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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

Case No: 2016CP0701466

Benjamin C.P. Sapp, Special Referee

Appellate Case No. 2023-001394

**DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE, FOR NOVASTAR MORTGAGE FUNDING
TRUST, SERIES 2006-5 NOVASTAR HOME EQUITY LOAN
ASSET-BACKED CERTIFICATES, SERIES 2006-5,
Respondents.**

v.

TERRY LENNETTE GRANT,

Appellant,

APPELLANT'S AMENDED RECORD ON APPEAL

VOLUME I PAGES 1-498

WITH INDEX

By: s/Terry Lennette Grant

Terry Lennette Grant

P O Box 21936

Hilton Head Island, SC 29926

843-301-575

terrygrantseries@gmail.com

Date: June 20, 2025

**Cc: Chad Wilson Burgess, Esquire
Genevieve Speese Johnson, Esquire
Brook Dangerfield, Esquire
Caroline Richardson Glenn, Esquire
May R. Powers, Esquire
William Price Stork, Esquire
Kenneth Gregory Wooten, III, Esquire**

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¹ Could Not Locate

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

v.

Terry Lennette Grant,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-07-01466

**ORDER DENYING DEFENDANT'S
MOTION TO STAY**

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the case. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on May 4, 2023, on the parties' pending cross motions for summary judgment. On June 12, 2023, the undersigned issued an Order granting the Plaintiff's motion for summary judgment and denying the Defendant's motion for summary judgment (hereinafter "Order"). The Order was entered on June 28, 2023.

On July 7, 2023, Defendant, Terry Lennette Grant (hereinafter "Defendant" or "Grant"), requested reconsideration of the Order. An Order denying the Grant's motion to reconsider was filed on September 1, 2023.

Grant filed a Notice of Appeal to the South Carolina Court of Appeals on September 5, 2023, and the appeal remains pending. The Order granting the Plaintiff's motion for summary judgment directed the foreclosure sale of real property and, as such, the Order was not stayed by the pending

appeal pursuant to Rule 241(b)(4), SCACR. The foreclosure sale was scheduled for November 3, 2023. On November 2, 2023, at approximately 4:15 PM, Grant filed a Motion for a stay pending appeal and/or Motion to vacate judgment. The November 3, 2023, foreclosure sale proceeded as scheduled, attended by counsel for the Plaintiff. Despite being notified of the sale, Defendant did not attend the sale, nor did she contact the undersigned prior to the sale to inform the Court of her Motion. Out of an abundance of caution, immediately prior to conducting the November 3, 2023 foreclosure sale, the undersigned checked the Clerk of Court's records to determine if the Defendant had made any filings related to the sale. During this review, Defendant's Motion was discovered and reviewed as related to staying the sale. Defendant's Motion was denied, and the foreclosure sale proceeded as scheduled. This Court directed counsel for the Plaintiff to submit a formal order denying the stay.

Based upon careful review of the pleadings and subsequent filings made in this action, the applicable rules of civil procedure and case law concerning those rules, this Court makes the following findings of fact and conclusions of law as the grounds for denial of the Defendant's Motion:

FINDINGS OF FACT:

The Notice of the November 3, 2023 foreclosure sale was filed and served on the Defendant on October 4, 2023. Despite Defendant having ample opportunity to file and serve her Motion and request a hearing in compliance with the timing requirements set forth in SCRPC Rule 6(f), Defendant filed her Motion mere hours before the scheduled foreclosure sale. Based upon the timing of Defendant's Motion, Defendant deprived the Plaintiff sufficient notice and opportunity to respond to her request and she deprived this Court an opportunity to afford her the relief requested. Even had the Defendant immediately notified the Court and the parties of her Motion in the hours between its filing and the foreclosure sale, and a bond been set, it would have been

practically impossible for the Defendant to post the bond prior to the foreclosure sale in compliance with SC Code §13-9-170.

Therefore, this Court finds the Defendant's motion to be untimely and ineffective in requesting a stay of the foreclosure sale. The undersigned lacks jurisdiction to take up a motion for relief from judgment under SCRPC Rule 60(b) at this time and, as such, to the extent the Defendant's Motion requests such relief, this Court declines to take up that motion at present.

CONCLUSIONS OF LAW:

1. The Defendant's Motion to stay the foreclosure sale is untimely and therefore must be denied.
2. The November 3, 2023 sale, properly proceeded as scheduled without a stay being issued.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Defendant's Motion to stay the foreclosure sale is denied.
2. The November 3, 2023 foreclosure sale is unimpacted by the Defendant's Motion.

AND IT IS SO ORDERED.


 The Honorable Benjamin C.P. Sapp
 Special Referee for Beaufort County

Dated: Nov. 16, 2023
 Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5

Terry Lennette Grant

DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3809 Fernandina Road, Suite 110
Columbia, SC 29210

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

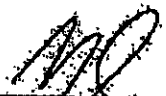
This order ☒ ends ☐ does not end the case.

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)
		N/A
If applicable, describe the property, including tax map information and address, referenced in the order. All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191. ALSO: A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC.," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139. SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.		

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.


 Circuit Court Judge S.A. Judge Code 1111 Date Nov. 16, 2023

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Terry Lennette Grant
 PO Box 21936
 Hilton Head Island, SC 29925

Terry Lennette Grant
 226 Wild Horse Road
 Hilton Head Island, SC 29926

Chad W. Burgess, Esquire
 Brock & Scott, PLLC
 3800 Ferdinandina Road Suite 110
 Columbia, SC 29210

ATTORNEY(S) FOR THE
 PLAINTIFF(S)

ATTORNEY(S) FOR THE
 DEFENDANT(S)

CLERK OF COURT

Court Reporter: John A. Sullivan

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 judgment to parties who are not E-Fileers 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.

SCRP Form 4C (02/2017)

Page 4 of 4

Case File No: 15-22471-FC02

Page 7

NOTICE OF SALE

NOTICE OF SALE CIVIL ACTION NO. 2016-CP-07-01466 BY VIRTUE of the decree heretofore granted in the case of: Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 vs. Terry Lennette Grant, the undersigned Special Referee for Beaufort County, South Carolina, will sell on November 3, 2023, at 11:00 AM, or on another date, thereafter as approved by the Court, at the Courthouse, City of Beaufort, State of South Carolina, to the highest bidder:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON HILTON HEAD ISLAND, COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON A SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, THIS BEING THE SAME PROPERTY DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON THAT SURVEY ENTITLED "3.99 AC. WILD HORSE ROAD," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191.

ALSO:

A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THOSE CERTAIN PARCELS OWNED BY TERRY LENNETTE GRANT DESCRIBED AS PARCEL B AND ACCESS & DRAIN FIELD EASEMENT ON BOTH THAT SURVEY ENTITLED "3.99 AC." PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191 AND THAT SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, INCLUDING WITHOUT LIMITATION A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL

RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THE "ASPHALT DRIVE" AS SHOWN ON THE SURVEY RECORDED IN PLAT BOOK 136 AT PAGE 139.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS, IF ANY, MORE PARTICULARLY IDENTIFIED IN THE ABOVE REFERENCED PLAT OR OTHERWISE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA, WHICH ARE APPLICABLE TO THE ABOVE DESCRIBED PROPERTY.

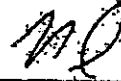
THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO TERRY LENNETTE GRANT BY DEED OF TERRY GRANT ENTERPRISES, INC. DATED AUGUST 9, 2001 AND RECORDED AUGUST 24, 2001 IN BOOK 1463 AT PAGE 34 AND RE-RECORDED FEBRUARY 10, 2004 IN BOOK 1908 AT PAGE 2034 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 226 Wildhorse Road, Hilton Head Island, SC 29926

TMS: R510 007 000 018A 0000

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Master In Equity, at conclusion of the bidding, five percent (5%) of his bid, in cash or equivalent, as evidence of good faith, same to be applied to the purchase price in case of compliance, but in the case of non-compliance to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff. Should the last and highest bidder fail to comply with the other terms of the bid within thirty (30) days, then the Master In Equity may re-sell the property on the same terms and conditions on some subsequent Sales Day. No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately. Purchaser to pay for documentary stamps on the Deed. The successful bidder will be required to pay interest on the amount of the balance of the bid from date of sale to date of compliance with the bid at the rate of 7.75% per annum. The sale shall be subject to taxes and assessments, existing easements and restrictions, easements and restrictions of record and any other senior encumbrances.

In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.



The Honorable Benjamin G. P. Sapp
Special Referee for Beaufort County

Plaintiff's counsel:

Chad W. Burgess
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3340
Chad.Burgess@brockandscott.com

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company
as Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

v.

Terry Lennette Grant,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-07-01466

ORDER DENYING DEFENDANT'S MOTION TO
RECONSIDER

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on May 4, 2023, on the parties' pending cross motions for summary judgment. On June 12, 2023, the undersigned issued an Order granting the Plaintiff's motion for summary judgment and denying the Defendant's motion for summary judgment (hereinafter "Order"). The Order was entered on June 28, 2023. The foreclosure sale was scheduled for September 7, 2023.

File reference: 15-22471

CID541361

DID200284

On July 7, 2023, Defendant, Terry Lennette Grant (hereinafter "Defendant" or "Grant"), requested reconsideration of the Order. After careful review of the pleadings and subsequent filings made in this action, any memoranda, arguments, and testimony presented by the parties, the applicable rules of civil procedure and case law concerning those rules, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT:

Defendant's motion asserts that the undersigned did not consider her filings or proposed order in issuing the Order. At the May 4, 2023, hearing on the pending motions for summary judgment, each party was directed to submit a proposed order for my consideration within 30 days. The request for proposed orders from each of the parties is common practice in the Courts of this State. Each party complied with the Court's request and submitted proposed orders. Each proposed order was reviewed along with the filings in this action and, after completion of my review, I ruled in favor of the Plaintiff and signed the proposed order submitted by counsel for the Plaintiff. Defendant's filings were not ignored in making my ruling.

Defendant specially takes issue with this Court's ruling as it relates to one piece of evidence submitted in the case. That document is a copy of the Settlement Statement from the subject closing which occurred on September 18, 2006. *See* Defendant's Affidavit filed October 6, 2022, Exhibit #1. Plaintiff conceded at the hearing that the copy of the Settlement Statement filed by Grant is a true and accurate copy of the unsigned Settlement Statement from the closing of the subject loan. Defendant's current motion asserts that, "you still ruled in Plaintiff's favor, even though unsigned closing documents violate Federal and State Statutes [sic] and Laws, i.e., RESPA and TILA". *See* Defendant's Motion ¶ 5. The Defendant has asserted no counterclaims in this action for violations of the RESPA, TILA, or any statute related to the closing of the

subject loan. As such, whether Defendant ever signed a copy of the Settlement Statement is not pertinent to the issues involved in this foreclosure action.

Defendant's submission of an unsigned copy of the Settlement Statement does not support a conclusion that she did not enter into the subject loan. To the contrary, the copy of the Settlement Statement submitted by the Defendant is wholly consistent with the public records recorded following the closing of the loan. Defendant's contention that she did not enter into the subject loan is also refuted by the Defendant's own answers filed in this action on October 28, 2016, July 21, 2017, December 7, 2017, and February 15, 2018. Furthermore, the Defendant is barred from challenging her entry into the subject loan by the law-of-the-case doctrine as well as the doctrines of res judicata and collateral estoppel as outlined in the Order.

Finally, the Defendant takes issue with the timeline of the filing of the Order following its signing on June 12, 2023. Any order entered by the undersigned, as Special Referee, is required to be physically signed and forwarded to the Clerk of Court for filing rather than submitted via e-filing. Therefore, there is nothing unique about the short passage of time from signing the Order to its filing.

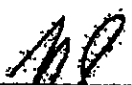
CONCLUSIONS OF LAW: I therefore, conclude as follows:

1. Based upon the foregoing, the Defendant's motion to reconsider should be denied.
2. The September 7, 2023, sale should proceed as scheduled.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Defendant's motion to reconsider is denied.
2. The September 7, 2023, sale shall proceed as scheduled.

AND IT IS SO ORDERED.



The Honorable Benjamin C.P. Sapp
Special Referee for Beaufort County

Dated: Dec. 29, 2023
Walterboro, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5.

Terry Lennette Grant

DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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

Page 15

ELECTRONICALLY FILED - 2023 Sep 01 2:04 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701466

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 order: All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191. ALSO: A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC.," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139. SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.		

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. No regard to the factors

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.

MR
Circuit Court Judge S.A. Judge Code _____ Date Dec 29, 2023

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Terry Lennette Grant
PO Box 21936
Hilton Head Island, SC 29925

Terry Lennette Grant
226 Wild Horse Road
Hilton Head Island, SC 29926

Chad W. Burgess, Esquire
Brook & Scott, PLLC
3800 Fernandina Road Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE
PLAINTIFF(S)

ATTORNEY(S) FOR THE
DEFENDANT(S)

CLERK OF COURT

Court Reporter: John A. Sullivan

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 judgment to parties who are not E-Fileers 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 BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

v.

Terry Lennette Grant,

Defendants

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-07-01466

**MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE**

**(GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT)**

DEFICIENCY WAIVED

Hearing Date: May 4, 2023

Appearances: Chad W. Burgess, Esquire for Plaintiff; Vivian Michelle Woods

Court Reporter: Naomi McCracken

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on May 4, 2023 on the parties' pending cross motions for summary judgment, a record was made which is reported herewith, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT:

1. Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (hereinafter "Plaintiff" or "Deutsche Bank") filed its initial Lis Pendens, Summons and Complaint on June 29, 2016.



File reference: 15-22471



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2. Service was made upon the Defendant Terry Lennette Grant (hereinafter "Defendant" or "Grant") as is shown by the proofs of service filed herein.
3. Grant filed an answer to the initial complaint on October 28, 2016. The Complaint was amended on November 9, 2017. Grant answered the Amended Complaint on December 7, 2017.
4. Plaintiff's Motion for Summary Judgment was filed on September 7, 2022. Defendant's Motion for Summary Judgment was filed October 21, 2022.
5. According to an Affidavit filed herein, no Defendant is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. Grant was notified of the time and date of this hearing as is evidenced by the Notice of Hearing and Certificate of Service filed April 21, 2023. Despite being duly notified of the hearing, Grant did not attend. The hearing was attended by Vivian Michelle Woods. Ms. Woods asserted she was attorney-in-fact via a limited power of attorney executed by Grant. Ms. Woods confirmed she was not a South Carolina licensed attorney. As such, she was not allowed to represent Grant at the hearing, but she was allowed to observe the hearing.
7. Counsel for Plaintiff acknowledged Defendant made various filings in opposition to Plaintiff's Motion for Summary Judgment and in support of her motion. I take judicial notice of and have reviewed the parties' respective filings in conjunction with issuing this Order. *Freeman v. McBee*, 280 S.C. 490, 494, 318 S.E.2d 325, 327 (Ct.App. 1984). ("A Court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.")
8. For value received, Terry Lennette Grant made, executed and delivered a note, dated September 18, 2006, promising thereby to pay to the order of Mortgage Electronic Registration

Systems, Inc. as nominee for NovaStar Mortgage, Inc. the sum of \$680,000.00 with interest at the rate of 7.75% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

9. To better secure the payment of the Note described above, the said Terry Lennette Grant made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., in writing, dated September 18, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. The Mortgage was recorded on September 26, 2006, and is of record in the Beaufort County Registry in Book 2448 at page 823.

10. This mortgage constitutes a valid first lien on the subject property.

11. Thereafter, the Mortgage was assigned to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 by assignment recorded on December 10, 2009, in Book 2915 at Page 902.

12. Plaintiff alleges the installments of principal and interest falling due from and after January 1, 2008, have not been paid, thereby placing Plaintiff in default under the terms of the Note and Mortgage. As a result of Plaintiff's default, foreclosure efforts were initiated and have been ongoing since 2009. I take judicial notice of the filings in the prior foreclosure actions as summarized below. *Id.*

13. The initial foreclosure action was filed on December 1, 2009. *See* SC Civil Action Number 2009-CP-07-05612. The 2009 foreclosure was voluntarily dismissed on February 12, 2010, without apparent service of process on Grant.

14. The second foreclosure action was filed on April 12, 2010. *See* SC Civil Action Number 2010-CP-07-01690. The case was referred to the Honorable Marvin H. Dukes, III, as Master in

Equity for Beaufort County on June 15, 2010. Grant appeared in the 2010 foreclosure *pro se* and no counterclaims were asserted. As a part of the 2010 foreclosure, Deutsche Bank sought to reform the subject Mortgage and sought an easement for ingress and egress for itself and its successors. On February 7, 2014, Judge Dukes entered an Order granting Deutsche Bank's Motion for Partial Summary Judgment as to the reformation and easement causes of action. The February 7, 2014, Master's Order which granted Deutsche Bank's motion for partial summary judgment, reformed the legal description contained in the Mortgage, and granted Deutsche Bank and its successors an easement as described therein. The Master's Order established: (1) that Grant, for value received, entered into the subject Note and Mortgage; (2) that Deutsche Bank was the present lienholder at the time the Order was entered thereby establishing standing to enforce the subject Note and Mortgage; (3) that Deutsche Bank was entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake; and, (4) entitlement to an easement for the purposes of ingress and egress.

15. Deutsche Bank was granted judgment as to its remaining cause of action for foreclosure in an Order entered May 28, 2014. The May 28, 2014 Foreclosure Order was vacated and the cause of action for foreclosure was dismissed without prejudice pursuant to SCRPC Rule 60(b) on January 14, 2016. The February 7, 2014 Order reforming the Mortgage and granting an easement for ingress and egress remains in full force and effect as it was not affected by the vacating of the foreclosure portion of the 2010 action. Grant has not appealed February 7, 2014 Order, and it has never been vacated.

16. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated

in the former suit and any issues which might have been raised in the former suit.” *Plum Creek Dec. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (internal citations omitted). See also *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986) (under the doctrine of collateral estoppel, once final judgment has been reached in prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim).

17. “Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.” *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). “[A]n unappealed ruling, right or wrong, is the law of the case.” *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). “The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case.” *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). “Under the law of the case doctrine, a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order.” *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 119, 754 S.E.2d 486, 490 (2014).

18. Grant’s defenses in this foreclosure center around challenges to her entering the subject loan and her attack of Deutsche Bank’s standing to bring the foreclosure actions. The above-described doctrines bar Grant’s challenges.

19. Grant alleges she never entered into the subject note and Mortgage because the subject closing documents were “incorrectly prepared”. See Defendant’s Affidavit filed October 6, 2022, Paragraphs 2 through 4. These statements are inconsistent with the numerous answers filed by the Defendant in this case. See Defendant’s answers filed October 28, 2016, July 21, 2017, December

7, 2017, February 15, 2018. The Defendant's answers consistently admit entering into the subject Note and Mortgage. The Defendant's answers also consistently reference that the subject Mortgage had an incorrect legal description. As noted above, the Mortgage's legal description was addressed in the February 7, 2014 Order as a matter of law. Further, the publicly available records filed in the Beaufort County Register of Deeds' Office refute Grant's claims.

20. Grant asserts, and Plaintiff agrees, that the proceeds from the subject loan purportedly paid off a prior mortgage held by Mortgage Electronic Registration System's Inc, as nominee for GreenPoint Mortgage Funding, Inc. recorded in the Beaufort County Registry on December 15, 2003 in Book 1886 at Page 1116 (the "GreenPoint Mortgage"). Grant claims that the Greenpoint Mortgage was paid off in 2004 and satisfied by a document recorded in the Beaufort County Registry on April 23, 2004 in Book 1942 at Page 2544. See Defendant's Affidavit filed October 6, 2022, Paragraph 2(D) and Exhibit #2 attached thereto. The document Defendant relies upon as evidence that the GreenPoint Mortgage was paid off in 2004 is a Partial Release of Mortgage which releases from the GreenPoint Mortgage a portion of land excluding the .46 acres which are the subject of the Plaintiff's Mortgage and this foreclosure action. The 2004 Partial Release does not support a finding that the GreenPoint Mortgage was fully paid off in 2004.

21. In support of her assertions, Grant filed a copy of the Settlement Statement from the subject closing which occurred on September 18, 2006 (See Defendant's Affidavit, Exhibit #1). Plaintiff conceded at the hearing that the copy of the Settlement Statement filed by Grant is a true and accurate copy of the unsigned Settlement Statement from the closing of the subject loan. The Settlement Statement indicates the amount of \$387,910.25 was paid to GreenPoint from the proceeds of the subject loan. A Satisfaction of Lost Mortgage was executed by Mortgage Electronic Registration Systems Inc, as nominee for GreenPoint Mortgage Funding, Inc. was

recorded in the Beaufort County Registry on October 10, 2006 in Book 2456 at Page 1986. The Satisfaction of Lost Mortgage conclusively establishes that the GreenPoint Mortgage was fully paid off in 2006 from the proceeds of the subject loan.

22. The Settlement Statement also shows a payoff of a second mortgage to South Carolina Bank and Trust ("SCB&T Mortgage") in the amount of \$101,788.42. The SCB&T Mortgage was recorded in the Beaufort County Registry on June 31, 2005, in Book 2220 at Page 1497. A Satisfaction of the SCB&T Mortgage was executed October 10, 2006, and recorded in the Beaufort County Registry on March 21, 2007 following the closing of the subject loan. This payoff further establishes Grant's entry into the subject loan.

23. The Settlement Statement also shows a payment to the South Carolina Department of Revenue in the amount of \$22,837.33. A SCDOR Tax Lien was recorded in the Beaufort County Registry on April 5, 2006 in Book 24 at Page 1305. A Tax Lien Satisfaction was recorded in the Beaufort County Registry on October 27, 2006 in Book 27 at Page 1942. The Settlement Statement also shows payment to the United States IRS for Federal Tax in the amount of \$105,908.28. No Federal tax liens appear in the Beaufort County Registry.

24. The February 7, 2014 Order, coupled with the indisputable evidence found in the Beaufort County Registry of the funds from this loan being used to pay off prior debts owed by the Defendant put falsity to her claim that she walked out of the closing without signing the subject Note. There is simply no genuine issue of material fact remaining regarding the Defendant having entered into and benefited from the subject loan and the Plaintiff is entitled to summary judgment regarding this issue.

25. Grant asserts Plaintiff lacks standing to pursue the foreclosure action both as grounds for her motion for summary judgment and against the Plaintiff's motion for summary judgment.

“Standing refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *Michael P. v. Greenville Cty. Dep’t of Soc. Servs.*, 385, S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009) (citing *Powell ex re. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008)). SCRCF Rule 17(a) provides that, “[e]very action shall be prosecuted in the name of the real party in interest” and further sets forth that, “[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest”. In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, “[t]he requirement of Standing is not an inflexible one.” *Id.* at 220 (quoting *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat’l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). “[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note.” *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) (“The Transfer of a note carries with it a mortgage given to secure payment of such note.”).

Id. at 220. Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. “Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view.” *Id.* at 223.

26. The Plaintiff produced the original Note for this Court's inspection at the May 4, 2023 hearing. As evidenced by the stamps placed on the face of the document, Plaintiff previously produced the Note for Judge Dukes' inspection in the 2010 Foreclosure Action on May 28, 2014 in conjunction with entry of foreclosure judgment in that case. The original Note was again produced for the Court's inspection in connection with a prior hearing in this action on August 3, 2021. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

27. Further, the Defendant lacks standing to challenge the transfer of the subject Note and Mortgage because she was not a party to said transfer. In *Re McFadden*, 471 BR 136 (2012); see also *Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012) ("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity"); see also *Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). ("Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.").

28. Based upon the foregoing, I find the Plaintiff has standing to bring the instant foreclosure action as a matter of law.

29. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"), Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to

participate in the Home Affordable Modification Program (hereinafter, "the HAMP"); however, Plaintiff alleges upon information and belief, that the loan is not subject to modification under the HAMP as contemplated under the Administrative Order because the Borrower(s) failed to respond to the HAMP inquiries or failed to provide the necessary supporting documentation.

30. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court¹.

31. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was/were Terry Lennette Grant.

32. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

33. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sums outlined in the Plaintiff's Affidavit filed April 3, 2023², to constitute reasonable attorney's fees for the Plaintiff's attorney for services performed up to this point in time under the terms of the note and mortgage. Performance of additional services may result in a determination by this court that additional reasonable attorney's fees are due.

¹ The Plaintiff's compliance with the 2009 and 2011 Administrative Orders regarding HAMP and creating foreclosure intervention are evidenced by the filings herein with no evidence appearing in the record to refute compliance with the Administrative Orders. I further note that these Administrative Orders were rescinded on May 17, 2023, by SC Supreme Court Administrative Order 2023-05-17-01.

34. Based upon the uncontroverted evidence presented, the amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	10/28/2022	\$672,991.46
Deferred Principal Balance:		\$0.00
Accrued interest from:	12/01/2007 to: 03/13/2023	\$801,015.05
Per diem interest from:	03/14/2023 to: 05/04/2023	\$8,110.53
Accruing at:	7.75% per annum	
Escrow Balance:		\$192,476.07
- Taxes for the years 2019-2023		\$12,234.25
- Insurance for the years 2019-2023		\$34,460.10
- Prior Servicer Escrow Balance		\$145,899.41
Prior Servicer Fees		\$2,672.03
Property Inspections		\$767.00
Property Valuation Fee/BPO		\$255.00
Prior Servicer Foreclosure Fee/Costs (Paid through 9/12/2018)		\$38,628.98
Late charges:		\$2,681.27
Credits:		
- Escrow Payments/ Credits		\$ (117.69)
Foreclosure Fee/Costs(paid through (03/06/2023):		\$15,813.23

35. Total Debt secured by Note and Mortgage, is **\$1,735,410.62²**. Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

36. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCP.

