

SUPPLEMENT TO DEFENDANTS' MOTION FOR RELIEF: STATE OF SOUTH
CAROLINA COUNTY OF LEXINGTON IN THE COURT OF COMMON PLEAS

Case No. 2024-CP-32-01094

THE BANK OF NEW YORK MELLON f/k/a The Bank of New York as successor in interest to
JPMorgan Chase Bank, N.A., as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1,
NovaStar Home Equity Asset-Backed Certificates, Series 2004-1,

Plaintiff,

v.

TIMOTHY-ALLEN NUNALLY and MARK-ANTHONY NUNALLY,

Defendants.

FILED
2025 JUL -9 PM 4:43
LISA H. COOPER
CLERK OF COURT
LEXINGTON

SUPPLEMENT TO MOTION FOR RELIEF – SECURED BORROWING AND SANCTIONS

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(1) DECLARATORY JUDGMENT THAT THE 28 JULY 2023 ASSIGNMENT IS A
SECURED-BORROWING AND VOID; (2) SANCTIONS AND ATTORNEY FEES FOR
MISREPRESENTATION OF OWNERSHIP (ASC 860 / FAS 140; SCRCP 11; S.C. R. PROF.
COND. 3.3)

Defendants Timothy-Allen Nunally and Mark-Anthony Nunally (collectively, "Defendants"),
proceeding pro se, respectfully supplement their pending Motion for Relief and state as follows:

I. INTRODUCTION 1. On 28 July 2023 Plaintiff filed an assignment purporting to transfer the subject mortgage loan into the NovaStar Mortgage Funding Trust 2004-1 (“Trust”). 2. Under Financial Accounting Standard (“FAS”) 140—codified at ASC 860—derecognition of financial assets is a pre-condition to a true sale. 3. Because the transfer failed every prong of ASC 860-10-40-5, it effected only a secured borrowing; therefore, Plaintiff never acquired legal or equitable title and lacks standing. 4. Continuing to represent otherwise constitutes a material misrepresentation warranting sanctions under Rule 11, SCRPC, and Rule 3.3, S.C. Rules of Professional Conduct.

II. ARGUMENT

A. The Assignment Is Void as a Secured Borrowing 5. ASC 860 prohibits derecognition where (i) transferred assets are not isolated from the transferor, (ii) transferee lacks the unilateral right to pledge or exchange, or (iii) transferor maintains effective control. All three defects are present here. 6. As late transfer, the assignment also violates the Trust’s PSA closing date and is void under N.Y. EPTL § 7-2.4.

B. Plaintiff’s Misrepresentation Warrants Sanctions 7. By styling itself the lawful owner/holder without ASC 860 compliance, Plaintiff violated its duty of candor. Rule 11 authorizes fee-shifting and any “appropriate sanction.”

C. Amendment No. 1 Was Never Validly Adopted Under PSA § 12.01—All Rights Asserted Thereunder Are Ultra Vires and Unenforceable

Even if Plaintiff could overcome the nineteen-year late-transfer defect, it still must demonstrate that “Amendment No. 1 to the Pooling and Servicing Agreement,” dated August 1, 2005, was

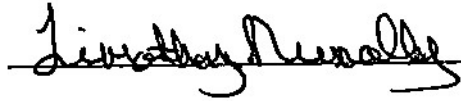
lawfully executed. PSA § 12.01 conditions any amendment on (i) a contemporaneous **Opinion of Counsel** attesting that the change neither violates the PSA nor jeopardizes the Trust's REMIC election, and (ii) receipt of all requisite certificate-holder and rating-agency consents. Plaintiff has produced none of these prerequisite documents. Absent strict compliance with § 12.01, the trustee lacked authority to accept new collateral or alter the sale terms; any right now claimed by BONY Mellon that depends on Amendment No. 1 is therefore **ultra vires** and unenforceable under New York EPTL § 7-2.4. See *In re Bank of N.Y. Mellon*, 42 N.Y.S.3d 683, 686 (Sup. Ct. 2016) (trustee acts outside PSA are void).

Accordingly, Plaintiff's reliance on the 2023 assignment—which itself hinges on Amendment No. 1—is fatally flawed, and the Complaint must be dismissed with prejudice.

III. PRAYER FOR RELIEF WHEREFORE, Defendants respectfully move this Honorable Court to: 1. Declare that the 28 July 2023 assignment constituted a secured borrowing, failed derecognition under FAS 140/ASC 860, and is void ab initio; 2. Award Defendants *all recoverable damages, including but not limited to*: a. General, special, compensatory, economic, tort, and non-economic damages; b. Statutory damages under TILA (15 U.S.C. § 1640(a)), RESPA (12 U.S.C. § 2605(f)), FDCPA (15 U.S.C. § 1692k), and SCUTPA (S.C. Code Ann. § 39-5-140); c. Consequential, incidental, liquidated, and nominal damages as permitted by contract or statute; d. Lost wages and income resulting from time and expense required to defend title; e. Punitive damages for willful misconduct, fraud, and misrepresentation; 3. Quiet title to 5681 Grande River Road, College Park, GA 30349, free of any lien premised on the void assignment; 4. Enjoin Plaintiff and its agents from initiating or prosecuting any foreclosure or collection action based on the void assignment; 5. Award attorney fees, costs, and sanctions


pursuant to Rule 11, SCRPC, and Rule 3.3, SCACR; 6. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,



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Mark–Anthony Nunally, Pro Se Address: 5681 Grande River Road, College Park, GA 30349

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Date: June 9, 2025

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2025, I served the foregoing *SUPPLEMENT TO MOTION FOR RELIEF – SECURED BORROWING AND SANCTIONS* upon:

Chadwick A. Burgess, Esq.

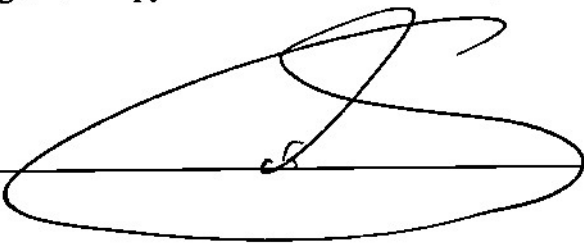
Brock & Scott, PLLC

3800 Fernandina Rd., Ste. 110

Columbia, SC 29210

by hand-delivering a true copy to the office of opposing counsel, receipt acknowledged below;
and/or

by depositing a true copy in the United States Mail, certified, return-receipt requested, postage prepaid.

A handwritten signature in black ink, appearing to be 'Mark-Anthony Nunnally', is written over a horizontal line. The signature is stylized and somewhat cursive.

Mark-Anthony Nunnally, Pro Se Defendant

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