

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

HSBC Bank, USA, National Association as)
TRUSTEE, for Wells Fargo Asset Securities)
Corporation, Mortgage Pass-Through)
Certificates, Series 2007-10,)

Plaintiff,)

v.)

CYNTHIA RUSSO N/K/A CYNTHIA)
CHESTNUT,)

Defendant.)

IN THE CIRCUIT COURT FOR THE)
FIFTEENTH JUDICIAL COURT)
2009-CP-26-2299)

**ORDER GRANTING PLAINTIFF'S)
MOTION FOR SUMMARY)
JUDGMENT TO DISMISS)
DEFENDANTS' COUNTERCLAIMS)
AND ORDER GRANTING)
PLAINTIFF'S MOTION FOR)
SUMMARY JUDGMENT ON ITS)
MORTGAGE FORECLOSURE CAUSE)
OF ACTION)**

FILED
HORRY COUNTY
2013 OCT - 8 PM 3: 29
RELANE HUGHES
CLERK OF COURT

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This matter came before the Court on July 24, 2013 at 11:30 a.m. (the "Hearing") on motion of Plaintiff HSBC Bank, USA, National Association as TRUSTEE, for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10 ("Plaintiff") for (a) summary judgment against Defendant Cynthia Russo n/k/a Cynthia Chestnut ("Russo") on its causes of action for Mortgage Foreclosure; and (b) summary judgment against Defendant to dismiss her counterclaims asserted against Plaintiff (collectively, the "Motions"). For the reasons set forth in this Order, Plaintiff's Motions are granted.

Having reviewed the pleadings in this case, the affidavits submitted to me, the exhibits introduced as part of the record in this matter, and after listening to the arguments of counsel at the Hearing, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff is a national bank association having an office and transacting business in Horry County, South Carolina.

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2. Russo is a citizen of the State of South Carolina and was at all times relevant herein a resident of Horry County, South Carolina who purchased real property in Horry County, South Carolina.

3. This Court has jurisdiction over the parties and the subject matter in this action.

4. Venue is proper in the Court of Common Pleas for Horry County.

5. This action involves the foreclosure of a mortgage encumbering residential real property.

6. Plaintiff complied with the Supreme Court Administrative Order 2011-05-02-01 by serving Russo with the required notice of rights of foreclosure intervention, and Russo has failed, refused or voluntarily elected not to participate in any foreclosure intervention process as shown by the Certification of Mortgagor's Non-Compliance filed with this Court on November 16, 2012.

7. Russo was properly served with the Lis Pendens, Summons and Complaint.

8. Russo filed an Answer on or about December 13, 2012 and asserted counterclaims against Plaintiff.

9. On March 8, 2013, Plaintiff filed its Reply to Russo's Answer.

10. This matter was referred to me pursuant to Rule 53 of the South Carolina Rules of Civil Procedure for final disposition of the Real Property and to enter final judgment in this case pursuant to an Order of Reference filed on May 19, 2009.

11. On May 22, 2013, Plaintiff filed its Motion for Summary Judgment to dismiss the Counterclaims (defined below).

12. On June 20, 2013, Plaintiff filed its Motion for Summary Judgment against Defendant Russo on its causes of action for Mortgage Foreclosure.

13. Plaintiff filed the Affidavit of Amanda Weatherly in support of its Motions dated June 13, 2013, which, among other things, verified the debt owed to Plaintiff (the "Affidavit").

14. Proper notice of the Hearing of the Motions was provided to counsel of record as evidenced by the Amended Notices of Hearing filed with the Horry County Clerk of Court's Office on July 12, 2013.

15. Plaintiff's Motions are based, in part, upon the Complaint filed in this action, the documents described therein, the attachments to the Motions and the Affidavit.

16. The subject of this action is that certain real property located in Horry County, South Carolina as more fully described on Exhibit "A" attached hereto and incorporated herein by reference. The real property described on Exhibit "A" may be referred to as the "Real Property."

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17. The above-captioned Plaintiff is the correct named Plaintiff in this action; however, some of the pleadings filed in the case do not state the entire name of the Plaintiff. Accordingly, to the extent any of the captions refer to the Plaintiff otherwise, all captions shall be amended in this case pursuant to South Carolina Rule of Civil Procedure 15(a), SCRPC, to reflect the correct name of the Plaintiff as set forth in the Lis Pendens, Summons and Complaint, which is as follows: HSBC Bank, USA, National Association as TRUSTEE, for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10.