² A review of the Defendant's filings does not reveal a challenge or evidence to refute the amount of damages claimed by the Plaintiff.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff's Motion for Summary Judgment should be granted and the Defendant's motion for summary judgment should be denied.
2. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.
3. That there is due to the Plaintiff on its Note and Mortgage the sum of **\$1,735,410.62**, representing the Total Debt due to the Plaintiff as outlined above.
4. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest as previously set forth at the rate of 7.75% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff's Motion for Summary Judgment is granted and the Defendant's Motion for Summary Judgment is Denied.
2. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.
3. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Beaufort County Courthouse, City of Beaufort, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only

upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.75% per annum.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

D. Purchaser to pay for the deed and the cost of recording the deed.

4. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.
5. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
6. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master In Equity or the Plaintiff may re-advertise the Property for sale on the next, or some other subsequent, sales day, according to

the same terms set forth herein; and so on from time to time thereafter until a full compliance shall be secured.

7. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

8. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

9. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

10. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Beaufort County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191.

ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC.," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

This being a portion of the same property conveyed to Terry Lennette Grant by Deed of Terry Grant Enterprises, Inc. dated August 9, 2001 and recorded August 24, 2001 in Book 1463 at Page 54 and re-recorded February 10, 2004 in Book 1908 at Page 2034 in the Office of the Register of Deeds for Beaufort County, South Carolina.

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.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Terry Lennette Grant
PO Box 21936
Hilton Head Island, SC 29925

Terry Lennette Grant
226 Wild Horse Road
Hilton Head Island, SC 29926

Chad W. Burgess, Esquire
Brock & Scott, PLLC
3800 Fernandina Road Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE
PLAINTIFF(S)

ATTORNEY(S) FOR THE
DEFENDANT(S)

CLERK OF COURT

Court Reporter: John A Sullivan

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 judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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 BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

v.

Terry Lennette Grant,

Defendants

MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE

(GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT)

DEFICIENCY WAIVED

Hearing Date: May 4, 2023

Appearances: Chad W. Burgess, Esquire for Plaintiff; Vivian Michelle Woods

Court Reporter: Naomi McGracken

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on May 4, 2023 on the parties' pending cross motions for summary judgment, a record was made which is reported herewith, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT:

1. Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (hereinafter "Plaintiff" or "Deutsche Bank") filed its initial Lis Pendens, Summons and Complaint on June 29, 2016.



File reference: 15-22471



2. Service was made upon the Defendant Terry Lennette Grant (hereinafter "Defendant" or "Grant") as is shown by the proofs of service filed herein.

3. Grant filed an answer to the initial complaint on October 28, 2016. The Complaint was amended on November 9, 2017. Grant answered the Amended Complaint on December 7, 2017.

4. Plaintiff's Motion for Summary Judgment was filed on September 7, 2022. Defendant's Motion for Summary Judgment was filed October 21, 2022.

5. According to an Affidavit filed herein, no Defendant is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act aka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. Grant was notified of the time and date of this hearing as is evidenced by the Notice of Hearing and Certificate of Service filed April 21, 2023. Despite being duly notified of the hearing, Grant did not attend. The hearing was attended by Vivian Michelle Woods. Ms. Woods asserted she was attorney-in-fact via a limited power of attorney executed by Grant. Ms. Woods confirmed she was not a South Carolina licensed attorney. As such, she was not allowed to represent Grant at the hearing, but she was allowed to observe the hearing.

7. Counsel for Plaintiff acknowledged Defendant made various filings in opposition to Plaintiff's Motion for Summary Judgment and in support of her motion. I take judicial notice of and have reviewed the parties' respective filings in conjunction with issuing this Order. *Freeman v. McBee*, 280 S.C. 490, 494, 318 S.E.2d 325, 327 (Ct.App. 1984). ("A Court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.")

8. For value received, Terry Lennette Grant made, executed and delivered a note, dated September 18, 2006, promising thereby to pay to the order of Mortgage Electronic Registration

Systems, Inc. as nominee for NovaStar Mortgage, Inc. the sum of \$680,000.00 with interest at the rate of 7.75% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

9. To better secure the payment of the Note described above, the said Terry Lennette Grant made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc. in writing, dated September 18, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. The Mortgage was recorded on September 26, 2006, and is of record in the Beaufort County Registry in Book 2448 at page 823.

10. This mortgage constitutes a valid first lien on the subject property.

11. Thereafter, the Mortgage was assigned to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 by assignment recorded on December 10, 2009, in Book 2915 at Page 902.

12. Plaintiff alleges the installments of principal and interest falling due from and after January 1, 2008, have not been paid, thereby placing Plaintiff in default under the terms of the Note and Mortgage. As a result of Plaintiff's default, foreclosure efforts were initiated and have been ongoing since 2009. I take judicial notice of the filings in the prior foreclosure actions as summarized below. *Id.*

13. The initial foreclosure action was filed on December 1, 2009. See SC Civil Action Number 2009-CP-07-05612. The 2009 foreclosure was voluntarily dismissed on February 12, 2010, without apparent service of process on Grant.

14. The second foreclosure action was filed on April 12, 2010. See SC Civil Action Number 2010-CP-07-01690. The case was referred to the Honorable Marvin H. Dukes, III, as Master in

Equity for Beaufort County on June 15, 2010. Grant appeared in the 2010 foreclosure *pro se* and no counterclaims were asserted. As a part of the 2010 foreclosure, Deutsche Bank sought to reform the subject Mortgage and sought an easement for ingress and egress for itself and its successors. On February 7, 2014, Judge Dukes entered an Order granting Deutsche Bank's Motion for Partial Summary Judgment as to the reformation and easement causes of action. The February 7, 2014, Master's Order which granted Deutsche Bank's motion for partial summary judgment, reformed the legal description contained in the Mortgage, and granted Deutsche Bank and its successors an easement as described therein. The Master's Order established: (1) that Grant, for value received, entered into the subject Note and Mortgage; (2) that Deutsche Bank was the present lienholder at the time the Order was entered thereby establishing standing to enforce the subject Note and Mortgage; (3) that Deutsche Bank was entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake; and, (4) entitlement to an easement for the purposes of ingress and egress.

15. Deutsche Bank was granted judgment as to its remaining cause of action for foreclosure in an Order entered May 28, 2014. The May 28, 2014 Foreclosure Order was vacated and the cause of action for foreclosure was dismissed without prejudice pursuant to SCRCP Rule 60(b) on January 14, 2016. The February 7, 2014 Order reforming the Mortgage and granting an easement for ingress and egress remains in full force and effect as it was not affected by the vacating of the foreclosure portion of the 2010 action. Grant has not appealed February 7, 2014 Order, and it has never been vacated.

16. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated

in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dec. Co. v. City of Conway*, 334 S.C. 36, 34, 512 S.E.2d 106, 109 (1999) (internal citations omitted). See also *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986) (under the doctrine of collateral estoppel, once final judgment has been reached in prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim).

17. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). "[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). "Under the law of the case doctrine, a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order." *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 119, 754 S.E.2d 486, 490 (2014).

18. Grant's defenses in this foreclosure center around challenges to her entering the subject loan and her attack of Deutsche Bank's standing to bring the foreclosure actions. The above-described doctrines bar Grant's challenges.

19. Grant alleges she never entered into the subject note and Mortgage because the subject closing documents were "incorrectly prepared". See Defendant's Affidavit filed October 6, 2022, Paragraphs 2 through 4. These statements are inconsistent with the numerous answers filed by the Defendant in this case. See Defendant's answers filed October 28, 2016, July 21, 2017, December

7, 2017, February 15, 2018. The Defendant's answers consistently admit entering into the subject Note and Mortgage. The Defendant's answers also consistently reference that the subject Mortgage had an incorrect legal description. As noted above, the Mortgage's legal description was addressed in the February 7, 2014 Order as a matter of law. Further, the publicly available records filed in the Beaufort County Register of Deeds' Office refute Grant's claims.

20. Grant asserts, and Plaintiff agrees, that the proceeds from the subject loan purportedly paid off a prior mortgage held by Mortgage Electronic Registration Systems Inc. as nominee for GreenPoint Mortgage Funding, Inc. recorded in the Beaufort County Registry on December 15, 2003 in Book 1886 at Page 1116 (the "GreenPoint Mortgage"). Grant claims that the Greenpoint Mortgage was paid off in 2004 and satisfied by a document recorded in the Beaufort County Registry on April 23, 2004 in Book 1942 at Page 2544. See Defendant's Affidavit filed October 6, 2022, Paragraph 2(D) and Exhibit #2 attached thereto. The document Defendant relies upon as evidence that the GreenPoint Mortgage was paid off in 2004 is a Partial Release of Mortgage which releases from the GreenPoint Mortgage a portion of land excluding the .46 acres which are the subject of the Plaintiff's Mortgage and this foreclosure action. The 2004 Partial Release does not support a finding that the GreenPoint Mortgage was fully paid off in 2004.

21. In support of her assertions, Grant filed a copy of the Settlement Statement from the subject closing which occurred on September 18, 2006 (See Defendant's Affidavit, Exhibit #1). Plaintiff conceded at the hearing that the copy of the Settlement Statement filed by Grant is a true and accurate copy of the unsigned Settlement Statement from the closing of the subject loan. The Settlement Statement indicates the amount of \$387,910.25 was paid to GreenPoint from the proceeds of the subject loan. A Satisfaction of Lost Mortgage was executed by Mortgage Electronic Registration Systems Inc. as nominee for GreenPoint Mortgage Funding, Inc. was

recorded in the Beaufort County Registry on October 10, 2006 in Book 2456 at Page 1986. The Satisfaction of Lost Mortgage conclusively establishes that the GreenPoint Mortgage was fully paid off in 2006 from the proceeds of the subject loan.

22. The Settlement Statement also shows a payoff of a second mortgage to South Carolina Bank and Trust ("SCB&T Mortgage") in the amount of \$101,788.42. The SCB&T Mortgage was recorded in the Beaufort County Registry on June 31, 2005, in Book 2220 at Page 1497. A Satisfaction of the SCB&T Mortgage was executed October 10, 2006, and recorded in the Beaufort County Registry on March 21, 2007 following the closing of the subject loan. This payoff further establishes Grant's entry into the subject loan.

23. The Settlement Statement also shows a payment to the South Carolina Department of Revenue in the amount of \$22,837.33. A SCDOR Tax Lien was recorded in the Beaufort County Registry on April 5, 2006 in Book 24 at Page 1305. A Tax Lien Satisfaction was recorded in the Beaufort County Registry on October 27, 2006 in Book 27 at Page 1942. The Settlement Statement also shows payment to the United States IRS for Federal Tax in the amount of \$105,908.28. No Federal tax liens appear in the Beaufort County Registry.

24. The February 7, 2014 Order, coupled with the indisputable evidence found in the Beaufort County Registry of the funds from this loan being used to pay off prior debts owed by the Defendant put falsity to her claim that she walked out of the closing without signing the subject Note. There is simply no genuine issue of material fact remaining regarding the Defendant having entered into and benefited from the subject loan and the Plaintiff is entitled to summary judgment regarding this issue.

25. Grant asserts Plaintiff lacks standing to pursue the foreclosure action both as grounds for her motion for summary judgment and against the Plaintiff's motion for summary judgment.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385, S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009) (citing *Powell ex re. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008)). SCRPC Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, "[t]he requirement of Standing is not an inflexible one." *Id.* at 220 (quoting *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1740, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note.").

Id. at 220. Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. "Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view." *Id.* at 223.

26. The Plaintiff produced the original Note for this Court's inspection at the May 4, 2023 hearing. As evidenced by the stamps placed on the face of the document, Plaintiff previously produced the Note for Judge Dukes' inspection in the 2010 Foreclosure Action on May 28, 2014 in conjunction with entry of foreclosure judgment in that case. The original Note was again produced for the Court's inspection in connection with a prior hearing in this action on August 3, 2021. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

27. Further, the Defendant lacks standing to challenge the transfer of the subject Note and Mortgage because she was not a party to said transfer. In *Re McFadden*, 471 BR 136 (2012); see also *Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012) ("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity"); see also *Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). ("Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.").

28. Based upon the foregoing, I find the Plaintiff has standing to bring the instant foreclosure action as a matter of law.

29. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"), Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to

participate in the Home Affordable Modification Program (hereinafter, "the HAMP"); however, Plaintiff alleges upon information and belief, that the loan is not subject to modification under the HAMP as contemplated under the Administrative Order because the Borrower(s) failed to respond to the HAMP inquiries or failed to provide the necessary supporting documentation.

30. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court¹.

31. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was/were Terry Lennette Grant.

32. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

33. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sums outlined in the Plaintiff's Affidavit filed April 3, 2023², to constitute reasonable attorney's fees for the Plaintiff's attorney for services performed up to this point in time under the terms of the note and mortgage. Performance of additional services may result in a determination by this court that additional reasonable attorney's fees are due.

¹ The Plaintiff's compliance with the 2009 and 2011 Administrative Orders regarding HAMP and creating foreclosure intervention are evidenced by the filings herein with no evidence appearing in the record to refute compliance with the Administrative Orders. I further note that these Administrative Orders were rescinded on May 17, 2023, by SC Supreme Court Administrative Order 2023-05-17-01.

34. Based upon the uncontroverted evidence presented, the amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	10/28/2022		\$672,991.46
Deferred Principal Balance:			\$0.00
Accrued interest from:	12/01/2007	to: 03/13/2023	\$801,015.05
Per diem interest from:	03/14/2023	to: 05/04/2023	\$8,110.53
Accruing at:	7.75% per annum		
Escrow Balance:			\$192,476.07
- Taxes for the years 2019-2023			\$12,234.25
- Insurance for the years 2019-2023			\$34,460.10
- Prior Servicer Escrow Balance			\$145,899.41
Prior Servicer Fees			\$2,672.03
Property Inspections			\$767.00
Property Valuation Fee/BPO			\$255.00
Prior Servicer Foreclosure Fee/Costs (Paid through 9/12/2018)			\$38,628.98
Late charges:			\$2,681.27
Credits:			
- Escrow Payments/ Credits			\$ (117.69)
Foreclosure Fee/Costs (paid through (03/06/2023):			\$15,813.23

35. Total Debt secured by Note and Mortgage, is \$1,735,410.62². Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

36. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCP.

² A review of the Defendant's filings does not reveal a challenge or evidence to refute the amount of damages claimed by the Plaintiff.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff's Motion for Summary Judgment should be granted and the Defendant's motion for summary judgment should be denied.
2. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.
3. That there is due to the Plaintiff on its Note and Mortgage the sum of \$1,735,410.62, representing the Total Debt due to the Plaintiff as outlined above.
4. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest as previously set forth at the rate of 7.75% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff's Motion for Summary Judgment is granted and the Defendant's Motion for Summary Judgment is Denied.
2. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.
3. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Beaufort County Courthouse, City of Beaufort, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only

upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale, and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.75% per annum.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

D. Purchaser to pay for the deed and the cost of recording the deed.

4. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.
5. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
6. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof, and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master In Equity or the Plaintiff may re-advertise the Property for sale on the next, or some other subsequent, sales day, according to

the same terms set forth herein, and so on from time to time thereafter until a full compliance shall be secured.

7. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

8. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCP.

9. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

10. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Beaufort County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

11. It is further 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 Defendants in possession herein, the Sheriff of Beaufort County may be 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, and to keep said successful bidder or his assigns in such peaceable possession.
12. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master In Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
13. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON HILTON HEAD ISLAND, COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON A SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139. THIS BEING THE SAME PROPERTY DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON THAT SURVEY ENTITLED "3.99 AC., WILD HORSE ROAD," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191.

ALSO:

A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THOSE CERTAIN PARCELS OWNED BY TERRY LENNETTE GRANT DESCRIBED AS PARCEL B AND ACCESS & DRAIN FIELD EASEMENT ON BOTH THAT SURVEY ENTITLED "3.99 AC.," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 27, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191 AND THAT SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, INCLUDING WITHOUT LIMITATION A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THE "ASPHALT DRIVE" AS SHOWN ON THE SURVEY RECORDED IN PLAT BOOK 136 AT PAGE 139.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS, IF ANY, MORE PARTICULARLY IDENTIFIED IN THE ABOVE REFERENCED PLAT OR OTHERWISE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA, WHICH ARE APPLICABLE TO THE ABOVE DESCRIBED PROPERTY.

THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO TERRY LENNETTE GRANT BY DEED OF TERRY GRANT ENTERPRISES, INC. DATED AUGUST 9, 2001 AND RECORDED AUGUST 24, 2001 IN BOOK 1463 AT PAGE 54 AND RE-RECORDED FEBRUARY 10, 2004 IN BOOK 1908 AT PAGE 2034 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 226 Wildhorse Road, Hilton Head Island, SC 29926

TMS: R510 007 000 018A 0000

AND IT IS SO ORDERED.



The Honorable Benjamin C.P. Sapp
Special Referee for Beaufort County

Dated: 6/13/23
Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-07-01466

Deutsche Bank National Trust Company-as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5

Terry Lennette Grant

DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Brook & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

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.
- ☐ 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)
		N/A
If applicable, describe the property, including tax map information and address, referenced in the order.		

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191.

ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC.," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

This being a portion of the same property conveyed to Terry Lennette Grant by Deed of Terry Grant Enterprises, Inc. dated August 9, 2001 and recorded August 24, 2001 in Book 1463 at Page 54 and re-recorded February 10, 2004 in Book 1908 at Page 2034 in the Office of the Register of Deeds for Beaufort County, South Carolina.

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.

Circuit Court Judge

S.A.

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of ____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Terry Lennette Grant
PO Box 21936
Hilton Head Island, SC 29925

Terry Lennette Grant
226 Wild Horse Road
Hilton Head Island, SC 29926

Chad W. Burgess, Esquire
Breck & Scott, PLLC
3800 Fernandina Road Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE
PLAINTIFF(S)

ATTORNEY(S) FOR THE
DEFENDANT(S)

CLERK OF COURT

Court Reporter: John A Sullivan

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 judgment to parties who are not E-Fileers 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 BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

v.

Terry Leannette Grant,

Defendants

MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE.

(GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND DENYING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT)

DEFICIENCY WAIVED

Hearing Date: May 4, 2023.

Appearances: Chad W. Burgess, Esquire for Plaintiff; Vivian Michelle Woods.

Court Reporter: Naomi McCracken

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on May 4, 2023 on the parties' pending cross motions for summary judgment, a record was made which is reported herewith, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT:

1. Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (hereinafter "Plaintiff" or "Deutsche Bank") filed its initial Lis Pendens, Summons and Complaint on June 29, 2016.



File reference: 15-22471



2. Service was made upon the Defendant Terry Lennette Grant (hereinafter "Defendant" or "Grant") as is shown by the proofs of service filed herein.
3. Grant filed an answer to the initial complaint on October 28, 2016. The Complaint was amended on November 9, 2017. Grant answered the Amended Complaint on December 7, 2017.
4. Plaintiff's Motion for Summary Judgment was filed on September 7, 2022. Defendant's Motion for Summary Judgment was filed October 21, 2022.
5. According to an Affidavit filed herein, no Defendant is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act aka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. Grant was notified of the time and date of this hearing as is evidenced by the Notice of Hearing and Certificate of Service filed April 21, 2023. Despite being duly notified of the hearing, Grant did not attend. The hearing was attended by Vivian Michelle Woods. Ms. Woods asserted she was attorney-in-fact via a limited power of attorney executed by Grant. Ms. Woods confirmed she was not a South Carolina licensed attorney. As such, she was not allowed to represent Grant at the hearing, but she was allowed to observe the hearing.
7. Counsel for Plaintiff acknowledged Defendant made various filings in opposition to Plaintiff's Motion for Summary Judgment and in support of her motion. I take judicial notice of and have reviewed the parties' respective filings in conjunction with issuing this Order. *Freeman v. McBee*, 280 S.C. 490, 494, 318 S.E.2d 325, 327 (Ct.App. 1984). ("A Court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.").
8. For value received, Terry Lennette Grant made, executed and delivered a note, dated September 18, 2006, promising thereby to pay to the order of Mortgage Electronic Registration

Systems, Inc. as nominee for NovaStar Mortgage, Inc. the sum of \$680,000.00 with interest at the rate of 7.75% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

9. To better secure the payment of the Note described above, the said Terry Lennette Grant made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., in writing, dated September 18, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. The Mortgage was recorded on September 26, 2006, and is of record in the Beaufort County Registry in Book 2448 at page 823.

10. This mortgage constitutes a valid first lien on the subject property.

11. Thereafter, the Mortgage was assigned to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 by assignment recorded on December 10, 2009, in Book 2915 at Page 902.

12. Plaintiff alleges the installments of principal and interest falling due from and after January 1, 2008, have not been paid, thereby placing Plaintiff in default under the terms of the Note and Mortgage. As a result of Plaintiff's default, foreclosure efforts were initiated and have been ongoing since 2009. I take judicial notice of the filings in the prior foreclosure actions as summarized below. *Id.*

13. The initial foreclosure action was filed on December 1, 2009. See SC Civil Action Number 2009-CP-07-05612. The 2009 foreclosure was voluntarily dismissed on February 12, 2010, without apparent service of process on Grant.

14. The second foreclosure action was filed on April 12, 2010. See SC Civil Action Number 2010-CP-07-01690. The case was referred to the Honorable Marvin H. Dukes, III, as Master in

Equity for Beaufort County on June 15, 2010. Grant appeared in the 2010 foreclosure *pro se* and no counterclaims were asserted. As a part of the 2010 foreclosure, Deutsche Bank sought to reform the subject Mortgage and sought an easement for ingress and egress for itself and its successors. On February 7, 2014, Judge Duker entered an Order granting Deutsche Bank's Motion for Partial Summary Judgment as to the reformation and easement causes of action. The February 7, 2014, Master's Order which granted Deutsche Bank's motion for partial summary judgment, reformed the legal description contained in the Mortgage, and granted Deutsche Bank and its successors an easement as described therein. The Master's Order established: (1) that Grant, for value received, entered into the subject Note and Mortgage; (2) that Deutsche Bank was the present lienholder at the time the Order was entered thereby establishing standing to enforce the subject Note and Mortgage; (3) that Deutsche Bank was entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake; and, (4) entitlement to an easement for the purposes of ingress and egress.

15. Deutsche Bank was granted judgment as to its remaining cause of action for foreclosure in an Order entered May 28, 2014. The May 28, 2014 Foreclosure Order was vacated and the cause of action for foreclosure was dismissed without prejudice pursuant to SCRCP Rule 60(b) on January 14, 2016. The February 7, 2014 Order reforming the Mortgage and granting an easement for ingress and egress remains in full force and effect as it was not affected by the vacating of the foreclosure portion of the 2010 action. Grant has not appealed February 7, 2014 Order, and it has never been vacated.

16. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated

in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dec. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (internal citations omitted). See also *Richburg v. Baughman*, 290 S.C. 431, 351 S.E.2d 164 (1986) (under the doctrine of collateral estoppel, once final judgment has been reached in prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim).

17. "Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). "[A]n unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). "The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case." *Ross v. Med. Univ. of S. C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997). "Under the law of the case doctrine, a party is precluded from re-litigating issues decided in a lower court order, when the party voluntarily abandons its appeal of that order." *Hudson ex rel. Hudson v. Lancaster Convalescent Ctr.*, 407 S.C. 112, 119, 754 S.E.2d 486, 490 (2014).

18. Grant's defenses in this foreclosure center around challenges to her entering the subject loan and her attack of Deutsche Bank's standing to bring the foreclosure actions. The above-described doctrines bar Grant's challenges.

19. Grant alleges she never entered into the subject note and Mortgage because the subject closing documents were "incorrectly prepared". See Defendant's Affidavit filed October 6, 2022, Paragraphs 2 through 4. These statements are inconsistent with the numerous answers filed by the Defendant in this case. See Defendant's answers filed October 28, 2016, July 21, 2017, December

7, 2017, February 15, 2018. The Defendant's answers consistently admit entering into the subject Note and Mortgage. The Defendant's answers also consistently reference that the subject Mortgage had an incorrect legal description. As noted above, the Mortgage's legal description was addressed in the February 7, 2014 Order as a matter of law. Further, the publicly available records filed in the Beaufort County Register of Deeds' Office refute Grant's claims.

20. Grant asserts, and Plaintiff agrees, that the proceeds from the subject loan purportedly paid off a prior mortgage held by Mortgage Electronic Registration System's Inc, as nominee for GreenPoint Mortgage Funding, Inc. recorded in the Beaufort County Registry on December 15, 2003 in Book 1886 at Page 1116 (the "GreenPoint Mortgage"). Grant claims that the Greenpoint Mortgage was paid off in 2004 and satisfied by a document recorded in the Beaufort County Registry on April 23, 2004 in Book 1942 at Page 2544. See Defendant's Affidavit filed October 6, 2022, Paragraph 2(D) and Exhibit #2 attached thereto. The document Defendant relies upon as evidence that the GreenPoint Mortgage was paid off in 2004 is a Partial Release of Mortgage which releases from the GreenPoint Mortgage a portion of land excluding the .46 acres which are the subject of the Plaintiff's Mortgage and this foreclosure action. The 2004 Partial Release does not support a finding that the GreenPoint Mortgage was fully paid off in 2004.

21. In support of her assertions, Grant filed a copy of the Settlement Statement from the subject closing which occurred on September 18, 2006 (See Defendant's Affidavit, Exhibit #1). Plaintiff conceded at the hearing that the copy of the Settlement Statement filed by Grant is a true and accurate copy of the unsigned Settlement Statement from the closing of the subject loan. The Settlement Statement indicates the amount of \$387,910.25 was paid to GreenPoint from the proceeds of the subject loan. A Satisfaction of Lost Mortgage was executed by Mortgage Electronic Registration Systems Inc, as nominee for GreenPoint Mortgage Funding, Inc. was

recorded in the Beaufort County Registry on October 10, 2006 in Book 2456 at Page 1986. The Satisfaction of Lost Mortgage conclusively establishes that the GreenPoint Mortgage was fully paid off in 2006 from the proceeds of the subject loan.

