THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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SC Court of Appeals

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2024-001719

U.S. Bank Trust National Association, not in its Individual Capacity, but solely as owner Trustee for the Legacy Trust 2020-GSI, Rushmore Loan Servicing, Goldman Sachs Mortgage Company, U.S. Ban and U.S. Bank National Association.....Plaintiffs,

Of whom U.S. Bank Trust National Association not in its individual capacity, But solely as owner trustee for Legacy Mortgage Asset Trust 2020-GSI, U.S. Bank, and U.S. Bank National Association are the Respondents

vs.

Jacob Fulks; Florene Fulks..,.....Appellants.

RECORD ON APPEAL (ROA)
Case No. 2024-CP040-00292
Appellate Case No.: 2024-001719

Self-Represented Appellants

Jacob Fulks & Florene Fulks

Jacob Fulks and Florene Fulks/revflo@hotmail.com
140 Watson Way
Columbia, South Carolina 29229

Attorney for Respondent
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Columbia, SC 29201
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July 24, 2025

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Respectfully submitted,

Jacob Fulks & Florene Fulks

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140 Watson Way
Columbia, South Carolina 29229

ELECTRONICALLY FILED - 2024 Jan 30 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	DOCKET NO. 2024CP4000292
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendant(s).	ORDER OF REFERENCE Deficiency Judgment Demanded

(013225-03704)

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

IT IS HEREBY ORDERED, that this action is referred to the Honorable Joseph M. Strickland, as Master in Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee

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

The hearing shall be held in the Office of the Honorable Joseph M. Strickland, as Master in Equity for Richland County, located at:

Richland County Judicial Center
1701 Main Street, Room 2D
Columbia, SC 29201

_____
___ Circuit Court Judge for Richland County
or
___ Clerk of Court for Richland County

Columbia, South Carolina
_____, 2024.

ELECTRONICALLY FILED - 2024 Jan 30 10:52 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

Richland Common Pleas

Case Caption: U S Bank Trust National Association vs Jacob Fulks , defendant, et al

Case Number: 2024CP4000292

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jeanette W. McBride, by Virginia F. Belcher,
Chief Deputy Clerk of Court

ELECTRONICALLY FILED - 2024 Sep 18 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL DISTRICT
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Rushmore Loan Servicing Goldman Sachs Mortgage Company U.S. Bank, U.S. Bank National Association	)	Civil Action No. 2024-CP-40-00292
Plaintiff(s),	)	**ORDER GRANTING U.S. BANK TRUST'S MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' AMENDED COUNTERCLAIMS**
v.	)	
Jacob Fulks; Florene Fulks;	)	
Defendant(s).	)	

THIS MATTER came before the Court on September 16, 2024 for hearing on a motion to dismiss amended counterclaims of Defendants Jacob Fulks and Florene Fulks ("Defendants") filed by Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 ("Plaintiff") before the Honorable Judge Joseph M. Strickland in Richland County Court of Common Pleas in the above-captioned action pursuant to S.C. R. Civ. P. 12(b)(6).

After hearing oral arguments, reviewing memorandums of law, affidavits, and documents submitted by counsel, this Court grants Plaintiff's Motion to Dismiss and it is hereby ORDERED that Defendants' Counterclaims against Plaintiff are dismissed.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2024.

_____
The Honorable Joseph M. Strickland

ELECTRONICALLY FILED - 2024 Sep 18 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

Richland Common Pleas

Case Caption:	U S Bank Trust National Association , plaintiff, et al vs Jacob Fulks , defendant, et al
Case Number:	2024CP4000292
Type:	Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

State of South Carolina	)	
	)	
County of Richland	)	
U.S. Bank Trust National Association, Rushmore Loan Servicing, Goldman Sachs Mortgage Company,	)	2024-CP-40-00292
	)	Transcript
	)	of
Plaintiffs,	)	
	)	Hearing
vs.	)	
	)	
Jacob Fulks, Florene Fulks,	)	
Defendants.	)	

Date: September 16, 2024

Time: 10:41 a.m.

Location: Richland County Judicial Center, 1701 Main Street, Courtroom 2D, Columbia, South Carolina

Reported by
Miranda Brown

APPEARANCES

Presiding:	Judge Joseph M. Strickland Columbia, South Carolina
For the Plaintiff:	Jason A. Richardson, Esq. McGuire Woods, LLP. Columbia, South Carolina
Pro Se Defendants:	Florene Fulks Jacob Fulks Columbia, South Carolina

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EXHIBITS

(No exhibits were marked during the course of the hearing.)

PROCEEDINGS

THE COURT: This is civil action Number 2024-CP-40-292 -- 0292, "US Bank Trust National Association against Jacob Fulks and others." The matter before the Court today is a motion -- I'm sorry, a hearing to hear all motions. It's a foreclosure action, and we have -- we have at least two motions.

One motion is a motion by the plaintiff to dismiss counterclaims. And there's another motion by the defendants to remand the case back to the Court of Common Pleas.

Now, let me tell you, Ms. Fulks, this is the Court of Common Pleas. The Master-in-Equity is a division of Circuit Court, and once a case is deferred to the Master-in-Equity, he or she has the same power as a circuit judge sitting on jury. But I think you said off the record that you wanted a jury trial, and we will deal with that at the appropriate time.

All right. The plaintiff may proceed.

MR. RICHARDSON: Yes, you prefer stand or sit?

THE COURT: Say again, sir?

MR. RICHARDSON: Do you prefer stand or sit?

THE COURT: Please stand.

MR. RICHARDSON: All right.

THE COURT: It doesn't matter. Whatever is comfortable for you.

MR. RICHARDSON: No. I'm happy to please.

THE COURT: Okay.

MR. RICHARDSON: Yes, Your Honor, may it please the Court. This case arises from a complaint by client, US Bank, that was filed on -- in January, on 1/17, for foreclosure. That complaint arises out of a -- the plaintiffs -- or defendants' default on August 1 of 2023 of their mortgage payments. The total due and outstanding is $257,017.51, at the time of foreclosure. So interest and costs continue to accrue.

Plaintiff, I believe, on 20 -- I'm sorry, defendant, on 20/20/24 (verbatim) brought counterclaims and answers. Since then, I believe there was an amended counterclaim and an amended answer filed as well by defendants, and we responded to that.

But in essence, those amended counterclaims brought claims of negligent misrepresentation, fraudulent concealment, negligent infliction of emotional distress, and violation of the South Carolina Fair Trade Acts and Consumer Protection Code for the Attorney preference statute. US

Bank's position is that these claims should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to plead fraud and -- I'm sorry -- and also Rule 9 for failure to plead fraud with particularity. Sorry. Legal standard under Rule 12(b)(6), is "to survive a motion to dismiss, the complaint must state a valid claim which entitles relief to be granted." That's under "Gerald v. Potsey" (phonetic). And then Rule 8 requires the facts showing that the pleader is entitled to relief. And then Rule 9 for fraud claims requires that fraud claims be pled with reasonable particularity.

With respect to the plaintiffs' (verbatim) claims for negligent misrepresentation, under the case of "West v. Gladney," requires six different elements. Those six elements are: defendant made a false representation; the defendant had pecuniary -- a pecuniary interest in making that statement; defendant owed a duty of care to the -- to communicate truthful information; there's a breach of that duty; there's justifiable reliance on that statement; and the plaintiff suffered a pecuniary loss. And there also can be no causal statement or no liability for casual statements.

As far as the defenders' counterclaims, from the plaintiff's position, is they have not -- their counterclaims do not allege any element of the six that are required. They make no allegation of specific communication by US Bank. There's no allegation of any communications were for -- of any former loan servicers would impute liability to US Bank. There's no allegation of a duty, no allegation of any breach, and no allegation of any representation which were relied upon that was false.

With respect to the second counterclaim, which is fraudulent concealment, with -- under the case of "McLaughlin v. Williams," that requires nine elements in addition to pleading particularity under Rule 9. Those nine elements are representation, its falsity, its materiality, its knowledge of its falsity of reckless disregard for its truth or falsity, the intent by the plaintiff to act, the hearer's ignorance of that falsity, the hearer's reliance of its truth, the hearer's reliance on -- to rely thereon, and the hearer's consequent and proximate injury.

Under this case, "McLaughlin v. Williams," nondisclosure does not result in fraudulent

concealment, and fraudulent concealment only arises when a party has the duty to make them known. And then, even so, the relationship between the bank and the creditor is debtor-creditor in nature, and so no duty arises when it's not fiduciary. And that's under the case of "Regions Bank v. Schmauch". Let's see.

THE COURT: Attorney preference statute.

MR. RICHARDSON: The attorney preference statute next. Yes, sir. Would you like me to jump there instead of -- skip over --

THE COURT: No, no. Keep going. I'm sorry.

MR. RICHARDSON: No, no, no. I -- whatever you prefer.

THE COURT: I didn't want you to leave it out.

MR. RICHARDSON: No, no, no. I -- it's -- it's -- it's on my list. But I'm happy to go there now, if you'd like?

THE COURT: No. No. Keep going.

MR. RICHARDSON: Okay. And as far as negligent infliction of emotional distress, which I believe is the third claim, I'll call it "NIED" for short. NIED requires -- or only results in three different contexts where claims are valid. The first being "bystander liability of a death or serious industry -- injury of a relative." That's under the case of

"Kinard v. Augusta Sash". "Emotional distress arising from, and in addition to, physical injuries resulting from physical contact." That's in the case of "Bowen v. Blackwell". And "emotional trauma -- cause where -- that causes bodily injury." And that's in the case of "Padgett v. Colonial Wholesale Distributors". From the US Banks' perspective, the complaint does not allege any actionable negligence that fit any of these three categories.

And then, last but not least, the South Carolina Fair Trade Acts, or claims that arise under that in South Carolina Unfair Trade Practice -- Unfair Trade Practices and Acts, in other words the attorney statute. I think the -- the claim is the violation of the attorney statute. First of all, the attorney statute claims may not be brought within more than three years after the occurrence. So the loan was made in 2007, so the statute of limitations has elapsed since 2007. In addition, even if the statute of limitations did not elapse, the statute only applies to the original creditor, which US Bank is not the original creditor.

And as far as claims under the South Carolina -- the act -- the South Carolina Unfair Trade

Practices Act, under the case of "Health Promotion Specialist," the complainant would have to show that they engaged in unfair and deceptive acts and conduct or trade of commerce, the unfair act affected the public interest, and the plaintiff suffered monetary loss. From the plaintiffs' perspective, the complaint does not show any of those three categories.

And I believe that's Plaintiffs' short recitation of the claims.

THE COURT: Okay. All right. Let me hear the defendants' motion. You can -- you can stay seated if you like.

MS. FULKS: Okay.

THE COURT: All right.

MS. FULKS: This is all I have to say. I would like to ask that the Court take up the motion before addressing the plaintiff motion to dismiss our -- me and my husband's counterclaim.

THE COURT: Okay.

MS. FULKS: My motion has been before this Court since March 2024. It's uncomplicated, and counsel for plaintiff had ample enough of time to review the motion and should not be prejudiced by responding to it -- this hearing. Should this Court grant the

motion to transfer back to the Court of Common Pleas, US Bank will still have a chance to offer its motion to dismiss the counterclaim in circuit court.

I am well aware that foreclosure cases such as this action -- this action in equity in South Carolina says that such cases can be tried without a jury. However, since my answers also contain a counterclaim, which are legal and compulsory in nature, they are triable to a jury.

For example, one of the counterclaim alleged fraud and another alleged misrepresentation. One of the answers also alleged fraud and making of this alleged mortgage loan and note. My original answer and counterclaim requested a trial by jury. My amended counterclaim requested a jury trial. I believe the clerk in this case may have inadvertently referred the case to the -- to this court. South Carolina Rules of Civil Procedures 39(a) provide that when trial by jury has been demanded, in accordance to Rule 38, the trial should be designated on the calendar in the clerk's file, should be booked a jury action.

In accordance with South Carolina Rules of Civil Procedure 53(b) and Rule 38(b), as it is

written in both of our original answers and counterclaim in this amendment, I requested a jury trial. As this Court is well aware of, Rule 53(b) states that, "Upon the demand of a jury trial, the matter should be returned to circuit court." The South Carolina Court of Appeals addressed this same issue from this Court on April the 17, 2017. The "South Carolina Community Bank v. Salon Proz LLC, etc." the appeal court after reviewing 53(b), Rule 38(b), and Rule 39 stated, "Because Salon demanded a jury trial in its initial answer, the clerk should not have referred the case, and the master erred in denying Salon's motion to transfer the case to the jury docket." The Court also held that, "a jury demand could not be waived without written agreement or consent." I did not agree. My husband did not agree. Nor did we consent to a trial in this Court, which is evident by filing the motion to transfer.

THE COURT: Okay. Mr. Richardson?

MR. RICHARDSON: From the plaintiffs' perspective, I believe case law's clear that these claims arise from the transaction occurrence relating to the foreclosure and this is the proper form. I looked at the case of the "Bank of New York Mellon v.

Lindsay." I've quoted exactly where it says, "Where in actions of foreclosure, the defendant sets up a defense or counterclaim affecting the consideration and arising out of the transaction" --

THE COURT: Wait, wait. Speak a little more slowly.

MR. RICHARDSON: Sorry. I'll start over. "Where in actions of foreclosure, the defendant sets up a defense and/or counterclaim affecting the consideration and arising out of the transaction in which the mortgage lien was created, the authorities hold that the issues thus raised are equitable and to be tried by the Court upon its equity side," i.e., this Court.

THE COURT: Okay. Let me ask, Mr. Richardson, did the defendants make any payments at all on this mortgage?

MR. RICHARDSON: My understanding, the payments were paid up until August of 2023.

THE COURT: So they're making payments from 2007 until 2023?

MR. RICHARDSON: Yes, Your Honor. I believe there's a -- a bankruptcy that also occurred during that time. So the -- my client is pursuing foreclosure on the mortgage versus the note.

THE COURT: What happened in the bankruptcy?
MR. RICHARDSON: I believe this -- this claim was -- was -- I guess -- sorry, I forget the exact -- or extinguished or -- I'm not familiar the exact terminology. But I believe their -- their liability was no longer through the -- the bankruptcy, I can double-check on that. And --
THE COURT: All right. Are you in bankruptcy now?
MS. FULKS: No, sir.
THE COURT: Okay. What happened in the bankruptcy court?
MS. FULKS: Paid it. Paid the bankruptcy for seven years for $700.
THE COURT: And then what happened?
MS. FULKS: From my understanding, from a lawyer here in Columbia that I went to -- first of all, after the bankruptcy, it is my understanding that the house was paid off, and I got it on our credit report that it was paid off.
THE COURT: Uh-huh.
MS. FULKS: And then I didn't understand when Nationstar, or Mr. Cooper, called us and said we owed. And that's when I went to see a lawyer, just to ask a question.
THE COURT: Uh-huh.

MS. FULKS: And the lawyer said something about -- in reference to insurance of some clause in bankruptcy when they mortgage company file a -- someone files bankruptcy on a mortgage company, that their insurance paid that loan off, but I don't know what happened or who bought it but whatever. But as far as I'm concerned, our credit report showed that it's paid off, and then it popped back up. That's -- about the bankruptcy part; that's what happened. And I just left it alone until -- that's when me and my husband said that, "Well, it's paid for, according to our credit." What they -- what they did over there at the mortgage company, I don't know nothing about that.

THE COURT: Uh-huh.

MS. FULKS: But I know we not paying no more because we already paid the bankruptcy, and our attorney was Moss and Moss (verbatim), and I don't know what he did. I don't know what's going on with that. I just know me and my husband stopped paying it because they wrote us and said it was paid off. So I inquired to the three credit companies, "Show me the documentation." I know they've got to give reason why something is paid off, and they sent back the documentation, said

"Rushmore said this, y'all paid this, y'all balance is zero." Then when all this came up, that's why we made that decision, and the bankruptcy was filed. Because my husband had, at the time, prostate cancer, you know. He got sick and couldn't work. And I had to take care of him and stuff like that. And -- but we didn't not pay because of that; we just filed bankruptcy because we knew we couldn't pay our bills. So that's why bankruptcy came about. Because my husband got sick, and now he's sick again and I got to go through all of this. But, anyway, neither here or there. Thank you.

THE COURT: But you said the house is paid off?

MS. FULKS: Uh-huh.

THE COURT: All right. Did you get -- I don't know -- when I was growing up, my church had a -- had a -- had a ceremony called "burning the mortgage" because they paid off the mortgage and they got the mortgage back and -- and they burned on it because they didn't have to worry about it anymore.

MS. FULKS: Well --

THE COURT: Did you get your paperwork back?

MS. FULKS: No. I didn't no paperwork back. From my understanding and my research, it should have been

sent information in the -- in the real estate department that the house was paid off. It was never -- Rushmore sold it to something called Nationstar.

THE COURT: Uh-huh.

MS. FULKS: And how you -- okay, you get it paid off, so you get that check. And you get another check from another mortgage company, and then it, "Okay, y'all owe again, two hundred and something thousand dollars." My husband built that house from ground up in 1990 what?

MR. FULKS: Two.

MS. FULKS: Two. And y'all saying two-hundred and something thousand dollars. The house been paid off. But anyway, we not supposed to be discussing that, so . . . Thank you, sir. That's my answer.

THE COURT: Okay. Okay. The plaintiffs' motion is granted. Defendants' motion is denied. We need to have a hearing now on the merits of the case. So are y'all prepared to move forward today, or you want to come back another time?

MS. FULKS: No. I'm getting ready to file something. I don't want to do nothing else today.

THE COURT: All right.

MS. FULKS: I don't want to discuss the merits of the

case today.
THE COURT: Okay. Okay. We'll schedule a hearing. It's going to be -- well, the counterclaim has been dismissed. But you're going to still contest the foreclosure; is that correct?
MS. FULKS: I'm going to -- I'm going to -- I'm going to do something today. I'm going to take care of something today.
THE COURT: Okay.
MS. FULKS: Because you say that I can't have a trial.
MR. FULKS: A jury trial.
THE COURT: No, no. no. A jury trial.
MS. FULKS: I can't have a jury trial, right? That's what you said, right?
THE COURT: Right. I dismissed --
MS. FULKS: Okay
THE COURT: -- your motion to remand it to the -- to the circuit judge. So we'll be happy to hear on the merit stuff --
MS. FULKS: Okay.
THE COURT: -- in other words, so I'm going to do that. It's a contested hearing. We'll schedule a contested hearing. How long will it take, do you think?
MS. FULKS: Can I get a stay of extra time to amend the

counteraction based on what he read that needs to be included? Can I get a stay of -- of extra time for that?

THE COURT: Your motion's denied. We're going to set a hearing on the merits.

MS. FULKS: Okay.

