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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

James O. Spence, Master-in-Equity

Appellate Case No. 2026-001103

Trial Court Case No. 2024-CP-32-01094

The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, Respondents,

v.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; and Timothy Allen Nunally, Defendants,

of which Timothy Allen Nunally and Mark Anthony Nunally are the Appellants.

RECORD ON APPEAL

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by Lender as payment under the Note or this 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 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

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.

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

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 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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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 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.

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

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

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 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 pay 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

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 § 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.

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:

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA

County of Richland

The foregoing instrument was acknowledged before me this 11/30/04 (date)
by Brian L. Boger

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

My commission expires: 2/21/05

[Signature]
witness

EXHIBIT A

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as **Lot No. 283, Block W on a plat of Murraywood II** by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993 and recorded in Plat Book 262 at page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.

This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994 and recorded in Deed Book 5145 at page 97, Lexington County records.

Exhibit "D" BONY Mellon's 7/28/2023 Assignment of Mortgage on Light Blue Pastel Paper

October 6, 2025

Exhibit "D" is entered into the Record

- to provide a visual or physical representation of Authenticated Evidentiary fact(s).
 - is a true and accurate copy of the original.
 - is being offered into the Record to prove the purpose *of Exhibit "D"*.
- No party objects to the admission of this Exhibit D into evidence for and on the Record.

When Recorded Return To:
PHH Mortgage
C/O Nationwide Title Clearing, LLC
2100 Alt. 19 North
Palm Harbor, FL 34683

2023025395 BK: 21067 PG: 4146 - 4146
MORTGAGE ASST
Rec: \$10.00 Cnty: \$0.00 State: \$0.00
July 28, 2023 10:53:48 AM
FILED IN LEXINGTON COUNTY, SC

1 PGS

Tracy Rogers

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Mortgage together with all liens, and any rights due or to become due thereon to THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1, NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-1, WHOSE ADDRESS IS C/O PHH MORTGAGE CORPORATION, 5720 PREMIER PARK DRIVE, WEST PALM BEACH, FL 33407, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 01/30/2004, made by CARL A. NUNALLY AND FRANKIE L. NUNALLY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS and recorded 02/28/2004 in the Recorder or Registrar of Deeds of LEXINGTON County, South Carolina in Book 2841 and Page 4.

Dated this 28th day of July in the year 2023

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS

Susan Hicks
SUSAN HICKS
VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

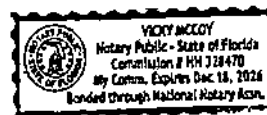
Alan Baker
ALAN BAKER
WITNESS

Tracy Rogers
TRACY ROGERS
WITNESS

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 28th day of July in the year 2023, by Susan Hicks as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Vicky McCoy
VICKY MCCOY
COMMISSION EXPIRES: 12/18/2026



Document Prepared By: Jennifer Zak/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
Recording Requested By: PHH Mortgage, C/O Nationwide Title Clearing, LLC 2100 Alt. 19 North, Palm Harbor, FL 34683

PHH02 438589022 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
OCWEN-NVLER MIN 100080190020066015 MERS PHONE 1-888-679-6377 MERS Mailing Address: P.O. Box 2026, Flint, MI 48501-2026 DOCR T282307-09:07:46 [C-1] EFRMSC1



D0101760322

Exhibit "E" Defendants' 9/06/23 & 9/24/23 Deeds of Distribution on Lavender Pastel Paper

October 6, 2025

Exhibit "E" is entered into the Record

- to provide a visual or physical representation of Authenticated Evidentiary fact(s).
 - is a true and accurate copy of the original.
 - is being offered into the Record to prove the purpose *of Exhibit "E"*.
- No party objects to the admission of this Exhibit E into evidence for and on the Record.

Re-record to add Trustee Title

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF LEXINGTON) DEED OF DISTRIBUTION
(Real Property Only)
IN THE MATTER OF:) NOT A WARRANTY DEED
CARL ALVIN NUNALLY, SR.
(Decedent)) CASE NUMBER. 2022ES3201253
The undersigned states as follows:

Decedent died on SEPTEMBER 4TH, 2021 ; and probate of the Estate is being administered in the Probate Court for LEXINGTON County, South Carolina, in File # 2022ES3201253.

I was appointed Personal Representative (s) on 28TH day of MARCH 2023.

Decedent owned real property described as follows:

Tax Map Number: 2734-01-003

Street/Property Address: 1759 Willow Creek Road, Columbia, SC 29210

Legal Description: Located: 1759 Willow Creek Drive Columbia, SC
Lat 34.066370 Long:-81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/11/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

This transfer is made pursuant to:

☒ Decedent's Will

Intestacy Statute: SCPC 62-2-103

Private Family Agreement: SCPC 62-3-912

Disclaimer by: _____

Probate Court Order issued on _____

Other: _____



2023031779 BK: 21073 PG: 1408 - 1410

3 PGS

DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00

September 6, 2023 02:29:15 PM

FILED IN LEXINGTON COUNTY, SC

Tina Querry



2023034409 BK: 21075 PG: 5539 - 5541

3 PGS

DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00

September 27, 2023 11:10:36 AM

FILED IN LEXINGTON COUNTY, SC

Tina Querry

FORM #400ES (1/2016)

Page 1 of 3

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: TIMOTHY ALLEN NUNALLY
Address: 4499 PERSIAN COURT
SNELLVILLE GA 30078

Name: MARK ANTHONY NUNNALLY
Address: 5681 GRANE RIVER RD
COLLEGE PARK GA 30349

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 30TH day of MAY, 2023 .

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Charlene H. Robinson
Print Name: Charlene H. Robinson

Witness: Rosevelt L. Robinson
Print Name: Rosevelt L. Robinson

Estate of: CARL ALVIN NUNALLY, SR.

Signature of Personal Representative: Timothy Nunally a P.R. & Trustee

Print Name: Timothy Nunally

If applicable, Signature of Co-Personal Representative:

Print Name: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF LEXINGTON

I, Charlene H. Robinson, Notary Public, a notary for the State of South Carolina do hereby certify that

Timothy Nunally
as Personal Representative(s) of the Estate of CARL ALVIN NUNALLY, SR., personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the day of May 30th, 2023

Charlene H. Robinson (SEAL)

(Signature of Notary Public)

Charlene H. Robinson
(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires: 1/20/2025

Exhibit "F" BONY Mellon's 10/03/2023 Assignment of Mortgage on Light Blue Pastel Paper

October 6, 2025

Exhibit "F" is entered into the Record

- to provide a visual or physical representation of Authenticated Evidentiary fact(s).
 - is a true and accurate copy of the original.
 - is being offered into the Record to prove the purpose of *Exhibit "F"*.
- No party objects to the admission of this Exhibit F into evidence for and on the Record.

When Recorded Return To:
 PHH Mortgage
 C/O Nationwide Title Clearing, LLC
 2100 Alt. 19 North
 Palm Harbor, FL 34683



2023035209 BK: 21076 PG: 4337 - 4337 1 PGS
 MORTGAGE ASST
 Rec: \$17.00 Cnty: \$0.00 State: \$0.00
 October 3, 2023 10:34:14 AM
 FILED IN LEXINGTON COUNTY, SC *Tina Gray*

ASSIGNMENT OF MORTGAGE

CORRECTIVE ASSIGNMENT OF MORTGAGE: TO CORRECT MORTGAGE RECORDING REFERENCE. ORIGINAL ASSIGNMENT OF MORTGAGE RECORDED ON 07/28/2023 IN BK: 21067 PG: 4146.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Mortgage with all liens, and any rights due or to become due thereon to THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1, NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-1, WHOSE ADDRESS IS C/O PHH MORTGAGE CORPORATION, 5720 PREMIER PARK DRIVE, WEST PALM BEACH, FL 33407, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 01/30/2004, made by CARL A. NUNALLY AND FRANKIE L. NUNALLY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS and recorded 02/28/2004 in the Recorder or Registrar of Deeds of LEXINGTON County, South Carolina in Book 9041 and Page 4.

Dated on 9/29/2023 (MM/DD/YYYY)
 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS

By: *Mackenzie Eichen*
 Mackenzie Eichen

VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

Signed and Acknowledged
 in the Presence of:

Angela Favao
 Angela Favao
 Witness 1

Lauren Astle
 Lauren Astle
 Witness 2

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization on 9/29/2023 (MM/DD/YYYY), by Mackenzie Eichen as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Julie Martens
 Julie Martens
 Notary Public - STATE OF FLORIDA
 Commission expires: 05/22/2026



JULIE MARTENS
 NOTARY PUBLIC
 STATE OF FLORIDA
 COM# 11 243030
 EXPIRES: MAY 22, 2026

Recording Requested By: PHH Mortgage, C/O Nationwide Title Clearing, LLC 2100 Alt. 19 North, Palm Harbor, FL 34683

PHH02 438983506 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
 OCWEN-NVLER (RN) MIN 100080190020066015 MERS PHONE 1-888-679-6377 MERS Mailing Address:
 P.O. Box 2026, Flint, MI 48501-2026 DOC# T142309-04:00:20 [C-1] FRMSC1



D0102524191

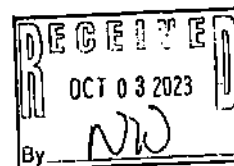


Exhibit "G" 12/18/2023 Defendants' Recorded Affidavit of Acknowledgment on Lavender

Pastel Paper

October 6, 2025

Exhibit "G" is entered into the Record

- to provide a visual or physical representation of Authenticated Evidentiary fact(s).
 - is a true and accurate copy of the original.
 - is being offered into the Record to prove the purpose *of Exhibit "G"*.
- No party objects to the admission of this Exhibit G into evidence for and on the Record.

AFFIDAVIT OF ACKNOWLEDGEMENT

AND ACCEPTANCE OF DEED

We, **Mark Anthony Nunnally** and **Timothy Allen Nunally** the living men, in the capacity of **Mark Anthony Nunnally** and **Timothy Allen Nunally** are recorded as ~~the~~ the **Grantee** on the **DEED** for the Real Property described as:

Located : 1759 Willow Creek Drive Columbia, SC

Lat 34.066370 Long:-81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 611411993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

The Real Property commonly known as 1759 Willow Creek Drive, Columbia, SC is on the attached original Deed filed and recorded on August 10, 1994 which lacked our acknowledgement and acceptance of said Deed.

It is our free will, act, and deed, to acknowledge on and for the public record of our acceptance of the Deed in Fee- Simple and lawful ownership of the above described Real Property in Fee-Simple as recorded in Deed Book 5145 at Page 97, Lexington County, South Carolina and the lawful ownership of the Real Property under the terms of the Deed. Our acceptance of the Deed and lawful ownership of the Real Property are under the terms of the Deed with all rights reserved.



2023044622 BK: 21086 PG: 3245 - 3247 3 PGS

AFFIDAVIT

Rec: \$10.00 Cnty: \$0.00 State: \$0.00

December 18, 2023 03:07:19 PM

FILED IN LEXINGTON COUNTY, SC

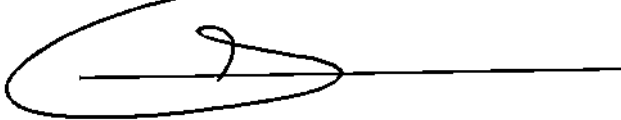
Tina Quarry

RECEIVED

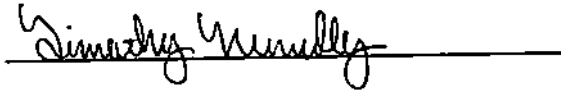
DEC 18 2023

All of our other Real Property and interest attached to this Real Property are to be immediately returned to us.

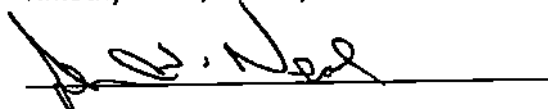
This our free will, act, and deed, under our hand and seal;

A handwritten signature, possibly "Mark- Anthony", is written over a horizontal line. The signature is enclosed in a large, hand-drawn oval.

Mark- Anthony; Nunnally Without Recourse

A handwritten signature, possibly "Timothy- Allen", is written over a horizontal line.

Timothy- Allen; Nunally Without Recourse

A handwritten signature, possibly "P. H. Noel", is written over a horizontal line.

Third Party Witness

State of South Carolina,

County of Fairfield ss.

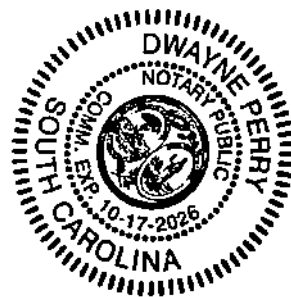
On this 18th day of December 2023, before me the subscribers,

DWAYNE PERRY personally appeared Mark- Anthony; Nunnally and Timothy- Allen; Nunally, to me known to be the living men described in and who executed the foregoing affidavit and acknowledged before me that they executed the same as their free will, act, and deed.

Dwayne Perry

(signature of Notary Public)

Notary Public, State of South Carolina



Stamp/ Seal

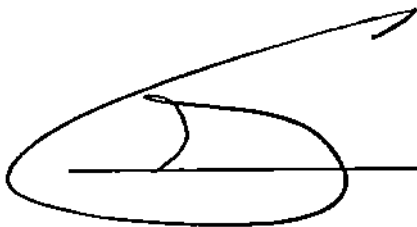
My commission expires: 10/17/2026

VERIFIED AFFIDAVIT OF SUBMISSION
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Personally appeared before me the undersigned, Mark-Anthony Nunnally, who, being duly sworn, deposes and states as follows:

1. I am the Defendant in the above-captioned matter and have personal knowledge of the facts set forth herein.
2. The attached color-coded exhibits, labeled Exhibits A through F, are true and correct copies of instruments recorded in the Lexington County Register of Deeds, and their coloration corresponds to the physical originals as examined.
3. The color presentation of each exhibit is material to the evidentiary issues of chain-of-title continuity, recordation defects, and authentication of signatures, seals, and endorsements.
4. This submission is made solely for the Court's clarity and not to alter or amend the official record.

FURTHER AFFIANT SAYETH NOT.

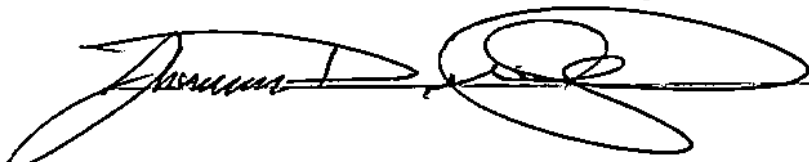
A handwritten signature in black ink, appearing to read 'Mark-Anthony Nunnally', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Nunnally: Mark-Anthony

5681 Grande River Road

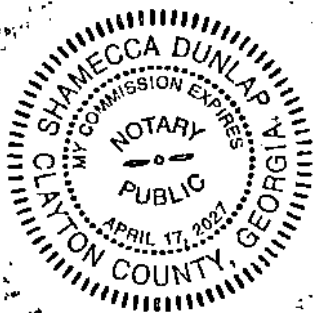
College Park, GA 30349

Subscribed and sworn before me this 7th day of October, 2025.



Notary Public for ~~South Carolina~~
Georgia.

My Commission Expires: 04-17-2027



CERTIFICATE OF SERVICE

I hereby certify that I have this 7th day of October, 2025, served a true and correct copy of the foregoing NOTICE OF COURTESY SUBMISSION OF COLOR-CODED EXHIBITS upon counsel for Plaintiff, Chad Burgess, Esquire, by ☐ hand delivery / ☐ U.S.

Mail / ☒ certified mail, return receipt requested], properly addressed as follows:

Chad Burgess, Esq.

Brock & Scott, PLLC

3800 Fernandina Road, Suite 110

Columbia, SC 29210

A handwritten signature in black ink, appearing to be 'Mark-Anthony Nunnally', is written over a horizontal line. The signature is stylized with a large loop at the beginning.

Nunnally: Mark-Anthony

5681 Grande River Road

College Park, GA 30349

Telephone: 404-980-4488

Email: markanunnally@gmail.com

Pro Se Defendant

IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Case No.: 2024-CP-32-01094

FILED

2025 NOV 18 PM 4:08

LISA H. COMER
CLERK OF COURT
LEXINGTON

The Bank of New York Mellon, f/k/a JP Morgan Chase Bank, N.A., as Trustee for
NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-
Backed Certificates, Series 2004-1,
Plaintiff,

v.

Nunnally: Mark-Anthony and Nunally: Timothy-Allen,
Defendants.

AMENDED DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

*(Incorporating Fiduciary Proof and Standing Addendum Pursuant to S.C. Code §§ 62-7-801 et
seq., Rule 56, and UCC § 3-301)*

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INTRODUCTION

Pursuant to Rule 56, SCRPC, Defendants respectfully move this Honorable Court for summary judgment dismissing Plaintiff's foreclosure complaint with prejudice. The documentary evidence establishes that Plaintiff lacks standing to foreclose because (1) the Mortgage was defectively executed and acknowledged, (2) the Note endorsements are facially void, (3) the Assignments of Mortgage are void *ab initio*, and (4) Defendants' chain of title holds priority under South Carolina's race recording statute.

Defendants further amend this Motion to include statutory fiduciary-proof requirements imposed upon trustees under the South Carolina Trust Code and the Uniform Commercial Code, demonstrating that Plaintiff's failure to meet those obligations independently defeats standing as a matter of law.

STATEMENT OF UNDISPUTED MATERIAL FACTS

1. On January 30, 2004, Carl A. Nunally and Frankie L. Nunally executed a Mortgage in favor of NovaStar Home Mortgage, Inc., recorded on February 20, 2004 in Book 9041, Page 4, Lexington County Register of Deeds. (Exhibit B).
2. The Mortgage bears only one subscribing witness, contrary to S.C. Code Ann. § 30-5-30, and contains a notarial acknowledgment that fails to identify the mortgagors, rendering execution and recordation defective.

3. The Note and allonges are fatally defective:
 - a. They introduce "NovaStar Mortgage, Inc.," a corporate stranger never the original lender of record.
 - b. They ambiguously name two payees: "NovaStar Mortgage, Inc." and "JP Morgan Chase Bank, as Trustee."
 - c. They are executed by an "Assistant Secretary" with no evidence of authority.
4. They purport to transfer the Note to multiple payees "without recourse," creating uncertainty as to who is entitled to enforce. (Exhibit A).
5. On July 28, 2023, Plaintiff recorded an Assignment of Mortgage purporting to transfer the NovaStar Home Mortgage, Inc., but it misidentified the original recording as having been made on February 28, 2004, in Book Number 9841.
6. The NovaStar Home Mortgage, Inc. was recorded on February 20, 2004, in Book Number 9041, Page 4. (Exhibit C).
7. On September 6, 2023 and September 27, 2023, the Deeds of Distribution were duly recorded in Defendants' favor at Book 21073, Pages 1408–1410, and Book 21075, Pages 5539–5541. (Exhibit D).
8. On October 3, 2023, Plaintiff recorded a second Assignment of Mortgage, again misidentifying the original recording as February 28, 2004. (Exhibit E).
9. On December 18, 2023, Defendants recorded their Affidavit of Acknowledgment & Acceptance at Book 21086, Pages 3245–3247. (Exhibit F).

STANDARD OF REVIEW

Rule 56 of the South Carolina Rules of Civil Procedure governs summary judgment. A party seeking summary judgment must demonstrate the absence of a genuine issue of material fact, after which the burden shifts to the opposing party to come forward with specific facts showing there is a genuine issue for trial.

South Carolina courts consistently enforce this three-part principle under Rule 56:

- *Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact.* " *Robinson v. Aiken (In re Robinson)*, No. 2023-UP-012, at *6 (S.C. Ct. App. Jan. 11, 2023); *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).
- Once this showing is made, "the opponent cannot simply rest on mere allegations or denials contained in the pleadings, but must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (2003); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991).
- At the same time, "summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378–79, 534 S.E.2d 688, 692 (2000).

The South Carolina Supreme Court in *Dawkins v. Fields*, 354 S.C. 58 (2003), reaffirmed that summary judgment is proper only where there is no genuine issue of material fact and

the movant is entitled to judgment as a matter of law. More recently, *The Kitchen Planners, LLC v. Friedman*, Op. No. 28173 (S.C. 2023), clarified that the “mere scintilla” of evidence is insufficient to defeat a properly supported motion for summary judgment. In the foreclosure context, *MidFirst Bank v. Brooks*, 2008-UP-196 (S.C. Ct. App.), and *Quicken Loans, Inc. v. Wilson*, Op. No. 5613 (S.C. Ct. App. 2019), emphasize that a party opposing summary judgment must present competent evidence of standing and ownership of the mortgage debt. Likewise, in *Lanier v. Bank of New York Mellon*, 2019-UP-284 (S.C. Ct. App.), arising from Lexington County, the Court of Appeals affirmed summary judgment for the borrower where BONY failed to prove lawful assignment of the note and mortgage. Collectively, these authorities confirm that when the record establishes defective assignments and lack of standing—as here—summary judgment for the defendants is mandated under Rule 56, SCRCP.

In determining whether a triable issue of fact exists, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Stoneledge at Lake Keowee Owners’ Ass’n, Inc. v. Builders FirstSource-Se. Grp.*, 776 S.E.2d 434, 437 (2015); *Quail Hill, LLC v. Cnty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010).

However, it is equally well settled that it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine. *Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

Applying these principles, summary judgment is appropriate where, as here, the movant demonstrates that the material documents (Note, Mortgage, Assignments) are facially defective and incapable of transferring any enforceable interest.

Once Defendants establish the absence of a valid and enforceable chain of title, Plaintiff cannot survive summary judgment by relying on conclusory allegations of standing.

When the circuit court grants summary judgment on a question of law, the appellate courts review the ruling de novo. *Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp.*, 776 S.E.2d 434, 437 (2015); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

The appellate court applies the same Rule 56(c) standard as the trial court. *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 528, 753 S.E.2d 428, 434 (2014).

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

Rule 56(f) allows a court to deny or delay summary judgment if the opposing party demonstrates by affidavit that it cannot present facts essential to justify opposition.

But here, Plaintiff has already had full opportunity to produce the Note, Mortgage, and Assignments, and those filings are facially defective.

Rule 56(f) does not shield a party from summary judgment where the essential facts are already before the Court and no additional discovery could cure the defects.

PRELIMINARY INCORPORATION OF RULES 12(b)(6) AND 9(b), SCRPC

Defendants hereby incorporate by reference their prior Motion to Dismiss for Failure to State a Claim pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure, and further invoke the heightened pleading standard of Rule 9(b), SCRPC, as to all allegations of fraud or misrepresentation asserted by the Plaintiff, directly or by

implication. The particular misrepresentations alleged are The particular misrepresentations alleged are (1) the false endorsement by 'NovaStar Mortgage, Inc.' purporting to act as the payee despite never being the originating lender, (2) the false recitation of a non-existent recordation date (February 28, 2004) in the Assignments, and (3) Plaintiff's continued representation of itself as lawful trustee despite the absence of any fiduciary proof or governing PSA. These acts constitute fraud in the execution and recordation of instruments. The defects identified therein remain uncured. Even upon full inspection and production of the alleged "wet-ink" Note and Mortgage, Plaintiff has failed to allege or prove the necessary elements establishing: a valid cause of action for foreclosure under South Carolina law; its lawful ownership or assignment of the Note and Mortgage; or any factual particularity sufficient to satisfy the Rule 9(b) standard.

Accordingly, pursuant to Rule 56, SCRCF, Defendants contend that there is no genuine issue of material fact, and that Plaintiff's Complaint, having failed at the pleading stage and remaining unsupported by competent proof, warrants judgment in favor of Defendants as a matter of law.

ARGUMENT

I. The Mortgage Was Defectively Executed and Acknowledged.

1. Under S.C. Code Ann. § 30-5-30, a mortgage requires two witnesses, one of whom may be the notary.
2. Here, only one subscribing witness appears, and the acknowledgment fails to name the actual mortgagors.

3. A mortgage that fails S.C. Code Ann. § 30-5-30 is not merely irregular — it is void ab initio and incapable of serving as the foundation for foreclosure.
4. A defectively executed mortgage is not entitled to recordation and imparts no constructive notice. *Lewis v. Lewis*, 324 S.C. 529, 479 S.E.2d 208 (Ct. App. 1996).
5. South Carolina law expressly requires that a mortgage be executed with two subscribing witnesses and either probate or acknowledgment in order to be entitled to recordation. S.C. Code Ann. § 30-5-30.
6. This requirement is reinforced by the South Carolina Register of Deeds' published prerequisites, which specify: "On all written instruments, with the exception of a mortgage satisfaction, there must be two witnesses and also a probate or acknowledgement statement.
7. The notary may also be one of the witnesses." (*Prerequisites to Recording Documents*, Greenville County Register of Deeds, citing S.C. Code Ann. § 30-5-30).
8. Here, the NovaStar Mortgage dated January 30, 2004 contains only one subscribing witness and a defective acknowledgment that fails to name the mortgagors.
9. As such, the instrument was defectively executed, not entitled to recordation, and cannot impart constructive notice. See *Lewis v. Lewis*, 324 S.C. 529, 479 S.E.2d 208 (Ct. App. 1996).
10. South Carolina courts have long held that defects in an instrument's acknowledgment impact whether the document imparts constructive notice.
11. In *Franklin Savings & Loan Co. v. Riddle*, 216 S.C. 367, 57 S.E.2d 910 (1950), the Supreme Court of South Carolina explained that a defective acknowledgment prevents an instrument from serving as valid notice in the chain of title.

12. Here, the NovaStar Mortgage contains only one subscribing witness and an acknowledgment that fails to name the mortgagors who appeared before the notary.
13. As in *Riddle*, these defects are fatal, rendering the mortgage defectively executed, improperly recorded, and incapable of imparting constructive notice.
14. South Carolina law requires that a mortgage be executed in the presence of two witnesses to be entitled to recordation. S.C. Code Ann. § 30-5-30.
15. Courts strictly enforce this requirement.
16. In *Vieira v. McGrath*, 532 B.R. 253, 259–60 (Bankr. D.S.C. 2015), the court held that a mortgage bearing one legible witness and one illegible mark did not satisfy the statute, rendering the mortgage defectively executed and not entitled to recordation.
17. The NovaStar Mortgage here bears only one subscribing witness and a defective acknowledgment.
18. As in *Vieira*, these defects are fatal, and the mortgage cannot impart constructive notice or form the basis for any valid assignment.
19. The distinction between whether a conveyance is void or voidable is critical.
20. A void instrument passes no rights whatsoever, while a voidable instrument may transfer rights until set aside.
21. The Bankruptcy Court for the District of South Carolina explained this principle in *In re Amtron, Inc.*, 192 B.R. 130, 135 (Bankr. D.S.C. 1995), holding that conveyances in violation of statutory requirements are void and ineffective to transfer title.
22. Here, the NovaStar Home mortgage, Inc. Mortgage was defectively executed under S.C. Code Ann. § 30-5-30, and BONY's Assignments of Mortgage misidentify a non-existent recordation date (February 28, 2004, a Saturday).

23. Under *Amtron*, these instruments are void ab initio and legally incapable of transferring any interest to BONY.
24. Because the Mortgage itself was never validly executed, no assignment of it could transfer enforceable rights.
25. The Assignments BONY relies on are thus doubly void — they not only misidentify a non-existent recordation date, they attempt to transfer a mortgage that was never lawfully perfected to begin with.
26. South Carolina law requires that mortgages be executed in the presence of two disinterested witnesses. S.C. Code Ann. § 30-5-30.
27. The South Carolina Supreme Court has long recognized that the validity of a subscribing witness is essential to a mortgage's enforceability.
28. In *J.W. Dillon & Son Co. v. Oliver*, 106 S.C. 410, 91 S.E. 604 (1917), the Court explained that the role of subscribing witnesses is a statutory safeguard, and that defects in witness competency undermine the instrument's validity and its entitlement to recordation.
29. Here, the NovaStar Home Mortgage, Inc. Mortgage was executed with only one subscribing witness, Maude K. Cole, and the acknowledgment itself failed to identify the mortgagors.
30. Under Dillon and S.C. Code Ann. § 30-5-30, the Mortgage was defectively executed, not entitled to recordation, and incapable of imparting constructive notice.
31. South Carolina's statutory safeguards are not technicalities; they are mandatory protections designed to ensure integrity of the public land records and to prevent fraud. See *J.W. Dillon & Son Co. v. Oliver*, 106 S.C. 410, 91 S.E. 604 (1917).

32. A mortgage executed without two subscribing witnesses and with a defective acknowledgment is not entitled to recordation, imparts no constructive notice, and is void ab initio. Lewis, 324 S.C. at 533; Riddle, 216 S.C. at 372.
33. Because the NovaStar Mortgage failed these statutory requirements, it could not be lawfully recorded or enforced.
34. BONY's later Assignments compound the defect, misidentifying a non-existent February 28, 2004 recordation date.
35. As a matter of law, BONY cannot enforce a void mortgage or its void assignments, and its foreclosure must fail.

II. The Note Endorsements Are Void.

36. The endorsements on the NovaStar Note are facially void because they:
- (a) introduce a corporate stranger,
 - (b) ambiguously name multiple payees,
 - (c) are executed by an unauthorized "Assistant Secretary," and
 - (d) purport to transfer the Note to multiple payees "without recourse."
37. These defects destroy negotiability and standing. U.C.C. § 3-110, U.C.C. §3-201, U.C.C. §3-204; *In re Veal*, 450 B.R. 897 (9th Cir. B.A.P. 2011); *BAC Home Loans Servicing v. Kinder*, 398 S.C. 619, 730 S.E.2d 313 (Ct. App. 2012).
38. South Carolina law further recognizes that parties to a negotiable instrument may be discharged when the holder alters enforcement rights without their consent.
39. S.C. Code Ann. § 36-3-606 provides that a party is discharged when the holder, without consent, extends payment or impairs recourse.

40. In *Seven Lakes Inv. Grp., Inc. v. Crowe*, 297 S.C. 534, 377 S.E.2d 576 (1989), the South Carolina Supreme Court held that a guarantor was discharged when the note holder extended payment without the guarantor's consent.
41. Here, BONY seeks to enforce a Note purportedly transferred into the NovaStar trust years after closing, with terms altered outside the borrower's consent.
42. Under S.C. Code Ann. § 36-3-606 and *Seven Lakes*, such actions discharge liability and render the Note unenforceable by BONY.
43. South Carolina law requires that a party demonstrate standing before invoking the jurisdiction of the court. *Davis v. Hamm*, 300 S.C. 284, 387 S.E.2d 676, 678 (Ct. App. 1989) ("A party must have a real interest in the subject matter of the action and a legal right to enforce it in order to have standing.").
44. BONY cannot demonstrate standing because it has no enforceable interest in the Note, the Mortgage, or the Assignments.
45. The endorsements are void, the Mortgage was defectively executed, and the Assignments misidentify a non-existent recordation.
46. Without standing, BONY's foreclosure action must be dismissed with prejudice.

A. Endorsement by a Corporate Stranger: NovaStar Mortgage, Inc. ≠ NovaStar Home Mortgage, Inc.

47. The Note endorsement is made by "NovaStar Mortgage, Inc." — an entity that was never the original lender of record.
48. The Note and Mortgage both identify the lender as "NovaStar Home Mortgage, Inc."
49. Public and judicial records confirm these were separate and distinct corporate entities:

- A. Massachusetts Division of Banks (2003): Issued a Consent Order against NovaStar Home Mortgage, Inc., confirming its status as a licensed, regulated lender. (Exhibit G).
 - B. California DFPI: Issued enforcement actions against NovaStar Mortgage, Inc., confirming that entity was independently regulated. (Exhibit H).
 - C. SEC Filings: SEC Exhibit 21.1 to Form 10-K confirms that NovaStar Home Mortgage, Inc. and NovaStar Mortgage, Inc. were distinct subsidiaries of NovaStar Financial, Inc., a Maryland corporation. (Exhibit I).
 - D. *Beaumont v. Bank of New York Mellon*, 81 F. Supp. 3d 896, 902 (N.D. Ill. 2015): The court addressed BONY Mellon's foreclosure standing in the context of NovaStar-originated loans and treated NovaStar Home Mortgage, Inc. and NovaStar Mortgage, Inc. as separate legal entities.
 - E. *Lawyers Title Ins. Corp. v. NovaStar Mortgage, Inc.*, 862 N.E.2d 774, 778 (Ind. Ct. App. 2007): The court adjudicated claims involving NovaStar Mortgage, Inc. in a title insurance dispute, further confirming that NovaStar Mortgage, Inc. was an independent corporation, not interchangeable with NovaStar Home Mortgage, Inc.
50. Taken together, these authorities establish beyond dispute that "NovaStar Home Mortgage, Inc." and "NovaStar Mortgage, Inc." were not interchangeable names, but legally distinct corporations.
51. Under the Uniform Commercial Code, only the original payee or a valid transferee may endorse or negotiate a promissory note. U.C.C. § 3-201.

52. An endorsement by a corporate stranger — one never the payee or a proven successor — is a nullity. *In re Veal*, 450 B.R. at 911. See also *Kinder*, 398 S.C. at 316 (standing requires valid negotiation and possession of the note).
53. Because “NovaStar Mortgage, Inc.” was not the original payee, not a proven successor by merger, and not an authorized transferee of “NovaStar Home Mortgage, Inc.,” its purported endorsement is void ab initio.
54. This defect severs the chain of title, prevents negotiation of the Note, and leaves BONY incapable of proving itself a “person entitled to enforce.” *Arkison v. Griffin (In re Griffin)*, 719 F.3d 1126, 1131 (9th Cir. 2013).
55. No merger, name change, or successor-in-interest filing exists between NovaStar Home Mortgage, Inc. and NovaStar Mortgage, Inc..
56. Public SEC filings and state corporate registries identify them as discrete subsidiaries of NovaStar Financial, Inc., each maintaining separate licenses, corporate officers, and state registrations.
57. In the absence of a recorded merger certificate or corporate assignment, South Carolina law presumes no successor capacity. See *Lewis v. Lewis*, 324 S.C. 529 (1996) (applying strict proof to successor claims).
58. Accordingly, Plaintiff cannot rely on a nonexistent successor relationship to cure a void endorsement.

III. The Assignments of Mortgage Are Void Ab Initio.

59. Both the July 28, 2023 and October 3, 2023 Assignments misidentify the operative recording date as February 28, 2004, when in fact the NovaStar Mortgage was recorded on February 20, 2004 in Book 9041, Page 4.

60. The date BONY listed — February 28, 2004 — fell on a Saturday when the Lexington County Register of Deeds was closed.
61. No mortgage could have been recorded on that date.
62. An assignment referencing a non-existent or impossible instrument conveys nothing. *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 649–50 (2011).
63. A defective assignment cannot be cured by re-recording the same defect, as BONY attempted on October 3, 2023.
64. South Carolina law requires that an assignment of mortgage be in proper written form and recorded in order to provide notice. See S.C. Code Ann. § 29-3-330.
65. South Carolina's statutory foreclosure framework further reinforces these requirements.
66. Under S.C. Code Ann. § 29-3-310 et seq., every assignment or satisfaction of mortgage must be executed, acknowledged, and recorded in compliance with statutory form before it conveys or discharges any interest.
67. Likewise, S.C. Code Ann. § 15-39-610 et seq. governs judicial foreclosure sales and requires that the party seeking sale hold a valid, enforceable lien at the time of decree.
68. Plaintiff's defective assignments violate both statutory schemes, rendering any attempted enforcement under S.C. Code Ann. § 15-39-610 et seq. void as a matter of law because the underlying lien itself was never perfected under S.C. Code Ann. § 29-3-310 et seq.
69. Instruments that are defectively executed or recorded are not entitled to recordation and cannot impart constructive notice. *Lewis v. Lewis*, 324 S.C. 529, 479 S.E.2d 208 (Ct. App. 1996).

70. Here, BONY's Assignments are facially void because they reference a recordation that never occurred.
71. The distinction is critical: a voidable instrument may pass rights until set aside, but a void instrument passes no rights whatsoever. *In re Amtron, Inc.*, 192 B.R. 130, 135 (Bankr. D.S.C. 1995).
72. Because BONY's Assignments are void ab initio, they never transferred any enforceable interest in the mortgage.
73. South Carolina law requires a foreclosing plaintiff to establish standing by proving both lawful possession of the note and a valid assignment of the mortgage.
74. An assignee acquires no greater rights than its assignor and must prove the assignment's validity. *Bank of America, N.A. v. Draper*, 746 S.E.2d 478, 2013 WL 2422875, at *3, 2013 S.C. App. LEXIS 160 (Ct. App. 2013).
75. BONY cannot do so here.
76. Its Assignments are void on their face, its chain of title is broken, and its foreclosure complaint must therefore fail as a matter of law.

IV. Priority of Title

77. South Carolina follows a pure race recording statute:

“All deeds of conveyance of lands, tenements or hereditaments, either in fee simple or for life, all mortgages or instruments in writing in the nature of a mortgage of any real estate, all marriage settlements or instruments in the nature of a settlement of a marriage, shall be valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors) or purchasers for valuable consideration without notice only from the day and hour when they are recorded in the office of the register of deeds of the county in which the property is situated.”— S.C. Code Ann. § 30-7-10.

78. Under this statute, priority is determined strictly by the order of recordation, regardless of actual notice.

79. South Carolina courts have applied this principle consistently for more than a century.

80. In *Bryce & Co. v. Foot*, 25 S.C. 467 (1886), the Supreme Court held that a valid assignment for the benefit of creditors had precedence over a subsequent attachment because the assignment was properly executed and recorded first in time.

81. Likewise, in *Lewis v. Lewis*, 324 S.C. 529, 479 S.E.2d 208 (Ct. App. 1996), the Court of Appeals confirmed that an instrument defectively executed or not entitled to recordation imparts no constructive notice and cannot establish priority in the chain of title.

82. Here, Defendants Deeds of Distribution, recorded September 6, 2023 (Book 21073, Pages 1408–1410) and September 27, 2023 (Book 21075, Pages 5539–5541), and their Affidavit of Acknowledgment & Acceptance, recorded December 18, 2023 (Book

21086, Pages 3245–3247), were all validly executed and properly recorded in the Lexington County Register of Deeds.

83. These instruments establish Defendants' lawful chain of title.

84. In contrast, BONY recorded two Assignments of Mortgage dated July 28, 2023 (Book 21067, Page 4146) and October 3, 2023 (Book 21076, Page 4337), both of which misidentified the underlying NovaStar Home Mortgage, Inc. Mortgage as having been recorded February 28, 2004 in Book 9841, when in fact it was recorded February 20, 2004 in Book 9041, Page 4.

85. Because the Assignments reference a non-existent recordation, they are void ab initio and cannot transfer any enforceable interest.

86. South Carolina precedent also makes clear that standing must exist at the commencement of the action and cannot be retroactively created by later assignments. *Nelums v. Specialized Loan Servicing, LLC*, 422 S.C. 342, 811 S.E.2d 778, 784 (Ct. App. 2018).

87. BONY's foreclosure complaint was filed before any valid interest was ever transferred, and its later defective assignments cannot cure this defect.

88. False Recordation Date – February 28, 2004.

89. Plaintiff's October 3, 2023 Assignment is void on its face because it purports to assign a Mortgage "recorded on February 28, 2004."

90. February 28, 2004 was a Saturday, when the Lexington County Register of Deeds was closed and could not have accepted recordation.

91. The actual NovaStar Home Mortgage, Inc. Mortgage was recorded on February 20, 2004, in Book 9041, Page 4.

92. An assignment that references a non-existent or impossible recordation conveys nothing. *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637, 649–50 (2011).
93. Because Plaintiff's assignment rests on an impossibility, it is void ab initio.
94. Defendants' Deeds of Distribution and Affidavit of Acknowledgment & Acceptance, recorded before October 3, 2023, therefore take priority as a matter of law.
95. The requirement that assignments be validly recorded is central to South Carolina's race recording statute, S.C. Code Ann. § 30-7-10.
96. As the Supreme Court recognized in *Bryce & Co. v. Foot*, priority is determined by lawful execution and recordation.
97. Plaintiffs' instruments were properly recorded in 2023.
98. BONY's purported assignments, in contrast, fail under both S.C. Code Ann. § 29-3-330 and S.C. Code Ann. § 30-7-10, as they reference an impossible recordation date and were not lawfully perfected until after Plaintiffs' interests.
99. Accordingly, under S.C. Code Ann. § 30-7-10, Bryce & Co., Lewis, and Nelums, Defendants' Deeds and Affidavit hold priority as a matter of law over BONY's void assignments.
100. Plaintiff's foreclosure complaint, predicated on defective instruments recorded out of sequence, must fail.

V. Plaintiffs' Chain of Title Holds Priority.

101. Defendants' Deeds of Distribution, recorded September 6, 2023 and September 27, 2023, predate BONY's October 3, 2023 Assignment.

102. Under South Carolina's pure race recording statute, S.C. Code Ann. § 30-7-10, Defendants' properly recorded instruments have priority over BONY's defective assignments.
103. South Carolina law has long recognized that a validly executed and recorded conveyance or assignment takes precedence over subsequent claims or attachments.
104. In *Bryce & Co. v. Foot*, 25 S.C. 467 (1886), the Supreme Court held that an assignment for the benefit of creditors had priority over a later attachment because the assignment was valid and first in time.
105. The same principle applies here.
106. Defendants' Deeds of Distribution, recorded September 6, 2023 (Book 21073, Pages 1408–1410) and September 27, 2023 (Book 21075, Pages 5539–5541), and their Affidavit of Acknowledgment & Acceptance, recorded December 18, 2023 (Book 21086, Pages 3245–3247), were validly executed and recorded prior to BONY's October 3, 2023 defective Assignment.
107. Under *Bryce & Co.* and South Carolina's pure race statute, S.C. Code Ann. § 30-7-10
108. Plaintiffs' instruments take priority as a matter of law.

VI. Transfers into the NovaStar Trust After Closing Are Void.

109. Federal appellate authority confirms that foreclosure standing requires both production of the promissory note and proof that any trustee is authorized under governing trust law and valid transfers.
110. In *Edward Zadrozny v. Bank of New York Mellon*, 720 F.3d 1163, 1168 (10th Cir. 2013), the court held that a foreclosing trustee must demonstrate possession of the note and authority to act as trustee, and that the Uniform Commercial Code governs negotiability and enforcement of notes.
111. Here, BONY has failed to produce custodial receipts, closing certifications, or a valid chain of endorsements, and its Assignments reference a non-existent recordation date.
112. Under *Zadrozny* and South Carolina's UCC (S.C. Code Ann. § 36-3-110 to S.C. Code Ann. § 36-3-204), BONY cannot establish itself as the lawful note holder or trustee with authority to foreclose.
113. The NovaStar Mortgage Funding Trust 2004-1 is governed by New York law under its Pooling and Servicing Agreement.
114. However, South Carolina law controls procedural issues, including statutes of limitations.
115. In *In re Sterba*, 516 B.R. 579, 583–84 (B.A.P. 9th Cir. 2014), the court held that contractual choice of law provisions generally govern substantive rights but do not displace the forum state's statutes of limitations absent express agreement.
116. Accordingly, while New York trust law applies to determine whether transfers into the trust were void under EPTL § 7-2.4, South Carolina's statutes of limitation govern the timeliness of any foreclosure or enforcement action.

117. BONY cannot invoke New York's trust law selectively to avoid South Carolina's limitation periods.

117.-A. Chronological Timeline of Trust and Assignment Events

Event	Date	Source	Legal Effect
NovaStar Mortgage Funding Trust 2004-1 Closing	June 30 2004	SEC Form 8-K / PSA § 2.01	Assets limited to those transferred by closing date
		Lexington R.O.D.	Transfer nearly 19 years late → void
BONY Assignment #1	July 28 2023	Book 21067 P. 4146	under EPTL § 7-2.4 & 26 U.S.C. § 860G(a)(4)
		Lexington R.O.D.	Re-record of same
BONY Assignment #2	Oct 3 2023	Book 21076 P. 4337	void act—no legal effect

A. Persuasive Authority on Post-Closing Trust Transfers and Standing

118. Courts across multiple jurisdictions have uniformly recognized that post-closing transfers into securitized mortgage trusts are void, not merely voidable.

119. In *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637 (2011), the Supreme Judicial Court of Massachusetts held that assignments executed after a trust's closing date conveyed no interest and rendered the ensuing foreclosure void.

120. Likewise, the Supreme Court of Ohio in *Deutsche Bank Nat'l Trust Co. v. Holden*, 147 Ohio St. 3d 85 (2016), reaffirmed that a foreclosure plaintiff must establish standing *at the time the complaint is filed* by demonstrating ownership of both the note and mortgage.
121. The California Court of Appeal in *Glaski v. Bank of America*, 218 Cal. App. 4th 1079 (2013), applied New York EPTL § 7-2.4 to conclude that a transfer into a closed trust is void ab initio, not merely voidable, where the trust instrument limits acceptance of assets to a fixed closing date.
122. These authorities confirm that the 2023 Assignments recorded by BONY, purporting to transfer a 2004 NovaStar Mortgage into a trust long since closed, are legally ineffective under both New York and federal law.

B. Federal REMIC Compliance and the Timing of Transfers

123. The NovaStar Mortgage Funding Trust 2004-1 elected status as a Real Estate Mortgage Investment Conduit (REMIC) under 26 U.S.C. § 860A et seq.
124. Federal law strictly limits the timing of asset transfers into such trusts.
125. Under 26 U.S.C. § 860G(a)(4), any contribution of mortgages to a REMIC after its closing date constitutes a “prohibited transaction” that disqualifies the trust’s tax status and renders the transfer void for federal purposes. See also Treas. Reg. § 1.860G-2(f).
126. Because the NovaStar Trust’s closing date occurred in 2004, the 2023 Assignments of Mortgage recorded in Lexington County purport to effect transfers nearly two decades after that date, in direct violation of § 860G(a)(4).
127. Such post-closing transfers are legally ineffective and corroborate the void nature of the Assignments under both New York EPTL § 7-2.4 and South Carolina law.

128. The Restatement (Third) of Trusts § 7.2 similarly provides that a trustee's acts in contravention of the terms of the trust are void, not merely voidable.

129. BONY's acceptance of post-closing mortgage assignments contravenes the express temporal limits of the NovaStar trust and therefore constitutes a void act under well-settled trust principles.²

VII. FIDUCIARY PROOF AND STANDING UNDER SOUTH CAROLINA TRUST CODE AND UCC § 3-301

A. Fiduciary Proof Required by Statute

130. Under S.C. Code Ann. §62-7-801, S.C. Code Ann. §802, S.C. Code Ann. §810, and S.C. Code Ann. §813, a trustee must act in good faith, keep adequate records, and provide all parties information reasonably related to trust administration.

131. In *Turpin v. Thompson*, 278 S.C. 537 (1982), the Supreme Court held a trustee "must show by clear and convincing evidence that his actions comported with fiduciary obligations."

132. Likewise, *Jones v. Moore*, 293 S.C. 230 (1987), requires a trustee to account for all property and profits derived from the trust.

133. Plaintiff BONY, claiming to act as Trustee for NovaStar Mortgage Funding Trust 2004-1, has failed to produce the governing Pooling and Servicing Agreement (PSA), custodial receipts, or any fiduciary accounting as mandated by S.C. Code Ann. § 62-7-813.

¹ See N.Y. EPTL § 7-2.4; 26 U.S.C. § 860G(a)(4); *Restatement (Third) of Trusts* § 7.2 (acts contrary to trust terms are void). This doctrinal alignment among New York trust law, federal REMIC timing, and equitable remedies underscores that Plaintiff's acts are void *ab initio*, not merely voidable.

134. Such omission violates statutory duty and destroys the presumption of good-faith administration.

B. Effect of Fiduciary Proof Failure on Standing Under Rule 56

135. Standing is a material fact under Rule 56, S.C.R.C.P.

136. A trustee's authority must be demonstrated by admissible evidence of its fiduciary basis.

137. Absent production of the PSA and custodial records, BONY cannot establish a legally cognizable interest.

138. Its inability to meet the statutory proof burden leaves no genuine issue of material fact; therefore, summary judgment for Defendants is proper.

C. Intersection with Title 36 (UCC § 3-301)

139. S.C. Code Ann. § 36-3-301 defines a "person entitled to enforce" as one in lawful possession of the instrument or with equivalent rights. BONY, asserting trustee capacity, must show both (1) possession or rights of a holder and (2) fiduciary authorization under a valid trust.

140. Having produced neither, BONY is neither a "holder" nor a "person entitled to enforce."

141. Any foreclosure or assignment predicated upon such defective authority is void *ab initio*.

D. Equitable Consequence

142. Equity charges a trustee who cannot account "as though the property remained in his hands." *Jones v. Moore*, *supra*.

143. The South Carolina Supreme Court has further recognized equitable oversight of mortgage enforcement in *Risher v. Chase Home Finance, LLC*, 405 S.C. 202, 746 S.E.2d 471 (Ct.

App. 2013), holding that foreclosure actions invoke the court's equitable powers and that relief may be denied where the plaintiff fails to demonstrate clean hands or lawful authority.

144. Similarly, in *Wachovia Bank v. Coffey*, Op. No. 2010-174086 (S.C. Sup. Ct.), the Court denied foreclosure where the bank sought to enforce a mortgage executed by a non-titleholder, confirming that ownership and standing must coincide before foreclosure may proceed.

145. Defendant's failure to account renders it incapable of establishing standing or enforceable rights.

146. Summary judgment must therefore be granted to Defendants, quieting title and extinguishing Plaintiff's claims.³

VIII. Standing

147. South Carolina law requires that a party demonstrate standing before invoking the jurisdiction of the court. *Davis v. Hamm*, 300 S.C. 284, 387 S.E.2d 676, 678 (Ct. App. 1989) ("A party must have a real interest in the subject matter of the action and a legal right to enforce it in order to have standing.").

148. In foreclosure actions, standing depends on proving both lawful possession of the promissory note and a valid chain of assignments of the mortgage.

149. South Carolina courts have consistently held that a foreclosing party must establish itself as a "person entitled to enforce" under the Uniform Commercial Code. *BAC Home Loans Servicing v. Kinder*, 398 S.C. 619, 730 S.E.2d 313, 316 (Ct. App. 2012).

150. This requires valid negotiation and proper endorsement of the note.

151. Defective endorsements that name multiple payees or that are signed by unauthorized individuals do not satisfy Article 3.
152. The Restatement (Third) of Property (Mortgages) § 5.4 likewise recognizes that “a transfer of an obligation secured by a mortgage also transfers the mortgage,” meaning the mortgage follows the note.
153. Because BONY cannot demonstrate a lawful transfer or endorsement of the Note, it likewise acquired no interest in the Mortgage itself.
154. Similarly, an assignee acquires no greater rights than its assignor and must prove the validity of the assignment. *Bank of America, N.A. v. Draper*, 746 S.E.2d 478, 2013 WL 2422875, at *3, 2013 S.C. App. LEXIS 160 (Ct. App. 2013).
155. If the assignment is void or fatally defective, the assignee has no standing to foreclose.
156. Federal appellate authority echoes these requirements.
157. In *Arkison v. Griffin (In re Griffin)*, 719 F.3d 1126, 1131 (9th Cir. 2013), the court held that allegedly defective endorsements and assignments directly impact whether the claimant is a “person entitled to enforce” under Article 3 of the UCC.
158. Standing cannot be established where the chain of title is broken by void or improper transfers.
159. South Carolina courts further require that standing exist at the inception of the action and cannot be cured by later events. *Nelums v. Specialized Loan Servicing, LLC*, 422 S.C. 342, 811 S.E.2d 778 (Ct. App. 2018).
160. Here, BONY Mellon has failed to demonstrate standing.

161. The Note endorsements introduce a corporate stranger (“NovaStar Mortgage, Inc.”), ambiguously identify two payees, and are signed by an unauthorized “Assistant Secretary.”
162. The Assignments of Mortgage recorded July 28, 2023 and October 3, 2023 misidentify a non-existent recordation date (February 28, 2004, a Saturday when the Lexington County Register of Deeds was closed).
163. Under Davis, Kinder, Draper, Arkison, and Nelums, these defects prevent BONY from establishing a real interest in the subject matter of this action or proving itself a person entitled to enforce the Note and Mortgage.
164. At no point has Plaintiff produced the original ‘wet-ink’ Note or filed a sworn affidavit of possession by a qualified custodian as required by *BAC Home Loans Servicing v. Kinder*, 398 S.C. 619 (2012).
165. Possession and negotiation under UCC § 3-301 are conditions precedent to foreclosure standing; mere photocopies or conclusory assertions are legally insufficient.
166. Without standing, BONY’s foreclosure complaint must be dismissed with prejudice.

IX. Defendants Have Established Special Damages for Slander of Title.

167. South Carolina law requires that a plaintiff prove special damages in a slander of title action. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 21–22, 567 S.E.2d 881, 892 (Ct. App. 2002); *Huff v. Jennings*, 319 S.C. 142, 149–51, 459 S.E.2d 886, 891–92 (Ct. App. 1995).

168. Special damages consist of pecuniary losses that result “directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation.” *Huff*, 319 S.C. at 151.
169. Accordingly, Defendants have satisfied the special damages element of their slander of title claim, in addition to establishing publication, falsity, malice, and diminution of value.
170. BONY’s foreclosure proceedings, predicated on void instruments, directly caused Defendants to incur pecuniary losses in the form of costs and attorneys’ fees, thereby meeting the final element required under South Carolina law.
171. South Carolina courts have confirmed that special damages in slander of title cases include the costs of litigation necessary to remove the cloud on title.
172. In *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505, 510 (Ct. App. 2006), the Court of Appeals held that damages for slander of title “include the expense of legal proceedings necessary to remove the cloud cast by defendant’s publication.”
173. Similarly, in *Cason v. Duke Energy Corp.*, 348 S.C. 544, 560 S.E.2d 891, 896 (Ct. App. 2002), the Court recognized that attorney’s fees incurred in quieting title were recoverable as special damages caused by the defendant’s wrongful conduct.
174. Here, BONY’s false Assignments of Mortgage, recorded on July 28, 2023, and October 3, 2023, clouded Plaintiffs’ title with void instruments referencing a non-existent recordation date of February 28, 2004.

175. Plaintiffs were forced to bring this action to remove the cloud and restore clear title.
176. Under *Pye* and *Cason*, the expenses of these proceedings — including the reasonable value of attorney's fees required to prosecute the claim — are recoverable as special damages.

X. Defendants Are Entitled to Litigation Costs and Special Damages for Slander of Title

177. South Carolina law recognizes that special damages are recoverable where a defendant's wrongful conduct clouds title and forces the property owner to incur costs to clear it. *Huff v. Jennings*, 319 S.C. 142, 459 S.E.2d 886, 891 (Ct. App. 1995). Special damages consist of:
- A. "pecuniary losses that result directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation." *Id.* at 151.
178. In addition to the general damages flowing from wrongful foreclosure, Defendants are entitled to recover their direct litigation costs and quantifiable special damages arising from BONY's slander of title.
179. South Carolina courts have confirmed that litigation expenses may be recovered when they are the natural and proximate result of a defendant's wrongful publication of a false claim against real property. *Pye v. Estate of Fox*, 369 S.C.

555, 633 S.E.2d 505, 510 (Ct. App. 2006); *Cason v. Duke Energy Corp.*, 348 S.C. 544, 560 S.E.2d 891, 896 (Ct. App. 2002).

180. Here, BONY's defective Assignments of Mortgage (July 28, 2023 and October 3, 2023) and void Note endorsements introduced false claims of lien and interest into the public record.

181. Plaintiffs were required to file this action, prepare affidavits, obtain certified records, and marshal documentary evidence to defend against BONY's slanderous claims.

A. Recoverable Litigation Costs

182. Under South Carolina law, recoverable litigation costs are distinct from attorney's fees and include direct, out-of-pocket expenses necessary to prosecute an action. Plaintiffs seek reimbursement of the following costs, supported by receipts and affidavits filed contemporaneously with this Motion:

- a. Court filing fees
- b. Service of process fees
- c. Transcript and deposition preparation costs
- d. Transportation and preparation costs
- e. Certified copies and document preparation fees
- f. Title search and abstracting expenses

183. These expenditures were necessary and reasonable to rebut BONY's wrongful filings and defend Plaintiffs' chain of title.

184. B. Special Damages for Slander of Title
185. Plaintiffs further seek special damages equal to the reasonable value of attorney's fees that would have been required to defend against BONY's slander of title and restore marketable title. Although Plaintiffs appear pro se, the measure of special damages is the objective market value of the legal work reasonably required, as recognized in *Cason* and *Huff*. The wrongful recordation of void Assignments and defective endorsements forced Plaintiffs to take measures "reasonably necessary to counteract the publication," *Huff*, 319 S.C. at 151.

C. Relief Requested

186. Accordingly, Plaintiffs respectfully request that this Court, in addition to granting summary judgment in their favor, award them:
- a. Reimbursement of litigation costs as outlined above;
 - b. Special damages in the form of the reasonable value of attorney's fees necessary to clear title and defend against Defendant's wrongful foreclosure filings;
 - c. and Such further relief as this Court deems just and proper.

XI. Defendants' Entitlement To Damages

187. While the primary purpose of this motion is the dismissal of Plaintiff's complaint, the same undisputed facts that divest Plaintiff of standing also

establish its liability on Defendants' counterclaims for wrongful foreclosure and slander of title.

188. Plaintiff initiated a foreclosure it had no legal right to pursue, based on void instruments, thereby slandering Defendants' title to the property.

189. As there is no genuine issue of material fact regarding Plaintiff's liability, Defendants are entitled to summary judgment on their counterclaims and a subsequent hearing on the issue of damages.

Link Each Damage Type to a Cause of Action

190. Each category of damages sought arises from a distinct legal wrong as summarized in the table below, ensuring the requested relief is neither speculative nor duplicative.

Damage Type	Tied Cause of Action	Authority
Actual / Consequential (equity loss, costs)	Wrongful Foreclosure	<i>Haley v. Trees of Brookland</i> , 396 S.C. 45 (2011)
Special (Slander of Title)	Slander of Title	<i>Huff v. Jennings</i> , 319 S.C. 142 (1995)
Restitution	Unjust Enrichment / Constructive Fraud	<i>Canson Enterprises Ltd. v. Boughton & Co.</i> , [1991] 3 S.C.R. 534
Punitive	Willful Misrepresentation & Fiduciary Breach	S.C. Code Ann. § 15-32-520; <i>Lister v. NationsBank</i> , 329 S.C. 133 (1997)

A. Actual and Consequential Damages.

191. For a wrongful foreclosure claim, the goal of damages is to restore the injured party to the position they would have been in but for the defendant's wrongful

conduct. See *Haley v. Trees of Brookland, Inc.*, 396 S.C. 45, 720 S.E.2d 492 (Ct. App. 2011).

192. Accordingly, Defendants are entitled to recover the value of lost equity in the property, as well as any other payments, wrongful fees, or costs directly and consequentially resulting from Plaintiff's unlawful actions.
193. The equitable scope of damages recoverable under South Carolina law aligns with the reasoning of the Supreme Court of Canada in *Canson Enterprises Ltd. v. Boughton & Co.*, [1991] 3 S.C.R. 534, which recognized full compensation for both direct and consequential losses arising from a fiduciary's breach. This principle supports Defendants' request for comprehensive damages, including restitution and consequential losses flowing from BONY's wrongful conduct.