22. The Settlement Statement also shows a payoff of a second mortgage to South Carolina Bank and Trust ("SCB&T Mortgage") in the amount of \$101,788.42. The SCB&T Mortgage was recorded in the Beaufort County Registry on June 21, 2005, in Book 2220 at Page 1497. A Satisfaction of the SCB&T Mortgage was executed October 10, 2006, and recorded in the Beaufort County Registry on March 21, 2007 following the closing of the subject loan. This payoff further establishes Grant's entry into the subject loan.

23. The Settlement Statement also shows a payment to the South Carolina Department of Revenue in the amount of \$22,837.33. A SCDOR Tax Lien was recorded in the Beaufort County Registry on April 5, 2006 in Book 24 at Page 1305. A Tax Lien Satisfaction was recorded in the Beaufort County Registry on October 27, 2006 in Book 27 at Page 1942. The Settlement Statement also shows payment to the United States IRS for Federal Tax in the amount of \$105,908.28. No Federal tax liens appear in the Beaufort County Registry.

24. The February 7, 2014 Order, coupled with the indisputable evidence found in the Beaufort County Registry of the funds from this loan being used to pay off prior debts owed by the Defendant put falsity to her claim that she walked out of the closing without signing the subject Note. There is simply no genuine issue of material fact remaining regarding the Defendant having entered into and benefited from the subject loan and the Plaintiff is entitled to summary judgment regarding this issue.

25. Grant asserts Plaintiff lacks standing to pursue the foreclosure action both as grounds for her motion for summary judgment and against the Plaintiff's motion for summary judgment.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385 S.C. 407, 415, 684 S.E.2d 214, 215 (Ct. App. 2009) (citing *Powell ex re. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008)). SCRPC Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing in the context of a mortgage foreclosure and noted, "[t]he requirement of standing is not an inflexible one." *Id.* at 220 (quoting *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note." *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note.").

Id. at 220. Thus, a holder of a note has standing as the real party in interest to bring a foreclosure action. In *Draper*, the Court of Appeals also acknowledged that a mortgage servicer has standing to initiate a foreclosure action. "Several bankruptcy courts and federal district courts, including those in South Carolina, have recognized the servicer of a loan to be a real party in interest and able to initiate a foreclosure. We agree with this view." *Id.* at 223.

26. The Plaintiff produced the original Note for this Court's inspection at the May 4, 2023 hearing. As evidenced by the stamps placed on the face of the document, Plaintiff previously produced the Note for Judge Dukes' inspection in the 2010 Foreclosure Action on May 28, 2014 in conjunction with entry of foreclosure judgment in that case. The original Note was again produced for the Court's inspection in connection with a prior hearing in this action on August 3, 2021. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

27. Further, the Defendant lacks standing to challenge the transfer of the subject Note and Mortgage because she was not a party to said transfer. In *Re McFadden*, 471 BR 136 (2012); see also *Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012) ("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity"); see also *Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). ("Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract").

28. Based upon the foregoing, I find the Plaintiff has standing to bring the instant foreclosure action as a matter of law.

29. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"); Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to

participate in the Home Affordable Modification Program (hereinafter, "the HAMP"); however, Plaintiff alleges upon information and belief, that the loan is not subject to modification under the HAMP as contemplated under the Administrative Order because the Borrower(s) failed to respond to the HAMP inquiries or failed to provide the necessary supporting documentation.

30. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court¹.

31. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was/were Terry Lennette Grant.

32. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

33. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sums outlined in the Plaintiff's Affidavit filed April 3, 2022, to constitute reasonable attorney's fees for the Plaintiff's attorney for services performed up to this point in time under the terms of the note and mortgage. Performance of additional services may result in a determination by this court that additional reasonable attorney's fees are due.

¹ The Plaintiff's compliance with the 2009 and 2011 Administrative Orders regarding HAMP and creating foreclosure intervention are evidenced by the filings herein with no evidence appearing in the record to refute compliance with the Administrative Orders. I further note that these Administrative Orders were rescinded on May 17, 2023, by SC Supreme Court Administrative Order 2023-05-17-01.

34. Based upon the uncontroverted evidence presented, the amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	10/28/2022	\$672,991.46
Deferred Principal Balance:		\$0.00
Accrued interest from:	12/01/2007 to: 03/13/2023	\$801,015.05
Per diem interest from:	03/14/2023 to: 05/04/2023	\$8,110.53
Accruing at:	7.75% per annum	
Escrow Balance:		\$192,476.07
- Taxes for the years 2019-2023		\$12,234.25
- Insurance for the years 2019-2023		\$34,460.10
- Prior Servicer Escrow Balance		\$145,899.41
Prior Servicer Fees		\$2,672.03
Property Inspections		\$767.00
Property Valuation Fee/BPO		\$255.00
Prior Servicer Foreclosure Fee/Costs (Paid through 9/12/2018)		\$38,628.98
Late charges:		\$2,681.27
Credits:		
- Escrow Payments/Credits		\$ (117.69)
Foreclosure Fee/Costs (paid through 03/06/2023):		\$15,813.23

35. Total Debt secured by Note and Mortgage is \$1,735,410.62². Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

36. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency judgment pursuant to Rule 71(b), SCRCP.

² A review of the Defendant's filings does not reveal a challenge or evidence to refute the amount of damages claimed by the Plaintiff.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff's Motion for Summary Judgment should be granted and the Defendant's motion for summary judgment should be denied.
2. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.
3. That there is due to the Plaintiff on its Note and Mortgage the sum of \$1,735,410.62, representing the Total Debt due to the Plaintiff as outlined above.
4. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest as previously set forth at the rate of 7.75% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff's Motion for Summary Judgment is granted and the Defendant's Motion for Summary Judgment is Denied.
2. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.
3. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Beaufort County Courthouse, City of Beaufort, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only

File reference: LS-22471

upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.75% per annum.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

D. Purchaser to pay for the deed and the cost of recording the deed.

4. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.
5. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
6. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof, and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master In Equity or the Plaintiff may re-advertise the Property for sale on the next, or some other subsequent, sales day, according to

the same terms set forth herein, and so on from time to time thereafter until a full compliance shall be secured.

7. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

8. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCP.

9. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

10. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee, and that the Beaufort County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

11. It is further 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 Defendants in possession herein, the Sheriff of Beaufort County may be 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, and to keep said successful bidder or his assigns in such peaceable possession.
12. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master In Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
13. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON HILTON HEAD ISLAND, COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON A SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139. THIS BEING THE SAME PROPERTY DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON THAT SURVEY ENTITLED "3.99 AC., WILD HORSE ROAD," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191.

ALSO:

File reference: 15-22471

A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THOSE CERTAIN PARCELS OWNED BY TERRY LENNETTE GRANT DESCRIBED AS PARCEL B AND ACCESS & DRAIN FIELD EASEMENT ON BOTH THAT SURVEY ENTITLED "3.99 AC.," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191 AND THAT SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, INCLUDING WITHOUT LIMITATION A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THE "ASPHALT DRIVE" AS SHOWN ON THE SURVEY RECORDED IN PLAT BOOK 136 AT PAGE 139.

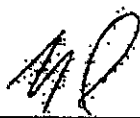
SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS, IF ANY, MORE PARTICULARLY IDENTIFIED IN THE ABOVE REFERENCED PLAT OR OTHERWISE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA, WHICH ARE APPLICABLE TO THE ABOVE DESCRIBED PROPERTY.

THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO TERRY LENNETTE GRANT BY DEED OF TERRY GRANT ENTERPRISES, INC. DATED AUGUST 9, 2001 AND RECORDED AUGUST 24, 2001 IN BOOK 1463 AT PAGE 54 AND RE-RECORDED FEBRUARY 10, 2004 IN BOOK 1908 AT PAGE 2034 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 226 Wildhorse Road, Hilton Head Island, SC 29926

TMS: R510007000 018A.0000

AND IT IS SO ORDERED.



The Honorable Benjamin C.P. Sapp
Special Referee for Beaufort County

Dated: 6/12/23
Beaufort, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5

Terry Lennette Grant

DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road, Suite 110
Columbia, SC 29210

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.
- ☐ **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)
		N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191.

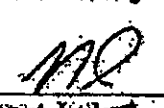
ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC.," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

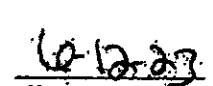
SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

This being a portion of the same property conveyed to Terry Lennette Grant by Deed of Terry Grant Enterprises, Inc. dated August 9, 2001 and recorded August 24, 2001 in Book 1463 at Page 54 and re-recorded February 10, 2004 in Book 1908 at Page 2034 in the Office of the Register of Deeds for Beaufort County, South Carolina.

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.


Circuit Court Judge S.A.

Judge Code


Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ____, 2023 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of ____, 2023 to attorneys of record or to parties (when appearing pro se) as follows:

Terry Lennette Grant
PO Box 21936
Hilton Head Island, SC 29925

Terry Lennette Grant
225 Wild Horse Road
Hilton Head Island, SC 29926

Chad W. Burgess, Esquire
Brook & Scott, PLLC
3800 Fernandina Road Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE
PLAINTIFF(S)

ATTORNEY(S) FOR THE
DEFENDANT(S)

CLERK OF COURT

Court Reporter: John A Sullivan

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 judgment to parties who are not E-Filed or who are appearing pro se. See Rule 77(d), SCRPC.

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.

NOTICE OF SALE

NOTICE OF SALE CIVIL ACTION NO. 2016-CP-07-01466 BY VIRTUE of the decree heretofore granted in the case of: Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 vs. Terry Lennette Grant, the undersigned Master In Equity for Beaufort County, South Carolina, will sell on September 7, 2023 at 11:00 AM, or on another date, thereafter as approved by the Court, at the Courthouse, City of Beaufort, State of South Carolina, to the highest bidder:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON HILTON HEAD ISLAND, COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON A SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139. THIS BEING THE SAME PROPERTY DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON THAT SURVEY ENTITLED "3.99 AC., WILD HORSE ROAD," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191.

ALSO:

A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THOSE CERTAIN PARCELS OWNED BY TERRY LENNETTE GRANT DESCRIBED AS PARCEL B AND ACCESS & DRAINFIELD EASEMENT ON BOTH THAT SURVEY ENTITLED "3.99 AC.," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191 AND THAT SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR

File reference: 15-22471



BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, INCLUDING WITHOUT LIMITATION A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THE "ASPHALT DRIVE" AS SHOWN ON THE SURVEY RECORDED IN PLAT BOOK 136 AT PAGE 139.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS, IF ANY, MORE PARTICULARLY IDENTIFIED IN THE ABOVE REFERENCED PLAT OR OTHERWISE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA, WHICH ARE APPLICABLE TO THE ABOVE DESCRIBED PROPERTY.

THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO TERRY LENNETTE GRANT BY DEED OF TERRY GRANT ENTERPRISES, INC. DATED AUGUST 9, 2001 AND RECORDED AUGUST 24, 2001 IN BOOK 1463 AT PAGE 54 AND RE-RECORDED FEBRUARY 10, 2004 IN BOOK 1908 AT PAGE 2034 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 226 Wildhorse Road, Hilton Head Island, SC 29926

TMS: R510-007 000 018A.0000

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Master In Equity, at conclusion of the bidding, five percent (5%) of his bid, in cash or equivalent, as evidence of good faith, same to be applied to the purchase price in case of compliance, but in the case of non-compliance to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff. Should the last and highest bidder fail to comply with the other terms of the bid within thirty (30) days, then the Master In Equity may re-sell the property on the same terms and conditions on some subsequent Sales Day. No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately. Purchaser to pay for documentary stamps on the Deed. The successful bidder will be required to pay interest on the amount of the balance of the bid from date of sale to date of compliance.

File reference: 15-22471

with the bid at the rate of 7.75% per annum. The sale shall be subject to taxes and assessments, existing easements and restrictions, easements and restrictions of record and any other senior encumbrances.

In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.



The Honorable Benjamin C.P. Sapp
Special Referee for Beaufort County

Plaintiff's counsel:

Chad W. Burgess
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540
Chad.Burgess@brockandscott.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
Deutsche Bank national Trust Company as)	)	CASE NO.: 2016-CP-07-01466
Trustee for NovaStar Mortgage Funding	)	
Trust, Series 2006-5 NovaStar Home	)	
Equity Loan Asset-Backed Certificates	)	MASTER IN EQUITY'S ORDER AND JUDGMENT
Series 2006-5	)	OF RELIEF OF JUDGMENT
	)	
Plaintiff,	)	
v.	)	
	)	(GRANTING THE DEFENDANT'S MOTION FOR
	)	SUMMARY JUDGMENT AND RELIEF OF
	)	FORECLOSURE JUDGMENT AND DENYING
	)	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT)
Terry Lennette Grant	)	
	)	
Defendant.	)	

Appearance: Chad W. Burgess, Esquire for Plaintiff; Vivian Michelle Woods, POA for Defendant; Court Reporter: Naomi McCracken
Hearing Date: May 4, 2023

MASTER IN EQUITY'S ORDER AND JUDGMENT

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on May 4, 2023 on the parties' pending cross motions for summary judgment, a record was made which is reported herewith from all previous related case records, the testimony, documents and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1) I find that Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 (hereinafter "Plaintiff" or "Deutsche Bank") filed its initial Lis

Pendens, Summons and Complaint on December 1, 2009 See SC Civil Action Number 2009-CP-07-05612. The assignment of the mortgage December 2, 2009 violates this rule of law. ("[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. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note."

2) I find that ("Deutsche Bank") was not the real party of interest to file a foreclosure action against the Defendant Terry Lennette Grant and her property based on the evidence provided by Defendant: A) "Assignment of Mortgage to Deutsche Bank dated December 2, 2009, one day after the lawsuit was initiated ("[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. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note.")). B) Corrective Assignment of Mortgage dated November 9, 2018" ("[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. 1710, 176, 20 S.E. 84, 85 (1984) ("The Transfer of a note carries with it a mortgage given to secure payment of such note.")). The fact that the Assignment of Mortgage needed to be Corrected nine (9) years later satisfies my mind that Plaintiff filing foreclosure actions against the Defendant was ineffective and Judgments should have never been granted.

3) I find that ("Deutsche Bank") was not in possession of both the Original Note

and Original Mortgage at the time these lawsuits were filed against Defendant based on the facts and evidence provided to this court by Plaintiff and Defendant. The law in the United States has long followed the Mary's Little Lamb rule—wherever the mortgage note goes the related mortgage is sure to follow. Restatement (Third) of Property (Mortgages) § 5.4. UCC § 9-203 (g) codifies this rule for both sales of a mortgage note and a security interest in a mortgage note to secure an obligation. The assignment of the mortgage December 2, 2009 violates this rule of law.

4) I find that ("Deutsche Bank") could not and did not own or was in possession of the Original Note and Original Mortgage at the time Plaintiff initiated any of the foreclosure actions against the Defendant based on the evidence submitted by the Plaintiff. The Plaintiff submitted what he identified as the Original Mortgage and what he identified as the Original Note; however, upon my reading the document Plaintiff identified as Original Note, I noticed three (3) documents of the Note, signed but NOT WITNESSED and NOT NOTARIZED as required by law. 1) the Adjustable Rate Note was signed but NOT WITNESSES and NOT NORIZED as required by law; 2) the Adjustable Rider (as part of the Note) was signed but NOT WITNESSED and NOT NOTARIZED as required by law; 3) the Prepayment Rider (As part of the Note) was signed, but NOT WITNESSED and NOT NOTARIZED as required by law; In the state South Carolina, a Will or a real estate documents such as Warranty Deeds, mortgage documents, Deeds of Trust, Grant Deeds and Quit Claim Deeds that states a transfer of real estate or property ownership require a witnesses to be present during the signing. In South Carolina, two witnesses are required by law for notarization, out of which one can be the notary themselves.

5) The hearing was attended by Vivian Michelle Woods, POA for Terry Lennette

Grant due to unforeseen occurrences; however, in order not to delay this case any further, Defendant asked Ms. Woods to attend in her place. She is Defendant's attorney-in-fact via a limited power of attorney executed by Defendant. Ms. Woods presence to make sure of the court's acceptance of all facts, documents and evidence to be entered into the record for Court review and specifically requests the Court to read relevant documents, facts and evidence prior to making any ruling. The Judge did agree to read all records relating to this case and subsequent cases filed prior to this one as well prior to making any ruling. .

6) Defendant made various filings in opposition to Plaintiff's Motion for Summary Judgment and in support of her motion. I take judicial notice of and have reviewed the parties' respective filings in conjunction with issuing this Order. *Freeman v. McBee*, 280 S.C. 490, 494, 318 S.E.2d 325, 327 (Ct.App. 1984). ("A Court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.")

7) I find that Defendant, Terry Lennette Grant, did not executed and delivered a Note dated September 18, 2006, promising thereby to pay Plaintiff nor Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc. the sum of \$680,000.00 with interest at the rate of 7.75% per annum (hereinafter "Note"). Nor any other terms and conditions are stated in the note, which is of record herein. Based on the facts, documents and evidence submitted by Plaintiff and Defendant, I saw a NOTE ("Adjustable Rate Note) with a Loan Number: 06-A19021 which is not the same Loan Number on the ("Allonge To Note") Loan Number:71971014. I also notice that this allonge does not have a Payee nor the date that the Allonge To Note was created. I also noticed a different Allonge dated June 25, 2012.

8) I find that Defendant Terry Lennette Grant did not executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., in writing, on September 18, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. Based on the evidence submitted by Plaintiff and Defendant, there was an unsigned HUD-1 Settlement Statement that was submitted by Plaintiff. Plaintiff admitted to the Court that the HUD-1 Settlement Statement was "unsigned". Defendant submitted further evidence to support Plaintiff's admission, by submitting copies of William Sloan's deposition dated January 13, 2023, where the sworn oath, Licensed attorney testified that the HUD-1 Settlement Statement was not signed by Defendant and not signed by the closing attorney. Defendant also submitted evidence¹ showing Plaintiff and the closing attorney's office still trying to surmise the validity of the HUD-1 Statement, the 1003 Uniform Residential Loan Application was not signed according to email dated September 19, 2006, day after the alleged closing.²

9) I find that Defendant is not and can not be defaulted on a transaction that did not take place on September 18, 2006 as Plaintiff alleged. Based on the facts and evidence submitted by the Plaintiff and Defendant, the unsigned HUD-1 Settlement Statement was required to be signed at closing by Defendant and Closing an attorney. This led me to believe that the Defendant did not participate in the closing and closing could not have taken place. Defendant submitted throughout her defending herself over the years, copies of her credit report, one in 2013 which reflected her owing (0) zero mortgage. Defendant submitted as evidence, her

¹ Email dated September 19, 2006

² A loan application must be documented on the Uniform Residential Loan Application (Form 1003) A complete, signed and dated version of the final Form 1003 must be included in the loan file.

recent credit report from all three major credit reporting agencies, Equifax, Transunion and Experian, each reflecting that Defendant doesn't have a mortgage.

10) I take judicial notice of the filings in the prior foreclosure actions as summarized below.

11). The initial foreclosure action was filed on December 1, 2009. The 2009 foreclosure was voluntarily dismissed on February 12, 2010, without apparent service of process on Grant. Plaintiff admits to violating law by stating the case was dismissed without apparent service of process of Defendant.

12). The second foreclosure action was filed on April 12, 2010. See SC Civil Action Number 2010-CP-07-01690. The case was referred to the Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County on June 15, 2010. Grant appeared in the 2010 foreclosure *pro se* and counterclaims were asserted; however, its verbiage may have not been in the correct context. Defendant has waited on Plaintiff's hearing to address her claims, but instead cases were dismissed according to the facts and evidence submitted by both Plaintiff and Defendant. Again, On February 7, 2014, Master's Order³ which granted Deutsche Bank's motion for partial summary judgment, reformed the legal description contained in the Mortgage, and granted Deutsche Bank and its successors an easement as described therein. The Master's Order should not have established: (1) that Grant, for value received, entered into the subject Note and Mortgage, because I find that the closing did not take place. (2) that Deutsche Bank was the present lienholder at the

³ Judge Dukes granted two foreclosure Judgments with unsigned HUD-1 Settlement Statement, Note that was not witnessed or notarized and ignoring the fact that the Mortgage separated from the note when Assignment of Mortgage was created December 2, 2009. *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984)

time the Order was entered thereby establishing standing to enforce the subject Note and Mortgage, because I find that the Mortgage was assigned on December 2, 2009, which separated the Mortgage from the Note; (3) that Deutsche Bank was not entitled to judgment as to its causes of action for reformation of the mortgage based upon mutual mistake; and, (4) was not entitled to an easement for the purposes of ingress and egress.

13) I find that Deutsche Bank should not have been granted a judgment as to its remaining cause of action for foreclosure in an Order entered May 28, 2014. I also find that the May 28, 2014 Foreclosure Order being vacated and the cause of action for foreclosure being dismissed, should have been with prejudice. I find that the February 7, 2014 Order reforming the Mortgage and granting an easement for ingress and egress was affected by the vacating of the foreclosure portion of the 2010 action. I find that vacating and dismissing the foreclosure should have been for the entire case. I find that Defendant did not appeal the February 7, 2014 Order, because Plaintiff stated in his motion for summary judgment that Defendant was without service of process. In addition, the survey was illegally obtained, when Donald S Cook, Jr. trespassed on Defendant's property to obtain a survey that Defendant did not order.

14) I find that this case is time barred based on Doctrine of Res judicata; "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Under the doctrine of res judicata, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Plum Creek Dec. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (internal citations omitted). See also *Richburg v. Baughman*, 290 S.C. 431, 351

S.E.2d 164 (1986) (under the doctrine of collateral estoppel, once final judgment has been reached in prior claim, relitigation of those issues actually and necessarily litigated and determined in the first suit are precluded in any subsequent action based upon a different claim).

15) I find that Defendant had a \$398,000 December 3, 2003 mortgage with GreenPoint Mortgage; however it appears to have been paid April of 2004.

16) I find that the unsigned HUD-1 Settlement Statement is inconsistent⁴ with what was allegedly paid to GreenPoint Mortgage on September 18, 2006. The unsigned HUD-1 Settlement Statement states that Plaintiff allegedly paid GreenPoint Mortgage \$387,920.25. Plaintiff provided no evidence to support this claim

17) I find that the unsigned HUD-1 Settlement Statement⁵ is inconsistent with what was allegedly paid to the IRS \$106,906.28 for Federal taxes. Plaintiff admitted to this Court they could not find evidence to support that the Defendant owed that amount listed on that unsigned HUD-1 Settlement Statement.

18) I find that the Defendant paid off a prior mortgage held by Mortgage Electronic Registration Systems Inc, as nominee for GreenPoint Mortgage Funding, Inc. recorded in the Beaufort County Registry on December 15, 2003 in Book 1886 at Page 1116 (the "GreenPoint Mortgage"). Defendant claims that the Greenpoint Mortgage was paid off in 2004 and satisfied by a document recorded in the Beaufort County Registry on April 23, 2004 in Book 1942 at Page 2544. See Defendant's Affidavit filed October 6, 2022, Paragraph 2(D) and Exhibit #2 attached thereto. The document Defendant relies upon as evidence that the GreenPoint Mortgage was paid off in 2004 is a Partial Release of Mortgage which releases from the GreenPoint Mortgage. This does not make sense to this

⁴ See Footnote 6

⁵ See FootNote 6 of this page

Court, that fully paid mortgage of \$398,000 received in December 2003, four (4) months 2004 only releases partial mortgage which they received \$398,000 and then the Defendant now owes 387,910.25 for the alleged mortgage recorded on an unsigned HUD-1 Settlement Statement. The 2004 Partial Release does support a finding that the GreenPoint Mortgage was fully paid off in 2004. The unsigned HUD-1 Settlement Statement⁶ does not support that Defendant owed GreenPoint Mortgage \$387,910.25 in September 2006. Plaintiff had not provided evidence to support that GreenPoint Mortgage received said funds. Plaintiff did not provide a satisfaction of mortgage nor an assignment of mortgage to Plaintiff.

19) In support of her assertions, Defendant filed a copy of the unsigned HUD-1 Settlement Statement from the alleged closing which Plaintiff claims had occurred on September 18, 2006 (See Defendant's Affidavit, Exhibit #1). Plaintiff conceded at the hearing that the copy of the Settlement Statement filed by Grant is a true and accurate copy of the unsigned HUD-1 Settlement Statement from the alleged closing of the alleged subject loan. Based on the facts, documents and evidence submitted by Plaintiff and the Defendant, I find that Defendant did not participate in the closing that Plaintiff states occurred on September 18, 2006. Defendant's motion for summary judgment is granted and Plaintiff motion for summary judgment is denied with prejudice.

20) The unsigned HUD-1 Settlement Statement also shows a payoff of a second mortgage to South Carolina Bank and Trust ("SCB&T Mortgage") in the amount of

⁶ See Redacted HUD-1 Settlement Statement which includes Settlement Certification Buyer/Borrower/Seller Certification signed by each party including the Settlement Agent/Closing Attorney which make reference to the Disclosure/Settlement Statement (Statement of Actual Cost),... "I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement. (Certification signed by all parties). In this case, Borrower's signature on one Certification, Lender's Signature on second Certification and Closing Attorney's Signature on the third Certification. This violates the 18 U.S.C. Section 1001 and 1010.

\$101,788.42. The SCB&T Mortgage was recorded in the Beaufort County Registry on June 31, 2005, in Book 2220 at Page 1497. A Satisfaction of the SCB&T Mortgage was executed October 10, 2006, and recorded in the Beaufort County Registry on March 21, 2007 following the alleged closing of the alleged subject loan. Plaintiff did not provide any evidence to support that this amount was disbursed or paid by providing an assignment of mortgage to the Plaintiff specifically. I find that Defendant did not participate in the closing, due to the fact that both parties were to have signed the HUD-1 Settlement Statement, Defendant and the Closing attorney and neither one signed as required by law. Based on the facts submitted by Plaintiff and Defendant, Defendant's motion for summary judgment is granted and Plaintiff motion for summary judgment is denied and dismissed with prejudice.

