

STATE OF SOUTH CAROLINA)
BEAUFORT COUNTY)

COURT OF COMMON PLEAS)
CASE NO. 10-CP-07-2927)

HSBC BANK, NA, AS Trustee)
For MLCC 2007-2)
Plaintiff,)

ANSWER OF DEFENDANTS)
S. RUSSELL FIELDEN)
AND DEBORAH FIELDEN)
AS TO PLAINTIFF'S)
COMPLAINT)

VS.)

S. RUSSELL FIELDEN, DEBORAH M.)
FIELDEN AND COASTALSTATES BANK)
Defendants.)

COASTAL STATES BANK,)
Cross-Plaintiff)
Vs.)

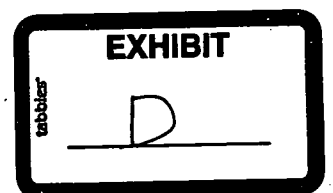
S. RUSSELL FIELDEN and DEBORAH)
FIELDEN,)
Cross-Defendants.)

Comes now the Defendants, S. Russell Fielden and Deborah M. Fielden, through their undersigned attorney, to answer the Complaint against him in this case.

Every paragraph not specifically admitted to is denied.

I. ANSWERS TO THE ALLEGATIONS OF THE COMPLAINT

1. Defendants admit §1 of Complaint.
2. Defendants are without information and belief to admit or deny §2 of Complaint.
3. Defendants are without information and belief to admit §3 of Complaint and denies same, therefore, and demands strict proof thereof.
4. Defendants are without information or belief to admit or deny the §4 of Complaint and therefore, denies same and demands strict proof thereof.
5. Defendants admit §5 of Complaint.
6. §6 of Complaint is irrelevant to this action and regardless, Defendants need not respond to them.
7. Defendants admit §7 of Complaint. However, Defendants deny that the signature of this note shows that this Plaintiff is entitled to payment from Defendant.
8. Defendants admit §8 of Complaint. However, Defendants deny that the mortgage shows that Plaintiff is entitled to payment from Defendant.
9. Defendant admit §9 of Complaint.
10. Defendant denies §10 of Complaint and demands strict proof thereof.
11. Defendant is without information and belief to admit or deny §11 of Complaint and therefore, denies same, and demands strict proof thereof.



12. Defendant denies §12 of Complaint and demands strict proof thereof. Plaintiff must show that they are the real party in interest and able to foreclose on this mortgage and note prior to dealing with any issues of default.
13. Defendant admits §13 of Complaint that they are seeking a deficiency judgment. Defendant denies that they are entitled to a deficiency judgment or any judgment period.
14. Defendant admits §14 of Complaint to the extent that Plaintiff has hired counsel. Defendant denies the remainder of §14.
15. Defendant is without information or belief to admit or deny §15 of Complaint And therefore denies same, and demands strict proof thereof.
16. Defendant admits §16 to the extent that this is the reason that Plaintiff is filing this suit. Defendant denies that Plaintiff is entitled to the relief that is being requested.
17. Defendant admits §17 to the extent that Coastal States Bank may or may not have an interest in the Defendant's property.

FOR A FIRST AFFIRMATIVE DEFENSE
[lack of standing, real party in interest]

18. Defendants repeat and re-allege all paragraphs of §1-17 of Answer as if fully set forth verbatim herein.
19. Plaintiff, failed to record an assignment to itself prior to filing (or serving) the Complaint in this case. Therefore, Plaintiff, admits that paragraph 3 of its Complaint is a misrepresentation in that it was not in possession of an assignment at the time it filed the Complaint and therefore, had no ownership of either the Note or the Mortgage when it filed the Complaint. Therefore, the Plaintiff lacks standing to proceed with this action as they are not the holder in due course of the note and the mortgage.

FOR A SECOND AFFIRMATIVE DEFENSE
[Setoff]

20. Defendants Fielden repeat and re-allege all paragraphs of §1-19 of Answer as if fully set forth verbatim herein

21. Defendants Fielden assert that Plaintiff is a securitized mortgage loan trust, and that in connection with the formation thereof and pursuant to applicable rules and regulations of the Securities and Exchange Commission, one or more insurances was/were placed on the loan the subject hereof in connection therewith. Such insurances, and other credit enhancements available to the securitized mortgage loan trust, provide benefits on default by the borrower with no recourse or subrogation against the borrower. To the extent that any benefits were paid on default as a result of available credit enhancements or other insurances, these answering Defendants are entitled to a setoff as to any amounts claimed due by Plaintiff herein.

