

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James E. Reeves, Special Referee

Appellate Case No.: 2013-000965

SCBT, NA,.....Respondent

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of
Revenue; Baird Transport, Inc,.....Defendants

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is the Appellant

RECORD ON APPEAL

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Greenville, SC 29601
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Counsel for Appellant

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-38-0030

SCBT, N.A.,)
Plaintiff,)

v.)

ORDER OF CONTINUANCE

Shelton Hoffman a/k/a Shelton)
L. Hoffman; South Carolina)
Department of Revenue; The)
United States of America acting)
by and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)
Defendants.)

This matter was scheduled for trial, along with a hearing on the Motion of Margaret Collins, Esquire to be relieved as Counsel for the Defendant, Shelton Hoffman, for January 10, 2013 at 2:00 p.m. at the Orangeburg County Courthouse. On January 9, 2013, the Court was informed that the Defendant, Shelton Hoffman, had been hospitalized and his attorney, Margaret Collins, requested a continuance on his behalf. In response, Harriet Wallace, the attorney for the Plaintiff, requested a Status Conference, which was held via telephone in lieu of the trial. The Status Conference was attended by Harriet Wallace, Margaret Collins, and Thomas Gore, attorney for the Defendant, Baird Transport, Inc. After review of the Court file and conferring with the above referenced Counsel, the Court Orders as follows:

- 1) The trial of this matter along with the Motion to be Relieved as Counsel, is hereby continued until further notice;

2) Mr. Hoffman is to provide to the Court, no later than Tuesday, January 15, 2013 at 5:00 p.m., a letter from his doctor indicating when he would be able to participate in a trial.

The parties have been given notice that the Court is not inclined to delay this case any further. In light of the pending Motion to be Relieved, the Defendant, Shelton Hoffman, is again advised to immediately seek counsel or be prepared to appear without the assistance of counsel.

IT IS SO ORDERED.

January 10, 2013
Summerville, South Carolina

James E. Reeves
James E. Reeves, as Special Referee
for Orangeburg County

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, N.A.,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman,
South Carolina Department of Revenue, The
United States of America acting By and
through its agent The Internal Revenue
Service, and Baird Transport, Inc.,

Defendants.

(016555-00055 HPW)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2012-CP-38-0030

**ORDER REFERRING
CASE TO**

James E. Reeves

VICE

O. Davie Burgdorf

Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, the above entitled case is an action for foreclosure and was referred to O. Davie Burgdorf, as Master in Equity for Orangeburg County on February 27, 2012. Thereafter, Judge Burgdorf recused himself as Master in Equity in this action.

IT IS THEREFORE ORDERED, that this action is referred to James E. Reeves as Special Referee (Orangeburg County) vice O. Davie Burgdorf to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. James E. Reeves shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, James E. Reeves shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any

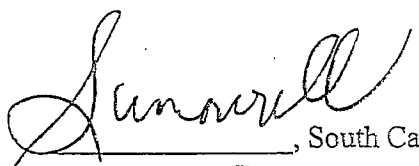
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Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b).



Diane S. Goodstein
Chief Administrative Judge



Sumner, South Carolina

Date: 10-28 2012

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; The United
States of America acting by and through its agency
the Internal Revenue Service; Baird Transport,
Inc.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

ORDER GRANTING CONTINUANCE
OF DEFENDANT SHELTON L. HOFFMAN
AND STIPULATIONS OF COUNSEL

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

(016555-00055 TKS)

 This matter is before the Court at the scheduled foreclosure hearing on June 26, 2012. Before the start of the foreclosure hearing, the Court heard Defendant Shelton Hoffman's Motion for Continuance. Defendant Shelton Hoffman (Defendant) was informed when the original May 8, 2012 foreclosure hearing was continued that this matter would not be continued thereafter and that if Defendant wanted to be represented, he should seek counsel immediately. Notice of the June 26th hearing was sent on May 10, 2012 and on May 30, 2012, Margaret A. Collins, Esquire served her Notice of Appearance in this matter. Despite adequate notice of the hearing, Ms. Collins filed Defendant Hoffman's "First Supplemental Notice of Motion, Motion to Strike Plaintiff's Answer, or in the Alternative, Motion to Require Amendment of Complaint and Motion to Add Indispensable Party and Motion for Continuance" on June 22, 2012. I granted Defendant's Request for Continuance to allow for additional time for discovery but contingent upon the hearing occurring no later than August 10, 2012 to avoid further delay and continuances.

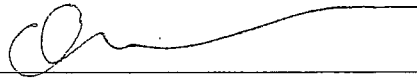
Furthermore, counsel for Plaintiff and Defendant stipulated to the following and I hereby order as follows:

1. Defendant's "Motion to Cancel Hearing and Motion to Dismiss Foreclosure Action and All Related

Actions” filed April 23, 2012 and Defendant’s “Amended Motion to Cancel Hearing and Motion to Dismiss Foreclosure Action and All Related Actions” filed May 3, 2012 shall be stricken, except as to the issue of whether or not the *Matrix* defense was properly before the Court.

2. The loan which is the subject of this action is a commercial loan.
3. Plaintiff will not object to a timely petition by Defendant to seek an appraisal under the S.C. appraisal rights statute, in the event of a deficiency.
4. Upon proof of then existing hazard insurance coverage on the collateral which is the subject of this action, Plaintiff will credit Defendant’s loan for such periods as were covered by the then existing hazard insurance and any late fees associated therewith.
5. This action will proceed pursuant to these stipulations.

AND IT IS SO ORDERED.



O. Davie Burgdorf
Master in Equity

Orangeburg, South Carolina

6/27, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; Baird Transport,
Inc.;

Defendants.

(016555-00055)

Harriet Pollitt Wallace, Esquire
Teri K. Stomski, Esquire
Attorneys for the Plaintiff

Shelton Hoffman a/k/a Shelton L. Hoffman
Pro Se Defendant

Milton G. Kimpson, Esquire
Attorney for South Carolina Department of Revenue

Thomas M. Gore, Esquire
Attorney for Baird Transport, Inc.

A hearing was held February 12, 2013 at 10:00 a.m. Evidence was presented, which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT AND PROCEDURAL HISTORY:

1. The Lis Pendens was filed on January 12, 2012.
2. The Summons and Complaint were filed on January 12, 2012.
3. Service was made upon all Defendants as shown by the proofs of service filed herein.

4. The Defendant Shelton Hoffman a/k/a Shelton L. Hoffman is not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.

ATTEST: TRUE COPY
Wingia B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

JUDGMENT OF FORECLOSURE AND SALE
Deficiency Judgment Demanded
against Shelton Hoffman

5. No Defendant raised any issues related to Plaintiff's standing to prosecute this action.

6. The parties have stipulated that the loan in issue is commercial loan. As a result, the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 and 2009-05-2-01 Administrative Order are not applicable.

7. Shelton Hoffman a/k/a Shelton L. Hoffman filed an answer which did not deny any of the allegations in the Complaint, but alleged that the debt had been paid.

