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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Charles J. McCutchen, Circuit Court Judge
Civil Action No. 2020-CP-40-02998

Appellate Case No. 2025-001756

Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates,……………………..……………..……………..…...…..………………..Appellant,

v.

Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee,…………………………………………………………………………...…..Respondents.

RECORD ON APPEAL

s/ M. McMullen Taylor
M. McMullen Taylor, S.C. Bar # 72848
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September 1, 2026

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS Case No.: 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee Defendants.	**ORDER DENYING PLAINTIFF'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO STRIKE JURY DEMAND**

This matter came before me at a hearing on the Plaintiff's Motion for Summary Judgment as to all of Defendant's counterclaims in the above-captioned action as well as the Plaintiff's Motion to Strike the Defendant's Jury Demand, on March 21, 2025. This is a contested mortgage foreclosure action in which the Defendants have raised counterclaims for violation of S.C. Code Ann § 37-10-102 (commonly called the attorney preference statute), for a declaratory judgment that a prepayment penalty provision in the subject note constitutes an unenforceable penalty, for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, and gross negligence. The parties supported and opposed the motions with factual material, and the record contains affidavits and deposition testimony.

It is well settled that "summary judgment may be rendered only 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. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of law. Folkens v. Hunt, 290 S.C. 194,196 348 S.E.2d 839,841 (Ct. App. 1986), "all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm. 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Here, it appears that there are defects in the corrective assignment executed by the Plaintiff in 2021, as there were in the stricken corrective assignment executed in 2013. The Plaintiff's corrective assignments do not mention assignment of the Promissory Note and only assign the mortgage. In a case involving a mortgage, the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. Carpenter v. Longan, 83 U.S. 271 (1872). The assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but… the assignment of the mortgage alone does not carry with it an assignment of the note. Hahn v. Smith, 154 S.E. 112 (S.C. 1930).

With regard to Defendant's counterclaims, South Carolina law states: 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). S.C. Code Ann. § 37-10-105(a). For subsection (C) to apply, if the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to § 37-5-108, the court may refuse to enforce the agreement. *S.C. Code Ann. § 37-10-105(C).* When viewed in the light most favorable to Defendants, there is a genuine issue of material fact present with respect to whether the Plaintiff owns or otherwise has the right to enforce the note and mortgage at issue. That is a question that is material to all the claims in this case. Without a further determination of the ability of the Plaintiff to enforce the mortgage, one cannot determine whether the Plaintiff is the appropriate party to move for summary judgment against the Defendant. Furthermore, when viewed in the light most favorable to the Defendants, there is a genuine question of material fact with regard to whether the contract at issue can be deemed unconscionable, and as such, a question of genuine fact exists as to the Defendant's counterclaims.

With regards to Plaintiff's Motion to Strike the Defendants Jury Demand it is well settled that because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." Carolina First Bank v. BADD, LLC, 414 S.C. 289, 778 S.E.2d 106 (2015). Because foreclosure actions are those in equity, defendants have a right to a jury trial only if their counterclaims are both legal and compulsory. Wachovia Bank Nat. Ass'n v. Blackburn. Characterization of a counterclaim depends on the parties main purpose in purpose in bringing the action. When a party seeks both money damages and equitable relief, characterization of the action as equitable or legal depends on the party's “main purpose” in bringing the action. Johnson and Alessandro v. S.C. National Bank, 328 S.E.2d 75 (1985). After reviewing the record and the pleadings by the Defendant in their answer, it is obvious that the counterclaims are legal in nature.

From there, it must be determined whether the counterclaims are either compulsory or permissive in nature. In South Carolina, courts have applied the “logical relationship” test to determine whether the counterclaim is compulsory or permissive. N.C. Fed. Sav. & Loan Asso. V. DAV Corp, 298 S.C. 514,519, 381 S.E.2d 903,906 (1989). A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim. Id. In a foreclosure action, a counterclaim arises out of the same transaction or occurrence and is thus compulsory, when there is a “logical relationship” between the counterclaim and the enforceability of the guaranty agreement. *Id*.

I find a logical relationship exists between the counterclaims and the enforceability of the mortgage. As such, I find that the counterclaims are compulsory in nature and as such are entitled to a trial by jury.

Therefore, it is hereby ORDERED that the Motion for Partial Summary Judgment and the Motion to Strike Defendants Jury Demand is denied.

IT IS SO ORDERED

Charles J. McCutchen
Presiding Circuit Judge

Columbia, South Carolina
June 16, 2025

Richland Common Pleas

Case Caption:	Deutsche Bank National Trust Company Trustee , plaintiff, et al vs Tommy Rush , defendant, et al
Case Number:	2020CP4002998
Type:	Order/Summary Judgment

IT IS SO ORDERED

Charles J. McCutchen

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS Case No.: 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee Defendants.	**ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION TO RECONSIDER**

On June 26, 2025, the Court denied Plaintiff's Motion for Partial Summary Judgment and Motion to Strike Jury Demand. On July 7, 2025, Plaintiff filed their Motion to Reconsider the June 26, 2025, Order. In their Motion to Reconsider, Plaintiff argues, among other things, that the following counterclaims are equitable in nature and, thus, do not satisfy the first element required to establish a claimant's right to a jury trial, as set forth in Wachovia Bank, Nat. Ass'n v. Blackburn, 407 S.C. 321, 755 S.E.2d 437 (2014): (1) Defendants' counterclaim for accounting; and (2) Defendants' counterclaim for unconscionability for violations under S.C. Code Ann. §§ 37-5-108 and 37-10-102.

The purpose of a motion under Rule 59(e), SCRCP, to alter or amend a judgment is to request the trial judge "reconsider matters properly encompassed in a decision on the merits." Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. See Elam v. SCDOT, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may choose to file such a motion when they believe the court misunderstood, failed to fully consider, or failed to rule on, an argument or issue, and the party wishes for the court to reconsider or rule on the argument or issue. See id. at 24, 602 S.E.2d at 779.

After reviewing the Motion to Reconsider and supporting memoranda, this Court finds that Defendants' counterclaims for accounting and unconscionability are both equitable in nature. Because a finding that the two counterclaims are equitable does not satisfy the first element of the Blackburn test, Defendants are not entitled to a jury trial on the accounting and unconscionability counterclaims. The Court still holds, however, that the remaining counterclaims are compulsory, which satisfies the second element of the Blackburn test, and that Defendants are entitled to a jury trial on those remaining claims.

Therefore, the Court, in its discretion, declines to hold a hearing to address the motion and, as decided on the record, briefs, and applicable law, respectfully declines to alter, amend, or vacate the prior order, as to all remaining arguments raised on Plaintiff's Motion to Reconsider, see Rule 59(f), SCRCP; Pollard v. City of Florence, 314 S.C. 397, 401–02, 444 S.E.2d 534, 536 (Ct. App. 1994), and amends the Court's June 26, 2025, Order as follows:

This matter came before the Court at a hearing on Plaintiff's Motion for Summary Judgment as to all of Defendants counterclaims in the above-captioned action, as well as Plaintiff's Motion to Strike Defendants' Jury Demand, on May 21, 2025. This is a contested mortgage foreclosure action in which Defendants have raised counterclaims for violation of S.C. Code Ann §§ 37-10-102 (commonly called the attorney preference statute) and

37-5-108 based on unconscionability, for a declaratory judgment that a prepayment penalty provision in the subject note constitutes an unenforceable penalty, for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, for accounting, and for gross negligence. The parties supported and opposed the motions with factual material, and the record contains affidavits and deposition testimony.

It is well settled that "summary judgment may be rendered only 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. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of law. See Folkens v. Hunt, 290 S.C. 194,196 348 S.E.2d 839,841 (Ct. App. 1986), "all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm. 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Here, it appears there are defects in the corrective assignment executed by Plaintiff in 2021, as there were in the stricken corrective assignment executed in 2013. Plaintiff's corrective assignments do not mention assignment of the Promissory Note and only assign the mortgage. In a case involving a mortgage, the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. See Carpenter v. Longan, 83 U.S. 271 (1872). The assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but… the assignment of the mortgage alone does not carry with it an assignment of the note. See Hahn v. Smith, 154 S.E. 112 (S.C. 1930).

Regarding Defendants' counterclaims, South Carolina law states: 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). See S.C. Code Ann. § 37-10-105(a). For subsection (C) to apply, if the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to section 37-5-108, the court may refuse to enforce the agreement. See S.C. Code Ann. § 37-10-105(C). When viewed in the light most favorable to Defendants, there is a genuine issue of material fact present with respect to whether Plaintiff owns or otherwise has the right to enforce the note and mortgage at issue. That is a question that is material to all the claims in this case. Without a further determination of Plaintiff's ability to enforce the mortgage, one cannot determine whether Plaintiff is the appropriate party to move for summary judgment against Defendants. Furthermore, when viewed in the light most favorable to Defendants, there is a genuine question of material fact regarding whether the contract at issue can be deemed unconscionable, and as such, a question of genuine fact exists as to Defendants counterclaims.

Regarding Plaintiff's Motion to Strike the Defendants Jury Demand, it is well settled that because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." Carolina First Bank v. BADD, LLC, 414 S.C. 289, 778 S.E.2d

106 (2015). Because foreclosure actions are those in equity, defendants have a right to a jury trial only if their counterclaims are both legal and compulsory. Wachovia Bank Nat. Ass’n v. Blackburn. Characterization of a counterclaim depends on the parties’ main purpose in bringing the action. When a party seeks both money damages and equitable relief, characterization of the action as equitable or legal depends on the party's “main purpose” in bringing the action. Johnson and Alessandro v. S.C. National Bank, 328 S.E.2d 75 (1985).

As to whether the counterclaims are legal or equitable in nature, after reviewing the record and the pleadings by the Defendants in their answer, the Court finds that the accounting counterclaim and the unconscionability counterclaims are equitable in nature and that all remaining counterclaims are legal in nature. Thus, Defendants are not entitled to a jury trial as to the accounting and unconscionability counterclaims.

From there, it must be determined whether the remaining counterclaims are either compulsory or permissive in nature. In South Carolina, courts have applied the “logical relationship” test to determine whether the counterclaim is compulsory or permissive. N.C. Fed. Sav. & Loan Asso. V. DAV Corp, 298 S.C. 514,519, 381 S.E.2d 903,906 (1989). A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim. Id. In a foreclosure action, a counterclaim arises out of the same transaction or occurrence and is thus compulsory, when there is a “logical relationship” between the counterclaim and the enforceability of the guaranty agreement. *Id*. The Court finds a logical relationship exists between the remaining counterclaims and the enforceability of the mortgage and that Defendants are entitled to a jury trial as to those counterclaims.

Therefore, it is hereby ORDERED that Plaintiff's Motion for Partial Summary Judgment is denied. Furthermore, Plaintiff's Motion to Strike Defendants' Jury Demand is granted as to the accounting and unconscionability counterclaims by denied as to all remaining counterclaims.

IT IS SO ORDERED

____
Charles J. McCutchen
Presiding Circuit Judge

July ___, 2025

Richland Common Pleas

Case Caption:	Deutsche Bank National Trust Company Trustee , plaintiff, et al vs Tommy Rush , defendant, et al
Case Number:	2020CP4002998
Type:	Order/Other

IT IS SO ORDERED

Charles J. McCutchen

Electronically signed on 2025-07-29 14:55:38

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A NO.: 2020-CP-40-
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee and The Fairways Homeowners Association, Defendants.	**SUMMONS AND NOTICE**

(File No. 4043.02620)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2838 Devine Street, Columbia, South Carolina 29205, pursuant to South Carolina Supreme Court Administrative Order 2020-04-03-01 within sixty (60) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have ninety (90) 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.

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 Plaintiff.

YOU WILL ALSO TAKE NOTICE that should you fail to answer the foregoing Summons, the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or a Special Referee for the aforesaid County, which Order shall, pursuant to Rule 53, SCRCP, specifically provide that the said Master or Special Referee is authorized and empowered, to enter a final judgment in this case and any appeal from the final judgment entered herein to be made directly to the Supreme Court.

YOU WILL ALSO TAKE NOTICE that under the provisions of S.C. Code Ann. §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its undersigned attorneys from the date of default. In the alternative Plaintiff will move before a Judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage which is the subject of this action and the Complaint attached hereto.

THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION GAINED WILL BE USED FOR THAT PURPOSE.

RILEY POPE & LANEY, LLC

s/ Stephanie M. Huggins
Stephanie M. Huggins, SC Bar #101757
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

July 1, 2020
Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A NO.: 2020-CP-40-
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee and The Fairways Homeowners Association, Defendants.	**COMPLAINT** FOR A FIRST CAUSE OF ACTION Foreclosure of Real Estate Mortgage (Non-Jury)

(File No. 4043.02620)

The Plaintiff above-named, complaining of the Defendants above named, herein alleges:

GENERAL ALLEGATIONS

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

2. The Plaintiff is a corporation or other legal entity duly organized and existing under and by virtue of the laws of one of the States of The United States of America and is authorized to transact business in the State of South Carolina.

3. The Plaintiff is holder of or otherwise entitled to enforce the Note and Mortgage described hereafter and that are the subject of this action.

4. Some lien on or right, title, or interest in the real estate, the subject of this action, may be claimed by the Defendants herein.

5. Based upon a search of the public records of Richland County, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made Defendants.

6. The Defendants herein described, if any, as judgment creditors, have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of S.C. Code Ann. §15-35-840.

7. On or about October 31, 2002, Tommy Rush made, executed and delivered unto New Century Mortgage Corporation a certain Note ("Note") in the principal sum of Three Hundred Six Thousand and 00/100 ($306,000.00) Dollars, with an interest rate of 8.990% per annum initially, payable in monthly

installments of principal and interest of $2,459.95 beginning December 1, 2002, a copy of which is attached hereto as Exhibit "A" and made a part hereof by reference.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Tommy Rush and Australia B. Rush made, executed and delivered unto New Century Mortgage Corporation a certain real estate mortgage ("Mortgage") covering the following described property:

> All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being the State of South Carolina, County of Richland, being more specifically shown and designated as Lot 13, Block B-1 on a plat of property of Fairways by Kenneth B. Simmons, F.A.S.L.A., dated January 15, 1972 and recorded in the Office of the RMC for Richland County in Plat Book W at Pages 80 and 81. Said plat is incorporated herein by reference for a more complete and accurate description.
>
> Being the same property conveyed unto Tommy Rush and Australia B. Rush by deed of Don Alkire Builders, Inc. dated October 31, 2002 and recorded November 5, 2002 in Deed Book 721 at Page 2764. Thereafter, Tommy Rush and Australia B. Rush conveyed the subject property unto Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee by deed dated July 6, 2005 and recorded July 6, 2005 in Deed Book 1071 at Page 1192 in the ROD Office for Richland County, South Carolina.
>
> TMS No. 17700-04-30
> Property Address: 453 Longtown Road West, Blythewood, SC 29016

9. The Mortgage was signed, witnessed and probated; thereafter the Mortgage was recorded in the public records of Richland County on November 5, 2002, in Book 721 at Page 2766. Thereafter, by assignment recorded August 14, 2013 in Book 1867 at Page 1431, the mortgage was assigned to Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates. A copy of the Plaintiff's Mortgage and Assignment(s) are collectively attached hereto as Exhibit “B” and made a part hereof by reference.

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

11. The terms of the Mortgage have been modified by Loan Modification Agreement effective October 28, 2009.

12. Thereafter, Tommy Rush and Australia B. Rush conveyed the subject property to Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee by deed dated July 6, 2005 and recorded July 6, 2005 in Deed Book 1071 at Page 1192; that the Defendant, Asia T. Rush Family Trust, Australia B. Rush as Trustee, is the owner and holder of record title to the real property hereinabove described as of the date of the filing of the Notice of Pendency to this action. A copy of the Plaintiff's Loan Modification Agreement is attached hereto as Exhibit “C” and made a part hereof by reference.

