly Marling, what's her job?

A. She's a portfolio manager.

Q. Mr. Mikoley?

A. He's also a portfolio manager, same as Tim Hapeman.

Q. They all are?

A. Correct.

Q. And you never have been, right?

A. Correct.

Q. Have you ever spoken to Mr. Mallabar, Ms. Marling, Mr. Mikoley or Mr. Hapeman concerning any involvement of MERS in connection with this loan?

A. No.

Q. Do you know a Dana Lantry, L-A-N-T-R-Y?

A. I do not.

MR. BARNES: I think that's all I have for you. Now, I had talked about what's called -- unless you have any questions.

MR. HEARN: I have no questions.

MR. BARNES: There's something called reading and waiving. What that means is that you have the right to read this transcript before it gets transcribed and used for any purposes permitted by the South Carolina rules of civil procedures in this court case.

If you want to exercise that right, you tell the court reporter you want to read it and she'll make arrangements for you to do that. If in reading through the transcript you notice anything that doesn't jog with your memory, there's something called an errata sheet that you can fill out. You can't change your testimony, but you can make notes on it.

If you trust that the court reporter has taken down everything accurately and you want to waive or give up that right, just tell her I waive, in which case we can use this deposition for any grounds permitted by the rules of civil procedure or case law. But the choice is yours, not mine.

A. I will waive it.

MR. BARNES: He waives. We'll take ours regular mail, no expedite. There are no exhibits. You can send it to my Florida office with a compressed. Do not need an ASCII.

(Deposition concluded at 12:22 p.m.)

* * *

STATE OF NEW YORK)

ss:

COUNTY OF ERIE)

I DO HEREBY CERTIFY as a Notary Public in and for the State of New York, that I did attend and report the foregoing deposition, which was taken down by me in a verbatim manner by means of machine shorthand. Further, that the deposition was then reduced to writing in my presence and under my direction. That the deposition was taken to be used in the foregoing entitled action. That the said deponent, before examination, was duly sworn to testify to the truth, the whole truth and nothing but the truth, relative to said action.

Wendy J. Benzee

WENDY J. BENZEE,
Notary Public.

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Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Michael Drouin and Kathleen Drouin

v.

Civil No. 11-cv-596-JL
Opinion No. 2012 DNH 089

American Home Mortgage Servicing, Inc., Wells Fargo Bank, N.A., and Option One Mortgage Corporation

MEMORANDUM ORDER

At first blush, this case appears to present a question that has demanded the attention of state and federal courts throughout the country over the past several years: whether mortgagors have standing to challenge the validity of putative assignments of their mortgages to claimed assignees attempting to enforce those mortgages. Two of the defendants argue that mortgagors have no such standing, and have moved to dismiss the complaint for that reason. Upon closer scrutiny, however, the complaint does not squarely challenge the validity of an assignment, and thus does not implicate that question.

Plaintiffs Michael and Kathleen Drouin filed this action in state court seeking to enjoin American Home Mortgage Servicing, Inc., Wells Fargo Bank, N.A., and Option One Mortgage Corporation from foreclosing on the property securing their mortgage loan. The Drouins allege that American Home Mortgage and Wells Fargo (collectively, "Wells Fargo"), claiming to possess an assignment

of their mortgage from Sand Canyon Corporation, the successor-in-interest to Option One (the original mortgagee), have demanded payment on the mortgage and threatened to foreclose if such payment is not made. But Sand Canyon cannot have assigned the mortgage to Wells Fargo, the Drouins allege, because it ceased holding any mortgages--including theirs--years before the alleged assignment.

Wells Fargo removed the case to this court, which has diversity jurisdiction over this matter under 28 U.S.C. § 1332. It then moved to dismiss, see Fed. R. Civ. P. 12(b)(6), asserting that the Drouins have no standing to challenge the assignment's validity and that they may not maintain a cause of action seeking to enjoin the foreclosure sale. Both parties declined the court's offer to hold oral argument on Wells Fargo's motion.

The motion is denied. Whatever the merits of Wells Fargo's argument as to the standing of a mortgagor to challenge the validity of an assignment, the gravamen of the Drouins' complaint is not that the assignment from Sand Canyon to Wells was invalid (though there are overtones of that as well). Rather, the Drouins' principal grievance is that, even if the assignment was technically "valid," it cannot have served to assign their mortgage to Wells Fargo because Sand Canyon did not hold the mortgage, and could not assign what it did not have. Because the

Drouins satisfy the requirements of standing as to that claim, and because New Hampshire law clearly establishes the right of mortgagors to file an action seeking to enjoin a foreclosure sale, the case may proceed.

I. Applicable legal standard

To survive a Rule 12(b)(6) motion to dismiss for lack of standing, a complaint must "set forth reasonably definite factual allegations, either direct or inferential, regarding each material element needed to sustain standing." Dubois v. U.S. Dep't of Agric., 102 F.3d 1273, 1281 (1st Cir. 1996). When reviewing the complaint under this standard, the court "accept[s] as true all well-pleaded factual averments . . . and indulge[s] all reasonable inferences therefrom in [the plaintiff's] favor." Katz v. Pershing, LLC, 672 F.3d 64, 70-71 (1st Cir. 2012) (quotation and alteration omitted). The court "need not, however, credit "bald assertions, subjective characterizations, optimistic predictions, or problematic suppositions," and "[e]mpirically unverifiable conclusions, not logically compelled, or at least supported, by the stated facts, deserve no deference." Sea Shore Corp. v. Sullivan, 158 F.3d 51, 54 (1st Cir. 1998) (internal quotation marks omitted). The following background summary is consistent with that approach.

II. Background

In 2004, Michael and Kathleen Drouin, borrowed $212,500 from Option One and, in return, granted it a mortgage on their Deerfield, New Hampshire residence. In early 2008, Option One discontinued its mortgage loan origination activities, sold its mortgage servicing business, and changed its name to "Sand Canyon Corporation." Not long thereafter, the State of California found that Option One--a California corporation--had violated California Financial Code § 50205 and had "conduct[ed] business in such an unsafe and injurious manner as to render further operations hazardous to the public or to customers." The state therefore prohibited it from conducting further residential mortgage lending and servicing, or, indeed, from doing any business at all. In an affidavit submitted in another, unrelated case in 2009, the President of Sand Canyon attested that Sand Canyon's business at that time consisted solely of dealing with litigation claims, and that it did not own "any residential real estate mortgages."

Notwithstanding that representation, and despite the fact that nothing subsequently happened to breathe new life into Sand Canyon, it purportedly assigned the Drouins' mortgage to Wells Fargo on March 24, 2011. Wells Fargo has now demanded payment on the mortgage from the Drouins, claiming to stand in the shoes of

the mortgagee by virtue of this assignment. It has also threatened the Drouins with foreclosure, scheduled a foreclosure sale (which the state court enjoined after this action was filed but before its removal to this court), and maintained that it may demand and collect mortgage payments from the Drouins unless they affirm and restructure its claimed rights under the mortgage.

III. Analysis

Article III of the Constitution "limits the jurisdiction of federal courts to 'Cases' and 'Controversies.'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 559 (1992) (quoting U.S. Const. art. III, § 2, cl. 1). One facet of this case-or-controversy requirement is the doctrine of standing, which serves to ensure that the plaintiff "is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." Warth v. Seldin, 422 U.S. 490, 518 (1975). In order to establish standing to bring a claim, a plaintiff must demonstrate (1) an injury that is both "concrete and particularized" and "actual or imminent"; (2) "a sufficiently direct causal connection between the challenged action and the identified harm"; and (3) "that a favorable resolution of her claim would likely redress the professed injury." Katz, 672 F.3d at 71-72 (citing Lujan, 504 U.S. at 560). These three constitutional elements of standing "apply with equal force in

every case," and are further supplemented by prudential concerns that "require a plaintiff to show that his claim is premised on his own legal rights (as opposed to those of a third party), that his claim is not merely a generalized grievance, and that it falls within the zone of interests protected by the law invoked." Id. at 72.

Wells Fargo concedes that the constitutional requirements for standing are met because plaintiffs have alleged an actual injury that is traceable to its conduct and redressable by order of this court. Thus, only the prudential dimension of the standing requirement, and more specifically, the prohibition on raising a third party's rights, is at issue here. Citing a lengthy list of cases, Wells Fargo contends that any enforceable rights in an assignment belong solely to the parties to, or intended beneficiaries of, the assignment. Because the Drouins are neither, it argues, any challenge they make to the assignment's validity necessarily invokes the rights of third parties.

It is difficult to quarrel with the proposition that, at least in some cases, the obligor under a contract lacks standing to challenge the validity of the obligee's assignment of its rights under that contract. In a diversity case such as this one, the court looks to state law to determine the nature of a

plaintiff's rights, see Utah ex rel. Div. of Forestry, Fire & State Lands v. U.S., 528 F.3d 712, 721 (10th Cir. 2008); Gen. Tech. Applications, Inc. v. Exro Ltda, 388 F.3d 114, 118 (4th Cir. 2004), and New Hampshire law recognizes the general rule that a "debtor cannot interpose defects or objections which merely render the assignment voidable at the election of the assignor or those standing in his shoes." Woodstock Soapstone, Co., Inc. v. Carleton, 133 N.H. 809, 817 (1991) (emphasis omitted; quoting 6A C.J.S. Assignments § 115, at 780 (1975)). Thus, if the Drouins' only theory of relief in this suit was that the assignment was invalid for some reason that would make it voidable by Sand Canyon, Wells Fargo's motion might have some merit.

But that is not the Drouins' only theory of relief, or even their principal one.[1] Instead, the Drouins claim that Sand Canyon, according to its president's own admission, did not hold any mortgages--including theirs--as of the date of the supposed

[1]The complaint does contain some allegations suggesting that the Drouins may seek to challenge the authority of one Tonya Hopkins, who signed the alleged assignment, to act on Sand Canyon's behalf. That matter is the type of infirmity that would "merely render the assignment voidable" at Sand Canyon's election, and therefore could not, by itself, convey standing on the Drouins here. See Woodstock Soapstone, 133 N.H. at 817 (obligor lacked standing to challenge signatory's authority to execute assignment). But it is at best secondary to the Drouins' principal theory of relief.

assignment. Therefore, they maintain, Sand Canyon could not have passed any interest in the mortgage (including the right to foreclose) to Wells Fargo, regardless of the assignment's "validity" as a purely technical matter. Simply put, the Drouins do not argue that the assignment was somehow technically deficient or flawed as a matter of law (and thus voidable or even void); they claim that the purported assignment never took place as a matter of fact, that it simply never occurred. Their theory--that the assignor, as a stranger to the mortgage, could not have transferred it to the assignee--"is not an attack on the Assignment itself," and thus not governed by the case law holding that debtors lack standing to raise such attacks.[2] Bailey v. Wells Fargo Bank, N.A., No. 09-4190, 2012 WL 1192785, at *6-7 (Bkrtcy. D. Mass. Apr. 10, 2012).

The New Hampshire case law governing the type of claims the Drouins actually assert here confirms their standing. As the New Hampshire Supreme Court has explained, "[a] debtor may, generally, assert against an assignee all equities or defenses existing against the assignor prior to notice of the assignment, any matters rendering the assignment absolutely invalid or

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[2]This theory calls to mind the venerable maxim "nemo dat quod non habet," i.e., one cannot give what one does not have. See Mitchell v. Hawley, 83 U.S. 544, 550 (1872); Chase v. Sanborn, 5 F. Cas. 521, 523 (Clifford, Circuit Justice, C.C.D.N.H. 1874) (No. 2,628).

effective, and the lack of plaintiff's title or right to sue." Woodstock Soapstone, 133 N.H. at 817 (emphasis omitted) (quoting 6A C.J.S. Assignments § 115, at 780 (1975)); cf. also Restatement (Second) of Contracts § 336(1) (1981) ("By an assignment the assignee acquires a right against the obligor only to the extent that the obligor is under a duty to the assignor; and if the right of the assignor would be voidable by the obligor or unenforceable against him if no assignment had been made, the right of the assignee is subject to the infirmity.") (emphasis added). The Drouins' argument that Sand Canyon did not hold their mortgage at the time of assignment falls into at least the first (if not all) of these categories. If Sand Canyon itself had, before the assignment, attempted to enforce the mortgage through foreclosure, the Drouins could have raised precisely the same defense against it that they now raise against Wells Fargo, i.e., that it did not in fact own their mortgage.

A recent case from the New Hampshire Superior Court, Newitt v. Wells Fargo Bank, N.A., No. 213-2011-CV-00173 (N.H. Super. July 14, 2011) (Arnold, J.), lends support to the Drouins' position.[3] The plaintiffs in Newitt also sought to enjoin Wells

[3]Wells Fargo argues that Newitt is "not binding or persuasive." While it is true that Newitt is not a definitive statement of New Hampshire law, it is far more instructive on the issue of the nature of the Drouins' rights under New Hampshire law than the extrajurisdictional authority Wells Fargo cites.

Fargo (acting there in its capacity as the trustee for a securitized trust) from foreclosing on the property securing their mortgage loan. In 2006 or 2007, the mortgagee had assigned the plaintiffs' mortgage to Option One/Sand Canyon, which then, in 2010, purported to assign it to Wells Fargo. Id., slip op. at 2. As here, the plaintiffs--citing the selfsame affidavit of Sand Canyon's president upon which the Drouins rely--argued that the 2010 assignment could not have transferred any interest in their mortgage to Wells Fargo, because Sand Canyon had ceased holding any mortgages by 2009 at the latest. Id. at 2-3. There, as here, Wells Fargo argued that the plaintiffs could not challenge the assignment. Id. at 3. Judge Arnold squarely rejected that argument, noting in the process (among other things) that "[t]he assignment from Sand Canyon to Wells Fargo of an interest which Sand Canyon did not possess" was no more effective to assign the mortgage "than the lack of any assignment at all." Id. at 7.

Following the guidance set forth in Woodstock Soapstone and Newitt, this court concludes that the Drouins have standing to pursue their theory that Sand Canyon did not hold their mortgage, and thus could not have assigned it to Wells Fargo. Wells

Fargo's remaining argument,[4] that the Drouins may not assert a cause of action seeking to enjoin foreclosure, is easily rejected. New Hampshire is a nonjudicial foreclosure state, in which a mortgagee or its assignee may foreclose on a property without first initiating an action in court. See N.H. Rev. Stat. Ann. § 479:22 et seq. Where, as here, a mortgagee attempts to undertake such a nonjudicial foreclosure, the foreclosure statutes specifically authorize the mortgagor to "assert defenses against the foreclosure by 'petition[ing] the superior court ... to enjoin the scheduled foreclosure sale.'" Bolduc v. Beal Bank, SSB, 994 F. Supp. 82, 90 (D.N.H. 1998) (quoting N.H. Rev. Stat. Ann. § 479:25, II) (some internal quotations omitted); see also Gordonville Corp. N.V. v. LR1-A Ltd. P'ship, 151 N.H. 371, 377 (2004) (plaintiff properly challenged nonjudicial foreclosure sale by petitioning the superior court to enjoin foreclosure). That is what the Drouins have done here.

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[4]The memorandum in support of Wells Fargo's motion to dismiss also contains a section contending that the complaint "is insufficient on its face," but the argument set forth in that section appears to be coextensive with Wells Fargo's argument that the Drouins lack standing. To the extent that section seeks to make some other argument as to why the complaint does not state a claim, that argument is insufficiently developed and therefore waived. See F.T.C. v. Direct Mktg. Concepts, Inc., 624 F.3d 1, 17 (1st Cir. 2010).

IV. Conclusion

For the reasons set forth above, the motion to dismiss[5] is DENIED.

SO ORDERED.

Joseph N. Laplante
United States District Judge

Dated: May 18, 2012

cc: Robert M.A. Nadeau, Esq.
Paula-Lee Chambers, Esq.
Geoffrey M. Coan, Esq.
Thomas C. Tretter, Esq.
Victor Manougian, Esq.

[5]Document no. 23.

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Michael Drouin and Kathleen Drouin

v.

American Home Mortgage Servicing, Inc., Wells Fargo Bank, N.A., and Option One Mortgage Corporation

Civil No. 11-cv-596-JL
Opinion No. 2012 DNH 089

FILED - RECORD
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CHERYL A. [illegible]
CLERK OF COURT
DORCHESTER COUNTY

MEMORANDUM ORDER

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A recent case from the New Hampshire Superior Court, Newitt v. Wells Fargo Bank, N.A., No. 213-2011-CV-00173 (N.H. Super. July 14, 2011) (Arnold, J.), lends support to the Drouins' position.[3] The plaintiffs in Newitt also sought to enjoin Wells

[3]Wells Fargo argues that Newitt is "not binding or persuasive." While it is true that Newitt is not a definitive statement of New Hampshire law, it is far more instructive on the issue of the nature of the Drouins' rights under New Hampshire law than the extrajurisdictional authority Wells Fargo cites.