8. South Carolina Department of Revenue filed an answer through its attorney, Milton G. Kimpson.

9. The United States of America acting by and through its agency the Internal Revenue Service ("IRS") filed an answer through its attorney, Matthew J. Modica. Thereafter, Defendant IRS was dismissed from the action as shown by the Stipulation of Dismissal filed herein.

10. Baird Transport, Inc. filed an answer through its attorney, Thomas M. Gore.

11. Four final foreclosure hearings have been scheduled in this case, with this being the fourth.

12. The first foreclosure hearing was scheduled for May 8, 2012, before the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County. At that hearing, Defendant Hoffman did not appear, but instead his purported representative, Ronnie Hoffman, appeared. Judge Burgdorf continued the case and ordered that Ronnie Hoffman could not represent Defendant Hoffman, and if Defendant Hoffman "wanted to be represented, he should seek counsel immediately." See Order Granting Continuance of Def. Hoffman and Stipulations of Counsel, Jul. 13, 2012.

13. The second foreclosure hearing was scheduled for June 26, 2012, and notice of the hearing was served by Plaintiff's counsel on May 10, 2012. On May 30, 2012, Margaret A. Collins, Esquire filed a Notice of Appearance. Thereafter, on June 22, 2012, Ms. Collins filed Defendant Hoffman's First Supplemental Notice of Motion, Motion to Strike Plaintiff's Answer, or in the Alternative, Motion to Require Amendment of Complaint and Motion to Add Indispensable Party and Motion for Continuance. Judge Burgdorf granted Defendant Hoffman's request for continuance "to allow additional time for discovery but contingent upon the hearing occurring no later than August 10, 2012 to avoid further delay and continuances." See Order Granting Continuance of Def. Hoffman and Stipulations of Counsel, Jul. 13, 2012. At the hearing, Defendant Hoffman, through his attorney, withdrew Defendant's Motion to Cancel Hearing and Motion to Dismiss Foreclosure Action and All Related Actions filed April 23, 2012, and Defendant's Amended Motion to Cancel Hearing and Motion to Dismiss Foreclosure and All Related Actions filed May 3, 2012, except as to the issue of whether or not the *Matrix* defense was properly before the Court.

14. On September 12, 2012, in light of his upcoming retirement, Judge Burgdorf recused himself and remanded the case back to the Clerk of Court to have a Special Referee appointed.

15. On or about September 12, 2012, Margaret A. Collins, Esquire and Collins & Burkett Law Firm, LLC filed a Notice of Motion and Motion to Be Relieved as Counsel. Pursuant to the certificate of service filed herein, all attorneys of record and Defendant Hoffman were served with a copy of same. On November 2, 2012, an Order Referring Case to James E. Reeves vice O. Davie Burgdorf was entered.

16. On or about December 14, 2012, all attorneys of record were notified of the time, date, and place of the January 10, 2013 hearings on Margaret A. Collins, Esquire and Collins & Burkett Law Firm, LLC's Motion to Be Relieved as Counsel and the final foreclosure hearing by notice and certificates of mailing of record herein.

17. Defendant Hoffman filed an Objection to Motion to Be Relieved as Counsel and Motion to Delay Foreclosure Hearing on January 2, 2013, *pro se*. In response to Defendant's motion, on January 4, 2013, this Court advised Defendant Hoffman that it was "not inclined to delay the matter further" on the grounds that the matter had already been continued and that the Motion to be Relieved as Counsel had been filed for four months, giving Defendant ample opportunity to obtain new counsel if he desired. This Court also advised Defendant Hoffman that both the Motion of Margaret A. Collins, Esquire and Collins and Burkett Law Firm, LLC to be Relieved of Counsel and the foreclosure case were both scheduled for January 10, 2013 at 2:00 p.m. and that regardless of the Court's ruling as to the Motion to be Relieved that the Defendant Hoffman should be prepared to proceed with the foreclosure matter. Accordingly, this Court advised the Defendant Hoffman to seek immediate counsel.

18. On January 8, 2013, Defendant Hoffman filed Defendant's Memorandum in Support for Injunctive Relief and Declaratory Judgment, *pro se*.

19. Due to the illness of Defendant Hoffman, the January 10, 2013 hearing was continued and instead, the Court held a telephone status conference. Present at the status conference were Harriet Pollitt Wallace, attorney for Plaintiff; Margaret A. Collins, attorney for Shelton Hoffman; Thomas M. Gore, attorney for Baird Transport; and Jim Boyd, representative of SCBT. At the status conference, the Court declined to rule on Ms. Collins' Motion to be Relieved. The Order of Continuance specifically stated that the parties had been given notice that the Court was not inclined to delay this case any further and that in light of the pending Motion to be Relieved, the Defendant, Shelton Hoffman, was again advised to immediately seek counsel or be prepared to appear without the assistance of counsel.

20. Notice of this hearing was served on all parties by Notice of Hearing served on January 22, 2013, and filed herein. This Notice specifically stated that the parties were again notified that the Court was not inclined to delay this case any further and that in light of the pending Motion to be

Relieved, the Defendant, Shelton Hoffman, was again advised to immediately seek counsel or be prepared to appear without the assistance of counsel.

21. Pursuant to the Complaint and Plaintiff's Exhibit 1 admitted at the trial without objection, I find that Shelton Hoffman for value received, made, executed and delivered a promissory note dated April 27, 2009 (the "Note") promising thereby to pay to SCBT, N.A. in the sum of \$92,568.00. Pursuant to the express terms of the Note, Defendant Hoffman agreed that the Note would be secured by a real estate mortgage dated October 21, 2003 in the name of Shelton Hoffman aka Shelton L. Hoffman and a Security Agreement dated November 13, 2008, as further described below.

22. The Note states that it is secured by a Real Estate Mortgage dated October 21, 2003 executed by Defendant Hoffman. At the trial, the real estate mortgage ("Mortgage") executed by Shelton Hoffman a/k/a Shelton L. Hoffman in favor of South Carolina Bank and Trust, N.A. covering real property located in Orangeburg County described as it is in the Complaint was admitted into evidence as Exhibit 2. The Mortgage was filed on October 21, 2003, and is of record in the Office of RMC/ROD in Book 1394 at page 239 and specifically states that it secures all present and future obligations of Hoffman to Plaintiff under any promissory note, contract, guaranty, or other evidence of debt existing at or after the execution of the mortgage. See S.C. Code Ann. § 29-3-50.

23. At the hearing, Plaintiff's counsel stipulated that Defendant Hoffman's prior counsel had provided a copy of a deed from Defendant Hoffman to Alan Hoffman (the "Alan Hoffman Deed") recorded in the Office of the Register of Deeds Office for Orangeburg County in Book 634 at Page 1031 on October 1, 1996, which was admitted into evidence without objection. Plaintiff stipulated, without objection, that the foreclosure decree and notice of sale should less and except the property referenced in the Alan Hoffman Deed since it was recorded prior to the Mortgage which is the subject of this foreclosure action. The Alan Hoffman Deed indicates that Defendant Hoffman conveyed the following property out of the 55.5 acre tract described in the Mortgage to Alan Hoffman:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 1.35 acres, more or less, situate, lying and being in School District 6, Elizabeth Township, County of Orangeburg, State of South Carolina, being more particularly shown and delineated on a plat prepared for Alan Hoffman by Douglas E. Platt, Sr., SPLS, dated September 12, 1996 and recorded in the office of the RMC for Orangeburg County in Plat Book 75-S at Page 459, bounded and measured as follows: On the Northeast by property now or formerly of Shelton Hoffman and measuring thereon 350.00 feet; on the Southeast by property now or formerly of Shelton Hoffman and measuring thereon 175.00 feet; on the Southwest by property now or formerly of Shelton Hoffman and measuring thereon 350.00 feet; and on the Northwest by the 66 foot right-of-way of Lightning Hill Road (S-38-99) and measuring thereon 175.00 feet; be all measurements a little more or less.