13. The hereinafter named Defendant(s) may have some interest in or lien upon the property which is the subject of this action by virtue of the matter and issues herein below alleged. In the event there is a surplus from the foreclosure sale of the subject property, the validity, priority and amount of such lien or claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRCP. These liens or interests are described as follows:

> *The Fairways Homeowners Association by virtue of, but not limited to, any lien or enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto. Any such interest or lien upon the subject property is junior and subordinate to Plaintiff's mortgage.*

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

14. The Plaintiff incorporates the allegations of the preceding Paragraphs as if repeated verbatim.

15. With regard to the Note and/or Mortgage which are the subject matter of this suit, Plaintiff and its attorney have provided all applicable notices and rights to cure as required and otherwise have complied with all applicable Federal, State, and local statutes, laws, rules, regulations, orders or other government directives.

16. The installments of principal and interest which became due on January 1, 2013 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the Note and Mortgage, elects to and does declare the entire balance of said principal and interest due and payable at once, and that there is now due and owing and unpaid upon the said Note and Mortgage the sum of Three Hundred Thirty Four Thousand Thirty Nine and 49/100 ($334,039.49) Dollars as of January 1, 2013, with a current interest rate of 3.6250% per annum from December 1, 2012, together with reasonable attorney's fees and the costs and disbursements of this action, plus all moneys, if any, advanced by the Plaintiff under the terms of the Note and Mortgage for the payment of ad valorem taxes and/or insurance premiums, property maintenance, and securing thereof or otherwise.

17. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action, and under the terms of the Note and Mortgage, Plaintiff's counsel is entitled to reasonable attorney's fees and costs of this action.

18. Plaintiff may be forced to pay sums for taxes, 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.

19. Plaintiff's right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-650 and §29-3-660 is expressly demanded against Tommy Rush.

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

(1) Ascertain and determine the amount due upon the Note and Mortgage held or being enforced by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a purchase money first mortgage lien on the subject property, and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees, the costs of maintaining the property or securing and inspecting the property, if any, incurred as a result of this delinquency, and for the costs of this action.

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

(4) 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 the Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, SCRCP.

(5) 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.

(6) Grant judgment against the Defendant Tommy Rush pursuant to S.C. Code Ann. §29-3-650 and §29-3-660.

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

RILEY POPE & LANEY, LLC
s/ Stephanie M. Huggins
Stephanie M. Huggins, SC Bar #101757
2838 Devine Street
Post Office Box 11412 (29211)
Columbia, South Carolina 29205
(803) 799-9993
Attorneys for Plaintiff

July 1, 2020
Columbia, South Carolina

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended

Tommy Rush
453 Longtown Road West, Blythewood, SC 29016
File No. 4043.02620

1. Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates is the Creditor to whom the debt is owed. Creditor has retained the law firm of Riley Pope & Laney, LLC, to collect the owed debt. Any written requests should be addressed to Riley Pope & Laney, LLC, Post Office Box 11412, Columbia, SC, 29211, (803) 799-9993 (Phone), (803) 239-1414 (Fax).

2. As of July 1, 2020, the total debt you owe is $521,016.61. Because interest, late charges, attorney's fees and costs, and other charges as allowed by the Note and Mortgage continue to accrue from the date set forth above, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph One (1) of this Notice.

3. Unless you, the Consumer, either orally or in writing within thirty (30) days after the receipt of this Notice, disputes the debt or any portion of the debt set forth in Paragraph Two (2) of this Notice and further described in the Complaint attached hereto, the validity of the debt will be assumed to be valid by the Creditor's law firm, Riley Pope & Laney, LLC.

4. If you, the Consumer, notify Riley Pope & Laney, LLC, at the address set forth in Paragraph One (1) of this Notice in writing within thirty (30) days of the receipt of this Notice that the debt or any portion thereof is disputed, Riley Pope & Laney, LLC, will obtain a verification of the debt, and a copy of the verification will be mailed to the Consumer by Riley Pope & Laney, LLC.

5. If you, the Consumer, make a written request to Riley Pope & Laney, LLC within thirty (30) days of the receipt of this Notice, Riley Pope & Laney, LLC, will provide you, the Consumer, the name and address of the original Creditor, if different from the current Creditor.

6. This notice should <u>not</u> be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

7. Please be advised that the time period in which you, the Consumer, have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.

8. Military service members on "active duty" or "active service," or a dependent of such a service member may be entitled to certain legal protections pursuant to the Servicemembers' Civil Relief Act, 50 U.S.C. §3901 et seq. If you believe that you may be entitled to such protection, please contact our office immediately.

9. If you have been discharged in a bankruptcy proceeding, we are not seeking personal liability against you, but are pursing the rights against the property as provided in the security agreements.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

2 YEAR RATE LOCK

ADJUSTABLE RATE NOTE

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

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

October 31, 2002 [Date] BLYTHEWOOD [City] SOUTH CAROLINA [State]

453 LONGTOWN ROAD WEST , BLYTHEWOOD, SOUTH CAROLINA 29016 [Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. $ 306,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is
NEW CENTURY MORTGAGE CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid Principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 8.9900 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay Principal and interest by making a payment every month.

I will make my monthly payments on the first day of each month beginning on December 1, 2002 . I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on November 1, 2032 , I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612
or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. $ 2,459.95 . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid Principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

[redacted]

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of November 2004, and on that day every 6th month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and Eight-Tenths percentage points (6.8000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.4900 % or less than 8.9900 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.9900 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

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

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

[redacted]

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of **15** calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be **5.00** % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. **GIVING OF NOTICES**

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. **OBLIGATIONS OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. **WAIVERS**

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. **UNIFORM SECURED NOTE**

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

[redacted]

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

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

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

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

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

Tommy Rush
_______________(Seal) -Borrower
TOMMY RUSH

_______________(Seal) -Borrower

_______________(Seal) -Borrower

_______________(Seal) -Borrower

_______________(Seal) -Borrower

_______________(Seal) -Borrower

_______________(Seal) -Borrower

_______________(Seal) -Borrower

Pay to the order of, without recourse

____
New Century Mortgage Corporation

By: _______________
Name: Magda Villanueva
Title: A.V.P. / Shipping Manager

[Sign Original Only]

[redacted]

New Century Mortgage Corporation
its successors and/or assigns
18400 Von Karman, Suite 1000
Irvine, CA 92612

Loan: [redacted]

LOST NOTE AFFIDAVIT

Magda Villanueva, A.V.P. / Shipping Manager and Marissa Carrasco, Shipping Supervisor of New Century Mortgage Corporation, a California Corporation ("New Century") each being duly sworn, deposes and says:

That New Century Mortgage is the original Promissory Note Holder in connection with Deed of Trust / Mortgage for **Tommy Rush (S.S.#** [redacted]**) and on October 31, 2002** in the amount of **$ 306,000.00** and that the obligations set forth in the Promissory note ("Note") are secured by a mortgage on real property located at **453 Longtown Road West, Blythewood, South Carolina 29016 (A.P.N. # 177000430).** The original Note was lost and New Century certifies that the attached copy of the note is a certified true copy of the Note originally executed by **Tommy Rush on October 31, 2002.**

New Century, in its corporate capacity, hereby agrees to indemnify and hold harmless ____, its successors and assigns, against any loss, liability or damage, including but not limited to reasonable attorney's fees, arising from or relating to, (I) any false statement contained in this Lost Note Affidavit, (ii) any claim of any party that it has already purchased a mortgage loan evidenced by the Lost Note or any interest in such loan and (iii) the inability to foreclose on the related Mortgage or otherwise realize on the related property due to the fact the mortgage loan is not evidenced by an original Note.

Given under my hand this 7th day of November, 2002

New Century Mortgage Corporation,
a California Corporation

By:____________________
Magda Villanueva, A.V.P. / Shipping Manager

By: MCarrasco
Marissa Carrasco, Shipping Supervisor

ALLONGE TO THE NOTE

LOAN #: [redacted]

NOTE DATED: October 31, 2002

IN FAVOR OF:

NEW CENTURY MORTGAGE CORPORATION

AND EXECUTED BY: Tommy Rush

PAY TO THE ORDER OF WITHOUT RECOURSE:

____

NEW CENTURY MORTGAGE CORPORATION

BY:______________________________________
NAME: Magda Villanueva
TITLE: A.V.P./ Shipping Manager

Return To:

NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612

Prepared By:

NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612

Book 00721-2766 Mortgage
2002090511 11/05/2002 14:38:02:90
Fee: $28.00 County Tax: $0.00 State Tax: $0.00
2002090511 John G. Norris Richland County ROD

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) **"Security Instrument"** means this document, which is dated **October 31, 2002**, together with all Riders to this document.
(B) **"Borrower"** is
TOMMY RUSH AND AUSTRALIA B RUSH

Borrower is the mortgagor under this Security Instrument.
(C) **"Lender"** is
NEW CENTURY MORTGAGE CORPORATION.
Lender is a CORPORATION
organized and existing under the laws of CALIFORNIA.

[redacted]

[redacted]

Lender's address is **18400 VON KARMAN, SUITE 1000 IRVINE, CA 92612**
Lender is the mortgagee under this Security Instrument.

(D) **"Note"** means the promissory note signed by Borrower and dated **October 31, 2002**. The Note states that Borrower owes Lender **Three Hundred Six Thousand and No/100** -------------------------- Dollars (U.S. $ **306,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **November 1, 2032**.

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

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

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

[X] Adjustable Rate Rider	[ ] Condominium Rider	[ ] Second Home Rider
[ ] Balloon Rider	[ ] Planned Unit Development Rider	[ ] 1-4 Family Rider
[ ] VA Rider	[ ] Biweekly Payment Rider	[X] Other(s) [specify] **Prepayment Rider Arm Rider Addendum**

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

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

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

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

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

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

(N) **"Periodic Payment"** means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) **"RESPA"** means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

Initials: TR [redacted] ABR

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, the following described property located in the COUNTY [Type of Recording Jurisdiction] of RICHLAND [Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Parcel ID Number: 177000430 which currently has the address of 453 LONGTOWN ROAD WEST [Street], BLYTHEWOOD [City], South Carolina 29016 [Zip Code] ("Property Address"):

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

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

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

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

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this

Initials: TL [redacted]
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Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of

Initials: TR [redacted]
ABP

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

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

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

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

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

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

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

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

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

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

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

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

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

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

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

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

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

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

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

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

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

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

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

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12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

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

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

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

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a

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notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall by any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Chiron Sudie	Tommy Rush (Seal) TOMMY RUSH -Borrower
Dennis Wayne Cato	Australia B Rush (Seal) -Borrower
(Seal) -Borrower	(Seal) -Borrower
(Seal) -Borrower	(Seal) -Borrower
(Seal) -Borrower	(Seal) -Borrower

[redacted]

STATE OF SOUTH CAROLINA,
County of Lexington

Personally appeared before me China M. Friedrich and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver the within written Mortgage; and that he/she with Dennis Wayne Cator, witnessed the execution thereof.

[signature]

Sworn to before me this 31 day of October, 2002.

My Commission Expires: 01/20/07

Dennis Wayne Cator
Notary Public for South Carolina

Exhibit A

All that certain piece, parcel or lot of land, together with any improvements thereon, situate, lying and being the State of South Carolina, County of Richland, being more specifically shown and designated as Lot 13, Block B-1 on a plat of property of FAIRWAYS by Kenneth B. Simmons, F. A. S. L. A., dated January 15, 1972 and recorded in the Office of the RMC for Richland County in Plat Book W at pages 80 and 81. Said plat is incorporated herein by reference for a more complete and accurate description.

This being the same property conveyed to Don Alkire Builders, Inc. by deed of W. Russell Drake and Yorktown Investment Holdings, A South Carolina General Partnership dated May 3, 2000 and intended to be recorded in the Office of the ROD for Richland County with this mortgage.

TMS #: 17700-04-29

Grantee's Address: 116 Bardwell Way, Blythewood SC 29016

Mortgagee's Address: 18400 Von Karman, Suite 1000
Irvine, CA 92612

Loan Number [redacted]

PREPAYMENT RIDER
ADJUSTABLE RATE LOAN

This Prepayment Rider is made this 31st day of October, 2002 and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") and Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure repayment of Borrower's Note to

NEW CENTURY MORTGAGE CORPORATION

(the "Lender").

To the extent that the provisions of this Prepayment Rider are inconsistent with the provisions of the Note and/or Security Instrument, the provisions of this rider shall prevail over and shall supersede any such inconsistent provisions of the Note and/or Security Instrument.

In addition to the covenants and agreements made in the Note and Security Instrument, the Borrower and Lender further covenant and agree as follows:

5. BORROWERS RIGHT TO PREPAY

I have the right to make prepayments of principal any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing I am doing so. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless: the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment.

If within 24 months from the date of execution of the Security Instrument, I make a full prepayment or, in certain cases a partial prepayment, and the total of such prepayment(s) in any 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of 6 months advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of the loan.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Rider.

Tommy Rush

TOMMY RUSH

Australia B. Rush

New Century Mortgage
Generic Prepayment Rider
RE 103 (082396)

prearm.ltd
krs 011397

ADJUSTABLE RATE RIDER

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

2 YEAR RATE LOCK

THIS ADJUSTABLE RATE RIDER is made this **31st** day of **October 2002**, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to

NEW CENTURY MORTGAGE CORPORATION

("Lender") of the same date and covering the property described in the Security Instrument and located at:

453 LONGTOWN ROAD WEST , BLYTHEWOOD, SC 29016

[Property Address]

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

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

A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial interest rate of **8.9900** %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of **November 2004**, and on that day every **6th** month thereafter. Each date on which my interest rate could change is called a "Change Date."

[redacted]

[redacted]

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Six and Eight-Tenths percentage points (6.8000 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.4900 % or less than 8.9900 %. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage points (1.500 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.9900 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

Initials: TL [redacted]
ABR

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER
Uniform Covenant 18 of the Security Instrument is amended to read as follows:

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

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

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

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

Initials: TR [redacted]
ADR

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider.

Tommy Rush (Seal)
TOMMY RUSH -Borrower

(Seal)
-Borrower

Australia B. Rush (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[redacted]

Loan Numb[redacted]

ADJUSTABLE RATE RIDER ADDENDUM
(Libor Index - Rate Caps)

This Adjustable Rate Rider is made this 31st day of October 2002 , and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") and Mortgage, Deed of Trust or Security Deed (the "Security Instrument") and Adjustable Rate Rider (the "Rider") of the same date given by the undersigned (the "Borrower") to secure repayment of Borrower's Note to

NEW CENTURY MORTGAGE CORPORATION

(the "Lender").

Property securing repayment of the Note is described in the Security Instrument and located at:

453 LONGTOWN ROAD WEST , BLYTHEWOOD, SOUTH CAROLINA 29016

(Property Address)

To the extent that the provisions of this Adjustable Rate Rider Addendum are inconsistent with the provisions of the Note and/or Security Instrument and/or Rider, the provisions of this Addendum shall prevail over and supersede any such inconsistent provisions of the Note and/or Security Instrument and/or Rider.

In addition to the covenants and agreements made in the Note, Security Instrument, and Rider, Borrower and Lender further covenant and agree as follows:

4. (D) LIMITS ON INTEREST RATE CHANGES

The interest rate I am required to pay at the first change date will not be greater than 10.4900 % or less than 8.9900%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than One and One-Half percentage point(s) (1.500 %) from the rate of interest I have been paying for the preceding 6 months. My interest rate will never be greater than 15.9900 % or less than 8.9900 %.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Adjustable Rate Rider Addendum.