Fargo (acting there in its capacity as the trustee for a securitized trust) from foreclosing on the property securing their mortgage loan. In 2006 or 2007, the mortgagee had assigned the plaintiffs' mortgage to Option One/Sand Canyon, which then, in 2010, purported to assign it to Wells Fargo. Id., slip op. at 2. As here, the plaintiffs--citing the selfsame affidavit of Sand Canyon's president upon which the Drouins rely--argued that the 2010 assignment could not have transferred any interest in their mortgage to Wells Fargo, because Sand Canyon had ceased holding any mortgages by 2009 at the latest. Id. at 2-3. There, as here, Wells Fargo argued that the plaintiffs could not challenge the assignment. Id. at 3. Judge Arnold squarely rejected that argument, noting in the process (among other things) that "[t]he assignment from Sand Canyon to Wells Fargo of an interest which Sand Canyon did not possess" was no more effective to assign the mortgage "than the lack of any assignment at all." Id. at 7.

Following the guidance set forth in Woodstock Soapstone and Newitt, this court concludes that the Drouins have standing to pursue their theory that Sand Canyon did not hold their mortgage, and thus could not have assigned it to Wells Fargo. Wells

Fargo's remaining argument,[4] that the Drouins may not assert a cause of action seeking to enjoin foreclosure, is easily rejected. New Hampshire is a nonjudicial foreclosure state, in which a mortgagee or its assignee may foreclose on a property without first initiating an action in court. See N.H. Rev. Stat. Ann. § 479:22 et seq. Where, as here, a mortgagee attempts to undertake such a nonjudicial foreclosure, the foreclosure statutes specifically authorize the mortgagor to "assert defenses against the foreclosure by 'petition[ing] the superior court ... to enjoin the scheduled foreclosure sale.'" Bolduc v. Beal Bank, SSB, 994 F. Supp. 82, 90 (D.N.H. 1998) (quoting N.H. Rev. Stat. Ann. § 479:25, II) (some internal quotations omitted); see also Gordonville Corp. N.V. v. LR1-A Ltd. P'ship, 151 N.H. 371, 377 (2004) (plaintiff properly challenged nonjudicial foreclosure sale by petitioning the superior court to enjoin foreclosure). That is what the Drouins have done here.

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[4]The memorandum in support of Wells Fargo's motion to dismiss also contains a section contending that the complaint "is insufficient on its face," but the argument set forth in that section appears to be coextensive with Wells Fargo's argument that the Drouins lack standing. To the extent that section seeks to make some other argument as to why the complaint does not state a claim, that argument is insufficiently developed and therefore waived. See F.T.C. v. Direct Mktg. Concepts, Inc., 624 F.3d 1, 17 (1st Cir. 2010).

IV. Conclusion

For the reasons set forth above, the motion to dismiss[5] is DENIED.

SO ORDERED.

Joseph N. Laplante
United States District Judge

Dated: May 18, 2012

cc: Robert M.A. Nadeau, Esq.
Paula-Lee Chambers, Esq.
Geoffrey M. Coan, Esq.
Thomas C. Tretter, Esq.
Victor Manougian, Esq.

[5]Document no. 23.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

2014 FEB 10 AM 9:44

DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS
OF THE FIRST JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-18-0871

US Bank, NA as Trustee of the FRT-2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

PLAINTIFF'S MOTION FOR CONTINUANCE

(514978-00008 JJH)

TO: WILLIAM H. SLOAN, ESQUIRE, AND W. JEFF BARNES, ESQUIRE, ATTORNEYS FOR DEFENDANT JAMIE SINGLETON

Plaintiff US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff") respectfully moves the court for an Order of Continuance of this case, which is currently on the Dorchester County Master in Equity's Motion Hearings Roster for January 22, 2014, before the Honorable James E. Chellis, Master in Equity for Dorchester County. The ground for this motion is the following:

The undersigned represents the Plaintiff in this matter. On January 16, 2014, my law firm received an email from Sheryle Young, Court Coordinator for the Master in Equity for Dorchester County, informing us that this case "was added to a Motions Roster for 1/22/2014 at 9:30 AM." The email notice left only today and Tuesday as the two business days remaining prior to the scheduled hearing for Plaintiff to prepare for the hearing. (Monday, January 20, 2014 is a federal holiday.) Plaintiff has an affidavit prepared for review and execution, but Plaintiff's representative is out of the office until next Wednesday, January 22, 2014. Plaintiff cannot adequately prepare for this hearing as a result. Therefore, Plaintiff respectfully requests the continuance of the motions set in

this case set for January 22, 2014. Plaintiff's counsel is available January 28 and in early February for the rescheduled motions if the court so allows.

AFFIRMATION OF COUNSEL

The undersigned attorney has communicated with Defendant Jamie Singleton's counsel regarding this motion, who was unable to consent to the motion pending further consultation with his client and co-counsel.

John J. Hearn (SC Bar # 6635)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
john.hearn@rtt-law.com
ATTORNEYS FOR PLAINTIFF

Rogers Townsend & Thomas, PC and its staff are debt collectors.

January 17, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee of the FRT 2011-1 Trust;

Plaintiff,

v.

Jamie Singleton; Indigo Pointe Homeowners Association;

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION# 2011-CP-18-0871

NOTICE OF MOTIONS HEARING

FILED - RECORDED
2014 FEB 28 PM 1:17
CHERYL ... CLERK OF COURT
DORCHESTER COUNTY

(514978.00008 EL1)

TO THE DEFENDANTS ABOVE NAMED:

PLEASE TAKE NOTICE that all outstanding motions have been set for hearing on **April 24, 2014 at 9:30 a.m.** before the Honorable James E. Chellis, Master in Equity for Dorchester County, at the following address:

Dorchester County Courthouse
5200 East Jim Bilton Boulevard
St. George, SC 29477

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
erica.lybrand@rtt-law.com
ATTORNEY FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

February 26, 2014

CERTIFICATE OF SERVICE BY MAIL.
Case # 2011-CP-18-0871

I, Brittany Amos, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the following upon counsel of record by U.S. Mail, postage prepaid, on February 26, 2014 at the following address:

Document Served:

Notice of Motions Hearing

Counsel Served:

William H. Sloan, Esq.
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

William Jeff Barnes, Esq.
W.J. Barnes, P.A.
9350 Wilshire Blvd.
Beverly Hills, CA 90212

2014 FEB 28 PM 1:17
CLERK
DORCHESTER COUNTY

Brittany Amos
Paralegal
Rogers Townsend & Thomas, PC and its staff are debt collectors.

STATE OF SOUTH CAROLINA **DORCHESTER COUNTY**	)	**COURT OF COMMON PLEAS**
	)	CASE NO. 11-CP-18-871
US BANK, NA AS TRUSTEE FOR FRT 2011-1.	)	
Plaintiff,	)	
v.	)	NOTICE OF HEARING
JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,	)	
Defendants.	)	

2014 APR 14 PM 12:34

CLERK OF COURT
DORCHESTER COUNTY

Please take notice that the Jamie Singleton's Motion for Summary Judgment in this case has been scheduled before The Honorable James Chellis, Master-in-Equity for Dorchester County.

To: Rogers, Townsend
Attn: Erica Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29202
Attorney for Plaintiff

The hearing shall take place at:

Dorchester County Courthouse
5200 E. Jim Bilton Blvd.
St. George, SC 29477

The hearing shall take place on Thursday. April 24, 2014 at 930am.

William H. Sloan
1055 N. Main Street, Suite F
Summerville, South Carolina 29483
Telephone: (843) 873-7531
ATTORNEY FOR DEFENDANT SINGLETON

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Docket No.: 2011-CP-18-0871

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT JAMIE SINGLETON'S MOTION FOR SUMMARY JUDGMENT

(514978-00008 JJH)

US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff") hereby submits this Memorandum of Law in Opposition to Defendant Jamie Singleton's ("Defendant") Motion for Summary Judgment. Plaintiff requests that this Court deny Defendant's Motion for Summary on the basis that there is a genuine issue as to material fact regarding the transfer of the loan documents and the issue of standing, and, therefore, summary judgment is not appropriate at this time.

FACTS AND PROCEDURAL HISTORY

On January 4, 2006 Defendant executed and delivered to Plaintiff's predecessor in interest, People's Choice Home Loan, Inc., a fixed rate note ("Note") in the principal sum of $212,000.00. On the same day, Defendant executed a mortgage ("Mortgage") to Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc., which pledged the subject property as security for the payment of the Note. The Mortgage was recorded in the Office of the RMC/ROD for Dorchester County on January 12, 2006, in Mortgage Book 5142 at Page 2168.

The Note was subsequently transferred several times before finally being transferred to the FRT 2011-1 Trust, with US Bank, NA, serving as the Trustee. The current servicer of the subject loan is AMS Servicing, LLC. Pursuant to the Affidavit of James George attached hereto as Exhibit A, the Note was first transferred by the original lender, People's Choice Home Loan, Inc. (hereinafter referred to as "People's Choice"), to Nomura Holdings, Inc. on or around August of 2006. The Note was endorsed in blank by People's Choice at the time of the transfer. Ocwen Loan Servicing, LLC, serviced the loan during the time period which Nomura Holdings owned the loan. Following the transfer of the Note to Nomura Holdings, People's Choice filed bankruptcy on March 20, 2007. At the time of the bankruptcy filing, People's Choice had no interest in the subject loan or Note.

Thereafter, on or around November of 2007, Nomura Holdings sold or transferred its interest in the Note to an entity named DB50 2007-1. GMAC Mortgage, LLC (hereinafter referred to as "GMAC") was the servicer of the loan for DB50 2007-1 at the time. In March of 2008, the subject loan went into default. As GMAC would likely be the named Plaintiff in any subsequent foreclosure action, as the servicer for the investor DB50 2007-1, an Assignment of Mortgage was given by Mortgage Electronic Registration Systems, Inc., as nominee for People's Choice Home Loan, Inc. to GMAC on July 14, 2008. The Assignment was signed by an individual who had authority to sign on behalf of Mortgage Electronic Registration Systems, Inc. ("MERS"). The Assignment of Mortgage was not intended to be a document of transfer or sale, but merely a means of notice to other potential creditors regarding that status of the mortgage.

A foreclosure action was filed on July 11, 2008, and a Judgment of Foreclosure and Sale was issued on February 6, 2009. A judicial sale was scheduled for March 3, 2009, but on March 2, 2009, the Defendant filed Chapter 13 bankruptcy and the sale was cancelled. Defendant failed

to make payments according to the terms of the bankruptcy plan and settlement agreement and the bankruptcy was dismissed on October 15, 2009. Prior to the bankruptcy dismissal, in July of 2009, the servicing of the subject loan was transferred from GMAC to Wealthbridge Mortgage Corp.

Thereafter, the subject Note was transferred to 50 by 50 REO. LLC, an entity associated with DB50 2007-1 in October of 2010. At the same time, in October 2010, the servicing of the loan was transferred to AMS. Pursuant to active loss mitigation with the new entity, the prior foreclosure action was dismissed on October 25, 2010, and the 2009 judgment was vacated.

Following a default on the loss mitigation plan. this foreclosure action was filed on April 25, 2011. In order to provide notice to other potential creditors, an assignment of Mortgage into 50 by 50, REO, LLC, was executed on August 31, 2011, and recorded on September 14, 2011 in Book 5142 at Page 168. Again, this Assignment was not intended to convey or transfer the loan documents, but simply to provide notice to other creditors of who they should direct their inquiries to.

Defendant filed a Motion to Dismiss on May 24, 2011. Shortly thereafter, the file was placed on hold due to the South Carolina Supreme Court Administrative Order 2011-05-02-01 ("Administrative Order"), which required that in all actions pending on May 2, 2011, where the property is owner-occupied, a Notice of Foreclosure Intervention shall be served on the borrower and the matter stayed until such a time that the attorney for the Plaintiff files a Certification of Compliance with the Administrative Order. A Notice of Foreclosure Intervention was filed on June 15, 2011, and subsequently a Consent Order Removing the Case from Active Docket was filed on August 17, 2011, due to the continued negotiations with the Defendant regarding loss mitigation options.

On October 31, 2011, the subject loan was transferred to FRT 2011-1 Trust, with US Bank, NA, acting as trustee. AMS continued to service the loan on behalf of the new owner of the loan. 50 by 50 REO, LLC executed and recorded an Assignment of Mortgage to US Bank, NA, as Trustee of the FRT 2011-01 Trust, in order to provide notice to creditors of the transfer. This, again, was not intended to be a transfer document. FRT 2011-1 Trust, by and through its attorneys, holds the original note, endorsed in blank by the original lender.

An Attorney Certification with the Administrative Order was filed on December 19, 2011. Thereafter, an Order to Restore was filed on June 1, 2012. A hearing on all pending motions in the case, including Defendant's Motion to Dismiss, was held on June 27, 2012. Defendant's Motion to Dismiss was denied[1], and Defendant filed his Answer and Counterclaim on July 10, 2012. Plaintiff's Reply was filed on August 13, 2012.

On June 25, 2013, a Consent Order was issued, admitting W. Jeff Barnes *pro hac vice*, to represent the interests of the Defendant in this matter. Defendant took Plaintiff's 30(b)(6) deposition on July 9, 2013, and Plaintiff took Defendant's deposition on July 23, 2013. Defendant filed his Motion for Summary Judgment on September 26, 2013. Thereafter, a Consent Scheduling Order was entered on October 23, 2013.

SUMMARY JUDGMENT STANDARD

When deciding a motion for summary judgment, the question for the court is whether there exists a genuine issue as to any material fact. Rule 56, SCRCP. To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Sauner v. Pub. Serv. Auth. of S. Carolina,* 354

[1] A Form 4 Order denying Defendant's Motion to Dismiss was entered on July 26, 2012 and a formal Order denying Defendant's Motion to Dismiss and resolving other motions was entered on November 8, 2012. Defendant filed his Answer and Counterclaim within 15 days of the hearing date, as opposed 15 days of the entry of the Order denying his motion.

S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Even when the evidentiary facts are not in dispute, summary judgment should not be granted if there is disagreement concerning the conclusion to be drawn from those facts. *BPS, Inc. v. Worthy*, 362 S.C. 319, 325-26, 608 S.E.2d 155, 159 (Ct. App. 2005). Finally, summary judgment is a drastic remedy and should be cautiously invoked so as not to deny a litigant the opportunity to present its case.

ARGUMENT

I. PLAINTIFF HAS STANDING TO BRING THIS ACTION AND IS THE LEGAL OWNER OF THE NOTE AND MORTGAGE.

Defendants have contested Plaintiff's standing to bring this action on the basis that there was no lawful transfer or negotiation of the Note or Mortgage and for that reason Plaintiff has no rights to enforce the Note or Mortgage. Defendant's argument is based upon misinformation and incorrect application of the law regarding standing in a mortgage foreclosure action.

Upon transfer of the Note by the original lender, People's Choice, to Nomura Holdings, Inc., an endorsement in blank was stamped on the back of the last page of the original Note. A copy of the Note is attached hereto as Exhibit B for illustrative purposes. Negotiable instruments, which include promissory notes, are governed by Article 3 of the Uniform Commercial Code ("UCC"), codified in South Carolina as Title 36, Chapter 3 of the *South Carolina Code*. See *S.C. Code Ann.* § 36-3-101, *et seq.* (West 2012). The UCC sets out specific provisions with regard to the enforcement of a negotiable instrument:

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

A "holder" is a person or entity "who is in possession of a document or title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank." *S.C. Code Ann.* § 36-1-201 (West 2012). Plaintiff is the holder of the subject Note. A note initially made payable "to order" can become a bearer instrument, if it is endorsed in blank. See *S.C. Code Ann.* 36-3-109(c) (West 2012)(providing that an instrument payable to an identified person may become payable to bearer if it is indorsed in blank): See also S.C. *Code Ann.* 36-3-205(b) (West 2012)(describing what qualifies as a blank endorsement). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone[.]" § 36-3-205(b). Further, possession of a note is *prima facie* evidence of ownership of the instrument. In re *Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

In this case, the Plaintiff holds the original note that was endorsed in blank by the original lender. (Exhibit B). The Note was, therefore, made payable to bearer and was negotiated by transfer alone. § 36-3-203. The original Note was transferred by and among each entity who owned the Note throughout the history of the loan, as described herein. Thereafter, allonges were executed, first made payable to 50 by 50 REO, LLC, by GMAC, the servicer and document custodian for DB50 2007-1, and then to the Plaintiff by 50 by 50 REO. LLC. The Note was, therefore, negotiated directly to Plaintiff by the previous holder of the Note. Even if the court was to find that these allonges were invalid or not properly affixed to the Note, the Note itself is still endorsed in blank, allowing the holder of the note to enforce the Note under the *South Carolina Commercial Code* § 36-3-301. Therefore, Plaintiff has the requisite standing to prosecute the foreclosure, either by possession of the Note endorsed in blank, or by direct negotiation of the Note to it. As a result, Defendant's Motion for Summary Judgment should be denied.

II. AN ASSIGNMENT OF MORTGAGE PROVIDES NO CAPABILITY TO TRANSFER THE NOTE AND MORTGAGE, IS SIMPLY A NOTICE TO OTHER CREDITORS, AND IS IRRELEVANT TO THE ISSUE OF STANDING.