B. Special Damages for Slander of Title.

194. Defendants are entitled to recover special damages, which include the pecuniary losses incurred as a direct result of the disparagement of their title.
195. Critically, these damages include "the expense of measures reasonably necessary to counteract the publication, including litigation." *Huff v. Jennings*, 319 S.C. 142, 151, 459 S.E.2d 886, 892 (Ct. App. 1995).
196. The costs and fees incurred in defending this action and prosecuting the counterclaims to quiet title and remove the cloud created by Plaintiff's void instruments are therefore recoverable as a matter of law.

C. Punitive Damages.

197. An award of punitive damages is appropriate where a party proves by clear and convincing evidence that its harm was the result of the defendant's

willful, wanton, or reckless conduct. S.C. Code Ann. § 15-32-520; *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997).

198. Here, Plaintiff's conduct—initiating and pursuing foreclosure based on facially void assignments that reference a non-existent recordation and a mortgage that was itself defectively executed—constitutes a conscious failure to exercise due care and a reckless disregard for Defendants' property rights.
199. This conduct justifies an award of punitive damages, the determination of which is reserved for the trier of fact.

D. Plaintiffs further seek restitution of all sums paid under the NovaStar Home Mortgage, Inc. Promissory Note and Mortgage, and under subsequent void Assignments of Mortgage executed in favor of The Bank of New York Mellon.

200. Because these instruments were void ab initio, Plaintiff had no lawful right to collect payments.
201. Defendants are therefore entitled to restitution of all payments made — including principal, interest, escrow, insurance, taxes, and fees — together with prejudgment interest, as special damages and equitable relief under South Carolina law.

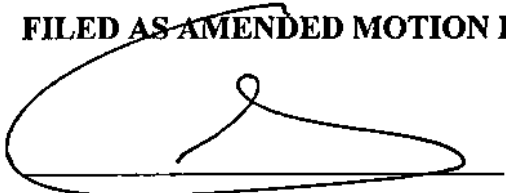
CONCLUSION

Because Plaintiff never held a valid interest in the Note or Mortgage and has failed to meet statutory fiduciary-proof obligations, no genuine issue of material fact exists. Defendants are entitled to judgment as a matter of law.

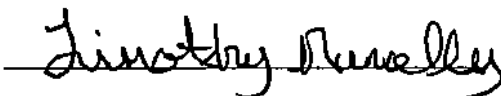
WHEREFORE, Defendants respectfully move this Honorable Court to:

1. Grant summary judgment in favor of Defendants;
2. Dismiss Plaintiff's foreclosure complaint with prejudice;
3. Declare the Mortgage and Assignments void *ab initio*;
4. Quiet title to Defendants;
5. Find pursuant to S.C. Code Ann. § 62-7-801 et seq. and S.C. Code Ann. § 36-3-301 that Plaintiff lacks standing to enforce or foreclose; and
6. Grant such further relief as this Court deems just and proper.
7. Schedule a separate evidentiary hearing, if necessary, on Defendants' damages pursuant to Section XI of this Motion.
8. **For the record, Defendants note that Cases 2024-CP-32-01094 and 2025-CP-32-0521 arise from the same operative facts, documents, and parties, and are therefore resolved herein by this unified ruling to ensure procedural efficiency and consistency of judgment.**

FILED AS AMENDED MOTION FOR SUMMARY JUDGMENT



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Date: 11.18.2025

Pro Se Defendants

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case Nos. 2024-CP-32-01094 / 2025-CP-32-0521

MARK-ANTHONY NUNNALLY and TIMOTHY-ALLEN NUNALLY,
Defendants,

v.

THE BANK OF NEW YORK MELLON, f/k/a The Bank of New York, as Successor in
Interest to JP Morgan Chase Bank, N.A., as Trustee for NovaStar Mortgage Funding Trust,
Series 2004-1,
Plaintiff.

Exhibit H-1

**AFFIDAVIT OF FIDUCIARY PROOF AND TRUSTEE NON-
PERFORMANCE**

I, Mark-Anthony Nunnally, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

I am one of the Defendants in the above-captioned action. I am a recorded owner of the real property located at 1759 Willow Creek Drive, Columbia, South Carolina 29212, and a beneficiary of the Estate of Carl A. Nunally, Sr. I am personally familiar with the facts stated herein.

2. Trustee's Fiduciary Obligations.

The Plaintiff, The Bank of New York Mellon, as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, is required to maintain and, upon demand, produce fiduciary records including the executed Pooling and Servicing Agreement ("PSA"), the Mortgage Loan Schedule, custodial delivery receipts, and all servicing and sub-servicing agreements. These documents are necessary to verify the Plaintiff's legal

authority and standing under S.C. Code Ann. § 62-7-801 et seq., and N.Y. Estates, Powers & Trusts Law § 7-2.4.

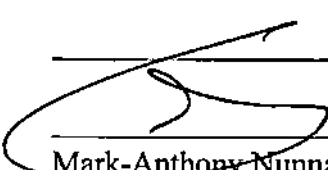
3. Non-Performance and Failure of Proof.

Despite formal requests and opportunities during discovery and court proceedings, the Plaintiff has failed to produce any of the above-referenced fiduciary documents. No executed PSA, custodial receipt, or loan schedule identifying the subject note has been produced. Plaintiff has also failed to demonstrate compliance with 26 U.S.C. § 860G(a)(4) governing REMIC timing requirements.

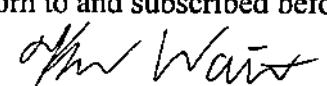
4. Resulting Legal Effect.

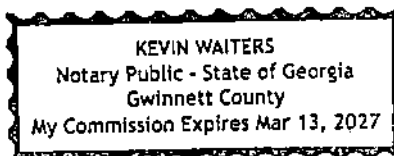
Because Plaintiff has failed to discharge its fiduciary duties and has not demonstrated lawful possession of the Note or Mortgage, it lacks standing to maintain this action. Any purported assignment or enforcement action taken by Plaintiff is therefore void ab initio under N.Y. EPTL § 7-2.4, and unenforceable under South Carolina law.

Further Affiant sayeth naught.


Mark-Anthony Nunnally
Defendant / Beneficiary

Sworn to and subscribed before me this 5th day of November, 2025.


Notary Public for ~~South Carolina~~ Georgia
My Commission Expires: 03/13/2027



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case Nos. 2024-CP-32-01094 / 2025-CP-32-0521

MARK-ANTHONY NUNNALLY and TIMOTHY-ALLEN NUNALLY,
Defendants,

v.

THE BANK OF NEW YORK MELLON, f/k/a The Bank of New York, as Successor in Interest
to JP Morgan Chase Bank, N.A., as Trustee for NovaStar Mortgage Funding Trust, Series 2004-
1,
Plaintiff.

Exhibit H-1

**AFFIDAVIT OF FIDUCIARY PROOF AND TRUSTEE NON-
PERFORMANCE**

I, Timothy-Allen Nunally, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

I am one of the Defendants in the above-captioned action. I am the duly appointed
Personal Representative of the Estate of Carl A. Nunally, Sr., and a recorded co-owner of
the property located at 1759 Willow Creek Drive, Columbia, South Carolina 29212.

2. Trustee's Fiduciary Obligations.

The Plaintiff, The Bank of New York Mellon, as Trustee for NovaStar Mortgage Funding
Trust, Series 2004-1, was obligated to maintain, and upon demand produce, fiduciary
records establishing the trust's lawful ownership of the subject loan, including the Pooling
and Servicing Agreement ("PSA"), Mortgage Loan Schedule, custodial delivery receipts,
and all related trust documentation. These are required under S.C. Code Ann. § 62-7-801
et seq., § 62-7-813, and N.Y. EPTL § 7-2.4.

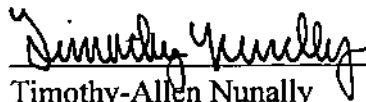
3. Non-Performance and Failure of Proof.

Plaintiff has not produced the PSA, custodial receipts, or any authenticated trust documentation showing that the subject mortgage loan was lawfully transferred to the trust prior to its closing date. Plaintiff has likewise failed to provide any fiduciary accounting or trust compliance documents despite repeated opportunities.

4. Resulting Legal Effect.

The Plaintiff's failure to provide fiduciary proof constitutes a breach of its statutory trustee duties and destroys standing. Any foreclosure or enforcement effort by the Plaintiff is therefore void ab initio, and the instruments upon which it relies are of no legal effect under S.C. law, N.Y. EPTL § 7-2.4, and 26 U.S.C. § 860G(a)(4).

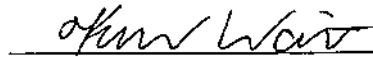
Further Affiant sayeth naught.



Timothy-Allen Nunally

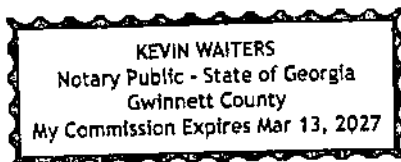
Personal Representative of the Estate of Carl A. Nunally, Sr.

Sworn to and subscribed before me this 5th day of November, 2025.



Notary Public for ~~South Carolina~~ Georgia

My Commission Expires: 03/13/2027



STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case Nos. 2024-CP-32-01094 / 2025-CP-32-0521

MARK-ANTHONY NUNNALLY and TIMOTHY-ALLEN NUNALLY,
Defendants,

v.

THE BANK OF NEW YORK MELLON, f/k/a The Bank of New York, as Successor in Interest
to JP Morgan Chase Bank, N.A., as Trustee for NovaStar Mortgage Funding Trust, Series 2004-
1,
Plaintiff.

EXHIBIT J-1

VERIFIED AFFIDAVIT OF DAMAGES

I, Mark-Anthony Nunnally, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

I am a Defendant in the above-captioned case and a recorded owner of the real property
located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. I make this
affidavit in support of Defendants' Motion for Summary Judgment and request for
damages.

2. Background and Wrongful Conduct.

The Plaintiff, The Bank of New York Mellon, initiated foreclosure proceedings without
lawful authority, relying on void instruments and defective assignments. Plaintiff's
actions were undertaken willfully and recklessly, resulting in financial harm, reputational
damage, and emotional distress.

3. Itemized Damages.

Based on my records and personal knowledge, I have incurred the following losses directly caused by Plaintiff's unlawful conduct:

- o Legal and filing costs: \$ 556.⁰⁰
- o Property equity loss: \$ 80,000.⁰⁰
- o Title and document correction costs: \$ 185.⁰⁰
- o Emotional distress and loss of enjoyment of property: \$ 5600.⁰⁰
- o Travel, postage, and administrative expenses: \$ 4,200.⁰⁰
- o Other special damages: \$ 1400.⁰⁰
- Total Actual Damages: \$ 91,491.⁰⁰

4. Punitive Damages.

Plaintiff's conduct constitutes willful, wanton, and reckless disregard for Defendants' rights, warranting punitive damages under S.C. Code Ann. § 15-32-520 and *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997). The amount of punitive damages should be determined at a separate evidentiary hearing following a finding of liability.

5. Verification.

I verify that the foregoing statements are true and correct to the best of my knowledge and belief.

Further Affiant sayeth naught.

Mark-Anthony Nunnally
Defendant / Property Owner

Sworn to and subscribed before me this 5th day of November, 2025.

Kevin Waiters
Notary Public for ~~South Carolina~~ Georgia
My Commission Expires: 03/13/2027

KEVIN WAITERS
Notary Public - State of Georgia
Gwinnett County
My Commission Expires Mar 13, 2027

VERIFIED AFFIDAVIT OF DAMAGES

I, Timothy-Allen Nunally, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

I am a Defendant in the above-captioned case, the duly appointed Personal Representative of the Estate of Carl A. Nunally, Sr., and a recorded co-owner of the property located at 1759 Willow Creek Drive, Columbia, South Carolina 29212.

2. Background and Wrongful Conduct.

The Plaintiff, The Bank of New York Mellon, acting as Trustee for the NovaStar Mortgage Funding Trust, Series 2004-1, initiated a foreclosure action predicated on void instruments and defective assignments executed long after the Trust's closing date. Such conduct has directly caused injury to the Estate and to me individually.

3. Itemized Damages.

Based on my personal knowledge and records, the following losses have been sustained:

- o Legal and court-related costs: \$ 556.⁰⁰
- o Loss of property equity or value: \$ 80,000.⁰⁰
- o Costs to correct title and record documents: \$ 185.⁰⁰
- o Emotional distress and reputational harm: \$ 5600.⁰⁰
- o Administrative and estate-related expenses: \$ 4200.⁰⁰
- o Other special damages: \$ 1,400.⁰⁰
- Total Actual Damages: \$ 91,491.⁰⁰

4. Punitive Damages.

Plaintiff's actions were willful, wanton, and reckless, violating its fiduciary obligations under S.C. Code Ann. § 62-7-801 et seq. and *Lister v. NationsBank*. Punitive damages should be assessed at a separate hearing to deter similar misconduct.

5. Verification.

I verify that the foregoing statements are true and correct to the best of my knowledge and belief.

Further Affiant sayeth naught.

Timothy Allen Nunally
Timothy-Allen Nunally

Personal Representative of the Estate of Carl A. Nunally, Sr.

Sworn to and subscribed before me this 5th day of November, 2025.

Kevin Waiters
Notary Public for ~~South Carolina~~ Georgia
My Commission Expires: 03/13/2027

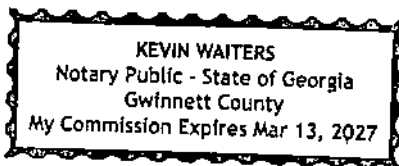


EXHIBIT LIST

Defendants' Amended Motion for Summary Judgment

Case Nos. 2024-CP-32-01094 / 2025-CP-32-0521

Court of Common Pleas, Lexington County, South Carolina

Ex. No.	Title / Description	Authentication Basis	Admissibility & Purpose
A	<i>Original Mortgage and Note</i>		Demonstrates facial
	(2004) – Copy of the purported NovaStar Home Equity Loan Note and Mortgage executed in 2004.	Certified public record under Rule 902(4) , SCRE .	execution defects (single witness, improper acknowledgment); relevant under § 30-5-30.
B	<i>Defective Assignment of Mortgage (2023)</i> – Recorded assignment referencing non-existent “Feb 28 2004” date.	Certified copy from Register of Deeds (Rule 902(4)).	Proves void transfer and defective recordation under § 29-3-330 and § 30-7-10.
	<i>Pooling & Servicing Agreement (PSA) Excerpt</i> – SEC-filed document showing 2004 closing date.	Public SEC filing (Rule 201, Judicial Notice).	Confirms post-closing transfer violation under N.Y. EPTL § 7-2.4 and 26 U.S.C. § 860G(a)(4).

Ex. No.	Title / Description	Authentication Basis	Admissibility & Purpose
D	<i>Deeds of Distribution (Sept 2023)</i> – Certified deeds conveying title from the Estate.	Certified public record (Rule 902(4)).	Establishes Defendants' superior recorded title under § 30-7-10.
E	<i>Affidavit of Acknowledgment & Acceptance (Dec 2023)</i> – Beneficiaries' sworn acceptance of conveyance.	Notarized affidavit (Rule 902(8)).	Corroborates bona fide ownership; admissible under Rule 803(15).
F	<i>Mortgage Securitization Audit Report</i> – Expert analysis of NovaStar REMIC violations.	Affidavit of preparer (Rule 901(b)(1)).	Summary evidence under Rule 1006 and Rule 702; supports REMIC-timing argument.
G	<i>Certified Title Abstract & Recording History</i> – Chronological record of all filings affecting property.	Certified by Register of Deeds (Rule 902(4)).	Confirms priority and chain of title; relevant under § 30-7-10.
H	<i>Affidavit of Fiduciary Proof & Trustee Non-Performance</i> – Sworn statement of BONY's	Notarized affidavit (Rule 902(8)).	Admissible under Rule 56(e), SCRCP; supports lack of standing and fiduciary

Ex. No.	Title / Description	Authentication Basis	Admissibility & Purpose
	failure to produce trust documents.		breach.
I	<i>Certified Mail Receipts & Proof of Service</i> – Mailing records showing delivery of pleadings to opposing counsel.	Business records, self-authenticating (Rule 902(11)).	Demonstrates compliance with Rule 5(b) , SCRCP; procedural integrity.
J	<i>Verified Affidavit of Damages</i> – Sworn statement detailing losses, fees, and punitive-damage basis.	Notarized affidavit (Rule 902(8)).	Admissible under Rule 56(e) ; supports damages phase for wrongful foreclosure and slander of title.

Exhibit A – Original Mortgage and Note (2004)

Description: Copy of the purported NovaStar Home Equity Loan Note and Mortgage executed in 2004.

Authentication: Self-authenticating under Rule 902(4), SCRE, as certified public record; alternatively authenticated by affidavit of record custodian.

Admissibility: Demonstrative of facial execution defects (single witness, improper acknowledgment) and for comparison with Plaintiff's alleged assignments.

4

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

NOTEJANUARY 30, 2004
[Date]CLEVELAND,
[City]OHIO
[State]1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

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

I understand that the Lender may transfer this Note. The 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 6.990%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 payment on the 1ST day of each month beginning on MARCH 1, 2004.

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 FEBRUARY 1, 2024, 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

P.O. BOX 808911

KANSAS CITY, MO 64184-8911

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$941.26.

4. 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 the Note.

I may make a full Prepayment or partial Prepayments without paying a 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 the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. 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 which 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge 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 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(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.

7. 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.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or 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.

8. 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.

9. 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.

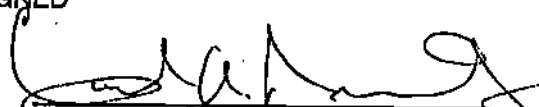
10. UNIFORM SECURED NOTE

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 which might result if I do not keep the promises which 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 are described as follows:

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.

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

 (Seal)
CARL A. NUNALLY

PAY TO THE ORDER OF:
JPMorgan Chase Bank, as Trustee*
WITHOUT RECOURSE
New York Mortgage, Inc.


David A. Pazgan, Sr., Vice President

ALLONGE

This Allonge is to be made a part of the Note:

Dated: January 30, 2004

Borrower: Carl A. Nunally

Property Address: 1759 Willow Creek Drive, Columbia, SC 29212

Original Lender: Novastar Home Mortgage, Inc., A Virginia Corporation

Loan #: 03-A37223

Loan Amount: \$ 121,500.00

Interest Rate: 6.990 %

Maturity Date: February 1, 2024

Pay to the Order of:

Novastar Mortgage Inc., A Virginia Corporation

JPMorgan Chase Bank, as Trustee*

Without Recourse:

Novastar Home Mortgage, Inc., A Virginia Corporation

By: 
Shannon Skonieczka
Assistant Secretary

* JPMorgan Chase Bank, as Trustee of the NovaStar Mortgage Funding Trust, Series 2004-1, relating to the NovaStar Home Equity Loan Asset Pooled Certificate Series 2004-1

Loan # 0071322440

ALLONGE TO NOTE

This endorsement is a permanent part of the Note in the amount of \$121,500.00.

NOTE DATE: 01/30/2004

BORROWER NAME: CARL A NUNALLY

PROPERTY: 1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212

PAY TO THE ORDER OF:

WITHOUT RECOURSE:

JPMORGAN CHASE BANK N.A. F/K/A JPMORGAN CHASE BANK, AS TRUSTEE OF
THE NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1 RELATING TO THE
NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES SERIES 2004-1



Signer: Kathy Tyler
Title: Vice President

After Recording Return To:
 NOVASTAR MORTGAGE, INC.
 ATTN: COLLATERAL CONTROL
 6200 OAK TREE BLVD. 3RD FLOOR
 CLEVELAND, OH 44131

This instrument was prepared by:

2004
 14668

Title Order No.: NUNALLY
 Escrow No.: NUNALLY
 LOAN #: 03-A37223

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100080190020066015

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 JANUARY 30, 2004, together with all Riders to this document.

(B) "Borrower" is CARL A. NUNALLY AND FRANKIE L. NUNALLY.

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is NOVASTAR HOME MORTGAGE, INC..

Lender is a CORPORATION,
 THE STATE OF VIRGINIA.
 LEXINGTON, SC 29073.

organized and existing under the laws of
 Lender's address is 104 ROBIN ROAD,

Lender is the mortgagee under this Security Instrument.

(E) "Note" means the promissory note signed by Borrower and dated JANUARY 30, 2004. The Note states that Borrower owes Lender *****ONE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND NO/100 ***** Dollars (U.S. \$121,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2024.

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

(G) "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.

(H) "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]:

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §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.

(Q) "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 MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the COUNTY [Type of Recording Jurisdiction] of LEXINGTON

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. (STATE: SOUTH CAROLINA, COUNTY: LEXINGTON)
APN #: 002734-01-003

which currently has the address of 1759 WILLOW CREEK DRIVE, COLUMBIA,

[Street] [City]

South Carolina 29212 ("Property Address"):
[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, 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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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.

by Lender as payment under the Note or this 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 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

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.

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

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 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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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

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.

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.

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

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 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 pay any recordation costs. Lender may

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 § 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.

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:

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA

County of Richland

The foregoing instrument was acknowledged before me this 1/30/04 (date)
by Brian L. Roger

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

My commission expires: 2/21/05

[Signature]
witness

EXHIBIT A

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on a plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993 and recorded in Plat Book 262 at page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.

This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994 and recorded in Deed Book 5145 at page 97, Lexington County records.

Exhibit B – Defective Assignment of Mortgage (Recorded 2023)

Description: Copy of Assignment of Mortgage into NovaStar Mortgage Funding Trust 2004-1, referencing non-existent recording date “February 28, 2004.”

Authentication: Certified copy from Lexington County Register of Deeds under Rule 902(4), SCRE.

Admissibility: Material evidence of void transfer and defective recordation under S.C. Code Ann. § 29-3-330 and § 30-7-10.

5

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants’ possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

When Recorded Return To:
PHH Mortgage
C/O Nationwide Title Clearing, LLC
2100 Alt. 19 North
Palm Harbor, FL 34683

2023026395 BK: 21067 PG: 4146 - 4146
MORTGAGE ASST
Rec: \$10.00 Cnty: \$0.00 State: \$0.00
July 28, 2023 10:53:48 AM
FILED IN LEXINGTON COUNTY, SC

1 PGS

Tina Querry

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Mortgage together with all liens, and any rights due or to become due thereon to THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1, NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-1, WHOSE ADDRESS IS C/O PHH MORTGAGE CORPORATION, 5720 PREMIER PARK DRIVE, WEST PALM BEACH, FL 33407, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 01/30/2004, made by CARL A. NUNALLY AND FRANKIE L. NUNALLY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS and recorded 02/28/2004 in the Recorder or Registrar of Deeds of LEXINGTON County, South Carolina in Book 9841 and Page 4.

Dated this 28th day of July in the year 2023

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS

Susan Hicks

SUSAN HICKS
VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

Alan Baker

ALAN BAKER
WITNESS

Tracy Rogers

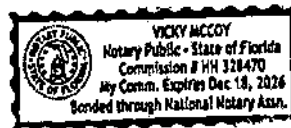
TRACY ROGERS
WITNESS

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization on this 28th day of July in the year 2023, by Susan Hicks as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Vicky McCoy

VICKY MCCOY
COMMISSION EXPIRES: 12/18/2026



Document Prepared By: Jennifer Zak/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
Recording Requested By: PHH Mortgage, C/O Nationwide Title Clearing, LLC 2100 Alt. 19 North, Palm Harbor, FL 34683
PHH02 438589022 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
OCWEN-NVLER MIN 100080190020066015 MERS PHONE 1-888-679-6377 MERS Mailing Address: P.O. Box 2026, Flint, MI 48501-2026 DOCR T282307-09:07:46 [C-1] EFRMSCI



D0101760322

When Recorded Return To:
PHH Mortgage
C/O Nationwide Title Clearing, LLC
2100 Alt. 19 North
Palm Harbor, FL 34683

2023035209 BK: 21076 PG: 4337 - 4337 1 PGS
MORTGAGE ASST
Rec: \$17.00 Crty: \$0.00 State: \$0.00
October 3, 2023 10:34:14 AM
FILED IN LEXINGTON COUNTY, SC *True Query*

ASSIGNMENT OF MORTGAGE

CORRECTIVE ASSIGNMENT OF MORTGAGE: TO CORRECT MORTGAGE RECORDING REFERENCE. ORIGINAL ASSIGNMENT OF MORTGAGE RECORDED ON 07/28/2023 IN BK: 21067 PG: 4146.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Mortgage with all liens, and any rights due or to become due thereon to THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1, NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-1, WHOSE ADDRESS IS C/O PHH MORTGAGE CORPORATION, 5720 PREMIER PARK DRIVE, WEST PALM BEACH, FL 33407, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 01/30/2004, made by CARL A. NUNALLY AND FRANKIE L. NUNALLY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS and recorded 02/28/2004 in the Recorder or Registrar of Deeds of LEXINGTON County, South Carolina in Book 9041 and Page 4.

Dated on 9/29/2023 (MM/DD/YYYY)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS

By: *Mackenzie Eichen*

Mackenzie Eichen
VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

Signed and Acknowledged
in the Presence of:

Angela Pavao
Angela Pavao
Witness 1

Lauren Astle
Lauren Astle
Witness 2

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization on 9/29/2023 (MM/DD/YYYY), by Mackenzie Eichen as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Julie Martens
Julie Martens
Notary Public - STATE OF FLORIDA
Commission expires: 05/22/2026



JULIE MARTENS
NOTARY PUBLIC
STATE OF FLORIDA
COMMS HM 243030
EXPIRES: MAY 22, 2026

Recording Requested By: PHH Mortgage, C/O Nationwide Title Clearing, LLC 2100 Alt. 19 North, Palm Harbor, FL 34683

PHH02 438983506 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
OCWEN-NVLER (RN) MIN 100030190020066015 MERS PHONE 1-888-679-6377 MERS Mailing Address:
P.O. Box 2026, Flint, MI 48501-2026 DOCR T142309-04:00:20 [C-1] FRMSCI



D0102524191

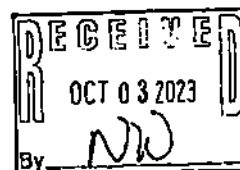


**Exhibit C – Pooling and Servicing Agreement (PSA) Excerpt and Closing
Date**

Description: Excerpts showing the Trust's closing date in 2004 and restrictions on post-closing asset transfers.

Authentication: True and correct excerpt from SEC Form 8-K filing (public record).

Admissibility: Judicially noticeable public filing; relevant under Rule 401, SCRE, and corroborative of violations of N.Y. EPTL § 7-2.4 and 26 U.S.C. § 860G(a)(4).

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Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

EX-4.1 4 dex41.htm POOLING AND SERVICING AGREEMENT DATED AS OF MARCH 1, 2004

EXECUTION COPY

NOVASTAR MORTGAGE FUNDING CORPORATION,
as Company

R. 580

NOVASTAR MORTGAGE, INC.,
as Servicer and as Seller

WACHOVIA BANK, NATIONAL ASSOCIATION
as Custodian

and

JPMORGAN CHASE BANK,
as Trustee

POOLING AND SERVICING AGREEMENT

Dated as of March 1, 2004

NovaStar Mortgage Funding Trust, Series 2004-1

NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1

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JUSTIA

AMENDMENT NO. 1 TO THE POOLING AND SERVICING AGREEMENT

EX-4.1 2 dex41.htm AMENDMENT NUMBER 1 TO THE POOLING AND SERVICING AGREEMENT
Amendment Number 1 to the Pooling and Servicing Agreement

Exhibit 4.1

AMENDMENT NO. 1 TO THE POOLING AND SERVICING AGREEMENT

Amendment No. 1, dated as of August 1, 2005 (the "Amendment"), to the Pooling and Servicing Agreement (the "Agreement") dated as of March 1, 2004, by and among NovaStar Mortgage Funding Corporation (the "Company"), NovaStar Mortgage, Inc., as seller and servicer (the "Seller" or "Servicer"), Wachovia Bank, National Association, as custodian (the "Custodian") and JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), as trustee (the "Trustee"). Capitalized terms used and not defined herein shall have the meaning set forth in the Agreement and Appendix A thereto.

WHEREAS the parties hereto have entered into the Agreement;

WHEREAS the parties hereto now wish to amend certain provisions in the Agreement pursuant to Section 12.01 of the Agreement; and

WHEREAS the Trustee shall not consent to this Amendment to the Agreement unless it shall have first received an Opinion of Counsel, to the effect that (a) this Amendment (i) will not result in the imposition of a tax on any REMIC created hereunder constituting part of the Trust Fund pursuant to the REMIC Provisions or (ii) cause any REMIC created hereunder constituting part of the Trust to fail to qualify as a REMIC at any time that any Certificates are outstanding and that the Amendment is being made in accordance with the terms of the Agreement and (b) any applicable requirements and conditions set forth in the Agreement with respect to the adoption of amendments thereto have been complied with.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the parties hereto agree to amend the Agreement pursuant to Section 12.01 of the Agreement and restate certain provisions thereof as follows:

1. The Agreement is hereby amended to add a form of the Advance Facility Notice as Exhibit L (in the form attached hereto as Exhibit L) and a form of the written notice to be provided to the Trustee of an Advance or Servicing Advance pursuant to Section 3.26 of the Agreement as Exhibit M (in the form attached hereto as Exhibit M).

2. MI Claim Payment Advances.

(a) The following paragraph is hereby inserted between the current second and third paragraphs of Section 3.13(a) of the Pooling and Servicing Agreement;

In the event that a Mortgage Loan would be properly classified as a Liquidated Mortgage Loan but for the fact that not all MI Insurance Proceeds claimed under the related MI Policy have been received, the Servicer may, from its own funds, make an advance (an "MI Claim Payment Advance") to the Collection Account in an

amount not to exceed the claimed amount of such MI Insurance Proceeds not yet received. The Servicer shall not make any MI Claim Payment Advance with respect to a claim under an MI Policy (i) if an MI Insurer Insolvency Event has occurred and is continuing with respect to the related MI Insurer, or (ii) to the extent that the MI Insurer has indicated it will not pay the full amount of the claim. In the event that the MI Claim Payment Advance equals the claimed amount on such MI Policy, then upon the deposit of such MI Claim Payment Advance into the Collection Account the related Mortgage Loan shall be considered a "Liquidated Mortgage Loan."

(b) Clause (a)(vi) of Section 3.07(a) of the Pooling and Servicing Agreement is hereby amended to read as follows:

(vi) to reimburse the Servicer or any Subservicer from Insurance Proceeds or Liquidation Proceeds relating to a particular Mortgage Loan for amounts expended by the Servicer or such Subservicer pursuant to Section 3.13, which amounts were expended (x) in good faith in connection with the restoration of the related Mortgaged Property which was damaged by the uninsured cause, (y) in connection with the liquidation of such Mortgage Loan, or (z) with respect to an MI Claim Payment Advance made by the Servicer with respect to such Mortgage Loan; provided, however, that reimbursements pursuant to clause (z) may only be made from MI Insurance

Proceeds actually paid by the MI Insurer under the MI Policy related to such Mortgage Loan;

(c) The following definition of MI Claim Payment Advance is hereby added to Appendix A to the Pooling and Servicing Agreement and the definitions of Liquidation Proceeds, Nonrecoverable Advance, Realized Loss and Subsequent Recovery set forth in Appendix A to the Pooling and Servicing Agreement are hereby amended to read as follows:

"Liquidation Proceeds": Proceeds (including Insurance Proceeds and any MI Claim Payment Advance) received in connection with the liquidation of any Mortgage Loan or related REO Property.

"MI Claim Payment Advance": As defined in Section 3.13(a).

"Nonrecoverable Advance": With respect to any Mortgage Loan:

(x) any Advance (other than an MI Claim Payment Advance) (i) which was previously made or is proposed to be made by the Servicer; and (ii) which, in the good faith judgment of the Servicer, will not or, in the case of a proposed Advance, would not, be ultimately recoverable by the Servicer from Liquidation Proceeds, Repurchase Price or future payments on such Mortgage Loan; and

(y) upon the final payment by the MI Insurer under an MI Policy for a Mortgage Loan with respect to which the Servicer has made an MI Claim Payment Advance, the amount, if any, by which an MI Claim Payment Advance made by the Servicer exceeds, the amount actually received as MI Insurance Proceeds from the related MI Insurer on account of the related claim; provided,

2

however that if an MI Insurer Insolvency Event occurs after the MI Claim Payment Advance has been made by the Servicer and before the full amount thereof has been reimbursed to the Servicer from the related MI Insurance Proceeds, then any remaining, unreimbursed amount shall be considered a Nonrecoverable Advance as of the date of the MI Insurer Insolvency Event; provided, further, however, that if a Nonrecoverable Advance has been reimbursed to the Servicer and the MI Insurer that was subject to the MI Insurer Insolvency Event thereafter makes payment on account of the applicable MI Policy, such payments shall be deemed Subsequent Recoveries.

"Realized Loss": With respect to each Mortgage Loan (or REO Property) as to which a Cash Liquidation or REO Disposition has occurred, an amount (not less than zero) equal to (i) the Principal Balance of the Mortgage Loan (or REO Property) as of the date of Cash Liquidation or REO Disposition, plus (ii) interest (and REO Imputed Interest, if any) at the Net Mortgage Rate from the Due Date as to which interest was last paid or advanced to Certificateholders up to the last day of the month in which the Cash Liquidation (or REO Disposition) occurred on the Principal Balance of such Mortgage Loan (or REO Property) outstanding during each Due Period that such interest was not paid or advanced, minus (iii) Net Liquidation Proceeds (after giving effect to coverage provided by any MI Claim Payment Advance and any MI Policy), if any, received with respect to such Cash Liquidation (or REO Disposition), minus the portion thereof reimbursable to the Servicer or any Subservicer with respect to related Advances or expenses as to which the Servicer or Subservicer is entitled to reimbursement thereunder but which have not been previously reimbursed, minus (iv) with respect to a Mortgage Loan on which a MI Claim Payment Advance has been made, the amount, if any, by which the MI Claim Payment Advance exceeds the related amount of MI Insurance Proceeds paid by the MI Insurer on account of the related Mortgage Loan upon the final payment by such MI Insurer (including payments made on or after the date on which such Mortgage Loan became a Liquidated Loan). With respect to each Mortgage Loan which has become the subject of a Deficient Valuation, the difference between the Principal Balance of the Mortgage Loan outstanding immediately prior to such Deficient Valuation and the Principal Balance of the Mortgage Loan as reduced by the Deficient Valuation. With respect to each Mortgage Loan which has become the object of a Debt Service Reduction, the amount of such Debt Service Reduction.

"Subsequent Recovery": With respect to any Mortgage Loan that had previously been the subject of a Realized Loss, (a) any principal amount subsequently received in connection with such Mortgage Loan, plus (b) with respect to a Mortgage Loan on which a MI Claim Payment Advance has been made, the amount, if any, by which the related amount of MI Insurance Proceeds exceeds such MI Claim Payment Advance, plus (c) with respect to a Nonrecoverable Advance relating to a MI Insurer Insolvency Event, the amount, if any, by which the related MI Insurer subsequently pays in respect of such Nonrecoverable Advance.

3. **Condition to effectiveness**. As a condition to the effectiveness of this Amendment, an Opinion of Counsel satisfying the requirements of Section 12.01 of the Agreement has been received by the Parties hereto.

4. Effect of Amendment. This Amendment to the Agreement shall be effective and the Agreement shall be deemed to be modified and amended in accordance herewith on the Distribution Date on the date on which the Trustee receives an executed copy of this Amendment. This Amendment, once effective, shall be effective as of the date first set forth above. The respective rights, limitations, obligations, duties, liabilities and immunities of the Company, the Seller, the Servicer, the Custodian and the Trustee shall hereafter be determined, exercised and enforced subject in all respects to such modifications and amendments, and all the terms and conditions of this Amendment shall be and be deemed to be part of the terms and conditions of the Agreement for any and all purposes. The Agreement, as amended hereby, is hereby ratified and confirmed in all respects.

5. The Agreement in Full Force and Effect as Amended. Except as specifically amended hereby, all the terms and conditions of the Agreement shall remain in full force and effect and, except as expressly provided herein, the effectiveness of this Amendment shall not operate as, or constitute a waiver or modification of, any right, power or remedy of any party to the Agreement. All references to the Agreement in any other document or instrument shall be deemed to mean the Agreement as amended by this Amendment.

6. Counterparts. This Amendment may be executed by the Parties in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. This Amendment shall become effective when counterparts hereof executed on behalf of such Party shall have been received.

7. Governing Law. This Amendment shall be construed in accordance with and governed by the laws of the State of New York applicable to agreements made and to be performed therein.

IN WITNESS WHEREOF, the Seller, the Servicer, the Company, the Trustee and the Custodian, have caused this Amendment to be duly executed by their officers thereunto duly authorized, all as of the day and year first above written.

NOVASTAR MORTGAGE
FUNDING CORPORATION,
as Company

By: /s/ Matt Kaltenrieder

Name: Matt Kaltenrieder

Title: Vice President

NOVASTAR MORTGAGE, INC.,
as Servicer and as Seller

By: /s/ Matt Kaltenrieder

Name: Matt Kaltenrieder

Title: Vice President

WACHOVIA BANK, NATIONAL
ASSOCIATION,
as Custodian

By: /s/ Sandy Berry

Name: Sandy Berry

Title: Vice President

JPMORGAN CHASE BANK,
NATIONAL ASSOCIATION
as Trustee

By: /s/ Andrew M. Cooper

Name: Andrew M. Cooper

Title: Assistant Vice President

[Signature Page for Amendment No. 1 to the Pooling and Servicing Agreement]

Exhibit L

FORM OF ADVANCE FACILITY NOTICE

[date]

JPMorgan Chase Bank, National Association

4 New York Plaza, 6th Floor

New York, NY 10004-2477

Attention: Worldwide Securities Services/ Global Debt - NovaStar Series 2004-1

R. 590

Re: Pooling and Servicing Agreement, dated as of March 1, 2004, by and among NovaStar Mortgage Funding Corporation (the "Company"), NovaStar Mortgage, Inc., as seller and servicer (the "Seller" or "Servicer"), Wachovia Bank, National Association, as custodian (the "Custodian") and JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), as trustee (the "Trustee") as amended by Amendment No. 1, dated as of August 1, 2005 (as amended, the "Agreement")

In accordance with Section 3.26(a) of the above-captioned Agreement, the undersigned hereby notifies the Trustee of the following information:

(a) The Servicer has entered into an Advance Facility.

(b) The Advancing Person is [_____].

(c) [_____], as the Servicer's Assignee, has the right to make withdrawals from the Collection Account subject to Section 3.26(b) of the Agreement to reimburse previously unreimbursed Advances and/or Servicing Advances pursuant to Section 3.07 of the Agreement.

[Remainder of Page Intentionally Left Blank]

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Agreement.

NOVASTAR MORTGAGE INC.

as Servicer

By: _____

Name: _____

Title: _____

[_____]

as Advancing Person

By: _____

Name:

Title:

The undersigned hereby acknowledges receipt of this notice pursuant to Section 3.26(a) of the Agreement.

ACKNOWLEDGED AND AGREED:

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, not in its individual capacity but solely as Trustee

By: _____

Name:

Title:

Exhibit M

FORM OF WRITTEN NOTICE TO THE TRUSTEE

JPMorgan Chase Bank, National Association

4 New York Plaza, 6th Floor

New York, NY 10004-2477

Attention: Worldwide Securities Services/ Global Debt - NovaStar Series 2004-1

Re: Pooling and Servicing Agreement, dated as of March 1, 2004, by and among NovaStar Mortgage Funding Corporation (the "Company"), NovaStar Mortgage, Inc., as seller and servicer (the "Seller" or "Servicer"), Wachovia Bank, National Association, as custodian (the "Custodian") and JPMorgan Chase Bank, National Association (formerly known as JPMorgan Chase Bank), as trustee (the "Trustee") as amended by Amendment No. 1, dated as of August 1, 2005 (as amended, the "Agreement")

In accordance with Section 3.26(a) and (b) of the above-captioned Agreement, [name of Advancing Person] hereby notifies the Trustee that [name of Advancing Person] has [purchased][funded][an Advance]/[a Servicing Advance] and is entitled to reimbursement from the Trustee pursuant to the terms of the Advance Facility.

(a) The amount of the reimbursement owed is an amount equal to \$[_____].

(b) Section [] of the Agreement permits this [Advance]/[Servicing Advance] to be reimbursed.

(c) Section [] of the Advance Facility entitles [name of Advancing Person] to request reimbursement from the Trust, rather than from the Servicer.

(d) [name of Advancing Person]'s wire transfer instructions are as follows:

[insert wire transfer instructions]

(e) [Proof of Event of Default under the Advance Facility, if applicable.]

[Remainder of the Page Intentionally Left Blank]

Capitalized words and phrases used herein shall have the respective meanings assigned to them in the above-captioned Agreement.

[]

as Advancing Person

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND AGREED:

NOVASTAR MORTGAGE INC.,
as Servicer

By: _____

Name: _____

Title: _____

Exhibit D – Defendants’ Deeds of Distribution (September 2023)

Description: Certified Deeds of Distribution conveying title from the Estate of Carl A. Nunally, Sr. to Defendants.

Authentication: Self-authenticating certified copies from Lexington County Register of Deeds.

Admissibility: Establishes superior recorded title and chain of ownership preceding Plaintiff’s defective assignment; relevant under S.C. Code Ann. § 30-7-10.

7

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants’ possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

Re-record to Add Trustee Title

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF LEXINGTON)
IN THE MATTER OF:) DEED OF DISTRIBUTION
CARL ALVIN NUNALLY, SR.) (Real Property Only)
(Decedent)) NOT A WARRANTY DEED
) CASE NUMBER: 2022ES3201253

The undersigned states as follows:

Decedent died on SEPTEMBER 4TH, 2021 ; and probate of the Estate is being administered in the Probate Court for LEXINGTON County, South Carolina, in File

2022ES3201253

I was appointed Personal Representative (s) on 28TH day of MARCH 2023.

Decedent owned real property described as follows:

Tax Map Number: 2734-01-003

Street/Property Address: 1759 Willow Creek Road, Columbia, SC 29210

Legal Description: Located: 1759 Willow Creek Drive Columbia, SC

Lat 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

This transfer is made pursuant to:

☒ Decedent's Will

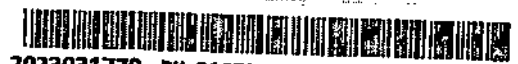
Intestacy Statute: SCPC 62-2-103

Private Family Agreement: SCPC 62-3-912

Disclaimer by: _____

Probate Court Order issued on _____

Other: _____



2023031779 BK: 21073 PG: 1408 - 1410

3 PGS

DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00

September 6, 2023 02:29:15 PM

FILED IN LEXINGTON COUNTY, SC

Tina Quarry

2023034409 BK: 21075 PG: 5539 - 5541

3 PGS

DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00

September 27, 2023 11:10:36 AM

FILED IN LEXINGTON COUNTY, SC

Tina Quarry

FORM #400ES (1/2016)

Page 1 of 3

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: TIMOTHY ALLEN NUNALLY
Address: 4499 PERSIAN COURT
SNELLVILLE GA 30078

Name: MARK ANTHONY NUNNALLY
Address: 5681 GRANE RIVER RD
COLLEGE PARK GA 30349

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 30TH day of MAY, 2023 .

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Charlene H. Robinson
Print Name: Charlene H. Robinson

Witness: Rosevelt L. Robinson
Print Name: Rosevelt L. Robinson

Estate of: CARL ALVIN NUNALLY, SR.

Signature of Personal Representative: Timothy Nunally a P.R. & Trustee
Print Name: Timothy Nunally

If applicable, Signature of Co-Personal Representative:
Print Name: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF LEXINGTON)

I, Charlene A. Robinson, Notary Public, a notary for the State of South Carolina do hereby certify that

Timothy Nunally
as Personal Representative(s) of the Estate of CARL ALVIN NUNALLY, SR., personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the day of May 30th, 2023

Charlene A. Robinson (SEAL)
(Signature of Notary Public)

Charlene A. Robinson
(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires: 1/20/2025

Exhibit E – Affidavit of Acknowledgment and Acceptance (December 2023)

Description: Sworn affidavit acknowledging and accepting property conveyance by the beneficiaries of the Estate.

Authentication: Properly notarized under Rule 902(8), SCRE.

Admissibility: Corroborates chain of title and bona fide possession under Rule 803(15), SCRE (statements in documents affecting an interest in property).

8

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

**AFFIDAVIT OF ACKNOWLEDGEMENT
AND ACCEPTANCE OF DEED**

We, **Mark Anthony Nunnally** and **Timothy Allen Nunally** the living men, in the capacity of **Mark Anthony Nunnally** and **Timothy Allen Nunally** are recorded as the **Grantee** on the **DEED** for the Real Property described as:

Located : 1759 Willow Creek Drive Columbia, SC

Lat 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 611411993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

The Real Property commonly known as 1759 Willow Creek Drive, Columbia, SC is on the attached original Deed filed and recorded on August 10, 1994 which lacked our acknowledgement and acceptance of said Deed.

It is our free will, act, and deed, to acknowledge on and for the public record of our acceptance of the Deed in Fee- Simple and lawful ownership of the above described Real Property in Fee-Simple as recorded in Deed Book 5145 at Page 97, Lexington County, South Carolina and the lawful ownership of the Real Property under the terms of the Deed. Our acceptance of the Deed and lawful ownership of the Real Property are under the terms of the Deed with all rights reserved.

RECEIVED

DEC 18 2023



2023044622 BK: 21086 PG: 3245 - 3247

3 PGS

AFFIDAVIT

Rec: \$10.00 Cnty: \$0.00 State: \$0.00

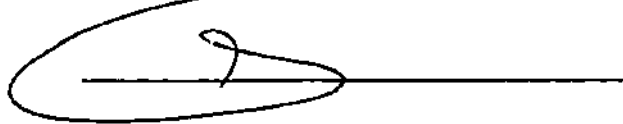
December 18, 2023 03:07:19 PM

FILED IN LEXINGTON COUNTY, SC

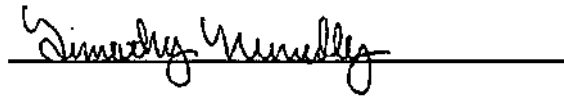
Tina Gentry

All of our other Real Property and interest attached to this Real Property are to be immediately returned to us.

This our free will, ~~act, and deed~~, under our hand and seal;

A handwritten signature, possibly "Mark- Anthony", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Mark- Anthony; Nunnally Without Recourse

A handwritten signature, possibly "Timothy- Allen", is written over a horizontal line.

Timothy- Allen; Nunally Without Recourse

A handwritten signature is written over a horizontal line.

Third Party Witness

State of South Carolina,

County of Fairfield ss.

On this 18th day of December 2023, before me the subscribers,

Dwayne Perry personally appeared Mark- Anthony; Nunnally and Timothy-
Allen; Nunally, to me known to be the living men described in and who executed the foregoing
affidavit and acknowledged before me that they executed the same as their free will, act, and
deed.

Dwayne Perry

(signature of Notary Public)

Notary Public, State of South Carolina



Stamp/ Seal

My commission expires: 10/17/2026

Exhibit F – Mortgage Securitization Audit Report

Description: Professional audit identifying REMIC violations and trust-closing-date discrepancies for NovaStar Mortgage Funding Trust 2004-1.

Authentication: Affidavit of preparer under Rule 901(b)(1), SCRE; business-records certification if necessary.

Admissibility: Expert summary under Rule 1006, SCRE, and Rule 702 (specialized knowledge assists trier of fact).

9

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

424B5 1 d424b5.htm FORM 424(B)(5)

Table of ContentsFiled Pursuant to Rule 424(b)(5)
Registration No. 333-108264**Prospectus Supplement**
(To prospectus dated March 3, 2004)**NovaStar Mortgage Funding Trust, Series 2004-1**NovaStar Mortgage, Inc.
Seller and Servicer**\$1,727,250,100**NovaStar Mortgage Funding Corporation
Company*NovaStar Home Equity Loan Asset-
Backed Certificates, Series 2004-1*

The certificates will be backed by a pool of residential mortgage loans. The pool contains both adjustable-rate mortgage loans and fixed-rate mortgage loans.

The Certificates-

Interest and principal on each class of certificates is scheduled to be paid monthly on the 25th day of the month or, if such day is not a business day, the next succeeding business day. The first scheduled distribution date is April 26, 2004.

Credit Enhancement-

The more senior classes of certificates will have the benefit of the subordination of the more subordinated classes.

All classes of underwritten certificates will be supported by overcollateralization, which is available to absorb losses.

Certain mortgage loans are covered by mortgage insurance policies.

Excess cashflow will be available to absorb losses and maintain overcollateralization.

Pre-Funding-

The trust fund has a pre-funding feature.

Offering Information	Initial Aggregate Certificate Balance	Pass-Through Rate	Price to Public	Underwriting Discount	Proceeds to the Company (2)
Class A-					
1A Certificates	\$ 405,000,000	LIBOR + 0.240% (1)	100%	0.2000%	\$ 404,190,000
Class A-1B Certificates	\$ 45,000,000	LIBOR + 0.330% (1)	100%	0.2000%	\$ 44,910,000
Class A-2 Certificates	\$ 400,000,000	LIBOR + 0.240% (1)	100%	0.2000%	\$ 399,200,000
Class A-					
3A Certificates	\$ 243,000,000	LIBOR + 0.090% (1)	100%	0.1800%	\$ 242,562,600
Class A-					
3B Certificates	\$ 359,500,000	LIBOR + 0.260% (1)	100%	0.2200%	\$ 358,709,100
Class M-1 Certificates	\$ 42,875,000	LIBOR + 0.450% (1)	100%	0.3000%	\$ 42,746,375
Class M-2 Certificates	\$ 52,500,000	LIBOR + 0.500% (1)	100%	0.3500%	\$ 52,316,250
Class M-3 Certificates	\$ 30,625,000	LIBOR + 0.550% (1)	100%	0.4000%	\$ 30,502,500
Class M-4 Certificates	\$ 26,250,000	LIBOR + 0.975% (1)	100%	0.4500%	\$ 26,131,875
Class M-5 Certificates	\$ 30,625,000	LIBOR + 1.050% (1)	100%	0.5000%	\$ 30,471,875
Class M-6 Certificates	\$ 21,875,000	LIBOR + 1.250% (1)	100%	0.5850%	\$ 21,747,031
Class B-1 Certificates	\$ 26,250,000	LIBOR + 1.700% (1)	100%	0.7000%	\$ 26,066,250
Class B-2 Certificates	\$ 21,875,000	LIBOR + 1.800% (1)	100%	0.8000%	\$ 21,700,000
Class B-3 Certificates	\$ 21,875,000	LIBOR + 2.950% (1)	100%	0.9000%	\$ 21,678,125
Class P Certificates (3)	\$ 100 (4)	N/A	N/A	N/A	N/A
Total	\$ 1,727,250,100				\$ 1,722,931,981

(1) Subject to increase as described herein and subject to a related available funds cap rate described herein and a maximum rate of 11%.

(2) Before deducting expenses, estimated to be \$650,000.

(3) The class P certificates will not be purchased by the underwriters. They will be transferred to an affiliate of the seller and servicer as partial consideration for the sale of the mortgage loans to the company.

(4) The certificate balance for the class P certificates will be payable on the earlier of (i) the 35th distribution date and (ii) the distribution date on which the aggregate certificate balances of the class A certificates are reduced to zero.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus supplement or the prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Wachovia Capital Markets, LLC, Greenwich Capital Markets, Inc., Deutsche Bank Securities Inc. and Morgan Stanley & Co. Incorporated as underwriters, will offer the underwritten certificates only after the certificates have been issued, delivered to and accepted by the underwriters. The underwriters have the right to reject any order. We expect to deliver the offered certificates on or about March 11, 2004 through The Depository Trust Company and upon request through Clearstream Banking Luxembourg or the Euroclear System.

Wachovia Securities**RBS Greenwich Capital**

R. 602

(Joint Lead Managers and Joint Book-Runners)

Exhibit G – Certified Title Abstract and Recording History

Description: Chronological record of all filings affecting title to 1759 Willow Creek Drive, Columbia, SC 29212.

Authentication: Certified by Lexington County Register of Deeds.

Admissibility: Self-authenticating under Rule 902(4), SCRE; relevant under § 30-7-10 for determining priority of instruments.

Exhibit G – Certified Title Abstract & Recording History

Property: 1759 Willow Creek Drive, Columbia, SC 29212

County: Lexington County, South Carolina

Source: Certified public records from the Lexington County Register of Deeds

Purpose: Demonstrates chronological record of filings affecting title and establishes

Defendants' superior ownership under S.C. Code Ann. § 30-7-10.

Instr. No. / Book-Page	Date Recorded	Instrument Type	Grantor / Grantee	Key Remarks / Defects & Authorities
—	Jan 30 2004	<i>Promissory Note with Allonge</i>	Carl A. Nunally → NovaStar Home Mortgage, Inc.	Allonge executed by corporate strangers; chain of endorsements ambiguous; violates UCC § 3-201 & UCC §3-204. Non-negotiable instrument. (G-1)
Book 14468 Pg ?	Mar 2004	<i>Mortgage (Single- Witness Execution)</i>	Carl A. & Frankie L. Nunally → NovaStar Home Mortgage, Inc.	One witness only; defective acknowledgment under S.C. Code Ann. § 30-5-30 and Lewis v. Lewis, 324 S.C. 529 (1996); void ab initio. (G-2)

Instr. No. / Book-Page	Date Recorded	Instrument Type	Grantor / Grantee	Key Remarks / Defects & Authorities
—	Jul 28 2023	<i>Assignment of Mortgage</i>	MERS (as Nominee) → BONY as Trustee for NovaStar Trust 2004-1	References non-existent recording date ("Feb 28 2004" Saturday); defective under S.C. Code Ann. § 29-3-330 and S.C. Code Ann. § 30- 7-10. (G-3)
Book 21076 Pg 4337	Oct 3 2023	<i>Corrective Assignment of Mortgage</i>	MERS (as Nominee) → BONY Trustee	Executed 19 years post- closing in violation of N.Y. EPTL § 7-2.4 and 26 U.S.C. § 860G(a)(4); void ab initio. (G-4)
Book 21073 Pg 1408	Sep 6 2023	<i>Deed of Distribution (Estate of Carl A. Nunally)</i>	Estate → Mark Anthony & Timothy Allen Nunally	Transfers fee-simple title to Defendants before defective assignment; superior priority under S.C. Code Ann. § 30-7- 10. (G-5)
Book 21086	Dec 18 2023	<i>Affidavit of Acknowledgment</i>	Mark A. & Timothy A.	Affirms acceptance and ownership in fee simple;

Instr. No. / Book-Page	Date Recorded	Instrument Type	Grantor / Grantee	Key Remarks / Defects & Authorities
Pg 3245		<i>and Acceptance of Deed</i>	Nunally → Public Record	recorded affidavit self- authenticating under Rule 902(8). (G-6)

0012861 BK: 5145 Pg: 0097

DEED
(INDIVIDUAL)

STATE OF SOUTH CAROLINA }
COUNTY OF LEXINGTON }

FILED, RECORDED, INDEXED
03/12/1999 10:01:57AM
Doc Fee: 10.00 St Fee: 242.40
Co Fee: 111.70 Pages: 1
LEX. CO. REGISTER OF DEEDS
BENJAMIN H. BENTLEY

KNOW ALL MEN BY THESE PRESENTS: That DANE C. FROST AND TERRI L. FROST, (hereinafter called "Grantor") for and in consideration of the sum of \$100,585.06 (one hundred thousand six hundred eighty-five, DOLLARS to it in hand paid at and before the sealing of these presents, by CARL A. NUNALLY AND FRANKIE L. NUNALLY of SOUTH CAROLINA (hereinafter called "Grantee") in the State aforesaid (the receipt of which is hereby acknowledged,) has granted, bargained, sold and released, and by these Presents does grant bargain, sell and release unto the Grantee, his heirs, successors, and assigns:

SEE ATTACHED SCHEDULE "A" FOR LEGAL DESCRIPTION

TMS/2734-01-003

This being the same property conveyed to Grantors by deed recorded in Deed Book 2590 page 144.

GRANTEE MAILING ADDRESS: 1789 Willow Creek Road, Columbia, SC 29210

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his heirs successors and assigns forever.

AND the Grantor does hereby bind himself and his heirs to warrant and forever defend all and singular the premises unto the Grantee his heirs, successors and assigns, against himself and his heirs, and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

0012861 M: 3143 Pg: 0098

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

DATE: 8-08-94

Signed, Sealed and Delivered
in the Presence of:

WITNESS

NOTARY PUBLIC

DANE C. FROST

TERRY L. FROST

STATE OF North Carolina

COUNTY OF Caldwell

PROBATE

PERSONALLY appeared before me the undersigned witness who, being duly sworn, says that (s)he saw the within named Grantor, sign, seal and deliver the within Deed, and that (s)he with the other witness whose signature appears above, witnessed the execution thereof.

SWORN to before me
8-08-94

WITNESS

NOTARY PUBLIC FOR North Carolina
My commission expires: 8-27-95

EXHIBIT A

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 223, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1973 and recorded in the Office of the REC for Lexington County in Plat Book 139-G at page 23; also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/93 and recorded in the Office of the REC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description; all measurements being a little more or less.

This being the same property conveyed to the Grantees by Deed of Johnny B. Long and Barbara B. Long dated December 16, 1992 and recorded in Deed Book 2590 at Page 144.

TNN: 002734-01-003

Lexington County, S.C.

NOTEJANUARY 30, 2004
[Date]CLEVELAND,
[City]OHIO
[State]1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$121,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is NOVASTAR HOME MORTGAGE, INC., A CORPORATION.

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

I understand that the Lender may transfer this Note. The 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 6.990%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(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 payment on the 1ST day of each month beginning on MARCH 1, 2004.

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 FEBRUARY 1, 2024, 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

P.O. BOX 808911

KANSAS CITY, MO 64184-8911

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$941.26.

4. 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 the Note.

I may make a full Prepayment or partial Prepayments without paying a 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 the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. 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 which 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.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge 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 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(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.

7. 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.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or 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.

8. 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.

9. 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.

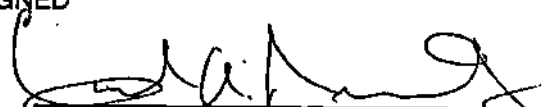
10. UNIFORM SECURED NOTE

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 which might result if I do not keep the promises which 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 are described as follows:

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.

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

 (Seal)
CARL A. NUNALLY

PAY TO THE ORDER OF:
JPMorgan Chase Bank, as Trustee*
WITHOUT RECOURSE
New York Mortgage, Inc.