THE COURT: And I was asking how long it was going to take to have to try the case. We need the whole day? a half a day?

MR. RICHARDSON: Plaintiffs will defend -- or defer to -- to defendants. I --

THE COURT: How -- how long do you need to try this case?

MS. FULKS: What do you say, Jacob?

MR. FULKS: A half a day. Half a day.

MS. FULKS: He said a half a day.

THE COURT: Half a day? Okay. We'll block out a whole day, and the hearing will probably be not here, but it will be in our new location on Decker Boulevard, Courtroom 1. But you'll get notified of all that. You'll be notified of all that as well. Okay. We'll schedule a hearing on the merits. All right.

MS. FULKS: What type of hearing is this? A hearing in the --

THE COURT: It's --

MS. FULKS: -- equity court?
THE COURT: It's -- it's going to be a trial.
MS. FULKS: Huh?
THE COURT: It's going to --
MR. FULKS: A trial.
THE COURT: -- be a trial. Provided -- presided over by me.
MS. FULKS: Oh, I'm going to get a trial?
MR. FULKS: Yes.
THE COURT: Yes. Yes. Just not a jury trial. Okay. That's what I meant when I said, "Hearing on the merits." You're going to get a trial.
MS. FULKS: Okay.
THE COURT: Okay?
MS. FULKS: All right.
THE COURT: All right. Let me make a note. (To the clerk) Set it up for one day or half a day?
COURT CLERK: We'll just block out the whole day.
MS. FULKS: He said a trial but not a jury trial?
MR. FULKS: Yeah. Not going to be a jury trial. It going to be a trial.
THE COURT: You'll get a bench trial.
MS. FULKS: A event?
THE COURT: A bench.
MR. FULKS: A bench trial.

THE COURT: Bench trial.
MR. FULKS: Bench trial.
MS. FULKS: Oh, bench trial.
MR. FULKS: Yeah.
MS. FULKS: Okay.
THE COURT: Yeah.
MS. FULKS: All right.
THE COURT: And we'll schedule a whole day. I don't know if it'll take that long.
COURT CLERK: (To the Court) And somebody's going to have to --
MS. FULKS: Right. All right.
THE COURT: I'm sorry, Madam Clerk.
COURT CLERK -- get a court reporter. Somebody's going to have to get a court reporter.
THE COURT: (To Mr. Richardson) Oh, could you get a court reporter?
MR. RICHARDSON: Yes, Your Honor.
THE COURT: Yeah. We'll schedule a date. We'll get in touch with both of you to schedule the date, hearing on the merits. And if you need a copy of the transcript from today, Ms. Brown has her card there, so she can --
MS. FULKS: Okay.
THE COURT: -- give you a copy of the -- of the

transcript. All right. Thank y'all so much.

MS. FULKS: Thank you so much.

MR. RICHARDSON: Thank you.

(Whereupon the within hearing was concluded at 11:01 a.m.)

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

CERTIFICATE

Be it known that Miranda Brown took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large and that by virtue thereof I was duly authorized to administer an oath;

that the deponent/witness, if any, was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Miranda Brown

Miranda Brown

Date: 9/30/2024
Notary public for South Carolina
My commission expires January 1, 2033
*Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

ELECTRONICALLY FILED - 2024 Jan 17 2:55 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendant(s).	IN THE COURT OF COMMON PLEAS DOCKET NO. SUMMONS (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Demanded

(013225-03704)

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 1221 Main Street, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1.

/s/ R. Brooks Wright
Rogers Townsend, LLC
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Columbia, South Carolina

ELECTRONICALLY FILED - 2024 Jan 17 2:55 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendant(s). (013225-03704)	IN THE COURT OF COMMON PLEAS DOCKET NO. COMPLAINT (NON-JURY) FORECLOSURE OF REAL ESTATE MORTGAGE Deficiency Judgment Demanded

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Richland County, South Carolina.

2. Pursuant to S.C. Code Section 33-15-101(b)(8) Plaintiff is a corporation or other legal entity collecting debts and / or enforcing mortgages, security interests or other rights in property securing debts.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Home Affordable Modification Program does not apply as it expired on December 31, 2016, prior to the referral of the loan for foreclosure.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the

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provisions of South Carolina Code Section 15-35-840.

7. Heretofore, on or about July 6, 2007, Jacob Fulks and Florene Fulks made, executed and delivered a certain Fixed Rate Note ("Note") in the principal sum of $178,500.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Jacob Fulks and Florene Fulks made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., as nominee for CMA Mortgage Inc., its successors and assigns a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land with the improvements thereon situate, lying and being in the County of Richland, State of South Carolina, being designated as Lot No. 70, on plat of Woodland Links Phase III by Civil Engineering of Columbia, dated April 5, 1988, and recorded in the Office of the ROD for Richland County in Plat Book 52, at page 1197, and being more particularly shown and designated on a plat prepared for Jacob Fulks and Mae Fulks by Collingwood Surveying, Inc., recorded in the aforementioned ROD office in Book 53 at Page 6222, reference being made to said latter plat, which plat is incorporated herein by reference, for a more complete and accurate description; be all measurements a little more or less.

This being the property conveyed to Jacob Fulks by Deed of Mae E. Fulks aka Mae Fulks conveying her interest, dated September 12, 2005 and recorded in the Office of the RMC for Richland County in Record Book 1107, Page 3454. Also the property conveyed to Jacob Fulks and Mae E. Fulks by Deed of Carolina Residential Builders, Inc., dated August 22, 1991 and recorded in the Office of the RMC for Richland County in Record Book D-1048, Page 208.

Property Address: 140 Watson Way
Columbia, SC 29229

TMS/PIN# 22913-03-33

9. The Mortgage was signed, witnessed and probated July 6, 2007; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Richland County on August 10, 2007, in Mortgage Book 1346 and Page 467. This Mortgage was assigned to U.S. Bank National Association, not in its individual capacity, but solely as Legal Title for LVS Title Trust I by Assignment dated December 5, 2011 and recorded on December 16, 2011 in Book 1728 at Page 262. Subsequently, this Mortgage was assigned to UMB Bank, National Association, not in its individual capacity, but solely as legal title trustee for Mart Legal Title Trust 2015-NPL1 by Assignment dated September 11, 2015 and recorded on September 29, 2015 in Book 2061 at Page 2690. Subsequently this mortgage was assigned to U.S. Bank National Association, not in its individual capacity, but solely as Trustee for the RMAC Trust, Series 2016-CTT by assignment dated December 14, 2017 and recorded December 27, 2017 in Book 2270 at Page 115. Subsequently, this mortgage was assigned to Goldman Sachs Mortgage Company dated

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February 25, 2020 and recorded March 4, 2020 in Book 2474 at Page 2859. Subsequently, this mortgage was assigned to U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 by assignment dated December 15, 2020 and recorded December 29, 2020 in Book 2569 at Page 683.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a First lien on the mortgaged premises.

11. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for August 1, 2023, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of August 1, 2023, the principal sum of $257,017.51, with interest from July 1, 2023, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

12. Pursuant to South Carolina Code Sections 29-3-650 and 29-3-660, Plaintiff specifically demands or reserves its right to a personal or deficiency judgment, unless heretofore or hereafter released, against the Notemaker(s) hereby obligated for the above-described debt.

13. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

14. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

15. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

16. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. None

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a First lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

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

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Richland County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

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

/s/ R. Brooks Wright
Rogers Townsend, LLC
ATTORNEYS FOR PLAINTIFF
John J. Hearn (SC Bar # 6635), John.Hearn@rogerstownsend.com
Brian P. Yoho (SC Bar #73516), Brian.Yoho@rogerstownsend.com
Jeriel A. Thomas (SC Bar #101400) Jeriel.Thomas@rogerstownsend.com
R. Brooks Wright SC Bar #105195) Brooks.Wright@rogerstownsend.com

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Columbia, South Carolina

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AFFIDAVIT OF SERVICE

State of SC | **County of Richland** | **Circuit Court**

Case Number: 2024CP4000292

Creditor:
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1

vs.

Debtor:
Florene Fulks, et al.

Received by BidRep, LLC to be served on **Florene Fulks, 140 Watson Way, Columbia, SC 29229.**

I, Jeremy DiCarmine, being duly sworn, depose and say that on the **20th day of January, 2024** at **8:52 am**, I:

SUBSTITUTE served by delivering a true copy of the **Lis Pendens, Summons, Complaint, and Certificate of Exemption from ADR** to: **Jacob Fulks** as **Husband** at the address of: **140 Watson Way, Columbia, SC 29229**, the within named person's usual place of **Abode**, who resides therein, who is of suitable age and discretion, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Marital Status: Based upon inquiry of party served, Defendant is married.

Description of Person Served: Age: 60, Sex: M, Race/Skin Color: Black, Height: 5'11", Weight: 175, Hair: Grey, Glasses: N

Is the place of service the dwelling / usual place of abode for the party served? (X) Yes ( ) No ( ) Unknown

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 22nd day of January, 2024 by the affiant who is personally known to me.

NOTARY PUBLIC
My Commission Expires **My Commission Expires August 04, 2031**

Jeremy DiCarmine
Process Server

BidRep, LLC
(803) 771-7900

Our Job Serial Number: RTT-0000006958
Ref: 909090-02345

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AFFIDAVIT OF SERVICE

State of SC **County of Richland** **Circuit Court**

Case Number: 2024CP4000292

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vs.

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INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **Lis Pendens, Summons, Complaint, and Certificate of Exemption from ADR** to: **Jacob Fulks** at the address of: **140 Watson Way, Columbia, SC 29229**, in compliance with state statutes.

Military Status: Based upon inquiry of party served, Defendant is not in the military service of the United States of America.

Marital Status: Based upon inquiry of party served, Defendant is married.

Description of Person Served: Age: 60, Sex: M, Race/Skin Color: Black, Height: 5'11", Weight: 175, Hair: Grey, Glasses: N

Is the place of service the dwelling / usual place of abode for the party served? (X) Yes ( ) No ( ) Unknown

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 22nd day of January, 2024 by the affiant who is personally known to me.

NOTARY PUBLIC
My Commission Expires

My Commission Expires August 04, 2031

Jeremy DiCarmine
Process Server

BidRep, LLC
(803) 771-7900

Our Job Serial Number: RTT-0000006957
Ref: 909090-02345

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE#2024CP4000292

U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1,
Rushmore Loan Servicing
Goldman Sachs Mortgage Company
U.S. Bank, U.S. Bank National Association

PLAINTIFF(S)

VS.

Jacob Fulks; Florene Fulks;

DEFENDANT(S)

DEFENDANT(S)...ANSWER, TO COMPLAINT AND COUNTERCLAIM FOR FRIVOLOUS LAWSUIT AND FRAUD ON THE COURT

DEMAND FOR JURY TRIAL

Amount is over $10,000

RICHLAND COUNTY
FILED
2024 FEB 16 PM 1:08
JEANETTE W. McBRIDE
C.O.P., & E.C.

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORDS

ANSWER WITH COUNTERCLAIM

Defendant, Pro Se, Jacob Fulks; Florene Fulks, most respectfully file their Answer in response to the Complaint of the Plaintiffs and interpose as well as their counterclaim against the latter, to wit:

Defendant Jacob Fulks; Florene Fulks; specifically reserving all rights pursuant to any and all motions previously served, answering the Complaint of the Plaintiffs and asserting a counterclaim, would allege unto this Honorable Court As Follows...

Defendants requests that the ***Pro se*** status is recognized and treated by

the Court as The United States Supreme Court and US District Courts have held such status be recognized and treated. "A pro se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers". ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); see also ***Estelle v. Gamble***, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976); ***Gillihan v. Shillinger***, 872 F.2d 935, 938 (10th Cir.1989). "We hold pro se pleadings to a less stringent standard than pleadings drafted by attorneys and construe them liberally". ***Tannenbaum v. United States***, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam); **Elmore v. McCammon** (1986) 640 F. Supp. 905 "...the right to file a lawsuit pro se is one of the most important. rights under the constitution and laws. **"Alexander v. Bothsworth**, 1915. "Party cannot be bound by contract that he has not made or authorized. Free consent is an indispensable element in making valid contracts."

1. On information and belief, by order dated November 12, 2015, The Supreme Court of South Carolina has now mandated mediation in all 46 Counties in both civil and domestic cases.

2. On information and belief, any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court.

3. SEE: JOHN T. KEMP V. COUNTRYWIDE HOME LOANS – COUNTRYWIDE NEVER TRANSFERRED NOTES -Case No. 08-18700-JHW

4. Defendants Pooling and Servicing Agreement are available. for inspection., and, that the defendants represented to this court that they request that the Plaintiffs. Produce the original note. Date: 07/06/2007 Along with the originating lender Pooling and Servicing Agreement.

5. See: PSA § 2.01(g)(i) at 56. Most significantly for purposes of this discussion, the note in question was never indorsed in blank or delivered. an assigned to GOLDMAN SACHS MORTGAGE COMPANY, Date: FEB 2 5 2020 or any other Servicing Companies such as RUSHMORE Servicing, U.S. BANK. NATIONAL, ASSOCIATION, as required by the Pooling and Servicing Agreement.

6. Defendants ask this court to expunge the foreclosure complaint. Claim because the lack of documentation meant it could not be proved in this Case.

7. THE COURT TAKE JUDICIAL NOTICE The originating lender must. be the original payee on the note, even when MERS is named as nominee. for the beneficiary in the security instrument. The note must be endorsed to each subsequent owner of the mortgage unless one or more of the owners endorsed the note in blank. The last endorsement on the note should be. that of the mortgage seller. The mortgage seller must endorse the note in

blank and without recourse.

8. The Current venue violates procedure. If for any reason, clerical or otherwise, the case is being handled by the wrong court or a court with no jurisdiction, the venue may be changed to a more suitable. court in a different location Once the sufficiency of the affidavit is. determined, such that belief that a fair trial cannot be obtained is justified, a change of venue is mandatory, (**Browning Manufacturing Co. v. Brunson**, 187 S.C. 278, 197 S.E. 311 (1938)), and all the papers relating to the action should be turned over to the nearest magistrate in the county who is not disqualified from hearing the case, so that he may. proceed as if the action had been originally filed with him. Section 22-3-920 points out specifically, that only "one such transfer shall be allowed. each party in any case." Changes of venue may be sought for a variety. of reasons, from emotional causes of action preventing the drawing of an impartial jury to the personal knowledge or involvement of the magistrate before whom the action was brought, but in every case, the change should only be granted where reasons sufficient to justify a belief. that a fair trial is not possible are alleged in the affidavit.

9. Under Federal Rule of Evidence 201 the court may judicially notice a fact that is not subject to reasonable dispute because it: is generally. known within the trial court's territorial jurisdiction; or (2) can be. Accurately and readily determined from sources whose accuracy.

cannot reasonably be questioned. The Court may take judicial notice of records of any court of record of the United States

I. NTRODUCTION

10. To protect the integrity pursuant to S.C. Code Ann. § 17-21-80, S.C. Code Ann. §§ 22-3-10, and 22-3-20. Section 22-3-10, as limited by § 22-3-20, counterclaim must be transferred to the docket of the trial COURT from COMMON PLEAS, COUNTY OF RICHLAND FILED - 2024 Jan 30 10:52 AM - RICHLAND - COMMON PLEAS – **CASE # 2024CP4000292** , Herein without further order of the court, and without subject matter Jurisdiction and the amount in controversy the sum of **$ 237,017.51**, by failing to return. Case back to the ADR Court.,

11. C.M.A. Mortgage, Inc. was founded in 1993. The Company's line of business includes arranging loans for others on a commission and fee. basis. C.M.A. Mortgage operates in the State of Indiana.

12. C.M.A. Mortgage, Inc, INDIANA FOR-PROFIT DOMESTIC CORPORATION voluntarily Dissolved Date 06/09/2008, Shut down. Demands strict proof thereof.

13. CMA Termination Agreement AGLIC 10-31-14 Demands strict proof thereof.

14. Defendant denies the allegations Contained in paragraphs 1, and of Plaintiff complaint. Demands strict proof thereof.

15. Defendants denies having knowledge or information sufficient. thereof. To forma belief as to the truth of the allegations in paragraphs 2,3, and 4, 5, 6, 7, 8,9,10, 11, 12,13,14, 15,16, Of Plaintiff complaint and respectfully refers all questions of law to the Trial Court.

FIRST AFFIRMATIVE DEFENSE

16. That the Court lacks personal jurisdiction over the defendant due to Improper service of the summons and complaint.

SECOND AFFIRMATIVE DEFENSE

17. That plaintiff lacks legal standing to bring this frivolous lawsuit. action.

THIRD AFFIRMATIVE DEFENSE

18. That plaintiff C.M.A. Mortgage, Inc ") was the servicer of the Loan in 2007

FOURTH AFFIRMATIVE DEFENSE

19. C.M.A. Mortgage, Inc, CORPORATION voluntarily Dissolved Date 06/09/2008, NEVER TRANSFERRED NOTES to GOLDMAN SACHS MORTGAGE COMPANY, Date: FEB 2 5 2020 or any other Servicing. Companies such as RUSHMORE Servicing, U.S. BANK. NATIONAL, ASSOCIATION, The Defendants that the note could not be enforced. because the possession and endorsement required by the UCC were lacking. Even if the newly prepared allonge was valid, the bank's lack of

possession was enough to defeat the claim, also See: Marks v. Braunstein, No, 09-cv-11402, where a district judge rejected enforcement of a note. because the assignee did not have possession.

FIFTH AFFIRMATIVE DEFENSE

20. That HUD States that the HOA Is not Authorized by its Governing. Documents to Foreclose, Federal Foreclosure Bar implicitly. demonstrated A clear intent to preempt South Carolina super priority lien law expressly. Prohibiting foreclosures on Agency property without consent Because the Federal and state statutes impliedly conflicted, the Federal Foreclosure Bar Superseded the South Carolina super priority lien. provision

SIXTH AFFIRMATIVE DEFENSE
("Unclean Hands")

21. Each and every allegation contained in the foregoing Paragraph is. Repeated As if fully alleged herein to the extent consistent with this Defense.

22. Plaintiff's complaint is barred by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE
("In Pari Delicto")

23. Each allegation contained in the foregoing paragraph is. Repeated As if fully alleged herein to the extent consistent with this. Defense.

24. Plaintiff's claim is barred, in whole or in part, by the doctrine of ("in pari Delicto"); which provide that a Plaintiff's who has participated in. Wrongdoing may not recover damage resulting from the wrongdoing.