Tommy Rush

TOMMY RUSH

Anstalia B. Rush

New Century Mortgage
RE 102 (082296)

ridmin.ifd JP 051702

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ASSIGNMENT OF MORTGAGE
Mortgage Book R 721 at page 2766

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, c/o Carrington Mortgage Services, LLC, Foreclosure Department 1610 E. St. Andrews Place, Ste. B150, Santa Ana, CA 92705, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Tommy Rush and Australia B. Rush to New Century Mortgage Corporation dated October 31, 2002, and duly recorded in the public records of Richland County, State of South Carolina, on November 5, 2002, in Mortgage Book 721 at page 2766.

IN WITNESS WHEREOF, New Century Mortgage Corporation has caused this instrument to be executed in its corporate name and behalf by Elizabeth A. Ostermann, as its Vice President, duly authorized, on this 9 day of August, 2013.

New Century Liquidating Trust Successor-in-Interest to New Century Mortgage Corporation by Carrington Mortgage Services, LLC as Attorney-In-Fact

By: Elizabeth A. Ostermann
its: Vice President

Monica Orozco
Witness No. 1 MONICA OROZCO

Melanie Vasquez
Witness No. 2 Melanie Vasquez

STATE OF ____________

COUNTY OF ____________

ACKNOWLEDGMENT
S.C. Code § 30-5-30

I, the undersigned, Notary Public for the State of ____________, do hereby certify that New Century Mortgage Corporation by ____________, its ____________, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this ________ day of ____________, 2013.

NOTARY PUBLIC FOR ____________
My Commission Expires: ____________

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202

[redacted]

Book 1887-1431
2013067177 08/14/2013 16:18:20:133
Assignment of Mortgage
Fee:$7.00 County Tax: $0.00 State Tax: $0.00

2013067177 John T. Hopkins II Richland County R.O.D.

453 Longtown Road West, Blythewood, SC 29016-000

ACKNOWLEDGMENT

State of California

County of Orange

On August 9, 2013 before me, J.A. Lozano, Notary Public, personally appeared Elizabeth A Ostermann, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ______________________ (Seal)

J. A. LOZANO
Commission # 2011474
Notary Public - California
Orange County
My Comm. Expires Mar 11, 2017

ADDITIONAL OPTIONAL INFORMATION	
DESCRIPTION OF THE ATTACHED DOCUMENT	
Title of Attached Document:	**ASSIGNMENT OF MORTGAGE**
Document Date:	**August 9, 2013**
Additional Information:	Borrower : **TOMMY RUSH**

CONFIDENTIAL

SERVICING

Loan Number [redacted]

[redacted]

Loan Modifications

Submitted By John K.

Date 11/4/09

Number of Pages 3

CMS
Carrington Mortgage Services, LLC

[redacted]

CMS Loan Number 000692457

Loan Modification (30/40 Balloon)

As of **10/28/09** ("Effective Date"), the terms of Your existing Mortgage loan referenced above and serviced by Carrington Mortgage Services, LLC ("CMS") are being modified for your benefit as described in detail below.

I. DEFINITIONS

A. "Mortgage" shall mean the mortgage, deed of trust, security deed or other security instrument encumbering the Property and corresponding to the above CMS Loan Number, dated 10/31/02 and recorded in the public records of County.

B. "Note" shall mean the note or other instrument of the same date and secured by the Mortgage.

C. "Balloon Payment" is a final payment of the then outstanding principal balance plus all earned interest remaining unpaid on the Maturity Date.

D. "Property" shall mean the real and personal property described in the Mortgage and located at:

453 LONGTOWN ROAD WEST
BLYTHEWOOD, SC 29016

E. "You" shall mean the mortgagor(s)/borrower(s) on the Mortgage.

II. TERMS AND CONDITIONS

A. The Note and the Security Instrument are modified to increase the principal balance of the Note by the amounts of your arrears on the Note including past due interest, past due Escrow Items and servicing costs. The new principal balance due under Your modified Note and the Mortgage is **$334247.40**. Upon modification, Your account became contractually current; however, any fees and charges that were not included in the principal balance will remain Your responsibility and must be paid. However, all unpaid late charges have been waived by us.

B. The annual rate of interest charged on the unpaid principal balance of Your loan is **5.00%**. This rate will remain in effect until the maturity date of your loan

C. Nothing herein shall be construed to modify, alter or otherwise change the Maturity Date of Your loan. The Maturity Date of Your loan remains **10/2032**.

D. You will make Your monthly payments on the 1st day of each month beginning on **11/01/09**. Your new monthly principal and interest payment will be **$1723.45**, which is lower than your previous monthly principal and interest payment of **$2705.49**. You will make your new principal and interest payments every month until You have paid in full all of the principal and interest and any other charges described below that You may owe under this Loan Modification. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before principal. The monthly payment is calculated using a forty (40)-year amortization period but the actual loan term of the Note is thirty (30) years. If You still owe amounts under the Note on the Maturity Date, as a result of the 10-year difference between the 40-year amortization period and the 30-year term of the Note, a large Balloon Payment shall become due and payable by You on the Maturity Date

TL

CMS

Carrington Mortgage Services, LLC

[redacted]

E. Nothing contained in this Loan Modification shall affect the existence of any escrow account for the payment of taxes and insurance. The monthly payment of principal and interest noted above does not include required payments for taxes and insurance, which may be substantial. Your monthly requirements for taxes and insurance will change periodically during the term of Your Mortgage.

F. You will comply with all other covenants, agreements and requirements of Your Mortgage, including without limitation, the covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds and all other payments that You are obligated to make under the Mortgage, except as otherwise provided herein.

G. In consideration for receiving the benefits of a decreased interest rate and monthly principal and interest payment You understand and agree that:

1. All of the rights and remedies, stipulations and conditions relating to default in the making of payments under the Mortgage will also apply to default in the making of the modified payments hereunder.

2. All covenants, agreements, stipulations and conditions in Your Note and Mortgage will remain in full force and effect, except as modified herein, and none of Your obligations or liabilities under Your Note and Mortgage will be diminished or released by any provisions hereof, nor will this Loan Modification in any way impair, diminish, or affect any of CMS's rights under or remedies on Your Note and Mortgage, whether such rights or remedies arise thereunder or by operation of law. All rights of recourse to which CMS is entitled against any property or any other persons in any way obligated for, or liable on, Your Note and Mortgage are expressly reserved by CMS.

3. You represent and warrant that You occupy the Property as Your residence.

4. Any expenses incurred in connection with the servicing of Your loan that may legally be charged to Your account, but have not been charged to Your account as of the Effective Date above, may be charged to Your account after the Effective Date.

5. Nothing in this Loan Modification will be understood or construed to be a satisfaction or release, in whole or in part, of Your Note and Mortgage.

6. You will make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Loan Modification which, if approved and accepted by CMS, will bind and inure to Your heirs, executors, administrators and assigns.

7. This Loan Modification is legally binding, enforceable in accordance with its terms and affects Your rights.

8. By making a payment in accordance with the terms of this Loan Modification, You are agreeing to be bound by the terms of the Loan Modification.

9. You have the opportunity to obtain independent legal counsel concerning this Loan Modification being made for Your benefit and to refuse the terms and conditions of this Loan Modification by contacting CMS at (888) 267-2419. You may also contact CMS at this number if You have any questions regarding this communication.

Tommy Rush

TOMMY RUSH

OCT-29-09 11:42 AM

All Purpose Acknowledgement

State of: South Carolina

County of: Richland

On this 29th day of October, 2009, before me J. Karen Alcaraz, a Notary Public, personally appeared Tommy Rose, personally known to me OR proved to me on the basis of satisfactory evidence to be the person/~~persons~~ whose name/~~names~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized ~~capacity~~/capacities, and that by his/~~her/their~~ signature/~~signatures~~ on the instrument the person/~~persons~~, or the entity upon behalf of which the person/~~persons~~ acted, executed this instrument.

Witness my hand and seal:

______________________, Notary Public (seal)

My Comission Expires: 8-12-14

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title of Document:

Document Date:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer

[ ] Individual

[ ] Corporate Officer – Title(s):

[ ] Attorney In Fact

[ ] Trustee

[ ] Guardian or Conservator

[ ] Other:

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee and The Fairways Homeowners Association, Defendants.	)	Case No.: 2020-CP-40-02998 **ANSWER AND COUNTERCLAIMS OF DEFENDANTS TOMMY RUSH, ASIA T. RUSH FAMILY TRUST, AND AUSTRALIA B. RUSH 29016** **(Jury Trial Requested)**

NOW COME DEFENDANTS, TOMMY RUSH, ASIA T. RUSH FAMILY TRUST, AUSTRALIA B. RUSH 29016 (hereinafter collectively referred to as "Defendants"), by and through the undersigned attorney, answering the Plaintiff's complaint and asserting their counterclaims against the Plaintiff as follows:

AS A FIRST DEFENSE
(General Denial)

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the

Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Paragraph one of the Complaint is not a factual allegation. Therefore, this allegation is denied.

3. Defendants deny the allegations contained in paragraphs two, three, five and six of the Complaint.

4. As to paragraph four of the Complaint, Defendants admit only that the Defendants filing this Answer and Counterclaim claim an interest in the subject property, and the remaining allegations of this paragraph are denied.

5. As to paragraph seven of the Complaint, Defendants admit only that Tommy Rush signed a document purporting to be a Note. The remainder of this paragraph is denied. It is further denied that a Note is attached to the Complaint as Exhibit "A", and it is noted that no such exhibit was served with the Complaint and no such exhibit is filed with the lawsuit on the public index for the County of Richland, State of South Carolina.

6. As to paragraph eight of the Complaint, Defendants admit only that Tommy Rush signed a document purporting to be a mortgage. The remainder of this paragraph is denied.

7. Answering the allegations in paragraph nine, Defendants admit only that Tommy Rush and Australia Rush signed a document purporting to be a mortgage. The remainder of this paragraph is denied.

8. Defendants deny the allegations contained in paragraphs ten, eleven, and thirteen of the Complaint.

9. Defendants admit the allegations contained in paragraph twelve of the Complaint, EXCEPT, Defendants deny that Exhibit "C" is made a part of the Complaint.

10. Paragraph fourteen is not an allegation, but it is denied as previously denied or qualified in the preceding paragraphs of this Answer and Counterclaim.

11. Defendants deny the allegations contained in paragraphs fifteen, sixteen, seventeen, eighteen and nineteen of the Complaint.

AS A SECOND DEFENSE
(Unclean Hands)

12. Plaintiff is precluded from recovering in equity because it, through its employees, agents, successors, assigns, and representatives have acted unfairly and corruptly in the matter that is the subject of this litigation. *See, Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E. (2d) 735 (1943).*

13. Plaintiff has acted unfairly and corruptly in one or more of the following ways:

a. by engaging in unfair and corrupt behavior by violating the federal underwriting guidelines in arranging and approving the subprime loan on the Defendants behalf by, including but not limited to, inflating the appraisal report associated with the property.

b. by approving the loan by inflating the Defendants' qualifications.

c. by preventing the Defendants from exercising their right to be represented by an independent attorney at the closing of the mortgage loan subject to this case.

d. by committing the unfair and corrupt acts as identified in the Final Report of Michael J. Missal, Bankruptcy Court Examiner, Case No. 07-10416 (KJC), including implementing a low-quality low approval program for subprime loans so for the purpose of enhancing its ability to securitize and pool loans.

e. by making a loan on a deceptive appraisal report that it knew or should have know was inflated and deceptive.

f. by commencing a previous foreclosure action, litigating it for over 6 years, then dismissing it after it lost its Motion for Summary Judgment.

g. by filing a statutorily defective Assignment of Mortgage in the public records of Richland County, State of South Carolina.

14. The Plaintiff's corrupt and unfair acts as alleged above were causally related to the subject matter of this lawsuit.

15. The Plaintiff's unfair and corrupt behavior caused the Defendants prejudice and injury, and consequently, Plaintiff is prohibited from foreclosing in equity.

AS A THIRD DEFENSE
(Laches)

16. Defendants repudiated the transaction with the Plaintiff's successor in interest over fourteen years ago.

17. Thereafter, the Plaintiff commenced litigation on the subject matter in 2013; however, it abandoned the cause once it was not successful in overcoming the Defendants' defenses. Therefore, it abandoned the cause in July 2019, only to return in another action which is designed to give it a new beginning in the litigation.

18. Plaintiff's conduct in asserting its alleged contractual rights has been neglectful, unreasonable, and the said unexplained length of time, under circumstances affording Plaintiff opportunity for diligence should be barred under the doctrine of laches because the Plaintiff failed to assert a known right in a timely manner.

19. Plaintiff had knowledge of the alleged contractual wrong committed by the Defendants, and it refused to embrace an opportunity to ascertain its rights for over a decade.

20. Plaintiff failed to do in law what it should have done. Therefore, the equitable doctrine of laches should preclude the Plaintiff from recovering in this matter.

21. The Plaintiff's unreasonable delay caused the Defendants prejudice and injury, to include causing the Defendants to spend a substantial sum as attorney's fees in defending this action.

AS A FOURTH DEFENSE AND FIRST COUNTERCLAIM
(Violation of S.C. Code § 37-10-102 and Section 37-5-108)

22. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

23. The mortgage's, which is the subject matter of this lawsuit, primary purpose was to secure in whole or in part by a lien on real estate for a personal, family or household purpose.

24. With respect to the alleged mortgage, which is the subject of this action, Plaintiff's successor, New Century Mortgage Corporation did not comply with the attorney preference provisions of S.C. Code § 37-10-102 with respect to the closing of the loan.

25. By denying the Defendant's the attorney of their choice, Defendants, without representation, entered a loan that was unconscionable at the time it was made.

26. Furthermore, the loan, which is subject to this litigation, was induced by unconscionable conduct as identified in the Final Report of Michael J. Missal, Bankruptcy Court Examiner, Case No. 07-10416 (KJC).

27. New Century Mortgage Corporation and the attorney who closed the loan did not inform the Defendants of the terms of the adjustable rate note, which caused the loan to become unaffordable to the Defendants once the loan adjusted.

28. As a direct and proximate result of Plaintiff's violation of S.C. Code § 37-10-102, Defendants suffered injury and damages, including but not limited to the threat of losing their home, pain and suffering and other intangibles, and attorneys' fees.

29. Further, the agreement between New Century Mortgage Corporation and the Defendants was, as a matter of law unconscionable pursuant to S.C. Code Section 37-5-108 at the time it was made or was induced by unconscionable conduct by New Century Mortgage Corporation. Therefore, Defendants are entitled to the relief identified in SECTION 37-10-105 AND the South Carolina Consumer Protection Code, including but not limited to, an order refusing to enforce the agreement between the Plaintiff and Defendants and a reasonable sum as attorney's fees.

AS A FIFTH DEFENSE AND SECOND COUNTERCLAIM
(Declaratory Judgment)

30. There is a justiciable controversy between the parties concerning the issues now before the Court.

31. Upon information and belief, the alleged note at issue in this case contains a prepayment penalty provision, which constitutes an unenforceable penalty.

32. The Defendants are entitled to a declaratory judgment that the prepayment penalty is unenforceable.

AS A SIXTH DEFENSE AND THIRD COUNTERCLAIM
(Violation of the SC Unfair Trade Practices Act)

33. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

34. Actions of the Plaintiff, including but not limited to, stated in this pleading constitutes violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10. *et. seq*.

35. More specifically, in inducing and closing the loan with the Defendants, New Century Mortgage Corporation committed substantial underwriting violations by making the

subprime loan to the Defendants more risky by offering an interest-only loan and by calculating the Defendants' ability to pay based solely on the interest-only and not on the adjusted rate.

36. The Plaintiff committed the deceptive and unfair acts in reducing loan quality to increase the amount and number of subprime loans to facilitate the pooling and securitization and sale to third parties. New Century's deceptive and fraudulent conduct is best identified and displayed in Final Report of Michael J. Missal, Bankruptcy Court Examiner, Case No. 07-10416 (KJC), a report which is hereby incorporated by referenced in this pleading as if fully set out herein.