David A. Pappas, Sr., Vice President

ALLONGE

This Allonge is to be made a part of the Note:

Dated: January 30, 2004

Borrower: Carl A. Nunally

Property Address: 1759 Willow Creek Drive, Columbia, SC 29212

Original Lender: Novastar Home Mortgage, Inc., A Virginia Corporation

Loan #: 03-A37223

Loan Amount: \$ 121,500.00

Interest Rate: 6.990 %

Maturity Date: February 1, 2024

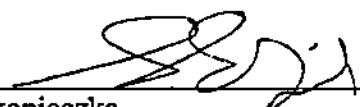
Pay to the Order of:

Novastar Mortgage Inc., A Virginia Corporation

JPMorgan Chase Bank, as Trustee*

Without Recourse:

Novastar Home Mortgage, Inc., A Virginia Corporation

By: 

Shannon Skonieczka

Assistant Secretary

* JPMorgan Chase Bank, as Trustee of the NovaStar
Mortgage Funding Trust, Series 2004-1, relating to the
NovaStar Home Equity Loan Asset-Backed Certificate
Series 2004-1

Loan # 0071322440

ALLONGE TO NOTE

This endorsement is a permanent part of the Note in the amount of \$121,500.00.

NOTE DATE: 01/30/2004

BORROWER NAME: CARL A NUNALLY

PROPERTY: 1759 WILLOW CREEK DRIVE, COLUMBIA, SC 29212

PAY TO THE ORDER OF:

WITHOUT RECOURSE:

**JPMORGAN CHASE BANK N.A. F/K/A JPMORGAN CHASE BANK, AS TRUSTEE OF
THE NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1 RELATING TO THE
NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES SERIES 2004-1**

A handwritten signature in cursive script, appearing to read "Kathy Tyler", is written over a horizontal line.

**Signer: Kathy Tyler
Title: Vice President**

After Recording Return To:
 NOVASTAR MORTGAGE, INC.
 ATTN: COLLATERAL CONTROL
 6200 OAK TREE BLVD. 3RD FLOOR
 CLEVELAND, OH 44131

This instrument was prepared by:

2004
 14668

Title Order No.: NUNALLY
 Escrow No.: NUNALLY
 LOAN #: 03-A37223

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100080190020066015

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 JANUARY 30, 2004, together with all Riders to this document.

(B) "Borrower" is CARL A. NUNALLY AND FRANKIE L. NUNALLY.

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, Michigan 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is NOVASTAR HOME MORTGAGE, INC..

Lender is a CORPORATION,
 THE STATE OF VIRGINIA.
 LEXINGTON, SC 29073.

organized and existing under the laws of
 Lender's address is 104 ROBIN ROAD,

Lender is the mortgagee under this Security Instrument.

(E) "Note" means the promissory note signed by Borrower and dated JANUARY 30, 2004. The Note states that Borrower owes Lender *****ONE HUNDRED TWENTY ONE THOUSAND FIVE HUNDRED AND NO/100 ***** Dollars (U.S. \$121,500.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2024.

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

(G) "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.

(H) "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]:

(J) "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.

(K) "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.

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

(M) "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.

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

(O) "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.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §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.

(Q) "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 MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the COUNTY [Type of Recording Jurisdiction] of LEXINGTON

[Name of Recording Jurisdiction]:

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF. (STATE: SOUTH CAROLINA, COUNTY: LEXINGTON)
APN #: 002734-01-003

which currently has the address of 1759 WILLOW CREEK DRIVE, COLUMBIA,

[Street] [City]

South Carolina 29212 ("Property Address"):
[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, 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 understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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.

by Lender as payment under the Note or this 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 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

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.

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

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 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. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground 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

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.

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.

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

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 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 pay any recordation costs. Lender may

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 § 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.

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:

[Signature]

[Signature] (Seal)
CARL A NUNALLY

[Signature]

[Signature] (Seal)
FRANKIE L NUNALLY

State of SOUTH CAROLINA

County of Richland

The foregoing instrument was acknowledged before me this 1/30/04 (date)
by Brian L. Roger

(name of person acknowledged).

[Signature]
Signature of Person Taking Acknowledgement

My commission expires: 2/21/05

[Signature]
witness

EXHIBIT A

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on a plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23. Also being shown on a plat prepared for Dane C. Frost and Terri L. Frost by Belter & Associates, Inc., dated June 14, 1993 and recorded in Plat Book 262 at page 70. Reference being made to said latter plat which is incorporated herein for a more complete and accurate description; all measurements being a little more or less.

This being the same property conveyed to Carl A. Nunally and Frankie L. Nunally by deed of Dane C. Frost and Terri L. Frost dated August 8, 1994 and recorded in Deed Book 5145 at page 97, Lexington County records.

When Recorded Return To:

PHH Mortgage
C/O Nationwide Title Clearing, LLC
2100 Alt. 19 North
Palm Harbor, FL 34683

2023026395 BK: 21067 PG: 4146 - 4146
MORTGAGE ASST
Rec: \$10.00 Cntr: \$0.00 State: \$0.00
July 28, 2023 10:53:48 AM
FILED IN LEXINGTON COUNTY, SC

1 PGS

The Quarry

ASSIGNMENT OF MORTGAGE

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Mortgage together with all liens, and any rights due or to become due thereon to THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1, NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-1, WHOSE ADDRESS IS C/O PHH MORTGAGE CORPORATION, 5720 PREMIER PARK DRIVE, WEST PALM BEACH, FL 33407, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 01/30/2004, made by CARL A. NUNALLY AND FRANKIE L. NUNALLY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS and recorded 02/28/2004 in the Recorder or Registrar of Deeds of LEXINGTON County, South Carolina in Book 9841 and Page 4.

Dated this 28th day of July in the year 2023
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS

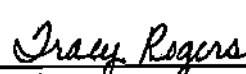


SUSAN HICKS
VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.



ALAN BAKER
WITNESS



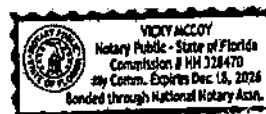
TRACY ROGERS
WITNESS

STATE OF FLORIDA
COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization on this 28th day of July in the year 2023, by Susan Hicks as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.



VICKY MCCOY
COMM EXPIRES: 12/18/2026



Document Prepared By: Jennifer Zak/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152
Recording Requested By: PHH Mortgage, C/O Nationwide Title Clearing, LLC 2100 Alt. 19 North, Palm Harbor, FL 34683

PHH02 438589022 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
OCWEN-NVLER MIN 100080190020066015 MERS PHONE 1-888-679-6377 MERS Mailing Address: P.O.
Box 2026, Flint, MI 48501-2026 DOCR T282307-09:07:46 [C-1] EPRMSC1



D0101760322

2023026395 RECORD BOOK BK 21067 PG 4146 (LAST PAGE)

When Recorded Return To:
 PHH Mortgage
 C/O Nationwide Title Clearing, LLC
 2100 Alt. 19 North
 Palm Harbor, FL 34683

2023035209 BK: 21076 PG: 4337 - 4337 1 PGS
 MORTGAGE ASST
 Rec: \$17.00 Cnty: 5000 State: 5000
 October 3, 2023 10:34:14 AM
 FILED IN LEXINGTON COUNTY, SC

DATE →

ASSIGNMENT OF MORTGAGE

CORRECTIVE ASSIGNMENT OF MORTGAGE: TO CORRECT MORTGAGE RECORDING REFERENCE. ORIGINAL ASSIGNMENT OF MORTGAGE RECORDED ON 07/28/2023 IN BK: 21067 PG: 4146.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, (ASSIGNOR), (MERS Address: P.O. Box 2026, Flint, Michigan 48501-2026) by these presents does convey, grant, assign, transfer and set over the described Mortgage with all liens, and any rights due or to become due thereon to THE BANK OF NEW YORK MELLON, F/K/A THE BANK OF NEW YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR NOVASTAR MORTGAGE FUNDING TRUST, SERIES 2004-1, NOVASTAR HOME EQUITY LOAN ASSET-BACKED CERTIFICATES, SERIES 2004-1, WHOSE ADDRESS IS C/O PHH MORTGAGE CORPORATION, 5720 PREMIER PARK DRIVE, WEST PALM BEACH, FL 33407, ITS SUCCESSORS AND ASSIGNS, (ASSIGNEE).

Said Mortgage dated 01/30/2004, made by CARL A. NUNALLY AND FRANKIE L. NUNALLY to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS and recorded 02/28/2004 in the Recorder or Registrar of Deeds of LEXINGTON County, South Carolina in Book 2041 and Page 4.

Dated on 9/29 /2023 (MM/DD/YYYY)

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS

By: Mackenzie Eichen
 Mackenzie Eichen
 VICE PRESIDENT

All persons whose signatures appear above have qualified authority to sign and have reviewed this document and supporting documentation prior to signing.

Signed and Acknowledged
 in the Presence of:

Angela Pavao
 Angela Pavao
 Witness 1

Lauren Astle
 Lauren Astle
 Witness 2

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization on 9/27 /2023 (MM/DD/YYYY), by Mackenzie Eichen as VICE PRESIDENT of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS"), AS MORTGAGEE, AS NOMINEE FOR NOVASTAR HOME MORTGAGE, INC., ITS SUCCESSORS AND ASSIGNS, who, as such VICE PRESIDENT being authorized to do so, executed the foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

Julie Martens
 Julie Martens
 Notary Public - STATE OF FLORIDA
 Commission expires: 05/22/2026



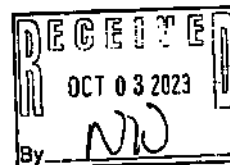
JULIE MARTENS
 NOTARY PUBLIC
 STATE OF FLORIDA
 COMM# HH 243030
 EXPIRES: MAY 22, 2026

Recording Requested By: PHH Mortgage, C/O Nationwide Title Clearing, LLC 2100 Alt. 19 North, Palm Harbor, FL 34683

PHH02 438983506 MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS)
 OCWEN-NVLER (RN) MIN 100080190020066015 MERS PHONE 1-888-679-6377 MERS Mailing Address:
 P.O. Box 2026, Flint, MI 48501-2026 DOCR T142309-04:00:20 [C-1] FRMSC1



D0102524191



Re-record to Add Trustee Title

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF LEXINGTON)
IN THE MATTER OF:) DEED OF DISTRIBUTION
CARL ALVIN NUNALLY, SR.) (Real Property Only)
(Decedent)) NOT A WARRANTY DEED
The undersigned states as follows:) CASE NUMBER: 2022ES3201253

Decedent died on SEPTEMBER 4TH, 2021 ; and probate of the Estate is being administered in the Probate Court for LEXINGTON County, South Carolina, in File # 2022ES3201253.

I was appointed Personal Representative (s) on 28TH day of MARCH 2023.

Decedent owned real property described as follows:

Tax Map Number: 2734-01-003

Street/Property Address: 1759 Willow Creek Road, Columbia, SC 29210

Legal Description: Located: 1759 Willow Creek Drive Columbia, SC

Lat 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 6/14/1993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagees by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

This transfer is made pursuant to:

☒ Decedent's Will

Intestacy Statute: SCPC 62-2-103

Private Family Agreement: SCPC 62-3-912

Disclaimer by: _____

Probate Court Order issued on _____

Other: _____

FORM #400ES (1/2016)

2023031779 BK: 21073 PG: 1408 - 1410 3 PGS
DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00
September 6, 2023 02:29:15 PM
FILED IN LEXINGTON COUNTY, SC

Trina Quarry

2023034409 BK: 21075 PG: 5539 - 5541 3 PGS
DEED OF DISTRIBUTION

Rec: \$15.00 Cnty: \$0.00 State: \$0.00
September 27, 2023 11:10:36 AM
FILED IN LEXINGTON COUNTY, SC

Trina Quarry

Page 1 of 3

In accordance with the laws of the State of South Carolina, the Personal Representative(s) does/do hereby release all of the Personal Representative's(s') right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries named below:

Name: TIMOTHY ALLEN NUNALLY
Address: 4499 PERSIAN COURT
SNELLVILLE GA 30078

Name: MARK ANTHONY NUNNALLY
Address: 5681 GRANE RIVER RD
COLLEGE PARK GA 30349

IN WITNESS WHEREOF the undersigned, as Personal Representative(s) of the above Estate, has executed this Deed of Distribution, on this 30TH day of MAY, 2023 .

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Witness: Charlene H. Robinson
Print Name: Charlene H. Robinson

Witness: Rosevelt L. Robinson
Print Name: Rosevelt L. Robinson

Estate of: CARL ALVIN NUNALLY, SR.

Signature of Personal Representative: Timothy Nunally a P.R. & Trustee

Print Name: Timothy Nunally

If applicable, Signature of Co-Personal Representative:

Print Name: _____

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF LEXINGTON)

I, Charlene H. Robinson, Notary Public, a notary for the State of South Carolina do hereby certify that

Timothy Nunally
as Personal Representative(s) of the Estate of CARL ALVIN NUNALLY, SR., personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand and seal this the day of May 30th, 2023

Charlene H. Robinson (SEAL)

(Signature of Notary Public)

Charlene H. Robinson

(Print name of Notary Public)

Notary Public for State of South Carolina

My Commission Expires: 1/20/2025

**AFFIDAVIT OF ACKNOWLEDGEMENT
AND ACCEPTANCE OF DEED**

We, **Mark Anthony Nunnally** and **Timothy Allen Nunally** the living men, in the capacity of **Mark Anthony Nunnally** and **Timothy Allen Nunally** are recorded as ~~the~~ the **Grantee** on the **DEED** for the Real Property described as:

Located: : 1759 Willow Creek Drive Columbia, SC

Lat 34.066370 Long: -81.184940

ALL THAT CERTAIN PIECE, PARCEL, or lot of land, with the improvements thereon, situated, lying and being in the County of Lexington, State of South Carolina, the same being shown and designated as Lot No. 283, Block W on plat of Murraywood II by Heaner Engineering Co., dated October 27, 1972, revised July 1, 1975 and recorded in the Office of the RMC for Lexington County in Plat Book 139-G at page 23; Also being shown and delineated on a plat prepared for Dana C. Frost and Terri L. Frost by Belter & Associates, Inc., dated 611411993 and recorded in the Office of the RMC for Lexington County in Plat Book 262 at Page 070. Reference being made to said plat which is incorporated herein by reference for a more accurate and complete description ; all measurements being a little more or less.

This being identical property conveyed to the Mortgagors by Deed of Dana C. Frost and Terri L. Frost dated August 8, 1994 and recorded simultaneously herewith in Deed Book 5145 at Page 97.

The Real Property commonly known as 1759 Willow Creek Drive, Columbia, SC is on the attached original Deed filed and recorded on August 10, 1994 which lacked our acknowledgement and acceptance of said Deed.

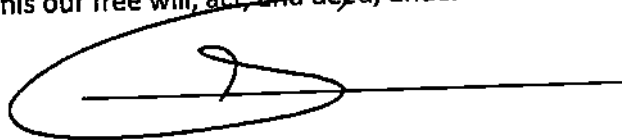
It is our free will, act, and deed, to acknowledge on and for the public record of our acceptance of the Deed in Fee- Simple and lawful ownership of the above described Real Property in Fee-Simple as recorded in Deed Book 5145 at Page 97, Lexington County, South Carolina and the lawful ownership of the Real Property under the terms of the Deed. Our acceptance of the Deed and lawful ownership of the Real Property are under the terms of the Deed with all rights reserved.

RECEIVED
DEC 18 2023

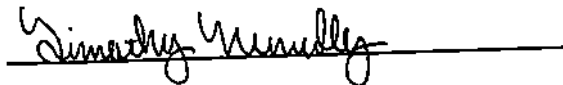

2023044622 BK: 21086 PG: 3245 - 3247 3 PGS
AFFIDAVIT
Rec: \$10.00 Cnty: \$0.00 State: \$0.00
December 18, 2023 03:07:19 PM
FILED IN LEXINGTON COUNTY, SC *Tina Querry*

All of our other Real Property and interest attached to this Real Property are to be immediately returned to us.

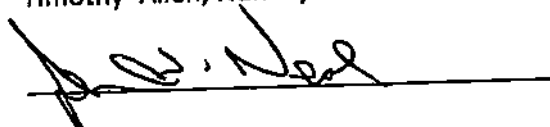
This our free will, act, and deed, under our hand and seal;

A handwritten signature, possibly "Mark", is written over a horizontal line. The signature is enclosed within a large, hand-drawn oval.

Mark- Anthony; Nunnally Without Recourse

A handwritten signature, possibly "Timothy Nunnally", is written over a horizontal line.

Timothy- Allen; Nunally Without Recourse

A handwritten signature, possibly "J. W. Neal", is written over a horizontal line.

Third Party Witness

State of South Carolina,

County of Fairfield ss.

On this 18th day of December 2023, before me the subscribers,

DWAYNE PERRY personally appeared Mark- Anthony; Nunnally and Timothy-
Allen; Nunally, to me known to be the living men described in and who executed the foregoing
affidavit and acknowledged before me that they executed the same as their free will, act, and
deed.

Dwayne Perry

(signature of Notary Public)

Notary Public, State of South Carolina



Stamp/ Seal

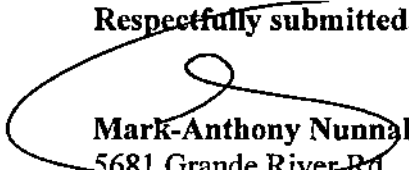
My commission expires: 10/17/2026

③
Gladys

Certification Statement

The foregoing abstract is a true and correct chronological summary compiled from certified public records of the Lexington County Register of Deeds. True and correct certified copies of each referenced instrument are attached as Exhibits G-1 through G-6. These records are self-authenticating under Rule 902(4), South Carolina Rules of Evidence.

Respectfully submitted,



Mark-Anthony Nunnally
5681 Grande River Rd.,
College Park, GA 30349 •
404-980-4488 •
markanunnally@gmail.com


Timothy-Allen Nunnally —
Co-Defendant

Date: November 10, 2025

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

Exhibit H – Affidavit of Fiduciary Proof and Trustee Non-Performance

Description: Affidavit from Defendants summarizing Plaintiff's failure to produce required trust documents, custodial receipts, and fiduciary accounting.

Authentication: Sworn affidavit under Rule 902(8), SCRE.

Admissibility: Admissible as affidavit evidence under Rule 56(e), SCRCP, supporting lack of standing and breach of fiduciary duty.

11

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

EXHIBIT H

AFFIDAVIT OF FIDUCIARY PROOF AND TRUSTEE NON-PERFORMANCE

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Case Nos. 2024-CP-32-01094 / 2025-CP-32-0521

I, **Mark-Anthony Nunnally**, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

2. I am a Defendant in the above-captioned case and a recorded owner of the real property located at **1759 Willow Creek Drive, Columbia, South Carolina 29212**. I am also a beneficiary of the Estate of **Carl A. Nunally, Sr.** I make this affidavit of my own personal knowledge.

3. Trustee's Fiduciary Obligations.

The Plaintiff, **The Bank of New York Mellon**, as Trustee for **NovaStar Mortgage Funding Trust, Series 2004-1**, is obligated to maintain, and upon request produce, fiduciary records establishing lawful authority to act as trustee, including:

- a. the executed **Pooling & Servicing Agreement (PSA)**;
- b. the **Mortgage Loan Schedule** identifying the subject loan;
- c. **custodial delivery receipts** showing actual transfer of the note and mortgage; and
- d. any **servicing or sub-servicing agreements**.

These documents are required under S.C. Code Ann. §§ 62-7-801 and 62-7-813, and under N.Y. EPTL § 7-2.4, which renders acts in contravention of the trust terms void.

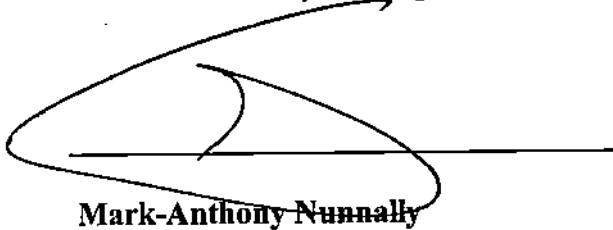
4. Non-Performance and Failure of Proof.

Despite multiple requests and court opportunities, Plaintiff has failed to produce any of the above-referenced fiduciary records. No executed PSA, no custodial receipts, and no mortgage loan schedule identifying the subject note have been furnished. Plaintiff has likewise failed to establish compliance with 26 U.S.C. § 860G(a)(4) (REMIC timing requirements).

5. Resulting Legal Effect.

Plaintiff's failure to perform its statutory trustee duties and to demonstrate lawful possession of the note or mortgage destroys standing to foreclose or to claim any beneficial interest in the subject property. Any purported assignment or enforcement action undertaken by Plaintiff is therefore void ab initio under N.Y. EPTL § 7-2.4 and unenforceable under South Carolina law.

Further Affiant sayeth naught.



Mark-Antony Nunnally

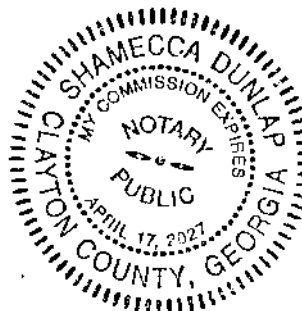
Defendant / Beneficiary

Sworn to and subscribed before me this 11th day of November, 2025.



Notary Public for South Carolina

My Commission Expires: 04/17/2027



Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

Exhibit I – Certified Mail Receipts and Service Proofs

Description: Mailing receipts showing proper service of pleadings and motions upon Plaintiff's counsel.

Authentication: Self-authenticating business records.

Admissibility: Demonstrates procedural compliance under Rule 5(b), SCRCF.

12

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants' possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

Exhibit J – Defendants’ Verified Affidavit of Damages

Description: Sworn statement of damages for wrongful foreclosure, slander of title, and punitive claims.

Authentication: Sworn before notary; Rule 902(8), SCRE.

Admissibility: Supporting affidavit under Rule 56(e), SCRCPP; relevant to damages phase if summary judgment granted on liability.

13

Certification

All exhibits listed above are true and correct copies of original records, instruments, or sworn affidavits in Defendants’ possession or obtainable from public repositories. Each exhibit is offered for the limited purposes stated and may be supplemented by certified originals at hearing.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case Nos. 2024-CP-32-01094 / 2025-CP-32-0521

MARK-ANTHONY NUNNALLY and TIMOTHY-ALLEN NUNALLY,
Defendants,

v.

THE BANK OF NEW YORK MELLON, f/k/a The Bank of New York, as Successor in Interest
to JP Morgan Chase Bank, N.A., as Trustee for NovaStar Mortgage Funding Trust, Series 2004-
1,
Plaintiff.

EXHIBIT J-1

VERIFIED AFFIDAVIT OF DAMAGES

I, Mark-Anthony Nunnally, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

I am a Defendant in the above-captioned case and a recorded owner of the real property
located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. I make this
affidavit in support of Defendants' Motion for Summary Judgment and request for
damages.

2. Background and Wrongful Conduct.

The Plaintiff, The Bank of New York Mellon, initiated foreclosure proceedings without
lawful authority, relying on void instruments and defective assignments. Plaintiff's
actions were undertaken willfully and recklessly, resulting in financial harm, reputational
damage, and emotional distress.

3. Itemized Damages.

The following amounts represent my good-faith estimates based on available records and

current valuations. I reserve the right to supplement or adjust these figures upon completion of discovery or at the damages hearing.

- o Legal and filing costs: \$ _____
- o Property equity loss: \$ _____
- o Title and document correction costs: \$ _____
- o Emotional distress and loss of enjoyment of property: \$ _____
- o Travel, postage, and administrative expenses: \$ _____
- o Other special damages: \$ _____
- Total Actual Damages: \$ _____

This total represents a good-faith estimate of actual damages subject to verification and adjustment at the evidentiary hearing.

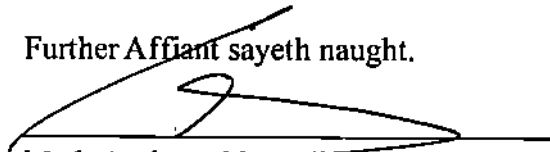
4. Punitive Damages.

Plaintiff's conduct constitutes willful, wanton, and reckless disregard for Defendants' rights, warranting punitive damages under S.C. Code Ann. § 15-32-520 and *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997). The amount of punitive damages should be determined at a separate evidentiary hearing following a finding of liability.

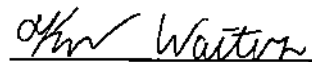
5. Verification.

I verify that the foregoing statements are true and correct to the best of my knowledge and belief.

Further Affiant sayeth naught.


Mark Anthony Nunnally
Defendant / Property Owner

Sworn to and subscribed before me this 5th day of November, 2025.


Notary Public for South Carolina
My Commission Expires: 03/13/2027

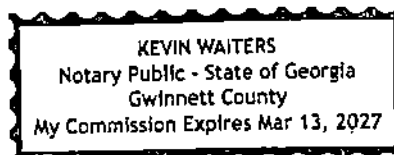


EXHIBIT J-2

VERIFIED AFFIDAVIT OF DAMAGES

I, Timothy-Allen Nunally, being duly sworn, depose and state as follows:

1. Affiant Identity and Standing.

I am a Defendant in the above-captioned case, the duly appointed Personal Representative of the Estate of Carl A. Nunally, Sr., and a recorded co-owner of the property located at 1759 Willow Creek Drive, Columbia, South Carolina 29212.

2. Background and Wrongful Conduct.

The Plaintiff, The Bank of New York Mellon, acting as Trustee for the NovaStar Mortgage Funding Trust, Series 2004-1, initiated a foreclosure action predicated on void instruments and defective assignments executed long after the Trust's closing date. Such conduct has directly caused injury to the Estate and to me individually.

3. Itemized Damages.

The following amounts represent my good-faith estimates based on available records and current valuations. I reserve the right to supplement or adjust these figures upon completion of discovery or at the damages hearing.

- o Legal and court-related costs: \$ _____
- o Loss of property equity or value: \$ _____
- o Costs to correct title and record documents: \$ _____
- o Emotional distress and reputational harm: \$ _____
- o Administrative and estate-related expenses: \$ _____
- o Other special damages: \$ _____
- Total Actual Damages: \$ _____

This total represents a good-faith estimate of actual damages subject to verification and adjustment at the evidentiary hearing.

4. Punitive Damages.

Plaintiff's actions were willful, wanton, and reckless, violating its fiduciary obligations under S.C. Code Ann. § 62-7-801 et seq. and *Lister v. NationsBank*. Punitive damages should be assessed at a separate hearing to deter similar misconduct.

5. Verification.

I verify that the foregoing statements are true and correct to the best of my knowledge and belief.

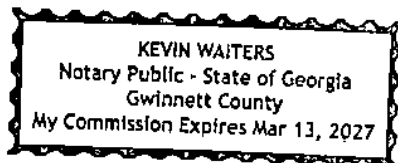
Further Affiant sayeth naught.

Timothy A. Nunally
Timothy-Allen Nunally

Personal Representative of the Estate of Carl A. Nunally, Sr.

Sworn to and subscribed before me this 5th day of November, 2025.

Kevin Waiters
Notary Public for ~~South Carolina~~ Georgia
My Commission Expires: 03/13/2027



CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing **Amended Defendants' Motion for Summary Judgment (Incorporating Fiduciary Proof and Standing Addendum)** by depositing same in the United States Mail, with adequate postage affixed, via USPS Certified Mail / Return Receipt Requested, addressed as follows:

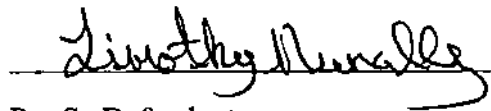
Chad Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Attorney for Plaintiff

This the _____ day of November 2025.

FILED AS AMENDED MOTION FOR SUMMARY JUDGMENT by:



Nunnally: Mark-Anthony



Nunally: Timothy-Allen

Pro Se Defendants

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

The Bank of New York Mellon, et al., ,
Plaintiffs,

v.

Nunnally: Mark-Anthony and Nunally: Timothy Allen
Defendants.

Case No. 2025-CP-32-1094

DEFENDANTS' MOTION FOR TEMPORARY RELIEF TO SUSPEND DELINQUENT TAX
SALE ACTION AND TO REQUIRE 4% ASSESSMENT RATE UNDER PROTEST PENDING
LITIGATION

Defendants submit this Motion for targeted temporary relief concerning the Delinquent Tax Sale
Notice dated March 17, 2025 against 1759 Willow Creek Dr., Columbia, SC 29212 (TMS
002734-01-003).

Defendants request:

1. A temporary suspension of all tax-sale activity, including the scheduled December 8,
2025 sale;
2. An order requiring the County to accept payment at the lawful 4% assessment rate,
applicable to owners of record on January 1, 2024;
3. Payment to be made under protest pursuant to S.C. Code § 12-60-2550.

I. ACTIVE OWNERSHIP LITIGATION REQUIRES PRESERVATION OF THE STATUS QUO

The subject property is directly implicated in this action, and its premature sale would interfere
with the Court's jurisdiction.

FILED

2025 NOV 18 PM 4:09

LISA M. COVER
CLERK OF COURT
LEXINGTON, SC

II. DEFENDANTS ARE ENTITLED TO THE 4% ASSESSMENT RATE

As of January 1, 2024, Plaintiffs were the owners of record.

The County's 6% classification is erroneous.

III. PAYMENT WILL BE MADE UNDER PROTEST

This protects all rights during the pendency of this litigation.

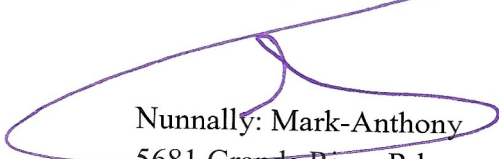
IV. TAX SALE WOULD CAUSE IRREPARABLE HARM

A forced auction prior to judicial determination cannot be undone.

WHEREFORE, Plaintiffs request:

1. A stay of the delinquent tax sale;
2. A directive requiring acceptance of the 4% legal-residence assessment rate;
3. Recognition of payment under protest;
4. Any further appropriate relief.

Respectfully submitted,



Nunnally: Mark-Anthony
5681 Grande River Rd
College Park, GA 30349
404-980-4488
markannally@gmail.com



Nunnally :Timothy Allen

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

The Bank of New York Mellon, et al., ,
Plaintiffs,

v.

Nunnally: Mark-Anthony and Nunally: Timothy Allen
Defendants.

Case No. 2025-CP-32-1094

PROPOSED ORDER GRANTING DEFENDANTS' MOTION FOR TEMPORARY RELIEF
REGARDING DELINQUENT TAX SALE AND ASSESSMENT RATE

Upon review of Defendants' Motion, affidavits, statutory authority, and the record, and good
cause appearing:

IT IS ORDERED THAT:

1. All actions by the Lexington County Treasurer, Auditor, or Delinquent Tax Collector relating to the Delinquent Tax Sale of 1759 Willow Creek Dr., Columbia, SC 29212 (TMS 002734-01-003) — including the scheduled December 8, 2025 auction — are hereby STAYED until further Order of this Court.
2. Lexington County shall accept payment from Plaintiffs at the 4% legal-residence assessment rate applicable to owners of record on January 1, 2024.
3. Plaintiffs' payment shall be accepted under protest pursuant to S.C. Code § 12-60-2550.
4. This relief is temporary and shall remain in effect pending further proceedings.

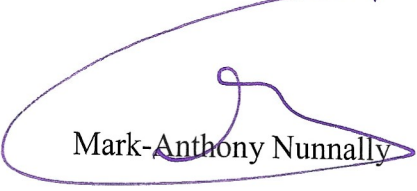
SO ORDERED.

Hon. Judge William Paul Keesley
Circuit Court Judge

Dated: _____

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Motion was served on all parties and counsel of record by U.S. Mail on the ____ day of _____, 2025.



Mark-Antony Nunnally

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

The Bank of New York Mellon, et al., ,
Plaintiffs,

v.

Nunnally: Mark-Anthony and Nunally: Timothy Allen
Defendants.

Case No. 2024-CP-32-01094
~~2025-CP-32-1094~~

DEFENDANTS' MOTION FOR TEMPORARY RELIEF TO SUSPEND DELINQUENT TAX
SALE ACTION AND TO REQUIRE 4% ASSESSMENT RATE UNDER PROTEST PENDING
LITIGATION

Defendants submit this Motion for targeted temporary relief concerning the Delinquent Tax Sale
Notice dated March 17, 2025 against 1759 Willow Creek Dr., Columbia, SC 29212 (TMS
002734-01-003).

Defendants request:

1. A temporary suspension of all tax-sale activity, including the scheduled December 8, 2025 sale;
2. An order requiring the County to accept payment at the lawful 4% assessment rate, applicable to owners of record on January 1, 2024;
3. Payment to be made under protest pursuant to S.C. Code § 12-60-2550.

I. ACTIVE OWNERSHIP LITIGATION REQUIRES PRESERVATION OF THE STATUS QUO

The subject property is directly implicated in this action, and its premature sale would interfere with the Court's jurisdiction.

FILED

FILED

CASE No. 2024-CP-32-01094
SUPPLEMENTAL CERTIFICATE OF SERVICE

2025 NOV 18 PM 1:22
9584 0718 5278 2428 7304 05

LISA M. CONER
CLERK OF COURT
LEXINGTON, VA

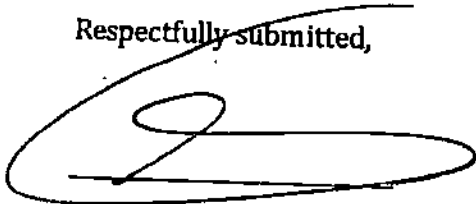
I hereby certify that I have this 18th day of November, 2025, served a true and correct copy of the following documents:

- Clocked copy of Defendants' Motion for Summary Judgment
- Clocked copy of Defendants' Notice of Courtesy Submission of Color-Coded Exhibits
- Supplemental filing materials requested by the Court

by depositing same in the United States Mail, with adequate postage affixed thereon, via USPS Certified Mail, Return Receipt Requested, addressed as follows:

Chad Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Respectfully submitted,



Nunnally: Mark-Anthony
5681 Grande River Road
College Park, GA 30349
404-980-4488
markannally@gmail.com
Pro Se Defendant

IN THE COURT OF COMMON PLEAS
LEXINGTON COUNTY, SOUTH CAROLINA
Case No. 2024-CP-32-01094

SUPPLEMENTAL CERTIFICATE OF SERVICE

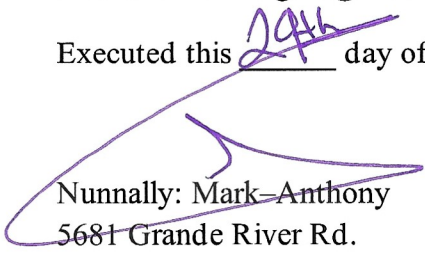
Defendants hereby certify that on this 29th day of November 2025, they served a true and correct copy of:

- Defendants' Notice of Courtesy Submission of Color-Coded Exhibits

Service was completed via email and U.S. Mail to:

Chad M. Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Email: Chad.Burgess@brockandscott.com

Executed this 29th day of November, 2025.


Nunnally: Mark Anthony
5681 Grande River Rd.
College Park, GA 30349
404-980-4488
MarkANunnally@gmail.com

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

Case No.: 2024-CP-32-01094

Nunally: Timothy--Allen and Nunnally: Mark--Anthony,
Plaintiffs,

v.

The Bank of New York Mellon,
Defendant.

SUPPLEMENTAL CERTIFICATE OF SERVICE (HAND DELIVERY)

I hereby certify that on the 1st day of December 2025, I personally hand-
delivered a true and correct copy of the following documents:

- 1.DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
- 2.DEFENDANTS' NOTICE OF COURTSEY SUBMISSION OF COLOR- CODED EXHIBITS
- 3.DEFENDANTS' AMENDED MOTION FOR SUMMARY JUDGMENT
- 4.DEFENDANTS' PROCEDURAL CLARIFICATION FOR THE RECORD
5. DEFENDANTS' MOTION FOR TEMPORAY RELIEF TO SUSPEND TAX SALE ACTION
AND TO REQUIRE THE 4% ASSESMENT RATE UNDER PROTEST PENDING
LITIGATION

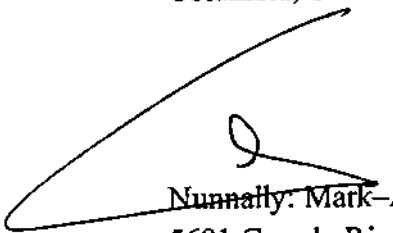
FILED

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LISA M. COWDER
CLERK OF COURT
LEXINGTON

I personally hand-delivered a true and correct copy of the following documents to counsel for the
Defendant at the following address:

Chad A. Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210



Nunnally: Mark-Anthony
5681 Grande River Road
College Park, GA 30349
Phone: 404-980-4488
Email: markanunnally@gmail.com

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2024-CP-32-01094

NOTICE OF BENCH TRIAL

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above-entitled cause, The Honorable **James O. Spence**, Master in Equity for Lexington County, has appointed February 10, 2026 at 10:00 AM at Lexington County Judicial Center, courtroom 2-A, 205 East Main St. Lexington SC 29072, as the time and place for holding a hearing on all pending motions and a bench trial. The Master in Equity is authorized to take testimony, make findings of fact and conclusions of law, enter a final judgment and to order the judicial sale of the property subject to foreclosure herein. This hearing will be held IN PERSON.

The hearing will be held at the Lexington County Judicial Center, courtroom 2-A, 205 East Main St. Lexington SC 29072, subject to all county-specific and court-specific Coronavirus/COVID-19 requirements and restrictions. Pursuant to South Carolina Supreme Court Administrative Order 2022-02-17-02, protective masks are no longer required in county courthouses; however, any person who is at risk or concerned about the dangers of COVID-19 may continue to wear a mask inside any courthouse, subject to a request from judges, courthouse staff, or law enforcement to briefly remove that mask during the presentation of a case or when necessary

23-28438 FC01

for security or identification purposes.

Additionally and most importantly, if you attend the hearing, please contact our office (803-454-3540) or the Court (803-785-8291) within 24 hours of the scheduled hearing date and time referenced above, so Court personnel may be alerted as to your attendance. If you plan to attend this hearing, we would respectfully appreciate your sending an email to SCHearings@BrockandScott.com or leaving a message for the undersigned at Brock and Scott, PLLC. (This is for purposes of notifying you in the event that the hearing is canceled.)

As a result of the hearing, a foreclosure sale could be ordered as soon as allowed by law after the foreclosure hearing.

Records in the possession of the undersigned as of this date reflect only the above parties and the above Defendant's counsel (if any). Please contact the undersigned immediately if any counsel has filed an appearance and their name is not reflected above as a recipient of this Notice.

According to the business records of Plaintiff, which have been made available to its Counsel and upon information and belief, neither Plaintiff nor its counsel is aware of any party to this action currently being in active bankruptcy and under the protection of the United States Bankruptcy Court ("USBK"). In addition, Counsel for Plaintiff has caused and/or has conducted a search of the PACER website for which Counsel, upon information and belief, reports no party, who executed the Note and/or Mortgage, and, to the best of his/her knowledge, is currently eligible for protection of the USBK. If any party has any information or record of a defendant currently being under the bankruptcy protections, it is requested that you notify counsel for Plaintiff immediately. Any demand for a deficiency is not applicable if a party has received a discharge in bankruptcy during the life of the mortgage, or is currently under the active protection of the bankruptcy courts. Moreover, any party to this action who is a discharged borrower to the debt of the Plaintiff shall not be subject to and is specifically excluded from both the calculation and collection of any amounts due and owing to the Plaintiff, as required by Rule 71(a) of the South Carolina Rules of Civil Procedure.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU: ARE A DEBTOR IN AN ACTIVE BANKRUPTCY CASE; ARE UNDER THE PROTECTION OF A BANKRUPTCY STAY; OR, HAVE RECEIVED A DISCHARGE IN BANKRUPTCY AND YOU HAVE NOT REAFFIRMED THE DEBT, THIS NOTICE IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT FROM YOU PERSONALLY.

Effective 03/01/2022 Lex. Co. MIE

s/ Chad W. Burgess
SC Bar #: 72520
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540
Chad.Burgess@brockandscott.com
Attorney for Plaintiff

Dated: January 26, 2026
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

C/A NO.: 2024-CP-32-01094

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

Plaintiff,

vs.

CERTIFICATE OF SERVICE BY MAIL

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

The undersigned hereby certifies that he/she is an employee of Brock & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

That on January 26, 2026, he served a copy of the below listed documents by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail. Any party that has appeared via electronic means is being served via electronic means.

Pleading: Notice of Bench Trial; Certificate of Service by Mail
Party (ies) Served:

Occupant(s)
1759 Willow Creek Drive
Columbia, SC 29212

Carl Alvin Nunally, Jr.
51173 Central Village Rd, Apt 301
Chesterfield, MI 48047

Mark Anthony Nunally
5681 Grande River Rd
Atlanta, GA 30349

23-28438 FC01

Timothy Allen Nunally
4499 Persian Ct
Snellville, GA 30039

Timothy Allen Nunally, as Personal Representative for the Estate
of Carl Alvin Nunally, Sr., deceased
4499 Persian Ct
Snellville, GA 30039

Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust
4499 Persian Ct
Snellville, GA 30039

s/ Chad W. Burgess
SC Bar #: 72520
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540
Chad.Burgess@brockandscott.com
Attorney for Plaintiff

Dated: January 26, 2026
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
C/A No.: 2024-CP-32-01094

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

**PLAINTIFF'S SCRCP RULE 16(C)
PRE-TRIAL BRIEF**

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

The Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, (hereinafter "Plaintiff") hereby submits this SCRCP Rule 16(c) Pre-Trial Brief:

NON-ARGUMENTATIVE STATEMENT OF FACTS

This action is for foreclosure of a mortgage on real property located in Lexington County, South Carolina. The subject property is located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. The Plaintiff's Lis Pendens, Summons, and Complaint were filed on March 8, 2024. The Defendants were properly served with the pleadings via personal service or via publication. The case was referred to The Honorable James O. Spence, as Master in Equity for Lexington County, on May 23, 2024. Following a denial of a prior motion to dismiss, the Defendants failed to answer or otherwise plead and, as a result, counsel for the Plaintiff filed an Affidavit of Default on March 24, 2025. The payments falling due and owing from and after

May 1, 2023 have not been made, although demand for payment thereof has been made. The loan matured on February 1, 2024. Plaintiff's action includes an action for declaratory judgment to correct an error on the notary section of the mortgage.

OBJECTIVE STATEMENT OF FACTS IN CONTROVERSY

The facts in controversy are relatively straightforward. Though they are in default, Defendants disputes the Plaintiff's right to foreclosure. Plaintiff intends to establish the elements of its foreclosure action, including but not limited to: 1) The borrowers entering into the Note, Mortgage, and loan modification, 2) the transfer of the loan to the Plaintiff and Plaintiff's right to enforce the Note and Mortgage, 3) the breach of the terms of the Note, Mortgage, and loan modification, 4) the amount and measure of Plaintiff's damages sustained as a result of breach. Plaintiff disputes all of the Defendants' arguments related to the Plaintiff's standing to bring the foreclosure and securitization of the subject loan as has been fully briefed previously.

STATEMENT OF LEGAL ISSUES

I. Plaintiff's standing to pursue foreclosure and Defendant's arguments related to securitization and violation of the pooling and servicing agreement.

The Plaintiff is the real party in interest with standing to bring this action as has been alleged in the complaint. The Plaintiff stands ready, willing, and able to prove its standing at trial as has been previously briefed in association with motions made by the Defendants.

Specifically, regarding Plaintiff's standing to bring the foreclosure action, on its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

Any challenge Defendants could make to the assignment of mortgage into Plaintiff is misplaced. While the assignment of mortgage are cogent evidence of the transfer of the Mortgage

to the Plaintiff, it is unnecessary to assert Plaintiff's right to enforce the Note and Mortgage. As noted in *BAC Home Loan servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549, "[t]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee". Quoting *Singleton v. Singleton*, 60 S.C. 216, 235, 38 S.E. 462, 469 (1901). Because it is the transfer of the Note that carries with it the transfer of the Mortgage the recordation of the assignment simply puts the world on notice of the assignment, and the timing of its recording has no impact on Plaintiff's standing to bring the instant foreclosure action. Notably, the assignments of mortgage are consistent with the transfer of the Note and Mortgage to the Plaintiff.

Further, the Defendants lack standing to challenge the transfer of the Note and Mortgage because they were not parties to said transfer. *In Re McFadden*, 471 BR 136 (2012); *see also Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012) ("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity"); *see also Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). ("Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.").

LIST OF EXHIBITS AND WITNESSES

I. List of Plaintiff's Exhibits

1.	POA/authority to act documents
2.	Form 8-K (10/4/18) – PMC as a wholly owned subsidiary of PHH and Ocwen
3.	Form 8-K (5/28/24) – Ocwen Financial Corp name change to Onity
4.	Note (1/30/04) - \$121,500.00
5.	Mortgage (2/20/04 in Book 9041 at Page 4)
6.	HUD Settlement Statement
7.	Deed into Carl and Frankie Nunally (3/12/1999 in Book 5145 at Page 97)
8.	Loan Mod (9/2/09)

9.	Assignment of Mortgage (7/28/23in Book 21067 at Page 4146)
10.	Corrective Assignment of Mortgage (10/3/23 in Book 21076 at Page 4337)
11.	Payment History (2009-2019)
12.	Payment History (2019-present)
13.	Judgment Figures
14.	Escrow Breakdown
15.	Corporate Advance Breakdown
16.	Breach Letter (9/7/2023)
17.	Supplemental Affidavit of Atty Fees & Costs
18.	
19.	
20.	

II. List of Witnesses

1. Louise Plasse;
2. Timothy Allen Nunally;
3. Carle Alvin Nunally, Jr.
4. Marck Anthony Nunally

UNUSUAL PROBLEMS RELATING TO EVIDENCE OR ANY OTHER UNUSUAL MATTERS

Plaintiff is unaware of any unusual problems relating to evidence or any other unusual matters that should be brought to the Court's attention at this time.

SETTLEMENT NEGOTIATIONS

There is no pending loss mitigation or settlement negotiations related to this matter and the parties appear to be ready to proceed with trial on the merits.

Respectfully Submitted,

s/ Chad W. Burgess
SC Bar #: 72520
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540
Fax 803-454-3541
Chad.Burgess@brockandscott.com
Attorney for Plaintiff

Dated: February 6, 2026
Columbia, South Carolina

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON

2026 FEB -9 PM 3:30

LISA M. COMER
CLERK OF COURT
LEXINGTON SC

The Bank of New York Mellon, f/k/a
The Bank of New York, as successor in interest to
JPMorgan Chase Bank, N.A., as Trustee for
NovaStar Mortgage Funding Trust, Series 2004-1,
NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1,
Plaintiff,

v.

Timothy Allen Nunally, as Personal Representative
for the Estate of Carl Alvin Nunally, Sr., deceased;
Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust;
Carl Alvin Nunally, Jr.;
Mark Anthony Nunnally;
Timothy Allen Nunally,
Defendants.

C/A No.: 2024-CP-32-01094

**DEFENDANTS' CONSOLIDATED RULE 16(c) NOTICE OF DISPUTED TRIAL
FRAME,**

**OBJECTION TO EVIDENTIARY SEQUENCING,
AND MOTION REQUIRING ELECTION OF STANDING THEORY**

INTRODUCTION

Defendants file this consolidated Rule 16(c) submission for the limited and clarifying purpose of ensuring that the trial proceeds in the proper legal sequence and upon competent evidence. This filing is not intended to re-argue prior motions, but to identify threshold issues expressly raised by Plaintiff's Amended Rule 16(c) Pre-Trial Brief that materially affect the scope, order of proof, and admissibility of evidence at trial.

I. DISPUTED TRIAL FRAME AND DEFAULT CHARACTERIZATION

Plaintiff's Rule 16(c) brief characterizes this matter as proceeding from an undisputed default posture and frames trial as limited to breach and damages. Defendants respectfully clarify that they dispute any framing that bypasses threshold determinations of standing and enforceability at the time the action was commenced.

Defendants' challenges concern subject-matter jurisdiction and Plaintiff's legal capacity to enforce the Note and Mortgage when suit was filed. These issues are not waived by any alleged default and must be resolved before the Court reaches breach or damages.

Defendants submit this clarification to prevent inadvertent narrowing of the trial to issues that presuppose unresolved threshold determinations.

II. OBJECTION TO EVIDENTIARY SEQUENCING — MORTGAGE COMPETENCY

Plaintiff's Rule 16(c) brief expressly acknowledges that its Complaint seeks declaratory judgment to correct a defect in the notary acknowledgment of the Mortgage.

Until such declaratory relief is adjudicated, the Mortgage instrument remains facially defective and cannot serve as competent evidence to establish standing, enforceability, or breach. Allowing reliance on the Mortgage prior to correction would invert the required order of proof and permit retroactive evidentiary repair.

Accordingly, Defendants object to any reliance on the Mortgage at trial unless and until the Court first adjudicates the requested declaratory relief. Defendants respectfully request that the Court require proper sequencing of proof consistent with this posture.

III. MOTION REQUIRING ELECTION OF STANDING THEORY

Plaintiff's Rule 16(c) brief asserts that assignments of mortgage are unnecessary to enforce the Note, while simultaneously listing multiple assignments—including a corrective assignment executed in 2023—as trial exhibits.

To avoid evidentiary inconsistency and prejudice, Defendants request that Plaintiff be required to elect a single standing theory prior to trial:

1. Holder-status enforcement alone, without reliance on assignments; or
2. Assignment-based enforcement, subject to scrutiny of timing, authority, and consistency.

Plaintiff should not be permitted to rely on mutually inconsistent theories in presenting its case-in-chief.

IV. IDENTIFICATION OF EVIDENTIARY ISSUES UNDER RULE 16(c)

Contrary to Plaintiff's assertion that no unusual evidentiary issues exist, Defendants identify the following matters as directly affecting admissibility and sequencing:

- A facial defect in the Mortgage acknowledgment;
- A pending request for declaratory relief to correct that defect;
- A corrective assignment executed nearly two decades after trust formation;
- Witness testimony anticipated to address trust and transfer matters without disclosed personal knowledge or custodial foundation.

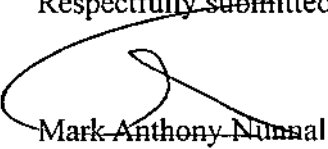
These issues are raised now for the limited purpose of assisting the Court in managing the orderly and lawful presentation of evidence.

CONCLUSION

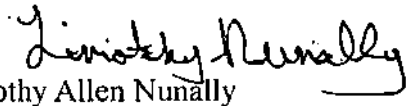
Defendants respectfully request that the Court:

1. Acknowledge the disputed trial frame identified herein;
2. Require proper sequencing of proof regarding standing and instrument competency;
3. Require Plaintiff to elect a single standing theory prior to presentation of evidence; and
4. Grant such further relief as the Court deems just and proper to ensure a fair and orderly trial.

Respectfully submitted,



Mark Anthony Nunally
Defendant, Pro Se
5681 Grande River Road
College Park, GA 30349
Telephone: 404-980-4488
Email: markanunnally@gmail.com



Timothy Allen Nunally
Defendant, Pro Se

Certificate of Service

I hereby certify that I served a true and correct copy of the foregoing Defendants' Consolidated Rule 16(c) Notice and Motion upon counsel for Plaintiff by electronic mail, addressed to:

Chad W. Burgess, Esq.
Brock & Scott, PLLC
Chad.Burgess@brockandscott.com

This 9th of February, 2026..



Mark Anthony Nunnally

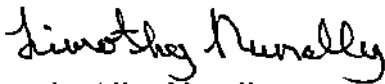
Defendant, Pro Se

5681 Grande River Road

College Park, GA 30349

Telephone: 404-980-4488

Email: markanunnally@gmail.com



Timothy Allen Nunally

Defendant, Pro Se

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
C/A No.: 2024-CP-32-01094

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

**PLAINTIFF'S AMENDED SCRCP RULE
16(C) PRE-TRIAL BRIEF**

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

The Plaintiff, The Bank of New York Mellon, f/k/a The Bank of New York as successor in interest to JPMorgan Chase Bank, N.A. as Trustee for NovaStar Mortgage Funding Trust, Series 2004-1, NovaStar Home Equity Loan Asset-Backed Certificates, Series 2004-1, (hereinafter "Plaintiff") hereby submits this SCRCP Rule 16(c) Pre-Trial Brief:

NON-ARGUMENTATIVE STATEMENT OF FACTS

This action is for foreclosure of a mortgage on real property located in Lexington County, South Carolina. The subject property is located at 1759 Willow Creek Drive, Columbia, South Carolina 29212. The Plaintiff's Lis Pendens, Summons, and Complaint were filed on March 8, 2024. The Defendants were properly served with the pleadings via personal service or via publication. The case was referred to The Honorable James O. Spence, as Master in Equity for Lexington County, on May 23, 2024. Following a denial of a prior motion to dismiss, the Defendants failed to answer or otherwise plead and, as a result, counsel for the Plaintiff filed an Affidavit of Default on March 24, 2025. The payments falling due and owing from and after

May 1, 2023 have not been made, although demand for payment thereof has been made. The loan matured on February 1, 2024. Plaintiff's Complaint includes an action for declaratory judgment to correct an error on the notary section of the Mortgage. Plaintiff has waived its right to a deficiency judgment.

OBJECTIVE STATEMENT OF FACTS IN CONTROVERSY

The facts in controversy are relatively straightforward. Though they are in default, Defendants dispute the Plaintiff's right to foreclosure. Plaintiff intends to establish the elements of its foreclosure action, including but not limited to: 1) The borrowers entering into the Note, Mortgage, and loan modification, 2) the transfer of the loan to the Plaintiff and Plaintiff's right to enforce the Note and Mortgage, 3) the breach of the terms of the Note, Mortgage, and loan modification, 4) the amount and measure of Plaintiff's damages sustained as a result of breach. Plaintiff disputes all of the Defendants' arguments related to the Plaintiff's standing to bring the foreclosure and securitization of the subject loan as has been fully briefed previously.

STATEMENT OF LEGAL ISSUES

I. Plaintiff's standing to pursue foreclosure and Defendant's arguments related to securitization and violation of the pooling and servicing agreement.

The Plaintiff is the real party in interest with standing to bring this action as has been alleged in the Complaint. The Plaintiff stands ready, willing, and able to prove its standing at trial as has been previously briefed in association with motions made by the Defendants.

Specifically, regarding Plaintiff's standing to bring the foreclosure action, on its face, the Note is a negotiable instrument as defined in S.C. Code Ann. §36-3-104. Plaintiff is the holder of the Note as defined in S.C. Code Ann. § 36-1-201 (b)(21)(A), formerly S.C. Code Ann. §36-1-201(20) as they are in possession of the negotiable instrument indorsed in blank. As the holder of the Note, Plaintiff is a "person entitled to enforce" the Note pursuant to S.C. Code Ann. § 36-3-301 as a matter of law.

Any challenge Defendants could make to the assignment of mortgage into Plaintiff is misplaced. While the assignments of mortgage are cogent evidence of the transfer of the Mortgage to the Plaintiff, the assignments are unnecessary to assert Plaintiff's right to enforce the Note and Mortgage. As noted in *BAC Home Loan servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549, "[t]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee". Quoting *Singleton v. Singleton*, 60 S.C. 216, 235, 38 S.E. 462, 469 (1901). Because it is the transfer of the Note that carries with it the transfer of the Mortgage, the recordation of the assignments simply put the world on notice of the transfer of the Mortgage, and the timing of their recording has no impact on Plaintiff's standing to bring the instant foreclosure action. Notably, the assignments of mortgage are consistent with the transfer of the Note and Mortgage to the Plaintiff.

Further, the Defendants lack standing to challenge the transfer of the Note and Mortgage because they were not parties to said transfer. *In Re McFadden*, 471 BR 136 (2012); *see also Reese v. United States Bank Nat'l Ass'n*, No. 3:11-2990-CMC-SVH, 2012 U.S. Dist. LEXIS 75652, at *8-9 (D.S.C. Apr. 30, 2012) ("Plaintiff is only a party to the Mortgage and, because the Assignment is a separate contract to which Plaintiff is not a party, she cannot question its validity"); *see also Windsor Green Owners Ass'n, Inc. v. Allied Signal, Inc.*, 362 S.C. 12, 605 S.E.2d 750 (Ct. App. 2004). ("Generally, one not in privity of contract with another cannot maintain an action against him for breach of contract.").

LIST OF EXHIBITS AND WITNESSES

I. List of Plaintiff's Exhibits

1.	POA/authority to act documents
2.	Form 8-K (10/4/18) – PMC as a wholly owned subsidiary of PHH and Ocwen
3.	Form 8-K (5/28/24) – Ocwen Financial Corp name change to Onity
4.	Note (1/30/04) - \$121,500.00
5.	Mortgage (2/20/04 in Book 9041 at Page 4)

6.	HUD Settlement Statement
7.	Deed into Carl and Frankie Nunally (3/12/1999 in Book 5145 ag Page 97)
8.	Loan Modification (9/2/09)
9.	Assignment of Mortgage (7/28/23in Book 21067 at Page 4146)
10.	Corrective Assignment of Mortgage (10/3/23 in Book 21076 at Page 4337)
11.	Payment History (2009-2019)
12.	Payment History (2019-present)
13.	Judgment Figures
14.	Escrow Breakdown
15.	Corporate Advance Breakdown
16.	Breach Letter (9/7/2023)
17.	Supplemental Affidavit of Atty Fees & Costs

II. List of Witnesses

1. Brian Boger
2. Louise Plasse;
3. Timothy Allen Nunally;
4. Carle Alvin Nunally, Jr.
5. Mark Anthony Nunally

UNUSUAL PROBLEMS RELATING TO EVIDENCE OR ANY OTHER UNUSUAL MATTERS

Plaintiff is unaware of any unusual problems relating to evidence or any other unusual matters that should be brought to the Court's attention at this time.

SETTLEMENT NEGOTIATIONS

The subject loan has matured. There are no pending loss mitigation or settlement negotiations related to this matter and the parties appear to be ready to proceed with trial on the merits.

Respectfully Submitted,

s/ Chad W. Burgess
SC Bar #: 72520
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540
Fax 803-454-3541
Chad.Burgess@brockandscott.com
Attorney for Plaintiff

Dated: February 8, 2026
Columbia, South Carolina

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

RECEIVED APR 14 2026
MA

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,)

Plaintiff,)

v.)

PACKET

TIMOTHY A. NUNALLY, et al.,)

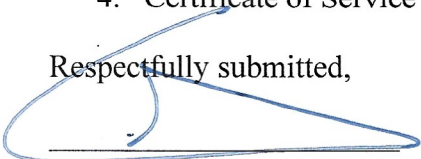
Defendants.)

Submitted April 14th, 2026

This packet contains the following documents submitted for the Court's consideration following the bench trial held on February 10, 2026:

1. Short-Form Proposed Order (Primary Proposed Order for signature)
2. Exhibit A – Supporting Proposed Order (Long-Form Proposed Order)
3. Exhibit B – Summary Sheet (Orientation Summary for Court Review)
4. Certificate of Service (Filing version only)

Respectfully submitted,


Nunnally: Mark-Anthony
Defendant, Pro Se
5681 Grande River Rd.
College Park, GA 30349


Nunnally: Timothy-Allen
Defendant, Pro Se
5681 Grande River Rd.
College Park, GA 30349

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

RECEIVED APR 14 2026
MA

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
TIMOTHY A. NUNALLY, et al.,	)	
	)	
Defendants.	)	

I. SUMMARY

This matter came before the Court for trial on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County.

The court reporter was present.