EIGHTH AFFIRMATIVE DEFENSE
("Illegality")

25. Each allegation contained in the foregoing paragraph is. Repeated As if fully alleged herein to the extent consistent with this defense

26. The assignment upon which Plaintiff's based some of all its Cause of action are illegal and/ or unenforceable under South Carolina law And public policy

NINTH AFFIRMATIVE DEFENSE

27. That plaintiff does not own the alleged debt.

TENTH AFFIRMATIVE DEFENSE

28. That plaintiff is not legally authorized to bring this action.

ELEVENTH AFFIRMATIVE DEFENSE

29. That plaintiff is not in possession and/or control of the Documents And/or witnesses necessary to prove its alleged claim. Against defendant

TWELFTH AFFIRMATIVE DEFENSE

30. That plaintiff does not own or possess the right(s) to Receive all payments or amounts allegedly due or owed pursuant the

Alleged Mortgage agreement

THIRTEENTH AFFIRMATIVE DEFENSE

31. That plaintiff did not pay fair and adequate consideration for the Alleged debt and plaintiff would be unjustly enriched if plaintiff were to Receive the relief Requested.

FOURTEENTH AFFIRMATIVE DEFENSE

32. That documents allegedly transferring ownership of the alleged. Debt to plaintiff were executed after the commencement of this action.

FIFTEENTH AFFIRMATIVE DEFENSE

33. That the amount plaintiff claims to be due is incorrect.

SIXTEENTH AFFIRMATIVE DEFENSE

34. The complaint fails to state a claim upon which relief. Can be granted.

SEVENTEENTH AFFIRMATIVE DEFENSE

35. Plaintiff's claim is barred, in whole or in part, by the applicable Principles of Waiver, ratification, latches and/ or estoppel

EIGHTEENTH AFFIRMATIVE DEFENSE

36. Plaintiff lacks standing to bring this action because it has. No business Relationship with defendant.

NINETEENTH AFFIRMATIVE DEFENSE

37. Plaintiff is not the real party in interest.

SPECIAL AND AFFIRMATIVE DEFENSES

38. The plaintiff is not entitled to the return of the title of the property, there being no breach of contract on the part of the Defendants, contrary to the allegations of the Plaintiffs in Par.1-16 of the Complaint.

COMPULSORY COUNTERCLAIM

39. Defendant Jacob Fulks; Florene Fulks; brings this. Counterclaim against Plaintiff's C.M.A MORTGAGE, INC, U.S. BANK. NATIONAL, ASSOCIATION, GOLDMAN SACHS MORTGAGE COMPANY RUSHMORE Servicing,

JURISDICTION

40. This Court lacks subject-matter jurisdiction over this. Counterclaim pursuant to S.C. Code Ann. § 17-21-80, S.C. Code Ann. §§ 22-3-10, and 22-3-20. Section 22-3-10

INTRODUCTION

41. This case is part of series of abusive lawsuits filed by Plaintiffs in furtherance of its business model of purchasing subprime. mortgage, Goldman/ C.M.A. Mortgage, Inc profited from the collapse in subprime mortgage bonds by short-selling subprime mortgage-backed securities, Residential mortgage-backed security (RMBS) are a type of mortgage-backed security backed by residential real estate mortgages. Bonds securitizing mortgages are usually treated as a separate class,

referring to the general package of financial agreements that typically represents cash yields that are paid to investors and that are supported by cash payments received from homeowners who pay interest and principal according to terms agreed to with their lenders; it is a funding instrument created by the "originator" or "sponsor" of the mortgage loan; without cross-collateralizing individual loans and mortgages (because it would be impossible to receive permission from individual homeowners) even when, as in this case, the defendant has not defaulted.

PARTIES

42. Defendants (hereinafter ("FULKS") is a resident citizen of The State of Richland County, South Carolina. Are Defendants in **CASE#2024CP4000292** RCP, filed in this Court.

43. Plaintiff Rushmore Servicing Coppell, TX 75019 8950 Cypress Waters Blvd Coppell, TX 75019 -At all times relevant to this Complaint, Defendants

44. Plaintiff Goldman Sachs Mortgage Company, 2001 Ross Avenue 8950 Cypress Waters Blvd Coppell, TX 7S201-At all times relevant to this Complaint, Defendants

45. Plaintiff U.S. Bank, U.S. Bank National Association Main Office of the Bank 425 Walnut St Cincinnati, OH 45202 Hamilton County-At all times relevant to this Complaint, Defendants

46. The alleged indebtedness of the Defendants is unsubstantiated.

by any evidence and is an act to pre-empt the defendant's exercise of their right to pursue collection by court action

47. That defendant has never seen the alleged US. BANK TRUST NATIONAL ASSOCIATION, not in its individual capacity. but solely as owner trustee for LEGACY MORTGAGE ASSET TRUST-2020-GS1 Mortgage agreement and therefore, could not have agreed to its provisions.

48. **THE COURT TAKE JUDICIAL NOTICE, See U.S. Bank NA v Cannella:: 2019::** New York Other Courts Web Neither **U.S. Bank N.A. v Guy,** supra, nor **Deutsche Bank Trust Co. Ams. v Codio, supra,** specifically addressed UCC § 3-202(2). In Guy, the court stated that the plaintiff "by producing the underlying adjustable rate note with an affixed undated allonge. Endorsed in ...

49. (***see US Bank N.A. v Cusati***, 185 AD3d 870, 871 [2020]).The Defendant reliance on the assignments of the mortgage is misplaced. "Because the mortgage is not the dispositive document of title as to the mortgage loan" (***Aurora Loan Servs., LLC v Taylor***, 25 NY3d at 362 [internal quotation marks omitted]; **see Bank of N.Y. v Silverberg, 86 AD3d 274,** 280 [2011]) Since the Plaintiff failed to establish Standing,

Borrower Has Standing to Challenge Void Assignment

50. **See:** Supreme Court of California held that a borrower on a home loan secured by a deed of trust has standing to base an action for

wrongful. foreclosure on allegations that defects in the purported. assignment of the note and deed of trust renders the assignment. void. *Yvanova v. New Century Mortgage Corp.*, No. S218973 (Cal. Feb. 18, 2016).

51. See: Jacob Fulks; Florene Fulks; Assignment of Mortgage
52. SEE: Recording Requested by and Return To:
53. CORELOGIC
54. PO BOX 9232
55. COPPELL, TX 75019
56. ASSIGNMENT OF SECURI1Y INSTRUMENT
57. REF NUMBER: 7600492902
58. Date: FEB 25. 2020
59. Protect Code: RPL002
60. Data ID: BO5L20G
61. Property Address: 140 WATSON WAY, COLUMBIA. SC 29229
62. Owner and Assignor <"Assignor") of Mortgage ("Security Instrument")
63. U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016- CIT, 60 LIVINGSTON AVENUE, EP-MN-WS3D, ST. PAUL, MN 55107
64. Assignee:
65. GOLDMAN SACHS MORTGAGE COMPANY, 2001 ROSS AVENUE, DALLAS, TX 7S201
66. Security Instrument is described as follows:
67. Date: 07/06/2007
68. Original Amount: $178500.00
69. Borrower/Grantor/Mortgagor/Ttrustor: JACOB FULKS AND
70. FLORENE FULKS Mortgagee/Beneficiary: MORTGAGE
71. ELECI'RONIC REGIS1RATION SYSTEMS, INC., AS
72. NOMINEE FOR CMA MORTGAGE INC, ITS SUCCESSORS
73. AND ASSIGNS
74. Mortgage Recorded or Filed in Book R 1346, Page 467,

75. Instrument Number 2007072604, 8/10/11'1J7 in
76. the Official Records in the County Recorder's or Clerk's Office of RICHLAND COUN1Y, SC.
77. U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS
78. INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR
79. RMAC TRUST, SERIES 2016-CIT BY RUSHMORE LOAN
80. MANAGEMENT SERVICES, ITS APPOIN1ED ATTORNEY IN FACT
81. Enadia Pierce ⬅
82. Title: Asst\ Vice President ⬅
83. B8-3-04, Note Endorsement (10/02/2019)-PAY TO THE
84. ORDER OF WITHOUT RECOURSE LENDER'S NAME
85. (Authorized Signature) NAME OF AUTHORIZED SIGNER
86. TITLE OF AUTHORIZED SIGNER
87. signed Enadia Pierce for RUSHMORE LOAN ⬅
88. The originating lender must be the original payee on the note
89. **THE COURT TAKE JUDICIAL NOTICE,** A breach of trust is Any action or inaction that violates the terms of the **trustee's Fiduciary** duties. If you feel that a **trustee** violated heir **fiduciary** responsibility or **failed** to act in good faith causing you to suffer economic hardship, you can recoup your losses,.

90. **THE COURT TAKE JUDICIAL NOTICE** THE BANK FAILED TO DEMONSTRATE STANDING TO BRING THE FORECLOSURE ACTION;THERE WERE QUESTIONS OF FACT WHETHER THE "HOLDER (OFTHE NOTE)" REQUIREMENTS OF THE UCC WERE MET (SECOND DEPT).The Second Department, reversing Supreme Court, determined plaintiff bank did not demonstrate standing to bring the foreclosure action:[T]here was no evidence that the plaintiff is the assignee

of note, and triable issues of fact exist as to whether the plaintiff was the holder of the note at the time the action was commenced. A promissory note is a negotiable instrument within the meaning of the Uniform Commercial Code (see UCC 3-104[2][d] ...). A "holder" is "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession" (UCC 1-201[b][21][A] ...). Where an instrument is endorsed in blank, it may be negotiated by delivery (see UCC 3-202[1]; 3-204[2] ...). In the present case, there is a triable issue of fact as to whether the note was properly endorsed in blank by an allonge "so firmly affixed thereto as to become a part thereof" when it came into the possession of the plaintiff (UCC 3-202[2] The plaintiff's reliance on the assignments of the mortgage is misplaced "because the mortgage is not the dispositive document of title as to the mortgage loan" . **HSBC Bank USA, N.A. v Herod**, 2022 NY Slip Op 01444, Second Dept 3-9-22

91. In fact, Plaintiff has made prima facie showing to satisfy. Both factors for the Court to grant a preliminary injunction. As to the first factor, the Complaint filed in this lawsuit alleges facts sufficient for the Court to conclude that CMA Mortgage Inc in its own right and/or Goldman Sachs Mortgage Company, U.S. Bank National Association, Legacy Mortgage Asset Trust 2020-GS1 would continue to engage in willfully deceitful conduct resulting in irreparable harm to Plaintiff. Further, Plaintiff

requests that the Court take judicial notice of Ar269. v. Cox, 431 S.E.2d 267, 269 (S.C. Ct. App. 1993). A second species of fraud exists, fraudulent. concealment. As the South Carolina Supreme Court explained: In the case of Holly Hill Lumber Co. v. McCoy, 201 S.C. 427, 23 S.E.2d372, we held that were party to a transaction conceals some material fact within his own knowledge, which it is his duty to disclose, he is guilty of actual fraud. Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction. Lawson v. Citizens & S. Nat. Bank of S.C., 193 S.E.2d 124, 126 (S.C. 1972). Nondisclosure is fraudulent when there is a duty to speak. Non-disclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known too the other party to the transaction. Pitts v. Jackson Nat. Life Inc. Co., 574 S.E.2d 502, 002) (citations and quotations omitted). Fabricio C. Santos, Carrington, Deutsche bank, which demonstrate its extraordinary pattern. and practice fraudulent and deceitful conduct.

92. FRAUDULENT CONCEALMENT the actions of hiding something or preventing it from being known...

2. In, Fact the bank may not be at a loss according to the Pooling and Servicing Agreement ("PSA") trusts terms. Notably, banks never inform the courts of the PSA terms in their foreclosure complaints.

3. The Plaintiffs' bank must establish "the existence of the mortgage and mortgage note, ownership of the mortgage and note, and

the Defendants default in payment." **Campaign v. Barba**, 23 AD3d 327 (2nd Dept. 2005). The PSA is the insurance existing specifically to protect. the banks from homeowner's default, which by its terms always pays any. defaulting mortgage and other fees, including real estate taxes. Logically, if the bank is paid then there is no default or damage to the bank. How can a loan be in default if the servicer advanced every. payment to cover any alleged default?

4. the PSA for a trust called OAR2 names not one but two servicers as CITIMORTGAGE, INC LOAN SERVICING LLC, (the master servicer and securities administrator) and U.S. Bank Trust National Association or Goldman Sachs Mortgage Company, Those servicers are responsible **to advance** payments to protect all mortgaged property in the trust in the event a homeowner defaults in payment (at PSA pages 53 and 116) as follows:

93. Fraudulent concealment is an equitable doctrine that, if. proven, operates to toll the applicable limitation period until the plaintiff can. reasonably discover his or her case. Fraudulent concealment exists where:
• the litigious parties have a special relationship with one another.
• the plaintiff conduct amounts to an unconscionable act towards the defendants, given the confidential nature of their relationship; and
• the plaintiff concealed the defendants right of action. (1) Once established, this equitable doctrine operates to restrict wrongdoers. from inappropriately concealing pertinent information and, in turn, leveraging a limitation period to cause an injustice.

94. **THE COURT TAKE JUDICIAL NOTICE** Jacob Fulks, Florene. Fulks; Defendants has Article III standing to seek statutory damages from

CitiFinancial Services, CitiMortgage, Inc. U.S. Bank Trust National Association, Goldman Sachs Mortgage Company the mortgage servicers for its violations of South Carolina. SECTION 29-3-320. Liability for failure to enter satisfaction. mortgage-satisfaction-recording statutes, these statutes. require. mortgage lenders and Servicers to record. satisfactions of mortgage (Also known as "certificates of discharge") within thirty days of the borrowers. repayment: a failure renders the lender and Servicers "liable to the mortgagor" for increasing statutory damages in amounts. dependent on the tardiness of the ultimate filing. Here, the Bank and Servicers did not record the satisfaction of the Lewis' mortgage,

95. In re Prudential Ins. Co. America Sales Practice Litig. Agent, 278 F.3d 175, 181 (3d Cir. 2002). Where bad faith is a necessary predicate for a court to use its inherent authority, an untrue Statement is made in bad faith if the statement was made for a harassing or frivolous. purpose. Byrne v. Nezhat, 261 F.3d 1075, 1125 (11th Cir. 2001). Bad faith can be inferred where an Attorney knowingly and deliberately makes. blatantly incorrect statements. See Crowe v. Smith, 151 F.3d 217, 239 (5th Cir. 1998) (finding adequate support in the record for the conclusion

that an attorney acted in bad faith in providing "blatantly incorrect discovery response" counsel Knew To be untrue at that the time it was offered).

96. In addition, any ruling that involves violation of due process. of law under the Fifth, Sixth, or Seventh Amendments is also a void. judgment. Void judgment Can be attacked or vacated at any time and there is no statute of limitation. **See Long v. Shorebank Development Corp.**, 182 F.3d 548 (C.A. 7 Ill. 1999). A void Judgment is one which, from its inception, was a complete nullity and without Legal effect, **Lubben v. Selective Service System Local Bd**. No. 27, 453 F.2d 645, 14 . L.R. Fed. 298 (C.A. 1 Mass. 1972).

97. "**Fraud upon the court**" has been defined by the 7th Circuit Court of Appeals to "embrace that species of fraud which does, or attempts to, defile the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery can not perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Kenner v. **C.I.R.**, 387 F.3d 689 (1968); 7 Moore's Federal Practice, 2d ed., p. 512, ¶ 60.23. The 7th Circuit further stated "a decision produced by fraud upon the court is not in essence a decision at all, and never becomes final."

98. The discovery rule generally provides a cause of action. accrues for purposes of the governing statute of limitations at the time.

when the debtor discovers or, in the exercise of reasonable care, should. have discovered the complained of injury." **Klein v. State Farm Fire & Cas**., 250 Fed. Appx. 150, 54 (6th Cir. Ohio 2007)

99. **Ninth Circuit in United States v. Estate of Stonehill,** "[m]ost fraud on the court cases involve a scheme by one party to hide a key fact from the court and the opposing party."[5] Perjury or nondisclosure of evidence may constitute fraud upon the court if "that. perjury or nondisclosure was so fundamental that it undermined the workings of the adversary process itself.

100. The Ninth Circuit Court of Appeal has ruled that obtaining an arbitration award through perjury is fraud. **See Dogherra v. Safeway Stores, Inc.**, 679 F.2d 1293, 1297 (9th Cir. 1982) (obtaining an award through perjury is fraud), cert. denied, 459 U.S. 990, 103 S.C t. 346, 74 L.Ed.2d 386 (1982).

101. That accordingly defendant could not have breached the Provisions Of the alleged Mortgage agreement

102. That since this action is for breach of the alleged Mortgage. Agreement, it Should be voided and Dismissed with prejudice.

FIRST COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION

103. That defendant repeats and reiterates each and every. Allegation above

104. That plaintiff knowingly, intentionally, maliciously, and Fraudulently Brought this action without legal authority or standing for the Purpose of inducing Defendant to pay money he does not owe to plaintiff.

105. Defendant has been forced to answer the purported complaint. To prevent Entry of a default judgment and does not submit to the Jurisdiction of this Court, and defendant has suffered noneconomic. Damages including but not limited to severe emotional distress and large. Economic damages including but not limited to attorneys' fees and costs.

106. That as a result of the foregoing, defendant has been damaged. In the amount Of One Hundred Thousand Dollars ($100,000.00) together With punitive damages, attorneys' fees, and costs

SECOND COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION

107. That defendant repeats and reiterates each and every. Allegation above.

108. That plaintiff knowingly, intentionally, maliciously, and Fraudulently Induced defendant to respond to this improperly commenced. Action based upon Defendant's process server's misrepresentations in the Affidavit of service that Service of process was conducted properly in Accordance with all applicable laws, For the purpose of inducing defendant to pay money he does not owe to plaintiff.

109. That plaintiff knew that the service of the purported summons. And complaint in this action was not conducted properly in accordance with All applicable laws.

110. Defendant has been induced to answer the purported. Complaint. To prevent Entry of a default judgment and does not submit to The Jurisdiction of this Court, and defendant has suffered noneconomic. Damages including but not limited to Severe emotional distress and large. Economic damages including but not limited to attorneys' fees and costs.

111. That as a result of the foregoing, defendant has been damaged. In the amount Of One Hundred Thousand Dollars ($100,000.00) together With punitive damages, Attorneys' fees, and costs.

THIRD COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION

112. That defendant repeats and reiterates each and every. Allegation above.

113. That plaintiff knowingly, intentionally, maliciously, and Fraudulently Induced defendant to respond to this improperly commenced. Action based upon Defendant's misrepresentations in the summons that. Defendant was required to Respond, when in fact defendants had no duty. To respond because plaintiff had Failed to take the necessary actions for the court to acquire jurisdiction over Defendant.

114. Defendant has been forced to answer the purported complaint. To prevent Entry of a default judgment and does not submit to the

Jurisdiction of this Court, and defendant has suffered noneconomic. Damages including but not limited to but Not limited to severe emotional. Distress and large economic damages including but Not limited to Attorneys' fees and costs.