37. Plaintiff's conduct was unfair methods of competition or deceptive acts or practices in the conduct of trade which affects commerce, in violation of S.C. Code Ann. § 39-5-20(a) (1985). Under S.C. Code Ann. § 39-5-140(a).

38. As a direct and proximate result of the Plaintiff's deceptive and unfair trade practices, the Defendants suffered an ascertainable loss of money or property, including money lost in purchasing the home at issue and a loss of attorney's fees in defending the Plaintiff's foreclosure cases.

39. Plaintiff's unfair or deceptive method, act or practice was a willful or knowing violation of S. C. Code § 39-5-20. Therefore, the court should award the Defendants three times the actual damages sustained and provide such other relief as it deems necessary or proper.

40. Plaintiff's conduct affected the public and it is capable of repetition.

AS A SEVENTH DEFENSE AND FOURTH COUNTERCLAIM
(For an Accounting)

41. Plaintiff's has employed deceptive and fraudulent accounting practices as found by the Final Report of Michael J. Missal, Bankruptcy Court Examiner, Case No. 07-10416 (KJC).

42. The accounting history for the loan subject to this case is long and complicated.

43. Therefore, in the interest of justice, the Defendants are entitled to accounting.

AS AN EIGHT DEFENSE AND FIFTH COUNTERCLAIM
(Gross Negligence)

44. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

45. New Century Mortgage Corporation owed the Defendants a duty to induce and close the loan, which is subject to this lawsuit, in accordance with the laws of the State of South Carolina.

46. The Plaintiff, if it is determined that it a lawful assignee, which is denied by the Defendants, breached the duty of care owed to the Defendants by inducing and closing the loan in violation of statutory and common law provisions, to wit: (a) failing to offer the Defendants the opportunity to acquire the attorney of their choice and (b) by inducing and closing a loan that was unconscionable from its inception.

47. As direct and proximate result of the Plaintiff's breach of the duty owed to the Defendants, Defendants suffered damages in the form of humiliation, embarrassment, loss of money associated with the transaction, and other intangible damages, all in an amount to be proved at trial.

48. Plaintiff/New Century's, as assignee for New Century, acts were deliberate, reckless, intentional, or done in a manner with a conscious and total disregard for the rights of the

Plaintiff. Therefore, Plaintiff is entitled to an award of punitive damages, in an amount to be proved at trial.

AS A NINETH DEFENSE
(Judicial Estoppel and Judicial Acceptance)

49. Plaintiff fully litigated the issues raised in this case in a previous case with most of the same Defendants in a case in this court bearing Case Number 2013-CP-40-5798 (hereinafter referred to as the "First Foreclosure Case").

50. In the First Foreclosure Case, the Plaintiff raised the same allegations, and it subsequently moved for Summary Judgment.

51. Summary Judgment was denied in the First Foreclosure Case.

52. Plaintiff should be judicially estopped from avoiding the effect of the denial of its Motion for Summary Judgment in the First Foreclosure Case by bringing a separate new action.

53. Moreover, Plaintiff should be required to judicially accept the rulings from the First Foreclosure Case under the theories of judicial estoppel, judicial acceptance, collateral estoppel, or res judicata.

WHEREFORE, having answered the Plaintiff's allegations and having asserted their Counterclaims, Defendants seek the following relief:

a. For an order dismissing the Plaintiff's Complaint.

b. A judgment against the Plaintiff for compensatory damages on the Counterclaims, in an amount to be proved at trial.

c. A judgment against the Plaintiff for trebled damages, in an amount to be proved at trial.

d. For an award of attorney's fees as the statutory laws of this state allows.

e. For such further relief the Court deems just and proper.

PLAINTIFF REQUESTS A JURY TRIAL ON ALL ISSUES AS ALLOWED BY LAW.

[Only the signature block is contained on this page].

At Orangeburg, SC

Dated: August 07, 2020

/s/ Glenn Walters, Sr.
GLENN WALTERS, Esquire
1910 Russell Street (29115)
Post Office Box 1346
Orangeburg, SC 29116
Phone: 803 531-8844
Fax: 803 531-3628
SC Bar No.: 13148

Attorney for DEFENDANTS,
Except The Fairways Homeowners Association

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee and The Fairways Homeowners Association, Defendants.	Case No.: 2020-CP-40-02998 **PROOF OF SERVICE**

I, Glenn Walters, certify that I have caused a copy of the **ANSWER AND COUNTERCLAIMS OF DEFENDANTS TOMMY RUSH, ASIA T. RUSH FAMILY TRUST, AND AUSTRALIA B. RUSH 29016 AS TRUSTEE** to be served on the Plaintiff's attorney on August 7, 2020, by depositing a copy of the same in the United States postage service, with proper postage affixed, with an appropriate return address, addressed as follows:

Stephanie M. Huggins, Esquire
RILEY POPE & LANEY, LLC
2838 Devine Street
Columbia, SC 29205

At Orangeburg, SC

Dated: August 07, 2020

/s/ Glenn Walters, Sr.
GLENN WALTERS, Esquire

Attorney for DEFENDANTS,
Except The Fairways Homeowners Association

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A NO.: 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee. Defendants.	**PLAINTIFF'S MOTION TO STRIKE JURY DEMAND**

TO: PATRICK M. KILLEN, ESQUIRE, AND JAKE DIPPOLD, ESQUIRE, ATTORNEYS FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorney, will move before the Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit at the Richland County Judicial Center located at 1701 Main Street, Columbia, South Carolina, on the tenth (10th) day following the service hereof or as soon thereafter as counsel may be heard, for an Order striking Defendants' jury demand pursuant to Rule 12(f), SCRCP. This motion is based on the following grounds:

1. This action is a mortgage foreclosure action, which is equitable in nature. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997). "Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." *Carolina First Bank v. BADD, LLC,* 414 S.C. 289, 778 S.E.2d 106 (2015).
2. Because the foreclosure action is equitable in nature, Defendants have the right to a jury trial only if their counterclaims are both legal and compulsory. *Wachovia Bank, Nat. Ass'n*

v. Blackburn, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Defendants' counterclaims are permissive and legal; therefore, Defendants are not entitled to a jury trial. *Id*.

3. To the extent that this Court concludes that any of Defendants' counterclaims shall be subject to a jury trial, Plaintiff asks this Court to bifurcate the nonjury actions from any counterclaims to be tried by a jury, pursuant to Rule 42(b), SCRCP. The foreclosure action and any permissive and legal counterclaims shall then be placed on the nonjury roster and any legal and compulsory counterclaims shall be placed on the jury roster.

This motion is based upon the pleadings in this matter, memoranda of law, and any other matter that may be argued at the hearing.

s/ M. McMullen Taylor
M. McMullen Taylor
RILEY POPE & LANEY, LLC
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Columbia, South Carolina 29205
(803)799-9993
mtaylor@rplfirm.com

Attorney for Plaintiff

March 19, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A NO.: 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee, Defendants.	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE DEFENDANTS' JURY DEMAND**

(File No. 4043.02620)

BACKGROUND

This is an action to foreclose a mortgage on real property in Richland County, South Carolina. A Summons and Complaint were filed on July 1, 2020, and Defendants filed and timely served an Answer asserting the following counterclaims: 1) violation of the S.C. Attorney Preference Statute (S.C. Code § 37-10-102); 2) statutory unconscionability of the loan (S.C. Code § 37-5-108); 3) declaratory judgment that the Note contains an unenforceable penalty; 4) violation of the S.C. Unfair Trade Practices Act; 5) an accounting; and 6) gross negligence. Defendant/Counterclaimant demanded a jury trial on all claims as allowed by law.

STANDARD

"Whether a party is entitled to a jury trial is a question of law...." *Wachovia Bank, NA. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson,* 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). If a complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim. *C & S Real Estate Servs., Inc. v. Massengale,* 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986), *modified by Johnson v. S.C. Nat'l Bank,* 292 S.C. 51, 354 S.E.2d 895 (1987). "If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

South Carolina courts have applied the "logical relationship" test to determine whether a counterclaim is compulsory or permissive. See *N.C. Fed. Say. & Loan Asso. v. DAV Corp*., 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989). If prevailing on a counterclaim would affect the lender's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory. *Blackburn*, 407 S.C. at 330, n.7, 755 S.E2d at 442, n.7 (citation omitted). "[T]here is no constitutional right to a jury trial for a non-compulsory counterclaim for damages asserted in an equitable action." *Crewe v. Blackmon*, 289 S.C. 229, 233, 345 S.E.2d 754, 757 (Ct. App. 1986) (citation omitted). Recently, in *Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck,* the South Carolina Supreme Court ruled that "in cases commenced on or after the effective date of this opinion, the question of whether a counterclaim is compulsory is governed by the plain language of Rule 13(a).” 440 S.C. 409, 412–13, 892 S.E.2d 280, 282 (2023). Because this case was commenced prior to *Est. of Houck*, the “logical relationship” test applies.

ARGUMENTS

1. Defendants/Counterclaimants are not entitled to a jury trial on Plaintiff’s foreclosure action.

The South Carolina Constitution provides that the right of trial by jury is to be “preserved inviolate.” S.C. Const. art. I, § 14. This provision preserves the right of trial by jury only in those cases in which the parties were entitled to it under the law or practice existing at the time of the adoption of the Constitution. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Id*. Mortgage foreclosure actions are equitable in nature. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d. 472, 475 (1997). "Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." *Carolina First Bank v. BADD, LLC,* 414 S.C. 289, 778 S.E.2d 106 (2015). Therefore, Defendants/Counterclaimants are not entitled to a jury trial on Plaintiff’s foreclosure action.

2. Defendants/Counterclaimants are not entitled to a jury trial on their counterclaim alleging violation of S.C. Code Ann. § 37-10-102 and S.C. Code Ann. § 37-5-108.

“Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions.” *Lester v. Dawson,* 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). If a complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim. *C & S Real Estate Servs., Inc. v. Massengale,* 290 S.C. 299, 302, 350 S.E.2d 191, 193

(1986), *modified by Johnson v. S.C. Nat'l Bank,* 292 S.C. 51, 354 S.E.2d 895 (1987). "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l. Ass'n v. Bell,* 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct.App.2009). Thus, Defendants/Counterclaimants have the right to a jury trial only if their counterclaim is both legal and compulsory. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). "If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Id.*

Characterization of an "action as equitable or legal depends on the appellant's 'main purpose' in bringing the action." *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted). "The main purpose of the action should generally be ascertained from the body of the complaint." *Id*. "However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Id*. The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable. *Bell v. Mackey*, 191 S.C. 105, 119–20, 3 S.E.2d 816, 822 (1939).

To determine whether a counterclaim is compulsory, a "'logical relationship' determination is made by asking whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage." *Wells Fargo Bank NA v. Smith,* 398 S.C. 487, 496, 730 S.E.2d 328, 333 (Ct. App. 2012). "If the defendant's prevailing on his counterclaim would affect the bank's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory." *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 331, 755 S.E.2d 437, 442 (2014).

Defendants/Counterclaimants assert a violation of the Attorney Preference Statute, S.C. Code Ann. § 37-10-102(a). A violation of the Attorney Preference Statute is remedied by recovery of actual damages and a penalty no less than $1,500.00 and no more than $7,500.00. S.C. Code Ann. § 37-10-105(A). The Statute does not provide for recission of the Note and Mortgage. Because Defendants/Counterclaimants' counterclaim of violation of the Attorney Preference Statute bears no "logical relationship" to the enforceability of the Note and Mortgage, the counterclaim is permissive. *See Wells Fargo Bank, NA v. Smith*, No. 2009-125666, 2012 WL 10987189, at *6 (S.C. Ct. App. June 13, 2012). Therefore, Defendants/Counterclaimants are not entitled to a jury trial on their counterclaim alleging violation of the Attorney Preference Statute.

Concerning their assertion that violation of the Attorney Preference Statute, along with other actions, was unconscionable under S.C. Code Ann. § 37-5-108, this statutory unconscionability counterclaim is compulsory because its remedies include refusal to enforce the Note and Mortgage. S.C. Code Ann. § 37-10-105(C). However, to be entitled to a jury trial on statutory unconscionability, this claim must not only be compulsory, but also legal in nature. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014).

Under the common law, unconscionability is an equitable defense to a contract claim. SOUTH CAROLINA EQUITY: A PRACTITIONER'S GUIDE, p. 180 (S.C. Bar 2010). Its remedy is voiding some or all of the contract at issue. *Id*. There is no right to a jury trial for equitable defenses or remedies. *Brown v. Greenwood Sch. Dist. 50 Bd. of Trs.*, 344 S.C. 522, 525, 544 S.E.2d 642, 643 (Ct. App. 2001); *Lester v. Dawson,* 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Further, under S.C. Code Ann. § 37-10-105(C) and § 37-5-108, the statute expressly provides that the question of whether an agreement is unconscionable is a matter of law for the Court. *See Wells Fargo*

Bank, NA v. Smith, No. 2009-125666, 2012 WL 10987189, at *5 (S.C. Ct. App. June 13, 2012). Defendants/Counterclaimants are not entitled to a jury trial on their counterclaim of unconscionability.

3. Defendants are not entitled to a jury trial on their second counterclaim seeking a declaratory judgment.

If a complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim. *C & S Real Estate Servs., Inc. v. Massengale,* 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986), *modified by Johnson v. S.C. Nat'l Bank,* 292 S.C. 51, 354 S.E.2d 895 (1987). "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l. Ass'n v. Bell,* 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct.App.2009). Thus, Defendants/Counterclaimants' have the right to a jury trial only if their counterclaim is both legal and compulsory. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). "If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Id.*

Defendants seek a declaratory judgment that a prepayment penalty within the Note is unenforceable. This prepayment penalty is amended by a Rider to the Mortgage. See EXH 1. The Rider states that the prepayment penalty expires two years after the execution date of October 31, 2002. To the extent their counterclaim is not moot, Defendants have waived any right they may have to a jury trial on their declaratory judgment action.

Defendants' counterclaim does not specify the relief they seek. Presumably, their remedy is to strike the prepayment penalty provision within the Note. As such, the declaratory judgment would not affect the enforceability of the Note, making their counterclaim permissive. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Because

Defendants brought a permissive counterclaim where the main action is equitable, Defendants have waived their right to a jury trial on their declaratory judgment counterclaim. *Id*.

4. Defendants are not entitled to a jury trial on their third counterclaim alleging a violation of the S.C. Unfair Trade Practices Act.

Defendant's third counterclaim alleges a violation of the S.C. Unfair Trade Practices Act, S.C. Code Ann. 39-5-10 *et seq*. They seek actual damages and treble damages for willful or knowing violations. As such, the alleged unfair trade practice violation would not affect the enforceability of the Note, making Defendants' counterclaim permissive. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Because Defendants brought a permissive counterclaim where the main action is equitable, Defendants have waived their right to a jury trial on their declaratory judgment counterclaim. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014).

5. Defendants are not entitled to a jury trial on their fourth counterclaim seeking an accounting.

The right of trial by jury applies only in those cases in which the parties were entitled to it under the law or practice existing at the time of the adoption of the Constitution. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Id*. "An accounting is essentially an equitable remedy." *Rogers v. Salisbury Brick Corp*., 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989). Because the right to a jury trial does not apply to equitable actions, Defendants are not entitled to a jury trial on their counterclaim for an accounting.

6. **Defendants are not entitled to a jury trial on their fourth counterclaim alleging gross negligence.**

If a complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim. *C & S Real Estate Servs., Inc. v. Massengale,* 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986), *modified by Johnson v. S.C. Nat'l Bank,* 292 S.C. 51, 354 S.E.2d 895 (1987). "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l. Ass'n v. Bell,* 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct.App.2009). Thus, Defendants/Counterclaimants' have the right to a jury trial only if their counterclaim is both legal and compulsory. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). "If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Id.*

Defendants' fifth counterclaim alleges that their lender breached its duty of care by inducing and closing the mortgage loan, which proximately caused damages. Answer and Counterclaim, p. 8. As such, the alleged negligence would not affect the enforceability of the Note, making Defendants' counterclaim permissive. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Because Defendants brought a permissive counterclaim where the main action is equitable, Defendants have waived their right to a jury trial on their declaratory judgment counterclaim. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014).