Plaintiff asserts it is entitled to foreclose based upon an alleged default under a mortgage loan. Defendants, as heirs of the original mortgagor, challenge Plaintiff's standing, the validity of the mortgage and assignments, and assert race-notice and recordation defenses.

The parties presented testimony, documentary evidence, and argument. After consideration of the record, the Court rules as follows:

II. FINDINGS OF FACT

THE COURT FINDS THE FOLLOWING UNDISPUTED FACTS

1. This action was filed on March 8, 2024.
2. The subject property is located at 1759 Willow Creek Drive, Columbia, South Carolina.
3. The mortgage was executed on January 30, 2004 and recorded on February 20, 2004.
4. Plaintiff relies on assignments recorded in 2023, including a corrective assignment.
5. Defendants' Deeds of Distribution were recorded prior to Plaintiff's corrective assignment.
6. A trial was conducted on February 10, 2026 pursuant to the Court's Trial Scheduling Order.

A. VALIDITY OF THE MORTGAGE AND ACKNOWLEDGMENT

The parties dispute whether the mortgage is valid.

Plaintiff argues the mortgage is valid and any defect is clerical.

Defendants argue the acknowledgment is defective and renders the mortgage not entitled to recordation.

The Court finds the acknowledgment is defective on its face and Plaintiff presented no evidence establishing that such defect may be cured. The Court further finds the mortgage was not entitled to recordation as a matter of law.

B. STANDING AT COMMENCEMENT

The parties dispute whether Plaintiff has standing.

Plaintiff argues the mortgage is valid and any defect is clerical.

Defendants argue the acknowledgment is defective and renders the mortgage not entitled to recordation.

The Court finds the acknowledgment is defective on its face and Plaintiff presented no evidence establishing that such defect may be cured. The Court further finds the mortgage was not entitled to recordation as a matter of law.

C. VALIDITY OF ASSIGNMENTS

The parties dispute the validity of the assignments.

Plaintiff argues the assignments validly transfer the mortgage.

Defendants argue the assignments misidentify the mortgage and are void.

The Court finds the assignments reference a mortgage recorded on February 28, 2004, a date not supported by the record, and further contain inconsistent recording information. Plaintiff presented no evidence reconciling these discrepancies. The Court finds the assignments fail to identify a valid instrument and are ineffective.

D. CHAIN OF TITLE AND TRUST AUTHORITY

The parties dispute whether Plaintiff established a valid chain of title and trust authority.

Plaintiff asserts authority as trustee.

Defendants argue no evidence establishes transfer into the trust.

The Court finds Plaintiff presented no admissible evidence establishing transfer of the loan into the trust or authority to enforce it. The Court finds a material gap in the chain of title.

E. PROOF OF DEFAULT AND INDEBTEDNESS

The parties dispute whether the mortgage is in default and the amount owed.

Plaintiff relies on a payment history and loan balance.

Defendants challenge the admissibility and foundation of such evidence.

The Court finds that Plaintiff failed to present competent, admissible evidence establishing the essential elements required for foreclosure.

The testimony of Plaintiff's witness, Louise Plasse, established only that she reviews and has access to certain business records maintained by third-party servicers and did not establish the foundational requirements necessary for admission of business records under Rule 803(6), SCRE.

The Court finds that Ms. Plasse did not testify as a records custodian and failed to establish the creation, maintenance, accuracy, or reliability of the records relied upon, including any payment history or default calculations.

The Court further finds that testimony that payments were "not all made" constitutes a conclusory statement and does not establish the amount owed, the method of calculation, or the existence of a default supported by admissible evidence.

The testimony of Plaintiff's witness, Brian L. Boger, was limited to loan origination and did not establish Plaintiff's possession of the Note at commencement, the existence of a default, or the amount owed.

The Court finds that no witness presented by Plaintiff provided competent testimony sufficient to establish default, indebtedness, or entitlement to foreclosure.

Accordingly, the Court finds that default and indebtedness were not proven and that Plaintiff failed to meet its burden of proof.

F. PRIORITY AND RACE-NOTICE

The parties dispute whether Plaintiff has priority under race-notice principles.

Plaintiff asserts its interest is superior.

Defendants argue no constructive notice exists due to defective recordation.

The Court finds that an improperly acknowledged mortgage is not entitled to recordation and does not impart constructive notice. The Court finds Plaintiff failed to establish priority over Defendants' recorded interests.

III. LEGAL ISSUES

The Court considered:

- (1) Whether there is a valid mortgage
- (2) Whether the mortgage is in default
- (3) Whether Plaintiff has standing at commencement
- (4) Whether Plaintiff established a valid chain of title and authority
- (5) Whether Defendants established a valid race-notice defense

IV. CONCLUSIONS OF LAW

1. The Court has jurisdiction pursuant to the Order of Reference.

2. Standing must exist at the time an action is commenced and cannot be established retroactively.
3. A mortgage must be properly acknowledged to be entitled to recordation, and an improperly acknowledged instrument does not provide constructive notice.
4. Assignments must identify a valid instrument and cannot transfer rights in a non-existent or misidentified mortgage.
5. A party seeking foreclosure must establish ownership of the debt and default through admissible evidence.
6. Plaintiff failed to establish standing, a valid enforceable mortgage, a valid chain of title, or default.

V. ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff has failed to establish standing at the commencement of this action;
2. Plaintiff has failed to establish a valid and enforceable mortgage entitled to recordation or enforcement;
3. Plaintiff has failed to establish a valid chain of title or authority to enforce the loan;
4. Plaintiff has failed to present competent, admissible evidence of default, amount owed, or entitlement to foreclosure;
5. Plaintiff has failed to meet its burden of proof as a matter of law;
6. Plaintiff's claims are hereby **DISMISSED WITH PREJUDICE**;
7. The Court declines to grant equitable or declaratory relief to cure defects in proof or statutory compliance;
8. All remaining relief requested by Plaintiff is **DENIED**.

This ruling is based upon Plaintiff's failure of proof on essential elements required for foreclosure, as established by the evidentiary record presented at trial, and not upon procedural or technical grounds.

IT IS SO ORDERED.

James O. Spence

Master-in-Equity

Lexington County, South Carolina

Dated: _____

Exhibit A

(Page continues from Proposed Order Packet)

**IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,)

Plaintiff,)

v.)

TIMOTHY A. NUNALLY, et al.,)

Defendants.)

EXHIBIT A

SUPPORTING PROPOSED ORDER

(Defendants' Long Form Proposed Order)

This Exhibit contains the Long-Form Proposed Order submitted by Defendants. It provides the full factual findings, legal analysis, and detailed reasoning supporting the Short-Form Proposed Order filed contemporaneously herewith.

Submitted this ____ day of April, 2026.

Nunnally: Mark-Anthony

Defendant, Pro Se

5681 Grande River Rd.

College Park, GA 30349

Nunally: Timothy-Allen

Defendant, Pro Se

5681 Grande River Rd.

College Park, GA 30349

**IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
TIMOTHY A. NUNALLY, et al.,	)	
	)	
Defendants.	)	

I. SUMMARY

This matter came before the Court for trial on February 10, 2026, before the Honorable James O. Spence, Master-in-Equity for Lexington County.

Plaintiff seeks foreclosure of a mortgage loan. Defendants, as heirs of the original mortgagor, challenge Plaintiff's standing, the validity of the mortgage and assignments, and assert recordation and race-notice defenses.

The Court considered testimony, documentary evidence, and argument. Based upon the record, the Court makes the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

A. MORTGAGE INSTRUMENT AND ACKNOWLEDGEMENT

1. The mortgage was executed on January 30, 2004.
2. The acknowledgment appearing on the mortgage does not properly identify the mortgagor and instead reflects a self-acknowledgment by the notary.
3. Plaintiff presented no legal authority establishing that such a defect constitutes a clerical error.
4. Plaintiff presented no admissible evidence demonstrating that the defect may be cured through testimony or equitable reformation.
5. The Court finds the acknowledgment is defective on its face.

B. RECORDATION AND CONSTRUCTIVE NOTICE

6. The mortgage was recorded on February 20, 2004.

7. Plaintiff's assignments and arguments reference a mortgage recorded on February 28, 2004.
8. The Court finds no evidence establishing that February 28, 2004 was a valid recording date for the subject instrument.
9. The Court finds that the record contains inconsistencies as to the identity and recording of the mortgage.
10. Plaintiff presented no evidence establishing that the mortgage was properly recorded in compliance with statutory requirements.

C. ASSIGNMENTS OF MORTGAGE

11. Plaintiff relies on assignments recorded in 2023, including a corrective assignment.
12. The assignments identify a mortgage recorded on February 28, 2004.
13. The corrective assignment repeats the same incorrect recording date and contains inconsistent recording references.
14. Plaintiff presented no evidence reconciling these discrepancies.
15. The Court finds that the assignments reference a mortgage instrument that does not exist as described.

D. CHAIN OF TITLE

16. The record reflects no assignment into Plaintiff's claimed trust until 2023.
17. Plaintiff presented no admissible evidence establishing a continuous chain of title from origination in 2004 to the 2023 assignment.
18. The Court finds a material break in the chain of title.

E. TRUST AUTHORITY

20. Plaintiff asserts authority as trustee of a securitized trust.
21. Plaintiff presented no Pooling and Servicing Agreement, custodial records, or other admissible evidence establishing transfer of the loan into the trust.
22. Plaintiff presented no evidence establishing the authority of the trustee to enforce the loan.
23. The Court finds no evidence that the loan was transferred into the trust.

F. STANDING AT COMMENCEMENT

- 24. This action was filed on March 8, 2024.
- 25. Plaintiff bore the burden of establishing standing at the time of filing.
- 26. Plaintiff presented no evidence establishing possession of the original note as of March 8, 2024.
- 27. Evidence presented addressed possession at or near the time of trial.
- 28. The Court finds Plaintiff failed to establish standing at commencement.

G. PROOF OF DEBT AND DEFAULT

- 28. Plaintiff presented a payment history and loan balance summary.
- 29. The Court finds that Plaintiff failed to present competent, admissible evidence establishing the essential elements required for foreclosure.
- 30. The testimony of Plaintiff's witness, Louise Plasse, established only that she reviews and has access to certain business records maintained by third-party servicers.
- 31. Ms. Plasse did not testify as a custodian of records and failed to establish the foundational requirements necessary for admission of business records under Rule 803(6), SCRE, including testimony regarding the creation, maintenance, accuracy, or reliability of the records relied upon.
- 32. Although Ms. Plasse asserted familiarity with the servicing system and payment history, she did not establish who created the records, when they were created, or whether they were made in the regular course of business at or near the time of the events recorded.
- 33. Her testimony that payments were "not all made" constituted a conclusory statement and did not establish the amount owed, the method of calculation, or the existence of a default supported by admissible evidence.
- 34. The testimony of Plaintiff's witness, Brian L. Boger, was limited to his involvement in the origination of the loan and did not establish Plaintiff's possession of the Note at the time the action was commenced, the existence of a default, or the amount allegedly owed.
- 35. Mr. Boger further testified that he did not witness the execution of the Note and relied on inference rather than personal knowledge regarding its execution.
- 36. His testimony additionally confirmed defects in the execution of the Mortgage acknowledgment, including his role as both notary and witness, raising substantial questions as to the validity of the instrument.
- 37. The Court finds that no witness presented by Plaintiff provided competent testimony sufficient to establish:
 - (1) possession of the Note at commencement of the action;

- (2) the existence of a default; or
- (3) the amount owed.

38. Accordingly, the Court finds that Plaintiff failed to meet its burden of proof.

H. DEFENDANTS' RECORDED INTEREST

- 39. Defendants' Deeds of Distribution were recorded prior to Plaintiff's corrective assignment.
- 40. Plaintiff presented no evidence establishing that its interest was properly recorded so as to impart constructive notice.

III. CONCLUSIONS OF LAW

A. STANDING

- 41. Standing is a jurisdictional requirement that must exist at the time an action is commenced.
- 42. A party must demonstrate entitlement to enforce the note at the time of filing.
- 43. Standing cannot be established retroactively by later-acquired evidence or assignments.
- 44. The Court declines to treat prior interlocutory rulings as dispositive of standing.
- 45. Plaintiff failed to establish standing as a matter of law.

B. DEFECTIVE ACKNOWLEDGMENT

- 46. A mortgage must be properly acknowledged to be entitled to recordation.
- 47. A defective acknowledgment renders the instrument not entitled to recordation.
- 48. Recordation of an improperly acknowledged instrument does not provide constructive notice.
- 49. Such defect cannot be cured by testimony or equitable reformation.

C. ASSIGNMENTS

- 50. An assignment must identify a valid, existing instrument.
- 51. An assignment referencing a non-existent or materially misidentified instrument is void.
- 52. Corrective instruments that repeat material defects do not cure such defects.
- 53. The assignments in this case fail as a matter of law.

D. TRUST AUTHORITY

- 54. A trustee must demonstrate authority to act on behalf of the trust.
- 55. Transfers into a securitized trust must comply with governing trust requirements.
- 56. Acts in contravention of trust requirements are void.

57. Plaintiff failed to establish authority to enforce the loan.

E. RACE-NOTICE

58. South Carolina is a race-notice jurisdiction.

59. Only properly recorded instruments impart constructive notice.

60. A mortgage not entitled to recordation cannot establish priority.

61. Plaintiff failed to establish priority over Defendants' recorded interests.

F. PROOF OF DEBT

62. A plaintiff must establish the existence of the debt and default through admissible evidence.

63. Unsupported summaries or unverified records are insufficient.

64. Plaintiff failed to meet its burden of proof.

IV. ORDER

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff has failed to establish standing at the time of commencement of this action, a jurisdictional prerequisite which cannot be cured retroactively;
2. Plaintiff has failed to establish the existence of a valid, enforceable mortgage lien entitled to recordation or enforcement under South Carolina law;
3. Plaintiff has failed to establish a valid chain of title or authority to enforce the subject loan;
4. Plaintiff has failed to present competent, admissible evidence establishing default, the amount owed, or entitlement to foreclosure;
5. Accordingly, Plaintiff has failed to meet its burden of proof as a matter of law;
6. Plaintiff's claims for foreclosure are hereby DISMISSED WITH PREJUDICE;
7. The Court declines to grant declaratory, equitable, or remedial relief to cure statutory, evidentiary, or jurisdictional defects;
8. All other claims, defenses, and requests for relief not expressly granted herein are DENIED.

The Court's ruling is based upon Plaintiff's failure to meet its burden of proof on essential elements required for foreclosure, independent of any procedural or technical defects, and is supported by the evidentiary record presented at trial.

IT IS SO ORDERED.

James O. Spence

Master-in-Equity

Lexington County, South Carolina

Dated: _____

Exhibit B

(Page continues from Proposed Order Packet)

**IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON**

Case No.: 2024-CP-32-01094

THE BANK OF NEW YORK MELLON,)

)

Plaintiff,)

)

v.)

)

TIMOTHY A. NUNALLY, et al.,)

)

Defendants.)

**EXHIBIT B
SUMMARY SHEET**

This Exhibit contains the Summary Sheet prepared for the Court's convenience. It provides a concise overview of the issues, timeline, findings, and requested disposition to assist the Court in reviewing the accompanying Proposed Orders.

Submitted this ____ day of April, 2026.

Nunnally: Mark-Anthony

Defendant, Pro Se

5681 Grande River Rd.

College Park, GA 30349

Nunally: Timothy-Allen

Defendant, Pro Se

5681 Grande River Rd.

College Park, GA 30349

SUMMARY SHEET

DEFENDANTS' SUMMARY SHEET FOR PROPOSED ORDER

(For Court Review – April 17, 2026)

Case: The Bank of New York Mellon v. Nunally, et al.

Case No.: 2024-CP-32-01094

Trial Date: February 10, 2026

CORE ISSUE SNAPSHOT

1. Standing at filing (March 8, 2024)
2. Valid enforceable mortgage
3. Valid assignment of identifiable instrument
4. Admissible proof of default and debt

Record Answer: Plaintiff failed to establish each required element.

TIMELINE (CONDENSED)

2004 – Mortgage executed (defective acknowledgment); recorded Feb 20; later misidentified as Feb 28

2009 – Loan modification (no authentication or authority)

2019–2023 – Estate transfers; Deeds of Distribution recorded

2023 – Assignments (wrong date; wrong book; no authority)

2024 – Foreclosure filed; no proof of note possession at filing

2026 – Trial; no admissible proof of default or debt

CHAIN OF TITLE

No continuous chain from 2004 to 2023.

Assignments reference non-existent instrument.

No proof of transfer into trust.

KEY FINDINGS

- 1) Plaintiff failed to establish standing at commencement
- 2) The mortgage is not entitled to recordation due to defective acknowledgment
- 3) Assignments fail to identify a valid instrument and are ineffective
- 4) Plaintiff failed to establish transfer into the trust or authority to enforce
- 5) Plaintiff failed to present admissible evidence of default or indebtedness
- 6) Plaintiff failed to establish priority under race-notice principles

LEGAL RESULT

Plaintiff failed to meet its burden of proof on all essential elements required for foreclosure.
No evidentiary or legal basis exists to grant foreclosure or equitable relief.

REQUESTED DISPOSITION

Dismissal with prejudice.

No equitable cure.

All other relief denied.

COURT ACTION REQUESTED

Entry of Order dismissing Plaintiff's claims with prejudice.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Defendants' Proposed Order, Short-Form Proposed Order, and Summary Sheet for Proposed Order** was served upon counsel for Plaintiff via USPS Certified Mail and electronic mail on this 14th day of April, 2026.

Chad W. Burgess, Esquire for Plaintiff
Brock & Scott, PLLC

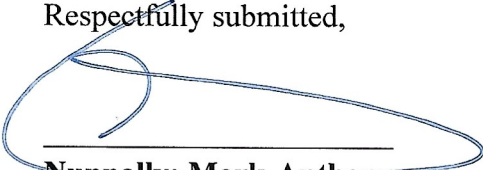
Westpark Center

3800 Fernandina Road, Suite 110

Columbia, SC 29210

Chad.Burgess@brockandscott.com

Respectfully submitted,



~~Nunnally: Mark-Anthony~~

Defendant, Pro Se

5681 Grande River Rd.

College Park, GA 30349



~~Nunally: Timothy-Allen~~

Defendant, Pro Se

5681 Grande River Rd.

College Park, GA 30349

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

C/A NO.: 2024-CP-32-01094

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

Plaintiff,

vs.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceased; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that he/she is an employee of Brock & Scott, PLLC, and is a person of such age and discretion as to be competent to serve papers.

That on the 4/24/2026 he/she served a copy of the following documents by placing said copy in a postage paid envelope addressed to each of the following persons at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail. Any party that has appeared via electronic means is being served via electronic means.

Pleading: Filed Master in Equity's Order and Judgment of Foreclosure and Sale and Reformation of Mortgage; Certificate of Service by Mail

Party (ies) Served:

Carl Alvin Nunally, Jr.
51173 Central Village Rd, Apt 301
Chesterfield, MI 48047

Mark Anthony Nunally
5681 Grande River Rd
Atlanta, GA 30349

Timothy Allen Nunally
4499 Persian Ct
Snellville, GA 30039

Timothy Allen Nunally, as Personal Representative for the
Estate of Carl Alvin Nunally, Sr., deceased
4499 Persian Ct
Snellville, GA 30039

Timothy Allen Nunally, as Trustee for the CAN Irrevocable
Trust
4499 Persian Ct
Snellville, GA 30039



Lauren Guy
Brock & Scott, PLLC

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

THE BANK OF NEW YORK MELLON,
F/K/A THE BANK OF NEW YORK, AS
SUCCESSOR IN INTEREST TO JPMORGAN
CHASE BANK, N.A., AS TRUSTEE FOR
NOVASTAR MORTGAGE FUNDING TRUST,
SERIES 2004-1, NOVASTAR HOME EQUITY
ASSET-BACKED CERTIFICATES, SERIES
2004-1,

Plaintiff,

v.

TIMOTHY NUNALLY and
MARK NUNNALLY,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
CASE NO.: 2024-CP-32-01094

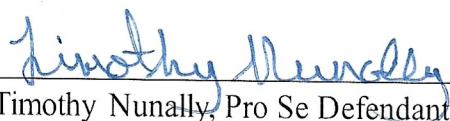
NOTICE OF APPEAL

PLEASE TAKE NOTICE that Defendants Timothy Nunally and Mark Nunnally, appearing pro se, hereby give notice of appeal as follows:

1. Defendants appeal to the South Carolina Court of Appeals from the Final Order signed by the Honorable James O. Spence, Master-in-Equity for Lexington County, on or about April 23, 2026, and entered in the above-captioned matter.
2. Defendants appeal from the Final Order in whole, including all findings, conclusions, rulings, and relief granted therein that adversely affect Defendants' rights, interests, defenses, title-related interests, possession-related interests, appellate rights, and rights concerning the real property commonly known as 1759 Willow Creek Drive, Columbia, South Carolina 29212.

3. This Notice of Appeal is filed and served to preserve meaningful appellate review of the trial record, admitted evidence, governing law, and issues preserved before the Court.
4. Defendants state that this appeal is taken in good faith and is not taken for purposes of delay.
5. Defendants seek appellate review of whether the Final Order is supported by the record, the law, and the preserved issues presented in this matter.
6. Because the Final Order concerns foreclosure-related relief affecting real property, Defendants are also filing, contemporaneously or promptly herewith, Defendants' Emergency Motion to Stay Enforcement of Final Order Pending Appeal and Petition for Writ of Supersedeas.
7. Defendants seek stay/supersedeas relief so that appellate review remains practical and meaningful, not merely theoretical after enforcement has altered the property rights at issue.
8. Defendants submit that meaningful appellate review requires that the same procedural and evidentiary standards invoked against them be applied equally to all parties.
9. Defendants reserve all rights, arguments, defenses, objections, and appellate issues available under South Carolina law and the South Carolina Appellate Court Rules.

Respectfully submitted,


Timothy Nunally, Pro Se Defendant

5681 Grande River Rd
College Park, GA 30349
markannunally@gmail.com


Mark Nunnally, Pro Se Defendant

5681 Grande River Rd
College Park, GA 30349
markannunally@gmail.com

Date: MAY 5, 2026
Lexington County, South Carolina

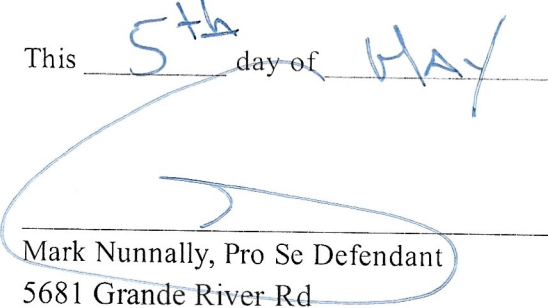
CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing **Notice of Appeal** upon counsel of record by electronic mail and/or U.S. Mail as follows:

Chad Burgess, Esq.
Brock & Scott, PLLC
Chad.Burgess@brockandscott.com
3800 Fernandina Rd., Suite 110
Columbia, SC 29210

Attorney for Plaintiff

This 5th day of MAY, 2026.



Mark Nunnally, Pro Se Defendant
5681 Grande River Rd
College Park, GA 30349
markannally@gmail.com

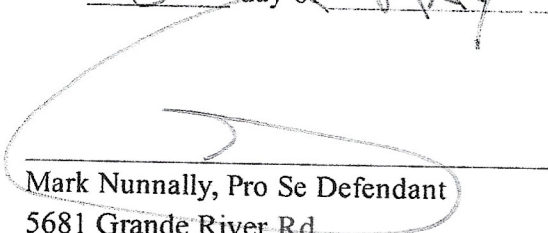
CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing **Notice of Appeal** upon counsel of record by electronic mail and/or U.S. Mail as follows:

Chad Burgess, Esq.
Brock & Scott, PLLC
Chad.Burgess@brockandscott.com
3800 Fernandina Rd., Suite 110
Columbia, SC 29210

Attorney for Plaintiff

This 5th day of MAY, 2026.



Mark Nunnally, Pro Se Defendant
5681 Grande River Rd
College Park, GA 30349
markannally@gmail.com

U.S. Postal ServiceTM
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For delivery information, visit our website at www.usps.com[®].

Columbia, SC 29210

Certified Mail Fee \$5.30

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3200 Fernandina Rd, Ste 110

City, State, ZIP+4[®]

Columbia, SC 29210

PS Form 3800, January 2023 PSN 7530-02-000-9047

See Reverse for Instructions

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) C/A #: 2024-CP-32-01094

The Bank of New York Mellon, f/k/a)
The Bank of New York as successor)
in interest to JPMorgan Chase Bank,)
N.A. as Trustee for NovaStar)
Mortgage Funding Trust, Series)
2004-1, NovaStar Home Equity Loan)
Asset-Backed Certificates, Series)
2004-1,)

Plaintiff,

V.

Timothy Allen Nunally, as Personal Representative for the Estate of Carl Alvin Nunally, Sr., deceses; Timothy Allen Nunally, as Trustee for the CAN Irrevocable Trust; Carl Alvin Nunally, Jr.; Mark Anthony Nunally; Timothy Allen Nunally,

Defendants.

HEARING

* * * * *

Tuesday, January 28, 2025

9:24 a.m. - 10:08 a.m.

The Hearing was heard before The Honorable Judge James O. Spence, at Lexington County Judicial Center, 205 East Main Street, Lexington, South Carolina, on the 28th day of January, 2025 before Nadine A. Garrett, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / contact@creelreporting.com

APPEARANCES**Chad W. Burgess, Esquire**

Brock & Scott, PLLC
 3800 Fernandina Road, Suite 110
 Columbia, South Carolina 29210
 Attorney for the Plaintiffs

Mark Anthony Nunally, Pro Se

5681 Grande River Road
 Atlanta, Georgia 30349
 Defendant

Timothy Allen Nunally, Pro Se

449 Persian Court
 Snellville, Georgia 30039
 Defendant

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<u>CALL TO ORDER:</u>	<u>PAGE</u>
THE COURT	3

MOTION BY MARK NUNALLY:

MARK NUNALLY	MOTION	5
MR. BURGESS	RESPONSE	7
MARK NUNALLY	REPLY	15

MOTION BY MARK NUNALLY:

MARK NUNALLY	MOTION	21
MR. BURGESS	RESPONSE	25
Certificate		36

EXHIBITS

(No exhibits were marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



THE BANK OF NY V NUNALLY

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CALL TO ORDER:

THE COURT: This is The Bank of New York Mellon versus Timothy Nunally, et al, 2024-CP-32-1094. Mr. Burgess is here for Plaintiff. We have Mr. Tim Nunally and Mr. Mark Nunally?

MARK NUNALLY: Yes, sir.

THE COURT: Okay. Thank you. All right. Here's what we're here for. The Defendants have filed two different motions. So, what we're going to do is we'll start with the first motion. And I want y'all to tell me what you're arguing, and then I'll hear from the other side, and we'll go back and forth. And then we'll do the second motion.

Now, remember that we're here with a court reporter. So, everybody will have an opportunity to speak. So say what you say, please don't interrupt me, or don't interrupt the other side. Now, saying that, I may very well interrupt the other side or you, one -- if I ask a question and I understand it, I may say, okay, I got it, move on. So like that. But just make sure that go back and forth, back and forth. Afterwards I will either say, this is what I think we'll do, or I'll ask for



THE BANK OF NY V NUNALLY

4

1 proposed submitted orders.

2 Make sure you guys get a copy of Madam
3 Court Reporter's contact information.
4 Lexington County does not have a court
5 reporter. It has been policy since the first
6 Master. Y'all can't see him because he's on
7 the wall up over there. He and the second
8 Master are up there frowning at me because I
9 feel better that way. Because that's the way
10 they used to look at me when I was sitting
11 where y'all were sitting. I just feel
12 comfortable still looking at them frown. But
13 we've never had a court reporter. So, policy
14 is, is the moving party has to pay for the
15 court reporter. If the non-moving party wants
16 to get a copy of the transcript, they got to
17 pay for it too. So that's just the policy. So
18 just please remember that for the future.

19 Okay. So when -- if you -- when you stand
20 up to do the motion, or if you -- you know, you
21 kind of -- when you talk, you need to say Mark
22 or Tim, so Madam Court Reporter can tell who it
23 is. All right.

24 So let's do the -- which motion would you
25 like to argue first?



THE BANK OF NY V NUNALLY

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1 **MARK NUNALLY:** Like to argue the affidavit in
2 support of the motion.

3 **THE COURT:** All right. You need to do the motion
4 first.

5 **MARK NUNALLY:** Okay. I'm sorry. I'm sorry. The
6 Motion for Judicial Notice. I'm sorry, sir.

7 **THE COURT:** Okay. All right. So what's on screen
8 is the Motion for Judicial Notice of Will and
9 Common Law Resident Trust. Is that what you're
10 referring to?

11 **MARK NUNALLY:** Yes, sir.

12 **THE COURT:** Okay. All right. If you will identify
13 yourself. And it's customary to stand and
14 address the Court.

15 **MOTION BY MARK NUNALLY:**

16 **MARK NUNALLY:** Yes, sir. My name is Mark Anthony
17 Nunally. And I am here to discuss the facts
18 that surround why we would, as Defendants, like
19 The Court to take judicial notice of the fact
20 that there is a will that is a will with poor
21 overprovision, I might add, that also speaks to
22 and of a Trust. This Trust is a irrevocable
23 trust, which has a corpus. And that corpus
24 contains land that is the real estate of the
25 decedent, Carl Alvin Nunally, Sr.



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1 **THE COURT:** All right. Let me ask you a question.
2 Is that y'all's ...

3 **MARK NUNALLY:** This is our dad, yes, sir.

4 **THE COURT:** Your father?

5 **MARK NUNALLY:** Yes, sir.

6 **THE COURT:** That's what I thought.

7 **MARK NUNALLY:** Yes, sir.

8 And so, in that regard, we have been
9 contacted in regards to a duty by way of JP
10 Morgan and Chase Bank as a result of them being
11 the Trustee for the NovaStar series
12 asset-backed certificate 2004-1, I think it is.

13 **THE COURT:** You can say, if you want to, just
14 Plaintiff.

15 **MARK NUNALLY:** Plaintiff.

16 **THE COURT:** It will incorporate all the filings that
17 say that.

18 **MARK NUNALLY:** For the Plaintiff, yes, sir.

19 **THE COURT:** Yes, sir.

20 **MARK NUNALLY:** And we are not exactly sure why we
21 have been contacted, being that we have no
22 duty, we have breeched no duty, and we have no
23 evidence of there being any kind of duty to be
24 performed.

25 We have provided a copy of a wet-ink



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1 signature mortgage, deed of trust that has been
2 shown to have been satisfied by said borrowers
3 of the Plaintiff. So we haven't even received
4 any type of evidence to understand exactly what
5 is it that they are attempting to state,
6 especially when, once again, this particular
7 real estate is in Trust.

8 **THE COURT:** Okay. All right. Let's stop there.
9 That's a good breaking point. You can have a
10 seat. I'm going to ask Mr. Burgess to respond
11 to the underlying -- who the Plaintiff is and
12 why they filed this lawsuit and the allegations
13 that it has been -- the mortgage has been
14 satisfied.

15 **RESPONSE BY MR. BURGESS:**

16 **MR. BURGESS:** Thank you, your Honor. May it please
17 the Court. Chad Burgess here on behalf of the
18 Plaintiff.

19 Your Honor, this is a mortgage foreclosure
20 action of property located here in Lexington
21 County. Your Honor, the Plaintiff is asserting
22 in this case that they are the owner and holder
23 of a note and mortgage that was entered into
24 by -- I believe the name -- I want to make sure
25 I have this exactly correct. Carl A.



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1 Nunally -- it's Senior. Let me be sure. I
2 believe it is -- that Mr. Nunally would be a
3 Senior. And that note and mortgage were
4 entered into back on January 30th, 2004.
5 Principal balance was \$121,500.

6 Your Honor, subsequently or
7 contemporaneously with the mortgage, the -- or
8 with note, Carl A. Nunally and Frankie L.
9 Nunally signed a mortgage that was recorded
10 here in Lexington County covering the property
11 located at 1759 Willow Creek Drive in Columbia,
12 South Carolina 29212. Again, located here in
13 Lexington County. That mortgage is of record,
14 filed -- recorded here in Lexington County,
15 February 28th, 2004, in book 9041 at page four.

16 Your Honor, related directly to that
17 motion, I don't think we take issue with the
18 fact that Mr. Nunally, during his life, may
19 have set up a trust or had a will. It was a
20 little unclear from the actual motion what the
21 Defendants in this case filed, what they were
22 asking the Court to take judicial notice of.
23 Again, we don't take issue with publically
24 recorded documents that Mr. Nunally made in his
25 life. We've asserted in the Complaint that the



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1 note and mortgage, in this instance, take
2 precedent over any subsequent conveyances into
3 a trust or any wills. Obviously, if you will,
4 the property during life, it would be subject
5 to the note and mortgage, which, in this case,
6 hasn't been paid.

7 **THE COURT:** Let's stop right there. And you can
8 have a seat. Because I want to make sure I
9 understand what has been argued and your
10 response and what my understanding is.

11 All right. The first thing is -- and I'm
12 going to work backwards in what he said. All
13 right. What he said at the end, is they're
14 alleging that the mortgage was made in two
15 thousand -- dated January 30th, 2004, and then
16 it was recorded right after that. If there was
17 a trust that was created and it was recorded
18 and put on notice, if it was done after that,
19 then it creates rights among the trust and the
20 trustees, but it doesn't skip the mortgage.
21 You can't make a mortgage, you can't borrow
22 money from a bank and then later say, now I'm
23 putting my money in a trust, I don't have to
24 pay it back. And it's just like earlier today,
25 before y'all came in, there was an estate. And



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1 we said, you still -- the mortgage follows the
2 property. You don't have to pay it, you're not
3 responsible to pay it, but the mortgage follows
4 the property, and they still can foreclose on
5 it, as long as the debt was made -- the note
6 and mortgage was made prior to the trust was
7 recorded. Because all the bank can do when
8 they make a mortgage, is go search public
9 record, see what's on record. So, that's a
10 well-established point of law. I don't think
11 they're arguing that you have a trust.

12 We are going to -- there are two issues
13 that we are going to raise -- discuss now about
14 that. One is, what I also heard them say is
15 they have a wet-ink satisfied, I guess, note
16 and mortgage. And assume it's of this -- is it
17 this mortgage that's in 2004?

18 **MARK NUNALLY:** It is actually a mortgage note that
19 is before that, Judge, that is here. And I did
20 attach that. We did attach that in the
21 affidavit, copy thereof. May I approach?

22 **THE COURT:** All right. If both of y'all will come
23 up.

24 Okay. Here's kind of what I want to
25 explain to you what you've got. You've got a



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1 satisfaction and it's on the same property, but
2 it's an earlier note and mortgage. And if you
3 see, this was done -- this was -- this mortgage
4 was recorded in 1999.

5 **MARK NUNALLY:** Yes, sir.

6 **THE COURT:** That's not this mortgage. This mortgage
7 was done after that. I don't know if this was
8 a -- this was done in 2004. So, while this is
9 satisfied properly of record, the issue that
10 they're foreclosing on is 2004.

11 **MARK NUNALLY:** Okay.

12 **THE COURT:** Does that make sense?

13 **MARK NUNALLY:** It does. We just haven't received
14 any evidence ---

15 **THE COURT:** Well, I understand. And that's the
16 thing. And this is how to check this. Because
17 all this is public record. So, if you look
18 right here, this tells when it was originally
19 filed. It was originally filed March 12th,
20 1999. And it was in book 5145100.

21 **MARK NUNALLY:** Yes, sir.

22 **THE COURT:** So the one there that they are doing,
23 foreclosing on, is January 30th, 2004. And
24 it's a different mortgage book and page. So
25 this one is -- this one's satisfied. Don't



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1 throw this away. So still keep this. It's the
2 same property. So that's that issue. So does
3 that make sense?

4 **MARK NUNALLY:** Yes, sir.

5 **THE COURT:** Okay. So you have a seat. And I want
6 to address another issue before -- because
7 we're just at the motion stage. I want to make
8 sure everybody understands how we move forward.

9 We're going to continue going through the
10 motion, but I want to bring up an issue. We're
11 in Circuit Court right now. In Circuit Court,
12 people can represent themselves individually
13 legally. But you can't represent any kind of
14 entity that is not you individually. So you
15 can't file pleadings, you can't make legal
16 arguments for entities that are not you. And
17 that normally includes trusts. So I think our
18 bailiff, Mr. Collins, indicated he had given
19 you the checklist, the sheet.

20 **MARK NUNALLY:** Yes, sir.

21 **THE COURT:** Okay. In there, I think, there is a way
22 about contacting attorneys to further explain
23 and give you advice as the case moves forward.
24 We're going to finish the argument, but we're
25 at a point where it's pertinent to make this



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1 information known to you.

2 **MARK NUNALLY:** Yes, sir.

3 **THE COURT:** There's four ways to get an attorney.

4 It's the attorney that you know that maybe did
5 the closing. Second is, is if you contact
6 South Carolina Legal Services and you qualify
7 with that, they may be able to provide you with
8 a free attorney. And they do foreclosure
9 defense work all the time. All right. So
10 that's them. Third way is Lexington County Bar
11 Association. If you Google them, get their
12 phone number, they have a real estate
13 subsection. Tell them we're in a foreclosure,
14 need your foreclosure folks, you got to hire --
15 contact them and hire them.

16 **MARK NUNALLY:** Yes, sir.

17 **THE COURT:** The next way is, there's two ways on the
18 fourth thing. If you contact South Carolina
19 Bar, you can do one of two things. One is, is
20 you can -- I think it's \$50 or -- it's
21 something. It's some amount of money that you
22 can say, I want to talk to a lawyer for like a
23 half an hour and on what topic. And then you
24 actually talk with somebody live and just tell
25 them and decide if you want to hire them or



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1 what you need to do, but you can talk to a
2 lawyer for a discrete amount of time for a set
3 fee.

4 The other thing that you can do with South
5 Carolina Bar is its lawyer referral. And the
6 last time I saw this work, and it's been years
7 ago, but I assume it's the same, is you go on
8 to the subsection and you type in your name,
9 and then a drop-down box comes down and it
10 says, what county do you live in? And then
11 when you say county, it then says, what kind of
12 dispute is it? And then you click, you know,
13 for multiple choice what it is. And then
14 eventually it spits out all the lawyers in the
15 State of South Carolina that do foreclosure
16 work in Lexington. So, the Lexington County
17 bar is the local group. The South Carolina bar
18 is the statewide group. All right. So you
19 want to talk to them to ensure, as the case
20 moves forward, that you've got counsel and it's
21 not going to be a situation where you're not
22 able to present evidence or make legal
23 arguments on behalf of a trust, if that becomes
24 an issue. All right. Does that make sense?

25 **MARK NUNALLY:** Yes, sir.



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1 **THE COURT:** Okay. So now we're at the point where
2 we're on this motion. And I think this motion
3 was we're in a trust, we had a wet-ink -- we
4 thought we had a statistician. So are there
5 any other issues with that first filing, about
6 the trust document?

7 **REPLY BY MARK NUNALLY:**

8 **MARK NUNALLY:** Just the -- once again, Judge, the
9 fact that, A, we have not, like what we've just
10 shown you, seen a wet sink -- a wet-ink
11 signature document stating that there is, once
12 again, a security deed of trust that has been
13 provided, first and foremost, by NovaStar that
14 was then picked up by J.P. Morgan and Chase.
15 We have no evidence of that. And so the best
16 evidence rule is what we are stating we are,
17 you know, wanting to see that behind.

18 **THE COURT:** All right. And you have an absolute
19 right to do that, and we're going to tell you
20 how we do that. What we do is, is in a
21 contested case, we do a scheduling order. I'm
22 going to put it up on the screen in a minute.
23 And what will happen is, is our office will
24 contact both of y'all and say, we need dates
25 for these -- for these events. And what the



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1 scheduling order says is, is under the rules,
2 I have a right to make them show me what
3 they've got. So it says, written discovery,
4 which means file your interrogatories, file
5 your request for production by this date. And
6 they can do the same thing.

7 Second is, is after that, is a motion
8 filing date. It says file your motions. If
9 they don't give you stuff, file a motion to
10 produce. If they don't follow that, do a
11 motion. All that stuff. And then there's a
12 motion hearing date in which all the motions
13 filed have to be argued. If you show up and
14 you don't argue a motion, it's deemed to be
15 abandoned. That's in language.

16 And then there's a trial date. When
17 there's a trial date, it's a multi-page
18 document, but they absolutely have to do it.
19 Now, notwithstanding that, if you want to see
20 the wet ink, obviously nobody is going to mail
21 a wet ink in litigation to somebody. So, if
22 you want to see a wet ink document, what we
23 normally do is we'll arrange for a time for
24 y'all to come up here and come in the court
25 room and look at it. And then if you're



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1 unsatisfied with it, we can make a copy of it
2 and then explain who has a burden to go get a
3 handwriting expert. So, you've got a right to
4 request that, but they're not going to mail you
5 the wet ink.

6 The reason they mailed you the wet ink in
7 this situation is because it's satisfied, and
8 they have a statutory duty to mail it to you,
9 so you can go record it, make sure it's taken
10 off record. But during litigation, each side
11 does not give the other side the original
12 documents. But you can come up here, review it
13 under court supervision, get a copy of it, and
14 then go get your expert if you want to
15 challenge the signature.

16 Does that make sense?

17 **MARK NUNALLY:** It does. Because we weren't able to
18 find any information on it. And we even went
19 on the MERS with the MERS ID number. We
20 weren't able to find anything significant in
21 regards to that.

22 **THE COURT:** I understand. These are all valid
23 questions, and they've got to produce responses
24 to it.

25 **MARK NUNALLY:** Yes, sir.



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1 **THE COURT:** Okay. So that's the first -- I think --
2 does that conclude the matters in the first
3 motion, those matters?

4 **MARK NUNALLY:** Yes. If I'm understanding, Judge --
5 thank you for your time. If I'm understanding,
6 we're going to move forward with discovery. Is
7 this correct?

8 **THE COURT:** Well, first of all, I've got to hear
9 your second motion. That second motion, I've
10 got to hear that because that might impact what
11 we do. So I need to hear -- but the first one,
12 I believe, is -- that's concluded, about the
13 wet ink and your ability to get documents.

14 **MARK NUNALLY:** Yes, sir. The ability to get the
15 documents because -- now, we also have in -- in
16 the case of the real estate and the trust in
17 regards to trustee and beneficiary having to
18 accept the warrantee deed for that of the trust
19 to be correct and efficient, we did that. And
20 when we did so, as we expressed in our
21 affidavit, we did that in fee simple. And so
22 from our understanding in South Carolina
23 property law, that allowed the ownership to be
24 correctly transferred to the trust. And we
25 just wanted to make sure that that was also



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1 something that was dually noted as a result of
2 it being included in the affidavit.

3 **THE COURT:** Okay. Well here's what normally would
4 happened then: And I want to explain
5 substantive law and procedural law.

6 **MARK NUNALLY:** Yes, sir.

7 **THE COURT:** When you either -- and when somebody
8 dies and title passes, it either goes by deed
9 of distribution -- to an individual by deed of
10 distribution and that gives it to them fee
11 simple, or it passes whatever the person
12 passed. It can only pass what the person
13 passed. Or, if afterwards you set up a trust
14 and want to deed it into a trust, you can to
15 that pursuant to trust law.

16 So as long as it's been done correctly and
17 it's got the language and you had fee simple to
18 pass and now you want to put it in a trust, you
19 can do that, according to South Carolina. But
20 there's always the caveat, subject to matters
21 of public record. So, if there's a mortgage or
22 there's a judgment lien that attached prior in
23 time to you doing that, you take it, but you
24 take it subject to the mortgage, subject to the
25 judgment, subject to the easement, subject to



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1 the HOA restrictions, you take it subject to
2 everything on record, you don't get -- when you
3 put it in a trust, doesn't wipe away the --
4 everything that's on public record.

5 Now, what it does do is it -- when you do
6 that, you're not responsible for the debt,
7 meaning they can't get a deficiency judgment
8 against you. If an individual has a mortgage
9 foreclosure, and they owe \$200,000 and it only
10 sells for 100, the bank can get the land and
11 \$100,000 judgment against the person who signed
12 it, because the bank has a right to be whole.

13 If you inherit it, the bank can only get
14 the dirt. They can't say, and I get \$100,000
15 judgment against you and all your assets to be
16 collected against, because you didn't sign the
17 note an mortgage.

18 Does that kind of make sense?

19 **MARK NUNALLY:** Yes, sir.

20 **THE COURT:** So a trust doesn't wipe away everything
21 that's prior to on public record. And that's
22 why you really need to talk with an attorney to
23 understand all of that. Not just the trial
24 scheduling stuff we're going to look at and how
25 that works and how you have to do that right.



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1 But also trust law, so you can evaluate what's
2 in your best interest to do to make your
3 options. Does that make sense?

4 **MARK NUNALLY:** Yes, sir.

5 **THE COURT:** Okay. All right. So, we could move on
6 into the next motion, the second motion.

7 **MOTION BY MARK NUNALLY:**

8 **MARK NUNALLY:** Yes, sir. Yes, sir. We can move
9 into that second motion, because I think that
10 you pretty much answered the questions in
11 regards to them having to come up with more
12 answers in regards to their evidence and ---

13 **THE COURT:** And after we do the second motion, we're
14 going to address the trial scheduling order,
15 unless something comes up where --
16 theoretically we're going to move on. But I
17 need to hear the second motion. And the second
18 motion is and y'all know that -- I think this
19 is your motion to dismiss for lack of personal
20 jurisdiction. You see what's on the screen,
21 right?

22 **MARK NUNALLY:** Yes, sir.

23 **THE COURT:** Okay. Everything is on -- has been --
24 South Carolina has been electronic filing thing
25 for civil court since prior to 2017. Lexington



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1 County came on in 2017. So everything you see
2 right here -- and I'll pull back up your case.
3 Everything's online. So you can see everything
4 they filed. They can see everything you filed.
5 Anybody in the public can go pull it up. So
6 any time you went to reference what has been
7 filed, it's all online. You go to the County
8 website, you go to the judicial click, and then
9 it directs you, type your case number in. It's
10 fairly easy to do it once you've done it a
11 couple of times. If there's a problem doing
12 it, you just call the clerk of court and say,
13 tell me how to navigate this. But it's fairly
14 routine-based search terms and things like
15 that.

16 So, the second motion is to dismiss for
17 personal jurisdiction. All right. The motion
18 was kind of sparse, so tell me -- it just says
19 lacks jurisdiction.

20 **MARK NUNALLY:** Your Honor, I think that what we did
21 in regards to that particular motion is we
22 filed that before actually knowing exactly what
23 the rules were here in regards to jurisdiction
24 by way of personal jurisdiction, especially
25 involving the fact that, even though we are



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1 non-residents, this is a matter that involves
2 the trust. And so, from our understanding,
3 that is what gives The Court personal
4 jurisdiction over the Defendants in this
5 matter.

6 **THE COURT:** All right. Well, there's actually two
7 kind of things that come in. One is, is
8 there's broad general statute that says, if we
9 can't find you to personally serve you, we can
10 do an affidavit of publication. And I think
11 the clerk -- that happened is the clerk signed
12 an order and it was published. There's also
13 another statute that says this: If the dirt's
14 in the county and you can't find the person
15 that owns it, you can serve by publication.
16 Because you've got -- I mean, people just can't
17 own county and then leave and not say, I don't
18 know that you can't -- I don't have to pay
19 taxes or I don't -- like that. So, as I
20 understand, are you -- I'm not asking are you
21 withdrawing it, but do you understand how they
22 had jurisdiction?

23 **MARK NUNALLY:** Yes, sir.

24 **THE COURT:** Okay. All right. So we'll just -- so
25 what I would do, then, is I'm going to ask



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1 Mr. Burgess, by next Friday, which is -- that
2 would be February 7th, to send The Court and to
3 y'all two, because we've got both e-mails on
4 it, a proposed word order that basically
5 summarizes what we've done on these two motion
6 hearings. All right. And then basically say,
7 jurisdiction one, not really contested. I
8 understand they have jurisdiction, acknowledge
9 jurisdiction. And then the first one we'll
10 talk about the wet ink, which mortgage is being
11 discovered, and then the fact that a trial
12 scheduling order is being filed to produce
13 documents. Something generic like that. And
14 they'll send it to me, and they'll send it to
15 you. And then if there's something you don't
16 understand, immediately respond back, because I
17 normally give three days to respond.

18 **MARK NUNALLY:** Yes, sir. And is your e-mail address
19 on that, sir?

20 **THE COURT:** When he sends it to me, he's going to
21 copy. That's a good question. So what should
22 we -- what we do now is reply all. So no new
23 e-mail chains, just reply all. Because if you
24 get something from the court, we would have
25 sent it to him and you. So just hit reply all.



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1 **MARK NUNALLY:** Reply all, okay.

2 **THE COURT:** All right. Okay. Everybody's set on
3 that procedures?

4 **MARK NUNALLY:** Yes.

5 **THE COURT:** Okay. Now, he will also put Madam Court
6 Reporter's contact information at the bottom of
7 the order. So make certain, if you go get an
8 attorney and the attorney wants to read what
9 happened, the attorney can contact Madam Court
10 Reporter, they've got to pay for the court
11 reporter. But they can contact them and get it
12 if they want to read it and see what was
13 actually said.

14 **MARK NUNALLY:** Yes, sir.

15 **THE COURT:** All right. Now we're going to shift
16 over to like a standard schedule order. Okay.
17 And I believe this is on our website. It may
18 have been tinkered with a little bit, but this
19 is the basic format which you'll get.

20 **RESPONSE BY MR. BURGESS:**

21 **MR. BURGESS:** Your Honor, just one -- just point of
22 clarification, I guess. Because their motion
23 was a motion to dismiss, there hasn't been any
24 formal answer to the complaint from either Mark
25 Nunally or Timothy Nunally, individually or --



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1 he's got two capacities in this case. He's the
2 personal representative of Carl Allen Nunally,
3 Sr. He's also the trustee for the trust that's
4 named and outlined in the Complaint. Because
5 we haven't received answers from those parties
6 yet, formal answers, because of the pending
7 motion to dismiss, I think the answer period is
8 still open. I'm not sure that that's covered
9 in the scheduling order just yet.

10 **THE COURT:** Thank you for bringing that to The
11 Court's attention. And we're going to talk
12 about where that would go, because you're going
13 to actually add -- we're going to renumber
14 things. We're going to -- instead of one, two,
15 three, four, we're going to have like one
16 through five. So if you look at the trial
17 schedule order, this is basically what we'll
18 send out. You've got your case caption, order
19 of reference, type of case, and it'll be
20 mortgage foreclosure. And then it'll have
21 Plaintiff's names and Defendants. The conflict
22 notice is, this is who I work for as an
23 attorney for 20 years right across the street
24 that way, what my name is, my mom. What this
25 says is, if you think we're related or if you



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1 think any of the witnesses are related or if
2 there's any kind of conflict notice, you need
3 to make that known in writing early, because
4 you don't want to get down the line and find
5 out you've got a witness who I've worked with
6 or drafted documents or stuff like that. So
7 make sure that your attorney that you will
8 hopefully get obviously will see this.

9 Next thing is, is the self-represented --
10 SRL or pro se. People call it the same thing.
11 Again, that's some information for pro se. It
12 basically says, bound by the same rules,
13 civility, evidence, ethics all of that. There
14 are a bunch of things you can look at on the
15 South Carolina judicial website that have the
16 number of written documents that will talk
17 about pro se things. They have -- even have
18 maybe a couple of videos about that. And that
19 lists that information.

20 So the scheduling order normally says
21 this. This is one where -- it would not say
22 this, because the last one obviously we did,
23 this is a new partition act on this board.
24 That's not what this is. So what's going to
25 happen is, is, Mr. Burgess, you're going to



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1 remind Joy Davidson that we're going to
2 actually have a one through seven instead of
3 one through six. So, what number one is going
4 to be is the -- it'll say something like Court
5 has denied motions to dismiss and otherwise.
6 Statute allows X dates -- or better yet, don't
7 put X dates. Put until the set date for
8 Defendants to file an answer and serve it on
9 him.

10 All right. When you file the motion
11 during the time period, it tolls your period to
12 file an answer. If you don't file an answer,
13 you're deemed to have admitted everything they
14 pled.

15 All right. So the first thing you're
16 going to do, is going to say when that date is.
17 So you have to file it and serve it on him by
18 the date. So that'll be the first thing.

19 Then the second thing it will basically
20 say is -- well, no, we're only going to have
21 six, actually. Second thing will be discovery
22 completed on or before X. What that means is,
23 is you serve all your interrogatories, requests
24 to produce. Tell me who your witnesses are,
25 you know, how to contact them, show me your --



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1 tell me what their documents are. Request to
2 produce is, give me a copy of it. Send me a
3 copy of it.

4 Remember, they're not going to send wet
5 ink. If you want to see the wet ink, you've
6 got to talk with them about setting up a time
7 to come up here to the conference room to look
8 at it, and then to get a copy of it if you want
9 to. And then you need to understand who has to
10 pay for the expert to -- if you believe it's
11 been forged or it's a nonperson signature.

12 **MARK NUNALLY:** Yes, sir. And what about in regards
13 to a request for admissions? Would there be
14 the same ---

15 **THE COURT:** That's part of the discovery, yeah.
16 Yeah, that's all, you know, request to admit,
17 request to produce, all of that standard stuff.
18 That's part of it.

19 And then when you complete that, then
20 we'll have a motion filing date. And there's
21 a form on this on our website. So if you go to
22 the County of Lexington website, and you can
23 see a form of this. And she'll send that to
24 you.

25 And then we'll have motions heard. And



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1 remember if you're the moving party, you've got
2 to bring the court reporter on a motion. At
3 trial, they got to bring the court reporter,
4 because they started it, basically. So, they
5 got to. But still, it really -- we have to
6 have a court reporter. If we don't have a
7 court reporter, we don't have a hearing. And
8 then functionally each side's going to have to
9 pay for the transcript, whether you moved or
10 not moved for it.

11 And then we'll set a trial date.

12 **MARK NUNALLY:** Okay. And there is no certified
13 copies of transcripts available from the South
14 Carolina Public Service Commission in regards
15 to these cases. Is that correct, Judge?

16 **THE COURT:** South Carolina Public ...

17 **MARK NUNALLY:** Service Commission is what I had
18 looked up.

19 **THE COURT:** No. What normally happens is, is you
20 contact court reporter, she transcribes it and
21 they have -- they are required by -- anyway,
22 they did a rule a year or two ago that said
23 Master in Equity private court reporters have
24 to comply with basically the same stuff the
25 State court reporters do. So they're under the



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1 same stuff. It's one rule. It's one of the
2 Administrative rules. They're under basically
3 the same stuff. So that's why, in the order,
4 we always say, put the court reporter's contact
5 information in. Because what you do is you
6 contact them, they prepare the transcript and
7 send it.

8 What happens in contested trials is, is
9 after it's over, they mail me a transcript
10 thumb drive. And we prepare an envelope and it
11 says, John Doe versus Jane Doe, trial held this
12 date, stamp it, and we take the thumb drive,
13 and we make a copy of that, and put it in the
14 file, and take the original thumb drive down to
15 the clerk of court. We used to give them a big
16 paper copy of the transcript and they'd file
17 and put it in a vault. Now we give them thumb
18 drives.

19 And they don't make them type one every
20 time, because you only need it, you know, if
21 you need it to refer to it for something or
22 there's an appeal. So they only type it out
23 for y'all if you request it. So a lot of times
24 in motion hearings where it kind of gets
25 resolved, nobody requests a typed one. But if



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1 you want it, you can always contact them and
2 they'd go back and prepare it. Does that make
3 sense?

4 **MARK NUNALLY:** It does.

5 **THE COURT:** Okay. And then the rest of this, this
6 is basically COVID stuff that we had in there
7 that we kind of left in there, because if
8 you -- if you get sick and you need to wear
9 masks, just tell us.

10 If you notice, there's a monitor there and
11 there's a wire right there. If you want to
12 come in and do like a power point in a
13 contested trial and do that, you can do that.
14 This says contact The Court five to ten days,
15 so you can come in and practice and hook up and
16 make sure your stuff's compatible.

17 Now, if there's a contested trial, we
18 normally start at 10:00. We normally meet an
19 hour early where we come in and we make sure
20 all the exhibits are marked, I understand what
21 the issues are, and then we get started and we
22 go kind of until we finish. So most of this is
23 sort of self explanatory. After it's -- and
24 then the end of this is, if you're not a lawyer
25 and you're writing your own order, there are



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1 resources on forms of how to do it and do
2 research at the two law schools. So, anyway
3 that's all online. And this is the copy we'll
4 be filling in that Joy Davidson in our office
5 will be doing group e-mails to set this.

6 Mr. Burgess, anything from Plaintiff?

7 **MR. BURGESS:** Your Honor, I think I just need the
8 e-mail addressed for Mr. Timothy Nunally and
9 Mark Nunally.

10 **THE COURT:** All right. Y'all -- I've got it. Will
11 y'all write it down for him? Because he's
12 going to -- remember, he's going to send it to
13 me and then he's going to copy y'all and then
14 everybody will reply all. So order's due
15 February 7th and then Joy to send out trial
16 schedule order info. And I think that's the
17 two things that how we move forward.

18 **MARK NUNALLY:** And, Judge that order will be due
19 from the ...

20 **THE COURT:** Yeah. The Plaintiff's going to draft
21 the order on the two motions. The proposed
22 Word order. And then you're going to have --
23 like if he sends it Friday, then that means
24 that gives you Saturday, Sunday, end of day
25 Monday we'll get a response, because it's going



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1 to be a short order and they're basically --
2 and not really contested orders, so do that.
3 And then Joy will send out basically, here's a
4 copy of it, here's the guts, we need the
5 information. What she does is she gets her
6 calendar out and y'all's calendar out and we
7 try to figure out dates that are best for all
8 three, because, you know, we've got a lot of
9 stuff that's already scheduled. We're working
10 around existing and we try to -- in circuit
11 court, regular circuit court, we work on a
12 docket system. What the docket system is, is
13 they call all the cases and say, who's ready.
14 So, you might go and you might not. We're
15 different in we're based on the federal law.
16 We go by appointment. So it says -- like
17 today, when were we supposed to start?

18 **TIMOTHY NUNALLY:** 9:30.

19 **THE COURT:** And when did we start? Pretty much
20 9:30. Yeah. Okay.

21 All right. Y'all anything further from
22 Plaintiff?

23 **MR. BURGESS:** Nothing from Plaintiff, Your Honor.

24 **THE COURT:** All right. Anything from Defendants?

25 **MARK NUNALLY:** No, sir.



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1 **THE COURT:** Do you feel like you understand what
2 we've done today?

3 **MARK NUNALLY:** Yes, sir.

4 **THE COURT:** Please contact an attorney, especially
5 to discuss, not only the case and the
6 substantive stuff, but that your need to
7 continue to represent the trust legally.
8 Because you don't want to get into a situation
9 where something's contested and then they can't
10 talk.

11 **(There being nothing further, this proceeding**
12 **concluded at 10:08 a.m.)**

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CERTIFICATE

This is to certify that the within hearing consisting of thirty-five (35) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenowriter with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on February 27, 2025.