South Carolina law "does not require both possession of the note and a written assignment of the mortgage to prove ownership." *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.'" *Midfirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F. Supp. 1304, 1318 (D.S.C. 1994)(citing *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930); *Ballou v. Young*, 42 S.C. 170, 20 S.E. 84 (1894)). "The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee. . . ." *South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct.App.1987). Therefore, enforcement of a note in South Carolina does not require the plaintiff to have a written assignment of the mortgage. *Woodberry*, 383 B.R. at 377.

Here, the Defendant claims that the Plaintiff lacks standing to bring a foreclosure action by attacking the validity of the written assignments of the mortgage. However, according to the great weight of the authority in South Carolina, the assignments of mortgage are irrelevant to standing. *Woodberry*, 383 B.R. at 377. Plaintiff possesses the original Note, endorsed in blank, which secures the subject Mortgage. As the owner of the Note, Plaintiff is also the owner of the Mortgage. The assignment of the mortgage is not a document of transfer and is recorded only for the benefit of third party creditors or other interested parties. Plaintiff need not demonstrate a valid written assignment of the Mortgage to prove its ownership because it holds the Note. Therefore, the validity of an assignment of mortgage cannot affect Plaintiff's standing to enforce the Note in this action, and the Motion for Summary Judgment should, therefore, be denied.

CONCLUSION

As set forth herein, Plaintiff is the holder of the original Note which has been endorsed in blank by the original lender. The transfer of the Note also carried with it the transfer of the Mortgage. Further, an assignment of mortgage is not necessary to establish standing of a Plaintiff to pursue a foreclosure action. Plaintiff therefore holds the requisite authority to enforce the terms and provisions of the Note and Mortgage, pursuant to state law.

The law is clearly in Plaintiff's favor as to the issue of standing, but, at the very least, there exist genuine issues of material fact regarding the transfer of the Note and the ownership of the Note throughout the history of the loan. In determining whether any genuine issues of material fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Plaintiff has set forth, by affidavit attached hereto and this memorandum, genuine issues of material fact which must be received in the light most favorable to the Plaintiff, as the non-moving party. Because there are genuine issues of material fact on the issue of standing, Defendant is not entitled to judgment as a matter of law and his Motion for Summary Judgment should, therefore, be denied.

Respectfully submitted,

Erica G. Lybrand (SC Bar # 79052)
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ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors.

April 16, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

2014 APR 21 AM 11:38

DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Docket No.: 2011-CP-18-0871

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association.

Defendants.

AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

(514978-00008 EL1)

PERSONALLY APPEARED before me, James George, who, being duly sworn, deposes and says as follows:

1. I am an employee of AMS Servicing, LLC ("AMS"), which is the servicer for the Plaintiff, Deutsche Bank National Trust Company, as Trustee of the FRT 2011-1 Trust ("Plaintiff"), and I am authorized to execute this affidavit on behalf of Plaintiff.

2. As the servicer of the subject loan, AMS has adopted the business records of the previous servicers and owners of the subject Note and Mortgage. My testimony is the result of a review of the records of AMS, including those adopted records.

3. My review of the records associated with the subject loan provided me with the following information:

a. The loan was originated by People's Choice Home Loan, Inc. on January 4, 2006.

b. On or around August of 2006, the loan was sold or transferred to Nomura Holdings, Inc. Ocwen serviced the loan on behalf of Nomura Holdings, Inc.

c. On or around September of 2007, Nomura Holdings, Inc. sold or transferred the subject loan to an entity named DB50 2007-1. At the time of the transfer GMAC Mortgage, LLC ("GMAC"), was engaged to service the loan held by DB50 2007-1.

d. At no time did GMAC own the subject loan.

EXHIBIT A

ALL-STATE LEGAL

e. Servicing of the subject loan was transferred from GMAC to Wealthbridge Mortgage Corp. in July of 2009.

f. 50 by 50 REO, LLC is an entity associated with DB50 2007-1. The subject loan was transferred to 50 by 50, LLC on or around October of 2010. At the same time, servicing of the subject loan was transferred from Wealthbridge to AMS.

g. On October 31, 2011, the loan was transferred to FRT 2011-1 Trust. FRT 2011-1 Trust is the current holder of the note, and AMS continues to service the loan on behalf of FRT 2011-1 Trust.

h. Madison Home Loan Consulting Company has never owned the loan, but instead acted as a third party vendor for the purposes of engaging the borrower in loss mitigation programs.

4. Plaintiff, by and through its attorney, currently holds the original note, which is endorsed in blank.

AFFIANT FURTHER SAYETH NAUGHT.

James P. Dorey

Title: Asset Manager

SWORN to before me this 15th day of April, 2014.

Notary Public for New York County of Erie

My Commission Expires: 10/21/2014

SUZIE E. LUMBERG
Notary Public - State of New York
No. 01LU6082152
Qualified in Erie County
My Commission Expires 10/21/2014

Loan Number [redacted]

ADJUSTABLE RATE NOTE
(LIBOR Six-Month Index (As Published In The Wall Street Journal)-Rate Caps)
Including Prepayment Penalty

2014 APR 21 AM 9:38

CLERK OF COURT
CHARLESTON COUNTY

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

01/04/2006	IRVINE	CALIFORNIA
[Date]	[City]	[State]

5505 ROWSHAM PLACE, NORTH CHARLESTON, SOUTH CAROLINA 29418
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 212,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is PEOPLE'S CHOICE HOME LOAN, INC. a WYOMING CORPORATION.

I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 10.450%. The interest rate I will pay may change in accordance with Section 4 of this Note.

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

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the 1st day of each month beginning on March 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on February 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P.O. Box 52678, Irvine, CA 92619 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ 1,931.33. This amount may change.

(C) Monthly Payment Changes

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

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Date(s)

The interest rate I will pay may change on the 1st day of February, 2008 and every 6th month(s) thereafter. Each date on which my interest rate could change is called a "Change Date."

EXHIBIT B
ALL-STATE LEGAL®
00284

(B) The Index

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

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding six and nine tenth(s) percentage points (6.900%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 13.450% or less than 10.450 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage point(s) (1.000%) from the rate of interest I have been paying for the preceding 6 months.

My interest rate will never be greater than 16.450%. My interest rate will never be less than 10.450%.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

5. BORROWER'S RIGHT TO PREPAY

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

The Note Holder will use my Prepayment to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to any accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial prepayment may be offset by an increase in the interest rate.

If within Twenty-four (24) months from the date of execution of the Security Instrument, I make full Prepayment or partial Prepayment, and the total of such Prepayment(s) in any 12-month period exceeds twenty percent (20%) of the original Principal amount of the loan, I will pay a Prepayment charge in an amount equal to 6 months' advance interest on the amount by which the total of my Prepayment(s) within that 12-month period exceeds twenty percent (20%) of the original Principal amount of the loan.

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

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

8. GIVING OF NOTICES

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. UNIFORM SECURED NOTE

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

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

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

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

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

JAMIE SINGLETON (Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

(Seal) -Borrower

[Sign Original Only]

PAY TO THE ORDER OF

WITHOUT RECOURSE
PEOPLE'S CHOICE HOME LOAN, INC.
A Wyoming Corporation

By _____
DIANA LANTRY
Title: Asst. Vice President

014978-00008

GMAC# [redacted]

ALLONGE TO NOTE

BORROWER NAME: Jamie Singleton

NOTE DATE: January 4, 2006

LOAN AMOUNT: $212,000.00

INTEREST RATE: 10.45% adjustable

FIRST PAYMENT DUE: March 1, 2006

MATURITY DATE: February 1, 2036

PAY TO THE ORDER OF: 50 By 50 REO, LLC

WITHOUT RECOURSE and without representation or warranty except as set forth in that certain Assignment of Note and Mortgage dated of even date herewith from Jamie Singleton in favor of GMAC Mortgage LLC.

Signed in the presence of:

GMAC Mortgage, LLC

By: ELIZABETH FOUST
Title: AUTHORIZED OFFICER

2310

Loan #[redacted]

ALLONGE TO NOTE

BORROWER NAME:	Jamie Singleton
NOTE DATE:	January 4, 2006
LOAN AMOUNT:	$212,000.00
INTEREST RATE:	10.45% adjustable
FIRST PAYMENT DUE:	March 1, 2006
MATURITY DATE:	February 1, 2036

PAY TO THE ORDER OF: US Bank, N.A., as Trustee of the FAT 2011-1 Trust

WITHOUT RECOURSE and without representation or warranty except as set forth in that certain Assignment of Note and Mortgage dated of even date herewith from Jamie Singleton in favor of 50 by 50 REO, LLC.

Signed in the presence of:

50 by 50 REO, LLC

By: Timothy R Halpin

Title: Asst Vice President

Ally Servicing, LLC as Attorney in Fact

3310

CERTIFICATE OF SERVICE BY MAIL
Case # 2011-CP-18-0871

I, Brittany Amos, an employee for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the following upon counsel of record by U.S. Mail, postage prepaid, on April 16, 2014 at the following addresses:

Document Served:

Memorandum in Opposition of Defendant Jamie Singleton's Motion for Summary Judgment

Counsel Served:

William H. Sloan, Esq.
Sloan Law Firm, PA
P.O. Box 85
Summerville, SC 29484

Brittany Amos
Paralegal
Rogers Townsend & Thomas, PC and its staff are debt collectors.

STATE OF SOUTH CAROLINA DORCHESTER COUNTY	))	COURT OF COMMON PLEAS CASE NO. 11-CP-18-871
50 BY 50 REO, LLC, Plaintiff, Vs. JAMIE SINGLETON AND INDIGO POINTE HOMEOWNERS ASSOCIATION, Defendants.	)))))	JAMIE SINGLETON'S MOTION TO COMPEL VS. PLAINTIFF

FILED - RECORD
2014 JUL 23 PM 1:14
CHERYL C. COURT
CLERK OF COURT
DORCHESTER COUNTY

Comes now, Defendant Jamie Singleton, "Singleton", through his undersigned attorney to request an Order to Compel against the Plaintiff because of the following:

1. The Court, on April 24, 2014, heard the Defendant's Motion for Summary Judgment.
2. As part of the basis in opposing the Summary Judgment, the Plaintiff furnished an Affidavit from James George of AMS Servicing, on behalf of the Plaintiff. However, the Plaintiff has failed to furnish additional evidence and paperwork which he relied on and referred to in his affidavit as to the chain of title of the Note and Mortgage in this matter.
3. According to the SCRCP, the Plaintiff has a continuing duty up until trial to continue to comply with the Defendant's discovery requests sent a long time prior to this Summary Judgment Motion.
4. On April 29, 2014, when the Court advised the parties that he was denying the Defendant's Motion for Summary Judgment, the Court noted,

"***The Plaintiff has a continuing duty to comply with Defendant's discovery requests under South Carolina law. The Court notes, with disfavor, failure of Plaintiff to offer Affiant's additional evidence to which he referred in his affidavit to the Defendant prior to the hearing.***"

5. On May 5, 2014, Plaintiff's counsel advised Defendants' counsel that she would "***be sending over some additional production soon.***"
6. Despite several prompts in the last 75 days, Plaintiff's counsel has not delivered this production to date.
7. This production of documents is necessary for the trial preparation for the Defendant.

WHEREFORE, having completed his Motion to Compel against the Plaintiff, Defendant Singleton asks for the following relief from this Court:

A. An Order Compelling the Plaintiff to produce documents as stated in the Motion above;
B. The costs for this action;
C. Any other such relief that this Court deems equitable.

William H. Sloan
Sloan Law Firm
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Defendant Singleton
July 21, 2014

FILED - RECORD
2014 JUL 31 AM 11:39
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

COUNTY OF DORCHESTER

Docket No.: 2011-CP-18-0871

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

AMENDED AFFIDAVIT OF JAMES GEORGE

(514978-00008 EL1)

PERSONALLY APPEARED before me, James George, who, being duly sworn, deposes and says as follows:

1. I am an employee of Seneca Mortgage Servicing, LLC, f/k/a AMS Servicing, LLC ("Seneca"), which is the servicer for the Plaintiff, US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff"), and I am authorized to execute this affidavit on behalf of Plaintiff.

2. As the servicer of the subject loan, Seneca has adopted the business records of the previous servicers and owners of the subject Note and Mortgage. My testimony is the result of a review of the records of Seneca, including those adopted records.

3. My review of the records associated with the subject loan provided me with the following information:

a. The loan was originated by People's Choice Home Loan, Inc. on January 4, 2006.

b. In March of 2006 the loan was sold by People's Choice Home Loan, Inc. to Nomura Credit and Capital, Inc. ("Nomura"). Ocwen serviced the loan on behalf of Nomura.

c. On September 27, 2007 Nomura sold the loan to 50 by 50 LLC, which immediately deposited the loan into its affiliate DB50 2007-1 Trust, formed prior to purchase. GMAC Mortgage, LLC ("GMAC"), was engaged to service the loan held by DB50 2007-1.

d. At no time did GMAC own the subject loan.

e. Servicing of the subject loan was transferred from GMAC to Wealthbridge Mortgage Corp. on July 1, 2009.

f. On October 15, 2010, the servicing of the subject loan was transferred to AMS Servicing, Inc. n/k/a Seneca Mortgage Servicing, LLC.

g. On October 31, 2011, Montana Drive Mortgage Holdings, LLC, the sole certificate holder of DB50 2007-1 Trust and sole member of 50 by 50 REO, LLC, deposited the loan into the FRT 2011-1 Trust. AMS continued to service the loan on behalf of FRT 2011-1 Trust, until April 28, 2014, when AMS became Seneca Mortgage Servicing, LLC.

h. Madison Home Loan Consulting Company has never owned the loan, but instead acted as a third party vendor for the purposes of engaging the borrower in loss mitigation programs.

4. Plaintiff, by and through its attorney, currently holds the original note, which is endorsed in blank.

AFFIANT FURTHER SAYETH NAUGHT.

James Longo

Title: Asset Manager

SWORN to before me this 14th day of July, 2014.

LISA J. COSTA
Notary Public, State of New York
No. 01C06037786
Qualified in Erie County
Commission Expires March 20, 2018

Notary Public for LISA J. COSTA - Erie County
My Commission Expires: 3/20/2018

STATE OF SOUTH CAROLINA **DORCHESTER COUNTY**	)	**COURT OF COMMON PLEAS**
	)	CASE NO. 11-CP-18-871
US BANK, NA AS TRUSTEE FOR FRT 2011-1,	)	
Plaintiff,	)	
v.	)	NOTICE OF HEARING
JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,	)	
Defendants.	)	

Please take notice that the Jamie Singleton's Motion to Compel in this case has been scheduled before The Honorable James Chellis, Master-in-Equity for Dorchester County.

To: Rogers, Townsend
Attn: Erica Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29202
Attorney for Plaintiff

The hearing shall take place at:

Dorchester County Courthouse
5200 E. Jim Bilton Blvd.
St. George, SC 29477

The hearing shall take place on September 30, 2014 at 2pm.

2014 AUG -8 AM 11:55
CLERK OF COURT
DORCHESTER COUNTY

William H. Sloan
1055 N. Main Street, Suite F
Summerville, South Carolina 29483
Telephone: (843) 873-7531
ATTORNEY FOR DEFENDANT SINGLETON

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING, and DOES 1-10,

Counter-Defendant and Cross-Defendants.

JAMIE SINGLETON's AMENDED ANSWER AND COUNTERCLAIM AND THIRD PARTY COMPLAINT

2014 OCT 28 AM 11:54
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
S.C. - RECORDS

Counter-Plaintiff JAMIE SINGLETON, by and through his undersigned counsel, files and serves his Amended Answer and Counterclaim against Counter-Defendant US BANK, NA AS TRUSTEE FOR FRT 2011-1, a foreign (non-South Carolina incorporated) entity; NOMURA HOLDINGS, INC., a foreign (non-South Carolina incorporated) entity; 50 By 50 REO LLC, a New York limited liability company; DB 50 2007-1 Trust, a New York business trust; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation;

SHELLPOINT MORTGAGE SERVICING, a South Carolina business entity, and DOES 1-10,

and sues said parties for Declaratory Relief and other relief, and states:

Comes now, Defendant Jamie Singleton, to first Answer the Complaint against him and file a Counterclaim against Plaintiff as follows:

Any item that is not specifically and fully admitted is denied.

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

1. Defendant (Singleton only) admits No. 1 of complaint.
2. Defendant denies No. 2 of Complaint and demands strict proof thereof.
3. Defendant denies No. 3 of Complaint.
4. Defendant requires a more definitive statement to No. 4 of Complaint before it can answer. Defendant does not know who the servicer is and does not know the investor mentioned in No. 4. Further, No. 4 of Complaint as it is states is a violation of the ***Administrative Order of Chief Justice Toal dated May 22, 2009 RE: Mortgage Foreclosures and the Home Affordable Modification Program (HMP)***

No. 4 of Complaint states that Modification attempts cannot be completed and have not been completed per the requirements of the ***Administrative Order*** mentioned above. Therefore, because of the defects admitted in No. 4 of Complaint, the Complaint states a claim where relief cannot be granted and this case should be dismissed under Rule 12-b-6, SC Rules of Civil Procedure and/or this case should be stayed per the said ***Administrative Order*** until the investor gives the servicer the authority to negotiate and actually does negotiate a mortgage modification in this case.