18. The loan documents that are the subject of this action include the following: (i) the Note (defined below); and, (ii) the Mortgage (defined below).

19. On February 1, 2007, Russo, for value received, made, executed and delivered to MortgageIt, Inc., a certain promissory Note (the "Note"), in the amount of \$531,300.00 (the "Principal"). A true and accurate copy of the Note was attached as Exhibit "A" to the Affidavit.

20. The Note provides, without limitation, that Russo promised to make monthly payments to MortgageIt, Inc. in the amount of \$3,016.40 beginning on April 1, 2007 until March 1, 2037.

21. The Note further provides, without limitation, that interest will be charged on the unpaid Principal until the full amount of Principal has been paid, at a yearly rate of 6.250%.

22. In order to secure Russo's obligations under the terms of the Note, Russo made, executed and delivered to Mortgage Electronic Registration Systems, acting solely as nominee for MortgageIt, Inc. and MortgageIt, Inc.'s successors and assigns, the Mortgage dated February 1, 2007 and recorded in the Horry County RMC Office in Mortgage Book 4844, at Page 2782 on February 7, 2007 (the "Mortgage," and together with the Note, are collectively referred to as the "Loan Documents"). A true and accurate copy of the Mortgage was attached as Exhibit "B" to the Affidavit.

23. As shown by the Affidavit, the Loan was originated by MortgageIt, Inc. on February 1, 2007 and then transferred to Deutsche Bank AG New York Branch on February 21, 2007. MortgageIt, Inc. retained servicing rights. On February 26, 2007, MortgageIt, Inc. transferred servicing rights to GMAC Mortgage, LLC. On April 23, 2007, Deutsche Bank AG New York Branch sold the loan to Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A. On April 23, 2007, GMAC Mortgage, LLC transferred servicing rights to Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A.

24. As further shown by the Affidavit, Wells Fargo was the owner of the Loan when the present foreclosure action was filed on March 9, 2009, and the Loan continues to be owned by Wells Fargo as of the date of the affidavit.

25. Wells Fargo has possession of the original Note.

26. Wells Fargo has possession of the original Mortgage.

27. The Mortgage constitutes a valid first priority lien on the Real Property.

28. Under the terms of Note, Russo agreed to make monthly payments to Plaintiff.

29. The Note provides, among other things, that failure to pay the full amount of each monthly payment on the date it is due constitutes an event of default.

30. Pursuant to the terms of the Loan Documents, upon an event of default, the entire Principal balance, accrued interest, fees, and collection costs will be immediately due and payable, and Plaintiff may foreclose the Mortgage.

31. Under the terms of the Loan Documents, if Russo is in default under the terms of the Note, Plaintiff may, at its option, send written notice of such default to Russo and provide her at least thirty (30) days from the date of such notice to cure such default.

32. Failure to cure such default allows Plaintiff to, without limitation, accelerate the Principal and foreclose the Mortgage.

33. Russo failed to make required payments when due to Plaintiff under the terms of the Note.

34. Accordingly, on December 14, 2008, Plaintiff sent a default letter to Russo: (i) providing her notice of her default under the terms of the Note; (ii) providing Russo thirty (30) days to cure such default; and, (iii) notifying Russo that failure to pay the amount owed within thirty (30) days of the date of the letter may result in Plaintiff accelerating the Principal and instituting foreclosure proceedings ("Demand Letter"). A true and accurate copy of the Demand Letter was attached as Exhibit "C" to the Affidavit.

35. Russo failed to cure such defaults under the terms of the Loan Documents.

36. Despite demand, and the expiration of the cure period, the foregoing defaults remain uncured and outstanding.

37. Russo remains in default under the terms, conditions and covenants of the Loan Documents.

38. As of June 14, 2013, the amounts due under the terms of the Note was \$724,042.84 (the "Debt"), plus attorneys' fee and costs as shown by the payoff statement, which was attached as Exhibit "D" to the Affidavit.