Nadine A. Garrett
Court Reporter

Notary Public for South Carolina
My Commission Expires: August 16, 2026



State of South Carolina)
)
County of Lexington)

The Bank of New York)
Mellon, f/k/a The Bank)
of New York as successor)
in interest to JPMorgan)
Chase Bank, N.A. as)
Trustee for NovaStar)
Mortgage Funding Trust,)
Series 2004-1, NovaStar)
Home Equity Loan Asset-)
Backed Certificates,)
Series 2004-1,)

Plaintiff(s),)

v.)

Timothy Allen Nunally,)
as Personal)
Representative for the)
Estate of Carl Alvin)
Nunally, Sr., deceased;)
Timothy Allen Nunally,)
as Trustee for the CAN)
Irrevocable Trust; Carl)
Alvin Nunally, Jr.; Mark)
Anthony Nunally; Timothy)
Allen Nunally,)

Defendant(s).)

2024-CP-32-01094

Transcript

of

Hearing

COPY

Date: August 27, 2025

Time: 2:02 p.m.

Location: Lexington County Judicial Center, Courtroom 2A,
205 East Main Street, Lexington, South Carolina

Reporter:
Breanna Sharper

APPEARANCES

Presiding:

The Honorable James O. Spence
Master-In-Equity
Lexington County Judicial Center

For the Plaintiff:

Chad W. Burgess, Esq.
Brock & Scott PLLC
Columbia, South Carolina

Pro Se Defendants:

Mark A. Nunally
Timothy A. Nunally

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EXHIBITS

(No exhibits were proffered.)

1 PROCEEDINGS

2 THE COURT: All right. We're here on the "Bank of New
3 York Mellon v. Nunally, et al." It's Case 2024-CP-
4 32-01094. Mr. Burgess is here for Plaintiff. Both
5 Nunallys are here. Mr. Tim Nunally and Mr. Mark
6 Nunally are here.

7 MR. M. NUNALLY: Yes, sir.

8 THE COURT: Okay. All right. Here's -- here's what
9 we're going to do. There are multiple motions that
10 have been filed. Some have been ruled on, some
11 have been filed according to the timing and the
12 scheduling order, some have not. So what we're
13 going to do is, is I want to do this
14 chronologically. And the last e-mail that I got --
15 I normally start with Plaintiff. I'm going to
16 start with Plaintiff again because you sent an
17 e-mail that you had started kind of doing the
18 chronological thing. So here's what we're going to
19 do. We're going to go through chronologically what
20 motions have been filed, and we're going to say,
21 "The motion was filed this date. This is what type
22 motion it was. Has it been ruled on?" If it
23 hasn't been ruled on, we'll -- we'll hear argument
24 on it, and then we'll move to the next one. But
25 that way we will go chronologically, and we'll

1 address everything.

2 Okay. Mr. Burgess?

3 MR. BURGESS: Thank you, Your Honor.

4 THE COURT: And if you'll just give a brief case
5 summary.

6 MR. BURGESS: Yes, Your Honor. Thank you, Your Honor.

7 Very briefly, this is a -- an action for
8 foreclosure of real property located here in
9 Lexington County. Defendants Timothy Allen Nunally
10 and Mark Anthony Nunally have appeared in the case.
11 Your Honor, initially, they did file back in 2024 a
12 motion to dismiss for lack of personal
13 jurisdiction. That motion was heard and ruled
14 upon. There is an order ruling upon that motion
15 that appears in the Court's records. I believe it
16 was heard -- let me confirm the day. I think it
17 was January of 2025. Let me confirm that.

18 THE COURT: All right. I -- I have a -- I have a motion
19 that says there was a hearing of January 28th,
20 2025, and it was two motions. Motion for lack --
21 dismissed for lack of personal jurisdiction filed
22 July 17th, 2024. The second motion, judicial
23 notice of will and common law resident trust filed
24 December 5th, 2024. So those --

25 MR. BURGESS: Yes, Your Honor.

1 THE COURT: Those two motions were filed July 17th --

2 MR. BURGESS: And December 5th, respectively.

3 THE COURT: The first -- well, the first was July 17th.

4 The second was filed December 5th, 2024. But there
5 was a ruling that was filed February 12th, 2025,
6 denying both.

7 MR. BURGESS: That's correct, Your Honor.

8 THE COURT: That's right?

9 MR. BURGESS: And that was a ruling formally from a
10 hearing that was held January 28th --

11 THE COURT: Right.

12 MR. BURGESS: -- of 2025.

13 THE COURT: Yeah. Hearing held --

14 MR. BURGESS: The proposed order was circulated to all
15 parties as it was submitted to this Court.

16 THE COURT: Okay.

17 MR. BURGESS: I -- I do have the e-mail contact
18 information for both the Nunallys. And as this
19 Court's practice --

20 THE COURT: Okay.

21 MR. BURGESS: -- we include the opposing party on all
22 the e-mails to the Court.

23 THE COURT: Right. Okay. So we've got those two. All
24 right. What's next?

25 MR. BURGESS: Your Honor, the next motion I had up was a

1 motion that was taken up, I believe -- let me get
2 the filing date. It was a motion in limine that
3 was filed back on, I believe it was, June 30th and
4 taken up and denied --

5 THE COURT: All right. June 30th of?

6 MR. BURGESS: 2025.

7 THE COURT: 2025.

8 MR. BURGESS: Yes, sir. And it was taken up at the time
9 slot originally scheduled for the trial in this
10 case. So if you recall, we had a -- a meeting for
11 the plaintiff and defendant to allow the defendants
12 to review the original note that's the subject of
13 this action. So we had that meeting, and the trial
14 was scheduled for July 10th as pursuant to the
15 scheduling order that -- that's on Your Honor's
16 screen from February 12th. In lieu of the trial,
17 because of these pending motions, Your Honor did
18 take up the outstanding motion in limine. There
19 was an order entered on that motion on July the
20 24th, 2025. It was via a Form 4.

21 THE COURT: All right. And it was denied?

22 MR. BURGESS: It was denied, yes, sir.

23 THE COURT: Okay. And, again, what we talked about was
24 -- again, just to refresh the defendants'
25 recollection, a motion in limine is an order that's

1 normally done pretrial and then the day of, also,
2 you -- you can reraise it in a jury circumstance,
3 because you don't want a motion being raised that a
4 jury's going to hear that might confuse them, so
5 you do it outside of the presence of the jury. We
6 don't have a jury to worry about that since the --
7 the -- I do jury -- I do judge and jury. And,
8 again, I think, as we discuss -- discussed, at some
9 point, Mr. Boger -- was it? Is that who it was?

10 MR. BURGESS: Yes, Your Honor.

11 THE COURT: It was Attorney Brian Boger?

12 MR. BURGESS: Mr. Boger is one of the plaintiff's --

13 THE COURT: Right.

14 MR. BURGESS: -- proposed witnesses.

15 THE COURT: He can -- he can come to be brought to
16 testify, and you can always object then to
17 evidentiary things or qualification things. But if
18 he's just testifying to eyewitnesses' signatures,
19 then he can certainly do that. So while I denied
20 the motion in limine, that doesn't mean you can't
21 raise normal trial objections at the trial when he
22 testifies. Was that -- that's my --

23 MR. BURGESS: Yes, Your Honor.

24 THE COURT: -- understanding what the --

25 MR. BURGESS: And to clarify, I -- I think maybe the

1 Nunallys misconstrued that -- I believe they --
2 they're -- were under the assumption that the
3 plaintiff was presenting Mr. Boger as some sort of
4 an expert --

5 THE COURT: Right.

6 MR. BURGESS: -- because he was the closing attorney,
7 he's, in fact -- he's a fact witness --

8 THE COURT: No, no.

9 MR. BURGESS: -- in the case.

10 THE COURT: He's just who signed, "I was there. I
11 signed. They signed." That was it, yeah. Okay.

12 MR. BURGESS: Yes, Your Honor. And that's specifically
13 related to the, I believe, first cause of action in
14 the complaint related specifically to the notary
15 section. Mr. Boger --

16 THE COURT: Right.

17 MR. BURGESS: -- acted as the notary. There's
18 signatures on the notary section that -- that we'll
19 get into --

20 THE COURT: Right.

21 MR. BURGESS: -- at trial.

22 THE COURT: Right. And they can cross-examine --

23 MR. BURGESS: And -- and certainly reserve that.

24 THE COURT: -- about that factually at trial, okay.

25 MR. BURGESS: Yes, sir.

1 THE COURT: All right. What's next?

2 MR. BURGESS: Your Honor, the next motion that I have
3 listed is a motion to set aside default that was
4 filed shortly after our meeting. It looks like
5 July 3rd, 2025. And that's the defendants' motion.

6 THE COURT: All right. That has not been argued?

7 MR. BURGESS: Correct.

8 THE COURT: Okay.

9 MR. BURGESS: That -- that one is still outstanding.

10 THE COURT: Okay. All right. Let's argue it. Y'all's
11 motion.

12 MR. M. NUNALLY: Yes, Your Honor. Thank you.

13 Your Honor, this motion was entered into the
14 record for it to show that courts in South Carolina
15 do, in fact, disfavor default when the case should
16 be decided on the merits. Therefore, we did cite
17 "Micronics, Inc. v. South Carolina Department of
18 Revenue" as to where entry of default is not a
19 final judgment, and also that Rule 55(c) permits
20 the court to set it aside for good cause shown, a
21 standard that was met in our case. Being that, as
22 stated in the motion, Defendants have shown good
23 cause under Rule 55(c). As stated, Plaintiff does
24 argue that there is no good cause for Defendants'
25 failure to file an answer, but has stated

1 Defendants actively participated in the litigation
2 appearing at the June 3rd, 2025, summary judgment
3 hearing and June 30th, 2025, instrument inspection,
4 as well as Defendants timely filed a motion to
5 dismiss for lack of personal jurisdiction, which as
6 was discussed and stated, if I'm not mistaken, by
7 Judge Spence, toves -- or told the response of
8 pleadings under Rule 12(a).

9 And, furthermore, the default was not reduced
10 to judgment and trial has not yet occurred.
11 Therefore, courts may set aside default where there
12 is no intent to abandon, no undue delay, and the
13 movant has a meritorious defense. That is case law
14 from "Hill v. Dotts," 345 South Carolina, 3045-47,
15 2nd Edition (2001). Furthermore, Defendants have
16 pled meritorious defenses. We have raised serious
17 questions of standing ownership of the note and
18 mortgage, as well as PSA violations under New York
19 Trust Law and REMIT tax law. These defenses,
20 including lack of enforceable interest, are not
21 only valid, but go to the heart of this foreclosure
22 claim, sir.

23 Plaintiff's argument that the proposed answer
24 is technically deficient misses the mark. The
25 court may permit amendment of the answer once the

1 default is lifted. We would be able to see South
2 Carolina Rules of Civil Procedure 15(a). The core
3 requirement is that a genuine dispute exist, which
4 Defendants have demonstrated.

5 Next, Plaintiff will not suffer under
6 prejudice. Plaintiff claims prejudice due to
7 witness scheduling, but plaintiff was on notice of
8 Defendants' litigation activity since February 20
9 of 2025 -- February 2025. I'm sorry. Also, no
10 trial has yet occurred, and Plaintiff will have
11 full opportunity to prosecute its claims once the
12 case proceeds on the merits. This is not undue
13 prejudice. It's the normal course of litigation.
14 And so, therefore, in conclusion, Defendants
15 respectfully move this Honorable Court to grant the
16 motion to set aside under Rule 55(c), permit filing
17 of the answer, and allow any necessary amendments,
18 and then also reinstate the matter for adjudication
19 on the merits, Your Honor.

20 THE COURT: All right. Thank you. Mr. Burgess?

21 MR. BURGESS: Thank you, Your Honor. May it please the
22 Court. Your Honor, in response to the motion to
23 set aside default, I believe Your -- Your Honor has
24 it pulled up right there in bold letters. The
25 Subsection 4 of the scheduling order says, "All

1 pending motions not presented for disposition are
2 deemed to be abandoned." As you'll notice, as part
3 of this Court's February 12th scheduling order, the
4 schedule was put in place partly because of the
5 participation of Mr. Nunally -- or both
6 Mr. Nunallys. This schedule was put in place, and
7 you'll notice in Number 1, it says, "The
8 defendants' denial of their motion to dismiss."
9 They're given leave under the rules. Under Rule
10 12(a), specifically, is what the order references
11 right there on the screen to file their answer
12 within the time frame allotted by Rule 12(a).
13 That's part of the schedule. The defendants are
14 allowed to submit discovery as a part of their
15 participation in the trial. The defendants did
16 serve my --

17 THE COURT: All right.

18 MR. BURGESS: -- office with discovery.

19 THE COURT: Let's stop. Let's go back to one.

20 MR. BURGESS: Yes, sir.

21 THE COURT: Let's go back to one on the screen. One
22 says, "Based on the denial of motion to dismiss,"
23 which told -- which would have told the time to
24 answer.

25 MR. BURGESS: Yes, sir.

1 THE COURT: This was done. This scheduling order was
2 held on May 23rd -- excuse me. This was held on --
3 gosh, what day was this?

4 MR. BURGESS: Your Honor, I believe it was entered
5 February the 12th.

6 THE COURT: It -- it was like a week --

7 MR. BURGESS: It was as a result of that January 28th --

8 THE COURT: Right.

9 MR. BURGESS: -- hearing.

10 THE COURT: It was like a week -- it was like a week --
11 week before the order. So the -- hang on. Let me
12 pull it down. So we addressed the first issue
13 about the pleading that there was a motion to
14 dismiss. It was denied. And then the rule says,
15 "Once it's denied, what do you have to do?"

16 MR. BURGESS: You have to file your --

17 THE COURT: Plead.

18 MR. BURGESS: -- response of pleading, and -- and that
19 Paragraph 1 directs them directly to the rule.

20 THE COURT: Okay. All right. So the rule was filed --
21 this order was filed February 12th, 2025. Was an
22 answer filed in compliance with Rule 12(a)?

23 MR. BURGESS: No, sir.

24 THE COURT: Okay. So it wasn't filed at 12(a). So
25 wasn't filed timely with Rule 12(a) as it states in

1 the scheduling order?

2 MR. BURGESS: That's correct, Your Honor.

3 THE COURT: Is that what you're arguing? All right.

4 Now, it then says, "All motions to be filed before
5 May 30th, 2025." Was there any motion filed before
6 May 30th, 2025, that said, "Here's my answer"?

7 MR. BURGESS: No, sir. And by that time, the affidavit
8 of default, which was served on the Nunallys, had
9 been filed with the court. And so there was no
10 filing after the denial of their motion to dismiss
11 up through May 30th, 2025. There was no motion to
12 set aside default. There was no answer filed.

13 THE COURT: Okay. All right. Next point.

14 MR. BURGESS: Thank you, Your Honor. And as the -- the
15 order plainly says on its face, "All of the
16 substantive motions" -- obviously, this order
17 wouldn't include motions related to conduct of
18 trial. Like we discussed the motion in limine.
19 The plaintiff wouldn't object to a motion in limine
20 or a motion to sequester a witness who showed up or
21 a motion for directed verdict. Those, obviously,
22 wouldn't be governed by this order. This order is
23 for substantive motions, which, of course, the
24 motion to set aside default is a substantive
25 motion.

1 Now, the reason why this is important is
2 because of Subsection 2, which talks about the
3 discovery timeline. In order for the plaintiff to
4 craft its discovery and its litigation strategy, at
5 that point in time, it's not participation from the
6 defendants that's needed. It's a formal answer
7 alleging affirmative defenses, counterclaims,
8 anything of that nature that would need to be
9 legally responded to by the plaintiff. And so
10 that's a part of what Plaintiff's litigation
11 strategy was. It -- it affected the entire
12 timeline for the plaintiff formulating discovery
13 requests and how the plaintiff responded to the
14 defendants' discovery requests because it impacted
15 the issues before the court.

16 As Your Honor's aware, the failure to plead an
17 affirmative defense could result in waiver. And
18 that's essentially what has happened in this
19 particular case. Not only waiver, but an admission
20 by the party in default of the allegations in the
21 plaintiff's complaint. And, in this case, as we
22 pointed out in the memorandum that we filed July
23 9th, on the four corners of the pleading, the
24 plaintiff's complaint pleads a cause of action for
25 foreclosure and for equitable mortgage, as -- as we

1 discussed about Brian Boger's testimony regarding
2 the -- the notary section. All of that is pled in
3 the plaintiff's complaint.

4 With the default, there is no issue in
5 controversy, having admitted all of the pleadings
6 in the complaint. So there's no further discovery
7 that needs to be conducted on those issues from the
8 plaintiff. So that's the plaintiff strategy. I'm
9 not trying to get into too much of, you know, how
10 the sausage is made about discovery and trial
11 strategy. But, obviously, Your Honor, when there's
12 a default by a party, far be it from the other
13 party to raise issues before the court that aren't
14 raised --

15 THE COURT: All right. Both --

16 MR. BURGESS: -- by the other party themselves.

17 THE COURT: Both sides are supposed to have the right to
18 rely on the rules?

19 MR. BURGESS: Yes, sir.

20 THE COURT: The timing rules.

21 MR. BURGESS: That -- that's correct.

22 THE COURT: It -- it's like -- it's like if there's
23 three balls and four strikes, each side's got three
24 balls and four strikes. You can't come back later
25 and say, "I should get five strikes." And -- and

1 -- and --

2 MR. BURGESS: And that -- that's exactly the plaintiff's
3 argument --

4 THE COURT: Okay.

5 MR. BURGESS: -- is that they should -- we --

6 THE COURT: All right.

7 MR. BURGESS: -- they should be stopped from now trying
8 to set aside a default that, pursuant to every
9 opportunity they've had by participating, that --
10 that doesn't demonstrate good cause their
11 participation in the case. In fact, it
12 demonstrates quite the opposite because the
13 Nunallys were aware of all of these items: the
14 entering into of the scheduling order, the
15 discovery request, everything of that nature. And
16 the plaintiff has complied as -- as best they can
17 to try and give the -- the defendants everything
18 they're asking for in terms of discovery. They've
19 provided the opportunity to see the originally
20 properly endorsed --

21 MR. M. NUNALLY: Objection, Your Honor.

22 THE COURT: Wait. Wait a minute. Wait a minute.

23 You're going to have a chance to -- you're going to
24 have a chance to respond. Let him finish.

25 MR. M. NUNALLY: Yes, sir.

1 MR. BURGESS: So the act of participation, Your Honor,
2 they did so with -- with this document right in
3 front of them. They knew when they had to respond
4 to the complaint. They've cited the rules that
5 direct them to respond to the complaint. And quite
6 frankly, just based on the clear and unambiguous
7 highlighted language of the scheduling order, this
8 particular motion is deemed abandoned.

9 THE COURT: All right. I want to -- hold on. I want to
10 ask a question. When -- let's assume I agree with
11 your argument just for argument's sake. So what
12 that means, then, is, is that they're in -- because
13 none of these earlier orders, to my knowledge, have
14 been appealed. They were -- were they served
15 personally or by publication?

16 MR. BURGESS: I believe, Mr. Nunally -- they're here
17 present today, were served by publication.

18 THE COURT: Right. And publication was because they
19 don't live in South Carolina, right? Is that --

20 MR. BURGESS: That's correct.

21 THE COURT: -- right? And the statute allows for it.

22 MR. BURGESS: That's correct.

23 THE COURT: And then --

24 MR. BURGESS: And I believe there were unsuccessful
25 attempts to --

1 THE COURT: Right.

2 MR. BURGESS: -- personally serve them.

3 THE COURT: Right. And -- and somebody else did the

4 order of -- the order of publication was done and

5 -- and all of that by statute, okay. So when

6 they're in default, they're in default to well-

7 played facts, right? So they're in default. So if

8 these two motions are -- are motions to dismiss and

9 set aside default are denied, what would the next

10 trial step be?

11 MR. BURGESS: Oh, Your Honor, it would be to hold the

12 trial on the merits. And, again --

13 THE COURT: The trial on -- okay.

14 MR. BURGESS: -- that --

15 THE COURT: The trial on the merits.

16 MR. BURGESS: -- that's the plaintiff's burden --

17 THE COURT: Right.

18 MR. BURGESS: -- in this case.

19 THE COURT: So at the trial of the merits, then you have

20 to bring in your bank witness with all their

21 records, and you have to introduce note, mortgage,

22 all of that stuff, and the debt.

23 MR. BURGESS: Yes, sir.

24 THE COURT: And they have the ability to cross-examine

25 on the debt, right?

1 MR. BURGESS: Yes, sir.

2 THE COURT: Okay. All right. All right. I didn't mean
3 to interrupt. I wanted to make sure.

4 MR. BURGESS: Your Honor is directly on point there. At
5 the trial, given the default, there are certain
6 items of fact that are deemed admitted. However,
7 the plaintiff still is charged with carrying his
8 burden of proof --

9 THE COURT: That's right.

10 MR. BURGESS: -- related to the foreclosure and the
11 equitable mortgage. Plaintiff is prepared to do
12 so. In fact, we had the trial scheduled at one
13 point in time.

14 THE COURT: Right. Now let's -- let's go back to the
15 meritorious defense. It's my understanding that
16 this mortgage was originally done on January 30th,
17 2004. Who did the note and mortgage then? Was it
18 the -- was it the two Nunally brothers, or who did
19 it?

20 MR. BURGESS: It was Carl A. Nunally and Frankie
21 Nunally. Carl Nunally --

22 THE COURT: So that was --

23 MR. BURGESS: -- was the signer on the note. And Carl
24 and Frankie -- Carl, Sr., I believe, and Frankie
25 were the original mortgagors under the terms --

1 THE COURT: And is that --

2 MR. BURGESS: -- of the mortgage.

3 THE COURT: That's Mom and Dad? Was that Mom and Dad?

4 MR. M. NUNALLY: That's -- that's correct --

5 THE COURT: All right.

6 MR. M. NUNALLY: -- Your Honor.

7 THE COURT: And Mom died in 2019 --

8 MR. M. NUNALLY: That's correct, Your Honor.

9 THE COURT: -- right? And -- and left it to Dad and

10 then Dad died --

11 MR. M. NUNALLY: That's correct, Your Honor.

12 THE COURT: -- is that --

13 MR. BURGESS: That's correct.

14 THE COURT: -- correct? Okay. All right. And then Mom

15 and/or Dad modified the loan? Did a loan

16 modification, right?

17 MR. BURGESS: Yes, sir. That's correct.

18 THE COURT: And what -- what does bankruptcy court say

19 about loan modifications? For example, if you've

20 done a loan modification, can you go in bankruptcy

21 court, and then claim, "I didn't sign the note"?

22 Can't, can you?

23 MR. BURGESS: It -- it's a ratification --

24 THE COURT: Right.

25 MR. BURGESS: -- Your Honor.

1 THE COURT: It's a ratification. So Mom and Dad signed
2 the note and mortgage. They never complained about
3 it. They went in and did a loan modification.
4 They never filed any legal action against it, did
5 they? To -- to your knowledge, was there any legal
6 action filed by original note and mortgage holder?

7 MR. BURGESS: No, Your Honor, there was not.

8 THE COURT: Okay.

9 MR. BURGESS: Neither through their estate --

10 THE COURT: So there was never any --

11 MR. BURGESS: -- in bankruptcy, or in any form that I'm
12 aware of.

13 THE COURT: -- anything filed against that. Now, would
14 you also agree with me that any legal claim that
15 Mr. -- I'm just going to say "Mr. Nunally and Mr.
16 Nunally," because I'm always getting you confused.
17 I had --

18 MR. T. NUNALLY: That's fine. No. You're good.

19 THE COURT: -- there were four boys in my family.

20 MR. M. NUNALLY: Yes, sir.

21 THE COURT: So I'm going to say "the Nunally brothers."

22 MR. M. NUNALLY: Yes, sir.

23 THE COURT: Okay. The Nunally brothers.

24 MR. M. NUNALLY: Yes, Your Honor.

25 THE COURT: All right. Would you also agree with me

1 that any rights that they have are -- are derived
2 through Mom and Dad's?

3 MR. BURGESS: That's correct, Your Honor.

4 THE COURT: That is --

5 MR. BURGESS: As far as rights in the property.

6 THE COURT: Rights in the property, okay. All right.

7 Okay.

8 All right. So as far as a defense, if Mom and
9 Dad had no defense, they have no defense, right?

10 MR. BURGESS: That is the plaintiff's position, yes,
11 sir.

12 THE COURT: Okay. Now, the defense they have -- that
13 they have raised, though, is that something's wrong
14 with the assignments and this New York case that
15 says the trust closing and foreclosing after that
16 that we'll address more and the other thing, but
17 did that -- does that seem to be the two main
18 prongs of a meritorious defense that they would
19 raise that their parents could have raised?

20 MR. BURGESS: Yes, Your Honor. I believe --

21 THE COURT: Okay.

22 MR. BURGESS: -- that's -- now -- and Your Honor raises
23 an excellent point, and we've discussed this a
24 little bit in our -- our memo in opposition to the
25 motion to dismiss. Because we get into the -- the

1 heart of that defense. I don't know that even if
2 standing to challenge the assignment, and we're not
3 conceding that was within the parameters of parties
4 to the contract, Mr. and Mrs. Nunally, I don't know
5 that that defense would transfer to someone who
6 took an interest in the subject property because
7 merely by virtue of taking an interest in the
8 property, which is what Mr. Nunally -- what the
9 defendants have done in this case, I don't --
10 doesn't make them a party to the underlying note
11 and mortgage. The -- the -- only the parties to
12 the contract, the note and mortgage, would have
13 rights therein. So that -- that's --

14 THE COURT: Well, they have some rights to it. For
15 example, if the mortgage was paid off, they could
16 send you a letter and say, "Send me the mortgage
17 satisfaction," right?

18 MR. BURGESS: They would have a right of redemption,
19 yes, sir.

20 THE COURT: Right. Right.

21 MR. BURGESS: They could pay off. They -- they --

22 THE COURT: Okay.

23 MR. BURGESS: -- wouldn't be entitled to things like a
24 loan modification --

25 THE COURT: Right.

1 MR. BURGESS: -- or have standing -- if -- assuming if
2 the parties to the contract -- if the case law were
3 such that the parties to the contract had standing
4 to challenge something related to the transfer of
5 the note and mortgage, I don't know that that
6 transfers to their heirs and assigns --

7 THE COURT: Okay. All right.

8 MR. BURGESS: -- if that makes sense.

9 THE COURT: Okay.

10 MR. BURGESS: And I'm not conceding that point, Your
11 Honor --

12 THE COURT: Well, I --

13 MR. BURGESS: -- I'm perfectly prepared to discuss that.
14 I don't believe that the original note signers
15 would have authority. And I think the case law is
16 extremely clear on that, that they wouldn't have
17 authority to challenge the transfer of the note and
18 mortgage.

19 THE COURT: Well -- well, I -- I understand. I want --
20 I want -- I want the Nunally brothers to understand
21 what we're talking about, because it sounds like
22 you're saying, "Wait a minute. What's good for the
23 goose is good for the gander," is not in mortgage
24 law because by contract, your parents agreed it
25 wasn't. And here's what I'm saying. If my -- if,

1 for example, if my wife and I own property and
2 we've got a mortgage on it, and we want to sell our
3 house and -- and let Mr. Richardson assume our
4 loan, we can't do that without the bank's
5 permission. It says so in the contract.

6 MR. M. NUNALLY: Yes, Your Honor.

7 THE COURT: The bank, however, they can assign our loan
8 to whoever they want as many times as they want.
9 We don't have any rights in saying, "No. Don't
10 assign my mortgage."

11 MR. M. NUNALLY: Yes, sir.

12 THE COURT: Because you agree to that in the mortgage
13 contract.

14 MR. M. NUNALLY: Yes, sir.

15 THE COURT: Okay. All right. So please -- just wanted
16 to make sure everybody understood that. All right.

17 MR. BURGESS: Well, thank you, Your Honor. And, Your
18 Honor, just basically wrapping up related to the
19 motion to set aside default. Basically, the courts
20 have all considered the grounds under 60(b) for
21 relief from judgment as cogent grounds for
22 considering a motion to set aside default. And is
23 --

24 THE COURT: All right. Hold -- all right. Hold on a
25 minute. Remember, because we're going to talk

1 about this later, there's -- there's -- there was
2 not an order of default done, was there? Or was
3 there an affidavit of default?

4 MR. BURGESS: There was an affidavit of default.

5 THE COURT: Okay.

6 MR. BURGESS: They're not seeking relief from judgment,
7 so they wouldn't have to --

8 THE COURT: Right.

9 MR. BURGESS: -- show any of the 60(b) factors.

10 THE COURT: That's right.

11 MR. BURGESS: But there are certain factors, such as
12 prejudice to the --

13 THE COURT: Right.

14 MR. BURGESS: -- opposing party, timeliness of the
15 motion, things of that nature, all of the factors
16 set forth under 60(b), including the reason for
17 failure to act, that would be related and -- and
18 cogent things for the court to consider --

19 THE COURT: Okay.

20 MR. BURGESS: -- and whether or not to grant the motion.

21 THE COURT: All right.

22 MR. BURGESS: And, Your Honor, to that point, I would
23 just like to point out that what I heard Mr.
24 Nunally say was that they had participated in the
25 case. That's not the same as filing an answer.

1 And that's not tantamount to good cause shown when
2 they had the unequivocal order in front of them in
3 terms of, "This is how the case is going to be
4 handled. This is our schedule," and then they wait
5 till over a month after the deadline for filing
6 motions, merely days before the scheduled trial to
7 file a motion to set aside default and then an
8 accompanying motion to dismiss just a few days
9 later. That all ties right into the -- to the good
10 cause and the 60(b)(4) factors, the timing for the
11 request for relief.

12 What I didn't hear Mr. Nunally say was the
13 reason why they waited until July and didn't, on
14 April 30th or any day before May -- May 30th, file
15 their motion to set aside default or file an
16 answer, anything of that nature before the
17 affidavit of default was filed. I didn't hear any
18 of that. And the prejudice of Plaintiff in this
19 case is clear. Your Honor, we -- we had a trial
20 set up. We were ready to go and that had to be
21 canceled. We had to spend considerable time on
22 these motions and on issues that weren't brought
23 about in an answer previously. And so that's --
24 those are things that all cut against the
25 defendants if we're considering the 60(b)(4)

1 factors.

2 THE COURT: All right. Thank you. Any response, Mr.

3 Nunally?

4 MR. M. NUNALLY: Yes, Your Honor. If I may, we -- we do

5 have a -- a oral argument memorandum in regards to

6 this particular situation.

7 THE COURT: Okay.

8 MR. M. NUNALLY: If I may approach the bench, so I --

9 THE COURT: Certainly. If you just make sure you give -

10 - give Mr. --

11 MR. M. NUNALLY: Yes, sir.

12 THE COURT: -- give him one, too.

13 MR. M. NUNALLY: Uh-huh.

14 THE COURT: Okay.

15 MR. M. NUNALLY: There you are, Attorney Burgess.

16 THE COURT: All right. All right. Thank you.

17 MR. M. NUNALLY: Here you are, sir. You're very

18 welcome.

19 And, respectfully, Your Honor, Plaintiff's

20 argument about our motions being untimely under the

21 scheduling order is what this particular oral

22 argument memorandum speaks to, kind of missed the

23 mark because standing as a threshold, by way of our

24 research that we have found to be jurisdictional --

25 a jurisdictional issue under the South Carolina

1 law, the Supreme Court in "Ex parte Progressive
2 Northern Insurance Company," 367 South Carolina 365
3 (2006), held that a lack of standing is a defect in
4 subject matter jurisdiction. In subject matter
5 jurisdiction --

6 THE COURT: All right. Hold on.

7 MR. M. NUNALLY: Yes, sir.

8 THE COURT: All right. Your predicate there is lack of
9 standing?

10 MR. M. NUNALLY: Yes, Your Honor.

11 THE COURT: All right. Why do you say they -- they've
12 got the original note. They've shown you the
13 original note.

14 MR. M. NUNALLY: Yes, Your Honor.

15 THE COURT: So they don't have standing how?

16 MR. M. NUNALLY: They have not shown us how they got the
17 note. They have not been able to prove that in --

18 THE COURT: All right. So what you're saying, then, is
19 in -- under South Carolina law, if -- if a bank has
20 physical possession of a promissory note, that they
21 have to show how they got the note?

22 MR. M. NUNALLY: Well, not necessarily, Your Honor. In
23 this case, the Bank of New York Mellon is
24 purporting to be a trustee over this trust. And,
25 therefore, just as we were told at the beginning of

1 this case that in order for --

2 THE COURT: All right. Well, hold on a minute.

3 MR. M. NUNALLY: Yes, Your Honor.

4 THE COURT: We're kind of drifting into the motion to
5 dismiss that addresses that. So don't go back into
6 your -- your trust argument.

7 MR. M. NUNALLY: Okay.

8 THE COURT: I'll -- I'm -- so you're -- your standing --
9 as I'm trying to understand, you're -- you're --
10 you're -- you're saying -- you're assuming they
11 don't have standing. And this is a mortgage
12 foreclosure. And South Carolina law says if you've
13 got the original note and you've -- and -- and
14 there's a mortgage and -- and all of that, then
15 you've got standing. You can claim what -- you
16 know, that it wasn't signed right or all that. But
17 "standing" means you've got the ability to start
18 the suit. They've got the note, all right? So --
19 all right. Go on to your next argument. Let's
20 assume -- let's assume you're right on standing,
21 but I'm just saying make sure you understand what
22 standing means, all right? So go on to the next
23 point.

24 MR. M. NUNALLY: Okay. Yes, Your Honor. Well, in
25 regards to the default and timeliness, as mentioned

1 in the memorandum, South Carolina law is clear that
2 jurisdiction cannot be waived or cured by the
3 default. That next, "Ex parte Progressive Northern
4 Insurance" --

5 THE COURT: All right. Hold on again. What do you mean
6 by "jurisdiction"?

7 MR. M. NUNALLY: What I mean --

8 THE COURT: When you say -- when you say, "It can't be
9 cured by default," what do -- when you say
10 "jurisdiction," what do you mean by that?

11 MR. M. NUNALLY: Their ability to try the matter.

12 THE COURT: All right. All right. Okay. Let's --
13 let's ask about that. The property is in -- is in
14 the -- the real estate is in South Carolina? Yes?

15 MR. M. NUNALLY: Yes, Your Honor.

16 THE COURT: The real estate is in the County of
17 Lexington?

18 MR. M. NUNALLY: Yes, Your Honor.

19 THE COURT: Yeah. Right. There is a recorded mortgage
20 on it?

21 MR. M. NUNALLY: Yes, Your Honor.

22 THE COURT: Okay. There was an order of reference that
23 referenced the case to the master in equity's
24 office?

25 MR. M. NUNALLY: Yes, Your Honor.

1 THE COURT: All right. Where is there -- how is there
2 not jurisdiction when those factors have been met?

3 MR. M. NUNALLY: Again, as far as I understand at the
4 moment, Your Honor, as we were told -- I'm sorry --
5 as my brother was told as a trustee, he had to show
6 proof of ownership, and we have not been able to
7 see that. The only way he would be able to show
8 that. If I'm -- if I'm correct --

9 THE COURT: Well, wait a minute. When you say, "He was
10 told" --

11 MR. M. NUNALLY: The trustee, Timothy Allen Nunnally, of
12 the CAN Irrevocable Trust.

13 THE COURT: Okay. Now -- all right. When was that
14 trust formed?

15 MR. M. NUNALLY: That trust was formed before our -- our
16 dad passed away.

17 THE COURT: Okay. What year?

18 MR. M. NUNALLY: 2021.

19 THE COURT: When did your dad and mom sign the mortgage?

20 MR. M. NUNALLY: If I'm not mistaken, that was 2004.

21 THE COURT: Four. That's the date that's critical.

22 Every -- the mortgage date is the controlling date.
23 If you die, if you form a trust, if you deed it, if
24 you give an easement, it's all subject to what's
25 already on the record title, which was the

1 mortgage. So you understand that you can't sign a
2 mortgage in 2004, and then heirs sign something 15
3 or 20 years later saying, "We're not taking subject
4 to it. We've decided we don't want the mortgage."
5 The mortgage is on record. It runs with the
6 property. It runs through the property.

7 MR. M. NUNALLY: Yes, Your --

8 THE COURT: All right.

9 MR. M. NUNALLY: -- Honor.

10 THE COURT: So -- all right. Now -- now, when you say
11 "he was told," he was told by whom?

12 MR. M. NUNALLY: This trustee was -- was told, if I am
13 not mistaken, by Judge Spence earlier in this case,
14 that in order for the property at hand, 1759, to be
15 in that trust, it had to be either deeded into the
16 trust, if I'm not mistaken, was determined by way
17 of gift or --

18 THE COURT: Right.

19 MR. M. NUNALLY: -- somewhere --

20 THE COURT: Right.

21 MR. M. NUNALLY: -- along those lines, and that we would
22 indeed have to show proof of that for it to be --

23 THE COURT: Okay.

24 MR. M. NUNALLY: -- standing.

25 THE COURT: Right.

1 MR. M. NUNALLY: And -- and our argument is that we have
2 not been shown proof that said mortgage was placed
3 in said trust by trustee to be over that --

4 THE COURT: All right.

5 MR. M. NUNALLY: -- particular trust, and they have not
6 been able to prove that.

7 THE COURT: Okay. You are -- okay. I -- now, I'm glad
8 you explained that, because I want to explain how
9 you're fundamentally misunderstanding South
10 Carolina Race Notice.

11 The mortgage is not put into a trust. The
12 mortgage is recorded like deeds in the office of
13 the ROD; it's recorded in 2004, and it's subject to
14 anything afterwards. It doesn't get put into the
15 trust; you take subject to it. So if -- if -- for
16 example, if your dad had done a deed when he was
17 alive, let's say, on -- and two years after this --
18 after the deed and the mortgage was recorded --

19 MR. M. NUNALLY: Yes, Your Honor.

20 THE COURT: -- he deeded it to the two of y'all in that
21 trust --

22 MR. M. NUNALLY: Yes. Yes, Your Honor.

23 THE COURT: -- it would have been subject to this
24 mortgage. He didn't put it into the trust. He
25 gave you the property. The mortgage follows it

1 because it's on public record.

2 MR. M. NUNALLY: Yes, Your Honor.

3 THE COURT: All right. So you understand that?

4 MR. M. NUNALLY: Yes, Your Honor.

5 THE COURT: Nobody had to give the mortgage to anybody.

6 The mortgage is on record. That's why you do title

7 searches before you buy property.

8 MR. M. NUNALLY: Yes, Your Honor.

9 THE COURT: Okay. All right. So does that make sense?

10 MR. M. NUNALLY: It does, Your Honor.

11 THE COURT: Okay. All right. So -- so that's the

12 subject matter jurisdiction issues.

13 MR. M. NUNALLY: Okay.

14 THE COURT: All right.

15 MR. M. NUNALLY: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. M. NUNALLY: Okay. So thank you, Your Honor, for --

18 THE COURT: Yeah.

19 MR. M. NUNALLY: -- clearing that up.

20 THE COURT: All right.

21 MR. M. NUNALLY: Well, by way of this particular

22 memorandum, we can still state that South Carolina

23 law is clear that jurisdiction cannot be waived or

24 cured by default.

25 THE COURT: Okay. We -- and we've sort of -- I hope you

1 understand better now what jurisdiction is. And I
2 don't --

3 MR. M. NUNALLY: Yes, Your Honor.

4 THE COURT: I don't -- I'm not hearing yet a persuasive
5 argument that says this court doesn't have
6 jurisdiction over the matter. And I agree with
7 you. You can't waive subject matter jurisdiction.
8 But I don't know. I haven't heard anything yet
9 that says this court -- we've got an order of
10 reference. The property's in South Carolina. The
11 property's in Lexington. It was recorded properly.
12 I don't hear anything that said we don't have
13 subject matter jurisdiction. Now, whether your
14 trust argument and your assignment about when they
15 filed the mortgage, that's your next motion. But
16 as far as jurisdiction, I'm not hearing anything.
17 And I'm not ruling, but I'm not hearing anything
18 that says, "For purposes of Rule 55, it's
19 jurisdictional."

20 Now, we -- I still got to weigh the 55
21 factors, or should we do this, you know, based on
22 an affidavit of default. And I'll consider what
23 you've argued and what -- what he's argued. So I
24 understand the jurisdictional argument on 55, and I
25 understand the affidavit of default argument. Is

1 there anything different other than that? Because
2 you -- because you understand a motion to vacate a
3 default is not an automatic -- it is not a matter
4 of right. It -- a court can say yes or no. If it
5 was an automatic right, you wouldn't have to file a
6 motion. You just say, "Here's my answer." The --
7 it -- we wouldn't have rules that say, "You have to
8 answer in 30 days. Just answer anytime, because we
9 want justice." You have to have a time limit. So
10 you understand -- you understand there are time
11 limits that apply to this?

12 MR. M. NUNALLY: Yes, Your Honor.

13 THE COURT: And -- and it's not -- and it's not a matter
14 of right under -- under motion to vacate that you
15 get it granted because the -- the summons says "30
16 days." And then the rules say, "If you file a
17 motion, you don't have to file it." But after you
18 rule on a motion, then you do have to file it
19 within the time period. So what he's arguing is --
20 is -- is technically, you -- you don't have the
21 right to file this motion because you didn't even
22 file it timely. And, second of all, even if I do
23 consider for the timeliness factor, you're not
24 meeting the things because you've been allowed to
25 participate, there's still going to be a trial.

1 All of that, okay?

2 MR. M. NUNALLY: Yes, Your Honor.

3 THE COURT: All right. Anything further on this motion?

4 MR. M. NUNALLY: And I -- and I think that we may touch
5 on this in -- in -- in some of the next motions, as
6 well, just in regards to the plaintiff's possession
7 of the note, and how we wish to argue that as being
8 insufficient, as well as the void assignment into
9 the trust.

10 THE COURT: Okay. I want to -- while you're thinking
11 about that, I want to, again, reiterate something
12 we've talked about I know at least once.

13 Again, in South Carolina, South Carolina law
14 is -- is possession of the note is like possession
15 of a \$20 bill. For example, if you take a \$20 bill
16 and go to Hardee's and say, "I want a coke," they
17 don't make you say, "Where did it prove -- where
18 did you get that \$20 bill from," do they?

19 MR. M. NUNALLY: No, sir.

20 THE COURT: They don't say, "Show me a chain of
21 possession that you didn't steal it or that you
22 didn't take it or it was assigned to you
23 improperly." Ownership is a jurisdiction, right?

24 MR. M. NUNALLY: Yes, Your Honor.

25 THE COURT: The notes -- the note is the same way, all

1 right? The note is the same way of it. So they've
2 got -- they've got possession of the note. So
3 they've got --that's jurisdiction. That's
4 jurisdiction. And -- and, again, remember, they
5 don't -- under South Carolina law, you don't have
6 to prove how they got the note. Just like a --
7 like the \$20 bill, they've got possession of the
8 original note. Now, what I do to allay homeowners'
9 concerns -- and it could happen if they did steal
10 it or if it got -- if it got delivered to them
11 somehow improperly and then all the records got
12 shipped to them improperly and then payments got
13 started and made to them improperly. If it was all
14 done somehow improperly, what -- what we can do if
15 you ask -- if -- if the case goes on and they win -
16 - and the bank wins, what I have done in a case
17 where the bank wins is we do a rule to show cause
18 if the homeowner asks for it. And I send a rule of
19 show calls to everybody in the chain, everybody
20 that is purported to had assignment from day one to
21 the end. And I order them to come to the court,
22 and say, "You show up on this date to tell me why
23 you have an ownership and this interest with these
24 people, or I'm going to order all your stuff marked
25 satisfied on the record." And to this date of --

1 I've only had to do it a couple times, but I've
2 never had anybody shown up. But that is a
3 protection mechanism that we do because it is a --
4 it is a legitimate concern that after you get --
5 you know, after a person gets foreclosed on, you
6 know, and -- and they -- and they don't see where
7 the original note goes, they don't want somebody
8 showing up 15 years later saying, "I got the
9 original note, and I don't see any payment stuff,"
10 and sue you again, right? So -- so I'm just
11 telling you that that is a mechanism for everybody
12 to remember if they end up winning the -- the --
13 the case. Do you understand what I'm saying?

14 MR. M. NUNALLY: Yes, Your Honor.

15 THE COURT: Okay. All right.

16 MR. M. NUNALLY: Yes, Your Honor. Your Honor, if I may,
17 in regards to the -- our argument about plaintiff's
18 possession of the note being insufficient, we would
19 like to, if we may, bring to the Court's attention,
20 under UCC 3-301, "A holder must be entitled to
21 enforce. And endorsements without proof of a
22 lossful (verbatim) transfer are meaningless." And
23 -- and we haven't seen that proof just yet of the
24 lawful transfer from who that loan was originated
25 with to who it transferred to. And, if I'm not --

1 THE COURT: Okay. And you're -- you're -- you are
2 citing UCC Article 3?

3 MR. M. NUNALLY: Yes, Your Honor.

4 THE COURT: Not Article 4?

5 MR. M. NUNALLY: Not at this moment, Your Honor.

6 THE COURT: Okay. All right. So, Mr. Burgess, if you
7 will -- whenever we do our proposed order, what
8 they are arguing then in Article 3 is commercial
9 paper. Article 4 is secured transaction. This is
10 a secured transaction because there is a -- a
11 mortgage. There is a security agreement with it.
12 There's a little different play over on it. He's
13 arguing -- what I understand the argument to be,
14 "Well, yes, there is." In Article 3, you would
15 have to show if somebody at Wendy's or whatever
16 restaurant it was, you would have to show them.
17 Because a \$20 bill's a note, right?

18 MR. M. NUNALLY: It is, Your Honor. Yes, Your Honor.

19 THE COURT: It's a negotiable note. It's a Federal
20 Reserve note. Theoretically, they can say, "Show
21 me where you got it from," if that's what Article 3
22 says. All right. So address Article 3 and the
23 Article 4 about secured transactions.

24 Now, I'm pretty sure I'm taking judicial
25 notice of this. I don't know anyone who's ever

1 told me in court or as a lawyer that they were
2 asked to show proof of the \$20 bill, and any time
3 they've spent money. Now, I guess, if you were --
4 if you had robbed the store, and it was like
5 something that had ink on it, you know, like one of
6 those dollar bills that might come up, but in an
7 ordinary course, you don't have to show where you
8 got money from/proof from. Okay. All right. Next
9 point.

10 MR. M. NUNALLY: Also, Your Honor, in "Crawford v.
11 Central Mortgage Company," 404 South Carolina 39
12 (2013), it was stated that there is a requirement
13 of authentication of business records and chain of
14 custody, and that mere possession does not prove
15 authority.

16 THE COURT: All right. At the trial, they're going to
17 have their business record person there, and all
18 that testimony will occur. Because they not only
19 -- what they have to do -- what that witness has to
20 do is -- is they have to come in and they have to
21 show how they got the documents, who they got it
22 from, the onboarding computer program they did, how
23 they logged in the payments, how they logged in the
24 stuff, how it's normal course of business. There
25 will be a -- a good deal of time devoted to that

1 normally during their -- the bank's portion. They
2 put the person up, he goes through all the business
3 records, so that occurs.

4 MR. M. NUNALLY: As to where we'll be able to cross?

5 THE COURT: Yes.

6 MR. M. NUNALLY: Okay.

7 THE COURT: Yes. Absolutely. You'll be able to cross
8 them.

9 MR. M. NUNALLY: Thank you, Your Honor.

10 THE COURT: Yep. Okay.

11 MR. M. NUNALLY: And then last -- lastly, at the June
12 30th, 2025, instrument inspection, Plaintiff, in
13 fact, did produce only the note, but failed again
14 to produce the pooling and service agreement/the
15 custodial receipts for servicing agreements. And
16 that evidentiary gap is fatal if you're going to be
17 a trustee in -- in -- in this position as far as we
18 understand, Your Honor.

19 THE COURT: All right. That's bleeding into the next
20 argument more, right? That -- that's not so much
21 -- that's not why you should necessarily -- that's
22 your -- your next argument. I understand what
23 you're saying. It can be part of this, but it's
24 more into the next argument, so let's -- okay. I
25 -- I understand you -- you're making that argument,

1 also.

2 MR. M. NUNALLY: Okay.

3 THE COURT: And you're going to have the chance after he
4 addresses your motion to argue it fuller.

5 MR. M. NUNALLY: Yes, Your Honor.

6 THE COURT: About the trust agreement, the pooling, and
7 securitization.

8 MR. M. NUNALLY: Yes, Your Honor.

9 THE COURT: Because he said "not -- not a relevant
10 thing." They've got the note. They've got the
11 mortgage. How we pay people and what we do and who
12 are -- how we do that, not relevant to the
13 enforceability. What you're -- what you're arguing
14 is, is there's this case that says there's a law
15 that says, "Yes. It is." If it's something
16 happens after a certain point in time, not who they
17 pay, who they're making securitized payment to, all
18 that stuff, that's not relevant. What you're
19 arguing is, is there's a New York case, it says,
20 "By statute pool and date closes at this time.
21 They can't foreclose afterwards." So we'll --
22 we'll hear more about that in detail shortly, I
23 think.

24 MR. M. NUNALLY: Thank you, Your Honor.

25 THE COURT: Okay. All right. Thank you. All right.

1 Okay. Next -- next part, Mr. Burgess, the motion
2 to dismiss based on pooling and the trust agreement
3 and those matters.

4 MR. BURGESS: Yes, Your Honor. That's the next one that
5 -- that we had. I believe that one was filed July
6 9th.

7 THE COURT: Okay.

8 MR. BURGESS: It was either July 8th or July 9th. I
9 think --

10 THE COURT: All right.

11 MR. BURGESS: -- July 8th.

12 THE COURT: Okay.

13 MR. BURGESS: And that was a motion to dismiss, it looks
14 like related to Rule 12(b)(1) and 12(b)(6). And,
15 Your Honor, we're certainly happy to address --

16 THE COURT: All right.

17 MR. BURGESS: -- both of those motions if they're
18 prepared to argue them.

19 THE COURT: All right. Are you -- are y'all ready to
20 argue it?

21 MR. M. NUNALLY: Yes, Your Honor.

22 THE COURT: You're -- okay. All right.

23 MR. M. NUNALLY: And -- and I apologize which motion is
24 that, again, Your Honor?

25 THE COURT: This is your motion to dismiss filed July

1 8th, 2025. 7/8/2025.

2 MR. M. NUNALLY: Yes. Yes, Your Honor. Again, this
3 goes back to the point of dismissal in regards to
4 Plaintiff's lack of standing, as we understand it,
5 by way of the assignment into a closed 2004 trust
6 done all the way in 2023 as being something that
7 we're not seeing the possibility of, and -- and it
8 hasn't been proven to us just yet of how it is
9 possible and that, even accepting allegations as
10 true, that we have yet to see any legally
11 cognizable claim, if you will, regarding this
12 motion.

13 THE COURT: All right. That -- what all that you just
14 said that's based on -- tell me that case -- the
15 case you're basing that all on. All of that that
16 you just said, "I believe what I just said because
17 of . . ." Tell me the case.

18 MR. M. NUNALLY: Yes. For a few we -- we -- well, we
19 know that the plaintiff has relied on cases like
20 Roshulyn (phonetic) and -- and -- and Bassman to
21 claim that --

22 THE COURT: No, no, no. I want to know what you rely
23 on. You cited in your case.

24 MR. M. NUNALLY: Yes. Yes, Your Honor.

25 THE COURT: Tell me that case, the date of it, and tell

1 me the facts of that case and the holding --

2 MR. M. NUNALLY: Yes, Your Honor.

3 THE COURT: -- that you base it on. And then he's going
4 to tell his cases, and then y'all will be able to
5 respond back to it.

6 MR. M. NUNALLY: Yes, Your Honor. As stated in the
7 motion has a -- Number 4 has a REMIT trust governed
8 by 26 U.S.C. Subsection 860D-860G. The trust could
9 not lawfully accept any mortgage asset after its
10 closing date without jeopardizing its federal tax-
11 exempt status. Also, transfers after the closing
12 date are prohibited under the IRS code and violate
13 the PSA. Courts have repeatedly held that post-
14 closing transfers into REMIT trust are void. For
15 that, we would be able to see "Glaski v. Bank of
16 America," as well as "In re Saldivar."

17 THE COURT: I've got it. You don't have to read it.
18 I've got it on screen.

19 MR. M. NUNALLY: Oh.

20 THE COURT: Okay. So this is -- I just found it. This
21 -- this is the motion, right?

22 MR. M. NUNALLY: Yes, Your Honor.

23 THE COURT: And -- and your -- the argument there is --
24 is, is there's a New York Trust Law that they
25 accept the mortgage after its closing date, and

1 that it -- it -- it subjects them to -- wait a
2 minute. Hold on. All right. As four, which
3 you're arguing, is -- it says, "The trust could not
4 lawfully accept it without jeopardizing its federal
5 tax-exempt status." That's what you say on four,
6 right?

7 MR. M. NUNALLY: Yes, Your Honor.

8 THE COURT: It doesn't say they couldn't enforce the
9 mortgage, right?

10 MR. M. NUNALLY: Yes, Your Honor.

11 THE COURT: It says if they did it, they might lose a
12 tax benefit --

13 MR. M. NUNALLY: Yes, Your Honor.

14 THE COURT: -- right? Okay. All right. And then it
15 says -- and then it goes on to say, "They're
16 prohibited." And then this says, "Those transfers
17 are void," right? So what --

18 MR. M. NUNALLY: Yes, Your Honor.

19 THE COURT: -- that says is, is that they're -- they're
20 void. That says something different, okay. All
21 right.

22 MR. M. NUNALLY: Yes, Your Honor.

23 THE COURT: So we'll let him address that. So let's
24 start on that part right now, because that's the --
25 that's a discrete subsection. So I'm going to let

1 him -- Mr. Burgess now address these matters
2 raised. Trust took it, post-closing assignment
3 void, tax stuff's gone. Tell me what -- what's the
4 -- what's your argument and response to that?

5 MR. BURGESS: Thank you, Your Honor. I'm happy to do
6 so. Your Honor, I'll try to be as brief as
7 possible. This isn't a novel issue. Courts across
8 the country have been faced with this sort of
9 defense, and uniformly they've been rejected. What
10 the defendants do have is pointing to a couple of
11 cases. And I'll start with the "Wells Fargo Bank
12 v. Erobo" that's on the screen there, and
13 Paragraph 9 of their motion. That would be 39
14 miscellaneous 3rd (1220), a New York Superior Court
15 2013 case, which the defendants cite for the
16 proposition that a post-closing assignment is void
17 under New York Trust Law, EPTL 7-2.4. That was the
18 holding of the trial court. Your Honor, I want to
19 preface that by stating that trial court decision
20 was obviously appealed --

21 THE COURT: All right. Stop for a minute.

22 MR. BURGESS: -- and later overturned on appeal.

23 THE COURT: All right. Stop for a minute. What is the
24 New York Superior Court? Is that a trial court or
25 an appellate court?

1 MR. BURGESS: It's trial court.

2 THE COURT: So it's a trial court. So it's like a trial
3 order?

4 MR. M. NUNALLY: Yes, Your Honor.

5 THE COURT: Okay. It's a trial order. Okay. So what
6 happened after that trial order?

7 MR. BURGESS: Yes, Your Honor. That order was
8 ultimately overturned in the specific finding in
9 the "Wells Fargo v. Eroboho" appealed decision.
10 And -- and I can give you the citation for that.
11 It was overturned and reversed in a decision found
12 at 127 AD 3rd -- I think it's the Appellate
13 District -- 3rd (1176). Also, NYS 3rd at 312.
14 This is a -- an appellate court decision that came
15 up.

16 THE COURT: All right. All right. Let me ask you a
17 question. All right. So that was an appellate
18 court. Was that the New York --

19 MR. BURGESS: It was.

20 THE COURT: -- Supreme Court, or was it their court of
21 appeals? What stage of appellate court ruling are
22 you talking about?

23 MR. BURGESS: It was the court -- their equivalent to
24 the court of appeals. It was not --

25 THE COURT: All right.

1 MR. BURGESS: -- the Supreme Court or the ultimate
2 highest court in -- in the appellate court system
3 for the state of New York, as my understanding.

4 THE COURT: All right. Was this -- was it appealed to
5 the highest court?

6 MR. BURGESS: No, sir.

7 THE COURT: Okay. Well, then --

8 MR. BURGESS: A leave for rehearing was actually denied.

9 THE COURT: Okay. All right.

10 MR. BURGESS: A leave to appeal further was actually
11 denied.

12 THE COURT: All right. So let's stop. So let me
13 explain this. (To the Nunallys) I want to -- I
14 want to explain to you what he just said, and I'm
15 going to put it on a South Carolina level.

16 MR. M. NUNALLY: Okay.

17 THE COURT: All right. What you cited in Number 4 was
18 my order. Somebody like me. A trial court order.

19 MR. M. NUNALLY: Yes, Your Honor.

20 THE COURT: A trial court order, "I said this." It got
21 appealed to the people in the picture over your
22 shoulder back there. The appeal court, like the
23 court of appeals.

24 MR. M. NUNALLY: Yes, Your Honor.

25 THE COURT: They said, "Trial judge got it wrong. We

1 don't agree with it." So it doesn't matter that
2 trial court, like me, ruled and agreed with you.
3 If the appellate court says, "No. This order is
4 not the law," is what the appellate court said.
5 Does that make sense?

6 MR. M. NUNALLY: It does, yes, Your Honor.

7 THE COURT: Okay. All right. And what I'm asking you
8 is, is what you've cited is in effect the court of
9 appeals decision, right?

10 MR. BURGESS: That's correct, Your Honor.

11 THE COURT: And -- and --

12 MR. BURGESS: The law of the case is the exact opposite
13 of the trial court order they've cited.

14 THE COURT: Okay. And to your -- and what -- now, tell
15 me what you just said "cert was denied." Is that
16 what you said?

17 MR. BURGESS: That's correct.

18 THE COURT: Okay. Now, I want to explain what a common
19 version of "cert is denied." What happens is, is
20 when it goes from, like, the trial judge and the
21 trial court, and they appeal it to the court of
22 appeals. The court of appeals makes a ruling. You
23 can appeal it from the court of appeals to the
24 Supreme Court by a process called "certiorari," and
25 what it says is, is the parties say, "Dear Supreme

1 Court, we think the court of appeals messed up, and
2 they should have affirmed the trial court, not
3 reversed them. We'd like you to take the case and
4 reverse the court of appeals."

5 The court -- the Supreme Court said, "No."
6 Now listen. "No." They said, "We're not taking
7 the case." Some people say, "Well, that
8 automatically means they agree with the court of
9 appeals." Could be. Could just mean they don't
10 want to take the case at this point. It could mean
11 a lot of things. But what we do know is, is that
12 in New York, the highest court ruling does not say
13 what Number 4 says. Is that your argument?

14 MR. BURGESS: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. BURGESS: That's our argument. And it's been
17 analyzed by courts across the country.