21) The unsigned HUD-1 Settlement Statement⁷ also shows a payment to the South Carolina Department of Revenue in the amount of \$22,837.33. A SCDOR Tax Lien was recorded in the Beaufort County Registry on April 5, 2006 in Book 24 at Page 1305. A Tax Lien Satisfaction was recorded in the Beaufort County Registry on October 27, 2006 in Book 27 at Page 1942. The Settlement Statement also shows payment to the United States IRS for Federal Tax in the amount of \$105,908.28. Plaintiff admitted that No Federal tax liens appear in the Beaufort County Registry and could not find evidence to support this alleged debt listed on the unsigned HUD-1 Settlement Statement. I find this to be inconsistent and based on the facts, evidence, and documents provided by Plaintiff and

⁷ See Redacted HUD-1 Settlement Statement which includes Settlement Certification Buyer/Borrower/Seller Certification signed by each party including the Settlement Agent/Closing Attorney which make reference to the Disclosure/Settlement Statement (Statement of Actual Cost),..." I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement. (Certification signed by all parties). In this case, Borrower's signature on one Certification, Lender's Signature on second Certification and Closing Attorney's Signature on the third Certification. This violates the 18 U.S.C. Section 1001 and 1010.

Defendant, I grant Defendant's motion for summary judgment and Plaintiff motion for summary judgment is denied and dismissed with prejudice.

22. I find that Defendant has submitted a considerable amount of evidence to support her defense, because neither party signed the HUD-1 Settlement Statement required by law, not even the closing attorney⁸. The email dated the day after the closing is concrete evidence that the closing did not happen. There are simply many genuine issues of material fact regarding the Defendant having entered into and benefited from the subject loan and the Defendant is entitled to summary judgment regarding this issue.

25. Defendant asserts Plaintiff lacks standing to pursue the foreclosure action both as grounds for her motion for summary judgment and against the Plaintiff's motion for summary judgment. "Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Michael P. v. Greenville Cty. Dep't of Soc. Servs.*, 385, S.C. 407, 415, 684 S.E.2d 211, 215 (Ct. App. 2009) (citing *Powell ex re. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008)). SCRPC Rule 17(a) provides that, "[e]very action shall be prosecuted in the name of the real party in interest" and further sets forth that, "[n]o actions shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until such time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest". In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013), the Court of Appeals took up the issue of standing

⁸ See Redacted HUD-1 Settlement Statement which includes Settlement Certification Buyer/Borrower/Seller Certification signed by each party including the Settlement Agent/Closing Attorney which make reference to the Disclosure/Settlement Statement (Statement of Actual Cost), "... I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement. (Certification signed by all parties). In this case, Borrower's signature on one Certification, Lender's Signature on second Certification and Closing Attorney's Signature on the third Certification. This violates the 18 U.S.C. Section 1001 and 1010.

in the context of a mortgage foreclosure and noted, “[t]he requirement of Standing is not an inflexible one.” *Id* at 220 (quoting *Sloan v. Sch. Dist. Of Greenville Cnty.*, 342 S.C. 515, 524, 537 S.E.2d 299, 304 (Ct. App. 2000)). The Court of Appeals further noted the following regarding transfers of Notes and Mortgages:

An assignee stands in the shoes of its assignor. *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); see also S.C. Code Ann. §36-3-203(b) (Supp. 2012) (Providing a transfer of an instrument vests in the transferee any rights the transferor had). “[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but...the assignment of the mortgage alone does not carry with it an assignment of the note.” *Hahn v. Smith*, 157 S.C. 157, 167, 154 S.E. 112, 115 (1930); see also *Ballou v. Young*, 42 S.C. 1710, 176, 20 S.E. 84, 85 (1984) (“The Transfer of a note carries with it a mortgage given to secure payment of such note.”).

23. The Plaintiff produced the original Note⁹,¹⁰ for this Court’s inspection at the May 4, 2023 hearing. As evidenced by the stamps placed on the face of the document, Plaintiff previously produced the Note¹¹ for Judge Dukes’ inspection in the 2010 Foreclosure Action on May 28, 2014 in conjunction with entry of foreclosure judgment in that case. The original Note¹² was again produced for the Court’s inspection in connection with a prior hearing in this action on August 3, 2021¹³. On its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument endorsed in blank. As the holder of the Note, Plaintiff is a “person entitled to enforce” the Note pursuant to

⁹ Note not witnessed and not notarized as required by law 30-5-30

¹⁰ See Exhibit #7 August 3, 2021 hearing; page 4 “This Note was secured by a mortgage Delivered to AMERIS as nominee for NovaStar Mortgage.

¹¹ Note not witnessed and not notarized as required by law 30-5-30

¹² Note not witnessed and not notarized as required by law 30-5-30

¹³ See Transcript of hearing for August 3, 2021, Judge Dukes did not inspect or even look at that Note. He stated, “I will take your word for it”. And the transcript’s cover sheet reflects no exhibits were entered for the record See Exhibit #7 page 2 and 6.

S.C. Code Ann. § 36-3-301 as a matter of law. I find too many inconsistencies as to the holder and/or owner of the note. The transcript (See Exhibit #7 dated August 3, 2021) states one thing "Mortgage Delivered to Ameris, the mortgage says NovaStar, Mortgage then it says Mortgage Electronic Registration Systems, Inc and Plaintiff says Deutsche Bank. I find that in favor of the Defendant granting her motion for summary judgment and denying Plaintiff motion for summary judgment with prejudice.

24. Based upon the foregoing, I find the Plaintiff does not have standing to bring any foreclosure actions as a matter of law.

25) I find the titleholder(s) of record of the Property as of the filing of these lawsuits is and should remain Defendant Terry Lennette Grant.

26) Having considered the nature, extent and difficulty of the Defendant representing herself over these many years; the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Defendant's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Defendant, I find that the sums outlined in the Defendant's Affidavit filed on or around April 13, 2023 and with the relief request in this order to constitute reasonable attorney's fees for the Defendant's attorney for services performed up to this point in time. Based upon the mountains of evidence, facts and documents submitted by Plaintiff and Defendant, the relief requested with interest at the rate of 7.75% of unpaid damages and other costs, expenses including attorney's fees, is hereby granted as follows:

- a) Damages cover periods from initial filing of Plaintiff's Complaint, December 1, 2009 - June 5, 2023, the ending of this case, which Total Damages is \$5,206,231.86. Interest shall be added to the total damages above until the date Defendant received a check in said amount of \$5,206,231.86 which represent compensatory, punitive, emotional

distress, mental anguish, being displaced for a period of time, cost and expenses associated with defending her case to include any attorney fees outstanding.

THEREFORE,

1. I find and it is ORDERED, ADJUDGED AND DECREED the Defendant's Motion for Summary Judgment is granted and the Plaintiff's Motion for Summary Judgment is Denied and case dismissed with prejudice.
2. I find and it is further ORDERED, ADJUDGED AND DECREED that the Defendant judgment against Plaintiff as relief for the (13) thirteen plus years of foreclosures against the Defendant's Property, being ordered sold at public auction on multiple occasions and after being granted multiple foreclosure judgments; however, Plaintiff never executing those foreclosure judgments constitute the damages listed herein in favor of the Defendant..
3. I find and it is further ORDERED, ADJUDGED AND DECREED Defendant's request financial relief is hereby granted in the sum of \$5,206,231.86 which is three (3) times the \$1,735,410.62 the Plaintiff is suing the Defendant for, which which represents compensatory, punitive, emotional distress, mental anguish, being displaced for a period of time, cost and expenses associated with defending her case to include any attorney fees outstanding, and the damages ensued by these lawsuits over the past (13) thirteen plus years.
4. I find and it is further ORDERED, ADJUDGED AND DECREED that the damages owed to Defendant in the preceding paragraph, constitute legal fees, damages listed in this order and all costs associated with Defendant

defending these cases against her and her property. Shall Plaintiff fail to pay damage relief in Total said amount, Defendant shall bear interest as set forth at the rate of 7.75% per annum or whatever rate the Court deem prudent and proper.

5. I find and it is further ORDERED, ADJUDGED AND DECREED that the Defendant(s) is not liable for the aforesaid Mortgage debt because Plaintiff could not substantiate that Defendant signed the NOTE documents¹⁴, the HUD-1 Settlement Statement was unsigned; neither signed by the Closing Attorney¹⁵.

6. I find and it is further ORDERED, ADJUDGED AND DECREED that Plaintiff was "negligent in its handling of the Foreclosure process[.]" and Plaintiff's actions caused Defendant "undue stress and emotional suffering and deprived the Defendant of the peaceful enjoyment of home ownership" *Hardwick v. Bank of Am., N.A.*, C/A No. 4:15-2222-MGL-KDW, 2 (D.S.C. June. 8, 2016)

7. I find and it is further ORDERED, ADJUDGED AND DECREED that each Plaintiff named herein, and all persons whomsoever claiming under him, them or it, be forever barred from all right, title, interest and equity of redemption in the

¹⁴ Note not witnessed and not notarized as required by law 30-5-30 and Beaufort General Requirements for Recording documents

¹⁵ See Redacted HUD-1 Settlement Statement which includes Settlement Certification Buyer/Borrower/Seller Certification signed by each party including the Settlement Agent/Closing Attorney which make reference to the Disclosure/Settlement Statement (Statement of Actual Cost),..." I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement. (Certification signed by all parties). In this case, Borrower's signature on one Certification, Lender's Signature on second Certification and Closing Attorney's Signature on the third Certification. This violates the 18 U.S.C. Section 1001 and 1010.

said premises which solely belongs to the Defendant, or any part thereof.

8. I find and it is further ORDERED, ADJUDGED AND DECREED that the Plaintiff lawsuit against the Defendant is time barred as a matter of law, The Doctrine of Res judicata (*Hardwick v. Bank of Am., N.A.*, Civil Action No.: 4:12-cv-01286-MGL (D.S.C. Mar. 5, 2013). Plaintiff's motion for summary judgment if hereby denied and this case is dismissed with prejudice.

9. I find and It is further ORDERED, ADJUDGED AND DECREED Plaintiff's Motion for Summary Judgment was filed on September 7, 2022 and is hereby denied and the case is dismissed with prejudice. Defendant's Motion for Summary Judgment was filed October 21, 2022 and is hereby granted.

The Honorable Benjamin C.P. Sapp
Special Referee for Beaufort County

Date: June 5, 2023

Defendant: Terry Lennette Grant, Pro Se
P O Box 21936
Hilton Head Island, SC 29925
843-301-5750
terrygrantseries@gmail.com

AND IT IS SO ORDERED.

**The Honorable Benjamin C.P. Sapp
Special Referee for Beaufort County**

**Dated: _____
Beaufort, South Carolina**

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home Equity
Loan Asset-Backed Certificates, Series
2006-5,

Plaintiff,

vs.

Terry Lynnette Grant,

Defendant.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-07-01466

ORDER OF REFERENCE
(Action for Foreclosure)

It appearing pursuant to Rule 53, S.C.R.C.P., that this action is one for the foreclosure of a mortgage and referral to The Honorable Benjamin C.P. Sapp, as Special Referee. The matter had previously been referred to The Honorable Marvin H. Dukes, III, who recused himself from further service in this matter by Order entered December 1, 2022. For good cause shown, the above captioned action may be referred to The Benjamin C.P. Sapp, as Special Referee for Beaufort County, and that the Special Referee shall have the authority to enter a final judgment, with appeal, if any, directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

THEREFORE, IT IS ORDERED that this matter is referred to The Honorable Benjamin C.P. Sapp as Special Referee for Beaufort County to direct entry of final judgment in this action under Rule 53 (b), SCRCF. Any appeal from the final judgment entered by the Special Referee shall be directly to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

[SIGNATURE PAGES TO FOLLOW]

ISO MOVE:

/s/Chad W. Burgess

Chad W. Burgess, Esq.

S.C. Bar No. 72520

Attorney for the Plaintiff

3800 Fernandina Road, Suite 110

Columbia, SC 29210

Phone: 803-454-3540 Fax: 803-454-3541

Chad.Burgess@brockandscott.com

Counsel for Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Referred to Master or Special Referee

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-02-18 18:27:23 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE CIRCUIT COURT
FOURTEENTH JUDICIAL CIRCUIT
C/A NO.: 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Plaintiff,

vs

**MOTION AND ORDER TO
RELIEVE COUNSEL**

Terry Lennette Grant; Catherine Alls,

Defendant(s)

COMES NOW the undersigned, pursuant to Rule 1.16 of the South Carolina Rules of Professional Conduct, moving this Court for an Order relieved as counsel for the Defendant Terry Lennette Grant. Charles E. Houston, Jr. entered Notice of Appearance on January 18, 2022 to represent Client(s) best interest. The undersigned has reason to believe that Mr. Houston's demonstrated, failed and/or refused to fulfill his obligations to his client. The undersigned client desires to relieve Charles E. Houston, Jr. from further obligations in this matter. Email correspondence was sent on October 3, 2022 and all parties have agreed to move forward to the hearing scheduled October 28, 2022. Upon good cause being shown, IT IS SO ORDERED.

I so move:

Terry Lennette Grant
P O Box 21936
Hilton Head Island, SC 29925
843-338-3679
terrygrantseries@gmail.com

Beaufort County, South Carolina October 9, 2022

Judge's Signature on Following Page

The South Carolina Court of Appeals

Deutsche Bank National Trust Company, as Trustee for
NovaStar Mortgage Funding Trust, Series 2006-5
NovaStar Home Equity Loan Asset-Backed Certificates,
Series 2006-5, Respondent,

v.

Terry Lennette Grant and Catherine Ails, Defendants,

Of whom Terry Lennette Grant is the Appellant.

Appellate Case No. 2021-000978

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2016CP0701466

ORDER

Counsel for both parties to this appeal represented to this Court that this appeal is now moot. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

V. Claire Allen

CLERK

Columbia, South Carolina

cc:

FILED
Aug 09 2022

Wesley D. Dail, Esquire
Brook Dangerfield, Esquire
Charles E. Houston, Jr., Esquire
Chad Wilson Burgess, Esquire

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Plaintiff,

v.

Terry Lynnette Grant; Catherine Alls,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2016-CP-07-01466

**CONSENT ORDER TO
VACATE FORECLOSURE JUDGMENT**

The Order and Judgment of Foreclosure and Notice of Sale was entered in the above captioned case on August 6, 2021. On January 18, 2022, Defendant Terry Lynnette Grant ("the Defendant") filed a Motion for Relief from Judgment.

The Plaintiff and Defendant, by and through their undersigned attorneys, hereby consent and request that the foreclosure judgment entered on August 6, 2021 be vacated and set-aside with the case status to return to pending status on the Master in Equity's roster.

Therefore, upon consent of the appearing parties,

IT IS THEREFORE ORDERED:

(1) That the foreclosure judgment dated August 6, 2021 is vacated and set-aside.

IT IS SO ORDERED

I CONSENT:

s/Charles E. Houston, Jr.
S.C. Bar No. 2663
The Houston Law Firm, LLC
1000 Main Street, Suite 200C
Phone 843-715-9078
chouston@houstonlawfirm.net
Attorney for Defendant Terry Lynnette Grant

I CONSENT:

s/Chad W. Burgess
S.C. Bar No. 72520
Brock & Scott, PLLC
3800 Fernandina Road Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Chad.Burgess@brockandscott.com
Attorney for Plaintiff

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Vacate Judgment

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-05-05 12:01:14 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2016-CP-07-01466

Deutsche Bank National Trust Company,

Plaintiff(s),

vs.

Terry Lennette Grant, et al.,

Defendant(s).

ORDER VACATING
ORDER OF REFERENCE
AND ORDER OF RECUSAL

Due to a conflict, in the above-referenced matter, I am recusing myself from this case and vacating the Order of Reference to the Beaufort County Master in Equity that was filed March 15, 2017.

This case shall return to the Pending Non-Jury Roster for re-assignment to a special referee and/or further disposition..

IT IS SO ORDERED.

Hon. Marvin H. Dukes, III
Master in Equity Judge for Beaufort County

November ____, 2022
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-12-01 09:10:23 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2016-CP-07-01466

Deutsche Bank National Trust et al.,

Plaintiff(s),

vs.

ORDER DENYING MOTION
TO ALTER OR AMEND

Terry Lennette Grant, et al.,

Defendant(s).

This came before me on Plaintiff's Motion to Alter or Amend; filed December 1st, 2022. This motion requests the Court to amend my December 1st, 2022, Order Vacating the Order of Reference and Recusing me from this case.

As I am already recused, my jurisdiction to rule on this matter is in question, however, to the extent I have any such jurisdiction, the motion is respectfully denied.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

December ____, 2022
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-12-06 15:02:55 page 2 of 2

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company
as Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

v.

Terry Lennette Grant; Catherine Alls,
Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2016-CP-07-01466

MASTER IN EQUITY'S ORDER AND JUDGMENT OF
FORECLOSURE AND SALE

DEFICIENCY WAIVED

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Master In Equity to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Master In Equity shall be directly to the South Carolina Court of Appeals.

Pursuant to the said reference, a hearing was held on August 3, 2021, a record was made which is reported herewith, and from the testimony and evidence I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on June 29, 2016 Amended Lis Pendens was filed November 9, 2017, and Re-Filed Lis Pendens was filed March 15, 2021..
2. The Summons and Complaint were filed on June 29, 2016, and Amended Summons and Complaint filed November 9, 2017..
3. Service was made upon the Defendants as is shown by the proofs of service filed herein.

File reference: 15-22471

CID541361

DID200284

Page 107

4. The Defendant Terry Grant is not in default, Defendant Catherine Alls is in default as to the allegations in Plaintiff's Amended Summons and Complaint, as shown by Affidavit filed herein.
5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.
6. The Defendant Terry Lennette Grant answered the Amended Summons and Complaint in this action and all Defendants have been notified of the time and date of this hearing.
7. The Defendants were notified of the time, date and place of hearing in this matter.
8. For value received, Terry Lennette Grant made, executed and delivered a note, dated September 18, 2006, promising thereby to pay to the order of NovaStar Mortgage, Inc. the sum of \$680,000.00 with interest at an adjustable rate initially of 7.75% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.
9. To better secure the payment of the Note described above, the said Terry Lennette Grant made, executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., in writing, dated September 18, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. The Mortgage was recorded on September 26, 2006 and is of record in the Beaufort County Registry in Book 2448 at page 823.
10. This mortgage constitutes a valid first lien on the subject property.
11. The legal description contained in the Mortgage was reformed by Order Granting Plaintiff's Motion for Partial Summary Judgment recorded February 7, 2014 in Civil Action No.

2010-CP-07-01690. Said Civil Action was dismissed; however, said dismissal was for the foreclosure portion of the action only, and any other judgments and causes of action were specifically preserved.

12. Thereafter, the Mortgage was assigned to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 by assignment recorded on December 10, 2009 in Book 2915 at Page 902.

13. As required by South Carolina Supreme Court Administrative Order 2009-05-22-01 (hereinafter, "the Administrative Order"), Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program (hereinafter, "the HAMP"); however, Plaintiff alleges upon information and belief, that the loan is not subject to modification under the HAMP as contemplated under the Administrative Order because the Borrower(s) failed to respond to the HAMP inquiries or failed to provide the necessary supporting documentation.

14. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

15. The titleholder(s) of record of the Property as of the filing of the Lis Pendens, Amended Lis Pendens, and Re-Filed Lis Pendens in this action was Terry Lennette Grant.

16. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

17. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing

the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$19,093.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed up to this point in time under the terms of the note and mortgage. Performance of additional services may result in a determination by this court that additional reasonable attorney's fees are due.

18. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	08/03/2021		\$ 672,991.46
Accrued interest from:	12/01/2007	to: 02/03/2021	\$ 688,278.85
Per diem interest from:	02/04/2021	to: 08/03/2021	\$ 25,864.90
Accruing at:	7.75% per annum		
Advancements to Escrow			\$ 169,542.43
Corporate Advances			\$ 41,863.72
Late charges:			\$ 2,681.27
Prior servicer fees:			\$ 2,672.03
Costs of collection prior to hearing:			\$ 1,454.21
Attorney's fees:			\$ 19,093.00

19. Total Debt secured by Note and Mortgage, is \$1,624,441.87. Interest shall be added to the total debt at the rate stated above until the date a judicial sale is conducted herein. Additional interest accrual after the date of such judicial sale will be governed by terms set forth herein below.

20. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCP.

21. The Defendant(s), below listed, claim or may claim liens upon or interests in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claims will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendants and such claims or liens are as follows:

A. The Defendant, Catherine Alls, have or may claim to have some interest in the Property by virtue of a judgment lien against Terry Grant, in the original principal amount of \$6,600.00, which lien was filed in the Beaufort County Records on 08/05/2009 in Civil Action No.: 2009-CP-07-01098. Said lien is junior and subordinate to Plaintiff's Mortgage and is hereby eliminated through a properly completed foreclosure sale.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.
2. That there is due to the Plaintiff on its Note and Mortgage the sum of \$1,624,441.87, representing the Total Debt due to the Plaintiff as outlined above.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest as previously set forth at the rate of 7.75% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Plaintiff's Motion for Summary Judgment is granted.
2. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's

attorney, the amount of the Plaintiff's debt to include continuing accruing interest as aforesaid, together with the costs and disbursements of this action.

3. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Master In Equity at public auction, at the Beaufort County Courthouse, City of Beaufort, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

- A. FOR CASH: The undersigned Master In Equity shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff.

- B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.75% per annum.

- C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

- D. Purchaser to pay for the deed and the cost of recording the deed.

4. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Master In Equity only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

5. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.
6. That the undersigned Master In Equity will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he/she will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. If such sale is made to anyone other than the Plaintiff or its assignee, should the successful bidder, or his/her assignee, fail to comply with the terms thereof within thirty (30) days after the date of sale, then the undersigned Master In Equity or the Plaintiff may re-advertise the Property for sale on the next, or some other subsequent, sales day, according to the same terms set forth herein, and so on from time to time thereafter until a full compliance shall be secured.
7. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
8. That the undersigned Master In Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCp.

9. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.
10. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Beaufort County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
11. It is further 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 Defendants in possession herein, the Sheriff of Beaufort County may be 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, and to keep said successful bidder or his assigns in such peaceable possession.
12. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master

In Equity shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

13. That it is further ORDERED ADJUDGED AND DECREED that the Deed and the Mortgage is reformed as described in the Findings of Fact herein above.
14. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON HILTON HEAD ISLAND, COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON A SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139. THIS BEING THE SAME PROPERTY DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON THAT SURVEY ENTITLED "3.99 AC., WILD HORSE ROAD," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191.

ALSO:

A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THOSE CERTAIN PARCELS OWNED BY TERRY LENNETTE GRANT DESCRIBED AS PARCEL B AND ACCESS & DRAIN FIELD EASEMENT ON BOTH THAT SURVEY ENTITLED "3.99 AC.," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND

RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191 AND THAT SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, INCLUDING WITHOUT LIMITATION A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THE "ASPHALT DRIVE" AS SHOWN ON THE SURVEY RECORDED IN PLAT BOOK 136 AT PAGE 139.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS, IF ANY, MORE PARTICULARLY IDENTIFIED IN THE ABOVE REFERENCED PLAT OR OTHERWISE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA, WHICH ARE APPLICABLE TO THE ABOVE DESCRIBED PROPERTY.

THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO TERRY LENNETTE GRANT BY DEED OF TERRY GRANT ENTERPRISES, INC. DATED AUGUST 9, 2001 AND RECORDED AUGUST 24, 2001 IN BOOK 1463 AT PAGE 54 AND RE-RECORDED FEBRUARY 10, 2004 IN BOOK 1908 AT PAGE 2034 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 226 Wildhorse Road, Hilton Head Island, SC 29926

TMS: R510 007 000 018A 0000

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-07-01466

Deutsche Bank National Trust Company as Trustee for
NovaStar Mortgage Funding Trust, Series 2006-5
NovaStar Home Equity Loan Asset-Backed Certificates,
Series 2006-5

Terry Lennette Grant; Catherine Aills

DEFENDANT(S)

PLAINTIFF(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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)
		N/A

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

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being on Hilton Head Island, County of Beaufort, State of South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191.

ALSO:

Court Reporter: John A Sullivan

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 judgment to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRPC.

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.

[illegible]

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC.," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S.C.R.L.S. #19010, dated February 13, 2013, and recorded in the Office of the Register of Deeds for Beaufort County South Carolina in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

This being a portion of the same property conveyed to Terry Lennette Grant by Deed of Terry Grant Enterprises, Inc. dated August 9, 2001 and recorded August 24, 2001 in Book 1463 at Page 54 and re-recorded February 10, 2004 in Book 1908 at Page 2034 in the Office of the Register of Deeds for Beaufort County, South Carolina.

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.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 2021 to attorneys of record or to parties (when appearing pro se) as follows:

Catherine Alls 5074 Carole Place 10C Stone
Mountain, GA 30087
Catherine Alls 3534 Timberloch Trl Snellville,
GA 30039
Terry Lennette Grant PO Box 21936 Hilton Head
Island, SC 29925
Terry Lennette Grant 226 Wild Horse Road
Hilton Head Island, SC 29926
Terry Lennette Grant c/o William H. Sloan,
Esquire Post Office Box 85 Summerville, SC
29484

Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al.

Case Number: 2016CP0701466

Type: Master/Order/Foreclosure & Sale and Form 4

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-08-06 10:45:34 page 14 of 14

NOTICE OF SALE

NOTICE OF SALE CIVIL ACTION NO. 2016-CP-07-01466 BY VIRTUE of the decree heretofore granted in the case of: Deutsche Bank National Trust Company as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5 NovaStar Home Equity Loan Asset-Backed Certificates, Series 2006-5 vs. Terry Lennette Grant; Catherine Alls, the undersigned Master In Equity for Beaufort County, South Carolina, will sell on September 7, 2021 at 11:00 AM, or on another date, thereafter as approved by the Court, at the Courthouse, City of Beaufort, State of South Carolina, to the highest bidder:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON HILTON HEAD ISLAND, COUNTY OF BEAUFORT, STATE OF SOUTH CAROLINA, DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON A SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139. THIS BEING THE SAME PROPERTY DESIGNATED AS PARCEL A AND CONTAINING 0.46 ACRES AS SHOWN ON THAT SURVEY ENTITLED "3.99 AC., WILD HORSE ROAD," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191.