5. Defendant admits No. 5 of Complaint.
6. With regards to No. 6 of Complaint, Defendant admits Defendant Indigo Pointe may have a lien on the subject property. Defendant Singleton does not admit the validity of any such lien filed on his property by Co-Defendant Indigo Pointe.
7. Defendant admits that he signed such a promissory Note as mentioned in No. 7. To non-party People's Choice Home Loans, Inc. Defendant does not admit the validity of such Note or that the Plaintiff has any right to enforce said Note.
8. Defendant admits that he signed a Mortgage in favor of Non-parties MERS, Inc. and People's Choice Home Loan, Inc. as noted in No. 8 of Complaint. Defendant denies the validity of Plaintiff to enforce such Mortgage.
9. Defendant admits No. 9 that all the documents were recorded as such. Defendant denies the remainder of No. 9 as far as validity of all the documents.
10. Defendant denies No. 10 of Complaint.
11. Defendant requests a more definitive statement as to No. 11 of Complaint as No. 11 of Complaint does not actually state whether Plaintiff or its agents sent any Notices to the Defendant.
12. Defendant is without information and belief sufficient to admit or deny No. 12 of Complaint, and therefore, denies same, and demands strict proof thereof.

13. Defendant denies No. 13 of Complaint that Plaintiff has the right to demand such deficiency balance. Defendant need not admit or deny No. 13 of Complaint as it is a prayer for relief. Plaintiff's predecessor in interest, GMAC Mortgage, LLC, waived its right to a deficiency against Mr. Singleton in this Court in case number 2008-CP-18-871. Therefore, judicial estoppel should apply in this case.
14. Plaintiff admits No. 14 of Complaint that counsel has been hired by the servicer. Defendant denies the remainder of No. 14 of Complaint.
15. Defendant lacks information sufficient to answer No. 15 of Complaint as Plaintiff has not specified any such payments made for taxes or insurances that they have made.
16. No. 16 of Complaint is a prayer for relief and Defendant need not respond to same and Defendant denies that they are entitled to same.
17. Defendant admits No. 17 of Complaint that Defendant Indigo may have an interest in property. Defendant denies the validity of such liens filed by Indigo.

II. MOTION FOR MORE DEFINITIVE STATEMENT

18. Defendant repeats §1-17 of the Answer as if they were repeated verbatim right here.
19. Defendant Singleton cannot respond to No. 4 of Complaint and requests a more definitive statement.
20. With regards to No. 4, Plaintiff has failed to state the investor that must approve a modification and has failed to mention the servicer. Defendant requests that Plaintiff identify the servicer and the investor that must approve any modification in this case before Defendant can respond to it.

III. MOTION TO DISMISS RULE 12-B-6 OR MOTION TO STAY

21. Defendant repeats §1-20 of Answer as if they are repeated verbatim right here.
22. No. 4 of Complaint claims the mortgage that is the subject of this case is not subject for modification because the investor has failed to give permission to the servicer to negotiate a modification.
23. This is not sufficient reason for the investor of the Mortgage to deny the Defendant a modification as mentioned in No. 1 of ***Administrative Order*** of 2009 mentioned in No. 4 of this Answer. The Plaintiff admitted that it is participating in the applicable Home Affordable Modification Program, "HMP". The ***Administrative Order*** is applicable for this loan as this loan was originated before 2009 and is the primary residence of the Defendant.
24. Therefore, the Plaintiff has failed to state a cause of relief where relief can be granted at this time and this case should be dismissed per Rule 12-b-6, SCRCP or the Court should order the case be stayed until attempts at HMP Modification have been completed per the aforementioned ***Administrative Order.***

IV. MOTION TO DISMISS- FAILURE TO JOIN NECESSARY PARTY

25. Defendant repeats §1-24 of this Answer as if repeated verbatim right here.
26. On November 23, 2011, the alleged servicer of this Mortgage, AMS Servicing, LLC. sent Mr. Singleton a letter, Exhibit A, stating that US Bank, NA, as Trustee, for FRT 2011-1,

is now the owner of his mortgage. AMS Servicing, LLC has claimed to be the servicer for the Plaintiff as well.

27. This letter should therefore, force an inquiry by this Court to determine the interests of US Bank, NA, as Trustee for FRT 2011-1
28. Failure to join US Bank, NA, as Trustee for FRT 2011-1 will potentially cause Mr. Singleton to face double liability in this case from them and the Plaintiff.
29. Therefore, Defendant Singleton moves before this Court to either join US Bank, NA, as Trustee for FRT 2011-1 as a party to this case or to dismiss this case if it is not feasible or possible to join them as a party to this case.

V. AFFIRMATIVE DEFENSE- LACK OF STANDING

30. Defendant repeats §1-29 of this Answer as if repeated verbatim right here.
31. Defendant purports to have standing to bring this action based on an assignment of Mortgage from People's Choice Home Loan, Inc., the original creditor via Mortgage Electronic Registration Systems. Inc. "MERS" to GMAC Mortgage, LLC and then a subsequent assignment to the Plaintiff from said GMAC.
32. MERS, Inc. has no authority to assign the mortgage that is the subject of this case. There is no Power of Attorney in this matter recorded which allows MERS, Inc. to assign the mortgage of this case. Therefore, the chain of custody of the Mortgage in this case has been broken the Plaintiff lacks the ownership of the Mortgage and the standing to sue in this case.

VI. AFFIRMATIVE DEFENSE- INSURANCE

33. Defendant repeats §1-32 of this Answer as if repeated verbatim right here.
34. Defendant asserts assert that that is mortgage is a securitized mortgage loan trust, and that in connection with the formation thereof and pursuant to applicable rules and regulations of the Securities and Exchange Commission, one or more insurances was/were placed on the loan the subject hereof in connection therewith. Such insurances, and other credit enhancements available to the securitized mortgage loan trust, provide benefits on default by the borrower with no recourse or subrogation against the borrower. To the extent that any benefits were paid on default as a result of available credit enhancements or other insurances, Defendant is entitled to a setoff as to any amounts claimed due by Plaintiff herein.

VII. AFFIRMATIVE DEFENSE- UNCLEAN HANDS

35. Defendant repeats §1-34 of this Answer as if repeated verbatim right here.
36. Plaintiff has brought this case forward with unclean hands and should be barred from relief under the equitable doctrine of unclean hands.

VIII. AFFIRMATIVE DEFENSE- WAIVER AND LACHES

37. Defendant repeats §1-36 of this Answer as if repeated verbatim right here.
38. Defendant asserts the defense of waiver and laches in this case, especially with regards for the right of Plaintiff to recover a deficiency balance in this case. GMAC Mortgage, LLC, alleged former holder and owner of the Note and Mortgage the subject of this case, waived a deficiency balance on the Note and Mortgage in this case when they sued Defendant Singleton before this Court in 2008 in case number 2008-CP-18-871. This waiver should be held in this equity court against the Plaintiff in this matter.

IX. AFFIRMATIVE DEFENSE- BAD FAITH AND UNFAIR DEALING RE: ADMINISTRATIVE ORDER

39. Defendant repeats §1-38 of this Answer as if repeated verbatim right here.
40. Defendant alleges that Plaintiff has failed to act in good faith that is required in the foreclosures of primary residences with regards to the ***Administrative Order Re: Mortgage Foreclosures*** dated May 2. 2011. Plaintiff offered a Defendant a "take it or leave it" mortgage modification offer and, as a result, the Defendant believes Plaintiff has failed to act in good faith as required by the ***Administrative Order***. Defendant requests that the Court makes an inquiry into this case and determine whether or not Plaintiff has acted in bad faith or not. This case is applicable to the said ***Administrative Order*** as this is a foreclosure for a property that is the primary residence of the Defendant.

X. AFFIRMATIVE DEFENSE- MORTGAGE UNENFORCEABLE AS THE NOTE AND MORTGAGE HAVE BEEN SEPARATED

41. Defendant repeats §1-40 of this Answer as if repeated verbatim right here.
42. The Note that is the subject of this matter was signed in favor of non-party People's Choice Home Loans, Inc. The Mortgage that is the subject of this action was assigned to non-party Mortgage Electronic Registration Systems, Inc. and then assigned from MERS to Plaintiff.
43. Ownership of the Note and Mortgage have been split forever and therefore, the Mortgage is unenforceable. Per ***Carpenter v. Longan, 16 Wall. 271, 83 U.S. 271, 275, 21 L.Ed. 313 (1872)*** the mortgage, the Security Instrument follows the Note, the Debt Instrument.

Therefore, this Note is unsecured and separated from the Note keeping the Plaintiff from validly foreclosing on the Mortgage.

XI. AFFMIRMATIVE DEFENSE-LACK OF VALID NOTICE OF ACCELERATION

44. Defendant repeats §1-43 of this Answer as if repeated verbatim right here.

45. §22 of the Mortgage requires any notice of acceleration come directly from the Lender. Defendant has received no Notice of same from People's Home Choice Home Loan, Inc. the lender listed on the Mortgage, nor MERS, its nominee listed on the Mortgage.

46. Therefore, the Plaintiff lacks the right to accelerate the Note and Mortgage in this case.

XII. AFFIRMATIVE DEFENSE- JUDICIAL ESTOPPEL

47. Defendant repeats §1-46 of this Answer as if repeated verbatim right here.

48. In A 2008 case for foreclosure, Plaintiff's predecessor in interest, GMAC, LLC filed a waiver of deficiency on the mortgage that is the subject of this action. Judicial estoppel should be applied preventing Plaintiff from demanding a deficiency balance in this case.

XIII. AFFIRMATIVE DEFENSE- RESERVATION OF DEFENSES

49. Defendant repeats §1-46 of this Answer as if repeated verbatim right here.

Defendant reserves all other defenses that have not come to light at this time

AMENDED COUNTERCLAIM AND CROSS-CLAIMS

A. Parties, Jurisdiction and Venue

50. This is an action for Declaratory Relief which is a proper Counterclaim to the main action, and the Cross-Claims are proper within this Court as the operative facts giving rise to the claims for relief arose out of the same series of transactions related to the same mortgage loan and the same borrower (Mr. Singleton).

51. Counter- and Cross-Plaintiff JAMIE SINGLETON is and was at all times material hereto a *sui juris* resident of the State of South Carolina over the age of eighteen (18), and is a Defendant in the main action.

52. Counter-Defendant US BANK NA AS TRUSTEE FOR FRT 2011-1 (hereafter "USB") is and was at all times material a foreign (non-South Carolina incorporated) private equity investment bank which did business in the State of South Carolina and invoked the jurisdiction of this Court by filing the main action which seeks to foreclose on the mortgage loan the subject of both the main action and this action.

53. Cross-Defendant NOMURA HOLDINGS, INC. (hereafter "Nomura") is and was at all times hereto a foreign (non-South Carolina incorporated) subsidiary holding company of Nomura Bank, which is a Japanese banking concern. Nomura claims to have purchased the mortgage loan the subject of this action from the original lender, that being People's Choice, and claims to have sold the loan to Cross-Defendant 50 BY 50 REO LLC.

54. Cross-Defendant 50 By 50 REO LLC (hereafter "50 By 50") is and was at all times material hereto a New York limited liability company which claims to have come into ownership of the mortgage loan the subject of this action.

55. Cross-Defendant DB 50 2007-1 Trust is and was at all times material hereto a New York business trust which claims to have come into ownership of the mortgage loan the subject of this action.

56. Cross-Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter "MERS") is and was at all times material hereto a Delaware corporation with its principal place of business being located in Virginia. MERS regularly conducts business in South

Carolina and regularly purports to transfer mortgage loans of South Carolina borrowers and undertake actions to further foreclosure actions in South Carolina.

57. Cross-Defendant SHELLPOINT MORTGAGE SERVICING (hereafter "Shellpoint") is a servicer which will be assuming the servicing of the loan the subject of this action as of November 1, 2014 per written notice from the current servicer. Shellpoint's location has been identified in writing by the current servicer as being located in Greenville, South Carolina.

58. Cross-Defendants DOES 1-10 are not identified at this point but are reserved in the event that discovery reveals other parties which may be added if any such parties are found or claim to have an interest in the outcome of this action.

59. Cross-Defendants Nomura, 50 By 50, MERS, and DB50 2007-1 are subject to the jurisdiction of this Court as they engaged in business in South Carolina by claiming to have acquired and transferred the mortgage loan the subject of this action on which Counter-Defendant USB is attempting to foreclose. The single act of allegedly transferring the mortgage loan the subject of this and the main action to Plaintiff/Counter-Defendant USB constitutes the type of single act which has caused harm to Counter/Cross-Plaintiff in South Carolina as the foreclosure arises out of and relates to the acts of the Cross-Defendants as set forth below, thus establishing the minimum contacts necessary to hale the Cross-Defendants into this Court.

60. Cross-Defendant Shellpoint is subject to the jurisdiction of this Court as it is located in Greenville, South Carolina and is servicing the loan the subject of this action as of November 1, 2014 as affirmatively represented by the current servicer.

61. Further, the relief sought is Declaratory relief, which requires the joinder of any party which may have an interest in the outcome of the claim. The State of South Carolina thus has an

interest in exercising jurisdiction over the Cross-Defendants, the acts of whom gave rise to the assertion of the foreclosure claim by Counter-Defendant USB. There is no inconvenience for the Cross-Defendants in this action and even if claimed, the inconvenience to Counter/Cross-Plaintiff with any severance of any claim as to any Cross-Defendant greatly outweighs any claim of prejudice to any of the Cross-Defendants. Further, severance of any claim as to any Cross-Defendant would unduly complicate this litigation and result in the possibility of inconsistent verdicts or orders.

62. All actions of the Counter-Defendant and the Cross-Defendants were directed toward and had their effects in South Carolina, and were intended by the Counter-Defendant and Cross-Defendants to be directed toward South Carolina.

B. Background Facts

63. Counter/Cross-Plaintiff originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

64. On January 15, 2009, Counter/Cross-Plaintiff received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by Cross-Defendant DB50 2007-1 Trust. No notice was provided to Counter/Cross-Plaintiff that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

65. Cross-Defendant Nomura claims to have purchased the mortgage loan the subject of this action as of January 6, 2006 from People's Choice. However, none of the loan transfer

documentation required by the Mortgage Loan Purchase Agreement has been produced, including the interim assignments of mortgage and the intervening endorsements for the Note.

66. People's Choice filed for Bankruptcy on March 20, 2007.

67. Cross-Defendant Nomura claims to have sold the mortgage loan the subject of this action to Cross-Defendant 50 By 50.

68. Counter-Defendant had previously produced an Assignment of Mortgage by Cross-Defendant MERS dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

69. Counter-Defendant had previously produced a letter dated November 23, 2011 from entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

70. There is a second "Assignment of Mortgage" which was filed in the public records by which Cross-Defendant 50 By 50 purportedly assigned the Mortgage to the Plaintiff/Counter-Defendant. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Counter-Defendant.

71. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to Cross-Defendant 50 By 50 or to the Counter-Defendant.

72. If Cross-Defendant Nomura sold the loan to Cross-Defendant 50 By 50, there was nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008; conversely, if Cross-Defendant MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Cross-Defendant Nomura did not sell the loan to Cross-Defendant 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

73. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Cross-Defendant Nomura to sell to Cross-Defendant 50 By 50 on September 27, 2007, and nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008.

74. If the loan was assigned by Cross-Defendant MERS to GMAC on July 14, 2008 or was in the inventory of the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust (of which the Counter-Defendant is the claimed "trustee") could not have acquired the loan on October 31, 2011.

75. It is without dispute that Counter-Defendant USB was not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by Cross-Defendant 50 By 50, which is also not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage.

76. As a direct and proximate result of the matters hereinabove, Counter-Plaintiff is in doubt as to his rights under the Note and Mortgage contracts.

COUNT I: DECLARATORY RELIEF

77. Counter/Cross-Plaintiff reaffirms and realleges paragraphs 1 through 76 hereinabove as if set forth more fully hereinbelow.

78. This is an action for Declaratory Relief which is brought pursuant to S.C. Code Ann. sec. 15-53-10 *et seq.* and is a proper counterclaim to the main action.

79. S.C. Code Ann. sec. 15-53-30 provides that any person interested under a deed, will, written contract or other writing constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

80. It is without dispute that the Note and Mortgage are contracts in which Counter/Cross-Plaintiff has an interest.

81. It is also without dispute that the actions of the Counter-Defendant and Cross-Defendants set forth above have affected the rights of the Counter/Cross-Plaintiff in the Note and Mortgage contracts, and that the claims of the Counter- and Cross-Defendants are conflicting and ambiguous. Further, there is no identification of who Cross-Defendant Shellpoint will be servicing the loan for.

82. S.C. Code Ann. Sec. 15-53-20 provides that courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed, and that no action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. It is without dispute

that this Court has jurisdiction over this action for declaratory relief and may grant the relief requested.