39. The Debt is computed as follows:

Unpaid Principal	\$525,432.76
Interest through 6.14.13	\$148,947.65
Escrow Advance	\$39,906.99
Late Fees	\$6,334.44
Recording Fees	\$5.00
NSF Charges and Other Fees	\$60.00
Recoverable Balance	\$3,356.00
Total	\$724,042.84

40. Interest accrues on the outstanding balance at the per diem rate of \$89.97.

41. Plaintiff's attorneys seek the right to petition the Court for an award of attorney's fees and costs incurred by Plaintiff to collect the indebtedness owed under the Note.

42. Plaintiff has waived its right to a deficiency judgment against Russo.

43. There were no other persons other than the parties to this action having any lien or claims against the Real Property as of the date of the filing of the notice of pendency of this action.

44. Under the terms of Note and Mortgage, Plaintiff is entitled to collect and realize upon the Real Property and to sell, or otherwise dispose of the same at public or private sale, and apply the proceeds from such sale to the debt owed to Plaintiff, as evidenced by the Note.

45. Russo is in default under the terms of the Note, and Plaintiff has exercised its rights under the Note and Mortgage to declare all sums owed by Russo immediately due and payable.

46. Plaintiff has retained the law firm of Womble Carlyle Sandridge & Rice, LLP for the purpose of instituting and prosecuting this action.

47. Russo asserted the following counterclaims against Plaintiff: (i) Negligent Misrepresentation; (ii) Violation of South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, et. seq.; (iii) Misrepresentations and/or Fraud; (iv) Third-Party Breach of Contract; (v) Breach of Contract Accompanied by Violation of the Covenant of Good Faith and Fair Dealing; and, (vi) Promissory Estoppel.

STANDARD OF REVIEW

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Summary judgment is proper when “the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Milligan v. Liberty Life Ins. Co.*, 313 S.C. 478, 443 S.E.2d 381 (1994). The evidence and all reasonable inferences must be examined in the light most favorable to the non-moving party. *Sauner v. Public Service Authority of South Carolina*, 581 S.E.2d 161, 165 (2003). Summary judgment is inappropriate if the facts are conflicting or the inferences to be drawn from the facts are doubtful. *Alston v. Blue Ridge Transfer Co.*, 308 S.C. 292, 294, 417 S.E.2d 631, 632 (Ct. App. 1992). In cases applying a preponderance of the evidence standard, “the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. Pursuant to South Carolina Rule of Civil Procedure 15(a), SCRPC, all of the pleadings in this file shall be amended to reflect the correct name of the Plaintiff, which is as follows: HSBC Bank, USA, National Association as TRUSTEE, for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2007-10.
2. Plaintiff is the owner of the Loan.
3. Plaintiff shall have judgment against Russo under the Note.
4. Plaintiff shall have judgment of foreclosure under the Mortgage.
5. The Mortgage is hereby declared a first lien on the Real Property.
6. This action involves the foreclosure of a mortgage encumbering residential Real Property. Plaintiff complied with the Supreme Court Administrative Order 2011-05-02-01 by serving Russo with the required notice of rights of foreclosure intervention, and Russo has failed, refused or voluntarily elected not to participate in any foreclosure intervention process as shown by the Certification of Mortgagor's Non-Compliance filed with this Court on November 16, 2012.
7. The Real Property should be ordered sold after due advertisement by the Horry County Master in Equity at public auction at the Horry County Courthouse, 1301 Second Avenue, Conway, South Carolina 29526. The sale shall be made subject to any taxes and assessments that are past due on the day of such sale.
8. The proceeds arising from the sale of the Real Property encumbered by the Mortgage shall be applied first to the costs and disbursements of this action, and next, to the payment and discharge of the amount of Russo's debt and interest or so much thereof as the proceeds will pay, and any surplus should be held pending further Order of the Court.
9. Plaintiff has waived its right to seek a deficiency judgment.