18 THE COURT: Okay. All right. So let's do some numbers
19 on that. That -- that was in your memo.

20 MR. BURGESS: Yes, sir. So, initially, the -- the
21 reason why this is important is because after the
22 2013 ruling in Erobobo at the trial court, the same
23 issue was being litigated across the country. In
24 California, where California has a nonjudicial
25 foreclosure method as far as foreclosing on a

1 mortgage -- in California, it would be nonjudicial
2 foreclosure of a deed of trust. Ultimately, in
3 California a -- a mortgage -- a mortgagor can file
4 an affirmative suit to try and state wrongful
5 foreclosure. And so that's exactly what happened
6 in 2013 in the Glaski case, "Glaski v. Bank of
7 America." Essentially in that case, Bank of
8 America had nonjudicially foreclosed. The Glaskies
9 filed suit and they made essentially the same
10 argument that the Nunallys are making in this case
11 because of the underlying transfer of the note and
12 mortgage into the trust was supposedly in
13 contravention of the times set forth in the pooling
14 and servicing agreement, it's void under New York
15 law. And the "Glaski -- Bank of America v. Glaski"
16 case actually did -- or "Glaski v. Bank of
17 America," I should say. And that's found at 160
18 California Reporter 3rd 449, also decided in 2013.
19 Now, it's important that that decision was made
20 while Erobobo was on appeal. And that'll be
21 discussed a little bit later in one of the further
22 cases that I cite that actually discuss a number of
23 these cases. And, essentially, Glaski said, "We
24 think that under the Erobobo case that the transfer
25 was void. And so the underlying mortgagor has

1 rights to be able to make a claim for wrong
2 foreclosure based on the timeliness of the
3 transfer. Essentially giving life or some credence
4 to this argument that we're here today on. The
5 pooling and servicing argument.

6 THE COURT: And -- and under -- and -- and want to make
7 sure that the Nunallys understand a term that you
8 just used. Half -- about half of America is
9 judicial foreclosure. About half is writ or
10 nonjudicial foreclosure. California is
11 nonjudicial. South Carolina is judicial. In South
12 Carolina, what has to happen in judicial -- like
13 South Carolina and Florida are judicial. North
14 Carolina and Georgia are writ or nonjudicial. In
15 the judicial states like we are, four things have
16 to happen before somebody could take your home.
17 They have to file a lawsuit, right? That's
18 happened. They have to have a hearing, an
19 adjudication that you're entitled to it. We're
20 still doing that part, right? Then if the bank
21 proves its case, it has to be sold after public
22 notice, at auction, and all that stuff. And then,
23 four, whoever the bidder is, bank or non-bank, has
24 to pay money and they have to get a deed. So those
25 four things have to happen. And as you can see,

1 you have full trial rights. You get to do
2 discovery, you get to do stuff, you got rules. The
3 writ states, while they're all a little different,
4 it basically works like this, "We're the bank. You
5 didn't make a payment. Get out in ten days unless
6 you file a countersuit that shows that you have
7 some basis to argue you should be able to stay in
8 the house." So what I understood you to say was
9 that happened. And in California, which is a
10 nonjudicial state, they said, "You filed a
11 countersuit. You've raised an issue that has at
12 least been successful on the trial level in New
13 York." But they didn't do it after the -- the --
14 the New York Appellate Court had ruled, is that
15 what you're saying?

16 MR. BURGESS: That's correct.

17 THE COURT: Okay.

18 MR. BURGESS: Glaski was decided before Erobobo was --

19 THE COURT: All right.

20 MR. BURGESS: -- appealed --

21 THE COURT: All right. Now --

22 MR. BURGESS: -- or before the decision on appeal.

23 THE COURT: Right. Now, if California courts had
24 learned that the New York case they were -- relied
25 on had been overruled, may have been a different

1 decision, may not. We don't know, right? So what
2 happened in the California case? Did it get
3 appealed up or what happened? It's just a trial
4 case.

5 MR. BURGESS: Well, the California case initially, the
6 Glaski case, which cited Erobobo, has 231 separate
7 negative citations in California and throughout the
8 United States. Those negative citations, a number
9 of those cases reference that Glaski on his face
10 was an outlier and is not widely accepted law.
11 And, Your Honor, I can go into a few of those now.
12 Particularly, there was --

13 THE COURT: All right. Well, hold -- well, hold on. In
14 the California case. What was it? What number?
15 What was that called? Was that Erobobo or Glaski?

16 MR. BURGESS: Glaski was the California. "Glaski v.
17 Bank of America."

18 THE COURT: Okay. So -- and Glaski was the trial one
19 appealed up to an appellate court?

20 MR. BURGESS: I believe it went to one of their second -
21 - their first levels of appeal, the -- essentially
22 the court of appeals. I -- there wasn't a
23 statewide law that came down that references Glaski
24 as the law of the case -- or the law of land in --
25 in California.

1 THE COURT: Okay. All right.

2 MR. BURGESS: So there's been a number of cases that
3 distinguish it, just flat out fail to follow it.
4 And it's because of the discussion that we're
5 having right now. The theory that the Nunallys are
6 putting forward that they're claiming these cases
7 -- and -- and they cite Glaski, which is the reason
8 why I'm discussing it -- is that the pooling and
9 servicing agreement in their theory -- and, again,
10 we haven't gotten into the facts of they would have
11 to prove that these things are, in fact, true. But
12 what they're asserting and assuming that -- even
13 assuming what they're asserting is true, they're
14 asserting that if a transfer of a mortgage into a
15 trust happens outside of a certain timeline that's
16 governed by the pooling and servicing agreement,
17 that New York law says that act is void. The only
18 way they would have standing under the Glaski case
19 and any case associated with -- with it, as if that
20 were, in fact, the law in New York that a transfer
21 is void. And, in fact, that's exactly the opposite
22 of what New York law is.

23 THE COURT: That was the law of New York on the trial
24 level decision.

25 MR. BURGESS: That was. That's correct.

1 THE COURT: But not --

2 MR. BURGESS: And that's what Glaski found.

3 THE COURT: But not when it got appealed up to the court
4 of appeals? The New York court appeals?

5 MR. BURGESS: Correct.

6 THE COURT: Okay.

7 MR. BURGESS: And the California Supreme Court, while
8 not making a determination about what New York law
9 said as far as -- far as void and voidable, in the
10 case of "Yakanova (verbatim) v. New Century
11 Mortgage Corporation." That's 62 California 4th
12 (919). It's a 2016 California Supreme Court case.
13 They asserted that the proposition in Glaski would
14 be true depending on what New York law said about
15 void versus voidable.

16 THE COURT: Right.

17 MR. BURGESS: So if New York law said that an action and
18 contribution of a pooling and servicing agreement
19 was a void act, then the Glaski argument would have
20 teeth. They didn't answer the question as to what
21 New York law said. They just said if the
22 proposition is -- if New York ever decides, and
23 they haven't to this day, as we sit here in 2025 --

24 THE COURT: Well, their court of appeals has said no to
25 what trial -- the trial people said?

1 MR. BURGESS: That's correct.

2 THE COURT: Right.

3 MR. BURGESS: And that's never been changed.

4 THE COURT: Right. That's never been changed.

5 MR. BURGESS: So the law, as we sit here today in 2025,
6 is that even considering everything that they're
7 saying that, A, number one, an action taken in
8 contradiction of a pooling and servicing agreement
9 is not void, but the mortgagors themselves don't
10 have standing to challenge that act, and that's --
11 it's their standing to challenge the act is what --
12 is the crux of the issue here, and that's what
13 California was -- was wrestling with --

14 THE COURT: Okay.

15 MR. BURGESS: -- was whether or not an action is void or
16 voidable under New York Trust Law.

17 THE COURT: All right.

18 MR. BURGESS: And I've cited in my brief that -- that we
19 filed on August the -- the 25th, Your Honor, a
20 number of cases that go right into the heart of the
21 Glaski case. Let -- as I said, this isn't a -- a
22 novel issue. They discuss it at length. One of
23 the -- the best cases that I read as far as in-
24 depth analysis of the -- the -- this very issue is
25 a bankruptcy court opinion out of the Eastern

1 District of Virginia, Norfolk Division. And it
2 analyzed all of the cases that we've been talking
3 about --

4 THE COURT: And that was the --

5 MR. BURGESS: -- Bassman, Eroboobo --

6 THE COURT: And that was the A-4 one?

7 MR. BURGESS: -- Glaski.

8 THE COURT: Yeah. Okay.

9 MR. BURGESS: And it was a 2016 bankruptcy case. So by
10 the time they made this decision, all of these
11 cases were already decided. So they had the full
12 information in front of them. And they -- they go
13 in depth. In fact, it's -- there's a page and a
14 half of -- of straight citation from that
15 case/straight quotation. They give an excellent
16 discussion of both Eroboobo, Glaski and the -- the
17 time frame and -- and the court's treatment of
18 whether or not a case -- or an action is -- is void
19 versus voidable. And, ultimately, the decision
20 that they made in that case was that the -- as
21 we're stating, the mortgagor does not have standing
22 to raise this pooling and servicing issue. And so
23 they can't have -- and they can't make the argument
24 they're making now. They lack standing to do it.
25 And under New York Trust Law, based on the laws

1 that stand, they're following the concept that even
2 if they accept as true that an action taken by the
3 trustee was in contravention, and -- and, again,
4 the plaintiff in this case isn't conceding that --
5 that that's factually happened here. Their
6 assertion is that every action taken regarding the
7 transfer of the note and mortgage to the plaintiff
8 in this case was perfectly within South Carolina
9 and New York law.

10 THE COURT: All right. All right.

11 MR. BURGESS: But, basically, they're saying they don't
12 have standing --

13 THE COURT: Let's stop.

14 MR. BURGESS: -- to make that argument.

15 THE COURT: Let's stop. Because I want to make a -- a
16 for instance argument. Hypothetical. All right.
17 Let's say I buy your argument that says what they
18 cited was trial court and New York got overruled.
19 They didn't understand that they weren't deciding
20 law. They don't -- they're non-lawyers. Whoever
21 -- however they got this information or whoever
22 they got it from didn't understand it was trial
23 court, not Supreme Court. They didn't shepardize
24 it, all right? And I -- and I deny the motion to
25 dismiss, right? Say if I -- if I deny both -- all

1 the motions and we're set for trial, right? Set
2 for trial. And then on the day of trial, you've
3 got your business record guy up, right? And he's
4 going through his, "How we got the note, how we got
5 the mortgage," and that. They can still at that
6 point ask that question, can't they?

7 MR. BURGESS: As far as how they got the note and the
8 mortgage?

9 THE COURT: Yeah. Did you get -- show -- show -- yeah,
10 right?

11 MR. BURGESS: I -- I believe that question can certainly
12 be answered. What I will say is this, what we have
13 before the court here is a -- an endorsed note that
14 is endorsed in blank.

15 THE COURT: I -- I --

16 MR. BURGESS: It is like money that isn't ink stained --

17 THE COURT: Right.

18 MR. BURGESS: -- or anything like that.

19 THE COURT: I understand that, but they can still ask
20 it. The -- the ruling -- if I rule for you on the
21 motion to dismiss, they can ask the same question
22 at trial, right?

23 MR. BURGESS: Yes, sir.

24 THE COURT: And they're not barred by me ruling the --
25 if I was to rule for you the motion to dismiss, and

1 your guy would have to explain how the stuff
2 happened, right?

3 MR. BURGESS: Yes, sir.

4 THE COURT: Because even if the answer is, "Yeah. We
5 did it afterwards, so what," the authority they
6 have then by what you're arguing is an overruled
7 New York trial court.

8 MR. BURGESS: That's correct.

9 THE COURT: That nobody else is following. Is that --
10 is that what you're arguing?

11 MR. BURGESS: Yes, sir.

12 THE COURT: Okay. All right. (To the Nunallys) So you
13 understand if I'm to rule that, you can still ask
14 the guy the question, and if there's some
15 additional law that comes up or something, or he's
16 -- he's got some bad research, you can still raise
17 that issue at the trial.

18 MR. M. NUNALLY: Yes, Your Honor.

19 THE COURT: Because what you've cited is a me order.
20 Not a guy -- not those guys in the picture order,
21 okay? You -- you understand what I'm saying?

22 MR. M. NUNALLY: (Nods head up and down.)

23 THE COURT: Okay. All right. All right. Anything
24 further on that issue?

25 MR. BURGESS: Well, Your Honor, I -- I -- because this

1 has come up in previous meetings that we've had in
2 previous hearings, I -- I did want to mention that
3 this argument in and of itself has never been taken
4 up in a published opinion in South Carolina.

5 THE COURT: All right.

6 MR. BURGESS: What I did find was some unpublished cases
7 at essentially every level. In the case of
8 "Scheider v. Deutsche Bank National Trust Company,"
9 that's a 572 Federal Appendix 185, it's a fourth
10 circuit opinion issued in 2014 that took up
11 essentially these same arguments. And what that --
12 what the fourth circuit did was they upheld the
13 district of South Carolina's dismissal -- or
14 granting of summary judgment on this very issue.
15 The Scheiders raised the exact same issue that the
16 Nunallys are raising in this case. They're stating
17 you -- they sued Deutsche Bank, and said, "You
18 don't have the authority to enforce the note and
19 mortgage because you -- because the timing of when
20 you received the note and mortgage into the trust."
21 The fourth circuit essentially upheld the motion
22 for summary judgment that was granted to Deutsche
23 Bank in that case.

24 THE COURT: All right. And -- and -- and just so
25 everybody understands, we're apples to apples,

1 right? So at trial, if you make that argument,
2 right? At trial, if you make that argument, what
3 you're also arguing is, is, "I'm not standing here
4 as an officer of the court saying that the fourth
5 circuit, even if it was published and this is the
6 fourth circuit that's unpublished," you're not
7 arguing it's controlling precedent for me, you're
8 arguing just like they would argue if they found
9 another state court decision. It's just
10 persuasive, right?

11 MR. BURGESS: That's correct, Your Honor.

12 THE COURT: Right.

13 MR. BURGESS: And in all candor to the court --

14 THE COURT: Right.

15 MR. BURGESS: -- I haven't found a South Carolina case
16 that is published --

17 THE COURT: Okay.

18 MR. BURGESS: -- that finds this. What I did find, in
19 addition to the Scheider case, which was district
20 court and fourth circuit, I found a South Carolina
21 Appellate Court unpublished opinion, "U.S. Bank v.
22 Johnson." That's 2012 Westlaw 10864163. Your
23 Honor, that was a similar case where it was a
24 foreclosure. And it was a -- an appellate court
25 decision. It's an unpublished decision. One of

1 the arguments being made by South Carolina Legal
2 Services on behalf of a -- a foreclosed Defendant
3 was the exact same type of argument the Nunallys
4 are raising here. The appellate court essentially
5 said, "Because there's no authority to support this
6 position, we're not going to address it." And it's
7 an unpublished opinion. It didn't go into depth.
8 I just wanted to put it out there for --

9 THE COURT: All right.

10 MR. BURGESS: -- the Court's understanding.

11 THE COURT: Well, I want -- I want to again explain that
12 -- what that means practically. When the Nunallys
13 stood up and said, "I want to tell you about this
14 New York trial case," right? It was -- we're in
15 South Carolina. That's a New York trial case,
16 right?

17 MR. M. NUNALLY: Yes, Your Honor.

18 THE COURT: The difference is there's a little
19 difference because it's a wedge in the -- in the
20 New York trial case, it was reversed, right? So
21 we've got published decisions saying that was
22 reversed, right? So you can't come in and argue a
23 case that was reversed is good law that controls
24 what I do, right? Because it's in New York, and
25 New York reversed it. Similarly, but not exactly

1 the same, what Mr. Burgess has done is he has
2 argued both South Carolina and bankruptcy in
3 federal court. (To Mr. Burgess) Was the
4 bankruptcy unpublished or -- or was it published?

5 MR. BURGESS: The bankruptcy was a trial court decision.

6 THE COURT: Okay. So --

7 MR. BURGESS: That -- that was "In re Cain."

8 THE COURT: Okay.

9 MR. BURGESS: It may have also been unpublished as 2012
10 Westlaw 1098465.

11 THE COURT: All right. Well, none of those -- none of
12 those are controlling me. They're not precedent.
13 It isn't like I read those and say, "I -- I can't
14 think anymore. Those people have told me what to
15 say," right? I can't -- I -- I don't have any -- I
16 can't. It's not controlling. But what it is, is
17 it could be persuasive because other jurisdictions
18 are just -- we don't have something directly on
19 point, or you'd be arguing that, right?

20 Controlling. So you go around and say, "Well, what
21 have other people done," right? So what he's
22 arguing is these three things. And trial courts
23 are free to say, "Well, I don't have to follow it,"
24 but if I read the cases and I read the cases that
25 they cite that are published, that are authority,

1 and I think it's good logic, I can follow the same
2 logic. I can't cite the unpublished case and say,
3 "See, I'm right, because they've already said so."
4 So if it got appealed, then the court of appeals
5 would look at my order like, "I thought this up by
6 myself. I wasn't citing a controlling appellate
7 decision from the people in the picture." Does
8 that make sense?

9 MR. M. NUNALLY: Yes, Your Honor.

10 THE COURT: So you can argue it. Y'all can't argue to a
11 court something that you know has been reversed.
12 You have a duty -- both sides have a duty to tell
13 the court, "That's been reversed," right? Because
14 otherwise you're lying to the court.

15 MR. M. NUNALLY: Yes, Your Honor.

16 THE COURT: So -- but you can say it's unpublished,
17 because what unpublished says is this is good law
18 just to these two -- these parties in this specific
19 case. Valid law. But it's not -- it doesn't then
20 affect everybody else in the state, right? Because
21 it could be little different stuff, little
22 different facts, little different tweaks. Does
23 that make sense?

24 MR. M. NUNALLY: Yes, Your Honor.

25 THE COURT: Okay. All right. Mr. Burgess?

1 MR. BURGESS: Well -- and, Your Honor, that -- that goes
2 to the heart of what I'm arguing. That this
3 particular theory isn't novel. It's been argued
4 across the United States. It's been examined in
5 depth. I provide numerous examples of that in --
6 in our brief and opposition to the motion to
7 dismiss. It simply does not hold water. Related
8 to the motion to dismiss itself for failure to
9 state a claim, the four corners of the complaint
10 control. We've pled a cause of action for
11 equitable mortgage related to the notary section of
12 the mortgage. We've pled a cause of action for
13 foreclosure for the purposes of a motion to
14 dismiss. The Court, considering those to be true,
15 would have to deny the motion --

16 THE COURT: Deny.

17 MR. BURGESS: -- to dismiss.

18 THE COURT: All right. I understand your argument.

19 MR. BURGESS: Additionally, we have the same arguments
20 related to timing. Because this was two days
21 before the scheduled trial --

22 THE COURT: Right.

23 MR. BURGESS: -- that this particular motion was made.

24 And, Your Honor, you -- you brought up an excellent
25 point, and I'll wrap it up with this. One of the

1 things that concerns me about this case is part --
2 part of the items that the Nunallys cite in their
3 documents that they've handed up or filed with the
4 court, including the one they hand up today,
5 they're citing them for propositions that don't
6 exist. And some of the cases that they cite don't
7 even exist. I'll give an example. One of the --
8 the cases that Mr. Nunally discussed in his initial
9 argument on the motion to dismiss was the "Crawford
10 v. Central Mortgage Company" case. That's 404
11 South Carolina 39 (2013). I believe it's a Supreme
12 Court case. This is the one where Justice Toal
13 said that the lender supervising or -- or sending
14 out loan modification agreements wasn't the
15 unauthorized practice of law.

16 THE COURT: Right. This was an unauthorized practice of
17 law case.

18 MR. BURGESS: Yes, Your Honor.

19 THE COURT: Crawford was.

20 MR. BURGESS: And --

21 THE COURT: Right.

22 MR. BURGESS: -- and I -- I say that -- I bring it up
23 because one of the things that Mr. Nunally asserts
24 right here in this document he handed me today that
25 -- that he asserts that case stands for is the

1 proposition that mere possession does not prove
2 authority, and that requires authentication of
3 business records and chain of custody. I've read
4 that case forward and backwards. I don't recall
5 any suggestion of chain of custody or the word
6 "custody" even being mentioned in that case. What
7 I fear here is potentially Mr. Nunally using AI
8 that's using buzzwords and putting them to cases
9 that Mr. Nunally wouldn't know whether or not they
10 exist or not if he doesn't have access to Westlaw
11 or Lexis. But he's citing them because he's being
12 told that's what these things stand for.

13 Another example would be the citation he gave
14 in this document he just handed up to "Ex parte
15 Progressive Northern Insurance Company," 367, S.C.
16 365, a 2006 case. He gives a full citation for it.
17 I've got Westlaw pulled up. I can't find that
18 case; that it -- that it exists at all. But he
19 cites it for the proposition that standing is -- as
20 jurisdiction on lack of standing means court lacks
21 subject matter jurisdiction. And, Your Honor, on
22 that point, I did discuss in my brief the
23 differentiation between standing and lack of
24 jurisdiction. Our Supreme Court in binding
25 precedent has said that standing in such matters --

1 THE COURT: All right.

2 MR. BURGESS: -- jurisdiction are not one and the

3 same --

4 THE COURT: Right.

5 MR. BURGESS: -- based on the waiver --

6 THE COURT: Right. I -- I --

7 MR. BURGESS: -- proposition that you discussed.

8 THE COURT: I understand. I understand that, and I'm

9 going to -- we're going to address what you just

10 raised momentarily. Okay. Anything in -- in

11 response?

12 MR. M. NUNALLY: Yes. I would like to say in regards to

13 -- I think that the plaintiff is possibly utilizing

14 the supplemental memorandum that was entered. If

15 I'm not mistaken.

16 THE COURT: (To Mr. Burgess) You did a supplemental e-

17 mail that you sent out to everybody?

18 MR. BURGESS: I did circulate a supplemental --

19 THE COURT: Yeah.

20 MR. BURGESS: -- memorandum of law just outlining --

21 THE COURT: Yeah.

22 MR. BURGESS: -- the law because I knew this would come

23 up for discussion today.

24 THE COURT: Right.

25 MR. BURGESS: That was filed back, I believe, on the

1 25th.

2 THE COURT: It was filed on August e-filed --

3 MR. BURGESS: August 25th.

4 THE COURT: -- on August 25th.

5 MR. M. NUNALLY: Okay.

6 MR. BURGESS: And, Your Honor, I e-mailed it to all the
7 parties --

8 THE COURT: Okay.

9 MR. BURGESS: -- as I was filing it.

10 THE COURT: Right.

11 MR. BURGESS: And it's just a -- an outlining of the
12 plaintiff's position related to the law. It's not
13 evidence of anything.

14 THE COURT: Right.

15 MR. BURGESS: It's just our arguments.

16 THE COURT: Okay.

17 MR. M. NUNALLY: Well, Your Honor, we -- we were
18 objection -- objecting to that, because last time
19 we -- we met, you specifically said there --
20 there's nothing else to be filed until we get to
21 this hearing today.

22 THE COURT: Oh -- oh, well, no. That's -- that was
23 motions. You can file memos. You -- I mean, like
24 -- like you just handed up to me. I mean, you
25 could file something that says, "This is -- this is

1 what I'm arguing." You can't file a motion. I
2 don't rule on this. This is just like your oral
3 argument.

4 MR. M. NUNALLY: Okay.

5 THE COURT: I mean, this is like when you hand -- if you
6 had handed me something that said, "Here's the 15
7 points I'm going to talk about today, I want to
8 file that." You could file that. That's not a
9 motion. This was a memorandum about what I'm going
10 to talk about for everything that's been filed.
11 That regularly -- I mean, this got filed early.
12 One of the banes of trial court is, is normally the
13 attorneys come in and say, "Here's 28 pages for the
14 motion we're going to hear right now. Please read
15 it." You can't do that, right?

16 MR. M. NUNALLY: Yes, Your Honor.

17 THE COURT: You can't read 28 pages right before you're
18 supposed to start. So that's okay. That's a memo.
19 That's not a filed motion.

20 MR. M. NUNALLY: Yes, Your Honor.

21 THE COURT: Okay. Anything further?

22 MR. M. NUNALLY: In regards to this motion, Your Honor?

23 THE COURT: Yeah. To what he said, yes.

24 MR. M. NUNALLY: Or to what he said?

25 THE COURT: Yes.

1 MR. M. NUNALLY: Your Honor, we're doing the best
2 research that we can with what we have. I utilize
3 extremities such as the Internet. I don't count on
4 AI because AI can be wrong. And the Emory Law
5 Library because we're in Atlanta. When I have the
6 chance here to be downtown on Harden Street at
7 their library, under oath here today, I am -- we,
8 as Defendants, are not trying to waste the court's
9 time or the plaintiff's time by entering in
10 decisions or -- or even case law or statutes that
11 don't exist. That -- that's not our intent.
12 That's not our intent. Our intent is to be as
13 honorable as this process --

14 THE COURT: Right.

15 MR. M. NUNALLY: -- requires us to be.

16 THE COURT: I -- I mean, you can stop right now. I
17 don't -- I don't -- I have not seen or heard
18 anything on behalf of what y'all have done or said
19 that indicates an indication to me that you are
20 deliberately lying or -- or trying to mislead the
21 court, okay. I'm not questioning your motive. We
22 are going to talk about some things for you to
23 start doing, okay? So I understand your argument.
24 I'm not making a finding. I don't think he was
25 arguing that. I think he was pointing it out as a

1 -- as a buzzword for the trial judge to say, "Talk
2 about this," and we're going to talk about this in
3 a moment when you finish about how -- how to
4 proceed, so this -- to -- because this happens to
5 lawyers. There are lawyers who do AI. There are
6 lawyers that do stuff that are getting in trouble.
7 So I'm going to talk about what our Supreme Court
8 says, and then some -- use some terms with you so
9 you don't get caught because you're not a lawyer;
10 not understanding Superior Court sounds like the
11 best one, the top one, right?

12 MR. M. NUNALLY: Yes.

13 THE COURT: It's not.

14 MR. M. NUNALLY: Yes, Your Honor.

15 THE COURT: It's not. How you shepardize it. What you
16 do when you're doing research, all right? So we're
17 going to talk about that a little bit. So I don't
18 -- I'm not -- I'm not -- none of that's going to be
19 in the order. I don't -- I didn't -- Mr. Burgess,
20 I didn't -- you -- I didn't understand you to be
21 making an accusation at them for doing this
22 purposefully? I --

23 MR. BURGESS: No, Your Honor. I'm just bringing it to
24 the Court's attention --

25 THE COURT: I didn't -- I didn't take --

1 MR. BURGESS: -- for that very reason.

2 THE COURT: I didn't receive it as that.

3 MR. M. NUNALLY: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. M. NUNALLY: It -- it was brought up by the
6 plaintiff regarding "Schneider (verbatim) v.
7 Deutsche Bank," their statement that was made;
8 however, as stated in our memorandum that was
9 handed up, from what we found in that case, there
10 was no evidence of a void act, and the bank
11 produced sufficient evidence of entitlement. And
12 here the plaintiff has indeed failed to produce the
13 PSA, custodial evidence or authority documents.
14 And the plaintiff's reliance on the overwhelming
15 authority ignores the fact that every case
16 projecting PSA theories turn on a lack of evidence
17 of a void act. And so here we are making efforts
18 for the record to be able to demonstrate precisely
19 the void defect, Your Honor.

20 THE COURT: Okay. All right. Let me explain what --
21 what I understood the arguments were. The
22 arguments were that the New York court said, "Yes.
23 It's void. It's void because you didn't show the
24 stuff. And it happened afterwards." The court of
25 appeal, the higher court, and the rest of the court

1 said, "You don't even get to ask that. You don't
2 have standing to ask that question." That's what
3 he's arguing. What I said earlier was as assuming
4 I say, "Okay. For -- for -- for purposes of motion
5 to dismiss, if I'm to grant it, he still has to
6 bring his guy and show his stuff." Now, do you get
7 to show -- do you get to say, "I get to now file a
8 motion," and say, "I get three more months or time
9 to look at this." No. I'm not going -- I'm not
10 going to do that because we've done discovery.
11 We've -- we've seen documents, you've seen
12 everything other than the pooling document, which I
13 haven't seen an authority that says you have a
14 right to get it. Something may change during the
15 actual cross-examination of the witness that I'm
16 going to allow you to ask the question, and I'll
17 rule on it then. I may say, "Under the existing
18 law, you don't have a right to look at it." He's
19 got the note. Doesn't matter about the pooling
20 agreement, whether they did it timely or not,
21 because all these cases disagree with what the New
22 York case said. I agree with that. Or if
23 something comes up that -- that his guy says,
24 "Well, Paragraph 3 says it's absolutely void, and
25 we have to pay them back money." He blurts

1 something like that out, well, then we're going to
2 come to a screeching halt about what documents
3 we're going to look at, all right? Does that make
4 sense?

5 MR. M. NUNALLY: It does, Your Honor.

6 THE COURT: Okay.

7 MR. M. NUNALLY: Yes, Your Honor. Well, also, what the
8 New York Supreme Court decided on in 2012,
9 "JPMorgan Chase Bank vs. Earling" (phonetic), is
10 that there is no evidence of a legal transfer or
11 merger between these two entities. And if that is
12 the case, then therefore NovaStar Mortgage, Inc.,
13 cannot legally endorse a note originated by
14 NovaStar Home Mortgage because they were two
15 different entities before the Bank of New York
16 Mellon even came along. And -- and -- and -- and
17 that is something that goes a little deeper into
18 the issue of how all of this securitization gets to
19 a particular point where it's -- it's not able to
20 be followed. It's -- it's not able to have the
21 oversight, unless there are those who have put in
22 enough time and research to be able to understand
23 what is going on, what has to happen, because
24 indeed, we are in --

25 THE COURT: All right. Let me -- let me just stop this

1 argument because I -- I know where you're headed.

2 But I want to ask you a fundamental question. What

3 -- what is a "mortgage" and a "note"?

4 MR. M. NUNALLY: A mortgage, from my understanding --

5 THE COURT: You -- or let me -- let me just -- let me

6 back this up. I'm going to give you a scenario and

7 ask you to agree with me or disagree with me.

8 MR. M. NUNALLY: Yes, Your Honor.

9 THE COURT: Okay. Assume these dates are right. Before

10 January 2004, your mom and dad did not own 1759

11 Willow Creek Drive in Columbia, did they?

12 MR. M. NUNALLY: Before? Yes. They did, Your Honor.

13 THE COURT: They -- they -- they borrowed money to buy

14 it, right?

15 MR. M. NUNALLY: But they did, in fact, own it before

16 that time, yes, Your Honor.

17 THE COURT: So -- all right. All right. Let me back

18 up. When -- when they got a mortgage, what did

19 they do the -- what did they do? They borrowed

20 money, right? Did they --

21 MR. M. NUNALLY: As far as I understand, yes, Your

22 Honor.

23 THE COURT: Did they borrow money to buy a house?

24 Originally?

25 MR. M. NUNALLY: Yes.

1 THE COURT: Yes. Okay.

2 MR. M. NUNALLY: Originally, yes, Your Honor.

3 THE COURT: So a note and the mortgage says, "I'm
4 borrowing money to pay -- to pay for the house,"
5 all right?

6 MR. M. NUNALLY: Yes, Your Honor.

7 THE COURT: I have to pay somebody back, right?

8 MR. M. NUNALLY: Yes, Your Honor.

9 THE COURT: Let's assume the person who -- like your mom
10 and dad are making their payments, right?

11 MR. M. NUNALLY: Yes, Your Honor.

12 THE COURT: And then the people who own the note and
13 mortgage decide they want to sell stuff to it,
14 right?

15 MR. M. NUNALLY: That they want to sell to the mortgage?

16 THE COURT: They want to -- they want to say, "I'm going
17 to sign the interest off the escrows to him."

18 MR. M. NUNALLY: Yes, Your Honor.

19 THE COURT: "I want to sign the interest off the taxes
20 to him."

21 MR. M. NUNALLY: Yes, sir.

22 THE COURT: "I want to do this." And they get into an
23 argument, and they don't follow that agreement.

24 And then your parents quit paying, right?

25 MR. M. NUNALLY: Yes, Your Honor.

1 THE COURT: Can your parents then come in and say, "I
2 don't have to pay for my house anymore because
3 y'all are having -- y'all aren't following your
4 internal agreement on how to disperse the money."

5 MR. M. NUNALLY: From my understanding, they're on
6 contract, so they -- they still have to perform.

7 THE COURT: Right. Okay. All right. So, in this case,
8 what you're arguing is, is that if there's a trust
9 agreement -- theoretically, if there's a trust
10 agreement and the trust agreement says, "We're
11 going to take assets because there are tax
12 ramifications about when it opens and when it
13 closes, and -- and we can't do stuff after a
14 certain point," let's assume that's right. But if
15 they do, and they can lose their -- the -- the
16 trust can lose their tax stuff, right?

17 MR. M. NUNALLY: Yes, Your Honor.

18 THE COURT: Does that also mean your parents say, "I
19 don't have to pay the mortgage anymore"?

20 MR. M. NUNALLY: It does not. No, Your Honor.

21 THE COURT: All right. They have to pay the mortgage.
22 The question is, is who they pay the mortgage to,
23 right?

24 MR. M. NUNALLY: Yes, Your Honor.

25 THE COURT: So if they don't make the payment, somebody

1 owns the note and mortgage, right?

2 MR. M. NUNALLY: Yes, Your Honor.

3 THE COURT: So the only question would be from the
4 defendants is -- is that we ensure that proper
5 payment is made to the proper person, so we don't
6 have to get -- we don't pay twice, right? That's
7 the concern. That's -- that's the concern, because
8 we have to have oversight to make sure they're
9 doing it right, and that they transferred the note
10 right, because we don't want to pay the wrong
11 person. So if the court ensures the right person
12 is getting paid and everybody in this chain of
13 title that it could theoretically be has a judicial
14 order saying, "You can't collect against the
15 Nunallys," then you are protected from a
16 theoretical problem that could occur, right?

17 MR. M. NUNALLY: Yes, Your Honor.

18 THE COURT: Because that's your danger, is that -- is
19 that somebody's going to come to you twice and try
20 to get payment, right?

21 MR. M. NUNALLY: Yes, Your Honor.

22 THE COURT: Okay. All right. We will -- like I said,
23 we will address that as the trial goes on as
24 merited, because that is a valid -- that is a valid
25 concern. I have never seen anything that says if

1 they do something wrong in the trust, "They don't
2 have to pay. They get a free house." Haven't seen
3 that. That's not the result. You know, it might
4 be saying, "This company really owns it. Divide it
5 between them, they got to foreclose." But I've
6 never seen anything that says, "The foreclosure and
7 the note and mortgage are void. They get to keep
8 the house and the money," because that's not
9 equitable. So remember that as we're going along
10 now.

11 Now, I want to address something else. As of
12 -- as to the AI and the argument and all of this.
13 There is a danger that law clerks, lawyers, judges,
14 everybody has when you go to a library, because
15 when you go to a library, you look at documents
16 called "West Digest," and stuff like that, right?

17 MR. M. NUNALLY: Yes, Your Honor.

18 THE COURT: Case law and like that?

19 MR. M. NUNALLY: Yes, sir.

20 THE COURT: And they have little two-and-three-word
21 things that tell you what the case says, right?

22 MR. M. NUNALLY: Yes, Your Honor.

23 THE COURT: You got to read the whole case. You got to
24 read -- you got to go to that citation, and then
25 read all four pages or five pages or twenty pages

1 or thirty pages, because a lot of times the little
2 blurb ain't what the case is really about, or it's
3 only one of the points. And you could be citing it
4 on something that can be misleading or not
5 applicable to the facts in your case. So everybody
6 is subject to that: lawyers, paralegals, and
7 stuff. You have to read the whole case. Then what
8 you have to do is when you read the whole case, you
9 have to then shepardize it. That's what we called
10 it. I don't know what it's called now on the
11 computer stuff. What shepardize is -- like, is
12 this the latest edition. Because if you press a
13 button, and it says, "Has -- has this case been
14 commented on or has it been further appealed?" And
15 they like pop up with a like little yellow things
16 or red things, and then it'll say, "Yeah. The --
17 the highest court of New York overruled them." So
18 you don't want to be citing, you know, "This is
19 great. This is a trial court." And then you say
20 you shepardize it, but they got overruled. You
21 can't cite the stuff if it got overruled. So you
22 have to check to see if it's been overruled, or if
23 it's been commented upon. So what he's done in his
24 is they've done that and he says, "There's 84
25 times. There's 121 times," or whatever these

1 numbers are where other states decided this and
2 said, "That's just not right. We don't think
3 that's sound logic what the New York trial court
4 did." Remember, the New York Court of Appeals
5 agreed. They reversed what the trial court said.
6 So that theory that you're relying on, not valid.
7 Not even in New York, because New York reversed it,
8 all right?

9 Now, how would you know that? Might not.
10 Lawyers come in sometimes and get very embarrassed
11 when the other side stands up and says, "They
12 didn't shepardize it. That decision they're
13 telling you about got -- got reversed on appeal."
14 So you got to do that. Does that make sense?

15 MR. M. NUNALLY: Yes, sir.

16 THE COURT: Okay.

17 MR. M. NUNALLY: Shepardize?

18 THE COURT: Shepardize. Update.

19 MR. M. NUNALLY: Update?

20 THE COURT: Update, yeah. Shepardize. Use those terms.

21 Show me how to shepardize or update, all right?

22 Mr. Burgess, do you know any other term that it's
23 called?

24 MR. BURGESS: I've always -- I'm a little older myself,
25 Your Honor. I've always called it "shepardizing."

1 THE COURT: Okay. And that's because --

2 MR. BURGESS: That's the way I was taught.

3 THE COURT: -- the -- the company was called "Shepards,"

4 and they were these, like, reddish kind of book.

5 Like reddish, almost garnet books. And they would

6 have pocket parts in them, and they would be going

7 back like into the 18th Century. All these cases.

8 "Was it -- was it mentioned this year?"

9 "No. Was it mentioned this year?"

10 "No." You had to go through, like, stacks and

11 stacks of books. Way easier now on computer

12 because you hit the button up here, and then it'll

13 come down and it'll spring out all the cases that

14 have mentioned it. So get the law librarian to

15 show you how to do that, okay.

16 MR. M. NUNALLY: Okay.

17 THE COURT: All right. Now, the next thing is about AI.

18 Here's what -- here's what -- you can go to the

19 South Carolina judicial website, okay? Right

20 there. You see right here, "8/15. Interim policy

21 on the use of generative artificial intelligence."

22 MR. M. NUNALLY: Yes, sir.

23 THE COURT: That would be a good read. It basically

24 says you can read this stuff, but you got to go

25 read the original source. You can't block paste

1 it. You know, you can't do an AI search, and then
2 just copy/move stuff into your thing. You got to
3 go check it, all right? What -- what we call this
4 -- the stuff that we're able to use, we basically
5 call a law clerk. Because all you can do is say,
6 "Highlight -- summarize what the arguments are."
7 That's it. One, two, three, four. That's what
8 your law clerk does. "What did they argue?"

9 "They argued. One, two, three, four." Then
10 what the judge has to do is the judge has to then
11 go read -- you have to read the documents. And you
12 have to read the proposed order. You got to go
13 read the -- the actual case. You can't rely on
14 what they're telling you it said. Because what
15 this does sometimes is they'll -- it will make up
16 stuff.

17 MR. M. NUNALLY: Uh-huh.

18 THE COURT: It will make up stuff, okay? Are either of
19 y'all married?

20 MR. M. NUNALLY: I am.

21 THE COURT: Okay.

22 MR. M. NUNALLY: And he is.

23 THE COURT: You are?

24 MR. M. NUNALLY: Yes, Your Honor.

25 THE COURT: Okay. I'm -- I'm not making light of this.

1 My wife and I have been married since -- we say we
2 were 16, but we weren't. We were actually -- we
3 didn't get married until ten years later, okay. I
4 had to have a job, all right? So -- so, anyways,
5 in a marriage, they talk about artificial
6 intelligence. They say, "The artificial
7 intelligence, sometimes, for unexplainable reasons,
8 just makes up stuff to try to please the person
9 who's asking the question; isn't that weird?"

10 And I said, "No. We're all married," right?
11 How many times do our spouses -- you know, we -- we
12 try to do that, right? Somebody's asking for
13 something, we'll go try to find an answer or
14 something that does it. And all AI is, is it's
15 humans putting in stuff --

16 MR. M. NUNALLY: Uh-huh.

17 THE COURT: -- that contain that bias, you know, to try
18 to please. So you got to remember, sometimes as a
19 spouse, we do stuff for your wife or your kids or
20 your children to try to please them or help that
21 might not be good or right, right? But we're doing
22 it because we -- we -- we're -- we're emotionally
23 compelled to do it. That's kind of what AI is
24 doing. Because they make up stuff. I mean, out of
25 the blue, they just make up stuff. And they go,

1 "Where did that come from?" And, somehow, it's
2 they -- the coding stuff has captured this very
3 human thing, you know, to try to please the person
4 that's asking the question, I guess, so -- so AI
5 doesn't scare me so much. My wife does some, but
6 not AI. I -- I respect her very much because, you
7 know. And I say that in a very respectful way. I
8 didn't mean that in a bad way. It's good to have a
9 healthy respect of your wife and fear. It's like
10 fear of God and then fear of your spouse. One and
11 two.

12 MR. M. NUNALLY: Is it okay if I write that down, Your
13 Honor?

14 THE COURT: Or the -- or the beginning -- or the
15 beginning of wisdom, right?

16 MR. M. NUNALLY: Yes, sir.

17 THE COURT: Okay. All right. So read that, okay?

18 MR. M. NUNALLY: Thank you, Your Honor.

19 THE COURT: All right. All right. Anything further
20 from either side?

21 MR. BURGESS: I believe that's all from the plaintiff,
22 Your Honor.

23 THE COURT: All right.

24 MR. BURGESS: Actually, Your Honor, I -- I did want to
25 make one point related to this document they've

1 handed up in -- in discussion about the Scheider
2 case.

3 THE COURT: Yes.

4 MR. BURGESS: I think that goes right into your point
5 about reading the actual case. I would -- I would
6 state that the -- the case doesn't stand for what
7 they're -- they're trying to --

8 THE COURT: Okay.

9 MR. BURGESS: -- assert here.

10 THE COURT: Well -- well, again --

11 MR. BURGESS: If they actually went and read it, they
12 would see --

13 THE COURT: Right. I -- I -- I understand. And what I
14 -- what I've differentiated from is people,
15 lawyers, judges. I mean, a lot of times, as a
16 trial judge I'll get cited a case, and somebody
17 will say, "It means this." So what I have to say,
18 as a trial judge is, "They argued this. While the
19 -- the ruling was this, it was based on these
20 facts. Our facts are different." So I'm not
21 saying I'm arguing against precedent. I'm saying
22 that case's facts aren't the same here, all right?
23 That all goes back to the same thing, read the
24 original case, the whole thing, and then shepardize
25 it, okay? Read the whole thing and shepardize it.

1 Because not only does it tell you what the accurate
2 state of the law is, you -- you're -- you're going
3 way deeper. You're getting a much fuller
4 understanding of the issue by reading the whole
5 thing instead of just a little bullet point
6 summary, if that makes sense.

7 MR. M. NUNALLY: It does. Yes, Your Honor.

8 THE COURT: Okay.

9 MR. M. NUNALLY: Yes, sir.

10 THE COURT: All right. Anything further from the
11 Nunallys?

12 MR. M. NUNALLY: That -- that would be all, Your Honor.

13 THE COURT: Okay. Thank you. All right. Here --
14 here's what we're going to do. I have read
15 everything. I have reviewed everything. I am
16 going to respectively deny both motions to dismiss
17 and vacate. And I want you to send the proposed
18 order within two weeks.

19 MR. BURGESS: Yes, sir.

20 THE COURT: And send it in Word order, copy the
21 Nunallys. What this means is, is that the next
22 step would be trial, right?

23 MR. BURGESS: Yes, sir.

24 THE COURT: All right. Now, I want you also to put in
25 the proposed order if what the appeal status of

1 motion to -- the -- the two motions are. What I'm
2 saying is, is that some motions you can appeal,
3 some you can't. They're called "interlocutor."
4 Because they're called "interlocutory," because --
5 just because you dismissed them at motion, you
6 still get to argue them in trial when you got a
7 witness there with the documents, right? Which is
8 what's going to happen here.

9 So I also want you, Mr. Burgess, to make
10 certain that when you are talking about the -- the
11 -- the California cases and the bankruptcy case and
12 the federal district court case that you put in the
13 order that I recognize that these cases are not
14 controlling precedent. And then distinguish
15 between non-jurisdictional precedent, persuasive
16 authority versus cases that have been appealed -- I
17 mean, been reversed and unpublished. So put all
18 that in there. Also, put that -- the second part,
19 I want you to go through and -- and do the
20 chronological argument because the whole argument
21 about "want to vacate and do an answer," they had
22 an opportunity. We talked about that. It was in
23 the -- it was in the trial scheduling order. We
24 talked about it. It didn't happen. And they had
25 -- and they have fully -- fully been litigating

1 this case. They've made all their arguments,
2 they've gotten discovery. Only thing they haven't
3 gotten is the pooling agreement, though I'm not
4 certain that you're not entitled to that. Not
5 certain of that, but that'll come out through trial
6 -- testimony at the trial. So they've -- they've
7 examined the original note. Seen the stuff. We're
8 going to have a trial. We're not doing this by
9 summary judgment. We're going to have a trial.
10 They can do cross-examination and direct. So I
11 don't see any -- any harm to them in saying, "I
12 should be" -- what we're not going to do is we're
13 not going to do an answer now at this point and
14 reopen the discovery and -- and all of that because
15 all the issues are still on the table that you
16 would be able to raise in a theoretical answer.
17 And you're going to be able to ask the -- their
18 business record person. Plus, we've done
19 discovery. Plus, we had the trial order, you know,
20 that -- that -- that defined: You got to do the
21 answer and you got to file motions. And they are
22 entitled to follow the rules just like y'all. When
23 y'all say, "Rule requires, rule requires, rule
24 requires." Well, they get to say, "Rule requires,
25 rule requires, rule requires," too. And I can't --

1 because y'all are pro se, I can't say, "I'm judging
2 them by one rule because they're lawyers, and y'all
3 by non-rules." I can explain stuff, which I have
4 tried to do. I can't be your lawyer; I can't make
5 your argument for you, but I got to hold you
6 accountable to the same strike zone and the same
7 everything. Y'all got to be --

8 MR. M. NUNALLY: Yes, sir, Your Honor.

9 THE COURT: -- equal in here.

10 MR. M. NUNALLY: Yes, sir.

11 THE COURT: So that's the ruling. If you will do that.

12 (To Mr. Burgess) Do you think two weeks or three
13 weeks you need to do this?

14 MR. BURGESS: That's an excellent question, Your Honor.

15 I -- it may take -- I -- I think I could probably
16 -- will get it done in two weeks.

17 THE COURT: Well, here, do this. Do this. By Friday --
18 by this Friday, two days from now, send Joy an e-
19 mail and send the Nunallys an e-mail that said, you
20 know, "I've gone back and I thought about this. I
21 will submit the proposed order on or about this
22 date," in Word, all right? So y'all will know when
23 he's sending it to me. And -- and because this
24 might be a one-week, it might be a two-week, it
25 might be a three-week thing because he might decide

1 I need some of the transcript, you know, make sure
2 I get this exactly right. Make sure you put Madam
3 Court Reporter's contact information in the
4 transcript. So what --

5 MR. BURGESS: Yes, sir.

6 THE COURT: -- you will do then is by Friday, you going
7 to send everybody an e-mail that says this is the
8 timeline. And in the -- and you're going to
9 address the two motions. You're also going to tell
10 if they are interlocutory or appealable. What I
11 mean by that is, is some motions you can't appeal
12 because you get to talk about them in trial,
13 basically. They're interlocutory. Some of them
14 are final, you have to -- so I -- I -- are these
15 both interlocutory?

16 MR. BURGESS: Your Honor, in my opinion, they -- they
17 would be.

18 THE COURT: I would think they would be, too. But I
19 want you to check --

20 MR. BURGESS: A denial of motion to dismiss would be
21 interlocutory.

22 THE COURT: -- because they're not -- they're not final.
23 Which "interlocutory" means you get to argue it
24 later again. So we don't appeal something unless
25 it's final. So this isn't a final order. This is

1 a -- this is a discovery order. Still got the
2 trial, okay? So you don't have to -- ensure that
3 you say if it's interlocutory or they've got X days
4 to appeal this order, all right? But I don't -- I
5 don't think they do. I think they're both
6 interlocutory. But you research that and put that
7 in the order.

8 MR. M. NUNALLY: And -- and I'm sorry --

9 THE COURT: Yeah.

10 MR. M. NUNALLY: -- Your Honor. Are you saying
11 "interlocutory" or "interrogatory"?

12 THE COURT: No. Interlocutory.

13 MR. M. NUNALLY: With an "l"?

14 THE COURT: I-n-t-e-r-l-o-c-u-a-t-a-r-y (verbatim), I
15 think. Something like that.

16 MR. M. NUNALLY: Thank you, Your Honor.

17 THE COURT: Yeah. Not an interrogatory like a question.

18 MR. M. NUNALLY: Yes, Your Honor.

19 THE COURT: But it -- it -- it means like temporary or
20 non-final.

21 MR. M. NUNALLY: Okay. Thank you, Your Honor.

22 THE COURT: Yeah. Because it says, "Final order is
23 either final or it's interlocutory." "Final" means
24 issue is over. You got to appeal it.
25 "Interlocutory," I've always read just to be a

1 synonym for -- for part of the trial process. It
2 ain't over. It's not a final order, so -- but just
3 do that, and we'll continue to move forward. All
4 right. Any questions?

5 MR. BURGESS: One thing I did want, while we're all
6 here, would it be -- since trial is the next step,
7 would we want to discuss scheduling for that?

8 THE COURT: Well, no. What -- what -- what you're going
9 to do is, is the next thing you're going to do is
10 you're going to tell when you're going to submit
11 it. And once you submit the order and I review it,
12 what I will say is I'll send out an e-mail and I'll
13 say, "Now, with Joy and everybody, we need to know
14 -- we need to set a trial time. We need to know
15 "not before" dates. We need to know conflict. We
16 need to know how long. We need a witness." We
17 will -- we will get on all together on that with
18 Joy after I do the summary judgment motion order.
19 Because I don't want to set a trial order before I
20 get the summary judgment order. Because I don't
21 know how long it's going to take me -- not the
22 summary judgment, this order. Until I get this
23 order. So --

24 MR. BURGESS: Yes, sir.

25 THE COURT: -- we're not going to set a trial until

1 we've got -- we -- we've moved fully through this.

2 Okay. Anything further from either side?

3 Okay.

4 MR. M. NUNALLY: No, Your Honor.

5 THE COURT: All right. Thank you.

6 (Whereupon, the hearing was

7 concluded at 3:59 p.m.)

8 (*This transcript may contain quoted material.

9 Such material is reproduced as read or quoted
10 by the speaker.)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE

Be it known that Breanna Sharper took the foregoing proceeding and hereby attests:

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

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

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

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

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

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

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


Breanna Sharper

Date: 9/8/2025

Notary public for South Carolina

My commission expires November 29, 2025

*Unless otherwise noted, this notary public administered the oath. Please refer to the transcript for any exceptions.

**For details on reading and signing, please refer to the transcript.



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TRIAL PROCEEDINGS

February 10, 2026

The Bank of New York Mellon

VS

Timothy Allen Nunally

2024-CP-32-01094

REPORTER: Kathryn Bostrom

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) CASE NO.: 2024-CP-32-01094

The Bank of New York Mellon,)
f/k/a The Bank of New York)
as successor in interest to)
JPMorgan Chase Bank, N.A. as)
Trustee for NovaStar Mortgage)
Funding Trust, Series 2004-1,)
NovaStar Home Equity Loan)
Asset-Backed Certificates,)
Series 2004-1,)
Plaintiffs,)
vs.)
Timothy Allen Nunally, as)
Personal Representative for)
the Estate of Carl Alvin)
Nunally, Sr., deceased;)
Timothy Allen Nunally, as)
Trustee for the CAN)
Irrevocable Trust; Carl Alvin)
Nunally, Jr.; Mark Anthony)
Nunally; Timothy Allen)
Nunally,)
Defendants,)

This within hearing reported by Kathryn B Bostrom,
Court Reporter and Notary Public in and for the State of
South Carolina; pursuant to Rule 30 of the South Carolina
Rules of Civil Procedure; said hearing was taken at the
Lexington County Courthouse, 205 East Main Street,
Lexington, on Tuesday, the 10th day of February, 2026,
before the Honorable Judge James O. Spence, commencing at
the hour of 10:17 a.m.

APPEARANCES:

Representing the Plaintiff:

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Chad.Burgess@brockandscott.com

Representing the Nunnaly Family:

Mr. Mark Nunally
Mr. Timothy Nunally

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14	interruption	
15	[ph] Denotes phonetically written	
16	[sic] Written as said	
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: We're here on the Bank of New York Mellon
3 vs. Nunally et al. This is Case 2024-CP-32-
4 01094. This is a contested foreclosure. We have
5 Mr. Burgess here for Plaintiff and both Mr.
6 Nunallys here for the defendants. Yes, sir. All
7 right. Mr. Burgess?

8 MR. BURGESS: Thank you, Your Honor. May it please the
9 Court? Your Honor, we've marked 17 exhibits,
10 pre-marked as Plaintiff's exhibits. I've been
11 handed, as Mr. Nunally came in this morning, a
12 binder that purports to have some exhibits that
13 haven't yet been marked by the court reporter.
14 I'm not sure if you wanted to take those up pre-
15 trial or if you wanted to take them up as they
16 try and submit them as exhibits. I haven't had
17 the opportunity to go through each and every one
18 of them marked -- the way that they've marked
19 them.

20 THE COURT: All right. Do you want to go through and
21 look at your 17 -- I mean, do y'all want the
22 chance -- do y'all want 20 or 30 minutes to look
23 through it?

24 MR. BURGESS: Well, I've given Mr. Nunally the
25 opportunity to review each one of them to see if

1 he had objections. I haven't gotten objections
2 specific to each one of them, but I have received
3 an indication via e-mail that Mr. Nunally did not
4 consent to any of the particular exhibits being
5 entered as evidence. I thought it might be --
6 maybe as appropriate to go through them and see
7 if there's any objections as they come up and as
8 they're submitted as evidence.

9 THE COURT: I think that's what we'll do. We'll just -
10 - we'll move them in as you go. And then each
11 side can make an objection. All right.

12 MR. BURGESS: Thank you.

13 THE COURT: If you'll give just a basic summary of the
14 case history, where we are, and what you see the
15 dispute as.

16 MR. BURGESS: Yes, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BURGESS: I'm happy to do so.

19 OPENING STATEMENT

20 MR. BURGESS: Your Honor, this is a foreclosure action
21 of property located here in Lexington County.
22 Your Honor, the plaintiff's complaint was filed
23 back on March 8, 2024. As Your Honor is aware,
24 we've had a number of motions in this action that
25 have been heard. Ultimately where we are

1 procedurally is that the defendants initially
2 filed a motion to dismiss the plaintiff's action.
3 That motion was denied. And pursuant to our
4 rules, the defendants did have an amount of time
5 to submit a response of pleading to the answer.
6 The defendants failed to do so. And that
7 resulted in a motion to -- or an entry of default
8 through an affidavit of default from our office.
9 Your Honor, in conjunction with the denial of the
10 motion to dismiss, there was a scheduling order
11 that this court entered. There were a number of
12 motions that the defendants filed after the
13 deadlines in the scheduling order, motions that
14 have been addressed and denied. Those motions
15 included a motion to -- a renewed motion to
16 dismiss, I believe a renewed motion for summary
17 judgement, a motion to be relieved from default,
18 a number of other motions that were all taken
19 care of in orders entered by this court.

20 THE COURT: All right. There was -- there was an
21 original trial schedule order, there was an
22 original trial set?

23 MR. BURGESS: That's correct. In July of '25. Yes,
24 sir.

25 THE COURT: And then motions were filed by the

1 defendant after the date. We heard some of those
2 motions, and then we redid a scheduling, a trial
3 scheduling, order? Does that --

4 MR. BURGESS: Well, I believe the trial was rescheduled
5 because that was the only task --

6 THE COURT: Right.

7 MR. BURGESS: -- that was needed. And I'm not sure
8 that a new order was entered that set officially
9 a new date. But the trial was rescheduled for
10 today's date. All parties have been notified.
11 And we're here ready to proceed on the
12 plaintiff's action. The particular action has
13 both a foreclosure, mortgage, and a declaratory
14 judgement action related to a scrivener's error
15 on the actual mortgage. And so we're here
16 prepared to proceed in that -- in that capacity.

17 THE COURT: All right. All right, thank you. Any
18 opening from the Nunally's?

19 MR. MARK NUNALLY: Good morning, Your Honor.

20 THE COURT: Yes, sir.

21 OPENING STATEMENT

22 MR. MARK NUNALLY: Good morning, Court. We are here to
23 first and foremost allow our exhibits to be
24 entered for the court's decision today. In
25 regards to this foreclosure action, we are here

1 to speak on the thresholds regarding this
2 foreclosure activity by the plaintiff regarding
3 standing and competency to show proof thereof.
4 Thus far on the record, we have shown valid
5 proof, valid case law, valid statutes as they
6 relate to the plaintiff's standing as well as the
7 defendant's standing in this case, Your Honor.
8 We are here today to show the court that in fact,
9 as stated by Your Honor, this is indeed a first
10 race state. And that particular title, which is
11 superior, is superior. And that is --

12 MR. BURGESS: Your Honor, to the extent that he's
13 making legal arguments --

14 THE COURT: All right. Hold on. We're -- you're -- I
15 understand you're going to make legal arguments.
16 So each time you can make your legal arguments,
17 so each time to make your legal arguments. And I
18 understand that -- that you've got exhibits, and
19 we'll do those exhibit by exhibit. You can --
20 you have to move to introduce those according to
21 the rules of evidence just like the plaintiff
22 does. So we'll do those on an exhibit by exhibit
23 examination for both plaintiff and defendant.
24 And then at the end, we will -- what will happen
25 is is Plaintiff goes first. And Plaintiff will

1 call their first witness. And they will do
2 direct examination. And then you can do cross-
3 examination. And then there can be re-direct and
4 re-cross back and forth a little bit. And
5 Plaintiff calls all their witnesses, because they
6 go first. And you have a right to cross-examine
7 now. And then you get to go. And then you can
8 call witness or you can swear yourself and then
9 testify if you want to. I believe they have
10 indicated that they have -- how many witnesses?

11 MR. BURGESS: Two witnesses for the plaintiff, Your
12 Honor.

13 THE COURT: All right. Are you calling -- are you
14 calling them as witnesses?

15 MR. BURGESS: I anticipate they will be witnesses on
16 their own behalf.

17 THE COURT: Okay.

18 MR. BURGESS: We had discussed, I believe previously,
19 at one of our motions hearing.

20 THE COURT: Okay.

21 MR. BURGESS: Of the number of witnesses. I believe
22 back when we met to allow the defendants to
23 inspect the original note, we discussed who would
24 be called as witnesses.

25 THE COURT: Okay. All right. Okay. All right. So --

Brian Boger - Direct Examination by Mr. Burgess

1 all right. Thank you. All right. Thank you.