115. That as a result of the foregoing, defendant has been damaged. In the amount Of One Hundred Thousand Dollars ($100,000.00) together With punitive damages, Attorneys' fees, and costs

FOURTH COUNTERCLAIM FOR FRIVOLOUS CONDUCT

116. That defendant repeats and reiterates each and every. Allegation above.

117. That plaintiff, its agents, servants and/or employees knowingly, Intentionally, maliciously, and fraudulently filed a false affidavit of service in This matter for the purposes of inducing defendant to pay the money and/or Respond to the improperly served summons and complaint, harassing, Annoying and embarrassing defendant: and causing defendant to waste. Time and money on legal fees to defend himself in this improperly. Commenced action. That the above-referenced misconduct constitutes "frivolous conduct" which is Punishable through an award of costs, Attorneys' fees, and sanctions pursuant to Rule 11 (c) (1)

118. That as a result of the aforesaid frivolous conduct, defendant Has been forced. To answer the purported complaint to prevent entry of a Default judgment and does Not submit to the jurisdiction of this Court, and

Defendant has suffered Noneconomic damages including but not limited to Severe emotional distress and large economic damages including but not Limited to attorneys' fees and costs.

119. That as a result of the foregoing, defendant respectfully Requests that this Court award costs, attorneys' fees, and sanctions to Defendant in the amount of One Hundred Thousand Dollars ($100,000.00) Together with exemplary damages, Attorneys 'fees and costs

FIFTH COUNTERCLAIM FOR VIOLATIONS OF THE FEDERAL FAIR CREDIT REPORTING ACT

120. That upon information and belief, plaintiff and/or its attorneys, Agents, Servants and/or employees, and/or plaintiff is alleged. Predecessor (s) interest and/or Their attorneys, agents, servants and/or employees, Repeatedly, knowingly, Intentionally, maliciously, and fraudulently reported. False, negative information on Defendant's credit reports in violation of the Federal Fair Credit Reporting Act Causing defendant to suffer damages.

121. That defendant repeats and reiterates each and every. Allegation above.

122. That upon information and belief, plaintiff and/or its attorneys, Agents, Servants and/or employees, and/or plaintiff is alleged. predecessor(s) interest and/or Their attorneys, agents, servants and/or employees, repeatedly, knowingly, Intentionally, maliciously, and fraudulently reported false, negative information on Defendant's credit

reports in violation of the federal Fair Credit Reporting Act causing defendant to suffer damages.

123. That as a result of the foregoing, defendant respectfully Requests that this Court award the greater of one hundred thousand dollars ($100,000.00) or $1,000 For each violation of the Fair Credit Reporting Act or defendant's actual damages Including but not limited to damages related to emotional distress and monetary Losses, together with punitive damages, attorneys' fees and costs.

SIXTH COUNTERCLAIM FOR FRAUD AND MISREPRESENTATION

124. That defendant repeats and reiterates each and every. Allegation above.

125. That plaintiff and/or other parties that were/are under the Control of or acting on behalf of the plaintiff intentionally and maliciously. fabricated documents and/or made false statements in documents. including but not limited to the dates of execution of said documents for purposes of inducing defendant to pay money to plaintiff.

SEVENTH COUNTERCLAIM FOR VIOLATIONS OF THE FEDERAL FAIR DEBTCOLLECTION PRACTICES ACT

126. That defendant repeats and reiterates each and every Allegation above.

127. That as previously set forth defendant has knowingly, Intentionally and Maliciously committed numerous frauds and attempted.

frauds in the course of Attempting to collect this alleged debt, all of which. constitute crimes under federal, state and/or local law.

128. Crimes committed by a debt collector in the course of Attempting to collect a Debt are violations of the Federal Fair Debt Collection Practices Act.

129. That as a result of the foregoing, defendant seeks damages in The amount of One Hundred Thousand Dollars ($100,000.00) and/or statutory or actual damages and other damages as provided in the Federal Fair Debt Collection Practices Act, including but not limited to punitive. damages, attorneys' fees, and costs

WHEREFORE, defendant demands judgment dismissing the complaint. Herein and awarding defendant the sums of One Hundred Thousand Dollars ($100,000.00) on the First Counterclaim, One Hundred Thousand Dollars ($100,000.00) on the Second Counterclaim, One Hundred Thousand Dollars ($100,000.00) on the Third Counterclaim, One Hundred Thousand Dollars ($100,000.00) on the Fourth Counterclaim, and on the Fifth Counterclaim, the greater of One Hundred Thousand Dollars ($100,000.00) or defendant's statutory damages or actual damages including but not limited to damages related to emotional distress and monetary losses for violation of the **defendant's** costs, disbursements, and attorneys' fees; One Hundred Thousand Dollars ($100,000.00) on the Sixth Counterclaim; and on the Seventh Counterclaim, the greater of one hundred thousand dollars ($100,000.00) or defendant's statutory or actual

damages including but not limited to monetary damages and damages for noneconomic harm including but not limited to damages related to emotional distress as provided in the Federal Fair Debt Collection Practices Act, together with defendant's costs, disbursements, and attorneys' fees. and such other and further relief as the Court deems just and proper. Original Lender: C.M.A. Mortgage, Inc, INDIANA FOR-PROFIT DOMESTIC CORPORATION voluntarily Dissolved Date 06/09/2008, Shut down. Demands strict proof thereof. C.M.A. Mortgage, Inc is in Fact violation. South Carolina General Statute § 39-5-10 et seq.; in violation of the South Carolina Unfair Trade Practices Act, Ann. § 39-5-10 et

130. Similarly, the plaintiff's unfounded suit has caused the defendants' mental anguish and suffering and public humiliation and embarrassment, for which the defendant claims moral damages of $100,000.00

WHEREFORE, having fully answered Plaintiff 's Complaint, Jacob Fulks. Florene Fulks; asks this Court to dismiss Plaintiff 's complaint, with Prejudice and award attorneys' fees and costs to Jacob Fulks; Florene. Fulks, and to award Jacob Fulks; Florene Fulks; nominal actual damages and to award punitive damages for Jacob Fulks, Florene Fulks, Counterclaim, and for such other and further relief as the Court. and jury deem necessary.

JACOB FAULKS AND FLORENE FULKS DEMANDS A TRIAL BY JURY OF ANY AND ALL ISSUES BEFORE THE COURT AND TRIABLE BY A JURY

Respectfully submitted on this 7Th day of February 8, 2024.

Jacob Fulks

Jacob Fulks, Florene Fulks
140 Watson Way
Columbia, SC 29229
revflo@hotmail.com
(803) 807-6414

CERTIFICATE OF SERVICES

I HEREBY CERTIFY that a copy of the foregoing. DEFENDANT(S)...ANSWER TO COMPLAINT AND COUNTERCLAIM FOR FRIVOLOUS LAWSUIT of Plaintiffs ON Thursday, February 8, 2024, was served by email and Certified Registered Letter on February 8, 2024 to the below listed parties:

R. Brooks Wright
Rogers Townsend, LLC
1221 Main Street, 14th Floor.
Columbia, SC 29201
ATTORNEYS FOR PLAINTIFF

Rushmore Servicing
Coppell, TX 75019
8950 Cypress Waters Blvd
Coppell, TX 75019

Goldman Sachs Mortgage Company,
2001 Ross Avenue
8950 Cypress Waters Blvd
Coppell, TX 7S201

U.S. Bank, U.S. Bank National Association
Main Office of the Bank
425 Walnut St
Cincinnati, OH 45202
Hamilton County

RICHLAND COUNTY
FILED
2024 FEB -8 PM 1:08
JEANETTE W. McBRIDE
C.C.P. G.S., & F.C.

JACOB FAULKS AND FLORENE FULKS DEMANDS A TRIAL BY JURY OF ANY AND ALL ISSUES BEFORE THE COURT AND TRIABLE BY A JURY

Respectfully submitted on this 7Th day of February 8, 2024

Jacob Fulks

Jacob Fulks, Florene Fulks
140 Watson Way
Columbia, SC 29229
revflo@hotmail.com
(803) 807-6414

ELECTRONICALLY FILED - 2024 Mar 01 4:15 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendant(s).	IN THE COURT OF COMMON PLEAS DOCKET NO. 2024CP4000292 REPLY OF PLAINTIFF TO DEFENDANT JACOB FULKS AND FLORENCE FULK'S ANSWER AND COUNTERCLAIM (NON-JURY) Deficiency Judgment Waived

(013225-03704)

The Plaintiff, U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, by way of Reply to the Answer and Counterclaim herein, would respectfully show unto the Court as follows:

1. That each and every allegation contained in the Answer and Counterclaim which is not hereinafter specifically admitted or otherwise qualified is denied, and strict proof is demanded thereof.

2. As to Paragraphs 11-13 and Paragraphs 42-45, the Plaintiff is without sufficient knowledge as to the truth of the allegations, but leaves Defendants to prove.

3. The Plaintiff denies all other allegations contained in the Answer to Complaint and Counterclaim, and demands strict proof thereof.

ELECTRONICALLY FILED - 2024 Mar 01 4:15 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

WHEREFORE, having fully set forth its Reply to the Answer to Complaint and Counterclaim, the Plaintiff, prays that this Honorable Court inquire into the matters at issue:

1. Dismiss the all Counterclaims of the Defendant Jacob Fulks and Florene Fulks with fees and costs; and

2. Award to the Plaintiff, such other and further relief as may be just and proper.

s/ Brian P. Yoho
Rogers Townsend, LLC
ATTORNEYS FOR PLAINTIFF
John J. Hearn (SC Bar # 6635), John.Hearn@rogerstownsend.com
Brian P. Yoho (SC Bar #73516), Brian.Yoho@rogerstownsend.com
Jeriel A. Thomas (SC Bar #101400) Jeriel.Thomas@rogerstownsend.com
R. Brooks Wright (SC Bar #105195) Brooks.Wright@rogerstownsend.com

1221 Main Street, 14th Floor
Columbia, SC 29201

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

Columbia, South Carolina
February 27, 2024

ELECTRONICALLY FILED - 2024 Mar 01 4:15 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendant(s). (013225-03704)	IN THE COURT OF COMMON PLEAS DOCKET NO. 2024CP4000292 CERTIFICATE OF MAILING

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the Reply to Defendant's Answer and Counterclaim, in connection with the above-referenced case by mailing a copy of the same by United States mail, postage prepaid, to Pro Se,

Jacob Fulks
140 Watson Way
Columbia, SC 29229

Florene Fulks
140 Watson Way
Columbia, SC 29229

Default Services Document Processor

ELECTRONICALLY FILED - 2024 Mar 04 9:30 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL DISTRICT
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Rushmore Loan Servicing Goldman Sachs Mortgage Company U.S. Bank, U.S. Bank National Association Plaintiff(s), v. Jacob Fulks; Florene Fulks; Defendant(s).	)	Civil Action No. 2024-CP-40-00292 **PLAINTIFF'S MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' COUNTERCLAIM AND/OR TO DESIGNATE CERTAIN CLAIMS AS DEFENSES**

The Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 ("U.S. Bank Trust" or "Plaintiff") by and through its counsel, hereby moves this Court to dismiss the Counterclaim of the Defendants Jacob Fulks and Florene Fulks ("Defendants") for failure to state a claim upon which relief can be granted pursuant to S.C. R. Civ P. 12(b)(6) and/or failed to allege fraud with particularity as required by S.C. R. Civ P. 9 and/or to designate certain purported claims as defenses pursuant to Rule 8(c). This Motion will be supported by the record, a memorandum of law, oral argument, and any other evidence requested or permitted by the Court.

Accordingly, Plaintiff U.S. Bank Trust respectfully requests that this Court grant its Motion and dismiss Defendants Jacob Fulks and Florene Fulks' Counterclaim with prejudice.

Respectfully submitted, this the 4th day of March, 2024.

U.S. BANK TRUST NATIONAL ASSOCIATION NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER

TRUSTEE FOR LEGACY MORTGAGE ASSET TRUST 2020-GS1
By Counsel

/s/ T. Richmond McPherson, III

T. Richmond McPherson III
(SC State Bar #80432)
Partner
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201 N. Tryon St.
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ELECTRONICALLY FILED - 2024 Mar 04 9:30 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

ELECTRONICALLY FILED - 2024 Mar 04 9:30 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 4th day of March, 2024, a true copy of the foregoing ***PLAINTIFF'S MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' COUNTERCLAIM*** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each party or attorney for each said party as follows:

Jacob Fulks
Florene Fulks
140 Watson Way
Columbia, SC 29229
803.807.6414
revflo@hotmail.com
Pro se Defendants

U.S. Bank, U.S. Bank National Association
Main Office of the Bank
425 Walnut St.
Cincinnati, OH 45202
Hamilton County

R. Brooks Wright
Rogers Townsend, LLC
1221 Main Street, 14th Floor
Columbia, SC 29201
Attorneys for Plaintiff

Goldman Sachs Mortgage Company
2001 Ross Avenue
8950 Cypress Waters Blvd.
Coppell, TX 75201

/s/ T. Richmond McPherson, III
T. Richmond McPherson III
(SC State Bar #80432)

STATE OF SOUTH CAROLINA	§	IN THE COURT OF COMMON PLEAS
	§	CIVIL ACTION # 2024-CP-40-00292
COUNTY OF RICHLAND	§	
	§	FIFTH JUDICIAL DISTRICT
U.S. Bank National Association, not in	§	
not in its individual capacity but solely as	§	**DEFENDANTS AMENDED ANSWER**
owner trustee for Legacy Mortgage Asset	§	**AND AMENDED COUNTERCLAIMS**
Trust 2020-GSI,	§	
Rushmore Loan Servicing	§	**JURY DEMAND**
Goldman Sachs Mortgage Company	§	
Plaintiff,	§	**OVER $100,000**
	§	
	§	
vs	§	
	§	
Jacob Fulks; Florene Fulks	§	
Defendants,	§	

RICHLAND COUNTY FILED
2024 APR -1 AM 9:57
JEANETTE W. McBRIDE C.C.P. G.S. & F.C.

DEFENDANTS AMENDED ANSWER AND AMENDED COUNTERCLAIMS

NOW COME, The Defendants Jacob Fulks and Florene Fulks (hereinafter "Defendants Fulks"), in accordance with *S.C. R. Civ. P. 15(a),* file this their Amended Answer and Amended Counterclaims to Complaint of the Plaintiffs, and would respectfully show unto this court the following:

1. The Court Order dated January 30, 2024, referred this case to the Master of Equity and list this action as a non-jury. Defendants original answer and counterclaims demanded a jury trial. *S.C. R. Civ. P 38.* (See illustration below)

DEFENDANT(S)...ANSWER TO COMPLAINT AND COUNTERCLAIM FOR FRIVOLOUS LAWSUIT AND FRAUD ON THE COURT

DEMAND FOR JURY TRIAL

Amount is over $10,000

RICHLAND COUNTY FILED 2024 FEB 21 PM 1:08 JEANETTE W. McBRIDE C.C.P. G.S. & F.C.

2. While this may be an action in foreclosure, Defendants' affirmative defenses and counterclaims are all triable issues by right to a jury. In accordance with, *S.C. R. Civ. P. 53(b),* upon the filing of a jury demand, the case shall be referred back to the circuit court. This amended answer and counterclaims relates back (*S.C. R. Civ .P 15(c)*) and supersedes the original answer and counterclaim filed February 8, 2024.

3. Each and every allegation not hereinafter specifically admitted or explained is denied and strict proof demanded thereof including a complete accounting and loan history from origination date to July 31, 2023.

4. Paragraph 1 of Plaintiffs Complaint does not need a response.

5. The Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraph 2, thereby denying same.

6. The Defendants Fulks deny Paragraph 3 of the complaint. The Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraphs 4, thereby denying same. The Defendants Fulks deny Paragraphs 5, and The Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraph 6, thereby denying same.

7. The Defendants Fulks deny Paragraph 7 & 8. The Defendants Fulks deny Paragraph 9, in so much as the mortgage was signed by them, witness by anyone in their present and legally probated on July 6, 2007. Defendants Fulks admit that based upon the Office of the RMC/ROD for Richland County, the documents appeared to have been recorded as stated. Defendants Fulks also deny legally binding assignments were made as stated in the remaining of Paragraph 9.

8. The Defendants deny Paragraph 10 and 11 of the complaint.

9. Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraph 12, 13, 14, and 15 of the complaint thereby denying same.

10. The Defendants Fulks deny any legally binding lien exist as stated in Paragraph 16 and demand strict proof thereof.

11. The Defendants Fulks request that all relief requested by Plaintiff in the complaint as stipulated on the final page of complaint be denied in its entirety.

12. Plaintiffs' claim is barred in whole or in part by each of the affirmative defenses enumerated. Defendants Fulks reserve the right to amend their defenses and counterclaim after additional pleading has been filed, after discovery or any other action by Plaintiffs with leave of court.

FIRST AFFIRMATIVE DEFENSE/ FORGERY

13. In September 2022, after the discharge of Defendant Florene Fulks bankruptcy discharge, Defendants discover some disturbing items regarding the mortgage and note. The Defendants Fulks never had a business relationship with a CMA Mortgage, Inc. the alleged originator of the mortgage and note. Defendants Fulks allege that the signatures on the alleged mortgage and note is a forgery. On July 6, 2007, Defendants Fulks never signed a mortgage or note for $178,500 with CMA Mortgage. On July 6, 2007, Defendants Fulks did not visit a CMA Mortgage office neither in person nor online, completed an application for a mortgage, visit the office of nor personally appeared before an attorney nor before a notary to close and sign a mortgage and note. Defendants Fulks believe that CMA Mortgage, its agents, employee(s), someone acting on their behalf or some other person beside themselves forged their signature on the alleged mortgage and note. On July 6, 2007, or anytime thereafter, Defendant Fulks never received any monies from the alleged $178,500 or any other benefit from Plaintiff nor its Predecessor-in-Interest CMA Mortgage, Inc. Defendants Fulks were married in May 2007 and are a couple of modest income. Defendant Fulks would clearly remember appearing before an attorney closing a note and mortgage only two months after the marriage and receiving **$178,500** [emphasis added] in return.

SECOND AFFIRMATIVE DEFENSE/LACK OF STANDING

14. The Defendants Fulks are informed and believe that based upon facts and evidence, the Plaintiff does not have standing to bring this action in that the Defendants Fulks have no legally binding relationship with the Plaintiff(s) nor its originator/predecessor CMA Mortgage. A forged instrument or contract is void ab initio and is never legally binding. Even assuming a legally binding mortgage note exists, Plaintiff lack standing to foreclose because they have no interest in the non-existence note and mortgage. Even assuming a legal contract existed between the parties, CMA Mortgage never assigned the alleged note to Mortgage Electronic Registry System (MERS) and MERS has never been the nominee for CMA Mortgage or cease to be the nominee and therefore MERS had no legal authority to make an assignment of the alleged note and mortgage. In addition, evidence suggest that CMA Mortgage formerly based out of Indiana dissolved in July 2008. CMA Mortgage was a small, private mortgage company with limited assesses and never participated in securitization of mortgage notes (including generating a pooling and service agreement (PSA), registering the pool of loans with the Security and Exchange Commission (SEC) or undertook any other action to securitized the alleged mortgage note).