10. The Counterclaims shall be dismissed with prejudice.

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11. Russo's negligent misrepresentation counterclaim fails as a matter of law and judgment should be granted in favor of Plaintiff because, among other reasons, Russo has not provided Plaintiff with any information or documents responsive to Plaintiff's First Set of Interrogatories to Russo, Plaintiff's First Set of Request for Production to Russo, and Plaintiff's First Set of Request for Admission to Russo (collectively the "Discovery Requests"), which were served on Russo by U.S. mail on March 7, 2013 and again on March 15, 2013. A copy of Plaintiff's Discovery Requests were collectively attached as Exhibit "A" to Plaintiff's Notice of Motion and Motion for Summary Judgment to dismiss Counterclaims. Russo was required to respond to the Discovery Requests by April 19, 2013, but she did not. Accordingly, Plaintiff, through its counsel, sent defense counsel a written notice of Russo's failure to respond to the Discovery Requests by letter dated April 22, 2013 and provided Russo ten (10) additional days to respond to same. A copy of the April 22, 2013 letter was attached as Exhibit "B" to Plaintiff's Notice of Motion and Motion for Summary Judgment to dismiss the Counterclaims. Despite such notice, Russo failed to serve Plaintiff with responses or objections to the Discovery Requests. South Carolina Rule of Civil Procedure 37(b)(2)(d), SCRPC, provides, without limitation, that this Court may dismiss "the action or proceeding or any part thereof. . ." including, among other things, a counterclaim for Russo's failure to serve answers to interrogatories. Therefore, there is no genuine issue of material fact, and Plaintiff is entitled to a judgment as a matter of law to dismiss Russo's counterclaim for Negligent Misrepresentation *with prejudice* since Russo has not submitted any evidence to support this counterclaim.

12. Russo's claim for violation of the South Carolina Unfair Trade Practices Act filed against Plaintiff fails as a matter of law because, among other reasons, Russo has not established that Plaintiff engaged in any deceptive acts that rise to the level of an unfair trade

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practice or that would cause injury to the public. Second, she failed to provide Plaintiff with any information or documents responsive to its Discovery Requests, as stated in Paragraph 11 of this Order. South Carolina Rule of Civil Procedure 37(b)(2)(d), SCRCP, provides, without limitation, that this Court may dismiss “the action or proceeding or any part thereof. . .” including, among other things, a counterclaim for Russo’s failure to serve answers to interrogatories. Third, this UTPA counterclaim does not apply to federally-insured banks, and the Plaintiff is a federally-insured bank and/or financial institution. S.C. Code Ann. § 39-5-20(b) provides that “[i]t is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.” In 15 U.S.C. 45(a)(2), the Federal Trade Commission Act sets forth the extent to which the Federal Trade Commission can regulate banks:

The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 USCS §§ 40101 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 USCS §§ 181 et seq.], except as provided in section 406(b) of said Act [7 USCS § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

15 S.C. 45(a)(2) (emphasis added).

Based on S.C. Code Ann. § 39-5-20(b), circuit courts across this state have found that the SCUTPA is inapplicable to banks. See *JJH Transport, LLC and Joel Herring v. Brank Banking and Trust Company of South Carolina* (2006-CP-21-1814); *Branch Banking and Trust Company of South Carolina v. Eartha Marshall* (2003-CP-40-3272). Therefore, Plaintiff is entitled to judgment as a matter of law to dismiss Russo’s counterclaim for violation of the South

Carolina Unfair Trade Practices Act and, therefore, this counterclaim is dismissed *with prejudice*.

13. Russo's claim for Misrepresentation and/or Fraud filed against Plaintiff fails as a matter of law because she failed to provide Plaintiff with any information or documents responsive to its Discovery Requests, as stated in Paragraph 11 of this Order. South Carolina Rule of Civil Procedure 37(b)(2)(d), SCRPC, provides, without limitation, that this Court may dismiss "the action or proceeding or any part thereof. . ." including, among other things, a counterclaim for Russo's failure to serve answers to interrogatories. Therefore, there is no genuine issue of material fact, and Plaintiff is entitled to a judgment as a matter of law to dismiss Russo's counterclaim for Misrepresentation and/or Fraud *with prejudice* since Russo has not submitted any evidence to support this counterclaim.