For a more complete and accurate description references craved to the above

description plat which is incorporated herein and made a part of this description by reference.

This being a portion of the same property devised to the grantor, Shelton Hoffman, by the Last Will and Testament of Theodore Koins Hoffman, which was duly admitted to Probate on June 29, 1979 and filed in the office of Probate Court for Orangeburg County in Apartment 583 at Package 3.

Tax Map No. 0088-00-00 012 000

Said conveyance is subject to a dirt drive extending along the Southwestern boundary of subject property and subject to a power line extending along the Southwestern boundary of subject property, all as set forth and shown on the above referenced plat.

24. The Mortgage, subject to the property conveyed in the Alan Hoffman Deed, constitutes a priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

25. Plaintiff testified at the hearing that South Carolina Bank and Trust, N.A. changed its name to SCBT, N.A., and then recently to SCBT. I find that Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and Security Agreement, and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

26. On or about November 13, 2008, Defendant Hoffman executed a Commercial Security Agreement in favor of SCBT, N.A., its successors and assigns, securing all present and further obligations of Hoffman to Plaintiff, in which Defendant Hoffman pledged a Link Belt Excavator, 1979 Intl Truck, Dump Wagon, and 1994 Landoll 30 Ton Lowboy. See Plaintiff's Exhibit 3, which was admitted into evidence. Plaintiff's security interest in the Link Belt Excavator and Dump Wagon is perfected pursuant to that certain UCC-1 Financing Statement the South Carolina Secretary of State's Office in file number 050819-1542432, and the security agreement 1994 Landoll 30 Ton Lowboy is perfected pursuant to that certain UCC-1 Financing Statement filed in the South Carolina Secretary of State's Office in file number 060313-1127451, including all continuations and amendments thereto. Plaintiff indicated that it is not seeking claim and delivery of the property described in the Security Agreement or UCC-1 Financing Statements until and unless the real property being foreclosed fails to satisfy the judgment.

27. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder or nominee for the holder thereof, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of the attorney herein for remedy by foreclosure.

28. The sum of \$59,543.91 is a reasonable fee to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. A review of the Court file, along with the Affidavit of Plaintiff's counsel, indicates an extraordinary amount of time and effort was required for this case, mainly caused by the actions of the Defendant, Shelton Hoffman. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel, their experience in handling foreclosure matters, and the numerous filings of Defendant in this action. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

29. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note, Mortgage, and Security Agreement is as follows:

- (a) Principal due June 5, 2011 \$81,858.19
- (b) Interest from June 5, 2011 through
February 12, 2013 at 7% per annum \$9,838.45*
- (c) Allowable Advances (paid attorney fees and costs)..... \$40,160.11
Paid Hourly Contested Litigation Fees (188.75 hrs.) - \$37,581.25
Paid Litigation Costs - \$2,578.86
- (d) Attorney Fee (awarded herein, but unpaid)..... \$18,983.80
Unpaid Hourly Fees for Contested Work (73.40 hrs.) - \$13,056.25
Anticipated Attorneys' Fees - \$5,000.00
Unpaid Litigation Costs - \$927.55
- (e) Allowable Escrow Advances \$2,666.64
[Insurance paid by Plaintiff - \$1,105.09 but waived per Plaintiff]
2011 Taxes Paid on Parcel 1 by Plaintiff - \$2,253.09
2011 Taxes Paid on Parcel 2 by Plaintiff - \$113.54
- (f) Allowable Late Charges \$540.18
- (g) Credit for 2009 and 2010 Force Placed Insurance (\$3,021.11)

TOTAL debt secured by Note and Mortgage,
including interest to date shown..... \$151,026.26

*Interest continues to accrue at \$15.92 per diem

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 7% per annum (pursuant to the terms of the Note). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the Mortgage and Security Agreement through the date to which such interest is computed.

30. Plaintiff is seeking the usual foreclosure of the mortgage and has expressly demanded the right to a personal or deficiency judgment pursuant to S.C. Code Ann. §29-3-660 demanded against Shelton Hoffman. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

31. Plaintiff submitted Testimony and other evidence proving the final debt owed as referenced herein is due and owing and unpaid by or on behalf of Defendant Hoffman.

32. Therefore, based on evidence presented, I find Defendant Hoffman is in default of the Note, Mortgage, and Security Agreement and Plaintiff is entitled to foreclose and seek Judgment in amount of final debt owed as referred herein against Defendant Hoffman.

33. The following Defendants may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendants may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendants and such liens or legal interests are as follows.

a. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Shelton Hoffman; Tax Lien No.: 3-50773619-9; Dated: December 6, 2006; Recorded: January 16, 2007; in the amount of \$846.69; in Book 214 at Page 15.

b. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Hoffman Electric Inc.; Tax Lien No.: 3-508001890-0; Dated: February 1, 2007; Recorded: May 2, 2007; in the amount of \$533.27; in Book 216 at Page 171.

c. Baird Transport, Inc., by virtue of a Judgment, including but not limited to, a lien against Hoffman Produce (Shelton Hoffman) Judgment Roll Number 2007-899; recorded August 21, 2007; in the amount of \$2,958.10.

IT IS THEREFORE ORDERED:

34. Margaret A. Collins and Collins & Burkett Law Firm, LLC's Motion to Be Relieved as Counsel is Granted.

35. Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order dated May 22, 2009 and the South Carolina Supreme Court Administrative Order dated May 2, 2011, and the foreclosure sale may proceed.

36. After all payments have been applied, the sum of \$151,026.26 as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

37. Plaintiff shall have judgment demanded against Shelton Hoffman. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale. In addition, in the event of a deficiency, Plaintiff may seek possession of the collateral referenced in the Security Agreement.

38. The amount due (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the note rate of 7.0% per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

39. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

40. The Defendant liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 7% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

41. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Orangeburg County Courthouse, in the City of Orangeburg, and State of South Carolina on a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the

amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 7%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

42. Personal or deficiency judgment having been demanded, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. Sec. 15-39-720 (1976).

43. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

44. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

45. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

46. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

47. The Master in Equity or Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same; After crediting the proceeds of sale, net of any commission on sale, an Order for Deficiency Judgment shall be entered without further notice or hearing.

NEXT: Any surplus should be held pending further Order of this court.