ALSO:

A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THOSE CERTAIN PARCELS OWNED BY TERRY LENNETTE GRANT DESCRIBED AS PARCEL B AND ACCESS & DRAIN FIELD EASEMENT ON BOTH THAT SURVEY ENTITLED "3.99 AC.," PREPARED FOR MS. TERRY L. GRANT BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED DECEMBER 22, 2003 AND RECORDED DECEMBER 31, 2003 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN PLAT BOOK 96 AT PAGE 191 AND THAT SURVEY ENTITLED "AN ASBUILT SURVEY OF PARCEL A, WILD HORSE ROAD," PREPARED FOR TERRY L. GRANT BY COOK LAND SURVEYING, BY DONALD R. COOK, JR., S.C.R.L.S. #19010, DATED FEBRUARY 13, 2013 AND RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY SOUTH CAROLINA IN PLAT BOOK 136 AT PAGE 139, INCLUDING WITHOUT LIMITATION A NON-EXCLUSIVE, APPURTENANT, ASSIGNABLE EASEMENT AND RIGHT OF WAY, WHICH SHALL RUN WITH THE TITLE TO PARCEL A CONTAINING 0.46 ACRES, REFERENCED ABOVE, OR ANY PORTIONS THEREOF, FOR

INGRESS, EGRESS AND ACCESS OF VEHICULAR AND PEDESTRIAN TRAFFIC TO AND FROM WILD HORSE ROAD OVER, ACROSS, AND THROUGH THE "ASPHALT DRIVE" AS SHOWN ON THE SURVEY RECORDED IN PLAT BOOK 136 AT PAGE 139.

SUBJECT TO ALL EASEMENTS, RIGHTS OF WAY, COVENANTS AND RESTRICTIONS, IF ANY, MORE PARTICULARLY IDENTIFIED IN THE ABOVE REFERENCED PLAT OR OTHERWISE RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA, WHICH ARE APPLICABLE TO THE ABOVE DESCRIBED PROPERTY.

THIS BEING A PORTION OF THE SAME PROPERTY CONVEYED TO TERRY LENNETTE GRANT BY DEED OF TERRY GRANT ENTERPRISES, INC. DATED AUGUST 9, 2001 AND RECORDED AUGUST 24, 2001 IN BOOK 1463 AT PAGE 54 AND RE-RECORDED FEBRUARY 10, 2004 IN BOOK 1908 AT PAGE 2034 IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA.

CURRENT ADDRESS OF PROPERTY: 226 Wildhorse Road, Hilton Head Island, SC 29926

TMS: R510 007 000 018A 0000

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Master In Equity, at conclusion of the bidding, five percent (5%) of his bid, in cash or equivalent, as evidence of good faith, same to be applied to the purchase price in case of compliance, but in the case of non-compliance to be forfeited and first applied to the costs incurred by the Plaintiff related to the sale and the balance then applied to the Plaintiff's debt in a manner suitable to the Plaintiff. Should the last and highest bidder fail to comply with the other terms of the bid within thirty (30) days, then the Master In Equity may re-sell the property on the same terms and conditions on some subsequent Sales Day. No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately. Purchaser to pay for documentary stamps on the Deed. The successful bidder will be required to pay interest on the amount of the balance of the bid from date of sale to date of compliance with the bid at the rate of 7.75% per annum. The sale shall be subject to taxes and assessments, existing easements and restrictions, easements and restrictions of record and any other senior encumbrances.

In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

The honorable Marvin H. Dukes, III
Master In Equity for Beaufort County

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Attorneys for Plaintiff
Phone 803-454-3540
Fax 803-454-3541



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Master/Order/Notice of Foreclosure Sale

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-08-06 10:45:54 page 4 of 4

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Plaintiff,

vs.

Terry Lennette Grant; Catherine Alls,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-07-01466

ORDER TO RESTORE

The undersigned attorney for Brock & Scott, PLLC, Attorneys for the Plaintiff, has moved before this Court to restore the above-captioned case. Based upon the record in this case, I make the following findings of salient fact and conclusion of law:

1. In the above-captioned action, at the request of the Plaintiff, the case was stricken from the file book by an Order of Stay filed previously with the Beaufort County Clerk of Court due to the Defendant(s), Terry Lennette Grant filing under Chapter 13 of the United States Bankruptcy Code.
2. The bankruptcy has been dismissed by order of the Bankruptcy Court dated December 18, 2018 (a copy attached hereto as Exhibit "A").
3. In the interest of judicial economy, justice and equity and for good cause shown, this case shall be restored.
4. This case has been referred to The Honorable Marvin H. Dukes, III, Master In Equity for Beaufort County for final disposition, and a final hearing shall be held at such date and time as may hereinafter be set.

THEREFORE, based upon the motion of the undersigned Attorney for the Plaintiff, and upon my review of the record in this case,

IT IS ORDERED that the above-captioned action shall be restored to the file book and shall return to the status the case held immediately prior to the order of stay filed September 20, 2018.

AND IT IS SO ORDERED.

JUDGES SIGNATURE PAGE TO FOLLOW.



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Restore Case To Active Docket

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2020-05-21 09:26:33 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
C/A NO.: 2016-CP-07-01466

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,
Plaintiff,
vs.

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER AND
ORDER GRANTING DEFENDANT'S
MOTION TO AMEND ANSWER**

Terry Lennette Grant; Catherine Alls,
Defendant(s).

THIS MATTER COMES BEFORE THE COURT on the following three motions filed
by Defendant Terry Lennette Grant:

1. Motion to Amend Answer filed July 21, 2017;
2. Motion to Reconsider Order to Amend Complaint filed November 7, 2017; and
3. Motion to Amend Answer filed February 15, 2018.

Present at the time of the hearing on June 13, 2018 were Genevieve S. Johnson of Brock and
Scott, PLLC, counsel for the Plaintiff and Defendant Terry Lennette Grant. After review of the
pleading, applicable rules of procedure and arguments of the parties, I hereby rule as follows:

I find the first motion has been rendered moot by the amended Complaint filed November
9, 2017 and subsequent amended answer filed on December 7, 2017.

Pursuant to SCRCP 15(b), "the court may allow the pleadings to be amended and shall do
so freely when the presentation of the merits of the action will be subserved thereby and the
objecting party fails to satisfy the court that the admission of such evidence would prejudice him
in maintaining his action or defense upon the merits." I find that the amended complaint does
not prejudice the Defendant. Therefore, The Motion to Reconsider Order to Amend Complaint is
denied. Likewise, I find the Plaintiff would not be unfairly prejudiced by the Defendant's Motion

to Amend Answer to include the defenses of laches and res judicata.

Additionally, Defendant Grant stated at the hearing she had been unable to obtain copies of the documents her prior counsel produced during discovery. Plaintiff agreed to provide copies of said documents to Defendant Grant.

For the forgoing reasons, it is hereby ORDERED, ADJUDGED, AND DECREED that

1. Defendant's Motion to Amend Answer filed July 21, 2017 is moot;
2. Defendant's Motion to Reconsider Order to Amend Complaint filed November 7, 2017 is denied;
3. Defendant Grant may amend her answer within 15 days of the date of this order to add the equitable defenses of laches and res judicata; and
4. Plaintiff will provide Defendant Grant copies of the documents previously produced by her former counsel during discovery within 30 days of the date of this order.

IT IS SO ORDERED.

*** JUDGE'S SIGNATURE PAGE TO FOLLOW ***



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-06-22 15:02:10 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as Trustee
for NovaStar Mortgage Funding Trust, Series 2006-5
NovaStar Home Equity Loan Asset-Backed
Certificates, Series 2006-5,

Plaintiff,

vs.

Terry Lennette Grant; Catherine Alls,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-07-01466

ORDER OF STAY
DUE TO BANKRUPTCY FILING

Upon motion of Attorney for the Plaintiff, and it appearing that the Defendant(s) Terry Lennette Grant has filed Chapter 13 Bankruptcy on August 13, 2018, Bankruptcy case number 18-04096, as evidenced by the Bankruptcy Court Docket Report attached to Plaintiff's Motion as Exhibit "A", and such filing results in an automatic stay in the present case.

IT IS THEREFORE ORDERED that the above case be stricken from the active roster of pending cases with leave to restore the action with the same civil action number, original filing date, and no further filing fee after the Bankruptcy case is dismissed or the Plaintiff has been granted a relief from the automatic stay by the Bankruptcy Court.

JUDGES SIGNATURE PAGE TO FOLLOW.



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Bankruptcy

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-09-20 15:06:26 page 2 of 2

ELECTRONICALLY FILED - 2018 Sep 20 4:22 PM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701466

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank, National Trust Company,
as Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5, Novastar Home
Equity Loan Asset-Backed Certificates,
Series 2006-5,

Plaintiff,

versus

Terry Lennette Grant and Catherine Alls,
Defendant(s).

COURT OF COMMON PLEAS
14TH JUDICIAL CIRCUIT

CASE NO. 2016-CP-07-1466

**ORDER RELIEVING WILLIAM
H. SLOAN AS ATTORNEY FOR
TERRY LENNETTE GRANT**

This case before me on May 13, 2018 for two motions filed by William H. Sloan, Esq. as attorney for Defendant Grant to:

A. Reconsider a previous Order granting the Plaintiff's Motion to Amend Complaint with regards to the legal description of the Mortgage and

B. Motion to Amend Answer

Present for the Plaintiff was Genevieve Johnson, Esq.

Catherine Alls did not appear although she was properly noticed for the hearings.

Prior to the case being called to Order, Mr. Sloan and Dr. Grant brought to the attention of the Court and Plaintiff's counsel that Dr. Grant wished to relieve Mr. Sloan as her attorney and to continue with her case pro-se.

Ms. Johnson did not object to this request to relieve Mr. Sloan as attorney for Dr. Grant.

Dr. Grant, while wishing to proceed pro-se immediately, was not properly prepared to argue the Motions that Mr. Sloan filed for her.

Previously, the Plaintiff wished to have its Motion for Summary Judgment on this day as well; however, this Motion was continued by consent of the parties present for approximately

60 days. After a discussion on the record, it was agreed that Grant's Motion filed by Sloan would be continued for approximately 30 days.

IT IS THEREFORE ORDERED THAT:

- a. William H. Sloan, Esq. is relieved as attorney for Terry Lennette Grant effective immediately.
- b. Grant's Motions filed by Sloan shall be continued until the next roster of Motions to take place either June 12 or June 13, 2018.
- c. Plaintiff's Motion for Summary Judgment shall not be scheduled before July 9, 2018.
- d. Defendant Terry Grant shall receive all further notices from this Court at:

Post Office Box 21936

Hilton Head Island, SC 29925-1936

843-301-5750

IT IS SO ORDERED:

The Honorable Marvin Dukes

Beaufort County Master in Equity

Beaufort, South Carolina

May __, 2018



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant ,
defendant, et al
Case Number: 2016CP0701466
Type: Order/Relieve Counsel

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2018-05-22 11:48:41 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5 NovaStar Home Equity Loan
Asset-Backed Certificates, Series 2006-5,

Plaintiff,

vs.

Terry Lennette Grant; Catherine Alls,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-07-01466

**ORDER
TO AMEND COMPLAINT**

Pursuant to Rule 15(a), South Carolina Rules of Civil Procedure, the above named Plaintiff has requested leave of court to amend its pleadings in this action. It appearing, from a review of the proposed Amended Lis Pendens, Summons and Complaint, that the amendment, if permitted, would not prejudice any party to this action; and it further appearing that no unreasonable delay would result there from;

THEREFORE, upon motion of the undersigned attorney, attorney for the Plaintiff, and pursuant to Rule 15(a), South Carolina Rules of Civil Procedure,

IT IS HEREBY ORDERED that the Plaintiff is given leave to amend its pleadings in this action, and the proposed Amended Lis Pendens, Summons and Complaint attached hereto are permitted for filing in this case.

IT IS FURTHER ORDERED that any future amendment will require a petition for further leave of this Court.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant
Case Number: 2016CP0701466
Type: Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2017-11-06 14:00:33 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NO: 2016CP0701466

Deutsche Bank National Trust Company	)	ORDER REFERRING NON-JURY ACTION TO THE BEAUFORT COUNTY MASTER IN EQUITY
Plaintiff(s)	)	
vs.	)	
Terry Lennette Grant	)	
Defendant(s)	)	

Pursuant to an Order of the South Carolina Supreme Court this Non-Jury matter is now referred to the Beaufort County Master in Equity with Finality. The Plaintiff is responsible for paying the Reference Fee pursuant to South Carolina Code of Laws Section 14-11-310. (\$100.00 for Partition Actions and Foreclosures and \$50.00 for all other cases); however, if the Plaintiff's case is over, any remaining party seeking Affirmative Relief will be responsible for paying the fee. The Reference Fee shall be paid within 30 days from the date this Order is signed or the Master will dismiss the case for non-payment of the Reference Fee.

IT IS SO ORDERED:

 Jerri Roseneau
 Beaufort County Clerk of Court

Dated: _____
 Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Deutsche Bank National Trust Company VS Terry Lennette Grant

Case Number: 2016CP0701466

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jeffri Ann Roseneau, Beaufort County Clerk of
Court

Electronically signed on 2017-03-14 16:50:32 page 2 of 2

ELECTRONICALLY FILED - 2017 Mar 15 9:03 AM - BEAUFORT - COMMON PLEAS - CASE#2016CP0701466

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home Equity
Loan Asset-Backed Certificates, Series 2006-
5,

Plaintiff,

vs.

Terry Lennette Grant; Catherine Ails,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-07-01466

ORDER FOR SERVICE BY
PUBLICATION

2016 SEP 19 AM 7:57
JERRI ANN GUSENETT
BEAUFORT COUNTY, S.C.
CLERK OF COURT

WHEREAS the attorney for Plaintiff moves this court for an order authorizing service by publication upon Defendant Terry Lennette Grant. This court reviewed the motion together with the affidavit in support thereof and any other filings in this case as deemed advisable by the undersigned. Said review results in a determination: that a cause of action does exist and is pending against the aforementioned Defendant; that said Defendant is proper party to the action by virtue of a lien or interest in real property in South Carolina to which the action is related; and that said Defendant cannot, after due diligence, be found within the State of South Carolina.

NOW, THEREFORE, ON MOTION of the attorney for the Plaintiff,

IT IS ORDERED that the Summons in the above entitled action, together with the Notice of Filing the Complaint, be served upon Defendant Terry Lennette Grant by publication of the same in a weekly newspaper of general circulation published in the County of Beaufort, South Carolina, once a week for three (3) consecutive weeks. I find the *Beaufort Gazette* is the newspaper most likely to give notice to the Defendant sufficiently,

IT IS FURTHER ORDERED that copies of the Summons be deposited in the U.S. Mail as provided in §15-9-740 of the S.C. Code Ann. (1976) to the last known address of Defendant Terry Lennette Grant.

9-16-16

Dated



Presiding Judge/Clerk of Court
Beaufort County, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5 NovaStar Home Equity
Loan Asset-Backed Certificates, Series 2006-
5,

Plaintiff,

vs.

Terry Lennette Grant; Catherine Alls,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-07-01466

MOTION FOR SERVICE BY
PUBLICATION

2016 SEP 19
JERRI ANN ROSE
CLERK OF COURT
BEAUFORT COUNTY, SC

A cause of action exists in favor of the above named Plaintiff against the above named Defendants relating to real property in the State of South Carolina, the same being shown by the Complaint filed herein. The Defendant Terry Lennette Grant, after due diligence, cannot be found within the State of South Carolina. Said named Defendant is proper party to the action, as more fully described in the pleadings of the Plaintiff filed herein. It appears that the said Defendant may have or claim a lien or interest in the subject real property. An affidavit in support of this motion is being filed herewith and is incorporated herein by reference.

The undersigned, Attorney for the Plaintiff, does hereby move for an order that the Summons in the above entitled action, together with the Notice of Filing the Complaint, be served upon Defendant Terry Lennette Grant by publication of the same in a weekly newspaper of general circulation published in the County of Beaufort, South Carolina, once a week for three (3) consecutive weeks.

IT IS FURTHER ORDERED that in the event the Plaintiff amends its Complaint pursuant to Rule 15, South Carolina Rules of Civil Procedure, and the above-referenced Defendants have not made a formal appearance in this case at that time, then service of said amended pleading(s) shall be authorized pursuant to this order in the manner described above.

I SO MOVE

Date: 9/14/2016



Kristen E. Washburn SC Bar 101415

Brook & Scott, PLLC
Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as Trustee
for NovaStar Mortgage Funding Trust, Series 2006-5
NovaStar Home Equity Loan Asset-Backed
Certificates, Series 2006-5,

Plaintiff,

vs.

Catherine Ails; Terry Lennette Grant; Lindberg Bing,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-07-01690

2016 LP-07-0547

ORDER VACATING JUDGMENT,
CANCELLING LIS PENDENS
AND DISMISSING CASE

2016 JAN 11 PM 12:36
CLERK OF COURT
CLERK OF COURT
CLERK OF COURT

Plaintiff initiated a mortgage foreclosure upon the mortgage filed in the Beaufort County records by Lis Pendens, Summons and Complaint filed April 12, 2010. Pursuant to Rule 53 S.C.R.C.P., this case was referred to the Master-in-Equity for Beaufort County, by Order of Reference filed on June 15, 2010. On May 28, 2014, The Order of Judgment of Foreclosure and Sale Notice (hereafter "Judgment of Foreclosure") was entered in Plaintiff's favor.

Since the date of the Judgment of Foreclosure the plaintiff has decided not to pursue the foreclosure. Thus, it is no longer equitable that the Judgment of Foreclosure should have prospective application. Accordingly, pursuant to Rule 60(b)(5) S.C.R.C.P., Plaintiff, without waiving any of its rights under the Note and Mortgage forming the basis for its action, hereby requests that its Summons and Complaint be dismissed of record, and further requests that the Judgment of Foreclosure entered on May 28, 2014 be vacated.

THEREFORE, as it is no longer equitable that the judgment should have prospective application and pursuant to SCRCP 60(b)(5),

IT IS ORDERED:

1. The Judgment of Foreclosure and Sale pertaining to the cause of action for foreclosure of the Mortgage and any Supplemental Judgment Order(s) is/are hereby vacated;
2. The Lis Pendens is marked canceled of record;
3. That any provision in any Judgment or Order in this case that extinguished, removed, or released a lien or interest due to it being junior and/or subordinate to the Plaintiff's mortgage lien is hereby vacated such that any such lien or interest is undisturbed by these proceedings.

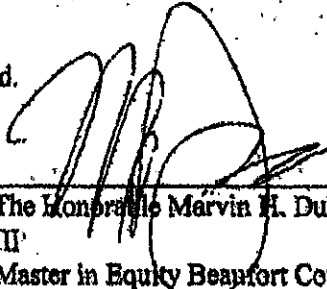


B&B 6/11/12

4. The Plaintiff may withdraw any original exhibits submitted in furtherance of this case;
5. "Plaintiff is unable to obtain consent from Defendant "Terry Lennette Grant." Consent was submitted to Defendants via U.S. Mail November 30, 2015 and December 10, 2015. To date Plaintiff has not received a response; And
6. The case is dismissed without prejudice and closed.

Date: _____

11/16



The Honorable Marvin H. Dukes,
III
Master in Equity Beaufort County

ISO MOVE:



Kristen E. Washburn SC Bar 101415

Brook & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone: 803-454-3540
Attorney for Plaintiff

Columbia, South Carolina

11/30/2015

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as Trustee
for NovaStar Mortgage Funding Trust, Series 2006-
5 NovaStar Home Equity Loan Asset-Backed
Certificates, Series 2006-5,

Plaintiff,

vs.

Catherine Alls; Terry Lennette Grant; Lindberg
Bing,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CR-07-01690

MOTION AND CONSENT ORDER
SUBSTITUTING COUNSEL

It appears that the Plaintiff has requested that the undersigned attorney of the law firm of Brock & Scott, PLLC, be substituted as counsel in the above referenced action and that the undersigned attorney of Pinkel Law Firm LLC be relieved as Plaintiff's counsel,

And as it appears that both counsel have noted their consent to the substitution, and that no unreasonable delay or prejudice will accrue,

THEREFORE, IT IS ORDERED that the undersigned attorney of the law firm of Brock & Scott, PLLC is hereby substituted as Plaintiff's counsel and that the undersigned attorney of Pinkel Law Firm LLC is hereby relieved as Plaintiff's counsel.

IT IS SO ORDERED

DATED: _____, 2015

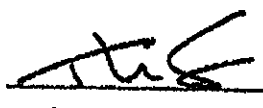
Master in Equity
Beaufort County, South Carolina

I SO MOVE


Suzanne E. Brown, SCB# 76440

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-576-7638

I CONSENT:


James A. Shook, SC Bar # 62370
Attorney of Record
Pinkel Law Firm LLC
P.O. Box 71727
North Charleston, SC 29415
(843) 577-5460



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company as Trustee for
NovaStar Mortgage Funding Trust, Series 2006-5
NovaStar Home Equity Loan Asset-Backed
Certificates, Series 2006-5,

Plaintiff,

vs.

Catherine Alls; Terry Lennette Grant; Lindberg Bing,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2010-CP-07-01690

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee of Brook & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

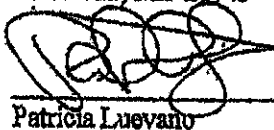
That on November 10 2015 she served a copy of MOTION AND CONSENT ORDER SUBSTITUTING COUNSEL by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Terry Lennette Grant
226 Wildhorse Road
Hilton Head Island, SC 29926

Catherine Alls
5074 Carole Place
Stone Mountain, GA 30087

✓ Terry Lennette Grant
Post Office Box 21936
Hilton Head Island, SC 29925

Lindberg Bing
6188 Oxon Hill Road
Oxon Hill, MD 20745


Patricia Luevano
Brook & Scott, PLLC

Wilmington, North Carolina

Brock & Scott, PLLC
WESTPARK CENTER
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Ref#: 15-22471

Terry Lennette Grant
Post Office Box 21936
Hilton Head Island, SC 29925

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding
Trust, Series 2006-5,

PLAINTIFF,

vs.

Terry Lennette Grant; Catherine Alls; and
Lindberg Bing,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2010-CP-07-1690

**ORDER AND JUDGMENT OF
FORECLOSURE AND SALE
(DEFICIENCY REQUESTED AGAINST
TERRY LENNETTE GRANT)**

TO: Joanne Tomasini
PINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:

Terry Lennette Grant, *Pro Se*

THIS MATTER having been opened to the Court upon the filing of the Motion for Summary Judgment by Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5, ("Plaintiff") for the foreclosure of a residential mortgage on property owned by Terry Lennette Grant ("Defendant"); the Court having considered the facts and law cited in the Motion, Plaintiff's Affidavit in Support of Summary Judgment together with supporting exhibits annexed thereto; the Court having conducted a hearing on the Motion on May 28, 2014; the Court having considered the oral arguments of counsel and Defendant; there being no material facts in dispute and good and sufficient cause having been shown.

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Pursuant to the said Order of Reference, a hearing was held and was attended by counsel and Defendant. From the testimony, affidavits and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Based upon the Certification of Mortgagor Non-Compliance filed herein, and pursuant to the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2,

2011, Order 2011-05-02-01, Defendant has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process.

2. The Lis Pendens was filed on April 12, 2010, and an Amended Lis Pendens was filed on June 12, 2013.

3. The Summons and Complaint were filed on April 12, 2010, and an Amended Summons and Complaint was filed on June 12, 2013.

4. Service was made upon the Defendant(s) named in this Report as is shown by the proof(s) of service filed herein.

5. The Defendant(s) Catherine Alls and Lindberg Bing are in default as shown by Affidavit(s) on file herein.

6. Terry Lennette Grant, *pro se* served an Answer on the Plaintiff, which is on file herein.

7. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter on May 1, 2014.

8. According to the Affidavit filed herein, the Defendant(s) are not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

9. Plaintiff moved for Partial Summary Judgment on the reformation of Mortgage. As a result the Order Granting Plaintiff's Motion for Partial Summary Judgment was entered on February 7, 2014. We hereby incorporate by reference all the terms of the Order Granting Plaintiff's Motion for Partial Summary Judgment.

10. By virtue of the Order and Partial Judgment entered February 7, 2014, the Mortgage was reformed to encumber the real property identified by TMS# R510 007 000 018A 0000, and the following property address: 226 Wildhorse Road, Hilton Head Island, South Carolina 29926.

11. Subsequently, Plaintiff moved for summary judgment on the foreclosure and in support thereof, filed an Affidavit in Support of Summary Judgment and a separate Affidavit of Verified Statement of Account, both executed by an authorized representative to evidence all relevant facts in this claim. "Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial. Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004). "[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact." Jackson v. Hermuda Sands, Inc., 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

12. Defendant Terry Lennette Grant did not file an opposing affidavit made on personal knowledge, setting forth the facts as would be admissible in evidence, that show there is a genuine issue

of material fact remaining for trial. Accordingly, I find that no genuine issue of material fact exists, and that based on the following facts, summary judgment is in favor of Plaintiff is proper.

13. For value received, Terry Lennette Grant made, executed and delivered a Note dated September 18, 2006, promising thereby to pay to the order of Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., the sum of \$680,000.00, with interest at an adjustable rate pursuant to the terms of the Note.

14. To better secure the payment of the Note described above, the said Terry Lennette Grant made, executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., a Mortgage in writing, dated September 18, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint and subsequent Amended Pleadings. The Mortgage was filed on September 26, 2006, and is of record in the Office of the Register of Deeds for Beaufort County in Book 2448 at Page 823.