83. S.C. Code Ann. sec. 15-53-130 provides that the Declaratory Judgments Act is declared to be remedial with its purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

84. S.C. Code Ann. sec. 15-53-40 provides that a contract may be construed either before or after there has been a breach thereof.

85. S.C. Code Ann. sec. 15-53-80 provides that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. Counter/Cross-Plaintiff has thus joined the Counter-Defendant and the Cross-Defendants who have all claimed an interest in the mortgage loan the subject of this action and the contracts associated therewith.

86. S.C. Code Ann. sec. 15-53-90 provides that when a proceeding for declaratory relief involves the determination of an issue of fact that such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending, and all existing rights to jury trials are preserved.

87. There are numerous issues of material fact as revealed by the facts set forth above, and Counter/Cross-Plaintiff hereby demands trial by jury of all such issues.

88. S.C. Code Ann. Sec. 15-53-100 provides that in any proceeding instituted under the Chapter (for declaratory relief) that the court may make such award of costs as may seem equitable and just.

89. As Counter/Cross-Plaintiff has been forced to bring this action to determine his rights under the Note and Mortgage contracts as a result of the actions of the Counter-Defendant and Cross-Defendants, Counter/Cross Plaintiff requests an award of his costs.

90. S.C. Code Ann. Sec. 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. Counter/Cross-Plaintiff reserves the right to amend this claim to request any such additional relief as this matter progresses.

WHEREFORE, Counter/Cross-Plaintiff demands the entry of a Declaratory Judgment declaring his rights and legal relations and status with relation to the Note and Mortgage contracts, and also requests a declaration that neither the Counter-Defendant nor any of the Cross-Defendants have any rights in and never had any rights or interest in the Note or the Mortgage for the reasons set forth above, and for any other and further relief which this Court deems just and proper.

Dated this 27th day of October, 2014.

William H. Sloan
Post Office Box 85
Summerville, SC 29483
Attorney for Defendant Singleton
843-873-7531
whs@sloanlawfirm.net

Oct. 27, 2014

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

JAMIE SINGLETON'S MOTION TO AMEND ANSWER TO ADD COUNTERCLAIM AND TO ADD ADDITIONAL DEFENDANTS

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys and in view of matters raised before the Court at a hearing on September 30, 2014, files his Motion to Amend his Answer and to Add Additional Defendants, and as grounds states:

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2014 OCT 28 AM 11:53
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

A. Introduction

1. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for bankruptcy on March 20, 2007.

2. On January 15, 2009, Mr. Singleton received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by an entity styled DB50 2007-1 Trust. No notice was provided to Mr. Singleton that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

3. Mr. Singleton sought discovery as to, *inter alia*, the history of custody and transfer of his mortgage loan. After having to file a Motion to Compel discovery, Mr. Singleton was finally

provided with documents from Plaintiff which claimed that his mortgage loan had been the subject of several conflicting transfers.

4. One of the documents produced was a letter dated January 6, 2006 from Nomura Holdings (hereafter "Nomura") with an attached Mortgage Loan Purchase Agreement (hereafter "MLPA") which sets forth a sale of loans from People's Choice to Nomura. The MLPA required documentary proof in specific form as to the transfer of loans from People's Choice to Nomura, including interim assignments of mortgage and intervening endorsements for the Note. None of this documentation was produced.

5. Another document produced was a purchase agreement whereby Nomura sold loans to an entity known as "50 By 50 REO LLC (hereafter "50 By 50")". There was also a Trust Agreement dated August 28, 2007 between LaSalle Bank and Wilmington Trust Company concerning something called the DB 50 2007-1 Trust. There is no loan schedule which sets forth that the loan the subject of this action was transferred to the DB 50 2007-1 Trust.

6. Plaintiff had previously produced an Assignment of Mortgage by non-party Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

7. There was also produced an Amended and Restated Trust Agreement dated October 31, 2011 involving an entity styled FRT 2001-1 Trust, Fort Asset Funding 2001-1 LLC, US Bank Trust National Association, and Wells Fargo, NA concerning the FRT 2011-1 Trust. No mortgage loan schedules were attached or provided.

8. A Sale and Administration Agreement dated October 31, 2011 was also produced which involved the FRT 2011-1 Trust, Fort Asset Funding 2011-1 LLC, numerous "Sellers" (all

of whom were owned by the same individual), US Bank National Association as Indenture Trustee, and Montana Drive Mortgage Holdings LLC.

9. Plaintiff had previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

10. There is a second "Assignment of Mortgage" which was filed in the public records by which 50 By 50 REO, LLC (the entity which was the original named Plaintiff in this case) purportedly assigned the Mortgage to the Plaintiff. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Plaintiff.

11. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to 50 By 50 or to the Plaintiff.

12. If Nomura sold the loan to 50 By 50, there was nothing for MERS to assign to GMAC on July 14, 2008; conversely, if MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Nomura did not sell the loan to 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

13. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Nomura to sell to 50 By 50 on September 27, 2007, and nothing for MERS to assign to GMAC on July 14, 2008.

14. If the loan was assigned to GMAC on July 14, 2008 or was in the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust could not have acquired the loan on October 31, 2011.

15. The named Plaintiff in this case is U.S. Bank, National Association as Trustee for FRT-2011-1 (hereafter "USBTF"). It is without dispute that USBTF was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by 50 By 50, which is also not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

16. On July 9, 2013, counsel for Mr. Singleton took the deposition of one James P. George, an employee of AMS. It is without dispute that AMS is not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

17. In view of the matters testified to by Mr. George, Mr. Singleton filed a Motion for Summary Judgment. The Motion was heard before the Court on September 30, 2014.

18. During the course of the hearing, the Court determined that the documents sought by Mr. Singleton as to the alleged transfers were relevant over the objection of counsel for the Plaintiff. When this determination was made, counsel for Plaintiff changed her position by stating that the documents sought were not in the possession or control of her client.

19. The Court then inquired of counsel for Mr. Singleton whether he thus desired to propound non-party discovery or amend his Answer to add the other parties allegedly involved in the claimed transfers as parties to this action. Counsel for Mr. Singleton opted for the latter.

20. Between the time of the hearing and the present, Mr. Singleton has been advised by the current servicer that the servicing of the loan will be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina, and thus Shellpoint must also be added as a party as it has an interest in the outcome of this action.

21. Mr. Singleton thus formally moves to amend his Answer to add additional party Defendants and a counter-claim and cross-claim for Declaratory Relief.

22. A copy of the proposed Counterclaim and Cross-Claims is appended hereto and incorporated herein by reference.

23. The instant Motion is filed in good faith in view of the matters above and after reasonable inquiry into the facts as revealed by documentation produced by Plaintiff, and as soon as practicable given the only recent discovery of the majority of the information above which was revealed in discovery produced to Mr. Singleton by Plaintiff as a result of a Motion to Compel Discovery.

24. The parties have, pursuant to SCRCP 11, conferred as to this Motion and counsel for Plaintiff/Counter-Defendant, after reviewing the proposed Amendment, has refused to consent to this Motion.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court grant this Motion and deem the attached Counterclaim and Cross-Claims as filed for the reasons set forth, and for any other and further relief which is just and proper.

William H. Sloan
Post Office Box 85
Summerville, SC 29483
Attorney for Defendant Singleton
843-873-7531
whs@sloanlawfirm.net

Oct 27, 2014

STATE OF SOUTH CAROLINA **DORCHESTER COUNTY**	**COURT OF COMMON PLEAS** CASE NO. 11-CP-18-871
US BANK, NA AS TRUSTEE FOR FRT 2011-1. Plaintiff, v. JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION, Defendants.	NOTICE OF HEARING

FILED - RECORDED
2014 NOV -4 PM 12:43
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

Please take notice that the Jamie Singleton's Motion to Amend Answer and Counterclaim in this case has been scheduled before The Honorable James Clelis, Master-in-Equity for Dorchester County.

To: Rogers. Townsend
Attn: Erica Lybrand, Esq.
Post Office Box 100200
Columbia, SC 29202
Attorney for Plaintiff

The hearing shall take place at:

Dorchester County Courthouse
5200 E. Jim Bilton Blvd.
St. George, SC 29477

The hearing shall take place on Monday December 15, 2014 at 200pm.

William H. Sloan
1055 N. Main Street, Suite F
Summerville, South Carolina 29483
Telephone: (843) 873-7531
ATTORNEY FOR DEFENDANT SINGLETON

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee of the FRT 2011-1 Trust,

Plaintiff,

vs.

Jamie Singleton; Indigo Pointe Homeowners Association,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Docket No.: 2011-CP-18-0871

2014 DEC 15 P 2:28
CLERK OF COURT
DORCHESTER COUNTY, SC

PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO AMEND ANSWER

(514978-00008 EL1)

US Bank, NA as Trustee of the FRT 2011-1 Trust ("Plaintiff") hereby submits this Memorandum of Law in Opposition to Defendant Jamie Singleton's ("Defendant") Motion to Amend Answer. Plaintiff requests that this Court deny Defendant's Motion to Amend on the basis that justice does not require the amendment and the motion would prejudice the Plaintiff, as described below:

1. JUSTICE DOES NOT REQUIRE THE AMENDMENT AS CONTEMPLATED IN DEFENDANT'S PROPOSED AMENDED ANSWER.

Rule 15(a) of the *South Carolina Rules of Civil Procedure* provides that leave to amend a pleading "shall be freely given *when justice so requires* and does not prejudice any other party" (emphasis added). In this case, justice absolutely does not require the amendment as proposed by the Defendant because the law in South Carolina clearly provides that there is no basis in law or fact for the new allegations and request for relief.

Under South Carolina law, "[p]ossession of a bearer instrument [note] is *prima facie* evidence of ownership." In re Woodberry, 383 B.R. 373, 377 (Bankr. D.S.C. 2008). South Carolina law "does not require both possession of the note and a written assignment of the

mortgage to prove ownership." Id. at 376. "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.'" Midfirst Bank, SSB v. C.W. Haynes & Co., Inc., 893 F. Supp. 1304, 1318 (D.S.C. 1994)(citing Hahn v. Smith, 157 S.C. 157, 154 S.E. 112 (1930); Ballou v. Young, 42 S.C. 170, 20 S.E. 84 (1894)). "The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee. . . ." South Carolina Nat'l Bank v. Halter, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct.App.1987) (citing Hahn, 157 S.C. 157, 154 S.E. 112). Thus, enforcement of a note in South Carolina does not require the plaintiff to have a written assignment of the mortgage securing the note. Woodberry, 383 B.R. at 377.

Under South Carolina law, the assignment of the mortgage is irrelevant to standing because the mortgage follows the note. The only issue related to standing in this case is whether the Plaintiff has possession of the original note, properly endorsed.

Negotiable instruments, which include promissory notes, are governed by Article 3 of the UCC, codified in South Carolina as Title 36, Chapter 3 of the South Carolina Code. See S.C. Code Ann. § 36-3-101. There are specific provisions in the UCC dealing with just who may enforce a negotiable instrument. See S.C. Code Ann. § 36-3-301. One's ability to enforce an instrument will depend on one's status, which in turn depends on which interests were acquired and how those interests were acquired. Id. Different rules apply to notes that are payable "to bearer" or "to order" and it is generally necessary to determine whether a negotiable note was effectively transferred or negotiated to the person seeking to enforce the note. See S.C. Ann. § 36-3-201; § 36-3-202; § 36-3-203. The issues in this case are most directly dealt with by § 36-3-301. Section 36-3-301 reads as follows:

> "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the

> rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.[1]

A "holder" is a person or entity "who is in possession of a document or title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank." S.C. Code Ann. § 36-1-201(20).

"When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." § 36-3-205(b). Because the Plaintiff has possession of the Note, indorsed to it and indorsed in blank, Plaintiff is the holder of the Note and has the power to enforce the Note under the South Carolina Commercial Code. § 36-3-301.

In addition to the applicable case law, as cited above, the following items are brought to the attention of the Court in order support of Plaintiff's Opposition the Motion to Amend:

(1) Recently decided case by the United States Court of Appeals for the Fourth Circuit, *Scheider vs. Deutsche Bank National Trust Company, et al.*, Appeal No. 13-1821; and

(2) A recent article published in the American Bar Association's Real Property, Trust, and Estate Law Journal, Volume 29, Number 1, Spring 2014, entitled *What We Have Learned From the Mortgage Crisis about Transferring Mortgage Loans.*

These items will be presented to the Court at the hearing on Defendant's Motion.

[1] SC. Code Ann. § 36-3-309 (West 2012) deals with the enforcement of instruments which have been lost, destroyed, or stolen, and S.C. Code Ann. § 36-3-418(d) deals with circumstances where an instrument has been paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance. Neither of those sections applies here.

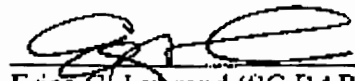
II. PLAINTIFF WILL BE PREJUDICED BY THE AMENDMENT.

Leave to amend a pleading should not be granted where the amendment will prejudice a party. Rule 15(a), *SCRCP*. In the case at bar, Plaintiff and Defendants have completed discovery, including depositions. The Parties have already incurred the expenses of a mediation. Allowing the Defendant to now amend his Answer to raise new allegations, bring in new parties, and request new relief will prejudice the Plaintiff as it did not have adequate notice of these new claims in conducting its discovery and deposition, and would require Plaintiff to now incur the additional expenses of new discovery and depositions.

Further, the Defendant has been in default on this loan since March of 2009. We are now approaching six years of the Defendant occupying the property and not paying the mortgage. Plaintiff continues to incur expenses relating to the servicing of the mortgage, and an amendment at this late stage in the case will only prejudice Plaintiff further by essentially requiring Plaintiff to continue to incur expenses and interest on a loan which has not been paid for over five years.

Therefore, Plaintiff respectfully requests that this court deny Defendant's Motion to Amend on the grounds that justice does not require the amendment and that the Plaintiff will be prejudiced by the amendment.

Respectfully submitted,



Erica G. Lybrand (SC BAR # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

December 15, 2014

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

JAMIE SINGLETON'S MOTION TO AMEND ANSWER TO ADD COUNTERCLAIM AND TO ADD ADDITIONAL DEFENDANTS
(amended to add additional parties identified since prior hearing on motion)

Defendant JAMIE SINGLETON (hereafter "Mr. Singleton"), by and through his undersigned attorneys and in view of matters raised before the Court at a hearing on December 15, 2014, files his Motion to Amend his Answer and to Add Additional Defendants which amends the prior motion due to even more parties claiming an interest in the Note and Mortgage just prior to and after December 15, 2014, and as grounds states:

A. Introduction

1. Mr. Singleton originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

2. On January 15, 2009, Mr. Singleton received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by an entity styled DB50 2007-1 Trust. No notice was provided to Mr. Singleton that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

3. Mr. Singleton sought discovery as to, *inter alia*, the history of custody and transfer of his mortgage loan. After having to file a Motion to Compel discovery, Mr. Singleton was finally provided with documents from Plaintiff which claimed that his mortgage loan had been the subject of several conflicting transfers.

4. One of the documents produced was a letter dated January 6, 2006 from Nomura Holdings (hereafter "Nomura") with an attached Mortgage Loan Purchase Agreement (hereafter "MLPA") which sets forth a sale of loans from People's Choice to Nomura. The MLPA required documentary proof in specific form as to the transfer of loans from People's Choice to Nomura, including interim assignments of mortgage and intervening endorsements for the Note. None of this documentation was produced.

5. Another document produced was a purchase agreement whereby Nomura sold loans to an entity known as "50 By 50 REO LLC (hereafter "50 By 50")". There was also a Trust Agreement dated August 28, 2007 between LaSalle Bank and Wilmington Trust Company concerning something called the DB 50 2007-1 Trust. There is no loan schedule which sets forth that the loan the subject of this action was transferred to the DB 50 2007-1 Trust.

6. Plaintiff had previously produced an Assignment of Mortgage by non-party Mortgage Electronic Registration Systems, Inc. (hereafter "MERS") dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

7. There was also produced an Amended and Restated Trust Agreement dated October 31, 2011 involving an entity styled FRT 2001-1 Trust, Fort Asset Funding 2001-1 LLC, US Bank Trust National Association, and Wells Fargo, NA concerning the FRT 2011-1 Trust. No mortgage loan schedules were attached or provided.

8. A Sale and Administration Agreement dated October 31, 2011 was also produced which involved the FRT 2011-1 Trust, Fort Asset Funding 2011-1 LLC, numerous "Sellers" (all of whom were owned by the same individual), US Bank National Association as Indenture Trustee, and Montana Drive Mortgage Holdings LLC.

9. Plaintiff had previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

10. There is a second "Assignment of Mortgage" which was filed in the public records by which 50 By 50 REO, LLC (the entity which was the original named Plaintiff in this case) purportedly assigned the Mortgage to the Plaintiff. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Plaintiff.

11. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to 50 By 50 or to the Plaintiff.