48. In the event the successful bidder is someone other than the Defendant in possession of the subject property, the Sheriff of Orangeburg County is ordered and directed to eject and remove from the property the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

49. In the event the successful bidder is other than the Defendant in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

50. The Defendants named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

51. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

52. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within

action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

53. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

54. The following is a description of the property herein ordered to be sold, which less and excepts a parcel which appears to have been conveyed out prior to the execution of the mortgage which is the subject of this action:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property

now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightning Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001
0089-00-03-003

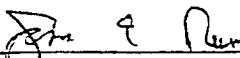
LESS AND EXCEPT:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 1.35 acres, more or less, situate, lying and being in School District 6, Elizabeth Township, county of Orangeburg, State of south Carolina, being more particularly shown and delineated on a plat prepared for Alan Hoffman by Douglas E. Platt, Sr., SCPLS, dated September 12, 1996 and recorded in the Office of the RMC for Orangeburg County in Plat Book 755 at Page 459, bounded and measuring as follows: On the Northeast by property now or formerly of Shelton Hoffman and measuring thereon 350.00 feet; on the Southeast by property now or formerly of Shelton Hoffman and measuring thereon 175.00 feet; on the Southwest by property nor or formerly of Shelton Hoffman and measuring thereon 350.00 feet; and on the Northwest by the 66 foot right-of-way of Lightning Hill Road (S-38-99) and measuring thereon 175.00 feet; be all measurements a little more or less.

For a more complete and accurate description references craved to the above described plat which is incorporated herein and made a part of this description by reference.

This being the same property conveyed to Alan Hoffman by Deed of Shelton Hoffman dated October 1, 1996 and recorded in the Office of the RMC for Orangeburg County on October 1, 1996 in Deed Book 634 at Page 1031.

Said conveyance is subject to a dirt drive extending along the Southwestern boundary of the subject property and subject to a power line extending along the Southwestern boundary of the subject property, all as asset forth and shown on the above referenced plat.


James E. Reeves
Special Referee

3/13, 2013
Orangeburg, South Carolina

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: SCBT, N.A. vs. Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; Baird Transport, Inc., C/A No. 12-CP-38-0030, The following property will be sold on ~~April 1, 2013~~, at 2:00 PM at the Orangeburg County Courthouse to the highest bidder:

May 6, 2013 JER

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

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Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightning Hill Road.

ATTEST: TRUE COPY

Winnie B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SC

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001 and 0089-00-03-003

LESS AND EXCEPT:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 1.35 acres, more or less, situate, lying and being in School District 6, Elizabeth Township, county of Orangeburg, State of south Carolina, being more particularly shown and delineated on a plat prepared for Alan Hoffman by Douglas E. Platt, Sr., SCPLS, dated September 12, 1996 and recorded in the Office of the RMC for Orangeburg County in Plat Book 755 at Page 459, bounded and measuring as follows: On the Northeast by property now or formerly of Shelton Hoffman and measuring thereon 350.00 feet; on the Southeast by property now or formerly of Shelton Hoffman and measuring thereon 175.00 feet; on the Southwest by property nor or formerly of Shelton Hoffman and measuring thereon 350.00 feet; and on the Northwest by the 66 foot right-of-way of Lightning Hill Road (S-38-99) and measuring thereon 175.00 feet; be all measurements a little more or less.

For a more complete and accurate description references craved to the above described plat which is incorporated herein and made a part of this description by reference.

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Said conveyance is subject to a dirt drive extending along the Southwestern boundary of the subject property and subject to a power line extending along the Southwestern boundary of the subject property, all as asset forth and shown on the above referenced plat.

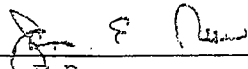
SUBJECT TO ASSESSMENTS, ORANGEBURG AD VALOREM TAXES, EASEMENTS AND/OR, RESTRICTIONS OF RECORD, AND OTHER SENIOR ENCUMBRANCES.

TERMS OF SALE: A 5% deposit in certified funds is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit on the day of sale or fails or refuses to comply with the bid within 30 days, then the property will be resold at the bidder's risk. Personal or deficiency judgment having been demanded or reserved, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. §15-39-720 (1976). The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 7% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Orangeburg County Clerk of Court at C/A #12-CP-38-0030.

1

NOTICE: The foreclosure deed is not a warranty deed. Interested bidders should satisfy themselves as to the quality of title to be conveyed by obtaining an independent title search prior to the foreclosure sale date.

Harriet Pollitt Wallace, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 771-7900
016555-00055



James E. Reeves
Special Referee

Website: www.rtt-law.com (see link to Resources/Foreclosure Sales)

NOTICE TO PRINTER: Please insert:

____ Once during week commencing _____
____ Once during week commencing _____
____ Once during week commencing _____

CERTIFICATE OF SERVICE BY MAIL

Civil Action Number 2012-CP-38-0030

I, Nancy Byers, an employee for the firm of Rogers Townsend & Thomas, PC hereby certify that on the March 18, 2013 I caused a copy of the following to be sent by electronic mail, postage prepaid to the parties shown below:

Documents Served:

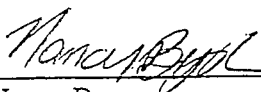
Judgment of Foreclosure and Sale
Notice of Sale
Form 4 Order

Parties Served:

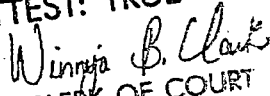
Shelton Hoffman a/k/a Shelton L. Hoffman
2944 Redmond Mill Road
North, SC 29912

Milton G. Kimpson, Esquire
SC Department of Revenue
PO Box 12265
Columbia, SC 29211

Thomas M. Gore, Esquire
McCorkle & Johnson, LLP
319 Tattnall Street, LLP
Savannah, GA 31404



Nancy Byers

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; Baird Transport,
Inc.

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

REPORT ON SALE AND DISBURSEMENTS
AND ORDER CONFIRMING SALE

Deficiency Judgment Waived

FILED FOR RECORD
JAN 17 2013
CLERK OF COURT
ORANGEBURG COUNTY

2013 MAY 17 PM 11:45

(016555-00055)

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned sold the property, subject of this action, for the sum of \$125,000.00, that amount being the highest bid made on Sales Day May 6, 2013 which sale, according to statute, was final.

2. The undersigned has executed and delivered to SCBT a good and sufficient deed.

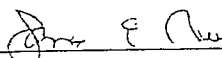
3. The following costs have been incurred and funds received and disbursed as set out below:

Bid Amount	\$125,000.00
Received from Plaintiff	\$2,000.00
Constructive Receipts	<u>\$123,000.00</u>
Total Receipts	\$125,000.00

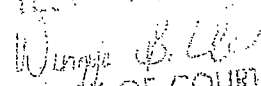
Disbursements

Reference Fee	\$750.00
Commission on Sale	<u>\$1,250.00</u>
Total Disbursed	\$2,000.00

All of the funds having been disbursed, I hereby ORDER the file closed and the case ended.


James E. Reeves
Special Referee

Orangeburg, South Carolina
May 13, 2013


CLERK OF COURT
ORANGEBURG COUNTY

Att: Rogers Townsend
P.O. Box 100200
Columbia SC 29202

M-BK: 02271 PG:0174

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; Baird Transport,
Inc.