15. This Mortgage constitutes a First mortgage lien on the subject property.

16. By Assignment of Mortgage dated December 2, 2009, and recorded December 10, 2009, in Book 2915 at Page 902, in the Office of the Register of Deeds for Beaufort County, Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc. assigned the subject Note and Mortgage to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5, the present lienholder and Plaintiff herein.

17. The following is a description of the mortgaged premises herein ordered to be sold:

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191.

ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field.

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Easement on both that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.P.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

TMS #: R510 007 000 018A 0000

Property Address: 226 Wildhorse Road, Hilton Head Island, SC

18. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HMP), however the loan is not subject to modification based upon all efforts have been exhausted without resulting in a modification.

19. Payment due on the Note has not been made as provided for therein, and Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of an attorney for collection.

20. The titleholder(s) of record in and to the subject property as of the filing of the Lis Pendens in this action is Terry Lennette Grant.

21. Counsel for Plaintiff filed an affidavit of attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff, I find that the sum of \$4,299.27 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of

the action. The plaintiff has advanced \$1,190.00 to its counsel as partial payment of the attorney's fee, and this amount is included in the corporate advances.

22. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by Note and Mortgage, is as follows:

Principal due as of January 1, 2008	\$672,991.46
Interest from December 1, 2007 through May 28, 2014 at 7.75%	\$339,775.14
Late Charges	\$732.71
Escrow adjustments (debits and credits)	\$76,078.31
Additional Costs and Fees (See attached Affidavit of Amount Due)	\$13,899.74
Cost of Collections prior to hearing	\$90.62
Attorney Fees (awarded but unpaid)	\$4,299.27
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$1,107,867.25

Interest for the period from May 28, 2014 as shown above at the rate of 7.75% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 7.75% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

23. Plaintiff specifically demands a deficiency judgment against the Defendant, Terry Lennette Grant, pursuant to S.C. Code Ann. Section 29-3-660 (1976) for any deficiency in this action remaining after sale of the mortgaged premises. *Plaintiff reserves the right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale.*

24. The following Defendants claim, or may claim a lien upon or interest in the subject property as follows:

- (a) Lingberg Bing, by virtue of the Quit Claim Deed dated March 17, 2004, and recorded March 18, 2004, in Book 1924 at Page 2538, which was perhaps vague in describing a 1.54 acres parcel, save and except 0.38 acres, conveyed to Terry Lennette Grant.

The Quit Claim Deed recorded in Book 1924 at Page 2538 was a valid transfer of the 1.54 acres parcel, save and except 0.38 acres, to Defendant Terry Lennette Grant and therefore Defendant Lindberg Bing has no interest in and to the Mortgaged Property.

- (b) Catherine Alls by virtue of a judgment against Terry Grant, filed August 5, 2009, Judgment Roll No. 2009-CP-07-1098, in the amount of \$6,600.00.

The interest or lien of the above Defendant, if any, is junior and subordinate to the plaintiff's first mortgage lien.

IT IS THEREFORE ORDERED:

1. Plaintiff's Motion Summary Judgment against Terry Lennette Grant is granted.
2. Based on the allegations in the Complaint and the evidence presented, I hereby order the defendant Lindberg Bing, no longer has any interest in the subject property.
3. Judgment is hereby entered in favor of Plaintiff against the Defendants on all causes of actions/defenses asserted by the Defendant in their Answer.
4. There is due to Plaintiff on the obligation and Mortgage set forth in the Complaint the sum of \$1,107,867.25, representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra*, together with interest at the rate provided therein from the date aforesaid to the date hereof.
5. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra*, and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 7.75%.
6. The Defendant(s) liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.
7. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity, or his agent under the direction of the Master in Equity, at public auction, at the Beaufort County Courthouse, Beaufort, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:
 - A. **FOR CASH:** The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.75%.
 - C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. This Mortgage constitutes a first lien on the subject property.

E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

8. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. The Master in Equity will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. 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 20 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.

10. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

11. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of the Court.

12. IT IS FURTHER ORDERED that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Beaufort County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder 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.

13. IT IS FURTHER ORDERED that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all

furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

14. IT IS FURTHER ORDERED that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

15. IT IS FURTHER ORDERED that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

16. IT IS FURTHER ORDERED that the Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

17. Plaintiff does not warrant its title search to purchasers at foreclosure sale or other third parties, who should have their own title search performed on the subject property.

18. The Master in Equity shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed. Plaintiff's Mortgage lien is described as follows:

That certain Mortgage given by Terry Lennette Grant to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc. dated September 18, 2006 and recorded in the Office of the Register of Deeds for Beaufort County on September 26, 2006 in Book 2448 at Page 823.

19. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled, "An As-built Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated

Page 154

December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191.

ALSO:

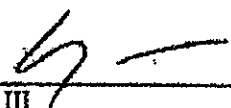
A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.P.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

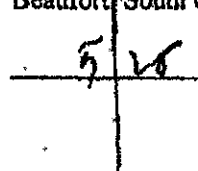
TMS #: R510 007 000 018A 0000.

Property Address: 226 Wildhorse Road, Hilton Head Island, SC

This being the same property conveyed to Terry Lennette Grant by deed of Lindberg Bing, dated March 17, 2004 and recorded in the Office of the Register of Deeds for Beaufort County on March 18, 2004 in Deed Book 1924 at Page 2538.


Marvin H. Dukes, III
Master in Equity for Beaufort County

Beaufort, South Carolina

 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee, for NovaStar Mortgage Funding Trust,
Series 2006-5,

PLAINTIFF,

vs.

Terry, Lennette Grant; Catherine Ails; and
Lindberg Bing,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 2010-CP-07-1690

(NON-JURY MORTGAGE FORECLOSURE)

RECORD OF HEARING

Pursuant to the Order of Reference filed in the above cause of action, a hearing was held May 28, 2014 before Marvin H. Dukes, III, as Master in Equity for Beaufort County. Counsel of record is as follows:

ATTORNEYS FOR PLAINTIFF: Joanne Tomasini-Muniz of FINKEL LAW FIRM LLC.

ATTORNEYS FOR DEFENDANTS: Terry Lennette Grant, *pro se*

The mortgagor(s) were in default on the terms of the note and mortgage as of January 1, 2008.

The Lis Pendens was filed on April 12, 2010, an Amended Lis Pendens was filed on April 19, 2011, and a Second Amended Lis Pendens was filed June 12, 2013.

The Summons and Complaint were filed on April 12, 2010, an Amended Summons and Complaint were filed on April 19, 2011, and a Second Amended Summons and Complaint we filed June 12, 2013.

Affidavits or Acceptances of Service are filed and show that service of the Summons and Complaint was properly effected upon all defendants herein. Catherine Ails and Lindberg Bing are in default.

There is an Affidavit of Non-Military Service indicating that the individual Defendant(s) are not in the military service of the United States of America.

Plaintiff's attorney offered into evidence on this date the following documents:

1. Notice of hearing and certificate of service
2. Promissory Note
3. Mortgage
4. Assignment
5. Affidavit of Military Status
6. Affidavit of Verified Statement of Account
7. Attorney's Fees/Costs Affidavit

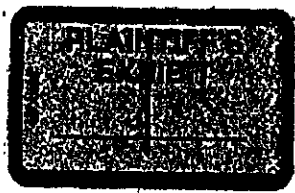
By the Affidavit of Verified Statement of Account, Plaintiff established the total debt amount due as \$1,107,867.25. Plaintiff is seeking a deficiency judgment.

Plaintiff moved for foreclosure of the subject mortgage, with equity of redemption barred, and for a sale of the subject property. The relief was granted, and the hearing was concluded.

Beaufort, SC

*supplemented
by C.R.*


Marvin H. Dukes, III
Master in Equity for Beaufort County



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5

PLAINTIFF,

v.

Terry Lennette Grant; Catherine Alls; and
Lindberg Bing, et al.

DEFENDANTS

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-071490

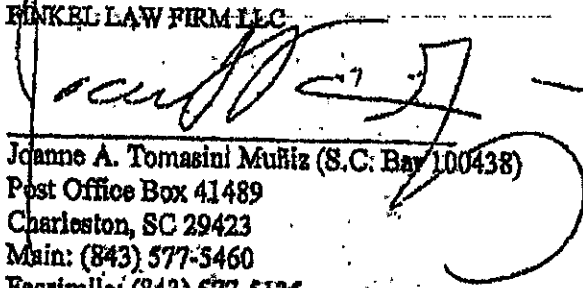
NOTICE OF HEARING

FILED
CLERK OF COURT
BEAUFORT COUNTY, S.C.
MAY 14 2014
PM 4:15

TO THE DEFENDANT ABOVE NAMED:

PLEASE TAKE NOTICE THAT a Motion for Summary Judgment hearing will be held before the Honorable Marvin H. Dukes, III Beaufort County Master in Equity, on Wednesday, May 28, 2014 at 9:30 p.m. This hearing will be held at the Beaufort County Courthouse, 102 Ribaut Road, Circuit Court Rm. 212, Beaufort, South Carolina.

BEAUFORT LAW FIRM LLC


Joanne A. Tomasini Mufiz (S.C. Bar 100438)
Post Office Box 41489
Charleston, SC 29423
Main: (843) 577-5460
Facsimile: (843) 577-5135
Attorney for Plaintiff

Dated: May 1, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5

PLAINTIFF,

v.

Terry Lennette Grant; Catherine Allis; and
Lindberg Bing,

DEFENDANTS

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-07-1690

CERTIFICATION OF SERVICE

FILED MAY -5 PM 4:19
JOSEPH ALI
BEAUFORT COUNTY, S.C.
CLERK OF COURT

The undersigned states that on May 1, 2014, she caused a true and correct copy of the Plaintiff's
Notice of Hearing to be served upon the party-identified below by depositing in the United States mail,
proper postage affixed and addressed as follows:

VIA REGULAR MAIL AND CERTIFIED MAIL R.R.R.

Terry Lennette Grant
P.O. Box 21936
Hilton Head Island, SC 29925
Pro Se Defendant

VIA REGULAR MAIL AND CERTIFIED MAIL R.R.R.

Terry Lennette Grant
226 Wildhorse Road
Hilton Head Island, SC 29926
Pro Se Defendant

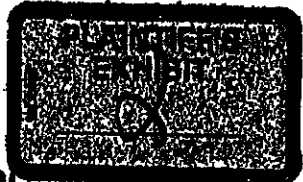
Catherine Allis
5074 Carole Place
Stone Mountain, GA 30087

Lindberg Bing
6188 Oxon Hill Road
Oxon Hill, MD 20745

HINKEL LAW FIRM LLC

Dominique F. Biggers

Dominique F. Biggers
Post Office Box 41489
Charleston, South Carolina 29423
Tel: (843) 577-5460
Facsimile: (866) 800-7954
Litigation Paralegal



EXC
COPY

MIN: 100020190058808478

Loan Number: [REDACTED]

ADJUSTABLE RATE NOTE

(LIBOR Six-Month Index (As Published in *The Wall Street Journal*)-Rate Caps)

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

SEPTEMBER 18, 2006

[Date]

RICHFIELD

[City]

OHIO

[State]

226 WILDHORSE ROAD, BILTON HEAD ISLAND, SOUTH CAROLINA 29926

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$680,000.00 (This amount is called "Principal"), plus interest, to the order of Lender. Lender is NOVASTAR MORTGAGE, INC., A VIRGINIA 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 7.750 %. 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(E) 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 NOVEMBER 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 OCTOBER 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 808911, KANSAS CITY, MISSOURI 64184--8911

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. \$4,871.80. 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.

MULTISTATE ADJUSTABLE RATE NOTE-LIBOR SIX MONTH INDEX
AS PUBLISHED IN THE WALL STREET JOURNAL-Single Family
Private Use MODIFIED INSTRUMENT

Page 1 of 6

Form 1000 1/01
DocuSign® Forms 832-547-7162
www.docuSign.com

(A) Change Dates

(A) Change Dates

(B) The 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 us notice of this choice.

(C) Calculation of Charges

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 or the Maturity Date at any now 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

(C) Effective Date of Changes

(F) Notice of Changes

5. **BORROWER'S RIGHT TO PREPAY **** See attached Prepayment Note Addendum.
I have the right to make payments of Principal and Interest at any time without penalty.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of 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 interest rate increase.

been paid.
 "Disbursement" means the right to require the Note Holder to give notice to other persons that amounts due have not
 been paid.
 "Disbursement" means the right to require the Note Holder to demand payment of amounts due. "Notice of Disbursement" means the right to require the Note Holder to give notice to other persons that amounts due have not
 been paid.

10. WAIVERS

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 persons 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.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

Unless specified here, any notice that must be given to us under this Note will be
 given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address
 If I give the Note Holder a notice of my different address,
 Unless the Note Holder requests 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.

8. GIVING OF NOTICES

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 is due on that amount. That time must be at least 30 days after the date on which
 the notice is mailed to me or delivered by other means.
 (1) 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.
 (2) Payment of Note Holder's Costs and Expenses
 If the Note Holder has requested 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 attorney's fees.
 (3) Notice of Default
 If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.
 (4) Default
 If I do not pay the full amount of my overdue payment of principal and interest, I will pay late charges promptly but only
 once on each late payment.
 5.000% of my overdue payment of principal and interest. I will pay late charges promptly but only
 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
 1.5

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Quarterly 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
 1.5% of my overdue payment of principal and interest. I will pay late charges 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 is due on that amount. That time must be at least 30 days after the date on which
 the notice is mailed to me or delivered by other means.
 (1) 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.
 (2) Payment of Note Holder's Costs and Expenses
 If the Note Holder has requested 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 attorney's fees.

6. LOAN CHARGES

If I am, which applies to the 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 the loan exceed the permitted limits,
 then: (a) any such loan charges shall be reduced by the amount necessary to reduce the charges to the permitted limits;
 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 repayment.

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:

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

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

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

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

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


TERRY LENNETTE GRANT (Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

(Seal)
Borrower

Pay to the order of
Deutsche Bank National Trust
Company, as Trustee

WITH FULL RESOURCES
NovaStar Mortgage, Inc.
A Virginia Corporation

David A. Pappas, Vice President

Larry E. Baraga, Vice President

Deutsche Bank National Trust Company,
as Trustee for the NovaStar Home Equity
Loan Asset-Backed Certificates, Series 2006-5

(Sign Original Only)

MULTISTATE ADJUSTABLE RATE NOTE, LIBOR 50-MONTH INDEX
(AS PUBLISHED IN THE WALL STREET JOURNAL - Single Family)
Female Moe MODIFIED INSTRUMENT Page 2 of 5

Form 3620 1/01
DoelMega@att.net 302-444-2244
www.doelMega.com

PREPAYMENT ADDENDUM TO NOTE

Loan Number: [REDACTED]

Date: SEPTEMBER 18, 2006

Borrower(s): TERRY LAMMIS GRANT

THIS PREPAYMENT ADDENDUM TO NOTE (the "Addendum") is made this 18th day of SEPTEMBER, 2006, and is incorporated into and shall be deemed to amend and supplement the certain promissory note (the "Note") made by the undersigned ("Borrower") in favor of NOVASTAR MORTGAGE, INC., a VIRGINIA CORPORATION.

("Lender") and dated the same date as this Addendum. Repayment of the Note is secured by a Mortgage, Deed of Trust, or Security Instrument ("Security Instrument") given by Borrower in favor of Lender and dated the same date as this Addendum. To the extent that the provisions of this Addendum are inconsistent with the provisions of the Note, the provisions of this Addendum shall supersede the inconsistent provisions of the Note.

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

Section 5 of the Note is amended to read in its entirety as follows:

5. BORROWER'S RIGHT TO PREPAY, PREPAYMENT CHANGE

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

The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under the Note. However, the Note Holder may apply my Prepayments to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayments to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no change in the due date of my monthly payment unless the Note Holder agrees in writing to those changes.

If the Note provides for changes in the interest rate, my partial Prepayment may reduce the amount of my monthly payments after the next Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase. It will be THIRTY-TWO (32) months from the date the Security Instrument is executed I make a full Prepayment or one or more partial Prepayments, I will pay a Prepayment charge in an amount equal to TWO percent (2.000 %) of the amount prepaid.

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


Borrower TERRY LENETTE GRANT Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Borrower Date

Prepared by: Nadine Alvarez
When Recorded Mail To:
Owen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409
Phone Number: 561-682-8835

ALLONGE

BOORROWERS: TERRY LENNETTE GRANT

PRESENTOWNER AND HOLDER: NOVASTAR MORTGAGE, INC

NOTE EXECUTION DATE: SEPTEMBER 18, 2006

NOTE AMOUNT: \$680,000.00

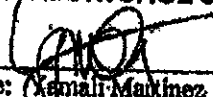
This allonge shall be annexed to the original Note, referenced above for purposes of transferring same from the present Owner and Holder of the Note, NOVASTAR MORTGAGE, INC ("Transferor") as of the date set forth below. As a result of said transfer, NOVASTAR MORTGAGE, INC has no further interest in the Note.

Date: JUNE 25, 2012

Pay to the order of

**DEUTSCHE BANK NATIONAL TRUST COMPANY AS
TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST,
SERIES 2006-5 NOVASTAR HOME EQUITY LOAN ASSET-
BACKED CERTIFICATES, SERIES 2006-5 without recourse,
representation or warranty express or implied this 25TH day of
JUNE, 2012**

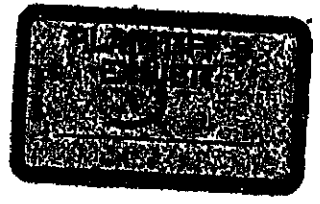
**NOVASTAR MORTGAGE, INC
BY IT'S ATTORNEY-IN-FACT
SAXON MORTGAGE SERVICES, INC**

By: 
Name: Kamali Martinez
Title: Vice President


ATTORNEY CODE: 00855

20
26
WDL
1627

BEAUFORT COUNTY SC-800
BK 02448 PG 823-0843
FILE NUM 2008077586
09/24/2006 10:22:54 AM
REC'D BY A JONES ROPY# 445810
RECORDING FEES 28.00



After Recording Return To:
NOVASTAR MORTGAGE, INC.
4059 KINROSS LAKES PARKWAY 2ND FLOOR
RICHFIELD, OHIO 44286
Loan Number: 05-A19021

[Specify Above This Line For Recording Data]

MORTGAGE

MIN: 100080190058808476

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 12, 13, 20 and 21. Certain words regarding the usage of words used in this document are also provided in Section 18.

- (A) "Security Instrument" means this document, which is dated **SEPTEMBER 18, 2006**, together with all Riders to this document.
(B) "Borrower" is **TERRY LENNETTE GRANT**;

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration System, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2025, Wilmington, DE 19801-2025, tel. (888) 676-MERS.

(D) "Lender" is **NOVASTAR MORTGAGE, INC.**

Lender is a **CORPORATION** organized and existing under the laws of **UNITED STATES**
Lender's address is **4059 KINROSS LAKES PARKWAY 2ND FLOOR, RICHFIELD, OHIO 44286**

(E) "Note" means the promissory note signed by Borrower and dated **SEPTEMBER 18, 2006**. The Note states that Borrower owes Lender **SIX HUNDRED EIGHTY THOUSAND AND 00/100 Dollars (U.S. \$ 680,000.00)** plus interest.

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **OCTOBER 1, 2036**.

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

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

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

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

PREPAYMENT RIDER TO SECURITY INSTR

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

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

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

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

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

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

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 2 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §1601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

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

TRANSFER OF RIGHTS IN THE PROPERTY

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

COUNTY of
(Type of Recording Jurisdiction)

of

BEAUFORT
(Name of Recording Jurisdiction)

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.
(STATE: SOUTH CAROLINA, COUNTY: BEAUFORT)

which currently has the address of

226 WILDHORSE ROAD

(Street)

HILTON HEAD ISLAND
(City)

South Carolina

29926

(Property Address):

Zip Code

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

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

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

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

1. **Payment of Principal, Interest, Borrower Fees, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Borrower Fees pursuant to Section 2. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 11. Lender may return any payment or partial payment if the payment or partial payment is insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payment in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim

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

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

3. **Funds for Borrowing:** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Fee") to provide for payment of amounts due for: (a) taxes and assessments on other than such other property, and

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

10. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

4. **Charges; Taxes.** Borrower shall pay all taxes, assessments, charges, fees, and impositions attributable to the Property which can obtain priority over this Security Instrument, including payments of ground rents on the Property, if any, and Commonly Assessed Taxes, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 2.

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

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, which include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any

form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

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

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

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

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

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

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

2007 CAROLINA Single Family Land Security Instrument - MERS DocType: Security Instrument
Form 2041 01/01 Page 6 of 14
www.docuSign.com

8. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for confirmation of a receiver, for appointment of a lien which may attach priority over this Security Instrument or to enforce lien or redemption), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or asserting the value of the Property, and securing and/or restoring the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorney's fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 8, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 8.

Any amounts disbursed by Lender under this Section 8 shall become a debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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

9. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loan reserve in lieu of Mortgage Insurance. Such loan reserve shall be non-refundable, notwithstanding the fact that the Loan is otherwise paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loan reserve. Lender can no longer require loan reserve payments if Mortgage Insurance coverage is in the original and the last period that Lender required provided by an insurer selected by Lender again becomes available. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loan reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 9 affects Borrower's obligation to pay interest at the rate provided in the Note.

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliates of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying

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

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

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

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

Notwithstanding the foregoing, Lender shall not be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 15, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

Deutsche Bank National Trust)
Company, as Trustee for NovaStar)
Mortgage Funding Trust, Series)
2006-5,)

Case No. 2010-CP-07-1690

Plaintiff,

vs.

Terry Lennette Grant; Catherine)
Alls; and Lindberg Bing,)

Defendants.)

ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT
(not ending action)

2014 FEB -7 PM 4:15
L. J. ROSENBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter was referred to me by order of reference on file herein. This matter came before me for a hearing on November 18, 2013, beginning at 1:30 p.m. on Plaintiff's Motion for partial summary judgment on its claims for Declaratory Judgment-Reformation of Mortgage, Declaratory Judgment-Easement by Necessity, and Declaratory Judgment-Easement Implied by Prior Use.

Demetri K. Koutrakos, Esquire appeared on behalf of the Plaintiff. Terry Lennette Grant appeared *pro se*.

Plaintiff has filed this action seeking to foreclose a mortgage it holds. Plaintiff has also asserted a claim seeking to reform the legal description in the mortgage arguing it describes property that none of the parties intended to encumber. In addition, because the property the parties intended to encumber is landlocked, Plaintiff has asserted two easement claims.

Plaintiff's Mortgage Reformation Claim

With respect to Plaintiff's Mortgage Reformation claims, the facts, viewed in the light most favorable to the non-moving party, are as follows:

On September 18, 2006, for value received, Terry Lennette Grant executed and delivered to NovaStar Mortgage, Inc. a certain promissory note ("Note") in the sum of \$680,000.00. Plaintiff's counsel presented to me the original Note for inspection at the hearing. Plaintiff is the current owner and holder of the Note.

To secure the payment of the Note, on September 18, 2006, Terry Lennette Grant executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., its successors and assigns, a mortgage covering the following described property:

All that certain piece, parcel or lot of land, including improvements thereon if any, situate and lying on Hilton Head Island, Beaufort County, South Carolina, more particularly shown and identified as formerly part of R51 0-007-000-017B 0000, being 0.38 Acres, on that certain Plat entitled "A Recombination Plat of 0.10 Acres and 0.38 Acres, a Section of Wild Horse Road Area" dated March 10, 2004, prepared by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R.L. S. #11905, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 98 at Page 75.

ALSO

All that certain piece, parcel or lot of land, including improvements thereon if any, situate and lying on Hilton Head Island, Beaufort County, South Carolina, more particularly shown and identified as formerly part of R51 0-007-000-018A 0000, being 0.10 Acres, on that certain Plat entitled "A Recombination Plat of 0.10 Acres and 0.38 Acres, a Section of Wild Horse Road Area" dated March 10, 2004, prepared by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R.L. S. #11905, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 98 at Page 75.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

The mortgage was recorded September 26, 2006 in the Office of the Register of Deeds for Beaufort County in Book 2448 at Page 823 ("Mortgage").

By Assignment of Mortgage dated December 2, 2009, and recorded December 10, 2009,

in Book 2915 at Page 902, in the Office of the Register of Deeds for Beaufort County, Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc. assigned the Note and Mortgage to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5, the present lienholder and Plaintiff herein.

Plaintiff has submitted clear and convincing evidence showing that, due to inadvertence, scrivener's error, and/or mutual mistake, the Mortgage did not accurately describe the property the parties intended to encumber. It was only through inadvertence, scrivener's error, and/or mutual mistake that the legal description attached to the Mortgage referenced parcels containing 0.38 acres and 0.10 acres. That property was not owned by Defendant Terry Lennette Grant.

Based upon the appraisal obtained at the origination of the subject loan, Defendant Terry Lennette Grant's admissions (Grant Dep. pp. 92, 119), the testimony of the closing attorney (Wolf Dep. pp. 16-25), and communications made at the time of the granting of the Mortgage between the borrower, closing attorney, and the lender (Wolf Dep. pp. 16-17, Ex. 3), the property designated as Parcel A, containing 0.46 acres, as further described below, as well as any easements necessary for the beneficial enjoyment of Parcel A, containing 0.46 acres, was the property intended to be encumbered by the Mortgage.

On or about April 18, 2013, a new survey was drawn by Donald A. Cook and recorded in the Office of the Register of Deeds for Beaufort County in Plat Book 136 at Page 139 ("2013 Cook Survey") (Grant Dep. Ex 9). The 2013 Cook Survey shows Parcel A, containing 0.46 acres, which is the property the parties intended to encumber by way of the Mortgage.

The 2013 Cook Survey describes the same Parcel A, containing 0.46 acres, as shown on that survey prepared for Terry L. Grant by Donald A. Cook recorded December 31, 2003 in the

Office of the Register of Deeds for Beaufort County in Plat Book 96 at Page 191 (Grant Dep. Ex 6) ("2003 Cook Survey").