12. If Nomura sold the loan to 50 By 50, there was nothing for MERS to assign to GMAC on July 14, 2008; conversely, if MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy), Nomura did not sell the loan to 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

13. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Nomura to sell to 50 By 50 on September 27, 2007, and nothing for MERS to assign to GMAC on July 14, 2008.

14. If the loan was assigned to GMAC on July 14, 2008 or was in the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust could not have acquired the loan on October 31, 2011.

15. The named Plaintiff in this case is U.S. Bank, National Association as Trustee for FRT-2011-1 (hereafter "USBTE"). It is without dispute that USBTE was not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by 50 By 50, which is also not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

16. On July 9, 2013, counsel for Mr. Singleton took the deposition of one James P. George, an employee of AMS. It is without dispute that AMS is not the original lender; did not extend Mr. Singleton any credit; and is not named or identified in either the Note or the Mortgage.

17. In view of the matters testified to by Mr. George, Mr. Singleton filed a Motion for Summary Judgment. The Motion was heard before the Court on September 30, 2014.

18. During the course of the hearing, the Court determined that the documents sought by Mr. Singleton as to the alleged transfers were relevant over the objection of counsel for the Plaintiff. When this determination was made, counsel for Plaintiff changed her position by stating that the documents sought were not in the possession or control of her client.

19. The Court then inquired of counsel for Mr. Singleton whether he thus desired to propound non-party discovery or amend his Answer to add the other parties allegedly involved in the claimed transfers as parties to this action. Counsel for Mr. Singleton opted for the latter.

20. Between the time of the hearing and the filing of the prior Motion to Amend, Mr. Singleton was advised by the then current servicer (BSI Financial Services) that the servicing of the loan will be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina, and thus Shellpoint must also be added as a party as it has an interest in the outcome of this action. Shellpoint confirmed this change of servicing by letter to Mr. Singleton dated November 26, 2014.

21. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to an entity styled NNPL Trust Series 2012-1 (identified as the "New Owner") located in Wilmington, Delaware, but that Shellpoint has been hired by this New Owner to service the loan. As such, Shellpoint retained an interest in the loan and must continue to be a party to this action.

22. However, by letter dated December 1, 2014 from Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is an entity styled New Penn Financial, LLC. No address for this new entity is provided in the letter. This directly conflicts with the letter from Shellpoint of October 23, 2014, and there is no document which states that the loan was sold from NNPL Trust Series 2012-1 to New Penn Financial, LLC.

23. By letter from Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to FCI Financial Services, Inc. in Anaheim, California as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again.

24. Mr. Singleton thus formally moves to amend his Answer to add additional party Defendants and a counter-claim and cross-claim for Declaratory Relief.

25. A copy of the proposed Counterclaim and Cross-Claims is appended hereto and incorporated herein by reference.

26. The instant Motion is filed in good faith in view of the matters above and after reasonable inquiry into the facts as revealed by documentation produced by Plaintiff, and as soon as practicable given the only recent discovery of the majority of the information above which was revealed in discovery produced to Mr. Singleton by Plaintiff as a result of a Motion to Compel Discovery, and as a result of the identified correspondence set forth above.

27. The parties have, pursuant to SCRCP 11, previously conferred as to the original Motion. Said counsel objected to the amendment at the hearing on December 15, 2014. The Court overruled the objection and requested counsel for Mr. Singleton to amend the Motion and the proposed Amended Answer and Counterclaim to include all of the newly identified parties claiming any interest in the mortgage loan, which Mr. Singleton has done here.

WHEREFORE, JAMIE SINGLETON respectfully requests that this Court grant this Motion and deem the attached Counterclaim and Cross-Claims as filed for the reasons set forth, and for any other and further relief which is just and proper.

William H. Sloan

Attorney for Defendant Singleton

Post Office Box 85

Summerville, SC 29484

843-873-7531

Jan. 30, 2015

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING; NNPL TRUST SERIES 2012-1; NEW PENN FINANCIAL, LLC; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

JAMIE SINGLETON's COUNTERCLAIM AND CROSS-CLAIMS

Counter-Plaintiff JAMIE SINGLETON, by and through his undersigned counsel, files and serves his Counterclaim against Counter-Defendant US BANK, NA AS TRUSTEE FOR FRT 2011-1, a foreign (non-South Carolina incorporated) entity; NOMURA HOLDINGS, INC., a foreign (non-South Carolina incorporated) entity; 50 By 50 REO LLC, a New York limited liability company; DB 50 2007-1 Trust, a New York business trust; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation; SHELLPOINT

MORTGAGE SERVICING, a South Carolina business entity, and DOES 1-10, and sues said parties for Declaratory Relief and other relief, and states:

A. Parties, Jurisdiction and Venue

1. This is an action for Declaratory Relief which is a proper Counterclaim to the main action, and the Cross-Claims are proper within this Court as the operative facts giving rise to the claims for relief arose out of the same series of transactions related to the same mortgage loan and the same borrower (Mr. Singleton).

2. Counter- and Cross-Plaintiff JAMIE SINGLETON is and was at all times material hereto a *sui juris* resident of the State of South Carolina over the age of eighteen (18), and is a Defendant in the main action.

3. Counter-Defendant US BANK NA AS TRUSTEE FOR FRT 2011-1 (hereafter "USB") is and was at all times material a foreign (non-South Carolina incorporated) private equity investment bank which did business in the State of South Carolina and invoked the jurisdiction of this Court by filing the main action which seeks to foreclose on the mortgage loan the subject of both the main action and this action.

4. Cross-Defendant NOMURA HOLDINGS, INC. (hereafter "Nomura") is and was at all times hereto a foreign (non-South Carolina incorporated) subsidiary holding company of Nomura Bank, which is a Japanese banking concern. Nomura claims to have purchased the mortgage loan the subject of this action from the original lender, that being People's Choice, and claims to have sold the loan to Cross-Defendant 50 BY 50 REO LLC.

5. Cross-Defendant 50 By 50 REO LLC (hereafter "50 By 50") is and was at all times material hereto a New York limited liability company which claims to have come into ownership of the mortgage loan the subject of this action.

6. Cross-Defendant DB 50 2007-1 Trust is and was at all times material hereto a New York business trust which claims to have come into ownership of the mortgage loan the subject of this action.

7. Cross-Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter "MERS") is and was at all times material hereto a Delaware corporation with its principal place of business being located in Virginia. MERS regularly conducts business in South Carolina and regularly purports to transfer mortgage loans of South Carolina borrowers and undertake actions to further foreclosure actions in South Carolina.

8. Cross-Defendant SHELLPOINT MORTGAGE SERVICING (hereafter "Shellpoint") is a servicer which will be assuming the servicing of the loan the subject of this action as of November 1, 2014 per written notice from the current servicer. Shellpoint's location has been identified in writing by the current servicer as being located in Greenville, South Carolina.

9. Cross-Defendant NNPL TRUST SERIES 2012-1 (hereafter "NNPL") appears to be a Delaware statutory (business) Trust established under the laws of the State of Delaware and located at c/o Christiana Trust, 500 Delaware Avenue, 11th Floor, Wilmington, Delaware 19801.

10. Cross-Defendant NEW PENN FINANCIAL LLC (hereafter "New Penn") is a limited liability company whose domicile is unknown as the December 1, 2014 letter from Shellpoint does not identify an address for this entity.

11. Cross-Defendant FCI FINANCIAL SERVICES, INC. (hereafter "FCI") appears to be a California corporation by virtue of Shellpoint's identification of FCI as having a P.O. Box numbered 27370 in Anaheim, California.

12. Cross-Defendants DOES 1-10 are not identified at this point but are reserved in the event that discovery reveals other parties which may be added if any such parties are found or claim to have an interest in the outcome of this action.

13. Cross-Defendants Nomura, 50 By 50, MERS, DB50 2007-1, Shellpoint, NNPL, New Penn, and FCI are subject to the jurisdiction of this Court as they engaged in business in South Carolina by claiming to have acquired and transferred interests in the mortgage loan the subject of this action on which Counter-Defendant USB is attempting to foreclose. The single act of allegedly transferring an interest in the mortgage loan the subject of this and the main action to Plaintiff/Counter-Defendant USB constitutes the type of single act which has caused harm to Counter/Cross-Plaintiff in South Carolina as the foreclosure arises out of and relates to the acts of the Cross-Defendants as set forth below, thus establishing the minimum contacts necessary to hale the Cross-Defendants into this Court.

14. Cross-Defendant Shellpoint is subject to the jurisdiction of this Court as it is located in Greenville, South Carolina and is servicing the loan the subject of this action as of November 1, 2014 as affirmatively represented by the current servicer and Shellpoint's own correspondence referred to hereinbelow.

15. Further, the relief sought is Declaratory relief, which requires the joinder of any party which may have an interest in the outcome of the claim. The State of South Carolina thus has an interest in exercising jurisdiction over the Cross-Defendants, the acts of whom gave rise to the assertion of the foreclosure claim by Counter-Defendant USB. There is no inconvenience for the Cross-Defendants in this action and even if claimed, the inconvenience to Counter/Cross-Plaintiff with any severance of any claim as to any Cross-Defendant greatly outweighs any claim of prejudice to any of the Cross-Defendants. Further, severance of any claim as to any Cross-

Defendant would unduly complicate this litigation and result in the possibility of inconsistent verdicts or orders.

16. All actions of the Counter-Defendant and the Cross-Defendants were directed toward and had their effects in South Carolina, and were intended by the Counter-Defendant and Cross-Defendants to be directed toward South Carolina.

B. Background Facts

17. Counter/Cross-Plaintiff originally entered into a mortgage loan transaction with an entity styled People's Choice Home Loan, Inc. (hereafter "People's Choice"), which filed for Bankruptcy on March 20, 2007.

18. On January 15, 2009, Counter/Cross-Plaintiff received a letter from an entity styled Madison Home Loan Consulting Company ("MHLCC") which stated that the mortgage on the Property was owned by Cross-Defendant DB50 2007-1 Trust. No notice was provided to Counter/Cross-Plaintiff that there had been any transfer of his loan out of the People's Choice bankruptcy to any other entity, or that there had been any sale or transfer of the loan from People's Choice to any entity prior to the filing of the Bankruptcy by People's Choice.

19. Cross-Defendant Nomura claims to have purchased the mortgage loan the subject of this action as of January 6, 2006 from People's Choice. However, none of the loan transfer documentation required by the Mortgage Loan Purchase Agreement has been produced, including the interim assignments of mortgage and the intervening endorsements for the Note.

20. People's Choice filed for Bankruptcy on March 20, 2007.

21. Cross-Defendant Nomura claims to have sold the mortgage loan the subject of this action to Cross-Defendant 50 By 50.

22. Counter-Defendant had previously produced an Assignment of Mortgage by Cross-Defendant MERS dated July 14, 2008, which is 16 months after People's Choice filed Bankruptcy, whereby MERS claims to assign the Mortgage to GMAC, which itself filed for Bankruptcy on May 14, 2012.

23. Counter-Defendant had previously produced a letter dated November 23, 2011 from an entity styled AMS Servicing, LLC which stated that "On October 31, 2011, FRT 2011-1 Trust acquired your mortgage loan". There is no evidence of any transfer of either the Note or the Mortgage from the bankrupt original lender (People's Choice) to the FRT 2011-1 Trust, or from either GMAC or the DB 50 2007-1 Trust back to anyone for later transfer to the FRT 2011-1 Trust.

24. There is a second "Assignment of Mortgage" which was filed in the public records by which Cross-Defendant 50 By 50 purportedly assigned the Mortgage to the Plaintiff/Counter-Defendant. This Assignment, dated September 24, 2012, contains no language as to any assignment of the Note, and is dated 4 years and 2 months after the prior Assignment of Mortgage from MERS as "nominee" for the bankrupt People's Choice to GMAC. There is no evidence of any re-transfer of the Mortgage from GMAC or any other prior transferee back to any entity for purposes of an assignment of the Mortgage to the Counter-Defendant.

25. There is no evidence of any assignment or lawful transfer of either the Mortgage or the Note from the bankrupt original lender, or the bankrupt GMAC, or the FRT 2001-1 Trust, to Cross-Defendant 50 By 50 or to the Counter-Defendant.

26. If Cross-Defendant Nomura sold the loan to Cross-Defendant 50 By 50, there was nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008; conversely, if Cross-Defendant MERS did assign the mortgage to GMAC (which itself later filed for Bankruptcy),

Cross-Defendant Nomura did not sell the loan to Cross-Defendant 50 By 50, and the loan remained in the inventory of People's Choice, which had filed bankruptcy.

27. If the loan was a retained asset within the inventory of People's Choice as of the time it filed Bankruptcy on March 20, 2007, there was nothing for Cross-Defendant Nomura to sell to Cross-Defendant 50 By 50 on September 27, 2007, and nothing for Cross-Defendant MERS to assign to GMAC on July 14, 2008.

28. If the loan was assigned by Cross-Defendant MERS to GMAC on July 14, 2008 or was in the inventory of the DB50 2007-1 Trust as of January 15, 2009, the FRT 2011-1 Trust (of which the Counter-Defendant is the claimed "trustee") could not have acquired the loan on October 31, 2011.

29. It is without dispute that Counter-Defendant USB was not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage. It is also without dispute that this action was originally filed by Cross-Defendant 50 By 50, which is also not the original lender; did not extend Counter/Cross-Plaintiff any credit; and is not named or identified in either the Note or the Mortgage.

30. Mr. Singleton was advised by the prior servicer (BSI Financial Services) that the servicing of the loan would be transferred to a new entity, that being Shellpoint Mortgage Servicing of Greenville, South Carolina. Shellpoint confirmed this change of servicing by letter to Mr. Singleton dated November 26, 2014.

31. By letter dated October 23, 2014, Shellpoint advised Mr. Singleton that the mortgage loan is being sold to Cross-Defendant NNPL (identified as the "New Owner") located in Wilmington, Delaware, but that Cross-Defendant Shellpoint has been hired by this New Owner

to service the loan. As such, Cross-Defendant Shellpoint retained an interest in the loan and must continue to be a party to this action.

32. However, by letter dated December 1, 2014 from Cross-Defendant Shellpoint, Shellpoint advised that the "new creditor to whom the debt is owed" is Cross-Defendant New Penn. No address for this new entity is provided in the letter. This directly conflicts with the letter from Cross-Defendant Shellpoint dated October 23, 2014, and there is no document which states that the loan was sold from NNPL to New Penn.

33. By letter from Cross-Defendant Shellpoint dated January 16, 2015, Shellpoint advised Mr. Singleton that the servicing of the loan was being transferred from Shellpoint to Cross-Defendant FCI as of February 5, 2015. It is unknown whether, in connection with the transfer of servicing, whether the loan itself was sold again, nor does this letter identify the current owner of the loan. If the loan is owned by Cross-Defendant NNPL, Cross-Defendant Shellpoint was identified as the servicer.

34. As a direct and proximate result of the matters hereinabove, Counter-Plaintiff is in doubt as to his rights under the Note and Mortgage contracts.

COUNT I: DECLARATORY RELIEF

35. Counter/Cross-Plaintiff reaffirms and realleges paragraphs 1 through 34 hereinabove as if set forth more fully hereinbelow.

36. This is an action for Declaratory Relief which is brought pursuant to S.C. Code Ann. sec. 15-53-10 *et seq.* and is a proper counterclaim to the main action.

37. S.C. Code Ann. sec. 15-53-30 provides that any person interested under a deed, will, written contract or other writing constituting a contract or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have

determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

38. It is without dispute that the Note and Mortgage are contracts in which Counter/Cross-Plaintiff has an interest.

39. It is also without dispute that the actions of the Counter-Defendant and Cross-Defendants set forth above have affected the rights of the Counter/Cross-Plaintiff in the Note and Mortgage contracts, and that the claims of the Counter- and Cross-Defendants are conflicting and ambiguous. Further, there is no identification of who Cross-Defendant Shellpoint will be servicing the loan for.

40. S.C. Code Ann. Sec. 15-53-20 provides that courts of record within their respective jurisdictions shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed, and that no action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. It is without dispute that this Court has jurisdiction over this action for declaratory relief and may grant the relief requested.

41. S.C. Code Ann: sec. 15-53-130 provides that the Declaratory Judgments Act is declared to be remedial with its purpose to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

42. S.C. Code Ann. sec. 15-53-40 provides that a contract may be construed either before or after there has been a breach thereof.

43. S.C. Code Ann. sec. 15-53-80 provides that when declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. Counter/Cross-Plaintiff has thus joined the Counter-Defendant and the Cross-Defendants who have all claimed an interest in the mortgage loan the subject of this action and the contracts associated therewith.

44. S.C. Code Ann. sec. 15-53-90 provides that when a proceeding for declaratory relief involves the determination of an issue of fact that such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending, and all existing rights to jury trials are preserved.

45. There are numerous issues of material fact as revealed by the facts set forth above, and Counter/Cross-Plaintiff hereby demands trial by jury of all such issues.

46. S.C. Code Ann. Sec. 15-53-100 provides that in any proceeding instituted under the Chapter (for declaratory relief) that the court may make such award of costs as may seem equitable and just.