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

SATISFACTION OF MORTGAGE BY
FORECLOSURE

Deficiency Judgment Waived

(016555-00055)

The lien of that certain mortgage given by Shelton Hoffman a/k/a Shelton L. Hoffman to South Carolina Bank and Trust, N.A. recorded in **Mortgagee Book 1394 at Page 239** in the Office of the RMC/ROD is released, canceled and satisfied by foreclosure sale on May 6, 2013 which sale, according to statute, was final.

Also, the subordinate lien(s) of any lien creditor who was duly made a party to the referenced foreclosure is/are released, as to these mortgaged premises only, in accordance with S.C. Code § 15-39-880.

James E. Reeves

James E. Reeves
Special Referee

May 13, 2013
Orangeburg, South Carolina

FILED May 31, 2013 04:43:07 pm
BOOK 02271
PAGE 0174 THRU 0174
INSTRUMENT # 2013001954

Bill Addison
Signature

FILED
ORANGEBURG
COUNTY
BILL ADDISON
REGISTER
OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; Baird Transport,
Inc.;

Defendant(s).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

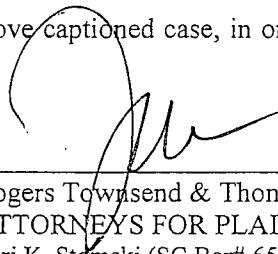
WAIVER OF DEFICIENCY JUDGMENT

2013 APR 10 PM 7:59

TM

(016555-00055)

The Plaintiff, SCBT, NA, through its attorneys, hereby waives all rights it may have to a personal or deficiency judgment in the above captioned case, in order that the sale may become final on the scheduled sales day.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Teri K. Stomski (SC Bar# 65250)

Harriet Pollitt Wallace (SC Bar# 69454)

220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
April 8, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James E. Reeves, Special Referee

Case No. 2012-CP-38-0030

Shelton Hoffman a/k/a Shelton L. Hoffman.....Appellant

v.

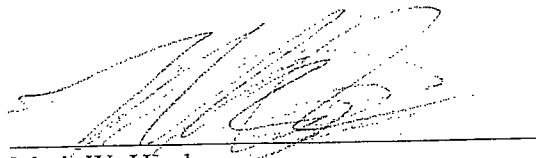
SCBT, NC.....Respondents

NOTICE OF APPEAL

Shelton Hoffman a/k/a Shelton L. Hoffman, hereby gives Notice of Appeal from the judgment of the James E. Reeves, Special Referee for the County of Orangeburg in the above captioned action, filed March 19, 2013.

APPEAL
FILED
CLERK OF COURT
ORANGEBURG COUNTY
SOUTH CAROLINA
MAY 1 2013

MARK W. HARDEE, ATTORNEY AT LAW

A handwritten signature in dark ink, appearing to read 'Mark W. Hardee', is written over a horizontal line.

Mark W. Hardee
Attorney for the Appellant
2301 Devine St
Columbia, South Carolina 29205
(803) 799-0905
(803) 799-0470 (fax)

Columbia, South Carolina
May 7, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; The United States of America acting by and through its agency the Internal Revenue Service; Baird Transport, Inc.;

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

PLAINTIFF'S RESPONSE TO
DEFENDANT SHELTON HOFFMAN'S
MOTION TO COMPEL

FILED
FEB 13 AM 11:20
CLERK OF COURT
ORANGEBURG

(016555-00055 HPW)

TO: MARGARET A. COLLINS, ESQUIRE, ATTORNEY FOR THE DEFENDANT
SHELTON HOFFMAN

Plaintiff by and through its undersigned attorney, objects to the Motion to Compel by Defendant Shelton Hoffman, and respectfully requests this Court issue an order denying the relief sought by Defendant Hoffman, on the grounds that the Motion is untimely and the information sought is not relevant to the present case.

1. Plaintiff has fully complied with discovery requests

Defendant's Motion to Compel is unclear regarding what Defendant Hoffman complains has not been produced by Plaintiff. In the Motion to Compel, Defendant states:

Specifically, Plaintiff produced original documents twice to Defendant or Defendant's representative. No disclosure was made that the October 21, 2003 Note was a copy at any time. However, Defendant's expert has provided evidence that the October 21, 2003 Note was not an original. The undersigned communicated with Plaintiff by email dated January 22, 2013 requesting responses to its discovery, more specifically to allow inspection of the original note in this matter, in an attempt to resolve the issue contained in this motion, a copy of which is also attached hereto.

This discovery request was not proper in that it does not comply with Rules 26 and Rule 34(b), SCRPC. "The request shall set forth the items to be inspected either by individual item or

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG

by category, and describe each item and category with reasonable particularity.” Rule 34(b), SCRCP.

Plaintiff was not provided with any written request regarding what Defendant Hoffman’s representatives wanted to review, other than the Requests for Production. The only two Requests for Production which can be applicable are:

4. Originals of all documents signed in connection with the loan which was obtained to purchase the property which is the subject of this action. If the original is not available, specify the reason and whether or not the original still exists.

RESPONSE: Plaintiff does not have any documents, original or otherwise, signed in connection with a loan obtained to purchase the property that is the subject of this action.

5. Allow for inspection of all original notes, mortgages and modification documents.

RESPONSE: Plaintiff will allow Defendant to inspect all original notes, mortgages and modification documents at a reasonable date and time suitable to the parties.

Based on the Requests for Production set forth above, Plaintiff provided Defendant Hoffman and his representatives with the original notes and mortgage in its possession, and copies of notes which had been paid out.

2. Discovery Requests Irrelevant Pursuant to Rule 26, SCRCP

Plaintiff is in possession of the original final note and mortgage which are the subject of the foreclosure action. Plaintiff is unaware of any statute that requires a lender to keep an original note which has been paid off. Plaintiff’s counsel has attempted to explain this to Defendant Hoffman’s counsel. To the extent Defendant Hoffman is attempting to compel original notes which have been paid off, the requests are not relevant to this action pursuant to Rule 26, SCRCP.

3. Discovery after August 10, 2012 was barred by Court.

Judge Burgdorf ordered that discovery be completed no later than August 10, 2012. See *Order Granting Continuance of Defendant Shelton Hoffman and Stipulations of Counsel*, dated June 27, 2012. The only note being foreclosed in this action is the final note dated April 27, 2009, since it supersedes all prior notes. There is no dispute that the original April 27, 2009 note and original mortgage have been shown to Defendant Hoffman or his representatives at the May 8, 2012 hearing, and were made available on June 19, 2012 and June 22, 2012, which were times

in which Defendant Hoffman noticed the deposition of an employee of Plaintiff, but then subsequently cancelled. It was not until the day before the third scheduled hearing that Defendant scheduled a time to have his alleged expert review any documents. Plaintiff never represented that it was in possession of the original October 2003 note, and it does not take an expert to determine it is not an original. In fact, the 2003 note has fax transmittal language at the top, just as there is on the copy attached to the Complaint.