CONCLUSION

For the reasons and arguments set forth above, Plaintiff requests that this Court deny Defendants' request for a jury trial on all of their counterclaims and strike their jury trial demand from the Defendants' Answer and Counterclaim.

RILEY POPE & LANEY, LLC

s/M. McMullen Taylor
M. McMullen Taylor, SC Bar 72848
2838 Devine Street
Columbia, South Carolina 29205
(803) 799-9993
mtaylor@rplfirm.com
Attorneys for Plaintiff

Columbia, South Carolina
May 12, 2025

EXHIBIT

1

Loan Number [redacted]

PREPAYMENT RIDER
ADJUSTABLE RATE LOAN

This Prepayment Rider is made this 31st day of October, 2002 and is incorporated into and shall be deemed to amend and supplement the Promissory Note (the "Note") and Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure repayment of Borrower's Note to

NEW CENTURY MORTGAGE CORPORATION

(the"Lender").

To the extent that the provisions of this Prepayment Rider are inconsistent with the provisions of the Note and/or Security Instrument, the provisions of this rider shall prevail over and shall supersede any such inconsistent provisions of the Note and/or Security Instrument.

In addition to the covenants and agreements made in the Note and Security Instrument, the Borrower and Lender further covenant and agree as follows:

5. BORROWERS RIGHT TO PREPAY

I have the right to make prepayments of principal any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing I am doing so. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless: the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment.

If within 24 **months from the date of execution of the Security Instrument, I make a full prepayment or, in certain cases a partial prepayment, and the total of such prepayment(s) in any 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of this loan, I will pay a prepayment charge in an amount equal to the payment of** 6 **months advance interest on the amount by which the total of my prepayment(s) within that 12-month period exceeds TWENTY PERCENT (20%) of the original principal amount of the loan.**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Prepayment Rider.

Tommy Rush
TOMMY RUSH

Australia B. Rush

[redacted]

New Century Mortgage
Generic Prepayment Rider
RE [redacted]

Mullen Taylor

From:	Nick Young <nick@shulerkillen.com>
Sent:	Tuesday, June 17, 2025 1:28 PM
To:	cmccutchenlc@sccourts.org; cmccutchensc@sccourts.org
Cc:	Patrick Killen; jhunter@crawfordvk.com; Mullen Taylor; Heidi Carey; DamonW@hnblaw.com
Subject:	2020CP4002998 Deutsche Bank National Trust Company Trustee , plaintiff, et al vs Tommy Rush , defendant, et al
Attachments:	Deutsche Bank v. Rush (Proposed Order) .docx

You don't often get email from nick@shulerkillen.com. Learn why this is important

Good afternoon:

Please find attached the proposed order relating to the Motion for Partial Summary Judgment and the Motion to Strike in the above-captioned case.

Respectfully,

Nicholas A. Young

Nick Young

Attorney

O: (803)774-8589 | Fax: (803)774-5028

1 Law Range • Sumter, SC 29150

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	Case No.: 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee Defendants.	**ORDER DENYING PLAINTIFF'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT AND MOTION TO STRIKE JURY DEMAND**

This matter came before me at a hearing on the Plaintiff's Motion for Summary Judgment as to all of Defendant's counterclaims in the above-captioned action as well as the Plaintiff's Motion to Strike the Defendant's Jury Demand, on March 21, 2025. This is a contested mortgage foreclosure action in which the Defendants have raised counterclaims for violation of S.C. Code Ann § 37-10-102 (commonly called the attorney preference statute), for a declaratory judgment that a prepayment penalty provision in the subject note constitutes an unenforceable penalty, for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, and gross negligence. The parties supported and opposed the motions with factual material, and the record contains affidavits and deposition testimony.

It is well settled that "summary judgment may be rendered only 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. Additionally, it must be shown that further inquiry into the facts of the case is not desirable to clarify the application of law. Folkens v. Hunt, 290 S.C. 194,196 348 S.E.2d 839,841 (Ct. App. 1986), "all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." Nelson v. Charleston County Parks & Recreation Comm. 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). A fact is "material" if proof of its existence or non-existence would affect disposition of the case under applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Here, it appears that there are defects in the corrective assignment executed by the Plaintiff in 2021, as there were in the stricken corrective assignment executed in 2013. The Plaintiff's corrective assignments do not mention assignment of the Promissory Note and only assign the mortgage. In a case involving a mortgage, the note and mortgage are inseparable; the former as essential, the latter as an incident. An assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity. Carpenter v. Longan, 83 U.S. 271 (1872). The assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but... the assignment of the mortgage alone does not carry with it an assignment of the note. Hahn v. Smith, 154 S.E. 112 (S.C. 1930).

With regard to Defendant's counterclaims, South Carolina law states: 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). S.C. Code Ann. § 37-10-105(a). For subsection (C) to apply, if the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to § 37-5-108, the court may refuse to enforce the agreement. *S.C. Code Ann. § 37-10-105(C).* When viewed in the light most favorable to Defendants, there is a genuine issue of material fact present with respect to whether the Plaintiff owns or otherwise has the right to enforce the note and mortgage at issue. That is a question that is material to all the claims in this case. Without a further determination of the ability of the Plaintiff to enforce the mortgage, one cannot determine whether the Plaintiff is the appropriate party to move for summary judgment against the Defendant. Furthermore, when viewed in the light most favorable to the Defendants, there is a genuine question of material fact with regard to whether the contract at issue can be deemed unconscionable, and as such, a question of genuine fact exists as to the Defendant's counterclaims.

With regards to Plaintiff's Motion to Strike the Defendants Jury Demand it is well settled that because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." Carolina First Bank v. BADD, LLC, 414 S.C. 289, 778 S.E.2d 106 (2015). Because foreclosure actions are those in equity, defendants have a right to a jury trial only if their counterclaims are both legal and compulsory. Wachovia Bank Nat. Ass'n v. Blackburn. Characterization of a counterclaim depends on the parties main purpose in purpose in bringing the action. When a party seeks both money damages and equitable relief, characterization of the action as equitable or legal depends on the party's "main purpose" in bringing the action. Johnson and Alessandro v. S.C. National Bank, 328 S.E.2d 75 (1985). After reviewing the record and the pleadings by the Defendant in their answer, it is obvious that the counterclaims are legal in nature.

From there, it must be determined whether the counterclaims are either compulsory or permissive in nature. In South Carolina, courts have applied the "logical relationship" test to determine whether the counterclaim is compulsory or permissive. N.C. Fed. Sav. & Loan Asso. V. DAV Corp, 298 S.C. 514,519, 381 S.E.2d 903,906 (1989). A counterclaim is compulsory if it arises out of the same transaction or occurrence as the party's claim. Id. In a foreclosure action, a counterclaim arises out of the same transaction or occurrence and is thus compulsory, when there is a "logical relationship" between the counterclaim and the enforceability of the guaranty agreement. *Id.*

I find a logical relationship exists between the counterclaims and the enforceability of the mortgage. As such, I find that the counterclaims are compulsory in nature and as such are entitled to a trial by jury.

Therefore, it is hereby ORDERED that the Motion for Partial Summary Judgment and the Motion to Strike Defendants Jury Demand is denied.

IT IS SO ORDERED

Charles J. McCutchen
Presiding Circuit Judge

Columbia, South Carolina
June 16, 2025

Mullen Taylor

From:	Mullen Taylor
Sent:	Friday, June 20, 2025 10:56 AM
To:	'McCutchen, Charles J. Secretary (Parker McDougal)'
Cc:	Patrick Killen; Heidi Carey; 'Nick Young'; McCutchen, Charles J. Law Clerk (Torrey Benjamin); Monique Trifos
Subject:	RE: 2020CP4002998 Deutsche Bank National Trust Company Trustee , plaintiff, et al vs Tommy Rush , defendant, et al
Attachments:	Proposed Order Summary Judgment Counterclaims.docx; Proposed Order Striking Defendants Jury Demands.docx

Good morning,

Attached please find Plaintiff's proposed order on its Motion for Partial Summary Judgment and proposed order on its Motion to Strike Defendants' Jury Demands. Both have been e-filed as proposed orders.

In the event the Court grants summary judgment on any/all of Defendants' counterclaims, then the Court's Order on Plaintiff's Motion to Strike Defendant's Jury Demands would not need to address those counterclaims for which summary judgment was granted. I didn't want to be presumptuous, so the proposed order on the Motion to Strike Defendants' Jury Demands addresses all counterclaims, subject to the Court's revision should summary judgment be granted.

Thank you for your consideration.

Respectfully,

Mullen Taylor
Counsel for Plaintiff

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Subject: RE: 2020CP4002998 Deutsche Bank National Trust Company Trustee , plaintiff, et al vs Tommy Rush , defendant, et al

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Thank you both!

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	C/A NO.: 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates, Plaintiff, vs. Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee, Defendants.	**ORDER STRIKING DEFENDANTS' JURY DEMAND**

(File No. 4043.02620)

This is an action to foreclose a mortgage on real property in Richland County, South Carolina. A Summons and Complaint were filed on July 1, 2020, and Defendants filed and timely served an Answer asserting the following counterclaims: 1) violation of the S.C. Attorney Preference Statute (S.C. Code § 37-10-102) and statutory unconscionability of the loan (S.C. Code § 37-5-108); 2) declaratory judgment that the Note contains an unenforceable penalty; 3) violation of the S.C. Unfair Trade Practices Act; 4) an accounting; and 5) gross negligence. Defendants/Counterclaimants demanded a jury trial on all claims as allowed by law.

STANDARD

"Whether a party is entitled to a jury trial is a question of law...." *Wachovia Bank, NA. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014). "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). If a complaint is equitable and the counterclaim legal and compulsory, the defendant has the right to a jury trial on the counterclaim. *C & S Real Estate Servs., Inc. v. Massengale*, 290 S.C. 299, 302, 350 S.E.2d 191, 193 (1986), *modified by Johnson v. S.C. Nat'l Bank*, 292 S.C. 51, 354 S.E.2d 895 (1987). "If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial." *Blackburn*, 407 S.C. at 330, 755 S.E.2d at 441.

Characterization of an "action as equitable or legal depends on the appellant's 'main purpose' in bringing the action." *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted). "The main purpose of the action should generally be ascertained from the body of the complaint." *Id*. "However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Id*. The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable. *Bell v. Mackey*, 191 S.C. 105, 119–20, 3 S.E.2d 816, 822 (1939).

South Carolina courts have applied the "logical relationship" test to determine whether a counterclaim is compulsory or permissive. See *N.C. Fed. Say. & Loan Asso. v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989). If prevailing on a counterclaim would affect the lender's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory. *Blackburn*, 407 S.C. at 330, n.7, 755 S.E2d at 442, n.7. "[T]here is no constitutional right to a jury trial for a non-compulsory counterclaim for damages asserted in an equitable action." *Crewe v. Blackmon*, 289 S.C. 229, 233, 345 S.E.2d 754, 757 (Ct. App. 1986). Recently, in *Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset*

Backed Certificates, Series 2007-1 v. Est. of Houck, the South Carolina Supreme Court ruled that "in cases commenced on or after the effective date of this opinion, the question of whether a counterclaim is compulsory is governed by the plain language of Rule 13(a)." 440 S.C. 409, 412–13, 892 S.E.2d 280, 282 (2023). Because this case was commenced prior to *Est. of Houck*, the "logical relationship" test applies.

DISCUSSION

This Court will determine whether Defendant has a right to a jury trial for Plaintiff's cause of action as well as Defendants' counterclaims.

1. Plaintiff's foreclosure action

Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Mortgage foreclosure actions are equitable in nature. *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d. 472, 475 (1997). "Because a foreclosure action is one sounding in equity, a party is not entitled, as a matter of right, to a jury trial." *Carolina First Bank v. BADD, LLC,* 414 S.C. 289, 778 S.E.2d 106 (2015). Therefore, Defendants are not entitled to a jury trial on Plaintiff's foreclosure action.

2. Counterclaim alleging violation of S.C. Code Ann. § 37-10-102 and S.C. Code Ann. § 37-5-108

Defendants/Counterclaimants assert a violation of the Attorney Preference Statute, S.C. Code Ann. § 37-10-102(a). A violation of the Attorney Preference Statute is remedied by recovery of actual damages and a penalty no less than $1,500.00 and no more than $7,500.00. S.C. Code Ann. § 37-10-105(A). The Statute does not provide for recission of the Note and Mortgage. Because Defendants/Counterclaimants' counterclaim of violation of the Attorney Preference Statute bears no "logical relationship" to the enforceability of the Note and Mortgage, the counterclaim is permissive. Therefore, Defendants/Counterclaimants are not entitled to a jury trial on their counterclaim alleging violation of the Attorney Preference Statute.

Concerning their assertion that violation of the Attorney Preference Statute, along with other actions, was unconscionable under S.C. Code Ann. § 37-5-108, this statutory unconscionability counterclaim is compulsory because its remedies include refusal to enforce the Note and Mortgage. S.C. Code Ann. § 37-10-105(C). However, to be entitled to a jury trial on statutory unconscionability, this claim must not only be compulsory, but also legal in nature. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014).

Under the common law, unconscionability is an equitable defense to a contract claim. SOUTH CAROLINA EQUITY: A PRACTITIONER'S GUIDE, p. 180 (S.C. Bar 2010). Its remedy is voiding some or all of the contract at issue. *Id*. There is no right to a jury trial for equitable defenses or remedies. *Brown v. Greenwood Sch. Dist. 50 Bd. of Trs.*, 344 S.C. 522, 525, 544 S.E.2d 642, 643 (Ct. App. 2001); *Lester v. Dawson,* 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Further, under S.C. Code Ann. § 37-10-105(C) and § 37-5-108, the statute expressly provides that the question of whether an agreement is unconscionable is a matter of law for the Court. *See Wells Fargo Bank, NA v. Smith*, No. 2009-125666, 2012 WL 10987189, at *5 (S.C. Ct. App. June 13, 2012). Defendants/Counterclaimants are not entitled to a jury trial on their counterclaim of unconscionability.

3. Counterclaim seeking a declaratory judgment

Defendants seek a declaratory judgment that a prepayment penalty within the Note is unenforceable. This prepayment penalty is amended by a Rider to the Mortgage. The Rider states that the prepayment penalty expires two years after the execution date of October 31, 2002. The counterclaim is therefore moot. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25–26, 630 S.E.2d 474, 477 (2006).

Even if the counterclaim was justiciable, their remedy of striking the prepayment penalty provision within the Note would not affect the enforceability of the Note, making their counterclaim permissive. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Because Defendants/Counterclaimants brought a permissive counterclaim where the main action is equitable, they have waived their right to a jury trial on their declaratory judgment counterclaim. *Id*.

4. Counterclaim alleging a violation of the S.C. Unfair Trade Practices Act

Defendant/Counterclaimants' third counterclaim alleges a violation of the S.C. Unfair Trade Practices Act, S.C. Code Ann. 39-5-10 *et seq*. They seek actual damages and treble damages for willful or knowing violations. As such, the alleged unfair trade practice violation would not affect the enforceability of the Note, making Defendants' counterclaim permissive. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Because Defendant/Counterclaimants brought a permissive counterclaim where the main action is equitable, they have waived their right to a jury trial on their counterclaim asserting a violation of the Unfair Trade Practices Act.

5. Counterclaim seeking an accounting

There is no right to trial by jury for equitable actions. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "An accounting is essentially an equitable remedy." *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989). Because the right to a jury trial does not apply to equitable actions, Defendants/Counterclaimants are not entitled to a jury trial on their counterclaim for an accounting.