2 All right. Call your first witness.

3 MR. BURGESS: All right. Thank you, Your Honor. At
4 this time, Plaintiff calls Brian Boger.

5 THE COURT: Thank you. If you'll come forward and be
6 sworn.

7 WHEREUPON:

8 BRIAN BOGER, being duly sworn and cautioned
9 to speak the truth, the whole truth and nothing
10 but the truth, testifies as follows:

11 MR. BURGESS: Your Honor, just a brief housekeeping
12 issue, we've handed up, and I've handed to the
13 defendants, Plaintiff's pre-marked Exhibits --
14 marked for identification as Plaintiff's 1
15 through Plaintiff's 17. I've handed those up. I
16 believe there's a copy up there.

17 THE COURT: Yes, sir. I've got those. Thank you.

18 MR. BURGESS: Your Honor, may I proceed?

19 THE COURT: Absolutely.

20 MR. BURGESS: Thank you.

21 DIRECT EXAMINATION

22 BY MR. BURGESS:

23 **Q. Mr. Boger, can you tell me a little bit about**
24 **yourself? What is your occupation?**

25 **A. I'm a lawyer. This is my 50th year of practicing.**

1 Q. And in your practice, have you ever had the
2 opportunity to close a real estate mortgage
3 transaction?

4 A. Yes. We actually did some math on it. It's about
5 25,000 closings that I've done over time.

6 Q. And in your -- I'll take these a little bit out of
7 order.

8 MR. BURGESS: Your Honor, may I approach the witness?

9 THE COURT: Most certainly.

10 Q. Mr. Boger, I want to hand up for you a couple of
11 documents. We'll go to the note first. Do you recall
12 back in --

13 THE COURT: Hold on a minute. When you -- y'all also
14 remember when you're mentioning a document, if
15 you will -- if they are marked already, if you
16 will indicate what they are.

17 MR. BURGESS: Yes, sir.

18 THE COURT: So has this been marked already as --

19 MR. BURGESS: Yes, sir. It has. The document I handed
20 up to the witness was marked as Plaintiff's
21 Exhibit Number 4.

22 THE COURT: Number 4. Okay. Thank you.

23 MR. BURGESS: I've handed them up two copies. The one
24 that's been marked for identification purposes as
25 well as the original document.

1 THE COURT: Okay. Thank you.

2 Q. And Mr. Boger, as a part of that -- you said 25,000
3 closings, do you recall if you had an opportunity to
4 close a loan for a Carl Nunally and Frankie Nunally?

5 A. Well, only because of this matter. I don't -- this is
6 22 years ago. And I don't have a specific memory
7 about this closing.

8 Q. Okay. And you recall that this transaction would have
9 taken place around 2004?

10 A. Yes.

11 Q. Mr. Boger, I want to hand you a second set of
12 documents. Because I think we talking about them in
13 conjunction.

14 MR. BURGESS: Your Honor, I'm handing Mr. Boger
15 Plaintiff's Exhibit Number 5, which is the
16 subject mortgage -- the original and the copy
17 that's been pre-marked as Plaintiff's Exhibit 5.
18 And while we're doing that, I will go ahead and
19 hand Mr. Boger Plaintiff's Exhibit Number 6 and 7
20 as well.

21 Q. And Mr. Boger, if you'll just take a minute to review
22 those exhibits.

23 A. I have reviewed them before today.

24 Q. And do you recognize those exhibits?

25 A. I do.

1 Q. Okay. And so let's -- let's talk about them, you
2 know, just in the order that they're marked.
3 Plaintiff's Exhibit Number 4, do you recognize that to
4 be a true and accurate copy -- or the original and a
5 true and accurate copy of the note that's the subject
6 of this action?

7 A. Yes. But I, you know, I didn't witness it -- witness.
8 I mean, I know -- they must have signed it, because I
9 did the mortgage and witnessed it. Yes. I recognize
10 those and they seem to be correct.

11 Q. Okay. And I'm glad you mentioned that. So let's go
12 to Plaintiff's Exhibit Number 5, the subject mortgage.
13 Do you recognize that to be a true and accurate copy
14 of a mortgage that you closed?

15 A. Yes.

16 Q. And is that mortgage recorded here in Lexington County
17 on February 20, 2004 in 9041 at page four?

18 A. Yes, I see that.

19 Q. And just going to -- I direct your attention to page
20 nine of that document.

21 A. Yes.

22 Q. Do you see that?

23 A. I do.

24 Q. Do you see where you would have notarized and
25 witnessed the signatures of Carl A. Nunally and

1 **Frankie L. Nunally?**

2 A. I do see that.

3 **Q. And this particular mortgage references the subject**
4 **note that's also signed there.**

5 A. Correct.

6 **Q. Would that be correct? And back in 2004, were you a**
7 **notary public for the state of South Carolina?**

8 A. Yes.

9 **Q. And looking on the originals of that mortgage, is that**
10 **your signature there on page nine?**

11 A. Yes.

12 **Q. And as both witness and serving as a notary?**

13 A. Correct.

14 **Q. Now, I noticed that there's an acknowledgment section**
15 **now on page nine. Is that correct?**

16 A. Yes.

17 **Q. And do you see the part of that acknowledgment where**
18 **there's an X by there -- and a -- looks like printed**
19 **name, Brian L. Boger?**

20 A. I do see that. Yes.

21 **Q. As part of that acknowledgment, you were acknowledging**
22 **that Frankie Nunally and Carl Nunally were the ones**
23 **that signed this particular mortgage. Would that be**
24 **correct?**

25 A. That's correct. But either me or my staff hand-wrote

1 my name in there instead of the Nunally's. And, you
2 know, that's an error, but, you know, I don't think
3 it's a fatal error by any way, shape, or form.

4 **Q. But as a part of this document, you were acknowledging**
5 **that Frankie Nunally and Carl Nunally signed as the**
6 **mortgagors in this particular transaction?**

7 A. Yes, that's correct.

8 **Q. And I know she signed as a witness to their name as**
9 **well.**

10 A. Right. I did.

11 **Q. And do you recognize the signature of the other**
12 **witness?**

13 A. Yes. She -- she worked for me for a couple of years.
14 Her dad was a criminal defense lawyer in Florida.

15 **Q. And would this closing have taken place at your**
16 **office?**

17 A. Yes.

18 **Q. I want to direct your attention to -- well, actually,**
19 **before we do that, could you take a look at the**
20 **originals of those documents? Both in Plaintiff's 4**
21 **and 5.**

22 A. Okay.

23 **Q. And are the documents that are marked for**
24 **identification purposes as Plaintiff's 4 and 5, are**
25 **those true and accurate copies of the originals?**

1 A. Yes. Yes, that's right. I'm looking at the original,
2 then looking at the copy. They are identical.

3 MR. BURGESS: Your Honor, at this time, I would submit
4 Plaintiff's Exhibit Number 4 and 5 into evidence.

5 THE COURT: All right. Mr. Nunally, any -- I'm going
6 to just say Mr. Nunally, that means both of you.

7 MR. MARK NUNALLY: Yes, sir.

8 THE COURT: So any objection to the note and the
9 mortgage coming in as the note and the mortgage?

10 MR. MARK NUNALLY: No, Your Honor.

11 THE COURT: All right. Without objection, Number 4 and
12 Number 5. Thank you.

13 (PLAINTIFF'S EXHIBIT NO. 4 ENTERED
14 INTO THE RECORD (4 pages) Note)
15 (PLAINTIFF'S EXHIBIT NO. 5 ENTERED
16 INTO THE RECORD (10 pages)
17 Mortgage)

18 **Q. Mr. Boger, directing your attention to Plaintiff's**
19 **Number 6. Do you recognize that document?**

20 A. I do.

21 **Q. And is that a copy of the, what we call, a HUD**
22 **settlement statement?**

23 A. Yeah.

24 **Q. Regarding this transaction?**

25 A. Yes.

1 Q. And does that cover the amounts that would have been
2 disbursed related to your handling or supervising the
3 closing?

4 A. Correct.

5 Q. And that indicates the money lent as well as any fees
6 and expenses that were then paid out as a part of this
7 transaction?

8 A. That's correct.

9 Q. And again, like we talked about, this transaction took
10 place at your office at 1331 Elmwood Avenue, Suite
11 210?

12 A. Yes.

13 Q. In Columbia? And directing your attention to page
14 number two, is that a true and accurate copy of your
15 signature?

16 A. Yes.

17 Q. And having reviewed this document, is that a true and
18 accurate copy of, as you recall, to the best of your
19 knowledge, a true and accurate copy of the settlement
20 statement for this loan?

21 A. Yes.

22 MR. BURGESS: Your Honor, at this time I would submit
23 Plaintiff's Exhibit Number 6, the settlement
24 statement, as evidence.

25 THE COURT: All right. Mr. Nunally, they are moving to

1 introduce Number 6, which is the HUD statement of
2 the closing into evidence. Any objection?

3 MR. MARK NUNALLY: I'm sorry, Your Honor. What was --
4 I didn't hear that last part?

5 THE COURT: It's Number 6. It's the HUD statement.
6 It's the -- the form you do at the closing.

7 MR. MARK NUNALLY: Oh, objection.

8 THE COURT: Pardon?

9 MR. MARK NUNALLY: Yes, sir. Objection.

10 THE COURT: All right. What is your objection?

11 MR. MARK NUNALLY: Objection. We don't know about that
12 document. And we have never seen it before
13 today.

14 MR. BURGESS: Your Honor, I don't believe that's a
15 valid objection. It has been produced. We've
16 discussed it before today. And they've been
17 provided with copies of every exhibit before
18 showing up here today.

19 MR. MARK NUNALLY: Okay. If it's been provided, then
20 yes, sir.

21 THE COURT: Okay. It's just -- and if -- and if -- you
22 need to look at it. What it is is when you do a
23 loan closing, it's a disbursement sheet.

24 MR. MARK NUNALLY: Okay. It's fine.

25 THE COURT: So that's it. Okay.

1 MR. MARK NUNALLY: Thank you, Your Honor.

2 THE COURT: So Number 6 in.

3 (PLAINTIFF'S EXHIBIT NO. 6 ENTERED
4 INTO THE RECORD (3 pages) HUD)

5 MR. BURGESS: Your Honor, for the record, I have also
6 handed photocopies of the pre-marked exhibits to
7 Mr. Nunally.

8 THE COURT: Right. I see -- I see them on the table.

9 MR. BURGESS: They're on his desk.

10 THE COURT: Yeah. Okay.

11 MR. BURGESS: And they're all in there.

12 MR. MARK NUNALLY: Okay. Thank you, sir.

13 MR. BURGESS: Your Honor, I beg the court's indulgence
14 for just one second. I'm looking at my exhibits
15 here.

16 **Q. Mr. Boger, I had -- did I had Plaintiff's Exhibit**
17 **Number 7 to you as well?**

18 A. Yes. I have the -- I have the marked copy.

19 **Q. Thank you. I just wanted to be sure you had it.**

20 A. Yeah, I have it.

21 **Q. To the best of your recollection, was this a refinance**
22 **transaction?**

23 A. It must have been, because I didn't handle this
24 purchase, it looks like, in 1999.

25 **Q. And just to clarify, the exhibit we're looking at is**

1 marked as Plaintiff's Exhibit Number 7. Have you
2 reviewed that document before?

3 A. Well, just today.

4 Q. Do you recognize that document to be a deed?

5 A. Yes.

6 Q. And is that a deed into Carl A. Nunally and Frankie L.
7 Nunally recorded back in 1999?

8 A. Yes.

9 Q. And that's here in Lexington County in book 5145 at
10 page 97?

11 A. Correct.

12 Q. And could I get you to look at page three of that
13 document, the Exhibit A, that continues the legal
14 description.

15 A. Yes.

16 Q. And just briefly, and I hate to keep jumping around on
17 you.

18 A. That's okay.

19 Q. Can you compare that legal description to the one
20 that's referenced in the subject mortgage?

21 A. Yeah, let me take a look and see if I can. Yes, they
22 are the same.

23 Q. And as related to the mortgage in the derivation
24 clause, it references that 1999 deed. Is that
25 correct?

1 A. It doesn't say 1999, but it references that --

2 Q. The 5145 at page 97?

3 A. Yes.

4 Q. And looking at -- the deed and the mortgage is -- the
5 subject property we're talking about, 1759 Willow
6 Creek Drive, Columbia, South Carolina, 29212? And I'm
7 directing your attention to page two of the subject
8 mortgage.

9 A. Yes, 1759 Willow Creek Drive. I see it.

10 Q. And that's located here in Lexington County?

11 A. Correct.

12 Q. And so as a closing attorney, you don't have any
13 reason to doubt that you were the attorney that
14 handled this transaction?

15 A. No doubt.

16 Q. And the subject mortgage was recorded. Do you recall
17 -- related to the transaction, again just going back
18 to the settlement statement, all of the funds related
19 to the loan, do you believe those were disbursed as
20 they're laid out in this particular settlement
21 statement?

22 A. Yes.

23 Q. And one last question, just going back to the
24 mortgage. That indication about the acknowledgment as
25 both the witness and notary, Mr. And Mrs. Nunally were

Brian Boger - Cross Examination by Mr. Mark Nunally

1 **the ones that acknowledged their signatures on the**
2 **mortgage?**

3 A. Yes.

4 **Q. I'm trying to think if there's any last questions. As**
5 **a part of your practice, you would have had measures**
6 **in place to verify the identity of people showing up**
7 **to do real estate closings at your office?**

8 A. Yeah. We -- back -- way back when, probably before
9 2004, we required a ID card, you know, a driver's
10 license.

11 **Q. So Mr. and Mrs. Nunally would have verified their**
12 **identity --**

13 A. Yes.

14 **Q. -- with that?**

15 A. That would be part of our practice. Yes.

16 **Q. And that would have taken place at your office on that**
17 **day?**

18 A. Correct.

19 MR. BURGESS: Your Honor, at this time I have no
20 further questions for this witness.

21 THE COURT: Thank you. Cross, Mr. Nunally?

22 MR. MARK NUNALLY: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. MARK NUNALLY:

25 **Q. Good morning, Mr. Boger.**

1 A. Good morning.

2 THE COURT: All right. Mr. Boger, if you'll make sure
3 that you keep the exhibits, the copies and the
4 originals, separated.

5 **Q. Mr. Boger, on --**

6 THE COURT: Counsel, it's Boger.

7 MR. MARK NUNALLY: Oh, I'm sorry. I'm sorry.

8 MR. BOGER: It's fine.

9 **Q. Mr. Boger.**

10 THE COURT: I just want it right for the court
11 reporter.

12 MR. MARK NUNALLY: Okay. Thank you. I'm sorry about
13 that. My apologies.

14 THE COURT: That's okay.

15 **Q. Mr. Boger, on Plaintiff's Exhibit Number 5, which**
16 **would be the mortgage.**

17 A. Yes.

18 **Q. On the page 9 of 9, which appears to be the affidavit,**
19 **were you as the notary able to identify the name of**
20 **who was to be acknowledged?**

21 A. Yes. That should have been -- where it has my name,
22 it should have been Carl and Frankie Nunally.

23 **Q. Okay.**

24 A. In that -- in that section.

25 **Q. Okay. And so when it comes to the names of the**

1 affiants, again, that would be Carl Nunally and
2 Frankie Nunally?

3 A. Correct.

4 Q. Okay. Were they, Carl and Frankie Nunally,
5 acknowledged by you on January 30, 2004 on the
6 affidavit for this mortgage?

7 A. I'm not sure I understand that.

8 MR. BURGESS: Your Honor, I'm going to object to that.

9 That's a confusing question. This isn't an
10 affidavit.

11 Q. Okay.

12 THE COURT: Will you rephrase, Mr. Nunally?

13 MR. MARK NUNALLY: Yes.

14 Q. Who is the name of person acknowledged on the face of
15 this affidavit for this mortgage?

16 MR. BURGESS: Your Honor, same objection. He's
17 referencing it as an affidavit.

18 THE COURT: All right. You're talking about the
19 mortgage. Right?

20 MR. MARK NUNALLY: Yes.

21 THE COURT: All right. Will you step forward and show
22 him on the actual mortgage which section, because
23 I think you're calling it maybe an incorrect
24 term.

25 MR. MARK NUNALLY: Okay.

1 THE COURT: So show him on the mortgage, and Mr.
2 Burgess you can step up and look too if you need
3 to. But direct his attention to it.

4 Q. I'm referring to this page right here.

5 A. Okay.

6 Q. Yes, sir. And referring to what has been
7 acknowledged. So excuse me for my ignorance.

8 A. It's okay.

9 Q. I'm used -- I've done so many affidavits here over the
10 past, and they've been acknowledged, and I'm just
11 seeing acknowledging, and I'm knowing that you're a
12 notary. So excuse me for that.

13 A. It's okay.

14 Q. But basically what I'm asking is the name of person
15 acknowledged would be you. Is that correct?

16 A. That's what it says. It should have -- it should have
17 been Carl and Frankie Nunally in that section where my
18 name is hand-written.

19 Q. Okay. Would you say that this is indeed a defect?

20 A. A -- yeah. It's a defect. It is not fatal in any
21 way.

22 Q. Okay.

23 A. In my -- I'm just a witness, but the judge will make a
24 decision of whether it's fatal or not.

25 Q. Thank you very much, sir.

Brian Boger - Redirect by Mr. Burgess; Recross by Mr. Mark Nunally
1 MR. MARK NUNALLY: All right. No further questions.

2 THE COURT: All right. Anything on re-direct?

3 MR. BURGESS: Just one question just to clarify so that
4 everyone is clear for the record.

5 REDIRECT EXAMINATION

6 BY MR. BURGESS:

7 Q. The acknowledgment we're talking about is the type
8 written or printed version of your name. And your
9 indication is that Carl A. Nunally and Frankie L.
10 Nunally should have been printed there rather than
11 your name?

12 A. Correct.

13 Q. And as we stand here today, do you recall you were
14 notarizing and acknowledging the signatures of Mr. and
15 Mrs. Nunally?

16 A. Yes.

17 Q. On the paper.

18 A. Without a doubt, they signed it and I saw it.

19 Q. And without a doubt, you were there with a second
20 witness from your office as well?

21 A. I was.

22 MR. BURGESS: No further questions, Your Honor.

23 THE COURT: All right. Any re-cross?

24 MR. MARK NUNALLY: Yes.

25 RECROSS EXAMINATION

Brian Boger - Recross Examination by Mr. Mark Nunally (continued)
BY MR. MARK NUNALLY:

1

2

Q. Mr. Boger, are there more than one witness to this transaction?

3

4

A. Yes. It was myself, as I'm pointing at now right there, and then one of my paralegals, right there, Marsha. And so she witnessed it there, and then she also -- we drew a little witness line for -- and she signed it again.

5

6

7

8

9

Q. Okay. And there is no need here for two witnesses besides you as the notary?

10

11

A. Well, there's a -- there's a requirement that two witnesses witness the Nunally's signature, so we did that.

12

13

14

Q. Okay.

15

16

17

A. And then the acknowledgment statute says that the -- one of these people, meaning me, can notarize the signatures, which I did.

18

19

20

Q. Okay. All right. And -- all right. And, of course, you mistakenly placed yourself down as the name of the person.

21

22

A. Correct. It should have been the Nunally's.

23

24

25

MR. MARK NUNALLY: Okay. Thank you.

THE COURT: Any re-direct?

MR. BURGESS: Nothing further from the plaintiff, Your Honor.

1 THE COURT: All right.

2 MR. BURGESS: May the witness be excused?

3 THE COURT: Yes. Now y'all excusing him for good, the
4 rest of the day?

5 MR. BURGESS: I don't have any further questions for
6 him.

7 THE COURT: Okay.

8 MR. BURGESS: I don't think he'd be recalled for
9 anything.

10 THE COURT: All right. Mr. Nunally, they're asking to
11 excuse him for the rest of the day, so.

12 MR. MARK NUNALLY: Yes, sir.

13 THE COURT: So is that okay with y'all?

14 MR. MARK NUNALLY: It's okay with us. Yes, sir.

15 THE COURT: Okay. Thank you.

16 MR. MARK NUNALLY: Thank you.

17 THE COURT: Thank you for coming, Mr. Boger.

18 MR. BOGER: Thank you. Just for what it's worth, I'm
19 going to my office and I can be reached by phone
20 if you need it.

21 THE COURT: All right. Thank you.

22 MR. BURGESS: I just want to be respectful of Mr.
23 Boger's time.

24 THE COURT: Okay. Thank you.

25 MR. BURGESS: I appreciate you coming as well.

1 THE COURT: Will you -- will you, because I know we've
2 got a lot of documents. Will you confirm at this
3 point what has been moved into evidence?

4 MR. BURGESS: Your Honor, my notes are that Plaintiff's
5 4, 5, and 6 have been moved into evidence. And
6 actually, I would move at this time to submit
7 Plaintiff's Exhibit Number 7, the vesting deed
8 into Mr. and Ms. Nunally.

9 THE COURT: All right. Any objection to that, Mr.
10 Nunally?

11 MR. MARK NUNALLY: No, Your Honor.

12 THE COURT: All right. So 4, 5, 6, and 7 without
13 objection. Thank you.

14 (PLAINTIFF'S EXHIBIT NO. 7 ENTERED
15 INTO THE RECORD (3 pages) Vesting
16 Deed)

17 MR. BOGER: And they're all right here.

18 THE COURT REPORTER: Thank you.

19 MR. BOGER: I don't know who gets them, but I don't
20 want to hold them.

21 MR. BURGESS: Let's leave them up there.

22 MR. BOGER: Okay. Thank y'all.

23 THE COURT: Yes, sir.

24 MR. MARK NUNALLY: Thank you.

25 MR. BOGER: Have a nice day.

Louise Plasse - Direct Examination by Mr. Burgess

1 MR. BURGESS: Your Honor, the next witness the
2 plaintiff calls at this time is Louise Plasse.

3 THE COURT: If you'll come forward and be sworn,
4 please.

5 WHEREUPON:

6 LOUSIE PLASSE, being duly sworn and
7 cautioned to speak the truth, the whole truth and
8 nothing but the truth, testifies as follows:

9 MR. BURGESS: Your Honor, may I --

10 THE COURT: Yes, sir.

11 MR. BURGESS: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. BURGESS:

15 **Q. Good morning, Ms. Plasse.**

16 **A. Good morning.**

17 **Q. Am I saying that right, Plasse?**

18 **A. Yes. Yes.**

19 **Q. Okay. Thank you. Can you tell me where you're**
20 **employed?**

21 **A. I am employed with Onity Group, formerly known as**
22 **Ocwen Loan Servicing.**

23 **Q. Okay. And how long have you been employed there?**

24 **A. 15 years.**

25 **Q. And can you tell me a little bit about the nature of**

1 **your employment?**

2 A. I am a senior loan analyst. In that capacity, I
3 review our business records as they relate to
4 foreclosure trials, depositions, mediations, and
5 eviction hearings.

6 **Q. Okay. And if I heard you correctly, you said Onity**
7 **Group, Incorporated?**

8 A. Yes.

9 **Q. Is Onity Group a parent company of PHH Mortgage**
10 **Corporation?**

11 A. They are. PHH is a wholly owned subsidiary under the
12 Onity umbrella. And in terms as it relates to what I
13 do, they are considered a sub-service or under the
14 Onity umbrella.

15 **Q. Okay. And in your employment, do you have access to**
16 **the records of Onity and PHH?**

17 A. I do, yes.

18 **Q. And just so that we're clear, I may reference PHH or**
19 **Onity interchangeably.**

20 A. Sure.

21 **Q. Is that fair?**

22 A. Yes.

23 **Q. Is that okay with you? And just for clarification,**
24 **Onity is the parent umbrella and PHH would be a**
25 **subsidiary?**

1 A. Yes, that's correct.

2 Q. Okay. And do you have personal knowledge of the
3 systems used to document and maintain records for
4 Onity and PHH?

5 A. I do, yes.

6 Q. And are you here to testify today with Onity on behalf
7 of PHH?

8 A. Yes, I am.

9 Q. Okay. I handed you up a number of exhibits. I want
10 to direct your attention first to Plaintiff's Exhibit
11 Number 1.

12 A. Yes.

13 Q. Do you recognize that document?

14 A. I do. It is the power of attorney.

15 Q. Okay. Well, let's walk through that document. Is
16 this a power of attorney to appoint PHH Mortgage
17 Corporation successor to Ocwen Loan Servicing, LLC as
18 a servicer related to the trust as the plaintiff in
19 this action?

20 A. It is, yes.

21 Q. And that gives PHH Mortgage Corporation authority to
22 act on behalf of the plaintiff. Is that correct?

23 A. Yes, it does.

24 Q. And looking at this document, is it maintained in the
25 normal course of business for Onity Group and PHH?

1 A. Yes, it is.

2 Q. And are you familiar with how documents such as powers
3 of attorneys are stored in Onity and PHH's system?

4 A. I am.

5 Q. And are those systems maintained by employees who have
6 actual knowledge about the records and the computer
7 system where the records are stored?

8 A. Yes.

9 Q. And do those individuals also have knowledge about the
10 policies and procedures used to keep those documents?

11 A. Yes.

12 Q. And do you have access and knowledge of those policies
13 and procedures?

14 A. I do.

15 Q. And are records such as this power of attorney created
16 at or near the time the authority that is delineated
17 in the power -- is it created at or near the time that
18 power is granted?

19 A. They are, yes.

20 Q. And looking at this particular power of attorney, has
21 it been publically recorded anywhere?

22 A. It has. It was recorded 11/4/2021 in Black Hawk
23 County, Iowa.

24 Q. And directing your attention to page, I believe it's
25 marked 5 of 9. Is that an incorporated power of

1 attorney that's incorporated into this public
2 document?

3 A. It is, yes.

4 Q. And directing your attention to page 8 of 9 where it
5 talks about covered trust. Is the plaintiff both
6 trustee and trust listed in line number 6 on Schedule
7 A?

8 A. They are. It references Bank of New York Mellon,
9 formerly known as the Bank of New York and successor
10 interest to JPMorgan Chase Bank as trustee for
11 NovaStar Mortgage Funding Trust, Series 2004-1,
12 NovaStar Home Equity Loan Asset-Backed Certificates,
13 Series 2004-1.

14 Q. And you understand that to be the plaintiff in this
15 particular matter?

16 A. I do, yes.

17 Q. And looking at this document, is your testimony here
18 today authorized by the power of attorney?

19 A. It is, yes.

20 Q. And it's also authorized by the particular practices
21 of your company. Is that correct?

22 A. Yes.

23 Q. And again, you're familiar with the policies and
24 procedures regarding testifying in court?

25 A. I am, yes.

1 Q. Have you ever testified in a foreclosure file before?

2 A. I have more than I care to mention.

3 Q. And as we were talking about, related to going back to
4 the first page of this document, is foreclosing and
5 activities related to foreclosure, particularly
6 foreclosure, both judicial and non-judicial. Are
7 those included in the powers granted by the power of
8 attorney?

9 A. It is, yes.

10 MR. BURGESS: Your Honor, at this time, I would submit
11 Plaintiff's Exhibit Number 1 as evidence.

12 THE COURT: All right. Mr. Nunally?

13 MR. MARK NUNALLY: Good morning, ma'am.

14 THE COURT: Whoa, whoa, whoa. This isn't cross. This
15 is just moving it into evidence.

16 MR. MARK NUNALLY: Okay.

17 THE COURT: All right. Do you have any objection to
18 the document coming in as evidence?

19 MR. MARK NUNALLY: No. No, I do not.

20 THE COURT: All right. Thank you. He's going to
21 finish his direct, then you'll have a chance to
22 cross.

23 MR. MARK NUNALLY: Yes, sir.

24 THE COURT: All right. Thank you. Without objection,
25 Plaintiff's Number 1.

1 (PLAINTIFF'S EXHIBIT NO. 1 ENTERED
2 INTO THE RECORD (9 pages) Limited
3 POA)

4 MR. BURGESS: All right. Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 Q. And we touched on this just a little bit previously in
7 your testimony. You indicated that PHH Mortgage
8 Corporation is a wholly owned subsidiary of Ocwen
9 Financial corporation?

10 A. Yes.

11 Q. I want to direct your attention to Plaintiff's Exhibit
12 Number 2. Do you recognize that document?

13 A. I do. These are part of our business records, and
14 this references the transaction between Ocwen
15 Financial Corporation and PHH.

16 Q. And is this document publically recorded with the
17 United States Securities and Exchange Commission?

18 A. It is, yes.

19 Q. And for clarification, is it a Form 8-K that's
20 typically used to report to the SEC? I call it the
21 Security and Exchange Commission, the SEC. Is that
22 okay with you?

23 A. Yes.

24 Q. And is this a Form 8-K that's typically filed for
25 reporting purposes to the SEC?

1 A. Yes.

2 Q. And is this document dated October 4, 2018?

3 A. Yes, it is.

4 Q. Okay. And I want to direct your attention to page
5 two, right underneath Section 1.01, counterpart
6 agreement.

7 A. Sure.

8 Q. Does this document indicate the merger between Ocwen
9 Financial Corporation and PHH Mortgage Corporation and
10 PHH Corporation related to Ocwen acquiring both of
11 those entities?

12 A. It does, yes.

13 Q. And in your employment, you're familiar with what Form
14 8-K's do. Would that be accurate?

15 A. Yes.

16 Q. And are those used, again, to report or announce
17 events that are material to investors related to
18 subject corporate entities and things of that nature?

19 A. It is, yes.

20 Q. And because it's filed with the SEC, this is a
21 publically available document?

22 A. It is, yes.

23 Q. And so just so that I'm clear, as a part of this
24 acquisition, PHH Mortgage Corporation became a wholly
25 owned subsidiary of Ocwen Financial Corporation?

1 A. Correct.

2 MR. BURGESS: Your Honor, at this point I would like to
3 submit Plaintiff's Exhibit Number 2 into
4 evidence?

5 THE COURT: Any objection to Number 2?

6 MR. MARK NUNALLY: No, Your Honor.

7 THE COURT: All right. Without objection, Number 2.

8 (PLAINTIFF'S EXHIBIT NO. 2 ENTERED
9 INTO THE RECORD (7 pages) FORM 8-
10 K)

11 Q. Ms. Plasse, at some point after the acquisition of
12 PHH, did Ocwen Financial Corporation change it's name
13 to Onity Group, Incorporated?

14 A. We did, yes.

15 Q. And Onity Group is your current umbrella employer. Is
16 that correct?

17 A. Yes. Yes.

18 Q. Okay. Directing your attention to Plaintiff's Exhibit
19 Number 3, do you recognize that document?

20 A. I do. This is also part of our business records, and
21 it is also a public record.

22 Q. Okay. And when you say business records, this is a
23 document kept in the normal course of business for
24 Onity and PHH?

25 A. It is, yes.

1 Q. And as we discussed, this document is a Form 8-K as
2 well?

3 A. Yes.

4 Q. And in the same matter as the last, it is used to
5 report events to the investors and to the SEC and to
6 the public at large, because it's recorded with the
7 SEC. Is that correct?

8 A. Yes, that's correct.

9 Q. And is this particular Form 8-K dated May 28, 2004?

10 A. It is.

11 Q. And right on page two of the document under Item 503,
12 does this have a public acknowledgment of the name
13 change from Ocwen Mortgage Corporation to Onity Group,
14 Incorporated?

15 A. It does.

16 Q. And even in -- related to the name change from Ocwen
17 to Onity, this is a public document that's -- or a
18 public event that's noted in several different
19 documents. Would that be correct?

20 A. It is, yes.

21 Q. And even this particular SEC report indicates the
22 articles of a corporation in the state of Florida that
23 were changed.

24 A. Correct.

25 Q. They changed the name formally from Ocwen PHH, would

1 that be correct?

2 A. Yes.

3 Q. Or -- I apologize, from Ocwen to Onity?

4 A. Correct.

5 Q. Okay. And again, you're here on behalf of Onity with
6 authority to testify. Would that be correct?

7 A. I am, yes.

8 MR. BURGESS: Your Honor, at this point I would submit
9 Plaintiff's Exhibit Number 3, the Form 8-K, as
10 evidence.

11 THE COURT: Mr. Nunally, Number 3?

12 MR. MARK NUNALLY: I have an objection -- I have an
13 objection, Your Honor. And the reason that I
14 have an objection is because Ocwen Financial
15 Corporation, I know that they have been produced
16 before. And the Form 8-K for Ocwen, but we have
17 not been provided with anything as it relates to
18 the actual trust itself by way of pooling and
19 servicing agreements and other custodial
20 documents to allow us to understand how that
21 trust came in to be, and how the plaintiffs are
22 indeed a trustee of that particular trust. We
23 have not been provided with that just yet. And
24 we're not really understanding what this is.

25 THE COURT: All right. As I understood it, this

1 document formalized a name change.

2 MR. BURGESS: That's correct.

3 THE COURT: That's it.

4 MR. BURGESS: It's submitted -- I'm not quite sure I
5 heard an objection --

6 THE COURT: All right.

7 MR. BURGESS: -- in Mr. Nunally's --

8 THE COURT: All right. Here is what it is. This
9 document is talking about a name change. I think
10 you're making a legal argument to the servicing
11 issue. I don't think that keeps this document
12 out. You can make that argument, you know, at
13 the conclusion of the testimony. I don't think
14 the -- that stops the name change from coming in.

15 MR. MARK NUNALLY: Okay.

16 THE COURT: So I'm going to allow Number 3 in --

17 MR. MARK NUNALLY: Yes, sir.

18 THE COURT: -- subject to your reservation of your --
19 the ultimate question y'all are arguing.

20 MR. MARK NUNALLY: Yes, sir.

21 THE COURT: All right.

22 (PLAINTIFF'S EXHIBIT NO. 3 ENTERED
23 INTO THE RECORD (22 pages) Form
24 8-K)

25 MR. BURGESS: May I proceed, Your Honor?

1 THE COURT: Yes, sir.

2 MR. BURGESS: Thank you. Just for clarification, was
3 that document admitted as evidence?

4 THE COURT: Yes. It went in. That was Number 3. Yes.

5 MR. BURGESS: Thank you.

6 Q. Ms. Plasse, directing your attention next to
7 Plaintiff's Exhibit Number 4. Do you have that
8 document in front of you?

9 A. I do.

10 Q. And you may have heard Mr. Boger testify about the
11 document. I want you to look at both the copy that's
12 been marked and admitted as Exhibit 4 and the original
13 of that document. Do you recognize that document?

14 A. I do. These are also part of our business records.

15 Q. And is that a copy of the subject note, dated January
16 30, 2004?

17 A. It is, yes.

18 Q. And the original lender on there, was it NovaStar Home
19 Mortgage, Incorporated?

20 A. Yes, it was.

21 Q. And was the principal balance originally \$121,500?

22 A. Yes, it was.

23 Q. And directing your attention to the second page of
24 that document. Does that have a printed name, Carl A.
25 Nunally underneath it?

1 A. It does.

2 Q. And does that appear to be a signature above it, where
3 it will be Carl A. Nunally?

4 A. There appears -- yes.

5 Q. And in your employment with Onity and PHH, was that
6 note subsequently transferred to the plaintiff in this
7 action?

8 A. Yes.

9 Q. Okay. And so let's talk about that transfer. There
10 are a series of endorsements included with this
11 document.

12 A. There are. There are two allonges attached to this
13 document. The first allonge goes from NovaStar Home
14 Mortgage, Incorporated to JPMorgan Chase Bank as
15 trustee with an asterisk, and the asterisk then
16 further elaborates the trust information with the
17 complete name of the trust. The next allonge is from
18 JPMorgan Chase Bank, formerly known as JPMorgan Chase
19 Bank as trustee of the NovaStar Mortgage Funding
20 Trust, Series 2004-1, relating to the NovaStar Home
21 Equity Loan asset backed certificate Series 2004-1.
22 And then there's the stamped endorsement, which is the
23 final endorsement to the trust.

24 Q. Well, is -- let's talk about that final endorsement.
25 Where it says pay to the order of?

1 A. Yes.

2 Q. Is that marked blank?

3 A. Yes.

4 Q. And relating to the -- this particular action, is the
5 plaintiff in possession of the original note in this
6 case?

7 A. Yes.

8 Q. Is that document that you've viewed the original?

9 A. Yes, it is.

10 MR. BURGESS: I beg the Court's indulgence for just one
11 second.

12 Q. Let's talk about -- Mr. Nunally had mentioned the
13 trust just a second ago. In this chain of
14 endorsements, do you see the endorsement into the
15 trust that is ultimately the same trust that's the
16 plaintiff in this action?

17 A. Yes.

18 Q. And that trust, in fact, on the last allonge, there at
19 the last page of the document, they endorsed it to
20 blank?

21 A. That's correct.

22 Q. And it's your understanding that an endorsement to
23 blank makes it a bare instrument?

24 A. Yes.

25 MR. BURGESS: Your Honor, I believe this document has

1 already been admitted into evidence as
2 Plaintiff's Exhibit Number 4.

3 THE COURT: Right. That's the note. That's already
4 in.

5 Q. Ms. Plasse, moving on to -- or actually, let me make
6 one more thing clear just about that particular
7 document before we move on. You had mentioned that
8 it's a business record of PHH on the -- I have a
9 couple questions about that. When you mentioned
10 business records, are you referring to the fact that
11 it's kept in the normal course of business for PHH and
12 Onity?

13 A. Yes.

14 Q. And related to it being kept in that particular course
15 of business. You have access to the particular
16 records?

17 A. I do.

18 Q. And is it a regular business practice, PHH and Onity,
19 as a servicer to keep copies and originals of the
20 notes and mortgages for the loans they service?

21 A. It is part of our business practice, and we have
22 practices in place to keep them, maintain the records,
23 and most commonly is referred to as the boarding
24 process. So one, we receive documents, it goes
25 through a rigorous boarding process to verify,

1 validate, and update that information accordingly
2 within our computer system, and it becomes a part of
3 our business records.

4 **Q. And in reviewing those business records, are you**
5 **familiar with the policies and procedures for doing**
6 **things such as insuring that the note has all the**
7 **proper endorsements?**

8 A. Yes.

9 **Q. And are you familiar with those practices of how**
10 **originals and copies are stored in PHH's system?**

11 A. I am. We have a vault where the original documents
12 are kept and maintained in our West Palm Beach office.
13 And they are kept there and secured there in a secure
14 environment.

15 **Q. And from time to time in cases such as this where you**
16 **have litigation, are those originals shipped to the**
17 **attorney of record for safe-keeping to present to the**
18 **court --**

19 A. Yes.

20 **Q. -- such as we're doing here today?**

21 A. Yes, they are.

22 **Q. Okay. Moving to Plaintiff's Exhibit Number 5, do you**
23 **have that document in front of you?**

24 A. I do. I have the original and the copy.

25 **Q. Okay. Do you recognize that document?**

1 A. I do. This is also, again, part of our business
2 records.

3 Q. And by business records, the same applies to the
4 mortgage as it would with the note as you just
5 testified about. Location, policies and procedures,
6 and how they're stored?

7 A. Yes, that's correct.

8 Q. Okay. And looking at this document, was the original
9 mortgagee Mortgage Electronic Registration Systems,
10 Incorporated as nominee for NovaStar Home Mortgage,
11 Incorporated?

12 A. Yes.

13 Q. And directing your attention to page number two, was
14 the address for the property to be secured by this
15 mortgage 1759 Willow Creek Drive, Columbia, South
16 Carolina, 29212?

17 A. That's correct.

18 Q. And going to the last page of this document, does that
19 contain a legal description?

20 A. It does.

21 Q. For the subject property?

22 A. It does. Exhibit A further describes the property
23 boundaries and lines of the property.

24 Q. And moving back to page 9 or 9. There are type-
25 written names for Carl A. Nunally and Frankie L.

1 Nunally. Do those appear to have signatures above
2 those?

3 A. They do, yes.

4 Q. And last question about that mortgage. Was it
5 recorded February 20, 2004 here in Lexington County in
6 Book 9041 at page four?

7 A. Yes.

8 Q. And moving along real quick to Plaintiff's Exhibit
9 Number 6. I believe this is also been previously
10 admitted as evidence. Do you recognize that document?

11 A. I do. Again, also part of our business records. It's
12 what is referred to as the HUD statement settlement
13 statement.

14 Q. And is that a true and accurate copy of the HUD
15 settlement statement kept in your business records?

16 A. Yes.

17 Q. And does that HUD statement reflect a financial
18 breakdown of a closing of this loan transaction?

19 A. Yes, it does.

20 Q. And as you heard Mr. Boger testify to it, it indicates
21 payments that were made on behalf of the borrowers in
22 this case?

23 A. That's correct, yes.

24 Q. And you're in agreement with that?

25 A. I am.

1 Q. And do you see on here that this particular loan paid
2 off a prior loan to Wells Fargo Home Mortgage, down
3 line 104?

4 A. I do.

5 Q. And also a second mortgage to Wells Fargo financial?

6 A. Yes.

7 Q. So would it be accurate to describe this transaction
8 as a refinance?

9 A. Yes.

10 Q. Thank you. And moving along to Plaintiff's Exhibit
11 Number 7, also previously admitted. Do you recognize
12 that document?

13 A. I do. This is also a business record. It is the deed
14 referencing the property, the subject property, for
15 here today.

16 Q. And this was the deed that would have been effective
17 at the time this mortgage was taken out?

18 A. Yes.

19 Q. And the owners at the time the mortgage was taken out,
20 were they Carl A. Nunally and Frankie L. Nunally?

21 A. Yes.

22 Q. And is this document recorded in Lexington County,
23 March 12, 1999 in Book 5145 at page 97?

24 A. Yes.

25 Q. Okay. Moving along to a new document. Directing your

1 attention to Plaintiff's Exhibit Number 8. Do you
2 recognize that document?

3 A. I do.

4 Q. And are you aware if the loan was ever modified?

5 A. It was.

6 Q. And Plaintiff's Exhibit Number 8, do you recognize
7 that as a loan modification?

8 A. Yes.

9 Q. And is that document dated August 20, 2009?

10 A. Yes, it is.

11 Q. And we've talked about some of the records keeping
12 that Ocwen, Onity, and PHH too. Are loan modification
13 agreements also agreements that are kept in the normal
14 course of business at Onity and PHH?

15 A. They are. We're obligated to keep and maintain all
16 business records that pertain to all of the loans that
17 we service.

18 Q. And would a loan modification agreement -- what do you
19 understand those to do?

20 A. The loan modification as I understand it changes the
21 terms and the amounts due in owing on a particular
22 loan.

23 Q. Thank you. And as part of this particular
24 modification, did it modify the balance to
25 \$104,168.23?

1 A. Yes, it did.

2 Q. And did it modify the interest rate down to 1.5
3 percent per annum?

4 A. Yes, it did.

5 Q. And relating to how those amounts were to be repaid,
6 is that also spelled out in this particular
7 modification?

8 A. It is.

9 Q. And the maturity date regarding this particular loan,
10 it remained the same, February 1, 2024. Is that
11 correct?

12 A. Yes, it did.

13 Q. So the loan is currently matured?

14 A. It has reached maturity, yes.

15 Q. And by maturity, you understand that to mean there is
16 no current payment scheduled that all the amounts due
17 and owing are currently due and owing?

18 A. Yes, that's correct.

19 Q. And directing your attention to page three of that
20 document. Does that appear to have a printed
21 signature, a printed name, of Carl A. Nunally and
22 Frankie L. Nunally?

23 A. It does, yes.

24 Q. And above that, it appears to bear a signature?

25 A. Yes.

1 Q. As well as some witnesses.

2 A. Correct.

3 Q. It looks like a Ross McVey and a -- it's a little hard
4 to read the print, but John Sunburg?

5 A. That's what it appears. Yes.

6 Q. And that's a printed name. And above that, there
7 appear to be signatures for that?

8 A. Yes.

9 Q. Dated September 2, 2009?

10 A. Yes.

11 Q. Would that be correct? And there's also a
12 acknowledgment on page four. Would that be correct?

13 A. Yes.

14 Q. And what appears to be a notary stamp?

15 A. That's correct also.

16 Q. And as a part of this document, there appears to be a
17 lender acknowledgment.

18 A. Yes.

19 Q. Would that be correct? And is that an acknowledgment
20 by the trust that's the plaintiff here in this matter
21 today?

22 A. Yes.

23 Q. And in compliance, or I guess in association with this
24 document, the Nunally's entered into a number of other
25 agreements that are attached to the loan modification

1 **agreement. Would that be accurate?**

2 A. Yes.

3 **Q. And reviewing the document, at the time this was**
4 **entered, it says Saxon Mortgage Services as attorney**
5 **in fact as acting on behalf of the borrowed trust. Do**
6 **you recall if Saxon ever acted as the servicing agent?**

7 A. They were prior servicer prior to coming to Ocwen Loan
8 Servicing, yes.

9 **Q. And are you familiar with how the records would have**
10 **been transferred from Saxon to Ocwen?**

11 A. I am. They would have been transmitted through a
12 digitized format and received and they would have gone
13 through the boarding process once we had received the
14 information.

15 **Q. And are you familiar with the policies and procedures**
16 **for boarding a loan from another servicer on when a**
17 **particular loan comes in to PHH?**

18 A. I am. We have a group of individuals and teams that
19 are part of the boarding process. And they're they
20 boarding team. And they all have different
21 responsibilities to verify and validate throughout the
22 boarding process. Our ESCROW department, our
23 insurance department, our legal department. All of
24 those teams have individual responsibilities to verify
25 information. Once they're satisfied with the

1 information as being transferred, we begin the process
2 of scanning the documents into our computer system so
3 then at that point, the documents become part of our
4 business records.

5 **Q. Thank you. And this particular document appears in**
6 **your business records for this particular loan?**

7 **A. It does, yes.**

8 **Q. Let me ask you one thing about verifying the**
9 **authenticity and accuracy of the information on the**
10 **document. It's one way to verify that if the**
11 **borrowers continue to make payments related to the**
12 **subject loan?**

13 **A. Yes.**

14 **Q. And it's your understanding that after September 2,**
15 **2009 when they signed the loan modification, Mr. And**
16 **Ms. Nunally made payments related to the loan?**

17 **A. Yes.**

18 **MR. BURGESS: Your Honor, at this time I would submit**
19 **Plaintiff's Exhibit Number 8 into evidence.**

20 **THE COURT: All right. Any objection to Number 8?**

21 **That's the loan modification where the loan was**
22 **modified by your parents and their interest rate**
23 **in return?**

24 **MR. MARK NUNALLY: No, Your Honor.**

25 **THE COURT: All right. No objection to Number 8.**

1 (EXHIBIT NO. 8 MARKED FOR
2 IDENTIFICATION PURPOSES (8 pages)
3 Loan Modification)

4 Q. Ms. Plasse, we talked previously about the note being
5 transferred to the plaintiff in this action. Was the
6 mortgage also transferred to public record?

7 A. Yes.

8 Q. Directing your attention to Plaintiff's Exhibit Number
9 9. Do you recognize that document?

10 A. I do. It is what is referred to as an assignment of
11 mortgage.

12 Q. And was that document recorded here in Lexington
13 County on July 28, 2023 in Book 21067 at page 4146?

14 A. Yes.

15 Q. And directing your attention to the next document in
16 line, Plaintiff's Exhibit Number 10. Do you recognize
17 that document?

18 A. I do. It's also an assignment of mortgage, also
19 recorded in Lexington County.

20 Q. Okay. And was that recorded October 3, 2023 in book
21 21076 at page 4337?

22 A. Yes.

23 Q. Okay. And let's talk about those two assignments
24 together real quick. I notice on Plaintiff's Exhibit
25 Number 10, it exhibits that it's a corrective

1 assignment of mortgage?

2 A. Yes.

3 Q. And it indicates -- am I accurate in saying it that it
4 indicates it's a correction of an original assignment,
5 that assignment that we referred to as Plaintiff's
6 Exhibit Number 9?

7 A. Yes.

8 Q. The one from July 28, 2023?

9 A. Yes.

10 Q. And so let's look at the mortgage recording
11 information in that. If you go to Plaintiff's Exhibit
12 Number 9, on the assignment of mortgage, it says Book
13 9841 at page 4. Is that correct?

14 A. Yes.

15 Q. Whereas if you go to Plaintiff's Exhibit Number 10, it
16 says Book 9041 at page 4.

17 A. Correct.

18 Q. And is that the -- the error that's being corrected in
19 this assignment of mortgage?

20 A. It is, yes.

21 Q. And if we look back at the subject mortgage, which is
22 Plaintiff's Exhibit Number 5, we see that the
23 recording information is in fact Book 9041 at page 4.
24 Is that correct?

25 A. I'm just verifying. Yes, that's correct.

1 **Q. And both of these assignments, again, have been**
2 **publically recorded here in Lexington County?**

3 **A. Yes, they have.**

4 MR. BURGESS: Your Honor, at this time, I would submit
5 into evidence Plaintiff's Exhibits Number 9 and
6 510.

7 THE COURT: All right. Number 9 and 10. Any
8 objections? That's the assignment and then the
9 corrective assignment on the number.

10 MR. NUNALLY: No, Your Honor.

11 THE COURT: All right. Without objection. Plaintiff's
12 9 and 10.

13 (PLAINTIFF'S EXHIBIT NO. 9 ENTERED
14 INTO THE RECORD (1 pages)
15 assignment of Mortgage)

16 (PLAINTIFF'S EXHIBIT NO. 10
17 ENTERED INTO THE RECORD (1 pages)
18 Corrected assignment of Mortgage)

19 **Q. Ms. Plasse, directing your attention to Plaintiff's**
20 **Exhibit Number 11. Before we get into that document,**
21 **let's -- let's back up a second and -- I want to ask,**
22 **have all the payments that are due and owing under**
23 **this loan before it matured, were all of the payments**
24 **made?**

25 **A. They were not all made, no.**

1 Q. And so pursuant to the note and mortgage, failure to
2 make the monthly payments as they become due, that's
3 an event of default. Would that be accurate?

4 A. That's correct, yes.

5 Q. And pursuant to the default, has the plaintiff chosen
6 to accelerate the balance due in owing?

7 A. Yes.

8 Q. And as we indicated, the loan matured during the
9 pendency of this foreclosure. Wouldn't that correct?

10 A. That's correct, yes.

11 Q. And directing your attention to, again, Plaintiff's
12 Exhibit Number 11, do you have personal knowledge of
13 the computer system used to generate payment
14 histories?

15 A. I do.

16 Q. And do you have knowledge of the system of record
17 related to how payments are accounted for?

18 A. I do, yes.

19 Q. And do the electronic payment histories, for my own
20 edification, do they report all the credits and
21 debits, charges made on the -- on the loan, all of the
22 money going in and out?

23 A. They do, yes.

24 Q. And have you viewed all of the payment history for
25 this particular loan?

1 A. Yes, I have.

2 Q. And directing your attention to Plaintiff's Exhibit
3 Number 11, is that a true and accurate copy of the
4 payment history from the years 2009 through 2019?

5 A. Yes.

6 Q. And is that document kept in the normal course of
7 business for PHH and Onity?

8 A. Yes, it is.

9 Q. And do you have access to the record related to -- or
10 the system of record used to keep this particular
11 document?

12 A. Yes, I do.

13 Q. And as I understand it, the 2009 through 2019 would
14 have been as a part of before the name change that we
15 talked about previously?

16 A. Yes, that's correct.

17 Q. And is this document showed regular payments coming in
18 on the loan?

19 A. It does.

20 Q. And it shows how each of those payments are accounted
21 for?

22 A. Yes, it does.

23 Q. Okay. And moving along to Plaintiff's Exhibit Number
24 12. Is that a continuing payment history for 2019 all
25 the way through to 2025 during this particular?

1 A. Yes.

2 Q. And again, the loan matured in 2024?

3 A. Yes, it did.

4 Q. Correct? And according to the payment histories, is
5 the loan due from May 1, 2023?

6 A. Yes.

7 Q. And according to Plaintiff's 12, much like Plaintiff's
8 11, this payment history is kept in the normal course
9 of business for --

10 A. It is, yes.

11 Q. -- PHH and Onity? And is this the Onity payment
12 history?

13 A. The PHH payment history.

14 Q. And again, we're talking -- PHH, just so that I'm
15 clear, is the servicer --

16 A. Correct.

17 Q. -- under the Onity umbrella?

18 A. Yes.

19 Q. And to be clear, you have access to the records
20 related to these particular types of documents?

21 A. Yes, I do.

22 Q. And the information retained on the payment history,
23 is it entered at or near the time the information
24 there on this reflected -- actually, let me -- let me
25 rephrase that. When a particular payment comes in or

1 a charge goes out that PHH pays, is that information
2 entered contemporaneously when the event happens?

3 A. Yes, it is.

4 Q. And are the individuals in charge of making entries on
5 the payment history, are they given training about
6 policies and procedures for handling payments that
7 come in?

8 A. Yes.

9 Q. Are they also given a training related to charges that
10 go out?

11 A. Yes.

12 Q. Would charges that go out, for example, be something
13 like an ESCROW payment for taxes?

14 A. That's correct, yes.

15 Q. And will payments coming in, that would be taking a
16 payment in from a borrower, applying the payment to
17 the principle interest, and any taxes and insurance
18 that will be due and owned?

19 A. Yes, they're applied in a timely fashion upon receipt.

20 MR. BURGESS: Your Honor, at this time I would --

21 excuse me, submit Plaintiff's Numbers 11 and 12,
22 the payment histories.

23 THE COURT: All right. Mr. Nunally, 11 and 12, that's
24 the payment history, the breakdown of
25 calculations of the debt.

1 MR. MARK NUNALLY: No objection.

2 THE COURT: All right. Without objection, Number 11
3 and 12.

4 (PLAINTIFF'S EXHIBIT NO. 11

5 ENTERED INTO THE RECORD (4 pages)
6 payment history)

7 (PLAINTIFF'S EXHIBIT NO. 12

8 ENTERED INTO THE RECORD (4 pages)
9 payment history)

10 Q. Ms. Plasse, related to and directing your attention to
11 Plaintiff's Exhibit Number 13 now, does PHH retain
12 records related to a tabulation of all the amounts
13 owed on a particular loan?

14 A. Yes, we do.

15 Q. And do they retain records related to this particular
16 loan?

17 A. Yes.

18 Q. And do you recognize or actually -- I should ask that
19 this particular document, those tabulations kept in
20 the same manner as the payment history as we
21 discussed?

22 A. They are, yes.

23 Q. Meaning that it's kept in the normal course of
24 business for PHH?

25 A. Yes.

1 Q. And its information is entered contemporaneously when
2 an event happens?

3 A. Yes.

4 Q. And it's entered by people with knowledge of how to
5 handle or enter the information into your system?

6 A. They are, yes.

7 Q. And do you recognize Plaintiff's Exhibit Number 13?

8 A. I do. It is a summary of the amounts due and owing.
9 Sometimes referred to as judgement figures. It shows
10 the total amounts due and the due date.

11 Q. Okay. And do you -- let's go over some of the entries
12 on that document real quick. Again, we talked about
13 the loan being due from 2023. Is that accurate?

14 A. It is.

15 Q. And is there a principle balance of \$6,345.74?

16 A. There is, yes.

17 Q. And an additional principle of \$12,076.10?

18 A. Yes.

19 Q. And that would be -- the reason why that's broken
20 would be results of that loan modification in 2009?

21 A. That's correct.

22 Q. That the document speaks for itself, but I'm assuming
23 that had a breakdown of a deferred principle balance
24 that would not have been approved on interest?

25 A. That is also correct, yes.

1 Q. Okay. And the total principle balance would have come
2 to \$18,421.84?

3 A. Correct.

4 Q. Is that correct? Is there interest accruing on this
5 loan?

6 A. There is an interest amount of \$271.97.

7 Q. And is that calculated through today's date?

8 A. Yes.

9 Q. And have there been any late charges?

10 A. There are -- let me just make sure if I can read, get
11 my eyes to work. Where are they? My eyes aren't
12 working today, sorry about that. It should be late
13 charges. Oh, here it is. Of 6698.

14 Q. \$66.98?

15 A. Yes.

16 Q. Have there been any ESCROW advances made on behalf of
17 the defendants?

18 A. Yes. There's ESCROW in the amount of \$7,114.30.

19 Q. Okay. And when you reference ESCROW, you understand
20 that to be tax payments?

21 A. Tax payments and insurance.

22 Q. Okay. Directing your attention to --

23 THE COURT: All right. Hold on a minute. I want to -
24 - I want to go off the record.

25 (Off the Record)

1 CONTINUED BY MR. BURGESS:

2 Q. So I wanted to kind of pull things back together with
3 respect to ESCROW. Because the loan matured, there
4 wasn't a normal, monthly principle and interest, tax
5 and insurance payment that would have been coming in
6 from the borrowers at this point in time?

7 A. Correct.

8 Q. And that goes back to 2024 when the loan matured?

9 A. Right.

10 Q. And at some point in time during this litigation, PHH
11 became aware that there were taxes that were due in
12 owing?

13 A. Correct.

14 Q. And did PHH take the opportunity to pay those taxes?

15 A. Yes.

16 Q. And was that to protect their mortgage interest in the
17 property?

18 A. It is, yes.

19 Q. Because if they hadn't have paid it, it would have
20 went to a tax sale?

21 A. Correct.

22 Q. And directing your attention to Plaintiff's Exhibit
23 Number 14. Do you recognize that document?

24 A. I do.

25 Q. And does that document have in it a breakdown of any

1 **payments advanced ESCROW related to this loan?**

2 A. It does.

3 **Q. And directing your attention to an entry from December**
4 **3, 2025.**

5 A. Yes.

6 **Q. Was there an amount paid of \$3,694.44?**

7 A. Yes, there was.

8 THE COURT: What page are you on?

9 MR. BURGESS: First page of Exhibit 14. I am one, two,
10 three, four, five, six --

11 THE COURT: All right. Down where it says "County Tax
12 and Disbursement"?

13 MR. BURGESS: Correct.

14 THE COURT: About mid way?

15 MR. BURGESS: ESCROW advance --

16 THE COURT: About mid way? Okay.

17 MR. BURGESS: Yeah. About 10 lines down.

18 THE COURT: Okay.

19 MR. BURGESS: Yes, sir.

20 THE COURT: All right. Okay. Got it.

21 **Q. And do you see that amount of \$3,694.44?**

22 THE COURT: Yep.

23 A. Yes, I do.

24 **Q. And a few days later on December 8, moving up a few**
25 **columns, third from the top.**

1 A. Sure.

2 Q. Was there another ESCROW advance for \$3,419.86?

3 A. There is, yes.

4 Q. And you understand this was for the 2024 and 2025
5 taxes?

6 A. Yes.

7 Q. And is that the only amount -- amounts as far as
8 ESCROW that PHH has advanced on behalf?

9 A. It is, yes.

10 Q. And if you add those two \$3,000 payments up, that
11 comes to a total of \$7,114.30?

12 A. It does, yes.

13 Q. Okay. And are there also corporate advances due on
14 them?

15 A. There are.

16 Q. And those are mentioned there on Exhibit 13,
17 recoverable corporate advance balance?

18 A. They are.

19 Q. And is that balance broken down directing your
20 attention to Plaintiff's Number 16 -- or actually 15,
21 I apologize.