As a result of the aforementioned inadvertence, scrivener's error, and mutual mistake, the Mortgage's legal description is incorrect. It was the intent of the parties that the legal description of the Mortgage should have read and should read as follows ("Mortgaged Property"):

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191.

ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.P.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the

Sloan Depo Ex 4 - Pg 4

office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

TMS #: R510 007 000 018A 0000

Property Address: 226 Wildhorse Road, Hilton Head Island, SC

A court of equity will reform a written instrument to conform to the real intention of parties where there has been mutual mistake as to terms. *Central Ice Cream & Candy Co. v. Home Ins. Co.*, 171 S.C. 162, 171 S.E. 797 (1933). A "mutual mistake" is one whereby both parties intended a certain thing and by mistake in the drafting did not get what both parties intended: *Commercial Union Assur. Co. v. Castle*, 283 S.C. 1, 320 S.E.2d 488 (Ct. App. 1984). Parol evidence is admissible to prove mutual mistake as grounds for reformation of instrument. *Southern Realty and Construction Co. v. Bryan*, 290 S.C. 302, 350 S.E.2d 194 (Ct. App. 1986). A mutual mistake is one whereby both parties intended a certain thing and by mistake in the drafting did not get what both parties intended. *Sims v. Tyler*, 276 S.C. 640, 281 S.E.2d 229 (1981); see also *Jordan v. Foster*, 264 S.C. 382, 215 S.E.2d 436 (1975) (Supreme Court upheld Master's reformation of option contract due to scrivener's error of attorney drafting the option contract).

There are no genuine issues of material fact. As a result of the aforementioned mistake, inadvertence, and scrivener's error, all admitted by Defendant Terry Lennette Grant and the closing attorney, and as shown by the undisputed documentary evidence provided to me, Plaintiff is entitled to an order and declaratory judgment, pursuant to S.C. Code Ann. §§ 15-53-10, et seq. and Rule 57 of the South Carolina Rules of Civil Procedure, declaring the Mortgage is reformed such that it describes and is a lien on the Mortgaged Property, which lien shall relate back to the date of the execution of the Mortgage.

Easement Claims

Plaintiff has also asserted claims seeking an easement by necessity and an easement implied by pre-existing use. With respect to Plaintiff's Easement claims, the facts viewed in the light most favorable to the non-moving party, are as follows:

At the time Defendant Terry Lennette Grant gave the Mortgage, she owned Parcel A containing 0.46 acres and parcels described as Parcel B and Access & Drain Field Easement on the 2003 Cook Survey and the 2013 Cook Survey. Parcel A containing 0.46 acres does not have access to the nearest public road. Instead, one must travel over and across Parcel B and Access & Drain Field Easement, owned by Defendant Terry Lennette Grant, to access the nearest public road. Defendant Terry Lennette Grant had constructed an asphalt driveway that crosses over Parcel B and Access & Drain Field Easement as shown by surveys in existence at the time she gave the Mortgage. (See Plats and surveys attached as Exhibit E to Plaintiff's Motion- Plat Book 81 at 137 recorded July 18, 2001 and Plat Book 86 at Page 17 recorded April 1, 2002).

In giving the Mortgage, Defendant Terry Lennette Grant severed title to the property she owned. At the time Defendant Terry Lennette Grant severed title to the property, it was actually and reasonably necessary that there be access to Parcel A containing 0.46 acres over and across Parcel B and Access & Drain Field Easement. It is the only way to access Parcel A containing 0.46 acres from a public road (Grant Dep. pp. 108-109, 141, Exs. 1, 6, 9).

The legal requirements to establish an easement by necessity are: (1) unity of title; (2) severance of title; and (3) necessity. *Graham v. Causey*, 284 S.C. 339, 326 S.E.2d 412, 413 (Cl. App. 1985).

By severing title to the property, Defendant Terry Lennette Grant had an obligation to provide to her mortgagee and grantee, a right-of-way over and across Defendant Terry Lennette

Grant's adjacent land, Parcel B and Access & Drain Field Easement, to a public road, Wild Horse Road.

Even though Plaintiff has met all the elements of its easement by necessity claims, I question whether such relief should be granted creating a new easement because there already is in existence a platted easement that benefits Plaintiff. The property the parties intended to encumber and to be described in the Mortgage is identified as Parcel A in the 2003 Cook Survey, but it already creates an access and drain field easement. I find and conclude Plaintiff and any successful bidder at a foreclosure sale are entitled to the benefit of the access and drain field easement shown both on the 2003 Cook Survey and the 2013 Cook Survey. Therefore, Plaintiff and any successful bidder at a foreclosure sale are not entitled to an easement by necessity to establish an easement that already exists for their benefit.

The doctrine of an easement implied by prior use provides that, where an apparently permanent and obvious servitude is imposed on one part of an estate in favor of another part of the same estate or property, which servitude is in use at the time of severance and is necessary for the reasonable enjoyment of the other part, on a severance of the ownership a grant of the right to continue such use arises by implication of law. 25 Am. Jur. 2d *Easements and Licenses* §. 22 (2006). The elements that must be proved to establish an easement implied by prior use are as follows: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. *Boyd v. Bellsouth*, 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006).

During the time Defendant Terry Lennette Grant owned both Parcel A containing 0.46 acres and parcels described as Parcel B and Access & Drain Field Easement, and at the time she severed title as referenced above, she used Parcel B and Access & Drain Field Easement to access Parcel A containing 0.46 acres from Wild Horse Road. She has used the asphalt drive as shown on the plats to access her property at the time of severance and today, as that is the only way to access the property (See 2013 Cook Survey; Plats and surveys attached as Exhibit E to Plaintiff's Motion; and Grant Dep. pp. 107-109, 141). That prior use was not merely temporary or casual; that prior use was apparent or known, the prior use was necessary in that there could be no other reasonable mode of enjoying Parcel A containing 0.46 acres without such prior use, and Defendant Terry Lennette Grant indicated an intent to continue the prior use after she severed title to the property. *Id.*

While I have already found there exists an access and drain field easement and the Plaintiff and any successful bidder at a foreclosure sale are entitled to the benefit of the access and drain field easement shown on the 2013 Cook Survey and the 2003 Cook Survey, the issue created by this cause of action relates to the concrete and asphalt drive over Parcel B that is in use, provides physical access to the property, and does not traverse entirely over the access and drain field easement.

As mentioned above, Plaintiff, as mortgagee and grantee, already has an easement over and across the area designated as Access & Drain Field Easement, which easement shall run with the land. However, I also find and conclude Plaintiff and any successful bidder at a foreclosure sale are also entitled to an easement for ingress and egress over and across the concrete and asphalt drive shown on the 2013 Cook Survey.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Plaintiff is granted summary judgment on its mortgage reformation claim.
2. The legal description contained in the Mortgage recorded September 26, 2006 in the Office of the Register of Deeds for Beaufort County in Book 2448 at Page 823 is hereby reformed, as of the date of its execution, such that it describes, encumbers, and is a lien on the following described property:

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191.

ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.P.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the

office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

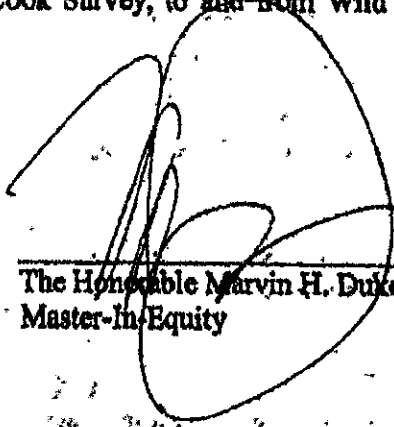
TMS #: R510 007 000.018A.0000

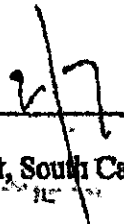
Property Address: 226 Wildhorse Road, Hilton Head Island, SC

3. Plaintiff, as mortgagee and grantee, as well as any purchasers at any foreclosure sale, possess an easement for drainage and ingress, egress, and access, both vehicular and pedestrian, over and across the property designated as Access & Drain Field Easement, to and from Wild Horse Road, as shown on the 2003 Cook Survey and the 2013 Cook Survey, which easement runs with the land.

4. Plaintiff, as mortgagee and grantee, as well as any purchasers at any foreclosure sale, possess an easement for ingress, egress, and access, both vehicular and pedestrian, over and across the asphalt drive as shown on the 2013 Cook Survey, to and from Wild Horse Road, which easement runs with the land.

AND IT IS SO ORDERED.


The Honorable Marvin H. Dukes, III
Master-In-Equity


Beaufort, South Carolina

2014

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-07-1690

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5

Terry Lennette Grant; Catherine Alls; and
Lindberg Bing

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Demetri K. Koutrakos, Esquire

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41, SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(f), SCRPC; ☐ 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)
Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5	Terry Lennette Grant; Catherine Alls; and Lindberg Bing	\$N/A
		\$
		\$

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

2014 FEB -7 PM 4:15
CLERK
COURT
S.C.

All that certain piece, parcel or tract of land, together with the improvements thereon, situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, designated as Parcel A and containing 0.46 acres as shown on a survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139. This being the same property designated as Parcel A and containing 0.46 acres as shown on that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191.

ALSO:

A non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through those certain parcels owned by Terry Lennette Grant described as Parcel B and Access & Drain Field Easement on both that survey entitled "3.99 AC., Wild Horse Road," prepared for Ms. Terry L. Grant by Donald R. Cook, Jr., S.C.P.L.S. #19010, dated December 22, 2003 and recorded December 31, 2003 in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 96 at Page 191 and that survey entitled "An Asbuilt Survey of Parcel A, Wild Horse Road," prepared for Terry L. Grant by Cook Land Surveying, by Donald R. Cook, Jr., S. C. P. L. S. #19010, dated February 13, 2013 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 136 at Page 139, including without limitation a non-exclusive, appurtenant, assignable easement and right of way, which shall run with the title to Parcel A containing 0.46 acres, referenced above, or any portions thereof, for ingress, egress and access of vehicular and pedestrian traffic to and from Wild Horse Road over, across, and through the "asphalt drive" as shown on the survey recorded in Plat Book 136 at Page 139.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

TMS #: R510 007 000 018A 0000

Property Address: 226 Wildhorse Road, Hilton Head Island, SC

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.

Circuit Court Judge

Judge Code

Date

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:

Demetri K. Koutrakos, Esquire

Joanne A. Tomasini-Muniz, Esquire

Terry Lennette Grant, Defendant

P. O. Box 21936, Hilton Head Island, SC 29925

30480.F302278

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-S,

PLAINTIFF,

vs.

Terry Lennette Grant; Catherine Alls; and
Lindberg Bing.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2010-CP-07-1690

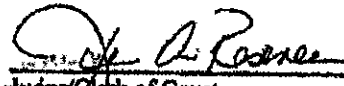
(NON-JURY MORTGAGE FORECLOSURE)

ORDER OF PUBLICATION

11 JUN 28 PM 4:00
Kelli Ann Roseneau
Clerk of Court
Beaufort County, S.C.

IT APPEARING to my satisfaction from the Affidavit and the pleadings previously filed herein, that a cause of action for the foreclosure of a mortgage pertaining to certain real property located in Beaufort County, South Carolina, exists and that the Defendant, Lindberg Bing, could not be located and, therefore, personal service cannot be obtained, now, on motion of the plaintiff, it is hereby

ORDERED that service of the Amended Summons, Amended Complaint and Amended Lis Pendens, in this action be made upon the above-named defendant by publication of the Amended Summons, together with the Notices, once a week for three (3) consecutive weeks in *Island Packet/Beaufort Gazette*, which is the newspaper most likely to grant notice to the defendant and is printed and published in the County and State aforesaid; and that a copy of the Amended Summons, Amended Complaint and Amended Lis Pendens be mailed to said defendant at the last known address: 6188 Oxon Hill Road, Oxon Hill, MD20745.

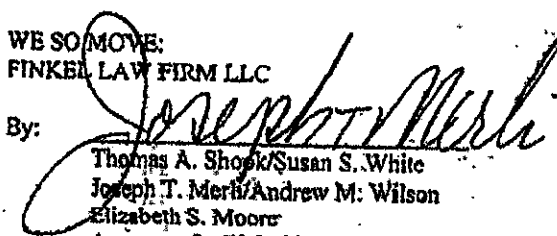

Judge Clerk of Court

Beaufort, South Carolina

6-21-2011

WE SO MOVE:
FINKEL LAW FIRM LLC

By:


Thomas A. Shook/Susan S. White
Joseph T. Merli/Andrew M. Wilson
Elizabeth S. Moore
Attorneys for Plaintiff

Page 1 of 2
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5,

PLAINTIFF,

vs.

Terry Lennette Grant; Catherine Alls; and
Lindberg Bing.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 2010-CP-07-1690

(NON-JURY MORTGAGE FORECLOSURE)

AFFIDAVIT

11 JUN 28 PM 4:00
RECEIVED
CLERK OF COURT
S.C.

PERSONALLY appeared before me, the undersigned, who being duly sworn, says that:

1. She/he is one of the attorneys for the Plaintiff in the above-entitled action.
2. This action was brought for the purpose of having the rights of the parties herein to the real-estate described in the said action adjudicated and to forever bar any and all claims, rights, titles, interest, estates and/or liens, other than those of the plaintiff, in, or upon the said real estate; that a part of the relief which the Plaintiff demands in this action is to exclude the defendant, Lindberg Bing from any interest in the said real estate; and that the said defendant, therefore, is a proper party to this action.
3. After diligent and reasonable search, the aforementioned defendant could not be located for service at the last known address: 6188 Oxon Hill Road, Oxon Hill, MD 20745, or elsewhere.
4. Deponent is informed and believes that under the circumstances the Court should issue an Order for service upon said defendant by publication of a copy of the Amended Summons and Amended Lis Pendens in this case according to the publication statutes of the State of South Carolina.

FINKEL LAW FIRM LLC
Post Office Box 71727
North Charleston, South Carolina 29415
(843) 577-5460

By:

Joseph T. Merli
Thomas A. Shook/Susan S. White
Joseph T. Merli/Andrew M. Wilson
Elizabeth S. Moore
Attorneys for Plaintiff

SWORN TO AND SUBSCRIBED before me on
This 23 day of May, 2011

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: Feb, 23, 2021

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5.

PLAINTIFF,

vs.

Terry Lennette Grant; Catherine Allis; and
Lindberg Bing.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS
C/A NO: 10-CP-87-1690

AMENDED
COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE
AND REFORMATION)

11 FEB 19 PM 11:18

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.
2. The Plaintiff is the servicer and/or mortgagee of the note and mortgage covering real property located in Beaufort County, which is the subject of the within captioned action, and is entitled to enforce same.
3. The defendant(s) named herein may have an interest in the property that is the subject of this action.
4. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).
5. Upon information and belief, the defendants Terry Lennette Grant, Catherine Allis and Lindberg Bing are not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003).

FOR A FIRST CAUSE OF ACTION

(Reformation of Legal Description contained in Plaintiff's Mortgage)

6. The previous allegations are incorporated herein as if repeated verbatim.
7. On or about September 18, 2006, for value received, Terry Lennette Grant executed and delivered to NovaStar Mortgage, Inc. a certain promissory note in the sum of \$680,000.00, together with interest thereon at an adjustable rate pursuant to the terms of the note.

8. To secure the payment of the said note and debt secured thereby, and in accordance with the terms and conditions thereof, on September 18, 2006, Terry Lennette Grant executed and delivered to Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc., its successors and assigns, a mortgage covering the following described property:

All that certain piece, parcel or lot of land, including improvements thereon if any, situate and lying on Hilton Head Island, Beaufort County, South Carolina, more particularly shown and identified as formerly part of R51 0-007-000-0178 0000, being 0.38 Acres, on that certain Plat entitled "A Recombination Plat of 0.10 Acres and 0.38 Acres, a Section of Wild Horse Road Area" dated March 10, 2004, prepared by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R.L. S. #11905, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 98 at Page 75.

ALSO

All that certain piece, parcel or lot of land, including improvements thereon if any, situate and lying on Hilton Head Island, Beaufort County, South Carolina, more particularly shown and identified as formerly part of R51 0-007-000-018A 0000, being 0.10 Acres, on that certain Plat entitled "A Recombination Plat of 0.10 Acres and 0.38 Acres, a Section of Wild Horse Road Area" dated March 10, 2004, prepared by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R.L. S. #11905, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 98 at Page 75.

SUBJECT to all easements, rights of way, covenants and restrictions, if any, more particularly identified in the above referenced Plat or otherwise recorded in the office of the Register of Deeds for Beaufort County, South Carolina, which are applicable to the above described property.

9. Thereafter the mortgage was recorded in the Office of the Register of Deeds for Beaufort County in book 2448 at page 823 on September 26, 2006.

10. The mortgage constitutes a first mortgage lien on the subject property.

11. From information obtained from the public records of Beaufort County, this was conveyed as follows:

(a) By deed dated August 9, 2001, and recorded August 24, 2001 in Book 1453 at Page 54, and Corrected Deed recorded February 10, 2004 in Book 1908 at Page 2034, Terry Grant Enterprises, Inc. conveyed to Terry Lennette Grant all that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 1.95 acres, more or less,

(b) By Quit Claim Deed dated March 17, 2004, and recorded March 18, 2004 in Book 1924 at Page 2538 Lindberg Bldg intended to convey to Terry Lennette Grant all of Lot identified as R510-007-000-017B for a total of 1.54 Acres, Save and Except 0.38 acres.

- (c) By Quit Claim Deed dated March 17, 2004 and recorded March 18, 2004 in Book 1924 at Page 2535, Terry Lennette Grant intended to convey to Lindberg Bing a 0.10-acre portion of Lot identified as R510-007-000-018A.
- (d) Thereafter by Deed dated March 7, 2005, and recorded November 24, 2005 in Book 2272 at Page 1350, Lindberg Bing conveyed to Joseph H. Seguin and Dawn R. Seguin both the 0.10 Acres, and 0.38 Acres on that certain Plat entitled "A Recombination Plat of 0.10 Acres and 0.38 Acres, a Section of Wild Horse Road Area" recorded in Plat Book 98 at Page 75.

12. It was only through inadvertence and mutual mistake that the legal description attached to Plaintiff's mortgage on Exhibit "A" referenced both the 0.38 Acres and 0.10 Acres owned by Lindberg Bing.

13. Plaintiff is informed and believes, based upon the appraisal, and the defendant Terry Lennette Grant's appearance at the hearing held on September 17, 2010 that the 5.01 acres owned by the defendant Terry Lennette Grant, was the property intended to be encumbered by Plaintiff's mortgage.

14. Plaintiff asks the Court to grant reformation of the legal description contained in the mortgage to comport with the parties intentions and public records described as follows:

All that certain place, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 3.95 Acres, on A Boundary Plat of R500-007-000-018A, a section of Wild Horse Road Area, prepared for Mr. Terry Grant by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R. L. S. #11905, dated February 5, 2004 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 97 at Page 107.

ALSO:

All that certain place, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 1.54 Acres, on A Boundary Plat of R500-007-000-017B, a section of Wild Horse Road Area, prepared for Mr. Lindberg Bing by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R. L. S. #11905, dated February 5, 2004 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 97 at Page 106.

EXCEPTING THEREFROM:

All that certain place, parcel or lot of land, including improvements thereon if any, situate and lying on Hilton Head Island, Beaufort County, South Carolina, more particularly shown and identified as formerly part of R510-007-000-018A 000, being 0.10 Acres, on that certain Plat entitled "A Recombination Plat of 0.10 Acres and 0.38 Acres, a Section of Wild Horse Road Area" dated March 18, 2004, prepared by Coastal Surveying Co., Inc., by Michael R. Dunnigan, S. C. R. L. S. #11905, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 98 at Page 75, and being a portion of that certain place, parcel or lot of land more particularly shown and identified as N/F Terry Grant, R510-007-000-018A on said Plat.

ALSO:
All that certain piece, parcel or lot of land, including improvements thereof if any, situate and lying on Hilton Head Island, Beaufort County, South Carolina, more particularly shown and identified as formerly part of R510 007 000 017B 0000, being 0.38 Acres, on that certain Plat entitled "A Recombination Plat of 0.40 Acres and 0.38 Acres, a Section of Wild Horse Road Area" dated March 10, 2004, prepared by Coastal Surveying Co., Inc., by Michael R. Dunigan, S. C. R. L. S. #11905, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 98 at Page 75, and being a portion of that certain piece, parcel or lot of land more particularly shown and identified as N.F. Lindberg Bldg. R510-007-000-017B on said Plat.

TMS #: R510 007 000 018A 0000

Property Address: 226 Wildhorse Road, Hilton Head Island, SC

FOR A SECOND CAUSE OF ACTION

(Foreclosure of Mortgage)

15. The previous allegations are incorporated herein as if repeated verbatim.
16. By Assignment of Mortgage dated December 2, 2009, and recorded December 10, 2009, in Book 2915 at Page 902, in the Office of the Register of Deeds for Beaufort County, Mortgage Electronic Registration Systems, Inc. as nominee for NovaStar Mortgage, Inc. assigned the subject note and mortgage to Deutsche Bank National Trust Company, as Trustee for NovaStar Mortgage Funding Trust, Series 2006-5, the present lienholder and Plaintiff herein.
17. Pursuant to the Administrative Order of the Chief Justice, 2009-05-22-01, the loan that is subject of this action is held by a participant in the Home Affordable Modification Program (HAMP), however the loan is not subject to modification under the HAMP because all efforts have been exhausted without resulting in a modification.
18. Pursuant to the terms of the mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.
19. According to the terms of said mortgage, and as additional security, Terry Lennette Cimini assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors and assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, towards the debt secured by said mortgage.

20. The monthly payments due on said note and mortgage are in default since January 1, 2008, although demand for payment thereof has been made and the plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of January 1, 2008, the sum of \$ 672,991.46, together with interest at an adjustable rate pursuant to the terms of the note, from December 7, 2007, and also for the costs and disbursements of this action, including attorney's fees.

FORA BOTH CAUSES OF ACTION

21. The previous allegations are incorporated herein as if repeated verbatim.
22. Pursuant to Sections 37-3-103, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a 'consumer loan' for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required.
23. The Plaintiff specifically demands a deficiency judgment against the defendant Terry Lennette Grant, pursuant to S.C. Code Ann. Sections 29-3-660, (1976), for any deficiency in this action remaining after sale of the mortgaged premises. *The Plaintiff reserves its right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale herein.*
24. The following Defendants claim, or may claim a lien upon or interest in the subject property as follows:
- (a) Lingberg Bing, by virtue of the Quit Claim Deed dated March 17, 2004, and recorded March 18, 2004, in Book 1924 at Page 2538, which was very vague in describing the 1.54 Acres, Save and Except 0.38 conveyed to Terry Lennette Grant.

The Court declare that the Quit Claim Deed recorded in Book 1924 at Page 2538 was a valid transfer of 1.54 Acres, Save and Except 0.38 to the defendant Terry Lennette Grant and that the defendant Lingberg Bing no longer has any interest in the subject property.

- (b) Catherine Alis claims, or may claim a lien upon or interest in the subject property by virtue of a judgment against Terry Grant, filed August 5, 2009, Judgment Roll No. 2009-CP-07-1098, in the amount of \$6,600.00.

The interest or lien of the above Defendant, if any, is junior and subordinate to the plaintiff's first mortgage lien.

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

1. The amount due upon the said note and mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.
2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any

taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

3. The Court grant reformation of the legal description contained in Plaintiff's mortgage to encumber the property described in Paragraph 14 *Supra* to comport with the parties' intentions and the public records.

4. The Court declare that the Quit Claim Deed recorded in Book 1924 at Page 2538 was a valid transfer of 1.54 Acres, Save and Except 0.38 to the defendant Terry Lennette Grant and that the defendant Lingberg Bing no longer has any interest in the subject property.

5. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

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

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

6. Plaintiff have deficiency judgment against the defendant Terry Lennette Grant, pursuant to Section 29-3-660 of the Code of Laws of South Carolina (1976) for any deficiency remaining after the sale of the mortgaged property. *The Plaintiff may withdraw its demand for deficiency judgment at any time prior to foreclosure sale.*

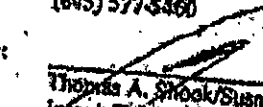
7. An Order be entered directing and empowering the Sheriff of Beaufort County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property heretofore described should the same become necessary.

8. An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the plaintiff's mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means.

9. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents, issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

10. An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency.
11. An Order be entered for such other and further relief as may be just and proper.

PINKEL LAW FIRM LLC
P.O. Box 71727
N. Charleston, SC 29415
(843) 577-5460

By: 
Thomas A. Shook/Suana S. White
Joseph T. Merrill/Andrew M. Wilson
Elizabeth E. Moore
Attorneys for Plaintiff

April 13, 2011

11560.537878

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2005-5,

PLAINTIFF,

vs.

Terry Lonneta Grant; and Catherine Ails,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
C/A NO: 10-CP-07-1690

(NON-JURY MORTGAGE FORECLOSURE)

ORDER OF REFERENCE

The within action being for foreclosure of a mortgage, upon motion of plaintiff's counsel, it is
ORDERED that this case is referred, pursuant to Rule 53 SCRCP, to Marvin H. Duker, III, Master
in Equity, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have,
including but not limited to, making findings of fact and conclusions of law; directing entry of final
judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders,
supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of
property and appraisal proceedings under Section 29-3-360, et seq. of the South Carolina Code, with any
appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South
Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day
other than the regular judicial sale day.

IT IS SO ORDERED.

Marvin H. Duker, III
Judge/Clerk of Court

Beaufort, South Carolina
10-15, 2010

WE SO MOVE:

RINKEL LAW FIRM LLC

P.O. Box 71727

North Charleston, SC 29405

(843) 577-3460

Joseph T. Merli
Beverly J. Finkel/Thomas A. Shook

Susan S. White/Joseph T. Merli

Andrew M. Wilson

Attorneys for Plaintiff

2010 JUN 15 PM 1:10
JEFFREY A. ROSENBAUM
CLERK OF COURT
BEAUFORT COUNTY, S.C.

1140 F102878
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5,

PLAINTIFF,

vs.