6. Counterclaim alleging gross negligence

Defendants' fifth counterclaim alleges that their lender breached its duty of care by inducing and closing the mortgage loan, which proximately caused damages. As such, the alleged negligence would not affect the enforceability of the Note, making Defendants' counterclaim permissive. *Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014). Because Defendants brought a permissive counterclaim where the main action is equitable, Defendants have waived their right to a jury trial on their negligence counterclaim.

IT IS HEREBY ORDERED that the Plaintiff's Motion to Strike Defendant/Counterclaimants' Jury Demand is granted. Defendants/Counterclaimants are not entitled to a jury trial on Plaintiff's foreclosure action, nor any of their counterclaims.

SIGNATURE ON NEXT PAGE

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates,

Plaintiff,

vs.

Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2020-CP-40-02998

PLAINTIFF'S MOTION TO RECONSIDER

(File No. 4043.02620)

Pursuant to Rule 59(e), SCRCP, Plaintiff respectfully moves this Court to alter or amend its Order Denying Plaintiff's Motions for Partial Summary Judgment and Motion to Strike Jury Demand. "When an issue or argument has been raised to but not ruled upon by the trial court, a party must file a Rule 59(e), SCRCP, motion to preserve the issue for appeal." *Shirley's Iron Works, Inc. v. City of Union*, 397 S.C. 584, 598, 726 S.E.2d 208, 215 (Ct. App. 2010). Additionally, Plaintiff respectfully seeks reconsideration of certain issues of law.

1. **In denying Plaintiff's Motion to Strike Defendant's Jury Demand, this Court overlooked or misapplied the *Blackburn* test.**

In deciding whether Defendants are entitled to a jury trial on their counterclaims, this Court summarized the two elements required to establish a right to a jury trial as set forth in *Wachovia Bank, NA. v. Blackburn*, 407 S.C. 321, 755 S.E.2d 437 (2014) - 1) the counterclaim is legal, not equitable; and 2) the counterclaim is compulsory, not permissive - but overlooked or failed to correctly apply this test to each of the counterclaims.

a) The Court erred in finding all counterclaims to be legal.

The Order concluded that all of the counterclaims are legal in nature. Order, p. 4. However, Defendants' fifth counterclaim for an accounting is not legal in nature. An accounting cause of action is unquestionably an equitable claim. *Rogers v. Salisbury Brick Corp*., 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989); *see also* SOUTH CAROLINA EQUITY: A PRACTITIONER'S GUIDE, pp. 49-54 (S.C. Bar 2010) (devoting a chapter to accounting as an equitable cause of action). It is blackletter law that there is no right to trial by jury for equitable actions. *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Because the right to a jury trial does not apply to equitable actions, Plaintiff is entitled to a nonjury trial on Defendants' counterclaim for an accounting.

Similarly, Defendants' second counterclaim asserts that certain actions of the lender were unconscionable pursuant to S.C. Code Ann. § 37-5-108. Under the common law, unconscionability is an equitable defense to a contract claim. SOUTH CAROLINA EQUITY: A PRACTITIONER'S GUIDE, p. 180 (S.C. Bar 2010). There is no right to a jury trial for equitable defenses or remedies. *Brown v. Greenwood Sch. Dist. 50 Bd. of Trs.*, 344 S.C. 522, 525, 544 S.E.2d 642, 643 (Ct. App. 2001); *Lester v. Dawson,* 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). Further, a remedy for unconscionability is recission of the Note. S.C. Code Ann. 37-10-105(C)(1). "There is no right to a jury trial for equitable remedies such as rescission and restitution." *Brown v. Greenwood Sch. Dist. 50 Bd. of Trs.,* 344 S.C. 522, 525, 544 S.E.2d 642, 643 (Ct.App.2001). S.C. Code Ann. § 37-10-105(C) expressly provides that the question of whether an agreement is unconscionable is a matter of law for the Court. Our Courts have consistently construed "a matter of law for the Court" to mean that the Judge, not a jury, determines the facts and law. *See Wright v. PRG Real Est. Mgmt., Inc.,* 426 S.C. 202, 222, 826 S.E.2d 285, 295 (2019) (stating that when the evidence is susceptible to only one inference, the issue becomes a matter of law for the court rather than the jury); *see also for example Wells Fargo Bank, NA v. Smith*, No. 2009-125666, 2012 WL 10987189, at *5 (S.C. Ct. App. June 13, 2012). Plaintiff is entitled to a nonjury trial on Defendants' counterclaim for unconscionable conduct.

b) <u>The Court erred in determining whether a counterclaim is compulsory or permissive.</u>

South Carolina courts have applied the "logical relationship" test to determine whether a counterclaim is compulsory or permissive. *See N.C. Fed. Say. & Loan Asso. v. DAV Corp*., 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989). If prevailing on a counterclaim would affect the lender's right to enforce the note and foreclose the mortgage, there is a logical relationship between the counterclaim and the underlying suit, and the counterclaim is therefore compulsory. *Wachovia Bank, NA. v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 442, fn. 7 (2014). The key question is whether the defendant's <u>counterclaim</u> would affect the enforceability of the Note.

To elaborate, in *Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck*, the Court of Appeals found that a claim of violation of the Attorney Preference Statute was permissive, not compulsory, because the alleged failure to comply with this Statute involved the execution of loan documents and the closing of the mortgage, whereas the foreclosure action involved the Mortgagor's default on the Note. 434 S.C. 500, 507–08, 863 S.E.2d 829, 833 (Ct. App. 2021), *aff'd as modified,* 440 S.C. 409, 892 S.E.2d 280 (2023). In *Advance Int'l, Inc. v. N. Carolina Nat. Bank of S.C.*, the Court of Appeals upheld the lower court's ruling that claims for fraud, negligence and unfair trade practices were permissive, not compulsory, because these claims did not affect the enforceability of the Note. 316 S.C. 266, 269, 449 S.E.2d 580, 582 (Ct. App. 1994), *aff'd in part*, *vacated in part*, 320 S.C. 532, 466 S.E.2d 367 (1996). Whether the remedy for the counterclaim affects the enforceability of the Note is another means of analysis under the "logical relationship" test. *See Wells Fargo Bank, NA v. Smith*, No. 2009-125666, 2012 WL 10987189, at *6 (S.C. Ct. App. June 13, 2012) (finding that a counterclaim alleging violation of the Attorney Preference Statute has no logical relationship to the foreclosure action because the remedy for violation is monetary damages only, not recission of the note).

To illustrate, if a borrower succeeded on a counterclaim that a lender was negligent in how it closed the mortgage loan, the lender's negligence would not have any affect on the lender's enforcement of the note because the occurrence or transaction is different – how the lender closed the loan is not the same as enforcement of the Note upon default of the borrower – and an award of monetary damages for negligence has no affect on the ability of the lender to enforce the Note. *See Advance Int'l, Inc. v. N. Carolina Nat. Bank of S.C.*, 316 S.C. 266, 269, 449 S.E.2d 580, 582 (Ct. App. 1994), *aff'd in part, vacated in part*, 320 S.C. 532, 466 S.E.2d 367 (1996) (ruling that negligence counterclaim is permissive). If the allegations of a counterclaim, if true, render a Note unenforceable, then there is a logical relationship between the foreclosure action and the counterclaim, thus making the counterclaim compulsory. *Carolina First Bank v. BADD, L.L.C.,* 414 S.C. 289, 295, 778 S.E.2d 106, 109 (2015).

In another illustration, the Court of Appeals found that there was a logical relationship between the enforceability of the note and a counterclaim alleging that the lender's right to foreclose was modified by an oral agreement. *N. Carolina Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989). Had the counterclaimant prevailed on this counterclaim, the lender's foreclosure action would have been premature. *Id*. Thus, the counterclaim was compulsory. *Id*.

Applying the "logical relationship" test here, Defendants' second counterclaim (to the extent it is not moot) seeks a declaratory judgment that a prepayment penalty within the Note is unenforceable. The Rider states that the prepayment penalty expires two years after the execution date of October 31, 2002. If the prepayment penalty within the Note is unenforceable, that provision would be struck from the Note or otherwise deemed void; however, the remaining provisions of the Note would still be enforceable. Because the counterclaim does not have a logical relationship to the enforceability of the Note in a foreclosure action, this counterclaim is permissive and thus Plaintiff is entitled to a nonjury trial.

Defendants' third counterclaim seeks damages for alleged violations of the Unfair Trade Practices Act. The actions that Defendants complain of are: 1) the Lender committing substantial underwriting violations by making a subprime loan to Defendants more risky by offering an interest-only loan and by calculating the Defendants' ability to pay based solely on the interest only and not on the adjusted rate; and 2) reducing loan quality to increase the amount of subprime loans to facilitate the pooling and securitization of mortgage loans as described by a Final Report of Michael J. Missal, Bankruptcy Court Examiner, Case No. 07-10416. These acts involve the inducement of the loan and the closing of the loan, which are distinct from enforcement of the Note. *See Deutsche Bank Nat'l Tr. Co. as Tr. for NovaStar Mortg. Funding Tr., Series 2007-1 NovaStar Equity Loan Asset Backed Certificates, Series 2007-1 v. Est. of Houck*, 434 S.C. 500, 507–08, 863 S.E.2d 829, 833 (Ct. App. 2021), *aff'd as modified*, 440 S.C. 409, 892 S.E.2d 280 (2023) (holding that a claim of violation of the Attorney Preference Statute was permissive, not compulsory, because the alleged failure to comply with this Statute involved the execution of loan documents and the closing of the mortgage, whereas the foreclosure action involved the Mortgagor's default on the Note). Further, should Defendants prevail on this counterclaim, their remedy is actual and treble damages, which would not affect the ability of Plaintiff to enforce the Note. Because the counterclaim does not have a logical relationship to the enforceability of the Note in a foreclosure action, this counterclaim is permissive and thus Plaintiff is entitled to a nonjury trial.

Defendants' fifth counterclaim alleges that their lender breached its duty of care by inducing and closing the mortgage loan, which proximately caused damages. This negligence claim does not affect the enforceability of the Note because prevailing on this counterclaim would have no affect on the enforceability of the Note. The Plaintiff could be found negligent, yet that does not prevent Plaintiff from enforcing the Note. *See Advance Int'l, Inc. v. N. Carolina Nat. Bank of S.C.,* 316 S.C. 266, 269, 449 S.E.2d 580, 582 (Ct. App. 1994), *aff'd in part, vacated in part*, 320 S.C. 532, 466 S.E.2d 367 (1996) (upholding the lower court's ruling that claim for negligence was permissive, not compulsory, because negligence did not affect the enforceability of the Note). Because the counterclaim does not have a logical relationship to the enforceability of the Note in a foreclosure action, this counterclaim is permissive and thus Plaintiff is entitled to a nonjury trial.

2. In denying Plaintiff's Motion for Partial Summary Judgment, this Court overlooked Plaintiff's argument that Defendant's Counterclaim for a Declaratory Judgment is moot.

Defendants seek a declaratory judgment that the prepayment charge within a Rider to the Mortgage constitutes an unenforceable prepayment penalty. The Mortgage included a Prepayment Rider providing that the Rushes had a right to make prepayments of principal at any time; however, if the Rushes made a prepayment exceeding 20% of the principal amount loaned within two years from the date of the execution of the Mortgage, a prepayment charge would be imposed. No prepayment charge would apply after October 31, 2004.

Generally, Courts consider only cases presenting a justiciable controversy. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25–26, 630 S.E.2d 474, 477 (2006). "A justiciable controversy exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract." *Id*. "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Id.* "If there is no actual controversy, this Court will not decide moot or academic questions." *Id.*

Here, a declaration that the prepayment charge is an unenforceable penalty would have no effect because the prepayment charge no longer applies. The ability of the lender to impose the prepayment charge expired as of October 31, 2004. Defendants' counterclaim was filed on August 10, 2020. Thus, there is no existing controversy and the counterclaim is moot. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25–26, 630 S.E.2d 474, 477 (2006).

3. **In denying Plaintiff's Motion for Partial Summary Judgment, this Court erred in ruling that Plaintiff has no right or capacity to defend against Defendants' counterclaims if it lacked standing to bring its foreclosure action.**

Defendants' sole argument against Plaintiff's motion for partial summary judgment concerned whether there was a genuine issue of material fact as to Plaintiff's right to enforce the Note and Mortgage or put another way, whether Plaintiff had standing to foreclose on the property. *See In re Field*, 604 B.R. 680, 690 (Bankr. D.S.C. 2019) (determining whether creditor had standing by examining its right to enforce note). The Order concluded that whether Plaintiff has the right to enforce the mortgage is a material issue, and that "[w]ithout a further determination of the ability of the Plaintiff to enforce the mortgage, one cannot determine whether the Plaintiff is the appropriate party to move for summary judgment against the Defendant." Order, p. 3. In other words, this Court ruled that Plaintiff cannot defend against Defendants' counterclaims if it lacks standing to bring its foreclosure action.

South Carolina law does not contemplate such a drastic and onerous measure. Under Rule 13(i), SCRCP, the court may render judgment on counterclaims separately even if the Plaintiff's claim has been dismissed. Rule 54(b) states that, in a case with a claim and counterclaims, judgment on the Plaintiff's claim only does not terminate the counterclaims nor any party. Clearly, the Rules contemplate separate treatment of claims and counterclaims. "Counterclaims are independent claims that a defendant asserts against a plaintiff who has sued him." Scott Moïse, Counterclaims, S.C. Law., September 2009, at 42. Whether or not the Plaintiff can enforce the Note and Mortgage in its foreclosure action against

Defendants has no effect on its ability to defend against Defendants' counterclaims. The question of standing applies to the party bringing a claim, not to the party defending against a claim. *See Sloan v. Greenville Cnty*., 356 S.C. 531, 547, 590 S.E.2d 338, 347 (Ct. App. 2003) (stating that plaintiff must have standing to bring a claim). Therefore, the question of whether Plaintiff has standing to enforce the Note and Mortgage is not material to the counterclaims at issue here. *See Bean v. S.C. Cent. R. Co*., 392 S.C. 532, 546, 709 S.E.2d 99, 106 (Ct. App. 2011) ("The substantive law identifies which facts are material, and "[o]nly disputes over facts that might affect the outcome of the [counterclaim] under the governing law will properly preclude the entry of summary judgment.").

CONCLUSION

For the reasons stated above, Plaintiff respectfully asks this Court to reconsider its Order and:

a. Concerning the issue of striking Defendants' jury demands:

    a. Provide analysis of the *Blackburn* test for each of Defendants' counterclaims;

    b. Correct the error that a claim for an accounting is legal in nature;

    c. Correct the error that a claim of unconscionability is legal in nature;

    d. Correct the error that the counterclaims are compulsory in nature;

b. Concerning the issue of summary judgment on Defendant's counterclaims:

    a. Provide a ruling that Defendant's declaratory judgment action is moot;

    b. Correct the error that the issue of Plaintiff's standing to bring its foreclosure action is material to Defendant's counterclaims and then properly analyze Plaintiff's statute of limitations arguments on their merits; and

c. For the purpose of an unambiguous record on appeal, enter separate orders for each motion.

s/ M. McMullen Taylor
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Attorney for Plaintiff

July 7, 2025

Columbia, South Carolina

State of South Carolina	)	Court of Common Pleas
	)	Fifth Judicial Circuit
County of Richland	)	Case No. 2020-CP-40-02998
Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates,	)	
Plaintiff,	)	
-vs-	)	Transcript of Record
Tommy Rush, Asia T. Rush Family Trust, Australia B. Rush 29016 as Trustee, and The Fairways Homeowners Assoc.,	)	
Defendants.	)	

May 21, 2025
Columbia, South Carolina

B E F O R E:

The Honorable Charles J. McCutchen, Judge

A P P E A R A N C E S:

McMullen Taylor, Esquire
Attorney for the Plaintiff

Nicholas Young, Esquire
Patrick Killen, Esquire
Attorneys for the Defendants

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter III

I N D E X

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
	(No Exhibits Presented)		

COURT REPORTER LEGEND

dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	trailing off
[*ph*]	phonetically written
[*sic*]	written as said
[*inaudible*]	unable to hear or understand due to audio and/or video issues

MAY 21, 2025

(WHEREUPON, the proceedings began via WebEx.)