THIRD AFFIRMATIVE DEFENSE/UNILATERAL MISTAKE

15. Any subsequent action by Defendant Fulks following the forged mortgage and note was a unilateral mistake by Defendants Fulks. Defendants Fulks acted under false pretenses regarding any subsequent contract or agreement. Defendants was under the belief that they were acting upon a mortgage that unknowingly had been prior paid in full and satisfied. The plaintiff knew or should have known that the mortgage note was questionable or illegal and that Defendant Fulks was mistaken. Plaintiffs or their predecessors-in-interest used that to take advantage of defendants; The Defendant Fulks mistake was not caused by the defendant's excessive carelessness; and defendant would not have agreed to enter into any post arrangements relating to the forged note on July 6, 2007, had they known.

FOURTH AFFIRMATIVE DEFENSE/EQUITABLE ESTOPPEL

16. Defendant Fulks never signed nor received a benefit from the alleged mortgage note. Plaintiff and or its predecessor and servicers have for over a decade represented to Defendant Fulks that they owed payments on a non-existence mortgage note. Plaintiffs since 2019 has reported to each major credit bureau that the balance on the mortgage note was zero yet continued to send and represent to Defendants Fulks though payment statements and notice of defaults that payments were due. Defendants Fulks without knowledge at the time acted upon this false presumption and have spent over $100,000 acting upon the misrepresentation.

FIFTH AFFIRMATIVE DEFENSE/UNJUST ENRICHMENT

17. The mortgage note alleged in the complaint never existed. For over a decade, but specifically to this counterclaim since May 2021, Plaintiffs and its predecessors have unjustly enriched themselves by accepting and receiving monies from Defendants Fulks on a forged instrument or contract. After collecting over $100,000 from Defendants Fulks, it would be unjust to allow Plaintiff to further enrich themselves by foreclose and selling Defendants Fulks home when Defendants Fulks never authorized a lien on the property, never signed for a mortgage and note, never appeared before a notary nor an attorney on July 6, 2007, to legal bind the mortgage and note.

SIXTH AFFIRMATIVE DEFENSE/VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURE ACT (RESPA):

18. Even assuming a legally binding mortgage note exists, Plaintiffs failed to provide the Housing and Urban Development (HUD) special information booklet; failure to provide a Mortgage Servicing Disclosure Statement and good faith estimate of settlement/closing costs to the defendant at the time of the loan application or within three (3) days thereafter; failure to provide defendants with an Annual Escrow Disclosure Statement for each year of the mortgage since its

inception; giving or accepting fees, kickbacks and/or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed; or charging a fee at the time of the loan closing for the preparation of truth-in-lending, uniform settlement and escrow account statements.

SEVENTH AFFIRMATIVE DEFENSE/CONDITIONS PRECEDENT

19. Even assuming a legal binding mortgage note exist Plaintiff failed to give proper notices in accordance with Section 20 of the alleged security instrument prior to commencing this action. Once such example, in April 2023, Defendants Fulks requested the documents in item 17 reference above, but Plaintiffs failed to provide and thereby to meet the conditions of even a forged contract.

EIGHTH AFFIRMATIVE DEFENSE/DISCHARGE IN BANKRUPTCY

20. While Defendants Fulks never signed the alleged mortgage and note nor received any benefit from the note, the debt was discharged in a bankruptcy filed by Florene Fulks in 2018.

NINTH AFFIRMATIVE DEFENSE/NEGILENT MISPRESENTATION

21. Since 2019, Plaintiff or its former loan servicers have reported to the three major three credit reporting agencies (Equifax, Experian and Transunion) that Defendants Fulks balance on the note was "zero" and that the loan was paid in full. Since at least May 2021, Plaintiffs or their Predecessors-in-Interest had stated to Defendants Fulks that they owed a mortgage note, Defendants replied on the statements and continue to make mortgage payments continue to pay thousands of dollars on a mortgage note that they never legally signed and was a forgery. Plaintiffs knew or should have known that no legally binding mortgage note existed. Plaintiff or its loan servicers acting on Plaintiff's behalf has sent Defendants Fulks monthly payment statements and notice of defaults requesting payments on the loan. In addition, Plaintiffs have and continue to represent to Defendant Fulks that they have a

mortgage and note with the Plaintiffs. Plaintiffs knew or should have known that The Fulks never signed nor received money or any other benefit from the mortgage loan. Defendants relied on this misrepresentation and

Plaintiffs had an interest in making the statements to enrich themselves through the continuation of payments by Defendants Fulks. Plaintiff owed a duty of care to ensure they communicated truthfully to Defendants Fulks regarding the forged mortgage loan, as well as listing the loan as paid in full according to their own credit reporting and internal documents. Defendant owed a duty to Defendants Fulks and Plaintiffs breached that duty by not advising Defendants Fulks that the loan had a zero balance and was paid in full. Defendants Fulks justifiably relied on the misrepresentation and lost several thousand dollars in unnecessary payments.

TENTH AFFIRMATIVE DEFENSE/ILLEGALITY

22. In order for a contract to be enforceable there must have been a meeting of the minds. The mortgage and note is unenforceable because no meeting of the mind ever occurred between Defendant Fulks and Plaintiff or its predecessor CMA Mortgage on July 6, 2007. Defendants Fulks never originated nor had a legally binding business relationship with Plaintiffs nor their Predecessor-in-Interest.

ELEVENTH AFFIRMATIVE DEFENSE

NEGLIGENCE NON-DISCLOSURE

23. Plaintiffs states that Defendants Fulks signed and owe a mortgage loan dated July 6, 2007. Defendants Fulks requested from Plaintiffs a complete accounting of the loan history on two occasions. That request included where the loan was signed, payment history, any changes to the original loan, date their loan was securitized and by whom, and anyone who ever possessed an interest in the note and mortgage. Defendants Fulks received in response only a copy of the original note and mortgage on one occasion and the second occasion they received the same with the exception of a short payment history, various mortgage assignments and welcome letter from

Rushmore Servicing and copies of the foreclosure lawsuit documents. Plaintiffs knew that the information was vital to Defendants. Plaintiffs currently possess documents and information that only they have privity. Plaintiffs had a duty to provide this information and withheld this information from Defendants Fulks.

TWELTH AFFIRMATIVE DEFENSE

24. Even assuming a legally binding mortgage contract exist, Plaintiffs claim are barred by the South Carolina statutes of fraud, statutes of limitations, novation, laches, wavier, unclean hands, and promissory estoppel.

AMENDED COUNTERCLAIMS

JURIDICTION

25. This court has jurisdiction over Defendants Fulks' counterclaims because defendants are residents of South Carolina. Furthermore, Plaintiffs U.S. Bank National Association, Goldman Sachs Mortgage Company and Rushmore Loan Servicing have avail themselves to this court jurisdiction relating to the counterclaims by conducting business in the state of South Carolina.

COUNTERCLAIM I

NEGILENCE MISREPRESENTATION

26. Defendants Fulks fully incorporate as set forth within the statements in their 9th Affirmative defense as a to this counterclaim and reestablish the following; In addition, at least since May 1, 2021 and continuously thereafter, Plaintiff or its former loan servicers have misrepresented to Defendants through notices, electronic communications, mortgage statements and other documents that they owed a mortgage note. Yet since 2019, Plaintiffs reported to three major three credit reporting agencies (Equifax, Experian and Transunion) that Defendants Fulks balance on the note was "zero" and that the loan was paid in full.

27. Since that credit bureau reporting, Plaintiff or its loan servicers acting on Plaintiff's behalf sent Defendants Fulks monthly payment statements and notice of defaults requesting payments on the loan.

28. The statements were made such that Defendant Fulks would act upon the misrepresentation and give money to Plaintiffs purporting to pay a mortgage note. Defendants Fulks relied on the misrepresentation and paid money on a mortgage they never signed nor received a benefit. Plaintiffs had an interest in making the statements to enrich themselves through the continuation of payments by Defendants Fulks. Plaintiffs owed a duty of care to ensure they communicated truthfully to Defendants Fulk regarding continuous payments on a mortgage loan that they knew

or should have known was not legal binding as well as their own credit reporting. Defendant owed a duty to Defendants Fulks and Plaintiff breached that duty by not advising Defendants Fulks that the loan had a zero balance and was paid in full. Defendants Fulks justifiably relied on the misrepresentation and lost over $100,000 dollars in unnecessary mortgage payments and other related payments due to the misrepresentation.

COUNTERCLAIM II

FRAUDULENT CONCEALMENT

29. Plaintiffs stated that Defendants Fulks signed and owe a mortgage loan dated July 6, 2007. Defendants Fulks requested from Plaintiffs a complete accounting of the loan history. That request included the place the loan was signed, payment history, any changes to the original loan, date their loan was securitized and by whom, anyone who ever possessed an interest in the note and mortgage. Defendants Fulks received in response only a copy of the original note and mortgage. Plaintiffs knew that the information was vital to Defendants. Plaintiffs currently possess documents and information that only they have privity. Plaintiffs had a duty to provide this information and withheld this information from Defendants Fulks. Defendant Fulks was damaged as the result of the concealment through the lost of money and emotional distress.

COUNTERCLAIM III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (NIED)

30. For nearly two decades, Defendant Fulks have paid on a mortgage note they never signed before an agent of Plaintiff, an attorney nor a notary public. Defendant Fulks did not receive money nor financially benefit from the $178,500 mortgage note. Plaintiffs knew or should have known the mortgage note was legally questionable and had a duty to act. Plaintiffs' now are attempting to foreclose on Defendant Fulks property and remove them from their home. Since at least May 1,

2021, Defendant Fulks has suffered emotional distress as a result of filing bankruptcy due to actions induce by plaintiffs or their predecessors-in- interest. Defendants Jacob Fulks have recently been placed on high blood pressure and has endured many other medical conditions. Defendant Florene Fulks have been hospitalized and placed on higher doses of high blood pressure medicine due to the stress of trying to pay a mortgage note and worry of losing their home to foreclosure on a mortgage note they never originated nor receive a benefit. Defendants Jacob Fulks have lost time from work due to stress and tending to his wife who has been under abnormal stress attempting to pay ever changing, yet fixed mortgage payment. Defendants Fulks previously spent large amounts of time with family and friends and have distanced themselves from family and friends due to the overwhelming stress of maintain mortgage payments and foreclosure actions. Defendants Fulks is the Department of Veteran Affairs designated caregiver their disable parent but recently had to temporary allow her sister to tend to their father due to the emotional impact of the foreclosure action of Plaintiff on a mortgage and note they never legal originated or consented too. Defendant Jacob Fulks work in a job that require strict attention to every detail. Stress over how to pay a mortgage and illegal foreclosure action over a mortgage he never originated has impacted his performance.

COUNTERCLAIM IV

VIOLATION OF SOUTH CAROLINA FAIR TRADE ACT (SCFTA) S.C. CONSUMER PROTECTION CODE (SCCPC)

31. Even assuming a legally binding mortgage existed, Plaintiffs are not entitled to foreclose because Plaintiffs or its predecessor-in-interest violated the Attorney Preference Statute. The mortgage note failed to comply with the attorney preference provisions of *S.C. Consumer Protection Code section 37-10-102* with respect to the closing of the loan, no attorney supervised the alleged closing of the loan, and the alleged loan is unconscionable. Defendant Fulks are entitled to damages, attorney's

fees, and penalties as provided in the South Carolina Consumer Protection Code, and for violation of the *South Carolina Unfair Trade Practices Act (the SCUTPA). See S.C. Code Ann. §§ 39-5-10 to -730 (1985 & Supp. 2020).*

REQUEST FOR PRESERVATION OF EVIDENCE

32. Request is hereby made that Plaintiffs preserve all records of written and/or oral communications and/or attempted communications with Defendant Fulks and any record of contact or attempted contact with Defendant Fulks. Destruction of such evidence shall constitute spoliation.

REQUEST FOR DISCOVERY

33. Defendant Fulks plans to conduct discovery in accordance with the *S.C. R. Civ. P. 26-37.*

MISNOMER/ALTER EGO

34. In the event that any parties are misnamed or are not included herein, it is Defendant Fulks contention that such was a "misidentification" or "misnomer" and/or such parties were "alter egos" of parties named herein. Alternatively, Defendant Fulks contends that "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants prays that U.S Bank National Association, Rushmore Loan Servicing and Goldman Sach be cited to appear and answer herein, and that after a final trial on the merits that Defendants Fulks recover:

1. Actual damages (including mental anguish);
2. Exemplary damages;
3. Attorney's fees;,
4. Court costs;,
5. Prejudgment and post-judgment interest;
6. Expungement of the mortgage lien and Lis Pendens from the Richland County Office of Deeds
7. Declare Conditions before filing the lawsuit was not met
8. Declare the mortgage loan void due to the forgery or illegality
9. Declare the mortgage and note unenforceable due to violation of SCFTA or RESPRA.

Respectfully submitted,

Jacob Fulks and Florene Fulks, Ph. D
Pro Se Defendants
140 Watson Way
Columbia, SC 29229
revflo@hotmail.com

Jacob Fulks Dr. Florene Fulks

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of April, 2024, a true copy of the foregoing **DEFENDANTS AMENDED ANSWER AND AMENDED COUNTERCLAIMS** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, and by certified email addressed to each party or attorney for each said party as set forward as follows:

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Attorneys for Plaintiffs
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RICHLAND COUNTY
FILED
2024 APR -1 AM 9:57
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF ____) ____ JUDICIAL CIRCUIT
) CASE NO.: 2024CP-40-0292
_____)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
Jacob & Fleone Fulks)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
____, Bar No. ____	____, Bar No. ____ N/A
Address:	Address:
Phone: ____ Fax ____	Phone: ____ Fax ____
E-mail: ____ Other: ____	E-mail: ____ Other: ____

RICHLAND COUNTY FILED
2024 APR 2 PM 3:53
JEANETTE W. McBRIDE C.C.P., G.S., & F.C.

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

SECTION I: Hearing Information

Nature of Motion: ____
Estimated Time Needed: 1 month Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order

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

Fleone Fulks
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted Jacob Fulks

SECTION III: Motion Fee

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

JUDGE'S SECTION

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

JUDGE CODE ____
Date: ____

CLERK'S VERIFICATION

Collected by: RM Date Filed: 4/2/24
☑ MOTION FEE COLLECTED: $ ____
☐ CONTESTED – AMOUNT DUE: $ ____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	§	IN THE COURT OF COMMON PLEAS
	§	CIVIL ACTION # 2024-CP-40-00292
COUNTY OF RICHLAND	§	
	§	FIFTH JUDICIAL DISTRICT
U.S. Bank National Association, not in not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GSI, Rushmore Loan Servicing	§	**DEFENDANTS MOTION TO TRANSFER CASE TO BACK TO CIRCUIT COURT AND ABATE SCHEDULED HEARING BEFORE THE MASTER OF EQUITY**
Goldman Sachs Mortgage Company Plaintiff,	§	
	§	**RE:**
	§	**HON. JUDGE STRICKLAND MASTER OF EQUITY**
vs	§	
	§	
Jacob Fulks; Florene Fulks	§	
Defendants,	§	

RICHLAND COUNTY FILED
2024 APR -2 PM 3:53
JEANETTE W. McBRIDE C.C.P., G.S.P. & F.C.

MOTION TO TRANSFER CASE BACK TO CIRCUIT COURT AND ABATE SCHEDULE HEARING BEFORE THE MASTER OF EQUITY

NOW COME, The Defendants Jacob Fulks and Florene Fulks (hereinafter "Defendants Fulks"), in accordance with *S.C. R. Civ. P. 53(b)*, file this their Motion to transfer this case back to the circuit court and abate the scheduled hearing before the master of equity set for April 9, 2024, and would respectfully show unto this court the following:

BACKGROUND

1. On January 17, 2024, Plaintiffs filed an action in foreclosure against Defendant Fulks.

2. On January 30, 2024, by court order, the case was referred to the Master of Equity, the Honorable Judge Joesph Strickland.

3. On February 8. 2024, Defendant Fulks filed their Original Answer and Counterclaims (OACC). The OACC demanded a jury trial.

4. On March 1, 2024, Plaintiffs replied to the OACC and on March 4, 2024, responded to the OACC with a Motion to Dismiss based upon failure to state a claim. The Motion also requested that the counterclaims be converted to affirmative defenses. The foreclosure appears to be listed as uncontested and non-jury and the motion is set for hearing on April 9, 2024 at 10:45 am before the master of equity.

5. On April 1, 2024, in accordance with *S.C. R. Civ. P. 15(a)*, Defendant Fulks filed their Amended Answer and Counterclaims (Exhibit A) as a matter of course. The amended counterclaims were both legal and compulsory and demanded a jury trial.

INTRODUCTION

6. *S.C. R. Civ. P. 38(b)* states, "any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Defendants amended answer and counterclaims is the last pleading directed to the issue of a jury trial issue.

7. *S.C. R. Civ. P. 53(b)*, states, "...upon the filing of a jury demand, the matter shall be returned to the circuit court."[emphasis added].

8. Defendant Fulks OACC demanded a jury trial. While the counterclaims in the original answer and counterclaims may not have been clear as Pro Se Defendant Fulks would have liked, the counterclaims were still legal and compulsory in nature and was mandated by *Rule 53(b)* to be returned to the circuit court.

9. The master in equity currently does not have jurisdiction to entertain the motion to dismiss and for judicial economy and efficiency, Defendants Fulks request

that the case be transferred back to the circuit court (Court of Common Pleas) and where the compulsory counterclaims and the foreclosure action can should be tried together.

AGRUMENTS AND AUTHORITIES

10. Plaintiffs foreclosure action is an action in equity. *Hayne Fed. Credit Union*, 327 S.C. at 248, 489 S.E.2d at 475. Generally, "In equity the parties are not entitled, as a matter of right, to a trial by jury. However, counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial.

11. If the complaint is equitable and the counterclaim is legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim. In that case, the proper procedure is as follows:

> (a) The trial judge may, pursuant to Rule 42(b), order separate trials of the legal and equitable claims, or may order the claims tried in a single proceeding. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 755 S.E.2d, 329 (2014)

12. A counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim.'" *Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct.App.2012) (quoting *First-Citizens Bank & Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991)); *see also* Rule 13(a), SCRCP.