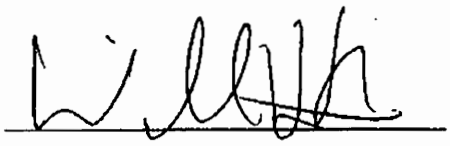
47. As Counter/Cross-Plaintiff has been forced to bring this action to determine his rights under the Note and Mortgage contracts as a result of the actions of the Counter-Defendant and Cross-Defendants, Counter/Cross Plaintiff requests an award of his costs.

48. S.C. Code Ann. Sec. 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. Counter/Cross-Plaintiff reserves the right to amend this claim to request any such additional relief as this matter progresses.

WHEREFORE, Counter/Cross-Plaintiff demands the entry of a Declaratory Judgment declaring his rights and legal relations and status with relation to the Note and Mortgage

contracts, and also requests a declaration that neither the Counter-Defendant nor any of the Cross-Defendants have any rights in and never had any rights or interest in the Note or the Mortgage for the reasons set forth above, and for any other and further relief which this Court deems just and proper.

Dated this 30th day of January, 2015.



William H. Sloan

Attorney for Defendant Singleton

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Summerville, SC 29484

843-873-7531

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Jan. 30, 2015

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER US BANK, AS Trustee of the FRT-2011-1 Trust, Plaintiff v. JAMIE SINGLETON AND INDIGO POINTE HOMEOWNERS ASSOCIATION. x Defendants.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2011-CP-18-871 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

2015 FEB -2 AM 11:48

CLERK OF COURT DORCHESTER COUNTY

Attorney for Defendant Singleton William H. Sloan, Esq., Bar No. 69630 Address: Post Office Box 85, Summerville, SC 29484 phone: (843) 873-7531 fax: (843) 873-873-7527 e-mail: whs@sloanlawfirm.net other:	Plaintiff's Attorney: Erica Lybrand, Esq., Rogers Townsend and Thomas Bar No. Address: Post Office Box 100200, Columbia, SC 29202 phone: 803-744-444 fax: 803-343-7013 e-mail: other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)xFORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
X PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Amend Answer and Counterclaim of Defendant Singleton
Estimated Time Needed: 30 minutes Court Reporter Needed: x YES / NO

SECTION II: Motion/Order Type

Written motion attached
x Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / xDefendant — January 31, 2015 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION Date Filed: Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

AFFIDAVIT OF SERVICE

STATE OF DORCHESTER
DORCHESTER COUNTY

COURT OF COMMON PLEAS

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Case No: 11-CP-18-871

V Plaintiff,

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants.

2015 MAY 12 AM 11:53
CLERK OF COURT
DORCHESTER COUNTY

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant,
v

US BANK, NA TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING; NNPL TRUST SERIES 2012-1; NEW PENN FINANCIAL, LLC; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross -Defendants

STATE OF DELAWARE }
}ss.
COUNTY OF NEW CASTLE }

I, Frank Joyce, the State of Delaware, County of New Castle, being duly sworn, say that on the 23rd day of April, 2015, at 11:20 a.m., I personally served a copy of a SUMMONS and CROSS-COMPLAINT on **50 BY 50 REO LLC,** c/o The Corporation Trust Company, 1201 N. Orange Street, Wilmington, DE 19801.

Name of individual accepting: Amy McLaren-Authorized to accept
Description of individual: White female, 35 years old, 5'5", 135lbs, brown hair.

Subscribed and sworn before me
This 23rd day of April, 2015

Notary Public

My commission expires:

CAREY M. SHEA
NOTARY PUBLIC
STATE OF DELAWARE
My commission expires April 25, 2015

00437

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 BY 50 REO, LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc.; and Does 1-10,

Counter-Defendant and Cross- Defendants.

(522291.00001)EL1

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-871

ANSWER OF DEFENDANT MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)

2015 JUL -2 AM 11:28

The Defendant, **Mortgage Electronic Registration Systems, Inc. ("MERS")**, answering the Counterclaim and Cross-claims of the Cross-Plaintiff Jamie Singleton (hereinafter "Singleton"), respectfully alleges as follows:

FOR A FIRST DEFENSE
(Responses to Specific Allegations)

1. Paragraph 1 is denied.

2. As to Paragraphs 2 through 6, MERS is without sufficient knowledge to admit or

deny the allegations of these Paragraphs, therefore they are denied.

3. As to Paragraph 7, MERS admits that it is a Delaware corporation with its principal place of business in the State of Virginia. The remaining allegations and inferences of this Paragraph are denied.

4. As to Paragraphs 8 through 12, MERS is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

5. Paragraph 13 is denied.

6. As to Paragraph 14, MERS is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

7. Paragraph 15 is denied.

8. As to Paragraph 16, MERS is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

9. Paragraph 17 is admitted, upon information and belief.

10. As to Paragraphs 18 through 21, MERS is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

11. As to Paragraph 22, MERS admits the contents of the Assignment of Mortgage from MERS to GMAC Mortgage, LLC, which is dated July 14, 2008, and recorded in the Register of Deeds Office for Dorchester County in Book 6727 at Page 330, and that this Assignment of Mortgage assigned the Mortgage at issue to GMAC Mortgage, LLC. The remaining allegations and inferences of this Paragraph are denied.

12. As to Paragraphs 23 through 25, MERS is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

13. As to Paragraphs 26 through 28, MERS responds that it properly assigned the Mortgage at issue by Assignment of Mortgage dated July 14, 2008, and recorded in the Register of Deeds Office for Dorchester County in Book 6727 at Page 330. All other allegations and inferences of these Paragraphs are denied.

14. As to Paragraphs 29 through 34, MERS is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

As to Count I: Declaratory Relief

15. In response to Paragraph 35, MERS reaffirms its prior responses in Paragraphs 1-14 of this Answer.

16. Paragraph 36 does not require a response; to the extent a response is deemed required, this Paragraph is denied.

17. Paragraph 37 contains a conclusion of law, to which no response is required; however, MERS makes reference to the statute cited and denies anything inconsistent therewith.

18. Paragraph 38 does not appear to make any allegations or inferences against MERS, and therefore no response is required; to the extent a response is deemed required, this Paragraph is denied.

19. MERS denies the allegations in Paragraph 39 to the extent that they pertain to MERS itself. MERS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and inferences in Paragraph 39, therefore they are denied.

20. Paragraphs 40 through 44 contain conclusions of law, to which no response is required; however, MERS makes reference to the statutes cited and denies anything inconsistent therewith.

21. Paragraph 45 does not appear to make any allegations or inferences against MERS, and therefore no response is required; to the extent a response is deemed required, this Paragraph is denied.

22. Paragraph 46 contains a conclusion of law, to which no response is required; however, MERS makes reference to the statute cited and denies anything inconsistent therewith.

23. Paragraph 47 is denied.

24. Paragraph 48 contains a conclusion of law, to which no response is required; however, MERS makes reference to the statute cited and denies anything inconsistent therewith.

25. The subsequent allegations and/or the prayers for relief as set forth in the Amended Complaint following the "WHEREFORE" provision are denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

26. Singleton fails to allege any wrongdoing on the part of MERS. Therefore, the Complaint fails to state facts upon which relief against MERS can be granted.

FOR A THIRD DEFENSE
(Non-waiver)

27. MERS reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth an Answer to Singleton's Counterclaim and Cross-Claims, MERS prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss MERS from this action;
2. Award to MERS a reasonable attorney's fee and costs incurred in the defense of this action; and
3. Award to MERS such other and further relief as may be just and proper.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900 Tel
(803) 343-7017 Fax
ATTORNEYS FOR MERS
Rogers Townsend & Thomas, PC, and its staff are debt collectors

June 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 BY 50 REO, LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc.; and Does 1-10,

Counter-Defendant and Cross- Defendants.

(522291.00001 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-871

ANSWER OF DEFENDANT FCI LENDER SERVICES, INC.

2015 JUL -2 AM 11:27
CLERK OF COURT
DORCHESTER COUNTY

The Defendant, **FCI Lender Services, Inc. ("FCI")** answering the Counterclaim and Cross-claims of the Cross-Plaintiff Jamie Singleton (hereinafter "Singleton"), respectfully alleges as follows:

FOR A FIRST DEFENSE
(Responses to Specific Allegations)

1. Paragraph 1 is denied.

2. As to Paragraphs 2 through 10, FCI is without sufficient knowledge to admit or

deny the allegations of these Paragraphs, therefore they are denied.

3. As to Paragraph 11, FCI admits that it is a California corporation and has an address of P.O. Box 27370, Anaheim, California.

4. As to Paragraph 12, FCI is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

5. Paragraph 13 is denied.

6. As to Paragraph 14, FCI is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

7. Paragraph 15 is denied.

8. As to Paragraph 16, FCI is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

9. Paragraph 17 is admitted, upon information and belief.

10. As to Paragraphs 18 through 28, FCI is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

11. Paragraph 29 is admitted, upon information and belief.

12. As to Paragraphs 30 through 32, FCI is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

13. As to Paragraph 33, FCI admits that the servicing of the mortgage loan was transferred from Shellpoint Mortgage Servicing to FCI, effective February 6, 2015. The remainder of the allegations and statements made in this Paragraph do not appear to be directed at or make any allegations against FCI, but to the extent they do, they are denied.

14. As to Paragraph 34, FCI is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

As to Count I: Declaratory Relief

15. In response to Paragraph 35, FCI reaffirms its prior responses in Paragraphs 1-14 of this Answer.

16. Paragraph 36 does not require a response; to the extent a response is deemed required, this Paragraph is denied.

17. Paragraph 37 contains a conclusion of law, to which no response is required; however, FCI makes reference to the statute cited and denies anything inconsistent therewith.

18. Paragraph 38 does not appear to make any allegations or inferences against FCI, and therefore no response is required; to the extent a response is deemed required, this Paragraph is denied.

19. FCI denies the allegations in Paragraph 39 to the extent that they pertain to FCI itself. FCI is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and inferences in Paragraph 39, therefore they are denied.

20. Paragraphs 40 through 44 contain conclusions of law, to which no response is required; however, FCI makes reference to the statutes cited and denies anything inconsistent therewith.

21. Paragraph 45 does not appear to make any allegations or inferences against FCI, and therefore no response is required; to the extent a response is deemed required, this Paragraph is denied.

22. Paragraph 46 contains a conclusion of law, to which no response is required; however, FCI makes reference to the statute cited and denies anything inconsistent therewith.

23. Paragraph 47 is denied.

24. Paragraph 48 contains a conclusion of law, to which no response is required; however, FCI makes reference to the statute cited and denies anything inconsistent therewith.

25. The subsequent allegations and/or the prayers for relief as set forth in the Amended Complaint following the "WHEREFORE" provision are denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

26. Singleton fails to allege any wrongdoing on the part of FCI. Therefore, the Complaint fails to state facts upon which relief against FCI can be granted.

FOR A THIRD DEFENSE
(Non-waiver)

27. FCI reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth an Answer to Singleton's Counterclaim and Cross-Claims, FCI prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss FCI from this action;
2. Award to FCI a reasonable attorney's fee and costs incurred in the defense of this action; and
3. Award to FCI such other and further relief as may be just and proper.

Erica G. Lybrand (SC Bar # 79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900 Tel
(803) 343-7017 Fax
ATTORNEYS FOR FCI
Rogers Townsend & Thomas, PC, and its staff are debt collectors

June 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association.

Defendants.

Jamie Singleton,

Counter-Plaintiff and Cross-Plaintiff,

v.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 BY 50 REO, LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc.; and Does 1-10,

Counter-Defendant and Cross- Defendants.

(522291.00001 EL1)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2011-CP-18-871

PLAINTIFF'S REPLY TO DEFENDANT JAMIE SINGLETON'S COUNTERCLAIM AND CROSS-CLAIMS

2015 JUL -2 AM 11:27
CLERK OF COURT
DORCHESTER COUNTY

The Plaintiff, currently identified as US Bank, NA as Trustee for FRT 2011-1 and to be substituted for US Bank Trust, National Association, Not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1 who is the real party in interest in this matter ("Plaintiff"), by way of Reply to the Counterclaim and Cross-Claims of Defendant Jamie Singleton ("Singleton") herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(Responses to Specific Allegations)

1. Paragraph 1 is denied.

2. As to Paragraph 2, Plaintiff is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

3. As to Paragraph 3, Plaintiff is without sufficient knowledge to admit or deny the allegations of this Paragraph as US Bank, NA as Trustee for FRT 2011-1 is not associated with the current real party in interest answering this Counterclaim. US Bank Trust, National Association, Not in its Individual Capacity but Solely as Owner Trustee of WestVue NPL Trust, Series 2014-1; therefore, these allegations are denied.

4. As to Paragraphs 4 through 10, Plaintiff is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

5. As to Paragraph 11, Plaintiff admits that FCI is a California corporation and has an address of P.O. Box 27370, Anaheim, California.

6. As to Paragraph 12, Plaintiff is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

7. Paragraph 13 is denied.

8. As to Paragraph 14, Plaintiff is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

9. Paragraph 15 is denied.

10. As to Paragraph 16, Plaintiff is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

11. Paragraph 17 is admitted, upon information and belief.

12. As to Paragraphs 18 through 28, Plaintiff is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

13. Paragraph 29 is admitted, upon information and belief.

14. As to Paragraphs 30 through 32, Plainitff is without sufficient knowledge to admit or deny the allegations of these Paragraphs, therefore they are denied.

15. As to Paragraph 33, Plaintiff admits that the servicing of the mortgage loan was transferred from Shellpoint Mortgage Servicing to FCI, effective February 6, 2015. The remainder of the allegations and statements made in this Paragraph do not appear to be directed

at or make any allegations against Plaintiff, but to the extent they do, they are denied.

16. As to Paragraph 34, Plaintiff is without sufficient knowledge to admit or deny the allegations of this Paragraph, therefore they are denied.

As to Count I: Declaratory Relief

17. In response to Paragraph 35, Plaintiff reaffirms its prior responses in Paragraphs 1-16 of this Answer.

18. Paragraph 36 does not require a response; to the extent a response is deemed required, this Paragraph is denied.

19. Paragraph 37 contains a conclusion of law, to which no response is required; however, Plaintiff makes reference to the statute cited and denies anything inconsistent therewith.

20. Paragraph 38 does not appear to make any allegations or inferences against Plaintiff, and therefore no response is required; to the extent a response is deemed required, this Paragraph is denied.

21. Plaintiff denies the allegations in Paragraph 39 to the extent that they pertain to Plaintiff itself. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and inferences in Paragraph 39, therefore they are denied.

22. Paragraphs 40 through 44 contain conclusions of law, to which no response is required; however, Plaintiff makes reference to the statutes cited and denies anything inconsistent therewith.

23. Paragraph 45 does not appear to make any allegations or inferences against Plaintiff, and therefore no response is required; to the extent a response is deemed required, this Paragraph is denied.

24. Paragraph 46 contains a conclusion of law, to which no response is required; however, Plaintiff makes reference to the statute cited and denies anything inconsistent therewith.

25. Paragraph 47 is denied.

26. Paragraph 48 contains a conclusion of law, to which no response is required; however, Plaintiff makes reference to the statute cited and denies anything inconsistent therewith.

27. The subsequent allegations and/or the prayers for relief as set forth in the Amended Complaint following the "WHEREFORE" provision are denied.

FOR A SECOND DEFENSE
(Failure to State a Claim)

28. Singleton fails to allege any wrongdoing on the part of Plaintiff. Therefore, the Complaint fails to state facts upon which relief against Plaintiff can be granted.

FOR A THIRD DEFENSE
(Non-waiver)

29. Plaintiff reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Reply to Singleton's Counterclaim and Cross-claims, Plaintiff prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss the counterclaims;
2. Grant Plaintiff judgment on its Complaint;
3. Award to Plaintiff reasonable attorney's fees and costs in accordance with the terms of the Note and Mortgage; and
4. Award to Plaintiff such other and further relief as may be just and proper.

Erica G. Lybrand (SC Bar #79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
erica.lybrand@rtt-law.com
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

June 30, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DORCHESTER

Case No. 2011-CP-18-00871

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

vs.

Jamie Singleton and Indigo Pointe Homeowners Association,

Defendants.

Jamie Singleton,

Counter-Plaintiff and Cross Defendant,

vs.

US Bank, NA as Trustee for FRT 2011-1; Nomura Holdings, Inc.; 50 by 50 REO LLC; DB 50 2007-1 Trust; Mortgage Electronic Registration Systems, Inc.; Shellpoint Mortgage Servicing; NNPL Trust Series 2012-1; New Penn Financial, LLC; FCI Lender Services, Inc., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

FILED - RECORDED
2015 JUL -6 PM 2:14
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

MOTION TO STRIKE AFFIDAVIT OF SERVICE OR, IN THE ALTERNATIVE, MOTION TO DISMISS OF NEW PENN FINANCIAL, LLC D/B/A SHELLPOINT MORTGAGE SERVICING

Pursuant to Rules 12(b)(4), 12(b)(5), 12(b)(6), and 12(f), SCRCP, New Penn Financial, LLC d/b/a Shellpoint Mortgage Service ("New Penn") moves to strike an Affidavit of Service concerning New Penn filed May 12, 2015, by Jamie Singleton ("Singleton") or, in the alternative, moves to dismiss any claims Singleton purports to assert against New Penn in this

action for insufficiency of process, for insufficiency of service of process, and for failure to state facts sufficient to constitute a cause of action against New Penn. This motion is based upon the pleadings filed in this case, applicable statutory and case law, and any memoranda of law that may be presented to the Court prior to or at the time of the hearing on this motion.