14. Russo's claim for Third-Party Breach of Contract filed against Plaintiff fails as a matter of law because Russo failed to provide Plaintiff with any information or documents responsive to its Discovery Requests as stated in Paragraph 11 of this Order. South Carolina Rule of Civil Procedure 37(b)(2)(d), SCRPC, provides, without limitation, that this Court may dismiss "the action or proceeding or any part thereof. . ." including, among other things, a counterclaim for Russo's failure to serve answers to interrogatories. Therefore, there is no genuine issue of material fact that Plaintiff is entitled to a judgment as a matter of law to dismiss Russo's counterclaim for Third-Party Breach of Contract with prejudice since Russo has not submitted any evidence to support this counterclaim. Second, to the extent Russo's claim for Third-Party Beach of Contract is premised on an alleged breach of the HAMP Guidelines, such claim fails as a matter of law because Russo's loan is not eligible for consideration under HAMP as shown by the Affidavit of Amanda Weatherly dated February 7, 2013 and filed on March 4, 2013. Therefore, because the HAMP Guidelines do not apply to the Russo's loan, all claims which

arise out of an alleged breach of HAMP Guidelines are dismissed *with prejudice*. Accordingly, as a matter of law Plaintiff is entitled to summary judgment, and Russo's Third-Party Breach of Contract claim is dismissed *with prejudice*.

15. Russo's claim for Breach of Contract Accompanied by Violation of the Covenant of Good Faith and Fair Dealing fails as a matter of law because Russo failed to provide Plaintiff with any information or documents responsive to its Discovery Requests, as stated in Paragraph 11 of this Order. South Carolina Rule of Civil Procedure 37(b)(2)(d), SCRPC, provides, without limitation, that this Court may dismiss "the action or proceeding or any part thereof. . ." including, among other things, a counterclaim for Russo's failure to serve answers to interrogatories. Therefore, there is no genuine issue of material fact that Plaintiff is entitled to a judgment as a matter of law to dismiss Russo's counterclaim for Breach of Contract Accompanied by Violation of the Covenant of Good Faith and Fair Dealing *with prejudice* since Russo has not submitted any evidence to support this counterclaim. Second, again to the extent this counterclaim is premised on an alleged breach of the HAMP Guidelines, such claim fails as a matter of law because Russo's loan is not eligible for consideration under HAMP, as shown by the Affidavit of Amanda Weatherly dated February 7, 2013 and filed on March 4, 2013. Third, Russo's counterclaim further fails as a matter of law because Russo failed to plead the necessary elements to sustain a claim for Breach of Contract Accompanied by Violation of the Covenant of Good Faith and Fair Dealing. Russo must allege at a minimum: (1) a binding agreement entered into by the parties, (2) a breach of that agreement; and, (3) that defendant suffered damage as a direct and proximate result of the breach. *Fuller v. Eastern Fire Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). Here, Defendant failed to (i) identify the contract that Plaintiff allegedly breached; (ii) state when such breach occurred; (iii) set forth any allegations to how such breach occurred; and; (iv) set forth the damages, if any, that Russo suffered by such alleged breach.

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Fourth, Russo failed to answer or object to Plaintiff's First Set of Requests for Admission, as previously stated and as shown by Plaintiff's Notice of Non-Filing Responses By Russo to Plaintiff's First Set of Requests for Admission, attached as Exhibit "F" to Plaintiff's Notice of Motion and Motion for Summary Judgment to Dismiss Counterclaims. As such, Russo is deemed to have admitted the Requests pursuant to South Carolina Rule of Civil Procedure 36, SCRPC. Accordingly, among other things, Russo admits she breached the terms of the Note (as defined in the Complaint), Mortgage (as defined in the Complaint) and is in default under the Note and Mortgage that is the subject of the Complaint. Russo cannot recover under this cause of action since she admitted she is the breaching party to the contract. "One seeks to recover damages for breach of a contract, to which he was a party, must show that the contract has been performed on his part, or at least that he was at the appropriate time, able, ready and willing to perform it." *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C.469, 487, 514 S.E. 2d 126, 135 (quoting *Parks v. Lyons*, 219 S.C. 40, 48, 64 S.E.2d 123, 126 (1951)). Since Russo admits she breached the terms of the Note and Mortgage, she cannot seek to recover damages under the Note and Mortgage. Therefore, Plaintiff is entitled to summary judgment as a matter of law, and Russo's counterclaim for Breach of Contract Accompanied by Violation of the Covenant of Good Faith and Fair Dealing is dismissed *with prejudice*.