THE COURT: I think we've just got a case with two motions this morning. Deutsche Bank versus Tommy Rush, 2020-CP-40-2998. All right. And this is a motion to strike and for summary judgment, both plaintiff's motions?

MS. TAYLOR: Yes, Your Honor.

THE COURT: Okay. And you are Mrs. --

MS. TAYLOR: My full name is McMullen Taylor. I go by Mullen, Mullen Taylor. I'm the counsel for the plaintiff in this case.

THE COURT: Okay. All right. And who do we have?

MR. YOUNG: Nicholas Young, Your Honor, for the defendant Rush.

THE COURT: Okay. All right.

MR. KILLEN: I'm Patrick Killen.

THE COURT: Okay.

MR. KILLEN: K-i-l-l-e-n. For the defendant Rush.

THE COURT: All right. All right. Ms. Taylor, this is your motion; correct?

MS. TAYLOR: Yes, Your Honor.

THE COURT: All right. I'll be glad to hear from you.

MS. TAYLOR: May I -- may I sit and argue?

THE COURT: Yeah.

MS. TAYLOR: Is that fine?

THE COURT: Yeah, that’s fine.

MS. TAYLOR: Okay. At the very beginning here, I just want to make everything simple here. There's three defendants here. There's Mr. Tommy Rush, Mrs. Tommy -- I mean, Mrs. Rush, Asia Rush, and then there's a trust. So just for the sake of simplicity, I'm just going to refer to all of them as either Rush or Mr. Rush, if that's okay.

THE COURT: All right.

MS. TAYLOR: This -- this case, Your Honor, just as a little bit of background, is a foreclosure action brought by Deutsche Bank National Trust. Mr. Rush executed a note to pay for a -- his residence. It’s in Blythewood, near Blythewood, Richland County. The note that he executed promised to pay the principal amount of $306,000. He has not made one payment since December 2012, hence the foreclosure action.

This is the second foreclosure action. There was an initial one filed in 2013 and dismissed without prejudice in 2019. The plaintiff then refiled just a few months later on July 1st, 2020. So the -- the case that we're dealing with is the 2020, obviously, that -- that -- that complaint in the case.

Following the complaint that was filed, Rush answered and brought five counterclaims against the plaintiff, and those are violation of provisions of the attorney preference statute, which is under the Consumer Protection Code, and also a unconscionability claim, which is also statutory. It’s within the Consumer Protection Code. This counterclaim -- he’s -- they've kind of combined those two together, and so I'll -- I'll try to treat those as best I can without being confusing to myself and y’all.

They also brought a declaratory judgment action seeking a declaration that the note in question contains an unenforceable penalty. There's also a counterclaim for an accounting and a counterclaim for gross negligence and a counterclaim for violation of the South Carolina Unfair Trade Practices Act, and Rush demanded a jury trial on all claims.

I have brought this motion to strike Rush’s jury demands. Plaintiff here submits that he's not entitled to a jury on any of his claims.

It's not clear to me whether or not Rush is seeking -- demanding a jury trial on the main complaint, which is an action for foreclosure. It is black letter law that foreclosure is an action of equity and, therefore, Mr. Rush is not entitled to a jury trial on the foreclosure action. That should be, if it's not already, transferred to the non-jury roster.

In terms of the counterclaims, so the issue -- the test for whether or not Mr. Rush is entitled to a jury on counterclaims, first and foremost, if the counterclaim is equitable, then obviously he's not entitled to a jury trial on that. One Of his counterclaims, the accounting, is an equitable claim. Therefore, once again, black letter law in South Carolina, Mr. Rush is not entitled to a jury trial on an equitable claim. So we also request that the accounting counterclaim be transferred, if it hasn't been already, to the non-jury trial roster.

The others are subject to what's been called the logical relationship test. If there's a situation like this where there is a equitable made claim, foreclosure in this situation, and the defendant brings counterclaims, in order to be entitled to a jury trial, Your Honor, the counterclaims must be both legal and compulsory. And our courts have defined compulsory as a claim in which the outcome, the remedy, would affect the enforceability of the foreclosure action in this case.

So, for example, if in a counterclaim the remedy is asking for damages, that does not affect the enforceability of the foreclosure. So a claim for damages -- counterclaim for damages would be deemed permissive and, therefore, the counterclaim that Mr. Rush in this case has waived any right to a jury trial in that situation.

So going back to the counterclaim in which Rush asserts a violation of the Consumer Protection Code, which would be the attorney preference statute, as well as another statute within the Code alleging unconscionability, the attorney preference statute provides specific remedy, and that is damages. Because damages -- an award of damages has no impact on enforcing a foreclosure action, then clearly any sort of claim of violation of the attorney preference statute is not compulsory. It's permissive. Therefore, Mr. Rush has waived any right to a jury trial concerning that claim.

Now, as I mentioned before, he's kind of wrapped in -- for other reasons I will make clear in my motion for partial summary judgment, he's also alleged a violation of the statute for unconscionability, which is 37-5-108, and that is a little bit different.

There's a -- an unpublished *Wells Fargo Bank v. Smith* case. I realize that you cannot cite this since you can't rely on it, but the reasoning is sound, and I've argued it in my motion that's already been filed. The short argument to this is that the statute specifically states that the question of whether or not unconscionable acts or conduct or term of contract is -- is determined by findings of the Court as a matter of law.

So in this situation, the statute directs that the issue of unconscionability is not to be decided by a jury, but to be decided by the judge in this case. It's also worthy to note that unconscionability sounds in equity, and common law unconscionability, that claim, you know, is -- is a -- is an equitable claim with an equitable remedy.

So I submit to this Court that the unconscionability allegations or a violation of the statutory unconscionability statute is a -- is a -- I can’t talk -- is a matter for the Court to decide, not the jury. The language itself precludes a jury trial on unconscionability. So we also ask that that cause of action, including the unconscionability, be referred to a non-jury roster.

The other claims, I believe, are easily disposed of here in terms of the right to a jury trial. Gross negligence is a tort claim. The remedy for that is damages. As I've said before, the test in this state is if the remedy is damages, then that's permissive, not compulsory, because damages does not affect the right of the foreclosure action proceeding. Therefore, Mr. Rush has waived his right to a jury trial on the negligence.

There's also a violation of the South Carolina Unfair Trade Practices Act. Similarly, by statute the remedy is damages. There's no remedy for rescission of the note, for example, which would go to the enforceability, you know, of -- of the note in that foreclosure action, but that's not the case here. So because the remedy is damages, that counterclaim is permissive, not compulsory. Thus, there's no right to a jury trial.

So, Your Honor, I believe that all five of these counterclaims should be tried by a Court without a jury, and so we request that this Court strike Mr. Rush's jury demand, and I'll answer -- I mean, I'll reply to any arguments that the defendant has.

THE COURT: All right. Mr. Young?

MR. YOUNG: Thank you, Your Honor, if it'll please the Court.

So plaintiff is right in the assertion that the logical relationship test applies to our counterclaims, and we argued that it -- our counterclaims are, in fact, logically related to the foreclosure issue, along with our affidavits in summary judgment. There were attorney preference by suppose -- we allege attorney preference violation, and if there's a -- I apologize, Your Honor.

THE COURT: No, no. Take your time.

MR. YOUNG: So as I was saying, the logical relationship test states that if the counterclaims are logically related to the foreclosure at issue, they are deemed compulsory. Our argument is at the root of the mortgage, whether the attorney preference statute, the gross negligence, the unconscionability, our arguments are those are logically related to the mortgage at issue and, as such, a jury demand should be allowed to continue.

While I understand that this has happened in other states, not so much South Carolina --

MS. TAYLOR: This is?

MR. YOUNG: It’s right there.

MS. TAYLOR: Under [*inaudible*]?

MR. YOUNG: Yes.

MS. TAYLOR: Okay.

MR. YOUNG: Your Honor, if I may approach?

THE COURT: Yeah.

MR. YOUNG: So, Your Honor, that article right there states that other states outside of South Carolina have held that counterclaims for unconscionability violation of the state and civil remedies and violation of State Consumer Collection Practices Act were considered compulsory in mortgage foreclosure cases. While I understand that out-of-state cases should be deemed persuasive and not precedential, it at least shows that some effect should be given to our counterclaims to be allowed to continue on the jury trial roster.

So with that, Your Honor, we respectfully request that the motion to strike the jury demand be denied. Thank you, Your Honor.

THE COURT: Okay. So -- so I guess your argument is basically we concede that the logical relationship test applies, and I’ve just got to make a determination whether these counterclaims are compulsory or permissive. If they're permissive, then no jury trial. Yes, if they’re compulsory, then I guess they would be.

MR. YOUNG: Yes, Your Honor.

THE COURT: That's -- okay. All right.

MR. YOUNG: Yes, Your Honor. I apologize.

THE COURT: Is that --

MS. TAYLOR: Yeah.

THE COURT: -- a quick summation of the argument?

MS. TAYLOR: Yes.

THE COURT: Okay.

MS. TAYLOR: I mean --

MR.YOUNG: [*Inaudible*.]

THE COURT: Okay.

MS. TAYLOR: Yeah. The defendant is asking that this Court ignore the South Carolina test concerning the logical relationship in whether or not a claim is compulsory or permissive. It's clear that South Carolina's test, the question of whether or not a claim is compulsory versus permissive, is the remedy that the counterclaim in this case seeks.

So it's compulsory if the counterclaim in this case would -- would affect the enforceability of the foreclosure action. If -- if the counterclaim is seeking damages, Deutsche can say, okay, let's just say they -- we can pay you damages, but it does nothing to prevent the foreclosure action from proceeding. So all of these -- all of these situations here, these counterclaims, with the exception of the clearly equitable accounting counterclaim, all of these seek damages, the gross negligence, obviously, the Consumer Protection Code.

There is -- the reason why they brought the unconscionability action is because that does -- that has a potential, not a mandatory, remedy of rescission of the note. But in this case, the language of the statute itself says that unconscionability is determined by findings of the Court as a matter of law. So my argument there is it is still nonetheless an issue to be decided by the Court, not a jury.

And I also -- I think I -- forgive me if I'm wrong. I think I actually missed the issue of the declaratory judgment of the note containing an unenforceable penalty. So if you don't mind, I'd like to just address that briefly.

THE COURT: That’s fine.

MS. TAYLOR: That is they're seeking a declaratory judgment that a provision within the note itself and the -- the mortgage contains a penalty in terms of their ability to prepay, to pay off the mortgage. There is a provision that deals with prepayment, and there is a penalty. However, that penalty expired in 2014. There was only a two-year time period in which that penalty applied.

So my first argument there is that cause -- I mean, that counterclaim is moot, and this Court can weigh that *sua sponte* and decide because it's an issue of your jurisdiction.

Secondly, in terms of whether or not this is compulsory versus permissive, a determination of whether or not this note contains an unenforceable penalty is a matter of law for this Court to decide. There's not a jury question in terms of the findings of fact. So that counterclaim as well is not subject to a jury trial.

THE COURT: All right. And -- and I noticed that there was a motion to strike jury trial demand and a motion for partial summary judgment, but it appears that the motion for partial summary judgment basically on these claims are on these facts?

MS. TAYLOR: No. I have separate arguments, separate time.

THE COURT: All right. I just wanted to make sure --

MS. TAYLOR: Yes.

THE COURT: -- that they weren't combined.

MS. TAYLOR: And, Your Honor, lastly, I mean, I -- I believe that these -- the issues are pretty clear cut in terms of the Rushes’s demand for a jury. That this Court should deny their demand for a jury, but should you find otherwise, we do ask that the foreclosure should already be on a non-jury roster, but any other counterclaim that's found to be non-jury be bifurcated. So whatever counterclaim Mr. Rush is entitled to a jury should be on a non -- I mean, a jury roster, and all the others on a non-jury roster because right now it's been kind of confusing with this case because it pops up on jury rosters without any distinction over what claims are going on to that.

MR. YOUNG: Your Honor, if I may respond to that --

THE COURT: Yeah.

MR. YOUNG: -- bifurcating? My only argument against the bifurcating is in the interest of judicial economy. We'd essentially be having two separate trials on the issue of this foreclosure, which, in my opinion, I don't see why we can't argue all of the claims at the same time, instead of having two separate miniature trials on the issues.

MS. TAYLOR: Your Honor, there are -- these -- the counterclaims have -- the facts concerning the counterclaims have nothing to do with the elements that must be proved in terms of a foreclosure. So I contend that there's no economy issue at all, that it's very appropriate to bifurcate a foreclosure action and have, you know, that be on a non-jury roster, as it should be.

THE COURT: All right. Thank you. And I guess you want to go ahead and argue your motion for partial summary judgment?

MS. TAYLOR: Yes, Your Honor.

THE COURT: All right.

MS. TAYLOR: So, Your Honor, the facts and the background obviously is the same and applicable in terms of the plaintiff's motion for summary judgment. I do want to make it clear that I seek summary judgment on Mr. Rush’s counterclaims only. This -- this motion for summary judgment does not touch the foreclosure action at all.

And everyone knows what the test is for summary judgment. It's appropriate when there's no genuine issue of material fact to dispute or the issue is purely a matter of law.

The opposing party here cannot rest on any mere denials or allegations but must come forward with affidavits or documents showing the disputed material facts, and I think it's also important to note that the scintilla standard no longer applies under Rule 56(c). So attempts to manufacture disputed facts should be rejected, and any sort of scintilla is not an appropriate argument to make.

Most of my arguments here, Your Honor, concern very straightforward issues of statute of limitations. As I said before, Mr. Rush has not disputed that he signed this note and mortgage promising to repay the principal amount of $306,000. This note was executed on October 31st, 2002. The lender was New Century Mortgage Corporation.

The -- I'm going to move around and not -- not do the counterclaims in order that they were brought. I’m trying to keep a simpler ones first, if you don't mind.

The Unfair Trade Practices counterclaim, this counterclaim asserts that New Century Mortgage Corporation violated the Unfair Trade Practices Act based on making a subprime adjustable rate loan to the defendants, and allegedly determined Mr. Rush's ability to pay based on interest payments only, and that New Century reduced the loan quality in order to facilitate the closing and securitization of the mortgage loans, as described in a bankruptcy examiner’s report that was filed way back in 2008 concerning bankruptcy proceedings for the lender in this case, which I mentioned earlier was New Century Mortgage Corporation.

All of these alleged violations would have occurred before the loan was closed during the application process or at the latest the date the loan was closed, which was October 31st, 2002. Under 39-5-150 of the Unfair Trade Practices Act, the statute of limitations is three years.

As I've said, the mortgage and the note was closed on October 31st, 2002. He obviously would have been put on notice of any future claim at the time of the closing in 2002, and he references this bankruptcy court examiner’s file, a report that was filed in bankruptcy court in 2008.

So at the latest, his claim alleging violation of the Unfair Trade Practices Act would have started running in 2008. His counterclaim actually was filed on August 10th, 2020. So clearly the statute of limitations has run with this claim.

I note that Mr. Rush filed an affidavit in this case a couple of days ago. None of the facts stated in Mr. Rush's affidavit goes to any defense of this such -- you know, in terms of the discovery rule or anything of that sort.

So I contend that the argument that I've made for summary judgment on the Unfair Trade Practice counterclaim, there are no disputed facts. The clear -- the law is clear, three years of statute of limitation. There's no question about that, and this counterclaim was brought many years after the statute has run. So the Unfair Trade Practices counterclaim should be -- I can prevail on that. Summary judgment should be granted in terms of that cause of action.