Upon information and belief, the Affidavit of Service upon New Penn that was filed on or about May 12, 2014, in this action, attests to service of an amended pleading or new cross-claim that has not been filed in this action. The Affidavit is thus defective and should be stricken from the Court's docket pursuant to Rule 12(f), SCRCP.

Further, even assuming a pleading asserting claims against New Penn was properly filed, such a pleading has not been properly served upon New Penn in compliance with Rule 4(d)(3) and 4(d)(8) of the South Carolina Rules of Civil Procedure. The Court thus has no personal jurisdiction over New Penn in this case, and New Penn should be dismissed as a party to this case pursuant to Rule 12(b)(4) and 12(b)(5), SCRCP.

In the alternative, New Penn moves to dismiss the cross-claims asserted in an exhibit to Singleton's Motion to Amend Answer to Add Counterclaim and to Add Additional Defendants, filed on or about February 2, 2015, (the "Cross Claim") because the Cross Claim fails to state facts sufficient to constitute a cause of action against New Penn. Singleton purports to assert a claim for declaratory judgment, asking the Court to "determine his rights under the Note and Mortgage contracts." (Cross Claim at ¶ 16.) The Cross Claim alleges that New Penn is named as a party to the declaratory judgment action because it serviced the loan that is the subject of this foreclosure action (the "Loan") or otherwise may have had some interest in the Loan. Although New Penn may have claimed an interest in the Loan in the past, it is not presently an owner or servicer or otherwise has any interest in the Loan. Therefore, it is not a party with any

"rights under the Note and Mortgage contracts" in this action that the Court needs to determine and is an unnecessary party against whom declaratory relief cannot be granted or would have little meaning or effect.

CONCLUSION

For the reasons stated above, the Affidavit of Service filed against New Penn should be stricken from the case, and/or New Penn should be dismissed as a party because of insufficiency of service of process, and/or any claims asserted against New Penn in this action should be dismissed for failure to state facts sufficient to cause of action against it.

HAYNSWORTH SINKLER BOYD, P.A.

By: _____

Emily H. Farr
John G. Tamasitis

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080

Attorneys for New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing

July 2, 2015

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1201 MAIN STREET, 22ND FLOOR (29201-3226)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
FACSIMILE 803.765.1243
www.hsblawfirm.com

EMILY H. FARR
ATTORNEY
DIRECT DIAL NUMBER 803.540.7705
efarr@hsblawfirm.com

July 2, 2015

The Honorable Cheryl L. Graham
Dorchester County Clerk of Court
5200 E Jim Bilton Blvd
St. George, SC 29477-8020

RECEIVED
JUL 06 2015
Clerk's

RE: *US Bank, NA as Trustee for FRT 2011-1 v. Jamie Singleton, et al.*
Case No. 2011-CP-18-00871
HSB File No. 38329.0005

Dear Ms. Graham,

Enclosed for filing are the original and one copy of the Motion to Strike Affidavit of Service, or in the Alternative, Motion to Dismiss of New Penn Financial, LLC d/b/a Shellpoint Mortgage Servicing, along with a motion slip and filing fee. Please file and return the clocked copy of the motion to me in the enclosed self-addressed, stamped envelope.

If you have any questions, please feel free to contact me. Thank you for your assistance in this matter.

With kind regards, I am,

Sincerely yours,

Emily H. Farr

EHF/cw
Enclosures

cc: The Honorable James E. Chellis
William H. Sloan, Esq.
Erica Lybrand, Esq.

DM: 4125400 v.1

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY

2015 JUL 16 AM 11:49

CHERYL [illegible]
DORCHESTER COUNTY

IN THE COURT OF COMMON PLEAS

CASE NO. 11-CP-18-871

US BANK, NA AS TRUSTEE FOR FRT 2011-1,

Plaintiff,

v.

JAMIE SINGLETON and INDIGO POINTE HOMEOWNERS ASSOCIATION,

Defendants;

JAMIE SINGLETON,

Counter-Plaintiff and Cross-Defendant,

v.

US BANK, NA AS TRUSTEE FOR FRT 2011-1; NOMURA HOLDINGS, INC.; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; SHELLPOINT MORTGAGE SERVICING; NNPL TRUST SERIES 2012-1; NEW PENN FINANCIAL, LLC; FCI LENDER SERVICES, INC., and DOES 1-10,

Counter-Defendant and Cross-Defendants.

AFFIDAVIT OF DEFAULT AS TO NOMURA HOLDINGS, LLC; 50 BY 50 REO LLC; DB 50 2007-1 TRUST; AND NNPL TRUST SERIES 2012-1

Personally appeared before me, William H. Sloan, Esq., attorney for the Plaintiff in this action, who being duly sworn, does states as follows:

That he is the attorney for the Cross-Plaintiff in this action. That the filed Summons and Complaint for Cross Complaint were duly served upon all Cross-Defendants Nomura Holdings, LLC; 50 by 50 REO, LLC; DB 50 2007-1 Trust; and NNPL Trust Series 2012-1 as evidenced by the Affidavits of Service that have already been filed with the Clerk of Court in this case. That more than thirty (30) days have elapsed since date(s) of said service, excluding the days of service, and that he has not received an Answer, Responsive Motion, letter or any other response from any of the Cross-Defendants Nomura Holdings, LLC; 50 by 50 REO, LLC; DB 50 2007-1 Trust; and NNPL Trust Series 2012-1 in this action. Cross-Defendants Nomura Holdings, LLC; 50 by 50 REO, LLC; DB 50 2007-1 Trust; and NNPL Trust Series 2012-1 have made no appearance in the above-referenced action according to the knowledge of the undersigned. The undersigned is familiar with the Servicemembers' Civil Relief Act, 50 USC App. §501 et seq. The undersigned

represents to the Court that according to his knowledge and belief, no Defendants are in the Military Service of the United States and therefore, are not entitled to protection by the said law.

And that Defendants Nomura Holdings, LLC; 50 by 50 REO, LLC; DB 50 2007-1 Trust; and NNPL Trust Series 2012-1 are now in default!

FURTHER AFFIANT SAYETH NOT!

William H. Sloan, Jr., Esq.
1055 N. Main Street, Suite F
Summerville, South Carolina 29483
Telephone: (843) 873-7531
ATTORNEY FOR THE PLAINTIFF

Sworn to and subscribed before me this 15 day of July, 2015.

South Carolina Notary Public
My commission expires 3-24-2020

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

US Bank, NA as Trustee for FRT 2011-1,

Plaintiff,

v.

Jamie Singleton and Indigo Pointe Homeowners Association

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2011-CP-18-00871

PLAINTIFF'S MOTION SUBSTITUTING PLAINTIFF

2015 SEP 21 PM 12:42
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

(522291-00001 EL1)

Plaintiff respectfully moves the court for an Order substituting US BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF WESTVUE NPL TRUST, SERIES 2014-1 as the Plaintiff in this action, pursuant to Rule 17(a).

On February 6, 2015, US BANK TRUST, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE OF WESTVUE NPL TRUST, SERIES 2014-1 became the owner of the subject loan as is indicated by the document attached as Exhibit A. An Assignment of Mortgage is being executed and will be recorded.

(SC Bar # 73844)

Erica G. Lybrand (SC Bar #79052)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

September 18, 2015

FCI Lender Services, Inc.
Loan Servicing • Specialty Servicing • Default
Phone: 800-931-2424 Fax: 714-282-5775

RECORDED
2015 SEP 21 PM 12:42
CLERK OF COURT
DORCHESTER COUNTY

NOTICE OF SERVICING TRANSFER

JAMIE SINGLETON
5505 ROWSHAM PL
NORTH CHARLESTON, SC 29418

Loan #: 9955850755
Property: 5505 ROWSHAM PL
NORTH CHARLESTON, SC 29418

Dear JAMIE SINGLETON:

The servicing of your mortgage loan is being transferred, effective 02/06/2015. This means that after this date, a new Servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

Shellpoint Mortgage is now collecting your payments. Shellpoint Mortgage will stop accepting payments received from you on 02/06/2015. FCI Lender Services, Inc. will collect your payments going forward. FCI Lender Services, Inc. will start accepting payments received from you on 02/06/2015.

Send all payments due on or after 02/06/2015 to FCI Lender Services Inc. at this address: PO BOX 27370, Anaheim, CA 92809-0112.

If you have any questions for either your present servicer, Shellpoint Mortgage, or your new Servicer FCI Lender Services, Inc. about your mortgage loan or this transfer, please contact them using the information below:

Previous Servicer	**Current Servicer:**
Shellpoint Mortgage	FCI Lender Services, Inc.
Customer Service	Customer Care Department
P.O. Box 10826	Post Office Box 27370
GREENVILLE, SC, 29603	Anaheim Hills, California 92809-0112
1-800-365-7107 (toll free or collect)	(800) 931-2424, x651 (toll free)
Hours of Operation:	Hours of Operation
Monday - Friday	Monday Friday
08:00 AM - 10:00 PM (Eastern Standard Time)	08:00 AM - 05:00 PM (Pacific)

Important Note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may not affect your insurance because we have not serviced mortgage life or disability premiums. However, if you wish to retain optional insurance, we would suggest that you contact your current optional product service provider or your Lender.

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old Servicer on or before its due date may not be treated by the new Servicer as late, and a late fee may not be imposed on you.

Sincerely,
Customer Care Department
FCI Lender Services

EXHIBIT
A
00457

FCI Lender Services, Inc.
Loan Servicing • Specialty Servicing • Default
Phone: 800-931-2424 Fax: 714-282-5775

02/09/2015

BORROWER WELCOME LETTER

JAMIE SINGLETON
5505 ROWSHAM PL
NORTH CHARLESTON, SC 29418

Re Loan Number: 9955850755
Property: 5505 ROWSHAM PL, NORTH CHARLESTON, SC 29418

Dear JAMIE SINGLETON:

Welcome to FCI Lender Services, Inc. ("FCI") Loan servicing! FCI is your Servicing Agent and is servicing your Mortgage Loan on behalf of your Lender/Creditor, **WestVue NPL Trust II (WestVue Series 2014-1)** (The "Creditor"). FCI is also a Debt Collector. Your Creditor has authorized FCI to process and collect your scheduled Mortgage Loan payments according to your Promissory Note and Security Instrument. A *Payment Statement* will be mailed or emailed to you on a regular basis. Please send your check with your account number written on it, plus the payment coupon from your statement (unless you have established an Automated Payments (ACH) debit program with FCI). You should review each *Payment Statement* carefully for accurate loan information. At year-end, an interest statement (IRS Form 1098) will be mailed to you for tax purposes. To view your account, and for other payment options, visit www.trustfci.com and click on "Borrower Payment Options" located at the top of FCI's web page.

IMPORTANT BANKRUPTCY INFORMATION

IF YOU OR YOUR ACCOUNT ARE SUBJECT TO PENDING BANKRUPTCY PROCEEDINGS, OR IF YOU RECEIVED A BANKRUPTCY DISCHARGE ON THIS DEBT, THIS STATEMENT IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT AN ATTEMPT TO COLLECT A DEBT.

Your Creditor has provided FCI the following information regarding the Total Amount Due on your Mortgage Loan (the "Debt").

Principal Balance:	$ 208,601.00
Accrued Interest:	$ 131,330.33
Accrued Late Charges:	$ 12,251.93
Other Amounts Due:	$ 22,726.02
Total Debt:	**$ 374,909.28**

VALIDATION OF DEBT: Unless you, the consumer, within thirty days after receipt of this notice, dispute the validity of the Debt, or any portion thereof, the Debt will be assumed to be valid by FCI as the Debt Collector. If you notify FCI in writing, within thirty days after receipt of this notice, that you dispute the Debt or any portion of the Debt, we will, as required by law, obtain and mail to you verification of the Debt and/or a copy of a Judgment against you. Upon your written request within the thirty-day period, FCI as the Debt Collector will provide you, as the consumer, with the name and address of the original creditor, if different from the current Creditor.

As of the date of this Notice, the Debt is **$ 374,909.28.** Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection.

IF YOU ARE NOT IN BANKRUPTCY OR DISCHARGED OF THIS DEBT, BE ADVISED THAT FCI IS A DEBT COLLECTOR AND IS ATTEMPTING TO COLLECT A DEBT ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

If you have any questions regarding the above information, please write or call FCI's Customer Care Center toll-free number at 1-800-931-2424 (x651) during normal business hours (Monday-Friday, 8:00 AM 5:00 PM, PST). When calling, please reference your loan number.

Sincerely,
Customer Care Department
FCI Lender Services

FCI Lender Services, Inc.
Loan Servicing • Specialty Servicing • Default
Phone: 800-931-2424 Fax: 714-282-5775

02/09/2015

ANNOUNCING

FCI'S BORROWER LIVE LOGIN

FCI's live login gives Borrowers access to current Loan Information including:

Monthly Statements
Principal Balance
Payment History
Loan Charges
Payments Due

Use your Borrower Login to **make last minute Online Payments** that will be credited to your account based on the time submitted. Simply click on "Express Payment" to make your loan payment for a small Express Payment fee.

Providing your loan is performing and current, you can also use your Borrower Login to **set up Automatic Payments (ACH)**, and not worry about sending in checks again.

Go to **www.trustfci.com** "Customer Login" and click on "Borrower Login" to set up your account.

Sincerely,
Customer Care Department
FCI Lender Services

FCI Lender Services, Inc.
Loan Servicing • Specialty Servicing • Default
Phone: 800-931-2421 Fax: 714-282-5775

02/09/2015

Privacy Policy

JAMIE SINGLETON
5505 ROWSHAM PL
NORTH CHARLESTON, SC 29418

Dear JAMIE SINGLETON:

At FCI Lender Services and our family of companies, we appreciate your business and the trust you have placed in us. We are committed to protecting the personal data we obtain about you. Please know that we do not sell your personal data. Please review the following details.

What personal data we may collect about you?
We may collect personal data about you to process your payments and to communicate with you regarding the status of your loan and payments. When required, we will obtain your consent before collecting it. The personal data may include:

Name and Address
Credit & Payment Data
Social Security number or taxpayer identification number

What do we do with your personal data?
We comply with Federal and State requirements related to the protection and use of your data. This means we only share data where we are permitted or required to do so. We also may be required to obtain your authorization before disclosing certain types of personal data. We may use your data for the following:

Process Loan and Payments
Respond to your requests
Comply with regulatory requirements
Prevent Fraud

We do not sell personal data about current or former customers or their accounts. We do not share your personal data for marketing purposes with anyone outside our family of companies. When affiliates or outside companies perform a service on our behalf, we may share your personal data with them. We require them to protect your personal data, and we only permit them to use your personal data to perform these services. Examples of outside parties who may receive your data are:

State or Federal Authorities
Other companies or service providers supporting your account

How do we protect your personal data?
In order to protect your personal data, we maintain physical, electronic, and procedural safeguards. We review these safeguards regularly in keeping with technological advancements. We restrict access to your personal data. We also train our employees in the proper handling of your personal data.

Our commitment to keeping you informed.
We will send you a Privacy Policy each year while you are our customer. In the event we broaden our data sharing practices, we will send you a new policy.

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
MOTION INFORMATION FORM AND COVER SHEET
CASE NO. 2011-CP-18-00871

RECORDED
2015 SEP 21 PM 12:42
CLERK OF COURT
DORCHESTER COUNTY

US Bank, NA as Trustee for FRT 2011-1, ☑ Plaintiff
v.
Jamie Singleton and Indigo Pointe Homeowners Association ☐ Defendant

name, S.C.Bar no, and address of plaintiff's attorney	name, S.C.Bar no, and address of Defendant's attorney
Erica G. Lybrand (SC Bar # 79052) Rogers Townsend & Thomas, PC 220 Executive Center Drive (29210) P.O. Box 100200 Columbia, SC 29202-3200 (803) 771-7900 tel. # (803) 343-7017 fax #	telephone: fax: email: other:

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPROSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion Substituting Plaintiff
Estimated Time Needed: 15 minutes Court Reporter Needed: YES

SECTION II: Motion Type

☑ Written motion attached
☐ Form Motion —

I hereby move for relief or action by the court as set forth in the attached proposed order.

(SC Bar # 73844) /s/ [signature] w/permission for Erica Lybrand
Signature of Attorney for Plaintiff

September 18, 2015
Date submitted

SECTION III: Motion Fee

☑ PAID —AMOUNT: $ 25.00
☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

CODE: _____ Date: _____

_____
JUDGE

CLERK'S VERIFICATION

Date Filed:

Collected by: _____
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED--AMOUNT DUE: _____

SCCA/233 (12/2009) 522291-00001 ELI