22 A. It is broken down, yes, and itemized.

23 Q. And when you referenced corporate advances, are those
24 charges generally referring to property inspections?

25 A. They are. And any other fees that have accrued over

1 the life of the foreclosure.

2 Q. Okay. And when you were referencing other fees, those
3 might be things like in addition to inspections, would
4 there be valuations in there or what we call BPOs?

5 A. Yes.

6 Q. And would there also be litigation fees and costs
7 related to that?

8 A. Yes, there would.

9 Q. And would there also be a -- any entries for -- say if
10 before the loan was referred to foreclosure, they were
11 charged for having a title search.

12 A. Yes.

13 Q. And I'm looking here on Exhibit Number 15. And feel
14 free to check my math, but I'm looking at property
15 valuation, what we call BPOs, those \$85 entries. Do
16 you see any of those on this particular history?

17 A. At the top of the page, I believe it's Item Number 4.
18 It says AVM for \$85.

19 Q. And was that October 30, 2025?

20 A. Yes.

21 Q. And so backing up, down at the very last line on the
22 page October --

23 MR. BURGESS: And this is, Your Honor, for everyone's
24 reference. Plaintiff's Exhibit Number 15.

25 THE COURT: I don't think I have a 15. I've got 13.

1 I've got 14. I've got 16, and I've got 17. And
2 I've got 1 through 14. But I don't think I've
3 got a 15. Hang on. Unless I picked it up in
4 error. I don't know that I have a 15.

5 MR. BURGESS: And I apologize, Your Honor.

6 THE COURT: That's okay.

7 MR. BURGESS: I have been jumping back and forth. I
8 have an extra copy. Or if you'd like to --

9 THE COURT: An extra copy would be fine. Or if I can
10 just look at it just briefly, the copy that's
11 here.

12 MR. BURGESS: Sure. May I approach, Your Honor?

13 THE COURT: Yes, sir. And will you make sure they've
14 got it too, the Nunallys do?

15 MR. BURGESS: Do you have Number 15?

16 THE COURT: Y'all have got a 15?

17 MR. MARK NUNALLY: Yes, sir.

18 THE COURT: Okay.

19 MR. BURGESS: Your Honor, I --

20 THE COURT: Okay. I -- I recognize -- that's standard.
21 I understand what that is. So you can take that
22 back.

23 MR. BURGESS: Okay. Thank you.

24 THE COURT: And Mr. Nunally, y'all go through and make
25 sure the numbers match up with what they're

1 saying. All right, that's Number 15.

2 **Q. And Ms. Plasse, we were talking about valuations or**
3 **what we call BPOs. The valuation -- we have one on**
4 **October 30, 2025 for \$85. Is that correct?**

5 A. Yes.

6 **Q. And then moving down to October 21, 2024. Another one**
7 **in the amount of \$85. Would that be correct?**

8 A. That's correct.

9 **Q. And then moving to the second page, there's another**
10 **one of \$85. Would that be correct?**

11 A. Yes, the third line item from the bottom.

12 **Q. And that's from September 20, 2023?**

13 A. Yes.

14 **Q. And adding of those three \$85 charges, I get a total**
15 **of \$255. Would that be accurate?**

16 A. Yes.

17 **Q. And I also see right here at the top, it looks like**
18 **property inspection fees for \$20 each time.**

19 A. Yes.

20 **Q. And looks like the last one listed here was January**
21 **16, 2026?**

22 A. Yes. They go out monthly to inspect the property to
23 make sure that property is secured.

24 **Q. And when you say inspect, you're referencing driving**
25 **by the property?**

1 A. Yeah. And the -- in the event, we hire a third party
2 vendor, Guardian, to do our property inspections. In
3 the event that the property is vacant, they make sure
4 the property has not been vandalized and that the
5 property is secured. They also would notate if there
6 was any property maintenance that needed to be tended
7 to.

8 Q. And so that's just ongoing to protect the mortgage
9 interest in the property?

10 A. Yes, it is.

11 Q. And again, you indicated that's occurring monthly?

12 A. Yes.

13 Q. At \$20 a pop. And I've added these up. If my math is
14 correct, that comes to \$600 in advances?

15 A. That sounds about right, yes.

16 Q. And based on this document, PHH has paid a number of
17 attorney's fees and costs related to this case?

18 A. Yes.

19 Q. So everyone on here that says A-T-B-R-O-C-K, that's to
20 Brock and Scott?

21 A. That's correct.

22 Q. My lawfirm. And as a part of this foreclosure, is the
23 plaintiff seeking recovery of attorney's fees and
24 costs related to the case?

25 A. We are, yes.

1 MR. BURGESS: Your Honor, at this time I would admit,
2 or seek for admission, submit Plaintiff's
3 Exhibits Number 13, 14, and 15 for -- into
4 evidence.

5 THE COURT: All right. 13, 14, and 15, which were the
6 breakdowns. Mr. Nunally?

7 MR. MARK NUNALLY: Yes, sir.

8 THE COURT: No objection?

9 MR. MARK NUNALLY: No objection. No, sir.

10 THE COURT: All right. So 13, 14, and 15.

11 (PLAINTIFF'S EXHIBIT NO. 13
12 ENTERED INTO THE RECORD (1 pages)
13 Total Amount due)

14 (PLAINTIFF'S EXHIBIT NO. 14
15 ENTERED INTO THE RECORD (4 pages)
16 Account History)

17 (PLAINTIFF'S EXHIBIT NO. 15
18 ENTERED INTO THE RECORD (2 pages)
19 Corporate Advance History)

20 THE COURT: Y'all, I fibbed. 15 was inside of 14. I
21 got it. Thank you. I didn't fib. I was
22 mistaken.

23 **Q. Ms. Plasse, I did have one more question about**
24 **corporate advances. We had talked about if PHH had**
25 **paid fees related to a title search --**

1 A. Yes.

2 Q. -- in conjunction with sending the case for
3 foreclosure. Was that charge \$250?

4 A. Yes.

5 Q. And was that incurred, it looks like, October 25,
6 2023, to a company named Avenue?

7 A. The date again, I'm sorry?

8 Q. It looks like fourth or fifth from the bottom, October
9 25, 2023?

10 A. Yes. Yep. Title search.

11 Q. And when you mentioned title search, would that be a
12 search of public records to determine who has an
13 interest in the subject property?

14 A. Yes.

15 Q. And that would return copies of any deeds that were
16 recorded post the mortgage, things of that nature?

17 A. Yes.

18 Q. And would that be a necessary cost related to
19 protecting the mortgage and proceeding with
20 foreclosure so that you have everyone named?

21 A. Yes.

22 Q. And I noticed that the defendants in this action are
23 named personally and as personal representative of the
24 estates of Carl and Frankie Nunally?

25 A. Yes.

1 Q. Are you aware of that? And relating into -- before we
2 get into any notices related to the foreclosure
3 action, is it your understanding today that Carl A.
4 Nunally and Frankie L. Nunally are deceased?

5 A. Yes.

6 Q. And to your knowledge, did Frankie Nunally pass away
7 January 14, 2019?

8 A. Based on my review of the records, yes.

9 Q. And does Ms. Nunally have an estate opened or was
10 there an estate opened here in Lexington County in
11 2019 bearing Estate Number 2019-ES-32-01345?

12 A. I believe so, yes.

13 Q. And subsequent to Ms. Nunally passing, did Carl
14 Nunally pass away, September 24, 2021?

15 A. He did, yes.

16 Q. And is there an estate open for Mr. Nunally?

17 A. As far as I know, yes.

18 Q. And was that estate opened in 2022 and bearing the
19 Action Number 2022-ES-32-01253?

20 A. Yes.

21 Q. And subsequent to their passing, the monthly payments
22 due and owing on the loan, were made all the way up
23 until May 1, 2023.

24 A. Yes, that's correct.

25 Q. So for approximately 20 months after Carl Nunally

1 passed away, the payments were kept up on this
2 particular loan?

3 A. Yes, they were.

4 Q. And when the payments stopped coming in -- first let's
5 talk about in general. When payments stop coming in
6 on a loan, is it PHH's practice to send notices of
7 default related to those?

8 A. It is, yes.

9 Q. And as a result of the default in this particular
10 case, was there a notice of default mailed out?

11 A. Yes, there was.

12 Q. And directing your attention to Plaintiff's Exhibit
13 Number 16, do you recognize that document?

14 A. Yes, I do. It is what is known as a notice of default
15 or demand letter. It advises the homeowner of their
16 obligations the amount due in owing and ways to pay
17 that money back to us by providing payment remittance
18 information, whether it's Western Union, regular mail,
19 overnight mail.

20 Q. That instructions the borrower on how to cure the --

21 A. Yes.

22 Q. -- default? And was this document mailed out
23 September 7, 2023?

24 A. Yes, it was.

25 Q. And regarding notices of default, are copies of

1 notices like this kept in the normal course of PHH's
2 business?

3 A. It is, yes.

4 Q. And are copies of the default entered into your system
5 when they're -- contemporaneously when they're mailed
6 out?

7 A. Yes.

8 Q. And are they scanned into your system by employees
9 that have knowledge of the process of sending out a
10 notice of default on a loan and things of that nature?

11 A. Yes.

12 Q. And I noticed this document was addressed to 4499
13 Persian Court, Snellville, Georgia, 30039.

14 A. Yes.

15 Q. Was that an address that PHH had in it's records for
16 notice purposes?

17 A. Yes.

18 Q. And is that the address of Timothy Alan Nunally in
19 this case?

20 A. I believe it is, yes.

21 Q. And you believe that because Mr. Nunally submitted
22 documents into the pleadings in this case --

23 A. Yes.

24 Q. -- from that address?

25 A. Yes.

1 MR. BURGESS: Your Honor, at this time I would submit
2 into evidence Plaintiff's Number 16, the notice
3 of default.

4 THE COURT: All right. Notice of default. Any
5 objection to Number 16?

6 MR. MARK NUNALLY: No objection, Your Honor.

7 THE COURT: All right. No objection, Number 16.

8 (PLAINTIFF'S EXHIBIT NO. 16
9 ENTERED INTO THE RECORD (5 pages)
10 Notice of Default)

11 Q. Ms. Plasse, I just have a few more questions for you.
12 Again, following this default in '23, the loan
13 matured, February 4, 2024. Is that correct?

14 A. Yes.

15 Q. And as a part of pursuing this foreclosure action, is
16 the plaintiff seeking an award of the attorney's fees
17 and court cost related to this action?

18 A. Yes, we are.

19 Q. And as a part of this foreclosure, is the plaintiff
20 seeking a declaratory judgement related to the
21 acknowledgment section of the mortgage that Mr. Boger
22 testified to?

23 A. Yes.

24 Q. And is the plaintiff seeking deficiency judgement of
25 foreclosure related to the mortgage and requesting

1 **this court set a judicial sales date?**

2 A. Yes.

3 MR. BURGESS: Your Honor, at this time that's all the
4 questions I have for this witness.

5 THE COURT: All right. All right. Exhibit 17?

6 MR. BURGESS: Exhibit 17 is the affidavit, supplemental
7 affidavit of attorney's fees from my office. I
8 anticipated that I would have to testify as to
9 those.

10 THE COURT: Right.

11 MR. BURGESS: Because of reasonable standards and the
12 deeds be strict with alliance.

13 THE COURT: That's right. I want to explain that
14 they've got 17, but that's not going into
15 evidence right now, because it's not been moved.
16 He's asked questions about it. If he -- if they
17 win, then we have a process where you would have
18 X days to review time records and all of that to
19 determine if you want to come back and cross-
20 examine him under oath about the reasonableness
21 of his attorney fees. So this is the summary
22 form. But if court rules for the bank, then they
23 would be entitled to it then as prevailing party.
24 But I haven't made that ruling yet. So this is
25 letting you know what it is. You could say I

1 don't want to challenge it, or I do want to come
2 back and cross-examine him on the attorney fees.
3 All right.

4 MR. MARK NUNALLY: Yes, Your Honor. We do want to come
5 back and cross-examine -- yes, sir.

6 THE COURT: All right. Well if we rule for him, we'll
7 do that by -- we'll handling that in writing how
8 we do that procedure.

9 MR. MARK NUNALLY: Thank you, Your Honor.

10 MR. BURGESS: Your Honor, I'm prepared to testify today
11 if that's necessary.

12 THE COURT: Okay.

13 MR. BURGESS: As far as --

14 THE COURT: Or if y'all want to do it today, you can do
15 it -- you can do it today, or you can come back.
16 Just be thinking about that, because I haven't
17 made a ruling yet.

18 MR. BURGESS: I understand, Your Honor.

19 THE COURT: All right.

20 MR. BURGESS: And it may be premature. I mean, if --
21 it's up to the court's discretion as far as what
22 order to take that in. I'm happy to do that as
23 part of the case in chief or come back, you know,
24 pending Your Honor's ruling or however the court
25 wishes to handle that.

1 THE COURT: Well, do you have all your -- all your time
2 sheets and everything with you? I mean --

3 MR. BURGESS: I do have a printed copy of those time
4 sheets. These are proprietary. I have
5 anticipated --

6 THE COURT: I would -- we'll just do it the normal way
7 and come back if we need, because that way you
8 can give it to them. They can look at it and
9 determine if they want to cross, and they'll have
10 it ahead of time. Okay.

11 MR. BURGESS: Thank you, Your Honor.

12 THE COURT: All right. And I've got to decide who I'm
13 going to rule for yet, so okay. All right.
14 Thank you. All right. Any further questions on
15 direct?

16 MR. BURGESS: Actually, I do have one more.

17 THE COURT: All right.

18 MR. BURGESS: I apologize, Your Honor.

19 THE COURT: Yes, sir.

20 MR. BURGESS: And I beg the court's indulgence.

21 **Q. Ms. Plasse, related to the trust that's the plaintiff**
22 **in this action, you understand that the trust is the**
23 **owner and holder of the subject mortgage. Would that**
24 **be accurate?**

25 **A. Yes.**

Louise Plasse - Cross Examination by Mr. Mark Nunally

1 Q. And as servicing agent, you would have all the records
2 related to the existence of the trust?

3 A. Yes, we do.

4 Q. And is that evidenced in the power of attorney that we
5 referenced back on Plaintiff's Exhibit Number 1?

6 A. It is, yes.

7 Q. And is that also referenced going through the
8 documents and acknowledged by Mr. and Ms. Nunally, on
9 Plaintiff's Exhibit Number 8, the loan modification?

10 A. It is, yes.

11 Q. So back in 2009, the -- Mr. and Ms. Nunally knew they
12 were entering into the agreement with the particular
13 trust that's --

14 A. Yes.

15 Q. -- part of your action.

16 MR. BURGESS: All right. Your Honor, no further
17 questions.

18 THE COURT: All right. Cross, Mr. Nunally?

19 MR. MARK NUNALLY: Yes, sir.

20 CROSS EXAMINATION

21 BY MR. MARK NUNALLY:

22 Q. Good morning, ma'am.

23 A. Good morning.

24 Q. Would you mind stating your name again for the record,
25 please?

1 A. Louise Plasse.

2 **Q. Louise Plasse. And Ms. Plasse, would you mind stating**
3 **for the court one more time exactly why you are here**
4 **today?**

5 A. I am a witness for Onity Group. I am a senior loan
6 analyst.

7 **Q. Okay. Thank you. And in regards to the mortgage, was**
8 **NovaStar Home Mortgage, Incorporated the originator**
9 **for this loan?**

10 A. They're the -- they were the original lender for the
11 loan, yes.

12 **Q. Okay. And were they ever the endorser for this loan?**

13 A. They have an endorsement on one of the allonges.
14 NovaStar Home Mortgage, Incorporated endorsing it over
15 to JPMorgan Chase Bank as trustee.

16 **Q. Okay. And how many endorsements are you finding on**
17 **this note?**

18 A. I guess it would be three here. There's two allonges,
19 and then the stamped endorsement.

20 **Q. Two allonges and a stamped endorsement. Okay. And in**
21 **the first endorsement, do you see the company name,**
22 **NovaStar Mortgage, Incorporated?**

23 A. I see NovaStar Home Mortgage, Incorporated.

24 **Q. In the first endorsement?**

25 A. Well, I'm following -- I've been trained to follow the

1 lenders listed as NovaStar, so I would look for
2 NovaStar Home Mortgage. It's on an allonge. It's
3 then endorsed over to JPMorgan Chase. So that's the
4 first endorsement.

5 **Q. So if I'm understanding what you're saying correctly,**
6 **the first endorsement does not occur on page two of**
7 **the note?**

8 A. No.

9 **Q. No. What would that endorsement be?**

10 A. That's the endorsement from JPMorgan Chase into the
11 specific trust. And then the last endorsement would
12 be the second allonge, which references JPMorgan Chase
13 to a blank endorsement. And that would end the chain
14 of endorsements.

15 **Q. Okay. And that would be located on the page after**
16 **page 2. Is that correct?**

17 A. No. The last endorsement is the final page.

18 **Q. Last endorsement --**

19 A. Yes.

20 **Q. -- is the final page. Before that page, is NovaStar**
21 **Mortgage, Incorporated a payee?**

22 A. I don't see where you're referencing payee. I see
23 that NovaStar Home Mortgage endorses to JPMorgan
24 Chase, pay to the order.

25 **Q. Okay. I'm sorry. I had saw that as pay to the order**

1 of. And from what I can see it, it states NovaStar
2 Mortgage, Incorporated, A Virginia Corporation, and
3 also JPMorgan Chase Bank as trustee.

4 A. Correct. And then there's also the asterisk that
5 completes the information as it relates to the trust.

6 Q. Okay. All right. And then of course without
7 recourse, NovaStar Home Mortgage, Incorporated steps
8 in?

9 A. Right. Well, they're the original lender.

10 Q. They're the original lender. Okay. And however, even
11 though they are the original lender, they are not seen
12 anywhere in the endorsement on page two?

13 A. No.

14 Q. The very first endorsement on this note?

15 A. They are not. It references it in the description of
16 the trust. It references NovaStar Home Equity Loan in
17 the description of the trust.

18 Q. Okay. But no NovaStar Home Mortgage, Incorporated?

19 A. No.

20 Q. No endorsement on this page at all by the original
21 lender?

22 A. Not on the -- if you're referencing the stamped
23 endorsement, no.

24 Q. What part did NovaStar Mortgage, Incorporated play in
25 this transaction?

1 A. I can't say specifically, because that is not part of
2 the closing. So I can't say specifically what part
3 they played other than being the lender.

4 **Q. That NovaStar Mortgage, Incorporated was the lender?**

5 A. Yes.

6 **Q. Okay. Not NovaStar Home Mortgage, Incorporated?**

7 A. Well, it's one in the same. They're entities, one in
8 the same.

9 **Q. Both of these entities from your knowledge?**

10 A. Yes.

11 **Q. Are the same?**

12 A. Yes.

13 **Q. And not different subsidiary companies?**

14 A. They're the same. I don't know that much about the
15 company, but they are the same company.

16 **Q. Okay. Has NovaStar Mortgage, Incorporated in any of**
17 **your dealings ever show up in an endorsement such as**
18 **this?**

19 MR. BURGESS: Your Honor, at this time I'm going to
20 object. I mean, the document speaks for itself.
21 And it says -- I'm happy to re-direct on that
22 point. But I think he's assuming facts that are
23 not in evidence.

24 MR. MARK NUNALLY: Well, Your Honor, the reason that
25 I'm asking is, once again, if the original lender

1 here is indeed NovaStar Home Mortgage,
2 Incorporated, I'm trying to figure out on this
3 first endorsement why it is not endorsed by them
4 rather than NovaStar Mortgage, Incorporated.

5 MR. BURGESS: Your Honor, objection. Assumes facts not
6 in evidence. If you look at the allonge, it says
7 what it says. It's endorsed from NovaStar Home
8 Mortgage, Incorporated. That is the original
9 lender.

10 MR. MARK NUNALLY: And --

11 THE COURT: Are y'all looking at two different places?

12 MR. MARK NUNALLY: I am looking at page two of the note
13 at the moment.

14 MR. BURGESS: He may be looking at a different place.

15 THE COURT: All right. Let's -- let's make -- let's --
16 y'all -- I want you to look at your exhibit and
17 the witness to make sure everybody is looking at
18 the same thing.

19 MR. BURGESS: I believe her testimony was that this was
20 the first endorsement from the original lender.

21 MR. MARK NUNALLY: I understand.

22 MR. BURGESS: That would be number 2, yes.

23 MR. MARK NUNALLY: Number 2? Because this doesn't have
24 number one. This does. This does not.

25 MR. BURGESS: You're assuming facts that are not in

1 there -- in evidence. That's what she testified
2 to.

3 MR. MARK NUNALLY: I understand, but this is page one?

4 MR. BURGESS: That's page one.

5 MR. MARK NUNALLY: And this is page two?

6 MR. BURGESS: That's page two.

7 MR. MARK NUNALLY: What would this page be?

8 MR. BURGESS: That's an allonge.

9 MR. MARK NUNALLY: An allonge --

10 MR. BURGESS: It's attached to --

11 MR. MARK NUNALLY: -- that has been added.

12 MR. BURGESS: It's stamped in the document.

13 MR. MARK NUNALLY: And it came after this one. Is that
14 correct?

15 MR. BURGESS: No.

16 MR. MARK NUNALLY: It came before it?

17 MR. BURGESS: That's not what she testified to. Your
18 Honor, that was the basis for my objection. He's
19 assuming facts that were not in evidence.

20 MR. MARK NUNALLY: Oh, okay. Okay.

21 **Q. So basically, ma'am, this endorsement came after the**
22 **allonge is what you're saying?**

23 A. Yes.

24 **Q. And why would that be?**

25 A. I can't speak to those facts, because I was not at the

Louise Plasse - Redirect Examination by Mr. Burgess
1 closing. I don't know. You know, I wasn't the person
2 that generated these documents. I don't know what
3 those business practices would have been back then.

4 **Q. And there are indeed two allonges made to this note --**

5 **A. Correct.**

6 **Q. And correct me if I'm wrong, but on the last allonge**
7 **to note, do you see NovaStar Home Mortgage,**
8 **Incorporated listed anywhere on that page?**

9 **A. I do not.**

10 **Q. You do not.**

11 MR. MARK NUNALLY: Thank you very much. I don't have
12 any more questions.

13 THE COURT: All right. Any re-direct?

14 MR. BURGESS: Yes, Your Honor. Just briefly.

15 REDIRECT EXAMINATION

16 BY MR. BURGESS:

17 **Q. Just to clarify the enforcement chain. We're, for the**
18 **record, looking at Plaintiff's Exhibit Number 4.**

19 **A. Yes.**

20 **Q. The note. And that document is comprised of four**
21 **pages total. Is that correct?**

22 **A. It is, yes.**

23 **Q. And when we're talking about endorsements, we're**
24 **talking about someone signing over to a different**
25 **entity. Would that be correct?**

1 A. Yes.

2 Q. And I think you hit on this in your cross. Let's go
3 back to page one of the document, so that we can
4 follow this along. NovaStar Home Mortgage,
5 Incorporated was the original lender?

6 A. Correct.

7 Q. Is that correct? Okay. Then we go to the first
8 allonge. This is what I would call a first
9 endorsement. Is that -- is it accurate to say this
10 document reads -- it's signed by NovaStar Home
11 Mortgage, Incorporated, A Virginia Corporation into
12 NovaStar Mortgage, Incorporated. And then it has
13 beneath it the JPMorgan Bank as trustee designation.
14 And it's got the trust information --

15 A. Correct.

16 Q. -- beneath it. Is that correct?

17 A. Yes.

18 Q. Now flipping back one page to the stamp that's on the
19 document. And it's pay to the order of JPMorgan Chase
20 Bank as trustee. It's got an asterisk. And it's got
21 the entire name of the trust that's the plaintiff in
22 this action. Would that be accurate?

23 A. Yes.

24 Q. And it says without recourse, by NovaStar Mortgage,
25 Incorporated.

1 A. Yes.

2 Q. Is that correct?

3 A. Yes.

4 Q. Now going forward, JPMorgan Chase Bank as trustee to
5 page four, which is the final allonge, the final
6 endorsement, into blank, is there a signature there
7 according to act on behalf of JPMorgan Chase Bank as
8 trustee?

9 A. Yes.

10 Q. Of the trust? Into blank?

11 A. Yes.

12 Q. Now, let's talk about endorsements. Are -- you're
13 familiar that an endorsement can go on any page of the
14 document?

15 A. I am.

16 Q. And when an allonge is signed, it serves the same
17 purpose?

18 A. It does, yes.

19 Q. And it's attached to the document?

20 A. Yes, it is.

21 Q. So essentially, these stamps or these allonges are
22 incorporated into the document as if they were stamped
23 on it just like the one there on page two?

24 A. That's the way I understand it, yes.

25 Q. And that's the same information?

Louise Plasse - Recross Examination by Mr. Mark Nunally

1 A. Yes.

2 **Q. So is it your testimony that based on these**
3 **endorsements, the original note that you have there is**
4 **in the possession of the plaintiff in this action?**

5 A. Yes.

6 MR. BURGESS: No further questions, Your Honor.

7 THE COURT: All right. Thank you. Any re-cross?

8 MR. MARK NUNALLY: Yes. Yes, Your Honor.

9 RECROSS EXAMINATION

10 BY MR. NUNALLY:

11 **Q. Exactly how would you know that the plaintiff is the**
12 **holder of this particular note by way of what you've**
13 **seen in these allonges as well as that endorsement?**

14 A. Well, based on the endorsement, and in and of itself,
15 that is an indicator that the plaintiff is in
16 possession of the documents.

17 **Q. Okay. And that would be the endorsement on which**
18 **page?**

19 A. The final allonge that's typed out indicates the trust
20 and the trust information.

21 **Q. Indicates the trust, trust information, and without**
22 **recourse, paid to the order of. And who are we paying**
23 **to the order of here?**

24 A. Nobody. It's a blank endorsement.

25 **Q. Okay. And by blank endorsement, what do you mean?**

1 A. I believe my attorney alluded to the blank endorsement
2 earlier showing possession of the note.

3 THE COURT: All right. Hold on. That's a legal
4 question, and y'all can address that later. But,
5 you know, a blank endorsement basically for a
6 note is like a 20 dollar bill. It means whoever
7 has possession of it. So it doesn't have to be
8 signed -- for example, if I did a note and I
9 endorse it in blank, I could give it to Mr.
10 Gable. He could give it to her, who could give
11 it to you, who could give it -- you could give it
12 to everybody else. You don't have to write a
13 name in it if it's blank.

14 MR. MARK NUNALLY: Okay.

15 THE COURT: All right. Does that --

16 MR. MARK NUNALLY: Thank you, Your Honor.

17 MR. BURGESS: Your Honor, you took the words right out
18 of my mouth. I was writing and I was about to
19 make the objection based on calling for a legal
20 conclusion.

21 THE COURT: Well, I understand. But did that make
22 sense? It's -- a blank endorsement is basically
23 the same thing as cash.

24 MR. MARK NUNALLY: Okay.

25 THE COURT: It's possession of it. For example, if you

1 go to the -- if you go to whatever -- wherever
2 you like to get fast food, that's like -- I can't
3 decide what I want to ask. I want to use it as
4 an example. But let's say I go to Chick-Fil-A.

5 MR. MARK NUNALLY: Yes, sir.

6 THE COURT: And I give them a 20 dollar bill. They
7 don't say who gave you this bill.

8 MR. MARK NUNALLY: Yes, Your Honor.

9 THE COURT: Prove who gave you this 20. Prove who gave
10 them the 20. Prove who gave them the 20.
11 Because cash is a bearer bond. When you do a
12 promissory note, which is a promise to pay, just
13 the same thing on a legal tender, cash, you don't
14 have to put a name in it. It's whoever has
15 possession. It's just like a 20.

16 MR. MARK NUNALLY: Yes. Yes, Your Honor.

17 THE COURT: So that -- and you're both free to argue --
18 argue that at the end, but that's what it is.
19 You don't have to put a name and a bearer,
20 because it's just like a 20. You don't have to
21 when you give somebody a 20 dollar bill prove who
22 gave you the 20, who gave them the 20, who gave
23 them the 20. Same thing with a note endorsed
24 like that. Does that make sense?

25 MR. MARK NUNALLY: It does. It does.

1 THE COURT: All right. Did that -- because --

2 MR. BURGESS: Yes, Your Honor.

3 THE COURT: Because that was a legal question that was
4 being asked. Okay. All right.

5 MR. MARK NUNALLY: I get -- that's why I was kind of
6 driving to the point of exactly how would it be
7 known by a blank endorsement exactly who the
8 holder in due course of the note is precisely.

9 THE COURT: And again, it's in -- it's because I've got
10 it in my hand.

11 MR. MARK NUNALLY: Okay.

12 THE COURT: Just like a 20 dollar bill.

13 MR. MARK NUNALLY: Okay.

14 THE COURT: Yeah.

15 **Q. And ma'am, are you testifying today that the plaintiff**
16 **does indeed have it in their hand?**

17 A. I am, yes.

18 **Q. Okay. Thank you.**

19 THE COURT: All right. Okay. Anything re-direct?

20 MR. BURGESS: No re-direct, Your Honor.

21 THE COURT: Okay. All right. You can step down then.

22 MR. BURGESS: There's no further questions for --

23 THE COURT: No further questions. Wait a minute. One
24 moment.

25 (Off the Record)

1 THE COURT: Mr. Burgess?

2 MR. BURGESS: Your Honor, pending the attorney's fees
3 issue, which I would reserve, I believe that
4 conclude's the plaintiff's case in chief unless
5 you'd like to take up attorney's fees at this
6 point. It may be premature because you haven't -
7 -

8 THE COURT: All right. We're going to just hold off on
9 that right now. So you're resting? Subject to
10 the right to revisit the attorney's fees?

11 MR. BURGESS: Subject to submitting the affidavit of
12 attorney's fees. Yes, sir.

13 THE COURT: Okay. All right. Thank you. All right.
14 They've rested. Which means you can call your
15 witness or you can be sworn, or if you don't
16 intend to call any witnesses or testify about the
17 facts and the notes and all that, we can hear
18 summaries of legal argument.

19 MR. MARK NUNALLY: Your Honor, is it at that particular
20 point where summaries of legal argument that I
21 would be able to present my argument by way of
22 PowerPoint?

23 THE COURT: If you're trying to introduce documents
24 into evidence that's not into evidence now, you
25 can't do it that way. You've got to do your case

1 in chief, be sworn, and then introduce the
2 documents. Now if the PowerPoint is just a
3 summary of -- if it's legal documents, if it's
4 just case and statutes and stuff like that -- Mr.
5 Burgess, I don't think there's any reason why he
6 could not reference a PowerPoint and do an
7 argument as long as it's referencing statutes and
8 case law. He just can't put any evidence in
9 without objection. Do you --

10 MR. BURGESS: I wouldn't have any objection in a
11 summation for presenting a PowerPoint so long as
12 it didn't provide evidence that hasn't been
13 admitted --

14 THE COURT: Right.

15 MR. BURGESS: -- in trial. Practically, I don't know
16 how he's going to be able to do that unless he
17 gives access to the monitors.

18 THE COURT: All right. Okay. Are you -- can you do
19 your -- you can read off your PowerPoint, right?

20 MR. MARK NUNALLY: Yes, sir.

21 THE COURT: I mean, you can make your argument from
22 your PowerPoint there, it just wouldn't show up
23 here?

24 MR. MARK NUNALLY: Yes, sir.

25 THE COURT: Okay. All right. How long is the

1 PowerPoint?

2 MR. NUNALLY: The PowerPoint at the moment is a short
3 41 slides.

4 THE COURT: All right.

5 MR. BURGESS: And, Your Honor, I suspect this is going
6 to contain a lot of evidence that hasn't been
7 admitted rather than a summation. That's where I
8 would object. I haven't had a chance to review
9 the PowerPoint slides.

10 THE COURT: All right. That's what I was going to say.
11 Here's what we're going to do. We're going to --
12 we're going to take a break. And we're going to
13 break for 30 minutes or earlier. And what I want
14 you to do is show him your PowerPoint. And then
15 if he says that's got evidence, you've got to get
16 sworn and you've got to get it in, and I can
17 object to it, we'll do that. If you say that's
18 fine, this is just summation, I'm fine with it.
19 But he's got a right to see the evidence before
20 it comes in.

21 MR. MARK NUNALLY: Yes, Your Honor.

22 THE COURT: Like they did. They showed it and you had
23 a copy of it and you could object to it. All
24 right. So we're going to break right now -- yes,
25 sir?

1 MR. MARK NUNALLY: We also had our exhibits --

2 THE COURT: A book?

3 MR. MARK NUNALLY: And we thought that marking them
4 simply meant putting a tab on them. We were
5 ignorant to the fact that it was more than that.

6 THE COURT: Well, you can -- again, if there's stuff
7 that's valid to get in, just because you marked
8 them a certain way, you can always say this is
9 now known as Defendant's Number 1 or Defendant's
10 Number 2. You can still seek to introduce them.

11 MR. MARK NUNALLY: Yes, Your Honor. Okay.

12 THE COURT: All right. Because everybody can have
13 exhibits, but not -- that doesn't necessarily
14 mean all exhibits are proper to come into
15 evidence.

16 MR. MARK NUNALLY: Yes, Your Honor.

17 THE COURT: So you can certainly, if there are exhibits
18 that y'all can be sworn in to testify to to
19 validly testify and get into evidence, then they
20 can come into evidence, and you just mark them
21 like they did, Defendant's 1, 2, 3, 4, 5, like
22 that, and it will be marked, and you can take
23 them out of your notebook and just hand them to
24 Madam Court Reporter, and they'd be part of the
25 record.

1 MR. MARK NUNALLY: Okay.

2 THE COURT: So does that make sense how we'll do that?

3 MR. MARK NUNALLY: Yes, sir.

4 THE COURT: And you'll just have to take them out and -
5 - do you have a notebook for him?

6 MR. MARK NUNALLY: Yes.

7 THE COURT: He's got -- okay. Then you can follow
8 along. So we're going to break and we'll come
9 back at 20 till or earlier if you tell Mr. Gable,
10 but y'all take a look at it, and then just see if
11 it -- if it's just a summation argument, a legal
12 summation argument or if there are things that
13 have to be -- foundations have to be laid and
14 have to be properly moved into evidence. All
15 right. Everybody understand what we're doing?

16 MR. MARK NUNALLY: Yes, Your Honor.

17 MR. TIMOTHY NUNALLY: Are we able to, while we're
18 breaking, see if we can plug our HDMI up to the
19 monitor if he says that it's okay so that
20 everybody can see?

21 THE COURT: I think the only way that's set up is if
22 y'all switch tables. I don't -- or if you think
23 -- I'm trying to see. Yeah. I don't --

24 MR. BURGESS: I think that one goes one of the things.

25 THE COURT: Yeah. I don't know that -- the one that's

1 always done is that -- is plugged in there. And
2 I don't -- I don't know how all that stuff works.
3 People come in early and do that. The -- I mean,
4 the person you want -- I mean, he's going to look
5 at it with you.

6 MR. MARK NUNALLY: Yes, sir.

7 THE COURT: All right?

8 MR. MARK NUNALLY: Yes, Your Honor.

9 THE COURT: If y'all want me to come and sit in the
10 back of the table and look at your screen while
11 you're doing it, I can do that if you -- I mean,
12 we can do that where I can see it.

13 MR. MARK NUNALLY: Yes, Your Honor. Okay.

14 THE COURT: I'm going to give y'all, like I said, until
15 20 till. And y'all let -- Mr. Burgess, you look
16 at it, look at their PowerPoint that they're
17 getting ready to show. I'll be back, and we'll
18 deal with it then. Okay.

19 (Off the Record)

20 THE COURT: All right. We are back on the record. In
21 talking with both parties, Defendants have a
22 PowerPoint that is approximately 40 plus sides.
23 Plaintiff's counsel's has reviewed and believes
24 there may be impermissible evidence in it. So I
25 am going to move to the rear of the court where

1 we can look at defendants' testimony where I can
2 see it and also Plaintiff's counsel can see it,
3 and we will go slide by slide. And remember,
4 these slides, if they have evidence, have to come
5 in as evidence pursuant to the South Carolina
6 Rules of Evidence. So if -- for example, if --
7 if there's something in it that says my neighbor
8 said, and Plaintiff says, objection hearsay, and
9 that was correct that it was hearsay, then we'd
10 say, slide one doesn't come in because it's
11 hearsay. It's not proper evidence. All right?
12 And then we'll go to slide two. All right?

13 MR. MARK NUNALLY: Your Honor, if it's authenticated
14 evidence, is it allowed to go ahead and be
15 entered on the record?

16 THE COURT: Well, authenticate, that's what we're doing
17 right now through your testimony. You're
18 authenticating it.

19 MR. MARK NUNALLY: Okay.

20 THE COURT: That's how it gets authenticated.

21 MR. MARK NUNALLY: Do you need my seat?

22 THE COURT: No, no. I'm going to sit back here where I
23 can kind of look this way and that and not be
24 sitting next to either one of y'all at the table.

25 MR. MARK NUNALLY: Okay. Thank you, Your Honor.

Mark Anthony Nunally - Narrative Direct Testimony (pro se)

1 THE COURT: All right.

2 WHEREUPON:

3 MARK NUNALLY, being duly sworn and cautioned
4 to speak the truth, the whole truth and nothing
5 but the truth, testifies as follows:

6 THE COURT: All right. Is this Slide 1?

7 MR. MARK NUNALLY: This is indeed Slide 1.

8 THE COURT: Okay. State your name for the record.

9 MR. MARK NUNALLY: Mark Anthony Nunally.

10 THE COURT: All right. And you have participated in
11 the preparation of this PowerPoint?

12 MR. MARK NUNALLY: That is correct.

13 THE COURT: All right. And you understand we're going
14 to go through it slide by slide that I can see it
15 and Plaintiff's counsel, Mr. Burgess can see it,
16 and we'll look at it, and you'll tell what is
17 being introduced, and that you want to move it
18 into evidence. And if it comes in properly,
19 we'll talk about it. If not, we'll move on.
20 We'll say that doesn't come in as proper
21 evidence.

22 MR. MARK NUNALLY: Yes, Your Honor.

23 THE COURT: All right. So Slide 1, tell me what Slide
24 1 is.

25 MR. MARK NUNALLY: Slide 1. Plaintiff's pleaded

1 claims each must survive threshold foreclosure
2 evidence. On the left-hand side of the screen,
3 you'll see a screenshot of Plaintiff's complaint.
4 And on the left-hand side of the screen, you will
5 see that Plaintiff's have asserted the following
6 claims in request for relief. First, declaratory
7 judgement, equitable lien, seeking to reform or
8 validate a defective mortgage instrument found on
9 pages of the complaint, found on pages five
10 through nine.

11 MR. BURGESS: Your Honor, I would object to this coming
12 in as evidence. This appears to be
13 argumentative. It wouldn't be evidence, it
14 certainly -- this would be proper for a
15 summation. I don't know about the snippet from
16 the complaint due to completeness, but my
17 objection is relevance and improper argument.

18 THE COURT: All right. Slide Number 1 is what's on --
19 what has been filed.

20 MR. MARK NUNALLY: It is indeed, Your Honor.

21 THE COURT: All right. It's been filed, and so the --
22 it's page one of the complaint.

23 MR. MARK NUNALLY: It is. Yes, sir.

24 THE COURT: All right. Okay. And I'm going to allow
25 it in subject to these things. I'm going to

1 allow it in subject to the doctrine of
2 completeness. Which means since you put in one,
3 he can put in two, three, four, five, six, seven
4 -- you have to put in the whole document.

5 MR. MARK NUNALLY: Yes, sir.

6 THE COURT: All right. Now, I'm not going to -- here's
7 the thing. If we had a jury right now, again,
8 remember I'm the judge and the jury.

9 MR. MARK NUNALLY: Yes, sir.

10 THE COURT: If we had a jury over there right now, I
11 would look over at the jury and say, okay, stuff
12 on the right side have been clocked, y'all can
13 take it. Stuff on the left side, you can't,
14 because that's legal argument. So I want you to
15 disregard everything on the left -- on my left,
16 the summation, because that's argument, but you
17 can look at what's clocked. So that's my ruling.
18 What's been clocked comes in, your argument over
19 there about what they've got to prove, that's
20 argument. That doesn't come in as evidence.
21 Okay?

22 MR. MARK NUNALLY: Yes, sir.

23 THE COURT: So that's Slide Number 1. All right.

24 Jury, you understand that? Okay. Next slide.

25 Because remember as I am jury, I'm the finder of

1 fact and the law.

2 MR. MARK NUNALLY: Yes, Your Honor.

3 THE COURT: Okay. All right. What is Slide 2?

4 MR. MARK NUNALLY: Slide 2 would be the Plaintiff's
5 South Carolina Rules of Civil Procedure Rule
6 16(c), pre-trial brief.

7 THE COURT: All right. That's in on the same doctrine
8 of completeness. I mean, I've been given that
9 document. It's been filed, it's of record.
10 That's --

11 MR. BURGESS: And, Your Honor, there was one amendment
12 to that. There were some typographical errors
13 and adding Mr. Boger's name to the witness list.
14 It was inadvertently omitted.

15 THE COURT: Okay. Is that the amended one, or

16 MR. BURGESS: No, that's the original.

17 THE COURT: The original. All right. I will also
18 note for the record that under the doctrine of
19 completeness, the amended one comes in too that
20 was filed, and they come in the entirety. So
21 that's 2. All right?

22 MR. MARK NUNALLY: Yes.

23 THE COURT: Pardon?

24 MR. MARK NUNALLY: Yes.

25 THE COURT: Yes.

1 MR. MARK NUNALLY: Slide 3, Plaintiff's objective
2 statement of facts and controversy from
3 Plaintiff's South Carolina Rules of Civil
4 Procedure, Rule 16(c) pre-trial brief, explaining
5 their objective statement of facts and
6 controversy.

7 THE COURT: All right. Hold on. All right. Hold on.
8 Number 3 is what they filed?

9 MR. MARK NUNALLY: Yes, Your Honor.

10 THE COURT: All right. That's already in it -- that's
11 already on the record.

12 MR. BURGESS: That's a portion of both the original
13 and the amended pre-trial brief.

14 THE COURT: Right.

15 MR. BURGESS: This, again, just to preface. It's just
16 an argument. I'm not sure it's something --

17 THE COURT: Well, what I'm saying is is -- all -- for
18 example, you can make -- I think you can make an
19 argument of everything that's been introduced, or
20 if an attorney files it and it's given to the
21 court, some things can come in. That -- is that
22 yours or that's his?

23 MR. MARK NUNALLY: That would be the plaintiff's, Your
24 Honor.

25 THE COURT: Okay. All right. That's fine. That's

1 fine, because that's already what he's given to
2 the court, has already been filed in the record.
3 Okay.

4 MR. MARK NUNALLY: Okay.

5 THE COURT: All right.

6 MR. MARK NUNALLY: Here we have Plaintiffs intends to
7 establish the elements of his foreclosure action,
8 including but not limited to, and we go through
9 the four elements that are listed in their brief.
10 Here you would see the note.

11 THE COURT: All right, those are already in evidence.
12 That's the note. The mortgage.

13 MR. MARK NUNALLY: Mortgage.

14 THE COURT: The loan modification.

15 MR. MARK NUNALLY: Loan modification.

16 THE COURT: All right. So the note is -- that's
17 Exhibit what?

18 MR. BURGESS: Plaintiff's 4.

19 THE COURT: Okay. All right. So on Number -- so
20 you're on Number 4, right?

21 MR. MARK NUNALLY: 4, yes, sir.

22 THE COURT: So on 4, we're going to put -- the note is
23 Exhibit what?

24 MR. BURGESS: Plaintiff's Exhibit 4.

25 THE COURT: So 4, and the middle one is the mortgage?

1 Is that right?

2 MR. BURGESS: Yes, sir.

3 MR. NUNALLY: Yes, Your Honor.

4 MR. BURGESS: All right. Plaintiff's Exhibit 5.

5 THE COURT: All right. Number 5, and the one to my
6 right is the loan modification.

7 MR. MARK NUNALLY: Yes, Your Honor.

8 THE COURT: Which would be 6.

9 MR. BURGESS: I believe so. No. It is on that -- I
10 have a list. Loan modification would be Exhibit
11 8.

12 THE COURT: 8. Okay. So on Defendant's Slide Number
13 4, we'll note that the note is already in
14 evidence as Plaintiff's Exhibit -- not objected
15 to at all by the defendant. Number 4, Number 5,
16 and Number 8. So that's -- those documents are
17 already in.

18 MR. MARK NUNALLY: Okay.

19 THE COURT: All right. Slide 5.

20 MR. MARK NUNALLY: Slide 5. We now still have the
21 note, the mortgage, loan modification, first
22 assignment made, last assignment made.

23 THE COURT: All right. The page five, the only thing
24 that's adding that is new is the two assignments,
25 which are what previous number?

1 MR. MARK NUNALLY: 9 and 10.

2 THE COURT: All right. So the only thing new in your
3 Slide 5 is number -- what has already been
4 introduced is the two assignments, Number 9 and
5 Number 10.

6 MR. MARK NUNALLY: Uh-huh.

7 THE COURT: Okay. All right. Okay. All right.

8 MR. MARK NUNALLY: Here we have the note, the
9 mortgage, the loan modification.

10 THE COURT: All right. So nothing new.

11 MR. MARK NUNALLY: No, Your Honor.

12 THE COURT: Nothing new on 6. Okay. All right.

13 MR. MARK NUNALLY: Here, we have Plaintiff's
14 supplemental affidavit of attorney's fees and
15 costs.

16 THE COURT: All right. We're going to disallow Number
17 7 as -- I'm not disallowing it. It's not timely
18 yet.

19 MR. MARK NUNALLY: Yes, Your Honor.

20 THE COURT: So we're not -- we're not going to take
21 that under consideration today because I have to
22 decide. They win, and then we have to decide if
23 you all want to cross-examine. If he wins, it's
24 the reasonableness of attorney fees. So there's
25 not -- we can't testify about that now.

1 MR. MARK NUNALLY: Yes, Your Honor.

2 THE COURT: Okay. So not in, Number 7. It's not
3 timely.

4 MR. MARK NUNALLY: No, sir.

5 THE COURT: All right. Number 8?

6 MR. MARK NUNALLY: Number 8 would also list the note,
7 mortgage, and loan modification.

8 THE COURT: All right. Nothing new on 8. All right?

9 MR. MARK NUNALLY: Okay. On the next slide, we have
10 the first page of the note, and we also have --
11 let's see, I think this is page two of the note.
12 Page two of two.

13 THE COURT: All right. So the note would be -- that
14 would be Exhibit Number 4?

15 MR. BURGESS: It would be. Yes, sir.

16 THE COURT: That would be Number 4, and that's already
17 been in multiple slides. So that's in. Number 4
18 is already in evidence.

19 MR. BURGESS: Number 4 already has completeness.

20 THE COURT: Right. That's right. The whole note with
21 all the endorsements and all the different pages
22 like that. Okay.

23 MR. MARK NUNALLY: Yes, sir.

24 THE COURT: So the note.

25 MR. BURGESS: And, Your Honor, I would object to the

1 left side of the slide that, like Your Honor
2 indicated before, the authorities.

3 THE COURT: Right. Right.

4 MR. BURGESS: As evidence.

5 THE COURT: Right. All I'm looking at is the
6 documents. I'm not considering the left side or
7 the argument, because that's not what we're doing
8 right now. We're just doing end evidence. Okay.

9 MR. MARK NUNALLY: Slide Number 9.

10 THE COURT: Yeah. All right. So we're on to Number
11 10 next.

12 MR. MARK NUNALLY: Here we have the first corrective
13 assignment, pictured there. And next to that we
14 also have page one of the complaint. And last,
15 we have the filing detail of the trust from the
16 EDGAR website.

17 THE COURT: All right. Wait a minute. All right.
18 Now I want to know -- all right. Number -- the
19 first thing, the corrective assignment, that's
20 already into evidence.

21 MR. MARK NUNALLY: Yes, Yes Honor.

22 THE COURT: The second thing is page one of --

23 MR. MARK NUNALLY: The complaint.

24 THE COURT: Of the complaint.

25 MR. MARK NUNALLY: Of the complaint, yes.

1 THE COURT: That's in evidence. That's okay. Now
2 tell me what the third thing is.

3 MR. MARK NUNALLY: The third page is the filing detail
4 for the trust from the webpage of EDGAR.

5 THE COURT: All right. Mr. Burgess?

6 MR. BURGESS: Well, Your Honor, I -- authentication
7 would be the first objection. Number two, I
8 can't read the details of that, even getting up
9 close to the document.

10 MR. MARK NUNALLY: Now I can pull it up and blow it up
11 if need be.

12 THE COURT: Do you have a paper copy?

13 MR. MARK NUNALLY: I don't have a paper copy.

14 THE COURT: I thought you had it in your notebook.

15 MR. MARK NUNALLY: No, Your Honor. We do not have
16 that one.

17 THE COURT: Okay.

18 MR. MARK NUNALLY: I have it on a Word document that
19 is on the sheet. That's where it can be seen a
20 bit better than what it is now.

21 MR. BURGESS: I mean, depending on what is being
22 submitted for the context, I'm not sure what
23 other objections other than authentication would
24 be if he's just showing that the trust is out
25 there. I don't think that's a fact to dispute.

1 MR. MARK NUNALLY: Yeah, it's just showing that the
2 trust was indeed filed and brought to life back
3 in March of 2004. And this is the filing
4 information.

5 MR. BURGESS: As far as the fact, I think we'll
6 stipulate to the existence of the trust the
7 plaintiff plead in their complaint.

8 THE COURT: All right. So you're going to stipulate to
9 the -- all right. Tell me what the dates are.

10 MR. MARK NUNALLY: This would be 3/1/2004, the date
11 that the trust opened.

12 THE COURT: All right. Is that your understanding?

13 MR. BURGESS: As far as the specific date that it
14 opened, I'm not quite sure that it -- I guess I
15 should put it like this. I don't --

16 THE COURT: All right. Here's what we're going to do.

17 MR. BURGESS: I think I'll stipulate to that, that it
18 was in existence in 2004. It continues to exist
19 to date. I mean, I think we're getting into
20 cumulative evidence, but --

21 THE COURT: Yeah, but that's okay, though. That's
22 what lawsuits are sometimes.

23 MR. BURGESS: Yeah.

24 THE COURT: I know you're making the technical
25 objection. Okay. All right. So Slide Number

1 10. Okay. All three. And again, we're just
2 talking about the exhibits. We're not talking
3 about the argument on the left or the descriptive
4 phrases.

5 MR. MARK NUNALLY: Yes, sir.

6 THE COURT: All right. Okay? All right.

7 MR. MARK NUNALLY: Yes, sir.

8 THE COURT: We're on to Number 11.

9 MR. MARK NUNALLY: Here we are with 11. We have
10 assignment -- corrective assignment one, again,
11 from 7/28/23, and then the last assignment made
12 on 10/3.

13 THE COURT: All right. So, again, we've got the two
14 assignments, which are numbers 9 and 10. Is that
15 right?

16 MR. BURGESS: Which line is this?

17 THE COURT: 11.

18 MR. BURGESS: This was 9 and 10.

19 THE COURT: Yes. So 11, again, the assignments that
20 are already in evidence as 9 and 10. Again, none
21 of the argument in the middle of the page.

22 MR. BURGESS: Yeah.

23 THE COURT: All right.

24 MR. MARK NUNALLY: Here, again, we have the last
25 assignment made in October 3rd -- made on October

1 3rd, 2023, as well as another snapshot of the
2 filing detail for the trust.

3 THE COURT: Is that the same one or a different one?

4 MR. MARK NUNALLY: This is the same.

5 THE COURT: Okay, so --

6 MR. MARK NUNALLY: Because there's only one.

7 THE COURT: All right. So that's the document we were
8 previously talking about.

9 MR. MARK NUNALLY: Indeed. Yes, sir.

10 THE COURT: That he stipulated to.

11 MR. MARK NUNALLY: That's correct.

12 THE COURT: All right. So we've got one -- on Number
13 12, which is y'all's Slide 12, we've got Exhibit
14 Number 10, that's already in evidence, and we've
15 got the right side of it, which was stipulated
16 to, for just the date of the trust. All right?
17 Is that right?

18 MR. BURGESS: The existence of the trust, yes.

19 THE COURT: The trust and the date. Okay. All right.
20 So we should be on to Number 13? Is that what
21 you got?

22 MR. MARK NUNALLY: Number 13.

23 THE COURT: All right. Number 13, number -- Slide
24 Number 13.

25 MR. MARK NUNALLY: Okay. Again, here we have the

1 note.

2 THE COURT: Note and the mortgage.

3 MR. MARK NUNALLY: First page and first page of the
4 mortgage.

5 THE COURT: All right.

6 MR. BURGESS: It's 4 and 5.

7 THE COURT: Yeah, it's 4 and 5. All right. We can
8 move on to 14.

9 MR. MARK NUNALLY: Here we have a snapshot of the
10 endorsement located on page 2 of the note.

11 MR. BURGESS: That's 14, and that's Plaintiff's 4.

12 THE COURT: All right. Okay. Again, what's there,
13 not your argument on the left side. Okay. All
14 right.

15 MR. MARK NUNALLY: Here we have paragraph 7 from
16 Plaintiff's complaint, along with a snapshot of
17 the acknowledgment made on the mortgage.

18 MR. BURGESS: Again, that's part of the complaint. As
19 long as it's completeness --

20 THE COURT: Right.

21 MR. BURGESS: -- it's five

22 THE COURT: Right. Those two --

23 MR. BURGESS: Plaintiff's 5.

24 THE COURT: Yeah, those two come in, again, subject to
25 the doctrine of completeness, meaning you could

1 finish it and end it because you're taking out
2 little parts of it. All right.

3 THE COURT REPORTER: Is that 15?

4 THE COURT: Yes, ma'am.

5 THE COURT REPORTER: Okay.

6 THE COURT: So we're on number 16 now.

7 MR. MARK NUNALLY: 16. 16, again, we have another
8 snapshot of paragraph 7 and another snapshot of
9 the acknowledgment.

10 THE COURT: Okay. Same thing for number 16. All
11 right? 17 is the --

12 MR. MARK NUNALLY: 17 is the mortgage first page, as
13 well as the acknowledgment page on the mortgage.

14 THE COURT: All right. So mortgage is already in.
15 That was 4 or 5?

16 MR. BURGESS: 5.

17 THE COURT: 5, number 5. That's two pages of a
18 multi-page mortgage?

19 MR. MARK NUNALLY: Yes.

20 THE COURT: Okay. All right. Again, the document's
21 not the argument on the left side.

22 MR. MARK NUNALLY: Okay. And it's the same thing here.

23 THE COURT: All right. So we're on Number 18?

24 MR. MARK NUNALLY: 18.

25 THE COURT: All right. Number 18, same, mortgage.

1 All right?

2 MR. MARK NUNALLY: Here we have the complaint, as well
3 as the supplemental affidavit of attorney's fees.

4 THE COURT: All right. The complaint's already in
5 because the complaint's in, but the attorney
6 fees, we're delaying that until later.

7 MR. MARK NUNALLY: Okay.

8 THE COURT: All right. 20?

9 MR. MARK NUNALLY: 20. Here we have plaintiff's brief
10 again.

11 THE COURT: Okay. All right.

12 MR. MARK NUNALLY: Number 16 is the brief.

13 THE COURT: All right. Again, subject to
14 completeness. 21.

15 MR. MARK NUNALLY: Affidavit for the supplemental
16 affidavit of attorney's fees and costs.

17 THE COURT: All right. Same thing with attorney fees.
18 That issue will come up.

19 MR. MARK NUNALLY: Okay. Here we have specific parts
20 that come from Plaintiff's brief, and these parts
21 are here because of what was stated in the brief
22 by way of their sequence.

23 THE COURT: All right, hold on. This is number 21?

24 MR. MARK NUNALLY: 22.

25 THE COURT: What was 21? 21 was the attorney fee.

1 Right?

2 MR. MARK NUNALLY: Yes.

3 THE COURT: Okay, I'm sorry. You're right. 22 is the
4 sequencing. All right. What I'm going to do is
5 -- that's very -- that's very confusing the way
6 you've got it because it's part of it and it's
7 arguing about three different things. All three
8 of those things are in the record.

9 MR. MARK NUNALLY: Yes, Your Honor.

10 THE COURT: So I'm not going to allow that into
11 evidence as an exhibit because it's confusion.

12 MR. MARK NUNALLY: Yes. Okay.

13 THE COURT: It would be really confusing to a jury is
14 what that means.

15 MR. MARK NUNALLY: Yes, Your Honor.

16 THE COURT: But obviously, they're already in the
17 record, and you can make your argument about it,
18 but that's not coming in as an exhibit. So
19 Number 22 is not coming in because it's
20 confusing. That doesn't mean you can't make an
21 argument because this stuff's already in record.

22 MR. MARK NUNALLY: Okay.

23 THE COURT: All right?

24 MR. MARK NUNALLY: Thank you, Your Honor.

25 THE COURT: Again, think about showing this to a jury

1 and them going back there and making sure they
2 were able to understand what it came in for. It
3 could be confusing.

4 MR. MARK NUNALLY: Okay.

5 THE COURT: All right, so we're on Number 23?

6 MR. MARK NUNALLY: 23.

7 THE COURT: All right. Number 23.

8 MR. MARK NUNALLY: A statement made in regards to what
9 the --

10 THE COURT: All right. That's just -- that's not it.
11 All right. That's law, and that's not in.

12 MR. MARK NUNALLY: Okay.

13 THE COURT: All right. We're on 24. 24 is the note
14 and mortgage, first page.

15 MR. MARK NUNALLY: Note, mortgage, and just
16 information in regards to the threshold issue.

17 THE COURT: All right, so the only thing, again, those
18 -- those two are already in.

19 MR. MARK NUNALLY: Okay.

20 THE COURT: So that's something that's already in.

21 MR. MARK NUNALLY: Again, we have paragraph 7 as well
22 as acknowledgment made on the note -- I'm sorry,
23 on the mortgage.

24 THE COURT: Yeah, those docs are already in. Same
25 thing for completeness.

1 MR. BURGESS: And that's 25?

2 MR. MARK NUNALLY: 25.

3 THE COURT: That's 25.

4 MR. BURGESS: Is the mortgage?

5 MR. MARK NUNALLY: Paragraph 7 from the complaint.

6 MR. BURGESS: Oh, okay. And then part of the
7 mortgage. I thought that was one document.

8 THE COURT: There's two things. All right, we're 26?

9 MR. MARK NUNALLY: 26, yes.

10 THE COURT: Well, I mean, we're now --

11 MR. MARK NUNALLY: Slide 26.

12 THE COURT: Yeah, we're now on 26. Right?

13 MR. MARK NUNALLY: Yes.

14 THE COURT: Okay. All right, that's what I got. Good.

15 All right. Now 26 is --

16 MR. MARK NUNALLY: The same.

17 THE COURT: Same thing. That's already in, so that's
18 not in.

19 MR. MARK NUNALLY: 27 also, the same.

20 THE COURT: All right. 27 again, that's already in.

21 On the left, that's clearly argument. So that
22 stuff's already in on the right, but that doesn't
23 come in as evidence.

24 MR. MARK NUNALLY: Okay. Same again.

25 THE COURT: All right. Then same thing for 28.