13. There is a logical relationship between Defendants Fulks counterclaims and the foreclosure action, as such the counterclaims are compulsory and legal, and arise out of the same transaction or occurrence as USBNA, Rushmore Loan Servicing and Goldman Sach Mortgage foreclosure action.

14. Furthermore, *Rule 39(a), S.C. R. Civ. P*, provides, "when trial by jury has been demanded as provided in *Rule 38*, the action shall be designated upon the

calendar and the clerk's filebook as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or its own initiative finds that a right of trial by jury of some or all of those issues does not exist."

15. This case must be returned to the jury docket of the circuit court. *S.C. R. Civ. P 53(b).* See also *S. Carolina Community Bank v. Salon Proz., 800 S.E. 2d.488, 95,96, S.C. Court of Appeals 2017. ("* Because Salon demanded a jury trial in its initial answer, the clerk should not have referred the case," *Id at 96*). It is indisputable that Defendants Fulks original answer and counterclaims as well as their amended answer and counterclaims demanded a jury trial. It is also clear that Defendant Fulks never consented in writing to a non-jury trial or a trial before a master-of-equity.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants prays that this case be transferred back to the circuit court and placed back on the jury docket, the hearing before the Master-in-Equity be abated, and the compulsory counterclaims and the foreclosure action should be tried together.

Respectfully submitted,

Jacob Fulks and Florene Fulks, Ph. D
Pro Se Defendants/ revflo@hotmail.com
140 Watson Way
Columbia, SC 29229
Jacob Fulks

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2 day of April, 2024, a true copy of the foregoing **DEFENDANTS MOTION TO REFER CASE BACK TO THE CIRCUIT COURT AND ABATE SCHEDULED HEARING** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, and by certified email addressed to each party or attorney for each said party as set forward as follows:

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Brian.Yoho@rogerstownsend.com

EXHIBIT A

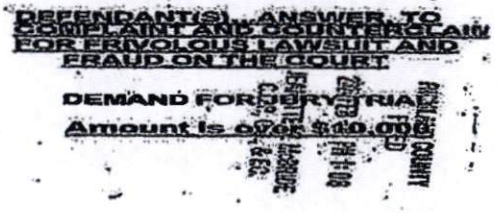
STATE OF SOUTH CAROLINA	§	IN THE COURT OF COMMON PLEAS
	§	CIVIL ACTION # 2024-CP-40-00292
COUNTY OF RICHLAND	§	
	§	FIFTH JUDICIAL DISTRICT
U.S. Bank National Association, not in not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GSI, Rushmore Loan Servicing Goldman Sachs Mortgage Company Plaintiff,	§	DEFENDANTS AMENDED ANSWER AND AMENDED COUNTERCLAIMS
	§	JURY DEMAND
	§	OVER $100,000
vs	§	
Jacob Fulks; Florene Fulks Defendants,	§	

RICHLAND COUNTY FILED
2024 APR -1 AM 9:57
JEANETTE W. McBRIDE C.C.P., G.S., & F.C.

DEFENDANTS AMENDED ANSWER AND AMENDED COUNTERCLAIMS

NOW COME, The Defendants Jacob Fulks and Florene Fulks (hereinafter "Defendants Fulks"), in accordance with *S.C. R. Civ. P. 15(a)*, file this their Amended Answer and Amended Counterclaims to Complaint of the Plaintiffs, and would respectfully show unto this court the following:

1. The Court Order dated January 30, 2024, referred this case to the Master of Equity and list this action as a non-jury. Defendants original answer and counterclaims demanded a jury trial. *S.C. R. Civ. P 38.* (See illustration below)



2. While this may be an action in foreclosure, Defendants' affirmative defenses and counterclaims are all triable issues by right to a jury. In accordance with, *S.C. R. Civ. P. 53(b)*, upon the filing of a jury demand, the case shall be referred back to the circuit court. This amended answer and counterclaims relates back (*S.C. R. Civ .P 15(c)*) and supersedes the original answer and counterclaim filed February 8, 2024.

3. Each and every allegation not hereinafter specifically admitted or explained is denied and strict proof demanded thereof including a complete accounting and loan history from origination date to July 31, 2023.

4. Paragraph 1 of Plaintiffs Complaint does not need a response.

5. The Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraph 2, thereby denying same.

6. The Defendants Fulks deny Paragraph 3 of the complaint. The Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraphs 4, thereby denying same. The Defendants Fulks deny Paragraphs 5, and The Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraph 6, thereby denying same.

7. The Defendants Fulks deny Paragraph 7 & 8. The Defendants Fulks deny Paragraph 9, in so much as the mortgage was signed by them, witness by anyone in their present and legally probated on July 6, 2007. Defendants Fulks admit that based upon the Office of the RMC/ROD for Richland County, the documents appeared to have been recorded as stated. Defendants Fulks also deny legally binding assignments were made as stated in the remaining of Paragraph 9.

8. The Defendants deny Paragraph 10 and 11 of the complaint.

9. Defendants Fulks lack sufficient information and belief as to form an opinion as to Paragraph 12, 13, 14, and 15 of the complaint thereby denying same.

10. The Defendants Fulks deny any legally binding lien exist as stated in Paragraph 16 and demand strict proof thereof.

11. The Defendants Fulks request that all relief requested by Plaintiff in the complaint as stipulated on the final page of complaint be denied in its entirety.

12. Plaintiffs' claim is barred in whole or in part by each of the affirmative defenses enumerated. Defendants Fulks reserve the right to amend their defenses and counterclaim after additional pleading has been filed, after discovery or any other action by Plaintiffs with leave of court.

FIRST AFFIRMATIVE DEFENSE/ FORGERY

13. In September 2022, after the discharge of Defendant Florene Fulks bankruptcy discharge, Defendants discover some disturbing items regarding the mortgage and note. The Defendants Fulks never had a business relationship with a CMA Mortgage, Inc. the alleged originator of the mortgage and note. Defendants Fulks allege that the signatures on the alleged mortgage and note is a forgery. On July 6, 2007, Defendants Fulks never signed a mortgage or note for $178,500 with CMA Mortgage. On July 6, 2007, Defendants Fulks did not visit a CMA Mortgage office neither in person nor online, completed an application for a mortgage, visit the office of nor personally appeared before an attorney nor before a notary to close and sign a mortgage and note. Defendants Fulks believe that CMA Mortgage, its agents, employee(s), someone acting on their behalf or some other person beside themselves forged their signature on the alleged mortgage and note. On July 6, 2007, or anytime thereafter, Defendant Fulks never received any monies from the alleged $178,500 or any other benefit from Plaintiff nor its Predecessor-in-Interest CMA Mortgage, Inc. Defendants Fulks were married in May 2007 and are a couple of modest income. Defendant Fulks would clearly remember appearing before an attorney closing a note and mortgage only two months after the marriage and receiving **$178,500** [emphasis added] in return.

SECOND AFFIRMATIVE DEFENSE/LACK OF STANDING

14. The Defendants Fulks are informed and believe that based upon facts and evidence, the Plaintiff does not have standing to bring this action in that the Defendants Fulks have no legally binding relationship with the Plaintiff(s) nor its originator/predecessor CMA Mortgage. A forged instrument or contract is void ab initio and is never legally binding. Even assuming a legally binding mortgage note exists, Plaintiff lack standing to foreclose because they have no interest in the non-existence note and mortgage. Even assuming a legal contract existed between the parties, CMA Mortgage never assigned the alleged note to Mortgage Electronic Registry System (MERS) and MERS has never been the nominee for CMA Mortgage or cease to be the nominee and therefore MERS had no legal authority to make an assignment of the alleged note and mortgage. In addition, evidence suggest that CMA Mortgage formerly based out of Indiana dissolved in July 2008. CMA Mortgage was a small, private mortgage company with limited assesses and never participated in securitization of mortgage notes (including generating a pooling and service agreement (PSA), registering the pool of loans with the Security and Exchange Commission (SEC) or undertook any other action to securitized the alleged mortgage note).

THIRD AFFIRMATIVE DEFENSE/UNILATERAL MISTAKE

15. Any subsequent action by Defendant Fulks following the forged mortgage and note was a unilateral mistake by Defendants Fulks. Defendants Fulks acted under false pretenses regarding any subsequent contract or agreement. Defendants was under the belief that they were acting upon a mortgage that unknowingly had been prior paid in full and satisfied. The plaintiff knew or should have known that the mortgage note was questionable or illegal and that Defendant Fulks was mistaken. Plaintiffs or their predecessors-in-interest used that to take advantage of defendants; The Defendant Fulks mistake was not caused by the defendant's excessive carelessness; and defendant would not have agreed to enter into any post arrangements relating to the forged note on July 6, 2007, had they known.

FOURTH AFFIRMATIVE DEFENSE/EQUITABLE ESTOPPEL

16. Defendant Fulks never signed nor received a benefit from the alleged mortgage note. Plaintiff and or its predecessor and servicers have for over a decade represented to Defendant Fulks that they owed payments on a non-existence mortgage note. Plaintiffs since 2019 has reported to each major credit bureau that the balance on the mortgage note was zero yet continued to send and represent to Defendants Fulks though payment statements and notice of defaults that payments were due. Defendants Fulks without knowledge at the time acted upon this false presumption and have spent over $100,000 acting upon the misrepresentation.

FIFTH AFFIRMATIVE DEFENSE/UNJUST ENRICHMENT

17. The mortgage note alleged in the complaint never existed. For over a decade, but specifically to this counterclaim since May 2021, Plaintiffs and its predecessors have unjustly enriched themselves by accepting and receiving monies from Defendants Fulks on a forged instrument or contract. After collecting over $100,000 from Defendants Fulks, it would be unjust to allow Plaintiff to further enrich themselves by foreclose and selling Defendants Fulks home when Defendants Fulks never authorized a lien on the property, never signed for a mortgage and note, never appeared before a notary nor an attorney on July 6, 2007, to legal bind the mortgage and note.

SIXTH AFFIRMATIVE DEFENSE/VIOLATION OF THE REAL ESTATE SETTLEMENT PROCEDURE ACT (RESPA):

18. Even assuming a legally binding mortgage note exists, Plaintiffs failed to provide the Housing and Urban Development (HUD) special information booklet; failure to provide a Mortgage Servicing Disclosure Statement and good faith estimate of settlement/closing costs to the defendant at the time of the loan application or within three (3) days thereafter; failure to provide defendants with an Annual Escrow Disclosure Statement for each year of the mortgage since its

inception; giving or accepting fees, kickbacks and/or other things of value in exchange for referrals of settlement service business, and splitting fees and receiving unearned fees for services not actually performed; or charging a fee at the time of the loan closing for the preparation of truth-in-lending, uniform settlement and escrow account statements.

SEVENTH AFFIRMATIVE DEFENSE/CONDITIONS PRECEDENT

19. Even assuming a legal binding mortgage note exist Plaintiff failed to give proper notices in accordance with Section 20 of the alleged security instrument prior to commencing this action. Once such example, in April 2023, Defendants Fulks requested the documents in item 17 reference above, but Plaintiffs failed to provide and thereby to meet the conditions of even a forged contract.

EIGHTH AFFIRMATIVE DEFENSE/DISCHARGE IN BANKRUPTCY

20. While Defendants Fulks never signed the alleged mortgage and note nor received any benefit from the note, the debt was discharged in a bankruptcy filed by Florene Fulks in 2018.

NINTH AFFIRMATIVE DEFENSE/NEGILENT MISPRESENTATION

21. Since 2019, Plaintiff or its former loan servicers have reported to the three major three credit reporting agencies (Equifax, Experian and Transunion) that Defendants Fulks balance on the note was "zero" and that the loan was paid in full. Since at least May 2021, Plaintiffs or their Predecessors-in-Interest had stated to Defendants Fulks that they owed a mortgage note, Defendants replied on the statements and continue to make mortgage payments continue to pay thousands of dollars on a mortgage note that they never legally signed and was a forgery. Plaintiffs knew or should have known that no legally binding mortgage note existed. Plaintiff or its loan servicers acting on Plaintiff's behalf has sent Defendants Fulks monthly payment statements and notice of defaults requesting payments on the loan. In addition, Plaintiffs have and continue to represent to Defendant Fulks that they have a

mortgage and note with the Plaintiffs. Plaintiffs knew or should have known that The Fulks never signed nor received money or any other benefit from the mortgage loan. Defendants relied on this misrepresentation and

Plaintiffs had an interest in making the statements to enrich themselves through the continuation of payments by Defendants Fulks. Plaintiff owed a duty of care to ensure they communicated truthfully to Defendants Fulks regarding the forged mortgage loan, as well as listing the loan as paid in full according to their own credit reporting and internal documents. Defendant owed a duty to Defendants Fulks and Plaintiffs breached that duty by not advising Defendants Fulks that the loan had a zero balance and was paid in full. Defendants Fulks justifiably relied on the misrepresentation and lost several thousand dollars in unnecessary payments.

TENTH AFFIRMATIVE DEFENSE/ILLEGALITY

22. In order for a contract to be enforceable there must have been a meeting of the minds. The mortgage and note is unenforceable because no meeting of the mind ever occurred between Defendant Fulks and Plaintiff or its predecessor CMA Mortgage on July 6, 2007. Defendants Fulks never originated nor had a legally binding business relationship with Plaintiffs nor their Predecessor-in-Interest.

ELEVENTH AFFIRMATIVE DEFENSE

NEGLIGENCE NON-DISCLOSURE

23. Plaintiffs states that Defendants Fulks signed and owe a mortgage loan dated July 6, 2007. Defendants Fulks requested from Plaintiffs a complete accounting of the loan history on two occasions. That request included where the loan was signed, payment history, any changes to the original loan, date their loan was securitized and by whom, and anyone who ever possessed an interest in the note and mortgage. Defendants Fulks received in response only a copy of the original note and mortgage on one occasion and the second occasion they received the same with the exception of a short payment history, various mortgage assignments and welcome letter from

Rushmore Servicing and copies of the foreclosure lawsuit documents. Plaintiffs knew that the information was vital to Defendants. Plaintiffs currently possess documents and information that only they have privity. Plaintiffs had a duty to provide this information and withheld this information from Defendants Fulks.

TWELTH AFFIRMATIVE DEFENSE

24. Even assuming a legally binding mortgage contract exist, Plaintiffs claim are barred by the South Carolina statutes of fraud, statutes of limitations, novation, laches, wavier, unclean hands, and promissory estoppel.

AMENDED COUNTERCLAIMS

JURIDICTION

25. This court has jurisdiction over Defendants Fulks' counterclaims because defendants are residents of South Carolina. Furthermore, Plaintiffs U.S. Bank National Association, Goldman Sachs Mortgage Company and Rushmore Loan Servicing have avail themselves to this court jurisdiction relating to the counterclaims by conducting business in the state of South Carolina.

COUNTERCLAIM I

NEGILENCE MISREPRESENTATION

26. Defendants Fulks fully incorporate as set forth within the statements in their 9th Affirmative defense as a to this counterclaim and reestablish the following; In addition, at least since May 1, 2021 and continuously thereafter, Plaintiff or its former loan servicers have misrepresented to Defendants through notices, electronic communications, mortgage statements and other documents that they owed a mortgage note. Yet since 2019, Plaintiffs reported to three major three credit reporting agencies (Equifax, Experian and Transunion) that Defendants Fulks balance on the note was "zero" and that the loan was paid in full.

27. Since that credit bureau reporting, Plaintiff or its loan servicers acting on Plaintiff's behalf sent Defendants Fulks monthly payment statements and notice of defaults requesting payments on the loan.

28. The statements were made such that Defendant Fulks would act upon the misrepresentation and give money to Plaintiffs purporting to pay a mortgage note. Defendants Fulks relied on the misrepresentation and paid money on a mortgage they never signed nor received a benefit. Plaintiffs had an interest in making the statements to enrich themselves through the continuation of payments by Defendants Fulks. Plaintiffs owed a duty of care to ensure they communicated truthfully to Defendants Fulk regarding continuous payments on a mortgage loan that they knew

or should have known was not legal binding as well as their own credit reporting. Defendant owed a duty to Defendants Fulks and Plaintiff breached that duty by not advising Defendants Fulks that the loan had a zero balance and was paid in full. Defendants Fulks justifiably relied on the misrepresentation and lost over $100,000 dollars in unnecessary mortgage payments and other related payments due to the misrepresentation.

COUNTERCLAIM II

FRAUDULENT CONCEALMENT

29. Plaintiffs stated that Defendants Fulks signed and owe a mortgage loan dated July 6, 2007. Defendants Fulks requested from Plaintiffs a complete accounting of the loan history. That request included the place the loan was signed, payment history, any changes to the original loan, date their loan was securitized and by whom, anyone who ever possessed an interest in the note and mortgage. Defendants Fulks received in response only a copy of the original note and mortgage. Plaintiffs knew that the information was vital to Defendants. Plaintiffs currently possess documents and information that only they have privity. Plaintiffs had a duty to provide this information and withheld this information from Defendants Fulks. Defendant Fulks was damaged as the result of the concealment through the lost of money and emotional distress.

COUNTERCLAIM III

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS (NIED)

30. For nearly two decades, Defendant Fulks have paid on a mortgage note they never signed before an agent of Plaintiff, an attorney nor a notary public. Defendant Fulks did not receive money nor financially benefit from the $178,500 mortgage note. Plaintiffs knew or should have known the mortgage note was legally questionable and had a duty to act. Plaintiffs' now are attempting to foreclose on Defendant Fulks property and remove them from their home. Since at least May 1,

2021, Defendant Fulks has suffered emotional distress as a result of filing bankruptcy due to actions induce by plaintiffs or their predecessors-in-· interest. Defendants Jacob Fulks have recently been placed on high blood pressure and has endured many other medical conditions. Defendant Florene Fulks have been hospitalized and placed on higher doses of high blood pressure medicine due to the stress of trying to pay a mortgage note and worry of losing their home to foreclosure on a mortgage note they never originated nor receive a benefit. Defendants Jacob Fulks have lost time from work due to stress and tending to his wife who has been under abnormal stress attempting to pay ever changing, yet fixed mortgage payment. Defendants Fulks previously spent large amounts of time with family and friends and have distanced themselves from family and friends due to the overwhelming stress of maintain mortgage payments and foreclosure actions. Defendants Fulks is the Department of Veteran Affairs designated caregiver their disable parent but recently had to temporary allow her sister to tend to their father due to the emotional impact of the foreclosure action of Plaintiff on a mortgage and note they never legal originated or consented too. Defendant Jacob Fulks work in a job that require strict attention to every detail. Stress over how to pay a mortgage and illegal foreclosure action over a mortgage he never originated has impacted his performance.