FOR A THIRD AFFIRMATIVE DEFENSE- MORTGAGE NOT A VALID PART OF SECURITIZED MORTGAGE TRUST

22. Defendants Fielden repeat and re-allege all paragraphs of §1-21 of Answer as if fully set forth verbatim herein.

23. Defendants Fielden assert that their Mortgage is not a valid part of the securitized mortgage trust that is the Plaintiff in this case. Upon information and belief, the Pooling and Servicing Agreement of the securitized mortgage trust that is the Plaintiff of this action requires that the any Mortgage be placed into the Trust within 90 days of signing of the Mortgage. The securitized mortgage trust, upon information and belief, commenced in 2007. This mortgage was not assigned to the Plaintiff until 2010 after this action had commenced. Upon information and belief, the Defendant's Mortgage is not validly owned by Plaintiff, according to its own rules, and therefore, lacks the standing to sue and the ownership necessary of the Note and Mortgage to foreclose.

24. **FOR A FOURTH AFFIRMATIVE DEFENSE- INVALID ASSIGNMENT
OF NOTE**

25. §1-24 of this Answer are repeated here as if re-typed verbatim here

26. The Assignment of Mortgage being used to claim standing to sue in this case was signed by Tracy Johnson, purporting to act on behalf of MERS, (Mortgage Electronic Registration System) who is the assignee on the MORTGAGE ONLY for the original creditor, Coastal States Bank. However, the assignment of MERS alleges to assign the Note as well. MERS is never mentioned on the promissory note that Defendants Fielden signed to Plaintiff. This makes the assignment a nullity.

27. The defective assignment of Note causes the Plaintiff to lack standing as they must be the holder of the Note and Mortgage to file this action. Therefore, this action should be dismissed on this account.

**EQUITABLE COUNTERCLAIM- DECLARATORY JUDGMENT
MORTGAGE INVALID**

28. §1-27 of this Answer are repeated here as if re-typed verbatim here.

29. Defendants are referred to as Counter-Plaintiffs and Plaintiff is referred to as Counter-Defendant.

30. This is an action for declaratory relief which is brought pursuant to SC Code. 15-53-10 *et seq.*

31. Pursuant to SC Code 15-53-20, this Court has the power and authority to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

32. Pursuant to SC Code 15-53-30, any person interested under, *inter alia*, a deed or written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a contract may have determined any question of construction or validity arising under the contract and obtain a declaration of rights, status, or other legal relations thereunder.
33. SC Code 15-53-130 provides that the chapter is declared to be remedial and its purpose to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.
34. Counter-Plaintiffs and Counter-Defendant are "persons" within the meaning of SC Code 15-53-30.
35. Counter-Plaintiffs are persons who have an interest under a deed to the Property and the mortgage loan contract and whose rights and status have been affected by the Counter-Defendant's actions. Counter-Plaintiffs are thus entitled to have determined the question of their rights and status as to the Property and in connection with the mortgage loan, and obtain a declaration of rights and status with respect thereto.
36. SC Code 15-53-60 provides that the enumeration in SC Code 15-53-30 to 15-53-50 does not limit or restrict the exercise of the general powers conferred in SC Code 15-53-20 in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove the uncertainty.
37. Counter-Plaintiffs have requested further relief in the form of injunctive and other relief. SC Code 15-53-120 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper, and that the application for such

relief shall be made to a court having jurisdiction to grant the relief. This Court has such jurisdiction.

38. As set forth above, Counter-Plaintiffs' rights and legal status as to the Property and under the mortgage loan contract have been affected by the Counter-Defendant's actions in seeking to foreclose on the Property through a legally faulty and ineffective "Assignment".

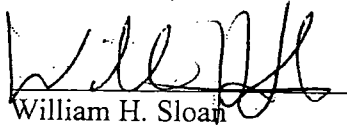
39. Counter-Plaintiffs thus request that this Court issue and decree that Counter-Defendant has no legal interest in either the note or the mortgage, and that thus Counter-Defendant does not possess the requisite legal standing to institute a foreclosure.

40. As the disposition of this claim necessarily involves the determination of an issue of fact, SC Code 15-53-90 provides that such issue and determination may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in this Court.

41. Counter-Plaintiffs also request, pursuant to SC Code 15-53-100, that they be awarded their costs as are equitable and just.

WHEREFORE, having answered Plaintiff's Complaint and filed its Counterclaim against them, Defendants Fielden move before this Court for an Order to:

- a. Dismissal of this action with prejudice.
- b. A declaration that the Plaintiff is not the holder in due course for the note and/or the mortgage or the real party in interest and therefore, not legally entitled to foreclose on the property the subject of this action.
- c. Judgment for Defendant on Plaintiff's Complaint and Defendant's Counterclaim
- d. Costs of this action awarded to these Defendants.
- e. Any other such relief this Court deems prudent, just and proper



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November 24, 2010