4. All discovery, including this Motion to Compel, have been untimely.

Throughout this litigation, Defendant Hoffman has abused the discovery rules and deadlines by serving discovery requests, notices of depositions and subpoenas at the last minute, despite having plenty of time in which to serve discovery or request additional information.

Notice of the second final foreclosure hearing, scheduled for June 26, 2012, was served on May 10, 2012. On May 30, 2012, Ms. Collins filed her notice of appearance. On June 14, 2012, Defendant Hoffman served Plaintiff with Interrogatories and Requests to Produce. Rule 33 and Rule 34, SCRCP, allow the party in which discovery being served thirty (30) days to respond to interrogatories and requests for production. However, these requests were served by Defendant Hoffman only twelve days prior to the final hearing. Despite the limited time, Plaintiff responded on June 18, 2012 so that the June 23, 2012 hearing would not need to be continued.

Also on June 14, 2012, Defendant Hoffman noticed the Deposition of Bruce Rheney for June 19, 2012, which is less than the 10 days required by Rule 30(b), SCRCP. Again, despite Defendant Hoffman's failure to follow the discovery rules, Plaintiff coordinated with Mr. Rheney to be available on June 18, 2012. The original note and mortgage which are the subject of this action were also available for inspection on June 18, 2012.

On June 18, 2012, Defendant Hoffman served and Amended Notice of Deposition for Bruce Rheney and Notice of 30(b)(6) deposition for June 22, 2012. Despite only four (4) days notice, Plaintiff, Mr. Rheney, and Jim Boyd were prepared to participate in the depositions that day, and the original documents were available for inspection. Defendant Hoffman also cancelled this deposition.

At the June 26, 2012 final hearing, the Court granted Defendant Hoffman's Motion for Continuance "to allow for additional time for discovery but contingent upon the hearing occurring no later than August 10, 2012 to avoid further delays and continuances." *See Order*

Granting Continuance of Defendant Shelton Hoffman and Stipulations of Counsel, dated June 27, 2012.

No further discovery was requested by either party after the August 10, 2012 hearing and discovery deadline, three days prior to the third scheduled hearing, on January 7, 2013, when Defendant Hoffman's counsel finally requested to schedule a time to view the original loan documents, and then on January 8, 2013, when Defendant Hoffman's "document examiner" contacted Plaintiff's counsel to schedule a time to "review the documents." Despite the short notice, Plaintiff's counsel accommodated Defendant and made all original documents it had pertaining to this loan, or any other loan by Hoffman available for inspection on January 9, 2012.

The January 10, 2012 hearing was again continued due to medical reasons of Defendant Hoffman. However, Plaintiff's counsel and Defendant Hoffman's counsel participated in a telephone status conference with the Court in which the Court ordered that no additional discovery would be allowed in order to keep the *status quo* until Defendant Hoffman was available for a hearing. In addition, Special Referee Reeves ruled at the Status Conference that he "would not allow a party to use additional discovery to delay the trial of this case" and an email to this effect was sent to counsel on January 11, 2013 at 5:14 p.m. See Exhibit A attached hereto.

As shown by the above discovery outline, it is the pattern of Defendant Hoffman to wait until less than a week before a scheduled hearing to begin serving Plaintiff and its counsel with discovery requests in order to impose unreasonable deadlines. As shown by Plaintiff's responsiveness each time discovery has been requested, Plaintiff has gone above and beyond what is expected and has cooperated as much as possible.

On or about January 22, 2013, Ms. Collins informed Plaintiff's counsel by email that her client intended to introduce the document examiner's report into evidence. She further requested the location or disposition of the original note and informed Plaintiff that the Expert would need to examine the document. Defendant Hoffman has failed to properly serve Plaintiff with a request to inspect documents pursuant to Rules 26 and 34, SCRPC.

While SCBT denies, there is anything to compel, Defendant Hoffman should not be allowed to take advantage of the continuation of the case to conduct additional discovery and/or file additional motions.

Plaintiff respectfully requests pursuant to Rule 37(a)(4), SCRCP, that the Court order Defendant Hoffman and/or its counsel pay reasonable expenses incurred in opposing its motion to compel, including attorney's fees, as set forth in the attached Affidavit of Attorney's Fees.



Harriet Pollitt Wallace (S.C. Bar #69454)

Rogers Townsend & Thomas, PC

220 Executive Center Drive

Post Office Box 100200 (29202)

Columbia, SC 29210

(803) 771-7900

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina

February 11, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION

SCBT NA

Plaintiff,

vs.

SHELTON HOFFMAN a/k/a SHELTON L

HOFFMAN; SOUTH CAROLINA

DEPARTMENT OF REVENUE; THE UNITED

STATES OF AMERICA ACTING BY AND

THROUGH ITS AGENCY THE INTERNAL

REVENUE SERVICE; BAIRD TRANSPORT,

INC

Defendants,

) Case No.: 2012-CP-38-0030

) DEFENDANTS MEMORANDUM IN SUPPORT
) FOR INJUNCTIVE RELIEF AND
) DECLARATORY JUDEMENT

Defendant submits this Memorandum with regards to the factors the Defendants deems
Necessary for the Courts understanding in considering the present action for Injunctive and Declaratory
Relief.

by *Shelton L Hoffman*

SHELTON L HOFFMAN

I Hereby certify that a copy of the foregoing was mailed on 01/08/2013 to ROGERS TOWNSEND &
THOMAS, PO Box 100200 Columbia, SC 29202, ATTORNEY FOR PLAINTIFF.

Rogers Townsend & Thomas
Authorized Representative

ATTEST: TRUE COPY
W. R. L.
ORANGEBURG COUNTY, SC

MEMORANDUM OF LAW HISTORY FORCE & EFFECT OF THE LAND PATENT

SECTION I ALLODIAL v. FEUDAL TITLES

This memorandum will be construed to comply with provisions necessary to establish presumed fact (Rule 301, Federal Rules of Evidence, and attending State rules) should interested parties fail to rebut any given allegation or matter of law addressed herein. The position will be construed as adequate to meet requirements of judicial notice, thus preserving fundamental law. Matters addressed herein, if not rebutted, will be construed to have general application.

In America today, there is a phenomenon occurring that has not been experienced since the mid-1930's. That phenomenon is increasingly, rising number of foreclosures, both in the rural sector and in the cities. This phenomenon is occurring because of the inability of the debtor to pay the creditor the necessary interest and principle on a rising debt load that is expanding across the country. As a defense, the land patent or fee simple title to the land and the congressional intent that accompanies the patent is hereby being presented. In order to properly evaluate the patent, in any given situation, it is necessary to understand what a patent is, why it was created, what existed before the patent, particularly in common-law England. These questions must be answered in order to effectively understand the association between the government, the land, and the people.

First, what existed before land patents? Since it is imperative to understand what the land patent is and why it was created, the best method is a study of the converse, or the common-law English land titles. This method thus allows us to fully understand what we are presently supposed to have by way of actual ownership of land.