COUNTERCLAIM IV

VIOLATION OF SOUTH CAROLINA FAIR TRADE ACT (SCFTA) S.C. CONSUMER PROTECTION CODE (SCCPC)

31. Even assuming a legally binding mortgage existed, Plaintiffs are not entitled to foreclose because Plaintiffs or its predecessor-in-interest violated the Attorney Preference Statute. The mortgage note failed to comply with the attorney preference provisions of *S.C. Consumer Protection Code section 37-10-102* with respect to the closing of the loan, no attorney supervised the alleged closing of the loan, and the alleged loan is unconscionable. Defendant Fulks are entitled to damages, attorney's

fees, and penalties as provided in the South Carolina Consumer Protection Code, and for violation of the *South Carolina Unfair Trade Practices Act (the SCUTPA). See S.C. Code Ann. §§ 39-5-10 to -730 (1985 & Supp. 2020).*

REQUEST FOR PRESERVATION OF EVIDENCE

32. Request is hereby made that Plaintiffs preserve all records of written and/or oral communications and/or attempted communications with Defendant Fulks and any record of contact or attempted contact with Defendant Fulks. Destruction of such evidence shall constitute spoliation.

REQUEST FOR DISCOVERY

33. Defendant Fulks plans to conduct discovery in accordance with the *S.C. R. Civ. P. 26-37.*

MISNOMER/ALTER EGO

34. In the event that any parties are misnamed or are not included herein, it is Defendant Fulks contention that such was a "misidentification" or "misnomer" and/or such parties were "alter egos" of parties named herein. Alternatively, Defendant Fulks contends that "corporate veils" should be pierced to hold such parties properly included in the interest of justice.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Defendants prays that U.S Bank National Association, Rushmore Loan Servicing and Goldman Sach be cited to appear and answer herein, and that after a final trial on the merits that Defendants Fulks recover:

1. Actual damages (including mental anguish);
2. Exemplary damages;
3. Attorney's fees;,
4. Court costs;,
5. Prejudgment and post-judgment interest;
6. Expungement of the mortgage lien and Lis Pendens from the Richland County Office of Deeds
7. Declare Conditions before filing the lawsuit was not met
8. Declare the mortgage loan void due to the forgery or illegality
9. Declare the mortgage and note unenforceable due to violation of SCFTA or RESPRA.

Respectfully submitted,

Jacob Fulks and Florene Fulks, Ph. D
Pro Se Defendants
140 Watson Way
Columbia, SC 29229
revflo@hotmail.com

Jacob Fulks D.S. Florene Fulks

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of April, 2024, a true copy of the foregoing **DEFENDANTS AMENDED ANSWER AND AMENDED COUNTERCLAIMS** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, and by certified email addressed to each party or attorney for each said party as set forward as follows:

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RICHLAND COUNTY
FILED
2024 APR -1 AM 9:57
JEANETTE W. McBRIDE
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL DISTRICT
	)	
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Rushmore Loan Servicing Goldman Sachs Mortgage Company U.S. Bank, U.S. Bank National Association	)	Civil Action No. 2018-CP-40-03311 **MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' AMENDED COUNTERCLAIM**
Plaintiff(s),	)	
v.	)	
Jacob Fulks; Florene Fulks;	)	
Defendant(s).	)	

The Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 ("U.S. Bank Trust" or "Plaintiff") by and through its counsel, hereby moves this Court to dismiss the Amended Counterclaim of the Defendants Jacob Fulks and Florene Fulks ("Defendants") for failure to state facts sufficient to state a cause of action pursuant to S.C. R. Civ P. 12(b)(6), for failure to plead fraud with particularity as required to S.C. R. Civ. P. (9), and under any applicable statute of limitations. This Motion will be supported by the record, a memorandum of law, oral argument, and any other evidence requested or permitted by the Court.

Accordingly, Plaintiff U.S. Bank Trust respectfully requests that this Court grant its Motion and dismiss Defendants Jacob Fulks and Florene Fulks' Answer and Counterclaim with prejudice.

Respectfully submitted, this the 2nd day of May, 2024.

U.S. BANK TRUST NATIONAL ASSOCIATION NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER

TRUSTEE FOR LEGACY MORTGAGE ASSET TRUST 2020-GS1
By Counsel

/s/ T. Richmond McPherson, III

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 2nd day of May, 2024, a true copy of the foregoing ***PLAINTIFF'S MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' AMENDED COUNTERCLAIM*** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each party or attorney for each said party as follows:

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Florene Fulks
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL DISTRICT
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Rushmore Loan Servicing Goldman Sachs Mortgage Company U.S. Bank, U.S. Bank National Association Plaintiff(s), v. Jacob Fulks; Florene Fulks; Defendant(s).	)	Civil Action No. 2018-CP-40-03311 **PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' AMENDED COUNTERCLAIM**

Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 ("U.S. Bank Trust" or "Plaintiff") by and through its counsel, respectfully submits this Memorandum of Law in Support of its Motion to Dismiss Defendants Jacob Fulks and Florene Fulks' Amended Counterclaim.

I. INTRODUCTION

On or about July 6, 2007, Jacob and Florene Fulks, executed and delivered a certain Fixed Rate Note and Mortgage (the "Loan") to secure the purchase of property located at 140 Watson Way, Columbia, SC in the principal sum of $178,500.00, payable in monthly installments. (Complaint ¶ 8). Defendant failed to pay the installments of principal and interest that were due on August 1, 2023 and thereafter. (*Id.* at 11). Accordingly, U.S. Bank Trust elected to declare the entire balance due and payable at once and initiated this lawsuit by filing a Complaint in the Court of Common Pleas on January 17, 2024. (*Id.*). Defendants filed their Answer and Counterclaim on

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February 8, 2024. After U.S. Bank Trust filed a motion to dismiss, the Defendants filed an Amended Counterclaim on April 1, 2024.

II. DEFENDANTS' ALLEGATIONS

Defendants allege claims for "Negligence (sic) Misrepresentation," "Fraudulent Concealment," "Negligent Infliction of Emotional Distress," and "Violation of South Carolina Fair Trade Act (SCFTA) [and] South Carolina Consumer Protection Code (SCCPA)." (Am. Countercl. ¶¶ 26-31). The various bases for these claims are difficult to summarize or comprehend.

With respect to negligent misrepresentation, Defendants appear to contend that, beginning on or around May 2019, Plaintiff or its loan servicers reported to the major credit reporting agencies that Defendants' loan was paid in full. (Am. Countercl. ¶ 26.) However, Defendants allege Plaintiff, through its loan servicers, misrepresented to them that they owed money under the Note, and they made unspecified payments in reliance on these representations. (Am. Countercl. ¶ 26-8.) Notably, however, Defendants do not allege that they paid the loan in full or any reason why they did not owe monthly payments on the Note after May 2021.

With respect to fraudulent concealment, Defendants allege that, at some unspecified point in time, they made a request to U.S. Bank Trust for a "full accounting" of the Loan, including "the place where the loan was signed, the payment history, any changes to the original loan, [and] the date their loan was securitized…" (Am. Countercl. ¶ 29.) In response, Defendants received copies of the Note and Mortgage. (Am. Countercl. ¶ 29.) Without support, Defendants argue U.S. Bank Trust had a duty to supply the information they requested and that they were "damaged" by an unspecified loss of "money" and emotional distress. (Am. Countercl. ¶ 29.)

With respect to negligent infliction of emotional distress, Defendants contend that, "for nearly two decades," they have paid under a "mortgage note they never signed before an agent of

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Plaintiff, an attorney or notary public." (Am. Countercl. ¶ 30.) Defendants go on to note that they suffered emotional distress "as a result" of having filed bankruptcy in 2021. (Am. Countercl. ¶ 30.) Defendants also contend that their high blood pressure "due to the stress of having to pay a mortgage note … they never originated or benefited from." (Am. Countercl. ¶ 30.) Defendants also detail how the stress of avoiding foreclosure has otherwise affected their lives. However, Defendants do not allege that U.S. Bank Trust engaged in any extreme or outrageous behavior or that they suffered severe emotional distress.

Lastly, with respect to their claim under SCCPA, the Fulks allege that Plaintiff's predecessor-in-interest violated the "Attorney Preference Statute" because no attorney supervised the "alleged closing of the loan" and because the loan is "unconscionable." Am. Countercl. ¶ 31.) The Fulks do not actually bring a claim under the SCFTA but, instead, broadly cite to the South Carolina Unfair Trade Practices Act ("SCUTPA").

For the reasons stated herein, Defendant's Counterclaims must be dismissed in their entirety.

III. LEGAL STANDARD

A moving party may move to dismiss a complaint where a party has failed "to state facts sufficient to constitute a cause of action." SCRCP Rule 12(b)(6). South Carolina Rule of Civil Procedure 12(b)(6) makes clear that in ruling on a motion to dismiss, "the trial court must base its ruling solely upon allegations set forth on the face of the complaint." *See* SCRCP 12(b)(6); *see also Doe v. Marion*, 645 S.E.2d 245, 247 (S.C. 2007). To survive a motion to dismiss, the complaint must state a valid claim which entitles the plaintiff to relief. *See Jarrell v. Petoseed Co., Inc.*, 500 S.E.2d 793, 792 (S.C. Ct. App. 1998); *see also Unisun Ins. v. Hawkins*, 342 S.C.

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537, 541-42, 537 S.E.2d 559, 561 (Ct. App. 2000) (a court will not "write into the pleadings allegations and defenses that are not presented.").

Rule 8 of the South Carolina Rules of Civil Procedure requires a party to establish "facts showing that the pleader is entitled to relief." SCRCP Rule 8(a). The fact pleading rule promulgated by Rule 8(a) is important. *See Clark v. Clark*, 239 S.C. 415, 416, 361 S.E.2d 328, 328 (1987) (finding Rule 8(a), SCRCP "requires a litigant to plead the ultimate facts which will be proved at trial"); *Jones v. Gilstrap*, 288 S.C. 525, 528, 343 S.E.2d 646, 648 (Ct. Ap. 1986) (finding conclusory allegations in a complaint insufficient).

In ruling on a Motion to Dismiss, a court may consider documents outside the pleadings where the documents are integral to the complaint, explicitly relied on in the complaint, and where the plaintiff does not challenge their authenticity. *Phillips v. LCI Intern. Inc.*, 190 F.3d 609 (4th Cir. 1999); *Martin v. Companion Healthcare Corp.*, 2001 S.C.C.P. LEXIS 1 (S.C.C.P. June 6, 2001). Moreover, a Court may consider public judicial records in deciding a Rule 12(b)(6) motion to dismiss. *See Does v. Bishop of Charleston*, 407 S.C. 128, 134, n. 2, 754 S.E.2d 494, 497 n.2. (2014).

IV. ARGUMENT

Defendants' Amended Counterclaim consists of general assertions without particular facts to support their claim as to the Plaintiff. There are no facts articulated in the pleading to implicate Plaintiff in any wrongful action. Merely reciting legal conclusions without any actual facts to support these conclusions is insufficient.

a. Defendants Have Not Alleged a Valid Claim for Negligent Misrepresentation.

In a claim for the common law tort of negligent misrepresentation where the damage alleged is a pecuniary loss, the plaintiff must allege and prove the following essential elements:

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> (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation.

West v. Gladney, 341 S.C. 127, 133–34, 533 S.E.2d 334, 337 (Ct. App. 2000). "There is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence. Moreover, there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter." *Id.* (Internal cites and quotations omitted.)

Defendants have not alleged any element of this claim. First, Defendants do not allege any specific communication by U.S. Bank Trust. Rather, they acknowledge whatever communications they are referring to may have been with or through U.S. Bank Trust's "former loan servicers." Defendants have not alleged any reason U.S. Bank Trust would be liable for any such communications by their loan servicers.

Further, Defendants have not alleged any reason Plaintiff or its loan servicers owed them a duty of care. Even were the Defendants to show a basis for a duty of care, they have not alleged any basis for a breach. *AMA Mgmt. Corp. v. Strasburger*, 309 S.C. 213, 223, 420 S.E.2d 868, 874 (Ct. App. 1992) (no duty to provide correct information, only to "exercise that care a reasonable man would take in the circumstances").

Relatedly, and more fundamentally, Defendants do not allege that any representation upon which they relied was false. Specifically, although Defendants point to what they may consider an inconsistency between information U.S. Bank Trust provided to credit reporting agencies and its demands for payments to Defendants, Defendants do not allege that they paid off the Loan. Indeed,

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if they had paid off the Loan, they would still have no claim for negligent misrepresentation arising from their subsequent payments because a payoff they made would necessarily be a fact known to them. *See West, supra*, ("there can be no reasonable reliance on a misstatement if the plaintiff knows the truth of the matter.") Accordingly, even in that case, they could not rely on any demand for payment from U.S. Bank Trust.

b. Defendants Fail to State a Claim for Fraudulent Concealment.

Similarly, to establish a claim for fraud and/or fraud in the inducement in South Carolina, a party must show:

> (1) a representation; (2) its falsity; (3) its materiality; (4) knowledge of its falsity or a reckless disregard for its truth or falsity; (5) intent that the plaintiff act upon the representation; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury.

McLaughlin v. Williams, 379 S.C. 451, 456–57 (Ct. App. 2008); *see also Turner v. Milliman*, 381 S.C. 101, 112 (Ct. App. 2009) (listing elements of fraud in the inducement).

"Nondisclosure becomes fraudulent concealment only when it is the duty of the party having knowledge of the facts to make them known to the other party to the transaction." *Lawson v. Citizens & S. Nat'l Bank of S.C.*, 259 S.C. 477, 481–82 (1972).

> The duty to disclose may be reduced to three distinct classes: (1) where it arises from a preexisting definite fiduciary relation between the parties; (2) where one party expressly reposes a trust and confidence in the other with reference to the particular transaction in question, or else from the circumstances of the case, the nature of their dealings, or their position towards each other, such a trust and confidence in the particular case is necessarily implied; (3) where the very contract or transaction itself, in its essential nature, is intrinsically fiduciary and necessarily calls for perfect good faith and full disclosure without regard to any particular intention of the parties.

Ardis, 314 S.C. at 515.

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Defendants have not satisfied any aspect or element of fraud or concealment. Defendants have not alleged what transpired with particularity as they do not state when these events occurred. They have not alleged any basis for a duty to disclose. U.S. "South Carolina holds the normal relationship between a bank and its customer is one of creditor-debtor and not fiduciary in nature." *Regions Bank v. Schmauch*, 354 S.C. 648, 671, 582 S.E.2d 432, 444 (Ct. App. 2003). Therefore, absent facts not alleged here, U.S. Bank Trust owed no common law duty to disclose anything to Defendants.

Again, however, the more fundamental defect with Defendants' fraudulent concealment claim is they do not allege any fact withheld from them that caused them to materially alter their position. The implication of Defendants' claim is that U.S. Bank Trust hid or is hiding some defect or defects with the Loan that rendered it unenforceable.[1] However, this type of vague innuendo is plainly inadequate. Rule 9(b) requires that these facts be set forth with "particularity."

Moreover, the fact that Defendants were requesting this information in the first place and, as they allege, believe it was "vital" for some unstated reason is fatal to their claim. To the extent a party acts knowing he has unanswered questions about a transaction, he has not relied on any representation or nondisclosure.

c. Defendants Have Not Alleged a Valid Claim for NIED.

---

[1] In connection with their claim for NIED, Defendants hint at possible arguments they intend to make against their obligation to repay the Note. They assert they did not sign the loan documents before an agent of the Plaintiff, an attorney or a notary. They also contend that they received no money from the loan and no benefit. To the extent these allegations are intended to support their fraudulent concealment claim, they are inarguably inadequate.

As a starting point, the Mortgage was notarized and there is no requirement that either a mortgage or a note be notarized to be enforceable against a borrower. Pl.'s Exh. 1, Mortgage. There is also no requirement that an attorney witness a client's execution of loan documents and loan transactions are routinely conducted by mail. Additionally, offer no support for their contention they did not benefit from the Loan. They are, after all, the record owners of the Property. Finally, all of the allegations raised were known to Defendants, or discoverable through reasonable diligence. Consequently, they cannot be raised in an action for fraud, which requires reliance on facts outside the reach of the claimant.

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South Carolina currently recognizes negligent infliction of emotional distress in three contexts. First, South Carolina recognizes negligent infliction of emotional distress in the "bystander" context—when a plaintiff observes a defendant's negligence cause the death or serious injury of a relative. *See Kinard v. Augusta Sash & Door Co.*, 286 S.C. 579, 582-83, 336 S.E.2d 465, 467 (1985) (finding a mother who witnessed the severe injury of her daughter could recover damages for emotional distress).

Second, South Carolina recognizes actions for negligent infliction of emotional distress when a plaintiff suffers emotional distress in addition to physical injuries resulting from physical contact of some kind. *See Boan v. Blackwell*, 343 S.C. 498, 502, 541 S.E.2d 242, 244 (2001) (stating a plaintiff may recover for mental anguish that accompanies a physical injury).

The third species of negligent infliction of emotional distress claims applies when emotional trauma proximately causes bodily injury. *See Padgett v. Colonial Wholesale Distrib. Co.*, 232 S.C. 593, 608, 103 S.E.2d 265, 272 (1958) ("If the respondent's bodily injury was proximately caused by the shock, fright and emotional upset as a result of the negligence and willfulness of the appellant, he was entitled to recover such damages as would compensate him for the injury so sustained."); *Strickland v. Madden*, 323 S.C. 63, 67, 448 S.E.2d 581, 584 (Ct. App. 1994) ("[T]o the extent [the plaintiff] can prove her bodily injury was proximately caused by her emotional trauma she may recover for such trauma ....").

Here, Defendants do not allege any actionable negligence, let alone negligence for which emotional distress is recoverable. As already discussed, Defendants have not alleged any facts showing that U.S. Bank Trust's collection efforts were wrongful or a breach of any duty. Further, the fact that Defendants' voluntarily filed for bankruptcy protection cannot be raised as a basis for a claim against U.S. Bank Trust. And the fact that U.S. Bank commenced this lawsuit cannot be

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characterized as negligent. The improper commencement of a lawsuit can only serve as the basis for a claim for malicious prosecution, which requires, among other things a termination of the action in favor of the claimant. *Lash v. Seneca Police Dep't*, No. 2014-002296, 2017 WL 4817224, at *1 (S.C. Ct. App. July 26, 2017) ("[T]o maintain an action for malicious prosecution, a plaintiff must establish: (1) the institution or continuation of original judicial proceedings; (2) by or at the instance of the defendant; (3) termination of such proceedings in plaintiff's favor; (4) malice in instituting such proceedings; (5) lack of probable cause; and (6) resulting injury or damage."). Insofar as this action has not terminated, no such claim could have accrued.