The same goes for the counterclaim of gross negligence. Statute of limitations for tort claims is three years. The Rushes allege in their counterclaim that New Century Mortgage owed them a duty to close the loan lawfully and breached that duty by failing to offer the opportunity to [*inaudible*] and allegedly inducing and closing a loan that was unconscionable from its inception.

It's undisputed that this loan was closed on October 31st, 2022 [*sic*], which was a very long time ago, way past the three-year statute of limitations. Because the statute has run on this case, the plaintiff should have its motion for summary judgment granted on the counterclaim for gross negligence.

In terms of the declaratory judgment counterclaim, as I've said before in my previous motion arguing the issue with the jury demand, this declaratory judgment seeks a declaration that a prepayment penalty within the note is unenforceable. It is clear -- I've attached the page of the mortgage that shows that the penalty provision expired in 2004. The mortgage was executed in 2002. Therefore, that -- their claim to seek that particular provision within the note or mortgage is moot. I mean, there's nothing for this Court to do because that prepayment penalty no longer applies.

So I ask that this Court grant the plaintiff’s summary judgment on this declaratory judgment claim because of the fact that it's moot. And secondarily, there's a statute of limitations that applies for declaratory judgment actions, and that would have run at the time when he became aware of the pre-penalty -- prepayment penalty and, therefore, that statute has run as well.

THE COURT: And the statute on that is what?

MS. TAYLOR: Well, there is a -- every declaratory judgment action has a statutory -- I mean, I think it’s the three-year statute of limitations.

THE COURT: Okay. All right.

MS. TAYLOR: Yes.

So the attorney preference violation, coupled with the unconscionability claim, that also -- the statute of limitations has run on that. Under the South Carolina attorney preference statute or actually generally with the Consumer Protection Code, there is a three-year statute of limitations for violation of the attorney preference statute.

The closing of this loan occurred October 31st, 2002. So, clearly, the statute -- clearly, the statute of limitations has run on any violation of the attorney preference statute.

The unconscionability -- I assume the reasons why the plaintiff has alleged unconscionable contract under the Consumer Protection Code is because that does away with the three-year statute of limitations, and they can bring that unconscionability claim up until the date of maturity of the loan.

So, in this case, there is a question which I contend is a matter of law for this Court to decide. That the allegations that the defendant has made or counterclaim that was made in his counterclaim, it's the Court to decide whether or not these actions are unconscionable, and the conduct that is alleged by Mr. Rush as unconscionable is this.

Once again, this New Century Mortgage Corporation's bankruptcy proceeding, in which a bankruptcy examiner filed a report in 2008, the violation of the attorney preference statute still constitutes unconscionability, as well as an allegation that New Century failed to inform Rush of the adjustable rate in the mortgage.

Under this statute for unconscionability, Your Honor, which is 37-5-108(4)(a), the statute directs the Court to consider several factors to determine whether unconscionability exists under the facts of the case, and there are several, but only a few apply to a consumer loan. The others apply to the debt collection practices.

THE COURT: What statute was that?

MS. TAYLOR: It's 37-5-108(4)(a).

THE COURT: All right.

MS. TAYLOR: And so the factors that do apply in this case -- because the others only applied for debt collection, and that's not what Mr. Rush is referring here, but the first factor that applies is some sort of gross disparity between the price of the property and the -- or the price of the property that is loaned and the value of the property as measured by the price at which similar property or loans are readily obtainable in consumer credit transactions. There is no allegation that Mr. Rush has made that would make this particular factor applicable.

The second one that could possibly apply in this situation is the fact that the creditor contracted for or received separate charges for insurance with respect to a consumer loan. And again, there's no allegations that this -- that there was any sort of insurance. There's nothing in the record that reflects any issue with insurance. Therefore, this factor does not apply.

And the other factor here is a fact that the lender has knowingly taken advantage of the inability of the debtor to reasonably protect his interests by reason of physical or mental infirmities, ignorance, literacy, inability to understand the language of the agreement, or similar factors.

There is nothing alleged in Mr. Rush's counterclaim for unconscionability that alleges that he has any physical or mental infirmity. He doesn't allege that he's ignorant or illiterate or has no ability to understand the language of the note or the mortgage. So those factors don't apply.

So courts similar -- in similar situations have also turned to the common law definition of unconscionability. And although there's nothing in this particular statute that requires the Court to consider it, there are cases, in particular that unpublished decision that I referenced earlier, almost all the cases. As a matter of fact, I think all of the cases that I found that deal with this question are all unpublished opinions of the Court of Appeals, and I realize they're not binding, but I do not have a particular reported decision, at least not one that I found.

But I think that the common law definition of unconscionability is useful to consider in this situation, and the definition -- common law definition is the absence of meaningful choice on the part of one party due to one-sided contract provisions or original provisions, together with oppressive terms that no reasonable person would accept them.

So there must be one-sided and oppressive contract terms to be unconscionable under the common law definition.

Here there is nothing in the contracts that Mr. Rush, you know, alleges is unconscionable. There's no term that prevents him from choosing his own attorney. There's nothing that prevented the Rushes from obtaining their own attorney. So his allegation that, you know, he -- he was not able to obtain his own attorney does certainly not fall within the common law definition of unconscionability.

The defendant's allegation that New Century Mortgage Corporation, who was the lender in this case, failed to inform him of the adjustable rate in the note is indisputably refuted by the documents that I've attached. These are documents that were provided prior to the closing and the application process.

There is a very clear adjustable rate disclosure form, which I've attached to my memorandum. And also, failure to disclose is not a factor to consider under the statute that I referenced. It doesn't fall within any of the criteria for unconscionability, and it does not fall within the common law definition of unconscionability. There's nothing that is an oppressive term that's one sided in this situation.

The unconscionability allegation that Mr. Rush made is based on this report of the bankruptcy examiner. Again, that is a report that was submitted in the bankruptcy proceedings of New Century Mortgage Corporation, and that bankruptcy was commenced in 2006. There was a report of a bankruptcy examiner filed in 2008 that detailed business practices of New Century.

The important point, which I've also attached in my memo in support, is that this -- the business practices that the -- the bankruptcy court examiner lays out occurred after 2004. This loan at issue here was executed in 2002. So this report of the bankruptcy examiner really has no relevance to unconscionability claims here.

Also, unconscionability is determined by the facts that existed at the time of the execution of the contract. So this report of the bankruptcy examiner filed in 2008 did not -- was not published at the time that the note was executed. Therefore, the bankruptcy examiner's report filed in 2008 has no relevance to the question of unconscionability.

As a matter of law, I contend, Your Honor, that the unconscionability aspects of the counterclaim fails as a matter of law, and without the finding of unconscionability, that counterclaim has a three-year statute of limitations because it's only the unconscionability allegation that takes this counterclaim out of a three-year statute of limitations. So the three-year statute applies without a finding of unconscionability and, therefore, it has run.

In terms of the -- yes, I believe I've gone through the gross negligence. The statute of limitations has run on that. Same with the declaratory judgment. The Unfair --

(WHEREUPON, the WebEx screen locked up and went blank, after which it resumed as follows.)

MR. YOUNG: -- meant for against partial summary judgments go to two-sided arguments.

By way of a little history with this case, this is the second time this motion has been brought. This one in particular is in 2020.

During this case, Judge Casey Manning ruled that the mortgage assignment -- the original mortgage assignment in this case was stricken from the record. The plaintiff attempted to perform a corrective assignment once that original was stricken from the record. However, that corrective assignment was only performed on the mortgage, and the note itself was not assigned.

As you saw, we submitted an affidavit from a Mr. William Pattullo, who's a private investigator who investigates mortgages.

Did you see --

MS. TAYLOR: Yes, I got that.

MR. YOUNG: Okay. Perfect. I just had a copy if you need it.

MS. TAYLOR: No, I’ve got it.

MR. YOUNG: Okay. Perfect.

MS. TAYLOR: Please go ahead.

MR. YOUNG: I apologize.

Carpenter v. Longan, which is a United States Supreme Court case, has held that the note must follow the mortgage. In Mr. Pattullo's affidavit, the plaintiffs did file a lawsuit affidavit that did have similar defects, as mentioned with the previous.

From there, Your Honor, as you know, the summary judgment standard is, is there a genuine issue of material fact. Our argument is, is that the unconscionable -- whether the agreement or transaction at issue was unconscionable under 37-10-105(a) requires more evidence and hearings to determine that, and it's not something that can be handled in a summary judgment setting. These factors that are being asserted alone by itself is something that would need to be argued more than outside the summary judgment standard.

And one other thing to consider, in 37-5-108(b)(1), which I've copied for Your Honor, if I can bring it up.

THE COURT: Yep. Thank you.

MR. YOUNG: Yes, sir.

In that statute, it says that the Court may -- while it doesn't have to, it is allowed to be -- another factor that could be considered is the consumer -- the consumer's current and expected income, obligations, and employment status, whether or not the creditor should know that the consumer is not able to make --

(WHEREUPON, the WebEx screen for the attorney locked up and went blank, after which it resumed as follows.)

MR. YOUNG: In reference to -- with regards to the argument that was made about the value of the property compared to the value of other properties, which is one of the factors that needed to be considered, in our affidavit from Mr. Rush, he explained how the appraisal amount that he was given at the original onset of the mortgage was 344,000.

He attempted to get another appraisal afterwards that showed a significant disparity of $104,000. I believe it was two years -- a year to a year and a half after the closing of the mortgage. We argued that that alone is something else to be considered with the factors, as the value of the property had significantly diminished in the time and should be considered.

And with that, Your Honor, our argument is solely there's more evidence and facts that need to be presented and considered outside the summary judgment standard or setting as to whether or not this mortgage was unconscionable. And it just seems to me that it would require more of the Court's time to determine unconscionability than solely in this one hearing, and that's why we ask that partial summary judgment be denied.

THE COURT: Okay. Thank you.

MS. TAYLOR: Your Honor, if I heard defendant's arguments right, he does not contest summary judgment on the -- the tort claim or the Unfair Trade Practices or the declaratory judgment concerning the prepayment penalty. He seems to be focusing on the violation of the attorney preference statute, coupled with the unconscionable conduct. There is nothing in the affidavit from Tommy Rush that was filed here that addresses any of those particular counterclaims. So there is no disputed issue of fact.

Actually, the only fact that matters in these statute of limitations arguments is the date that -- of the note and the mortgage, which was obviously undisputed, the date of the banking -- the bankruptcy examiner’s report. So there -- this Court should grant my motion in terms of those counterclaims.

In terms of the affidavit here from Mr. Rush, you know, ultimately, the purpose of this affidavit, as I read it, is to argue that the -- the assignment -- the plaintiff doesn't have standing to pursue the foreclosure action. I mean, that's -- that's largely what Mr. Rush is -- he’s certainly plainly stating that in paragraph 18 of the affidavit, in which he states, as a result of this assignment being stricken from the record, whether the plaintiff has standing to pursue this foreclosure is of serious concern.

As I said earlier, Your Honor, the foreclosure action is not the subject of my motion for summary judgment. That is completely irrelevant.

So Tommy Rush’s allegations in his affidavit, as well as the affidavit of this private investigator -- and this affidavit clearly is questioning the standing of Deutsche to bring the foreclosure action, which is entirely irrelevant here. He's raising -- he's saying that the -- Deutsche doesn't have standing to bring the foreclosure action. That's what both of these affidavits are saying.

Your Honor, as I said before, I know I'm repeating the obvious, but this -- these counterclaims have nothing to do with the standing of Deutsche in order to foreclose on the property. Not only that, Your Honor, but the defendants’ answer and counterclaim does not raise lack of standing at all and, therefore, I contend that defense has been waived.

So for that reason alone, these affidavits and their argument that's attempting to inject an irrelevant issue, which is lack of standing on foreclosure, should not be considered at all in terms of my motion for partial summary judgment. As a matter of fact, there was case law that states lack of standing is an affirmative defense that must be pled, and if it is not pled, lack of standing is waived.

MR. YOUNG: Your Honor, if I may respond?

THE COURT: Yes.

MR. YOUNG: So with regards to the attorney preference statute, the Consumer Protection Act, all of them revolve around the statute of limitations, which states that the three-year statute of limitations is not necessarily applicable if found that the mortgage debt issue is unconscionable. So our argument is involved all or enveloped all together with that. If you were to find that it in itself is unconscionable, it would reopen our statute of limitations, which is our argument that it requires more to be presented than solely what's asked for at summary judgment hearing, and for that reason, it should be denied on that basis.

With regards to the standing issue, if it's ultimately found that there's an issue with the assignment and the lack of standing, then the foreclosure action, in my opinion, would cease essentially, if there's no standing based off of this defective assignment or purported defective assignment.

MS. TAYLOR: May I?

THE COURT: Of course.

MS. TAYLOR: As I said, this complaint for foreclosure was filed in 2020. Obviously, the complaint was answered by Mr. Rush with his counterclaim from 2020. Mr. Rush has had coming up on five years to develop more facts, take depositions, file written discovery, and has not done so.

There has been a deposition of Mr. and Mrs. Rush that the plaintiff took a few years ago. We have exchanged documents. I don't know what else -- other facts that is in need of further development, especially since, you know, the defendant is arguing here that there needs to be more factual development, yet they have not taken the advantage of doing so over the past few years.

And this case is -- was on the trial -- I mean, the jury roster or a trial roster for next week. And it's now, you know, coming up in August as well. You know, there's some that they -- that issue, I think, is not something that should be given a great deal of weight.

THE COURT: All right. Primarily in this you need to talk about Mr. Rush, but I assume the arguments are the same for Mrs. Rush, as well as the Rush family trust?

MS. TAYLOR: That's correct.

THE COURT: Okay.

MS. TAYLOR: Yes. I just said before I was --

THE COURT: I didn't know if there were --

MS. TAYLOR: No, no, no. I was collectively calling all the defendants --

THE COURT: Okay.

MS. TAYLOR: -- Mr. Rush or Rush, as I said at the beginning.

THE COURT: All right.

MS. TAYLOR: So, Your Honor, I respectfully ask for the plaintiff's motion for partial summary judgment on all of the counterclaims.

THE COURT: All right. Thank you, ma'am.

All right. If -- if you would both -- if y'all don't mind, send me both proposed orders, you know, setting forth your arguments and -- and what you propose the ruling should be.

I know that there's a lot of stuff. How much time do y'all need to do it? I mean, I don't mind giving you 30 days, but if you can do it quicker, you just let me know.

MS. TAYLOR: Can we -- can we say no later than 30 days?

THE COURT: Yeah.

MS. TAYLOR: And we can get them in sooner?

THE COURT: Yeah.

MR. YOUNG: Thirty days is fine with us, Your Honor.

MR. KILLEN: Yeah, that's fine.

MS. TAYLOR: Do we email it to you, Your Honor?

THE COURT: Yeah. If you'll just email it to my law clerk. It's CMcCutchenLC. McCutchen, E-N, not E-O-N. Yeah. At sccourts.org.

MS. TAYLOR: Thank you, Your Honor.

THE COURT: Thank you.

MR. YOUNG: Thank you, Your Honor.

MR. KILLEN; Thank you, Your Honor.

(WHEREUPON, the proceedings ended.)

--- END REQUESTED TRANSCRIPT ---

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 32, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 21st day of May, 2025, to the best of my ability based upon the audio/video provided.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

January 23, 2026

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Charles J. McCutchen, Circuit Court Judge
Civil Action No. 2020-CP-40-02998

Appellate Case No. 2025-001756

Deutsche Bank National Trust Company, as Trustee for New Century Home Equity Loan Trust, Series 2003-2 Asset Backed Pass-Through Certificates,……………………..……………..……………..…...…..………………..Appellant,

v.

Tommy Rush, Asia T. Rush Family Trust, and Australia B. Rush 29016 as Trustee,…………………………………………………………………………...…..Respondents.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned counsel certifies that the Record on Appeal contains all material proposed to be included by all parties and not any other material.

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September 1, 2026