In England, at least until the mid-1600's, and arguably until William Blackstone's time in the mid-1700's, property was exclusively owned by the King. In arbitrary governments; the title is held by and springs from the supreme head, be he the emperor, king, potentate; or by whatever name he is known. McConnell v. Wilcox, 1 Seam (111.) 344, 367 (1837) The king was the true and complete owner, giving him the authority to take and grant the land from the people in his kingdom who either lost or gained his favor. The authority to take the land may have required a justifiable reason, but the king, leaving the dis-seised former holder of the land wondering what it was that had brought the King's wrath to bear upon him could conceivably have fabricated such a reason. At the same time the beneficiary of such a gift, while undoubtedly knowing the circumstances behind such a gift, may still not have known how the facts were discovered and not knowing how such facts occurred, may have been left to wonder if the same fate awaited him if ever he fell into disfavor with the king.

The King's gifts were called fiefs, a fief being the same as a feud, which is described as an estate in land held of a superior on condition of rendering him services. {2 Blackstone's Commentaries, p. 105.} It is also described as an inheritable right to the use and occupation of lands, held on condition of rendering services to the lord or proprietor, who himself retains the ownership in the lands, {Black's Law Dictionary, 4th Edition p. 748 (1968).} Thus, the people had land they occupied, devised, inherited, alienated, or disposed of as they saw fit, so long as they remained in favor with the King. {F. L. Ganshof, Feudalism, p. 113 (1964).} "This holding of lands under another was called a tenure, and was not limited

to the relation of the first or paramount lord and vassal. It extended to those to whom such vassal, within the rules of feudal law, may have parted out his own feud to his own vassals, whereby he became the mesne lord between his vassals and his own or lord paramount. Those who held directly to the king were called his "tenants in ... chief." {I E. Washburn, Treatise on the American Law of Real Property, Ch. 11, Section 58, P. 42 (6th Ed. 1902).} In this manner, the lands, which had been granted to the barons principal lands were again subdivided, and granted by them to sub-feudatories to be held of themselves. {Id., Section 65, p.44.} The size of the gift of the land could vary from a few acres to thousands of acres depending on the power and prestige of the lord. {See supra Ganshof at 113.} The fiefs were built in the same manner as a pyramid, with the King, the true owner of the land, being at the top, and from the bottom up there existed a system of small to medium sized to large to large sized estates on which the persons directly beneath one estate owed homage to the lord of that estate as well as to the King. {Id. at 114}

At the lowest level of this pyramid through at least the 14th and 15th centuries existed to serfs or villains, the class of people that had no rights and were recognized as nothing more than real property. {F. Goodwin, Treatise on The Law of Real Property, Ch. 1, p. 10 (1905)} This system of hierarchical land holdings required an elaborate system of payment. These fiefs to the land might be recompenses in any number of ways.

One of the more common types of fiefs, or the payment of a rent or obligation to perform rural labor upon the lord's lands known as socage, was the crops field. {Id. at 8} Under this type of fief a certain portion of the grain harvested each year would immediately be turned over to the lord above that particular fief even before the shares from the lower lords and then serfs of the fief would be distributed. A more interesting type of fief for purposes of this memorandum was the money fief. In most cases, the source of money was not specified, and the payment was simply made from the fief holder's treasury, but the fief might also consist of a fixed revenue to be paid from a definite source in annual payments in order for the tenant owner of the fief to be able to remain on the property. {Gilsebert of Mons, Chronique, cc. 69 and 115, pp. 109, 175 ed. Vanderkindere}

The title held by such tenant-owners over their land was described as a fee simple absolute. "Fee simple, Fee commeth of the French fief, i.e., praedium beneficarium, and legally signifieth inheritance as our author himself hereafter expoundeth it and simple is added, for that it is descendible to his heirs generally, that is, simply, without restraint to the heirs of his body, or the like, *Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive redditus*, etc. In Domesday it is called feodum." {Littleton, Tenures, Sec. Ib, Fee Simple} In Section 11 fee simple is described as the largest form of inheritance. Id. In modern English tenures, the term fee signifies an inheritable estate, being the highest and most extensive interest the common man or noble, other than the King, could have in the feudal system. {2 Blackstone's Commentaries, p. 106}

Thus, the term fee simple absolute in common-law England denotes the most and best title a person could have as long as the King allowed him to retain possession of (own) the land. It has been commented that the basis of English land law is the ownership of all reality by the sovereign. From the crown, all titles flow. The original and true meaning of the word "fee" and therefore fee simple absolute is the same as fief or feud, this being in contradiction to the term "allodium" which means or is defined as a man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. Wendell v Crandall, 1 N. Y. 491 (1848) Therefore on common-law England practically everybody who was allowed to retain land, had the type of fee simple absolute often used or defined by courts, a fee simple that grants or gives the occupier as much of a title as the "sovereign" allows such

occupier to have at that time. The term became a synonym with the supposed ownership of land under the feudal system of England at common law. Thus, even though the word absolute was attached to the fee simple, it merely denoted the entire estate that could be assigned or passed to heirs, and the fee being the operative word; fee simple absolute dealt with the entire fief and its divisibility, alienability and inheritability. Friedman v Steiner, 107 Ill. 131 (1883). If a fee simple absolute in common-law England denoted or was synonymous with only as much title as the King allowed his barons to possess, then what did the King have by way of a title?

The King of England held ownership of land under a different title and with far greater powers than any of his subjects. Though the people of England held fee simple titles to their land, the King actually owned all the land in England through his allodial title, and though all the land was in the feudal system, none of the fee simple titles were of equal weight and dignity with the King's title, the land always remaining allodial in favor of the King. {Gilsbert of Mons, Chronique, Ch. 43, p. 75 (ed. Vanderkindere)}

Thus, it is relatively easy to deduce that allodial lands and titles are the highest form of lands and titles known to Common-Law. An estate of inheritance without condition, belonging to the owner, and alienable by him, transmissible to his heirs absolutely and simply, is an absolute estate in perpetuity and the largest possible estate a man can have, being in fact allodial in its nature. Stanton v Sullivan, 63 R.I. 216, 7 A. 696 (1839) "The original meaning of a perpetuity is an inalienable, indestructible interest." Bouvier's Law Dictionary, Volume 3, p. 2570 (1914)

The King had such a title in land. As such, during the classical feudalistic period of common-law England, the King answered to no one concerning the land. Allodial titles, being held by sovereigns, and being full and complete titles, allowed the King of England to own and control the entire country in the form of one large estate belonging to the Crown. Allodial estates owned by individuals exercising full and complete ownership, on the other hand, existed only to a limited extent in the County of Kent.

In summary of Common-Law England:

- 1) the King was the only person (sovereign) to hold complete and full title to a land (allodial title);
- 2) the people who maintained estates of land, (either called manors or fiefs) held title by fee simple absolute.
- 3) this fee simple absolute provided the means by which the "supposed owner could devise, alienate, or pass by inheritance the estates of land (manors or fiefs);
- 4) this fee simple absolute in feudal England, being not the full title, did not protect the "owner" if the King found disfavor with the "owner",
- 5) the "owner" therefore had to pay a type of homage to the King or a higher baron each year to discharge the obligation of his fief,
- 6) this homage of his fief could take the form of a revenue or tax, an amount of grain, or a set and permanent amount of money,
- 7) and therefore as long as the "owner" of the fief in fee simple absolute paid homage to the king or sovereign, who held the entire country under an allodial title, then the "owner" could remain on the property with full rights to sell, devise or pass it by inheritance as if the property was really his.