16. Russo's claim for Promissory Estoppel filed against Plaintiff fails as a matter of law because she failed to provide Plaintiff with any information or documents responsive to its Discovery Requests as stated in Paragraph 11 of this Order. South Carolina Rule of Civil Procedure 37(b)(2)(d), SCRPC, provides, without limitation, that this Court may dismiss "the action or proceeding or any part thereof. . ." including, among other things, a counterclaim for Russo's failure to serve answers to interrogatories. Therefore, there is no genuine issue of material fact that Plaintiff is entitled to a judgment as a matter of law to dismiss Russo's

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counterclaim for Promissory Estoppel *with prejudice* since she has not submitted any evidence to support this counterclaim. Second, Russo failed to plead and establish the elements to of promissory estoppel, which are: (1) the presence of an unambiguous promise; (2) the promisee reasonably relied upon the promise; (3) the reliance was expected and foreseeable by the promisor; and (4) the promisee was injured as a result of reliance upon the promise.” *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 635, 620 S.E.2d 65, 86 (2005). Russo did not set forth any evidence that Plaintiff made a promise, when the alleged promise was made and how it was made. Moreover, Russo did not present any evidence that she relied on the alleged promise, and significantly, she did not present even a scintilla of evidence that Plaintiff expected her to rely on such alleged promise. Finally, Russo could not prove she was injured or damaged. In fact, Russo is still residing in the home and has not made a payment to Plaintiff since 2009. Accordingly, Plaintiff is hereby granted summary judgment and Russo’s counterclaim for promissory estoppel is dismissed as a matter of law *with prejudice*.

17. Accordingly, the Counterclaims are hereby dismissed *with prejudice*.

NOW, on motion of Plaintiff,

IT IS ORDERED, ADJUDGED AND DECREED THAT:

A. Plaintiff is entitled to a judgment against Defendant Cynthia Russo n/k/a Cynthia Chestnut for breach of the terms, provisions and covenants of the Note and Mortgage as of June 14, 2013 in the amount of **SEVEN HUNDRED TWENTY-FOUR THOUSAND FORTY-TWO AND 84/100THS (\$724,042.84) DOLLARS** (the “Total Debt”), together with attorneys’ fees and costs of collection and interest and costs accruing after that date through and including the date payment is made in full by the buyer at auction or sale.

B. The Horry County Clerk of Court is directed to enter the judgment referred to in Paragraph (A) above against Defendant Cynthia Russo n/k/a Cynthia Chestnut in the aforesaid amount on the judgment rolls of the Clerk of Court's Office immediately.

C. Plaintiff is entitled to judgment of foreclosure on the Real Property under the terms of the Note and Mortgage.

D. If Defendant on or before the date of any sale of the Real Property shall pay to Plaintiff's attorney the amount of \$724,042.84 as of June 14, 2013 plus interest, exclusive of attorneys' fees and costs, together with the costs of disbursements of this action, the action shall be dismissed with prejudice. Any amounts advanced by Plaintiff for costs, such as the payment of real property taxes, shall be added to the Total Debt.

E. Plaintiff's attorneys shall have the right to petition the Court for a supplemental award of attorneys' fees (a) for services rendered after the sale of the Real Property, or (b) in the event that the award of attorneys' fees and other collection costs hereunder is insufficient to reimburse Plaintiff for the same. In such event, the Russo shall be notified of any such petition and have the right to appear and contest the same.

F. On default of payment at or before the time and date of the sale, the Real Property described in the Complaint shall be sold together by the undersigned Master-in-Equity, at public auction, at the Horry County Courthouse, Horry County, South Carolina on November 4, 2013, or on some other convenient sales day hereafter, and should the regular day of judicial sales fall on a legal holiday, the sales day shall be on the Tuesday next succeeding such holiday on the following terms:

a. FOR CASH: The undersigned Master-in-Equity will require a deposit of five (5%) percent on the amount of the bid (in cash equivalent), same to be applied on the

purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and debts.

b. Full compliance with the bid must occur within thirty (30) days after the date of public sale. If the successful bidder does not comply within such time period, the good faith deposit shall be forfeited and applied to the costs and to Plaintiff's debt, and the Real Property shall be resold at the risk of the former highest bidder.

c. Interest on the balance of the bid shall be paid to the day of full compliance at the rate set forth in the Note.

d. The sale shall be free and clear of all subordinate liens.

e. The sale shall be subject to taxes and assessments that are not past due on the date of sale, existing easements, and easements and restrictions of record.

f. Purchaser shall pay for the preparation of the deed, for deed stamps and for the cost of recording the deed.