Terry Lennette Grant; and Catherine Allis,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
C/A NO: 10-CP-07-1690

(NON-JURY MORTGAGE FORECLOSURE)

ORDER OF REFERENCE

The within action being for foreclosure of a mortgage, upon motion of plaintiff's counsel, it is
ORDERED that this case is referred, pursuant to Rule 53 SCRCP, to Marvin H. Dukes, III, Master
in Equity, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have,
including but not limited to, making findings of fact and conclusions of law; directing entry of final
judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders,
supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of
property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any
appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South
Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day
other than the regular judicial sale day.

IT IS SO ORDERED.


Judge/Clerk of Court

Beaufort, South Carolina
6-15, 2010

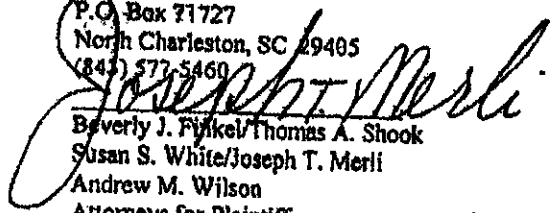
WE SO MOVE:

FINKEL LAW FIRM LLC

P.O. Box 71727

North Charleston, SC 29405

(843) 572-5460


Beverly J. Finkel/Thomas A. Shook

Susan S. White/Joseph T. Merli

Andrew M. Wilson

Attorneys for Plaintiff

2010 JUN 15 PM 1:10
BEAUFORT COUNTY, S.C.
CLERK OF COURT

51280.F007872

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as
Trustee for NovaStar Mortgage Funding Trust,
Series 2006-5,

PLAINTIFF,

vs.

Terry Lennette Grant; and Catherine Ails,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

C/A NO: 10-CP-07-1690

(NON-JURY MORTGAGE FORECLOSURE)

ORDER OF PUBLICATION

2008 MAY 10 PM 4:31
CLERK OF COURT
BEAUFORT COUNTY, SC

IT APPEARING to my satisfaction from the Affidavit and the pleadings previously filed herein, that a cause of action for the foreclosure of a mortgage pertaining to certain real property located in Beaufort County, South Carolina, exists and that the Defendant, Terry Lennette Grant, could not be located and, therefore, personal service cannot be obtained, now, on motion of the plaintiff, it is hereby

ORDERED that service of the Summons, Complaint and Lis Pendens, in this action be made upon the above-named defendant by publication of the Summons, together with the Notices, once a week for three (3) consecutive weeks in ~~Beaufort-Gazette~~ ^{Island Packet}, which is the newspaper most likely to grant notice to the defendant and is printed and published in the County and State aforesaid; and that a copy of the Summons, Complaint and Lis Pendens be mailed to said defendant at the last known address: 226 Wildhorse Rd., Hilton Head Island, SC 29926 and PO Box 21936, Hilton Head Island, SC 29925.


Judge/Glerk of Court.

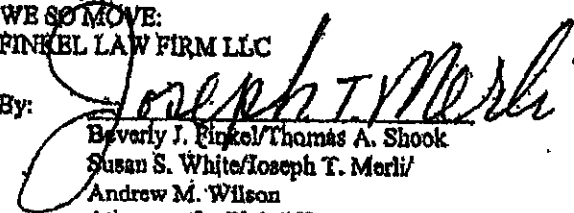
Beaufort, South Carolina

5/10 2010

WE SO MOVE:

FINKEL LAW FIRM LLC

By:


Beverly J. Finkel/Thomas A. Shook
Susan S. White/Joseph T. Merli/
Andrew M. Wilson
Attorneys for Plaintiff



Garber

Reporting Service
& Videoconferencing

1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

WILLIAM HENRY SLOAN, JR.

January 13, 2023

Deutsche Bank National Trust Company, etc.

vs

Terry Lynnette Grant

2016-CP-07-01466

REPORTER: Marcie L. Smith

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) CASE NO.: 2016-CP-07-01466
3 Deutsche Bank National Trust)
4 Company as Trustee for)
5 NovaStar Mortgage Funding)
6 Trust, Series 2006-5)
7 Novastar Home Equity Loan)
8 Asset-Backed Certificates,)
9 Series 2006-5,)
10 Plaintiff,)
11 v.)
12 Terry Lynnette Grant,)
13 Defendant.)
14

15 VIDEO CONFERENCE DEPOSITION OF

16 WILLIAM HENRY SLOAN, JR.

17 *****

18 Friday, January 13, 2023

19 10:17 a.m. - 1:17 p.m.

20 The deposition of William Henry Sloan, Jr., was
21 taken before Marcie L. Smith, a notary public in and for the
22 State of South Carolina, commencing on Friday, January 13,
23 2023, in Summerville, South Carolina, pursuant to Notice of
24 Deposition and/or agreement of counsel.
25

APPEARANCES

Attorney for Plaintiff:

Chad W. Burgess, Esquire
BROCK & SCOTT
3800 Fernandina Road
Columbia, South Carolina 29201
Chad.burgess@brockandscott.com

Also Present:

Dr. Terry L. Grant, appearing Pro Se
terrygrantseries@gmail.com

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Plaintiff's Exhibit Number 21 56

(Satisfaction)

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

WILLIAM HENRY SLOAN, JR., being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. BURGESS:

Q. Just a few pieces of housekeeping. This is the deposition of William H. Sloan. This is for case number 2016-CP-07-1466, pending in the Beaufort County Court of Common Pleas. It is the case of Deutsche Bank National Trust Company as trustee for Novastar Mortgage Funding Trust, series 2006-5, Novastar Home Equity loan asset-backed certificates, series 2006-5 as plaintiff, versus

1 defendant Terry Lynnette (sic) Grant as
2 defendant. Mr. Sloan, have you ever given a
3 deposition before?

4 A. Yes.

5 Q. And can you tell me what type of case it was.

6 A. There was -- I gave two depositions. I gave a
7 deposition in 1999 in an auto wreck case, and I
8 gave a deposition in a 2013 attorney malpractice
9 case.

10 Q. Okay, so generally you're familiar with how
11 depositions work and things of that nature,
12 correct?

13 A. Yes.

14 Q. Not your first rodeo, I guess I would say. The
15 oath you just took is the same as you would take
16 -- and this is more meant for Miss Grant. As if
17 you were sitting in a courtroom before a judge
18 and jury. So you have the same obligations to
19 tell the truth. And of course you understand
20 this, correct?

21 A. Yes.

22 Q. Okay, and I see you're here by yourself. Do you
23 intend to proceed today without the assistance of
24 an attorney on your behalf?

25 A. I apologize.

- 1 Q. No worries.
- 2 A. I'm sorry. Can you repeat the question, please.
- 3 Q. Absolutely. And I was just going to get to that.
- 4 If there's any time, either based on the
- 5 technology or, you know, any circumstance where
- 6 you don't understand the question I'm asking or
- 7 you don't hear it. Certainly ask me to state it
- 8 again. And I'm happy to do so. As I was saying,
- 9 I see you're here by yourself today. Do you
- 10 intend to proceed today without the assistance of
- 11 an attorney on your behalf?
- 12 A. Yes.
- 13 Q. And it may have already been mentioned when
- 14 everybody first joined in, but the court reporter
- 15 is taking everything down that's being said in
- 16 the room. And although she's incredibly
- 17 talented, it's difficult to take down everything
- 18 when two or more people are talking. So let's
- 19 try to speak one at a time. Can we agree to do
- 20 that?
- 21 A. Yes.
- 22 Q. And please allow me to ask the entire question.
- 23 Even if you think you know what the question is
- 24 before I ask it. Or before you answer it. I
- 25 understand we all have that tendency to nod or

1 give nonverbal answers or to try and speak as
2 soon as we think we know what's being asked. But
3 I would just ask that you make sure that all the
4 answers that you give are verbal and that you
5 wait till the end of the question. Having given
6 a deposition, I'm sure you understand that. Can
7 we agree on that?

8 A. Yes.

9 Q. And again, like I said, please let me know if you
10 don't understand the question. I'll try to
11 clarify or re-ask it or rephrase it for any
12 reason. If you give an answer, I'm going to
13 assume that you understood what I was asking.
14 Can we agree on that?

15 A. Yes.

16 Q. Are you under the influence of any medication or
17 substance that would prevent you from testifying
18 accurately and truthfully today?

19 A. No.

20 Q. If you need to take a break at any point or
21 anything like that, just let me know. Happy to
22 oblige. Otherwise, I'm going to try to get
23 through quickly. I don't anticipate we'll even
24 get to lunch. But if you wish to work through a
25 lunch break, I'm happy to do that and, you know,

1 proceed from there or to accommodate anyone in
2 the room. If someone needs a bathroom break or
3 anything, just let me know. I do ask that if we
4 do that, let's finish the question that we're on
5 and then, you know, we can take any breaks or
6 anything like that. Can we agree on that?

7 A. Yes.

8 Q. All right. So just going back to some
9 background. Can you please state your full name
10 for the record.

11 A. William, W-i-l-l-i-a-m. Henry, H-e-n-r-y.
12 Sloan, S-l-o-a-n, Jr. William Henry Sloan, Jr.

13 Q. Thank you. And are you currently employed?

14 A. I am self-employed. Sloan Law Firm, PA.

15 Q. And I was just going to get to that. You're a
16 licensed attorney in the state of South Carolina.
17 Is that correct?

18 A. My date of admission is November 13th, 2001. My
19 bar number is 69630.

20 Q. Okay. And so you're approximately 22 years, if
21 my math is correct, in the practice of law?

22 A. Yes.

23 Q. And the whole time have you been a solo
24 practitioner?

25 A. I worked for various firms from 2001 until 2006.

14 in the summer of 2002. I worked for Nations
15 Title, Tom Hall, from 2002 to early 2003. I
16 worked for Forquer Green and Lattimore from --
17 for about a few months during 2003. I worked for
18 a law firm which is now known as Weeks and
19 Irvine. I don't remember what they were called
20 at the time. Davidson, Bennett and Wigger, in
21 the summer and early fall of 2003. I worked for
22 Dallas Law Firm, PA, from November, December,
23 2003, until February, 2006.

24 Q. Okay, can you just generally go over the practice
25 areas that you were involved in, in working for

Garber Reporting
info@garberreporting.com

1 these various firms.

2 A. Steadman Law Firm was bankruptcy, probate,
3 estate, debt collection and real estate closings.
4 Hall Law Firm Nation's Title was 100% real estate
5 closings. Forquer, Green and Lattimore, all my
6 role was real estate closings. Weeks and Irvine,
7 or Davidson, Bennett and Wigger. All real estate
8 closings. Dallas Law Firm, almost all real
9 estate closings.

10 Q. Okay, are there any other areas of law outside of
11 the realm of real estate that you've worked in?

12 A. Estate planning. Wills, trusts, estates,
13 probate, debt collection.

14 (PLAINTIFF'S EXHIBIT NUMBER 1, MARKED, ATTACHED)

15 EXAMINATION RESUMED BY MR. BURGESS:

16 Q. Okay, I think we can go to the exhibits now. Let
17 me share my screen. I'm going to bring up
18 exhibit number 1. Let me know if you can see
19 that exhibit.

20 A. Mr. Burgess, you sent me the link yesterday. I
21 have -- I have all the exhibits right here in
22 addition to my screen.

23 Q. Okay, thank you.

24 A. Yes, I see exhibit number 1, notice of
25 deposition.

1 Q. All right. I want to direct your attention to
2 exhibit A of the notice of deposition. It lists
3 six separate items there on Exhibit A. Are you
4 prepared to discuss all the items listed on that
5 exhibit A this morning?

6 A. One, certainly. Two, any pleadings that I
7 prepared for Dr. Grant. Three, any responses to
8 written discovery requests that I prepared. I'm
9 not sure if I'm prepared to answer -- I'll do my
10 best, any matter of securing the note and
11 mortgage. Any matter securing the subject
12 property and any other matter. I did prepare for
13 this deposition, and I will answer your questions
14 as best as I can.

15 Q. Okay, thank you. That's fair enough. Just
16 backing up just one step. During your work as an
17 attorney, have you ever represented the defendant
18 in this case, Terry Lennette Grant?

19 A. Yes. I did represent Terry Lennette Grant. Dr.
20 Terry Lennette Grant in this case from sometime
21 in 2016, until sometime in 2018. Yes.

22 (PLAINTIFF'S EXHIBIT NUMBER 2, MARKED, ATTACHED)

23 EXAMINATION RESUMED BY MR. BURGESS:

24 Q. Okay. I'm going to direct your attention next to
25 exhibit number 2.

1 A. Okay.

2 Q. If you'll pull that up, I'll share my screen and
3 bring that up.

4 A. Right.

5 Q. Do you have that exhibit in front of you?

6 A. Yes.

7 Q. And this is an eight page document. Can you
8 briefly describe what that document is.

9 A. Looks like a promissory note related to a
10 closing.

11 Q. Thank you. And is the borrower under the terms
12 of that note Terry Lennette Grant?

13 A. That's her -- that's the name typed on page five.

14 Q. Thank you. And would you agree with me that that
15 appears to be a note or a promise to pay an
16 amount of \$680,000 there on page one?

17 A. The document speaks for itself. Yes.

18 Q. Thank you. And entered into September 18th,
19 2006. Is that the date on the document?

20 A. That's the date on the document. I did not
21 attend the closing. I did not do the closing,
22 but the document is dated September 18th, 2006.
23 Yes.

24 (PLAINTIFF'S EXHIBIT NUMBER 3, MARKED, ATTACHED)

25 EXAMINATION RESUMED BY MR. BURGESS:

1 Q. Okay. Directing your attention now to
2 plaintiff's exhibit number 3.

3 A. Okay.

4 Q. Do you have that document in front of you?

5 A. I have it right here.

6 Q. All right. I'm going to share my screen for
7 everyone else. Give me one second.

8 (OFF THE RECORD DISCUSSION)

9 EXAMINATION RESUMED BY MR. BURGESS:

10 Q. Okay, Mr. Sloan, you have exhibit 3 pulled up
11 there on the screen?

12 A. Yes.

13 Q. All right. Can you briefly tell me about that
14 document.

15 A. It appears to be a mortgage, apparently signed by
16 Dr. Grant. Related to this closing related to
17 this foreclosure action.

18 Q. Okay, and directing your attention to the --
19 first we'll go to the recording information.
20 Does that appear to be recorded there in Beaufort
21 County?

22 A. It appears to.

23 Q. And that appears to have a recording stamp from
24 the Register of Deeds office from September 26th,
25 2006. Would you agree with that?

1 A. It appears to.

2 Q. And otherwise your assertion is that document
3 speaks for itself as well?

4 A. The document speaks for itself.

5 Q. Thank you. And we may come back to these
6 documents for a question or two. I'm just going
7 through them for identification purposes right
8 now.

9 (PLAINTIFF'S EXHIBIT NUMBER 4, MARKED, ATTACHED)

10 EXAMINATION RESUMED BY MR. BURGESS:

11 Q. Directing your attention to plaintiff's exhibit
12 number 4. I guess let me back up for just one
13 second here. And I'll share this on the screen
14 while I'm doing so. Regarding this subject note
15 and mortgage, are you aware of any litigation
16 related to this note and mortgage? Specifically
17 ---

18 A. Excuse me, aware of any what?

19 Q. Foreclosure actions related to this note and
20 mortgage?

21 A. Yes. The above caption -- this captioned case,
22 which is why you're taking my deposition, and
23 there was a previous foreclosure against Dr.
24 Grant. If not two previous foreclosures against
25 Dr. Grant. Yes, I am aware of this.

1 Q. Thank you. And do you recognize the document
2 marked as exhibit number 4?

3 A. After -- yes.

4 Q. And you recognize that to be an order from a
5 prior foreclosure action?

6 A. That's what it appears to be.

7 Q. And just so that we're clear, your representation
8 of Miss Grant wasn't related to any of the prior
9 foreclosure actions in this case, just the
10 current one, 2016-CP-07-1466. Is that correct?

11 A. Yes.

12 Q. And this order entered February 7th, 2014, would
13 have come about long before you represented Miss
14 Grant?

15 A. Yes.

16 Q. Okay. And directing your attention to page two
17 of -- or I guess we should back up just for
18 time's sake. Can we agree this document speaks
19 for itself?

20 A. Yes.

21 Q. And it does appear to bear the signature of Judge
22 Dukes there on page ten. And it appears to be
23 recorded in the Beaufort County Clerk of Court's
24 Office. Would you agree with that?

25 A. It appears to, yes.

1 (PLAINTIFF'S EXHIBIT NUMBER 5, MARKED, ATTACHED)

2 EXAMINATION RESUMED BY MR. BURGESS:

3 Q. Okay. Pulling up plaintiff's exhibit number 5.

4 Do you recognize the document listed as exhibit
5 number 5?

6 A. I see what it is. I do not recognize it. Aside
7 from reading it over yesterday in preparation for
8 this deposition.

9 Q. I understand. Just one portion of the order that
10 I just want to make sure that we're clear about.
11 Would you agree with me that it appears to be an
12 order vacating a foreclosure judgment and
13 dismissing a case?

14 A. Yes.

15 Q. And it vacates a judgment entered May 27th, 2014?

16 A. Yes.

17 Q. Okay, now stepping back to exhibit 4, for just
18 one second. That order was entered February 7th,
19 2014. In the order vacating, is there any
20 mention of any order related to February 7th,
21 2014?

22 A. I'm sorry. Repeat the question, please.

23 Q. Okay, so what I'm getting at is we have the order
24 vacating the foreclosure judgment as exhibit 5.
25 And the question is that order vacating the

1 foreclosure judgment, you have two orders there
2 in front of you. One granting partial motion for
3 summary judgment. And one dismissing the
4 foreclosure action. The question is, does the
5 second order, exhibit number 5, reference or make
6 any mention of vacating the order granting
7 partial summary judgment?

8 A. It doesn't appear to. But I'm not going to make
9 that determination since I'm not the master in
10 equity in this case.

11 Q. Right. I'm just asking, you know, the document
12 on its face. Does it reference a February 7th,
13 2014 order for summary judgment ---

14 A. Not -- not specifically, no.

15 (PLAINTIFF'S EXHIBIT NUMBER 6, MARKED, ATTACHED)

16 EXAMINATION RESUMED BY MR. BURGESS:

17 Q. Okay. All right, moving along to exhibit number
18 6. Do you have that in front of you?

19 A. Yes.

20 Q. Okay. And can you briefly tell me what that
21 document is.

22 A. That appears to be the initial complaint in this
23 case.

24 Q. Okay, and that's for the 2016-CP-07-1466 case.
25 The current pending action. Is that correct?

1 A. Yes. Mr. Burgess, can you speak up a little bit,
2 please. I'm having a little bit of trouble
3 hearing you.

4 Q. Okay. I will try to bring my microphone a little
5 bit closer here.

6 (OFF THE RECORD DISCUSSION)

7 EXAMINATION RESUMED BY MR. BURGESS:

8 Q. Okay, getting back to the questions. Mr. Sloan,
9 do you recognize this document to be the original
10 complaint from this pending foreclosure action?

11 A. Yes.

12 Q. And at some point that complaint was amended, is
13 that correct?

14 A. Yes.

15 Q. And we'll get to the amended complaint, but I
16 wanted to direct your attention to the legal
17 description in the original complaint. And
18 comparing that to the original mortgage, does it
19 match?

20 A. Pardon?

21 Q. Comparing the legal description in the complaint,
22 and it's there on page two, and moving over to
23 page three. Comparing that back to the mortgage,
24 which was exhibit number 3, those two match.
25 Would you agree with that?

1 A. They appear to.

2 Q. And that's the recorded mortgage versus the
3 original complaint in this action?

4 A. Apparently so, yes.

5 (PLAINTIFF'S EXHIBIT NUMBER 7, MARKED, ATTACHED)

6 EXAMINATION RESUMED BY MR. BURGESS:

7 Q. Okay. And directing your attention to exhibit
8 number 7. I'll share my screen. Do you
9 recognize that to be the answer that you
10 submitted on behalf of Dr. Grant?

11 A. Yes, that is the first answer that I did for Dr.
12 Grant on or near October 26th, 2016. That's
13 absolutely my signature.

14 Q. Okay, thank you. And you can verify the contents
15 of that document are the same that you presented
16 back on October 26th, 2016?

17 A. In preparation for this deposition, I did not go
18 back to the court filings of this case, but I
19 know no reason why it wouldn't be the same --
20 that this exhibit 7 wouldn't be my filed answer --
21 -- first filed answer for Dr. Grant, October 26th,
22 2016.

23 Q. I just want to make sure that we're on the same
24 page. If that appears to be a true and accurate
25 copy of the answer. In other words, is there

1 anything on this document exhibit number 7, that
2 appears to be changed as far as the content of
3 the document, that appears to be changed from
4 your original? In other words, the allegations
5 of those pleadings appear to be what you alleged
6 back in 2016?

7 A. It appears to be a true and accurate copy. Yes.

8 Q. Okay, thank you. And at some point, you're aware
9 that the complaint in this action was amended.
10 Is that correct?

11 A. Yes, it was.

12 Q. Actually, let me back up one minute from that.
13 At some point before that answer was amended, you
14 sought to amend your answer as well, your answer
15 to the original complaint in this case. Do you
16 recall that?

17 A. I do recall that. I don't recall exactly what I
18 wanted to do. But that is correct. I wanted to
19 amend the answer.

20 (PLAINTIFF'S EXHIBIT NUMBER 8, MARKED, ATTACHED)

21 EXAMINATION RESUMED BY MR. BURGESS:

22 Q. Well, can I get you to take a look at exhibit
23 number 8 there. And I'll share it here on my
24 screen for everyone to see.

25 A. Yeah, I have exhibit 8 in front of me.

1 Q. And looking at the exhibit. Does that appear to
2 be your proposed amended answer to the original
3 complaint?

4 A. Yes.

5 Q. And that was E-filed with the clerk of court,
6 July 21st, 2017?

7 A. Yes, I see my s/signature. So, apparently,
8 Beaufort had gone E file by that time.

9 Q. Okay, now looking at the contents of that
10 document. Is there anything in this exhibit
11 number 8 that is varied, forged or, you know,
12 changed from the contents of your original
13 answer, or does that appear to be a true and
14 accurate copy?

15 A. It appears to be a true and accurate copy.

16 BY DR. GRANT:

17 Just a second, Chad. I need a bathroom break.

18 (OFF THE RECORD)

19 EXAMINATION RESUMED BY MR. BURGESS:

20 Q. Okay, I believe we left off with plaintiff's
21 exhibit number 8. And the question prior to that
22 was did that appear to be a true and accurate
23 copy of your proposed amended answer on behalf of
24 Dr. Grant as filed with the court.

25 BY THE COURT REPORTER:

1 I'm sorry, I could not hear the question.

2 EXAMINATION RESUMED BY MR. BURGESS:

3 Q. Mr. Sloan, the last question before we took our
4 break was regarding plaintiff's exhibit number 8,
5 the proposed amended answer. And I believe you
6 had testified that that was a true and accurate
7 copy of the answer you submitted on Ms. Grant's
8 behalf.

9 A. Yes, that is correct. Yes.

10 Q. And as we discussed before, at some point during
11 this litigation the foreclosure action itself was
12 amended. So there was an amended complaint
13 filed. -Is that correct?

14 A. That's my memory. Yes.

15 (PLAINTIFF'S EXHIBIT NUMBER 9, MARKED, ATTACHED)

16 Q. Okay, and I want to direct your attention to
17 plaintiff's exhibit number 9. And I'll share my
18 screen. All right, do you have that document in
19 front of you?

20 A. Yes.

21 Q. Okay. And do you recognize that document to be
22 the amended summons and complaint?

23 A. Yes.

24 Q. And for the purposes of this deposition, I think
25 what we will do just to be sure that everyone has

1 the information about the documents, it's Bates
2 stamped Sloan deposition exhibit 9, page one
3 through fourteen. It's a 14 page document.
4 Would you agree with me on that?

5 A. I'm not going to count the pages, but 14 sounds
6 about right.

7 Q. Directing your attention to page nine of exhibit
8 9.

9 A. Yes.

10 Q. And could you go back to the order granting
11 partial summary judgment, exhibit number 4.

12 A. Okay.

13 Q. Now that order, exhibit number 4, Judge Dukas's
14 order granting partial summary judgment, has in
15 it a reformed legal description. Would you agree
16 with me that that order essentially says it is
17 reforming the mortgage or the content of the
18 order speaks for itself?

19 A. The document speaks for -- the order speaks for
20 itself.

21 Q. Thank you. I just want to get you to take a look
22 at the legal description in that order reforming
23 the mortgage, exhibit number 4. And the amended
24 complaint. And can you tell me if the amended
25 complaint, legal description for the subject

1 property, matches the legal description from the
2 reformation order that Judge Dukes signed.

3 A. It does not appear to.

4 Q. Can you tell me what the difference is.

5 A. I know this says parcel A, .46 acres.

6 Q. Yeah.

7 A. And this says -- it's a different plat book and
8 page number. A different plat book and page
9 number. It appears to be different.

10 Q. So you're looking at page four of exhibit 9,
11 versus the -- I'll point you to the direct page.
12 So when you go down to page four of the exhibit
13 number 4. Would you agree that that matches?

14 A. Oh, excuse me. Excuse me. Yeah, the page four,
15 exhibit 4, matches the amended complaint, exhibit
16 9. It appears to.

17 Q. Okay, thank you. And to your knowledge, have
18 there been any further amendments? Or at least
19 while you were representing Miss Grant, were
20 there any further amendments to the complaint?

21 A. Not during the time that I represented Dr. Grant,
22 from summer'ish, 2016, to late spring of 2018.

23 (PLAINTIFF'S EXHIBIT NUMBER 10, MARKED, ATTACHED)

24 EXAMINATION RESUMED BY MR. BURGESS:

25 Q. All right. Let's go to exhibit number 10. Do