Lastly, even if Defendants could identify a negligent act by U.S. Bank Trust, they could not recover for their alleged emotional distress. They are not bystanders to a fatal accident. They did not suffer a bodily injury. And they do not allege any emotional distress caused as bodily injury. In addition, they do not allege any act by U.S. Bank Trust that could foreseeably cause a bodily injury.

For all of these reasons, their NIED claim must be dismissed.

d. Defendants Have Not Alleged a Valid Claim Under SCFTA or SCUTPA.

In connection with Count IV, Defendants cite to S.C. Code § 37-10-102 (the "Attorney Preference Statute"). However, the Attorney Preference Statute is irrelevant to their allegation that "no attorney supervised the alleged closing of the loan and the loan is unconscionable."[2] (Am. Countercl. ¶ 31.) Defendants make no specific allegations in support of their purported claim under SCUTPA. (Am. Countercl. ¶ 31.)

i. <u>Defendants' Claimed Violation of the Attorney Preference Statute May Not Be Brought Against U.S. Bank Trust.</u>

[2] Unconscionability is governed by S.C. Code Ann. § 37-5-108, not the Attorney Preference Statute. Other than mentioning the word "unconscionable," Defendants make no allegations in support of this theory.

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As an initial matter, a claim under the Attorney Preference Statute may not be brought as a Counterclaim at this time. Under, § 37-10-105(a) "No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C)." Subsection (C) permits a defense by recoupment or setoff after the expiration of the limitations period. § 37-10-105(c). Defendants' loan was made in 2007. Pl.'s Exh. 1, Mortgage. Therefore, Defendant may not assert a counterclaim for violation of § 37-10-102 and is limited to a defense by recoupment or setoff.

Moreover, the Attorney Preference Statute does not create a duty for attorney supervision. Rather, it obligates the originating lender to provide the borrower with an opportunity to select the attorney of his/her choice.

Pursuant to section 37-10-102, "whenever the primary purpose of a loan that is secured ... by a lien on real estate is for a personal, family or household purpose: (a) the creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction." S.C. Code Ann. § 37-10-102(a). The purpose of the statute is to protect borrowers by requiring "clear and prominent disclosure of all information necessary to ascertain the borrower's preference as to legal counsel." *Davis v. NationsCredit Financial Services Corp.*, 484 S.E.2d 471, 472 (S.C. 1997). In order to comply with the statute, a creditor may either include the preference information with the credit application on a form similar to one established by the administrator, or the creditor may deliver written notice to the borrower of the preference information within three business days after the application is received or prepared. S.C. Code Ann § 37-10-102(a)(1)-(2). "Creditor" means the person who grants credit in a credit transaction or, except as

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otherwise provided, an assignee of a creditor's right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor." S.C. Code Ann. § 37-1-301

Thus, to satisfy the claim provided by the statute, a claimant must allege that they were not presented with the opportunity to select their own attorney, which Defendants do not allege. And, more importantly, the Attorney Preference Statute is not applicable to U.S. Bank Trust. Section 37-10-105, provides that "[i]f a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages." S.C. Code Ann. § 37-10-105. Plaintiff did not originate the loan and did not "violate a provision of this chapter." Moreover, neither § 37-10-102 nor § 37-10-105 specifically impose obligations or penalties on assignees. Therefore, under § 37-1-301, Plaintiff is not a creditor for purposes of this action.

This conclusion was recently affirmed in *U.S. Bank Trust, N.A. as Trustee for LSF10 Master Participation Trust v. Lowery*, Case No. 2019CP-42-02270, Order Granting Motion for Partial Summary Judgment (May 20, 2021). In that matter, the defendant in foreclosure brought a counterclaim against the foreclosing assignee-creditor and the Hon. Gordon Cooper held:

> As a matter of law, U.S. Bank cannot be held liable for an alleged violation of the attorney-preference statute by the original lender—Household Finance—because U.S. Bank is only the assignee of the Loan and did not participate in the origination or settlement of the Loan transaction… Moreover, the attorney-preference statute specifically provides that a debtor only has a right to recover for an alleged violation of the statute only "from the person violating this chapter." S.C. Code Ann. § 37-10-105(A) (emphasis added). Consistent with South Carolina's common law limitation on assignee liability, the South Carolina Consumer Protection Code ("SCCPC") expressly precludes the assessment of liability for the acts of an assignor to an assignee in its definition of "creditor," which states as follows:
>
> > "Creditor" means the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment, <u>but use of the term does not in itself impose on an assignee any obligation of his assignor</u>." S.C. Code Ann. § 37-1-301(13) (emphasis added).

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> It is clear that the legislature's limitation of liability for attorney-preference violations to "the person violating this chapter" and express statement that the definition of "creditor" throughout the SCCPC, including § 37-10-102(a) and § 37-10-105(A), establish that as a matter of law, an assignee of a loan cannot be held liable or an alleged violation of the attorney-preference statute by the original lender.

Id.

U.S. Bank Trust is not the original lender. The original lender was CMA Mortgage, Inc. Pl.'s Exh. 1, Mortgage. Therefore, Defendant's claim must be dismissed.

ii. Defendants Fail to Allege Any Element of a Claim Under SCUTPA.

"To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 638, 743 S.E.2d 808, 816 (2013). "To be actionable under the UTPA, the unfair or deceptive act or practice must have an impact upon the public interest." York v. Conway Ford, Inc., 325 S.C. 170, 173, 480 S.E.2d 726, 728 (1997).

Although they baldly pronounce their right to recover under SCUTPA, Defendants make no attempt to satisfy the elements of a SCUTPA claim. Defendants do not allege any specific act was an unfair or deceptive act in commerce and make no reference to the public interest whatsoever. Their claim under SCUTPA must be dismissed for these reasons alone.

However, Defendant's SCUTPA claim also suffers from the same defect identified with respect to all of Defendants' claims. They imply that they were not obligated to repay the Loan but have failed to allege any facts that would make this implied assertion accurate. For all of these reasons, the Amended Counterclaim must be dismissed.

V. CONCLUSION

For the reasons stated herein, Defendant's claims against U.S. Bank Trust fail to state a cause of action upon which relief can be granted and therefore must be dismissed.

Respectfully submitted, this the 3rd day of May 2024.

U.S. BANK TRUST NATIONAL ASSOCIATION NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR LEGACY MORTGAGE ASSET TRUST 2020-GS1
By Counsel

/s/ Jason A. Richardson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of May, 2024, a true copy of the foregoing ***PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' ANSWER AND COUNTERCLAIM*** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each party or attorney for each said party as follows:

Jacob Fulks
Florene Fulks
140 Watson Way
Columbia, SC 29229
803.807.6414
revflo@hotmail.com
Pro se Defendants

U.S. Bank, U.S. Bank National Association
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Cincinnati, OH 45202
Hamilton County

R. Brooks Wright
Rogers Townsend, LLC
1221 Main Street, 14th Floor
Columbia, SC 29201
Attorneys for Plaintiff

Goldman Sachs Mortgage Company
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8950 Cypress Waters Blvd.
Coppell, TX 75201

/s/ Jason A. Richardson
Jason A. Richardson
(S.C. Bar No. 104237)

ELECTRONICALLY FILED - 2024 Jun 10 3:10 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FIFTH JUDICIAL DISTRICT
)	
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Rushmore Loan Servicing Goldman Sachs Mortgage Company U.S. Bank, U.S. Bank National Association)	Civil Action No. 2024-CP-40-00292
)	**NOTICE OF HEARING ON PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' AMENDED COUNTERCLAIM**
Plaintiff(s),)	
)	
v.)	
)	
Jacob Fulks; Florene Fulks;)	
)	
Defendant(s).)	

PLEASE TAKE NOTICE, that Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 ("U.S. Bank Trust" or "Plaintiff") by and through its counsel, McGuireWoods LLP, hereby gives notice that *Plaintiff's Memorandum of Law in Support of its Motion to Dismiss Defendants Jacob Fulks and Florene Fulks' Amended Counterclaim* in the above referenced matter is set for hearing before the Richland County Master in Equity, Judge Joseph M. Strickland, on Monday, September 16, 2024, at 10:00 AM in courtroom 2D, in the Richland County Judicial Center, 1701 Main Street, Columbia, SC 29202.

Dated: 10th day of June, 2024

Respectfully submitted,

By Counsel

/s/ Jason A. Richardson
Jason A. Richardson
(S.C. Bar No. 104237)
McGuireWoods LLP
1301 Gervais Street, Suite 1310

Columbia, SC 29201
Telephone: 803 251 2309
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Counsel for Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1

ELECTRONICALLY FILED - 2024 Jun 10 3:10 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

ELECTRONICALLY FILED - 2024 Jun 10 3:10 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of June, 2024, a true copy of the foregoing ***NOTICE OF HEARING ON PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' ANSWER AND COUNTERCLAIM*** was delivered to each of the below listed persons this date by depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each party or attorney for each said party as follows:

Jacob Fulks
Florene Fulks
140 Watson Way
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Pro se Defendants

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Attorneys for Plaintiff

Goldman Sachs Mortgage Company
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Coppell, TX 75201

/s/ Jason A. Richardson
Jason A. Richardson
(S.C. Bar No. 104237)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 09 2024
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph F. Strickland, Master-in-Equity

Common Pleas Case No. 2024-CP-40-0000292

U.S. Bank Trust National Association, not in its Individual Capacity, but solely as Trustee for the Legacy Trust, Rushmore Loan Servicing and Goldman Sach,
.....Respondent,

v.

Jacob Fulks; Florene Fulks,

.....Appellants.

JEANETTE W. WALKER, C.C.P., G.S., & CCRIDE
2024 OCT -9 PM 2:14
RICHLAND COUNTY FILED

NOTICE OF APPEAL

Jacob Fulks and Florene Fulks (hereinafter "Appellant") appeals from the order of the Honorable Joseph F. Strickland granting Respondents/Plaintiffs Motion to Dismiss Appellants/Defendants Counterclaims. The order was filed and received on September 18, 2024. Appellants also appeal the September 16, 2024, open court denial of their Motion to Transfer Back to Circuit Court for a Jury Trial. For the past three weeks, appellants attempted to get the Honorable Joseph F. Strickland to sign a written order denying their Motion to Transfer back to Circuit Court for Jury Trial but has been unsuccessful. A partial, certified hearing transcript highlighting the open court denial, and a copy of the signed order (Attachment) are submitted to the Court of Appeals herewith.

October 9, 2024

Respectfully submitted,

Jacob Fulks

Florene Fulks

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revflo@hotmail.com

Attorney for Plaintiff
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Roger Townsend, LLC
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Columbia, SC 29201
brian.yoho@rogerstownsend.com

ATTACHMENT

COURT ORDER GRANTING RESPONDENTS MOTION TO DISMISS AND HIGHLIGHTED TRANSCRIPT OF OPEN COURT DENIAL OF APPELANTS MOTION TO TRANSFER BACK FOR JURY TRIAL

ELECTRONICALLY FILED - 2024 Sep 18 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Rushmore Loan Servicing Goldman Sachs Mortgage Company U.S. Bank, U.S. Bank National Association Plaintiff(s), v. Jacob Fulks; Florene Fulks; Defendant(s).	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL DISTRICT Civil Action No. 2024-CP-40-00292 **ORDER GRANTING U.S. BANK TRUST'S MOTION TO DISMISS DEFENDANTS JACOB FULKS AND FLORENE FULKS' AMENDED COUNTERCLAIMS**

RECEIVED
OCT 09 2024
SC Court of Appeals

THIS MATTER came before the Court on September 16, 2024 for hearing on a motion to dismiss amended counterclaims of Defendants Jacob Fulks and Florene Fulks ("Defendants") filed by Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1 ("Plaintiff") before the Honorable Judge Joseph M. Strickland in Richland County Court of Common Pleas in the above-captioned action pursuant to S.C. R. Civ. P. 12(b)(6).

After hearing oral arguments, reviewing memorandums of law, affidavits, and documents submitted by counsel, this Court grants Plaintiff's Motion to Dismiss and it is hereby ORDERED that Defendants' Counterclaims against Plaintiff are dismissed.

IT IS SO ORDERED.

SIGNED this _____ day of _____, 2024.

_____
The Honorable Joseph M. Strickland

ELECTRONICALLY FILED - 2024 Sep 18 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

Richland Common Pleas

Case Caption: U S Bank Trust National Association , plaintiff, et al vs Jacob Fulks , defendant, et al

Case Number: 2024CP4000292

Type: Master/Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055

State of South Carolina)
)
County of Richland)

U.S. Bank Trust National Association, Rushmore Loan Servicing, Goldman Sachs Mortgage Company,)
)
Plaintiffs,)
)
vs.)
)
Jacob Fulks, Florene Fulks,)
Defendants.)

2024-CP-40-00292

Transcript

of

Hearing

RECEIVED
OCT 09 2024
SC Court of Appeals

Date: September 16, 2024

Time: 10:41 a.m.

Location: Richland County Judicial Center, 1701 Main Street, Courtroom 2D, Columbia, South Carolina

Reported by
Miranda Brown

APPEARANCES

Presiding: Judge Joseph M. Strickland
Columbia, South Carolina

For the Plaintiff: Jason A. Richardson, Esq.
McGuire Woods, LLP.
Columbia, South Carolina

Pro Se Defendants: Florene Fulks
Jacob Fulks
Columbia, South Carolina

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EXHIBITS

(No exhibits were marked during the course of the hearing.)

sent information in the -- in the real estate department that the house was paid off. It was never -- Rushmore sold it to something called Nationstar.

THE COURT: Uh-huh.

MS. FULKS: And how you -- okay, you get it paid off, so you get that check. And you get another check from another mortgage company, and then it, "Okay, y'all owe again, two hundred and something thousand dollars." My husband built that house from ground up in 1990 what?

MR. FULKS: Two.

MS. FULKS: Two. And y'all saying two-hundred and something thousand dollars. The house been paid off. But anyway, we not supposed to be discussing that, so . . . Thank you, sir. That's my answer.

THE COURT: Okay. Okay. The plaintiffs' motion is granted. Defendants' motion is denied. We need to have a hearing now on the merits of the case. So are y'all prepared to move forward today, or you want to come back another time?

MS. FULKS: No. I'm getting ready to file something. I don't want to do nothing else today.

THE COURT: All right.

MS. FULKS: I don't want to discuss the merits of the

case today.
THE COURT: Okay. Okay. We'll schedule a hearing. It's going to be -- well, the counterclaim has been dismissed. But you're going to still contest the foreclosure; is that correct?
MS. FULKS: I'm going to -- I'm going to -- I'm going to do something today. I'm going to take care of something today.
THE COURT: Okay.
MS. FULKS: Because you say that I can't have a trial.
MR. FULKS: A jury trial.
THE COURT: No, no. no. A jury trial.
MS. FULKS: I can't have a jury trial, right? That's what you said, right?
THE COURT: Right. I dismissed --
MS. FULKS: Okay
THE COURT: -- your motion to remand it to the -- to the circuit judge. So we'll be happy to hear on the merit stuff --
MS. FULKS: Okay.
THE COURT: -- in other words, so I'm going to do that. It's a contested hearing. We'll schedule a contested hearing. How long will it take, do you think?
MS. FULKS: Can I get a stay of extra time to amend the

counteraction based on what he read that needs to be included? Can I get a stay of -- of extra time for that?

THE COURT: Your motion's denied. We're going to set a hearing on the merits.

MS. FULKS: Okay.

THE COURT: And I was asking how long it was going to take to have to try the case. We need the whole day? a half a day?

MR. RICHARDSON: Plaintiffs will defend -- or defer to -- to defendants. I --

THE COURT: How -- how long do you need to try this case?

MS. FULKS: What do you say, Jacob?

MR. FULKS: A half a day. Half a day.

MS. FULKS: He said a half a day.

THE COURT: Half a day? Okay. We'll block out a whole day, and the hearing will probably be not here, but it will be in our new location on Decker Boulevard, Courtroom 1. But you'll get notified of all that. You'll be notified of all that as well. Okay. We'll schedule a hearing on the merits. All right.

MS. FULKS: What type of hearing is this? A hearing in the --

THE COURT: It's --

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

CERTIFICATE

Be it known that Miranda Brown took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large and that by virtue thereof I was duly authorized to administer an oath;

that the deponent/witness, if any, was first duly sworn to testify to the truth, the whole truth, and nothing but the truth, concerning the matter in the controversy aforesaid;

that the foregoing transcript represents a true, accurate, and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Miranda Brown

Miranda Brown

Date: 9/30/2024
Notary public for South Carolina
My commission expires January 1, 2033
*Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

Respectfully submitted,

Jacob Fulks

Florene Fulks

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
OCT 09 2024
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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph F. Strickland, Master-in-Equity

Common Pleas Case No. 2024-CP-40-0000292

U.S. Bank Trust National Association, not in its Individual Capacity, but solely as Trustee for the Legacy Trust, Rushmore Loan Servicing and Goldman Sach,

.....Respondent,

v.

Jacob Fulks; Florene Fulks,

.....Appellants.

PROOF OF SERVICE

I certify that we have served the foregoing notice of appeal on the date given below by emailing and US Mail to counsel for the Respondent at the address(es) of record noted below.

RICHLAND COUNTY
FILED
2024 OCT -9 PM 2:54
JEANETTE W. McBRIDE
C.C.P., G.S., & F.C.

Attorney for Plaintiff
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October 9, 2024

ELECTRONICALLY FILED - 2024 Oct 10 3:16 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	DOCKET NO.: 2024CP4000292
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendants.	MOTION FOR CONTINUANCE

(513263.11370 SMF)

Plaintiff U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, through its undersigned counsel, hereby respectfully moves the Court for a continuance of the foreclosure hearing that is currently scheduled for October 14, 2024, at 10:00 a.m. on the ground that Plaintiff will not be able to prepare an execute an Affidavit of Verified Statement of Account by the time of the hearing. The reason is that the servicing agent for this loan changed recently.

WHEREFORE, Defendant respectfully requests that the Court continue the foreclosure hearing that is currently scheduled for October 14, 2024, at 10:00 a.m.

Respectfully submitted,

s/ Brian P. Yoho

Brian P. Yoho (SC Bar # 73516)
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October 10, 2024

ELECTRONICALLY FILED - 2024 Oct 10 3:16 PM - RICHLAND - COMMON PLEAS - CASE#2024CP4000292

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS DOCKET NO. 2024CP4000292
U.S. Bank Trust National Association not in its individual capacity but solely as owner trustee for Legacy Mortgage Asset Trust 2020-GS1, Plaintiff, v. Jacob Fulks; Florene Fulks; Defendant(s).	CERTIFICATE OF MAILING

(014332-00471)

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have mailed a copy of the Motion for Continuance and proposed Order of Continuance in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addressees, listed below in separate envelopes, at each of their respective addresses shown thereon, this 10th day of October, 2024.

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Default Service Processor