G. In the event that the sale is adjourned, the Master-in-Equity shall have the right to adjourn the sale for such amount of time as is necessary in order to commence the sale as soon as possible after the scheduled time of sale.

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

I. Plaintiff hereby waives a personal or deficiency judgment. Bidding, therefore, shall be closed on the date of sale, and compliance with the successful bid shall be made upon the close of bidding.

purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and debts.

b. Full compliance with the bid must occur within thirty (30) days after the date of public sale. If the successful bidder does not comply within such time period, the good faith deposit shall be forfeited and applied to the costs and to Plaintiff's debt, and the Real Property shall be resold at the risk of the former highest bidder.

c. Interest on the balance of the bid shall be paid to the day of full compliance at the rate set forth in the Note.

d. The sale shall be free and clear of all subordinate liens.

e. The sale shall be subject to taxes and assessments that are not past due on the date of sale, existing easements, and easements and restrictions of record.

f. Purchaser shall pay for the preparation of the deed, for deed stamps and for the cost of recording the deed.

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G. In the event that the sale is adjourned, the Master-in-Equity shall have the right to adjourn the sale for such amount of time as is necessary in order to commence the sale as soon as after the **scheduled time of sale.**

J. The undersigned Master-in-Equity will, by advertisement according to law, give notice of the time and location of sale and the terms thereof and will execute to the purchaser, or purchasers, a deed to the Real Property. The Plaintiff, or another party to this action, may become a purchaser at such sale. If the purchaser or purchasers should fail to comply with the terms of sale within thirty (30) days after the date of sale, then the undersigned may advertise the Real Property for sale on the next or some other subsequent sales day, at the risk of the former highest bidder, and from time to time thereafter until full compliance shall have occurred. In the event Plaintiff or Russo is the successful bidder, at its option or the option of its assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien on the Real Property.

K. The undersigned shall apply the proceeds of the sale as follows:

First, proceeds shall be applied to payment of the costs and disbursements of this action and the sale and any liens for taxes due and payable upon the Real Property sold.


Second, proceeds shall be applied to payment to Plaintiff, or Plaintiff's attorneys, of the amount due to Plaintiff under this Order together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff and with Plaintiff's costs and attorneys fees.

Third, any surplus shall be held by the undersigned pending further order as provided in Rule 71(c) of the South Carolina Rules of Civil Procedure.

L. In the event the successful bidder is other than the Defendant in possession herein, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the Real Property, together with all personal property located thereon, to put the successful bidder or his assigns in full, quiet and peaceable possession of the Real Property without delay, and to keep the successful bidder or its assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

M. The Defendant, and all persons whosoever claiming under her, shall be forever barred and foreclosed of all right, title, interest and equity of redemption in the Real Property or any part thereof.

N. The deed of conveyance given pursuant to such sale need contain the names of only the first-named plaintiff and the first-named defendant and the defendant who was the titleholder of the mortgaged Real Property at the time of the filing of the notice of pendency of this action, and the name of the grantee. The Horry County Register of Deed's Office is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

 O. That, in the event of the failure of a representative of Plaintiff, to appear on the date and time specified for the sale of the Real Property, the foreclosure sale shall be canceled and continued until the next convenient sales date thereafter, and should the regular day of judicial sales fall on a legal holiday, then in such event, the sales day shall be on the Tuesday following such holiday.

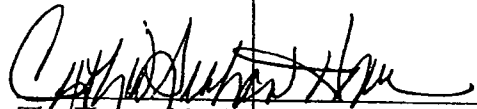
P. That the undersigned Master-in-Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a supplemental order to evidence additional debt incurred if the sale of the Real Property is delayed by the filing of a bankruptcy petition, transfer of service of the Loan Documents by Plaintiff or an attempt of the parties to reach a settlement, the issuance of a Supplemental Order to correct a harmless error in the action that does not substantially affect the rights of the parties, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c), South Carolina Rules of Civil Procedure.

Q. After the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Master-in-Equity shall direct the Horry Clerk of Court's Office to release of record the liens being foreclosed.

R. Attached as **Exhibit "A"** is a description of the Property ordered to be sold.

S. The Counterclaims are dismissed *with prejudice*.

AND IT IS SO ORDERED.



The Honorable Cynthia Graham Howe
Master In Equity

Conway, South Carolina
October 8, 2013

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CJH