SECTION II

LAND OWNERSHIP IN AMERICA TODAY

THE AMERICAN FEUDALISTIC SOCIETY

The private ownership of land in America is one of those rights people have proclaimed to be fundamental and essential in maintaining this republic. The necessary question in discussing this topic however is whether ownership of land in America today really is a true and complete ownership of land under an allodial concept, or is it something much different. In other words, are we living in an actual allodial freehold or are we living in an updated version of feudalistic Common Law.

The answer is crucial in determining what rights we have in the protection of our reality against improper seizures and encumbrances by our government and creditors. The answer appears to be extremely clear upon proper reflection of our rights when payments are missed on mortgages, or taxes, for whatever reason, are not paid. If mortgage payments are missed or taxes are not paid, we actually fall into disfavor with the parties who have the power, and these powers, through court proceedings or otherwise, take our land as a penalty. When one understands, when he is unable to perform as the government or his creditors request, and for such failures of performance his land can be forfeited, then he can begin to understand exactly what type of land-ownership system controls his life, and he should recognize the inherent unjustness of such constitutional violations.

The American-based system of land ownership today consists of three key requirements. These three are the warranty deed or some other type of deed purporting to convey ownership of land, title abstracts to chronologically follow the development of these different types of deeds to a piece of property, and title insurance to protect the ownership of that land. These three ingredients must work together to ensure a systematic and orderly conveyance of a piece of property; none of these three by itself can act to completely convey possession of the land from one person to another. At least two of the three are always deemed necessary to adequately satisfy the legal system and real estate agents that the titles to the property had been placed in the hands of the purchaser. Often-times, all three are necessary to properly pass the ownership of the land to the purchaser. Yet does the absolute title and therefore the ownership of the land really pass from the seller to purchaser with the use of any one of these three instruments or in any combination thereof? None of the three by itself passes the absolute or allodial title to the land, the system of land ownership America originally operated under, and even combined all three can not convey this absolute type of ownership.

What then is the function of these three instruments that are used in land-conveyances and what type of title the three conveys? Since the abstract only traces the title and the title insurance only insures the title, the most important and therefore first group examined are the deeds that purportedly convey the fee from seller to purchaser. These deeds include the ones as follows: warranty deed, quit claim deed, sheriff's deed, trustee's deed, judicial deed, tax deed, wig or any other instrument that purportedly conveys the title. All of these documents state that it conveys the ownership to the land. Each of these, however, is actually a color of title. (G. Thompson, Title to Real Property, Preparation and Examination of Abstracts, Ch. 3, Section 73, p.93 (1919))

A color of title is that which in appearance is title, but which in reality is not title. Wright v Mattison, 18 How. (U.S.) 50 (1855) In fact, any instrument may constitute color of title when it purports to convey the title of the land, as well the land itself, although it is void as a muniment of title.

Joplin Brewing Co. v Payne, 197 No. 422, 94 S.W. 896 (1906)

The Supreme Court of Missouri has stated, "that when we say a person has a color of title, whatever may be the meaning of the phrase, we express the idea, at least, that some act has been previously done... by which some title, good or bad, to a parcel of land of definite extent had been conveyed to him."

St. Louis v German, 29 Mo. 593 (1860)

In other words, a color of title is an appearance or apparent title, and "image" of the true title, hence the phrase "color of" which, when coupled with possession purports to convey the ownership of the land to the purchaser. This however does not say that the color of title is the actual and true title itself nor does it say that the color of title itself actually conveys ownership. In fact, the claimant or holder of a color of title is not even required to trace the title through the chain down to his instrument.

Rawson v Fox, 65 Ill. 200 (1872)

Rather it may be said that a color of title is prima facie evidence of ownership of and rights to possession of land until such time as that presumption of ownership is disproved by a better title or the actual title itself. If such cannot be proven to the contrary, then ownership of the land is assumed to have passed to occupier of the land. To further strengthen a color title-holder's position, courts have held that the good faith of the holder to a color of title is presumed in the absence of evidence to the contrary. David v Hall, 92 R. 1. 85 (1879); see also Morrison v Norman, 47 Ill. 477 (1868); and McConnell v Street, 17 Ill. 253 (1855) With such knowledge of what a color of title is, it is interesting what constitutes colors of title. A warranty deed is like any other deed of conveyance.

Mahrenholz v County Board of School Trustees of Lawrence County, et. al., 93 Ill. app. 3d 366 (1981) A warranty deed or deed of conveyance is a color of title, as stated in Dempsey v Burns, 281 Ill. 644, 650 (1917) (Deeds constitute colors of title); see also Dryden v Newman, 116 Ill. 186 (1886) (A deed that purports to convey interest in the land is a color of title) Hinckley v Green 52 Ill. 223 (1869) (A deed which, on its face, purports to convey a title, constitutes a claim and color of title); Busch v Huston, 75 Ill. 343 (1874); Chicking v Failes, 26 Ill. 508 (1861) A quit claim deed is a color of title as stated in Safford v Stubbs, 1 17 Ill. 389 [1886]; see also Hooway v Clark, 27 Ill. 483 (1861) and McCellan v Kellogg, 17 Ill. 498 (1855) Quit claim deeds can pass the title as effectively as a warrant with full covenants. Grant v Bennett, 96 Ill. 513, 525 (1880) See also Morgan v Clayton, 61 Ill. 35 (1871); Brady v Spurck, 27 Ill. 478 (1861); Butterfield v Smith, Ill. 11 1. 485 (1849) Sheriffs deeds also are colors of title. Kendrick v Latham, 25 Fla. 819 (1889); as is a judicial deed, Huls v Buntin, 47 Ill. 396 (1865). The Illinois Supreme Court went into detail in its determination that a tax deed is only color of title. "there the complainant seem to have relied upon the tax deed as conveying to him the fee, and to sustain such a bill, it was incumbent of him to show that all the requirements of the law had been complied with."

A simple tax deed by itself is only a color of title. Fee simple can only be acquired through adverse possession via payment of taxes; claim and color of title, plus seven years of payment of taxes. Thus any tax deed purports, on its face, to convey title is a good color of title. Walker v Converse, 148 Ill. 622, 629 (1894); see also Peadro v Carriker, 168 Ill. 570 (1897); Chicago v Middlebrooke, 143 Ill. 265 (1892); Piatt County v Gooden, 97 Ill. 84 (1880);

Stubblefield v Borders, 92 Ill. 570 (1897); Coleman v Billings 89 Ill. 183 (1878); Whitney v Stevens, 89 Ill. 53 (1878); Holloway v Clarke, 27 Ill. 483 (1861); Thomas v Eckard, 88 Ill. 593 (1878) color of title. Baldwin v Ratcliff, 125 Ill. 376 (1888); Bradley v Rees, 113 Ill. 327 (1885) (A wig can pass only so much as the testator owns, though it may attempt to pass more). A trustee's deed, a mortgages and strict foreclosure, Chickering v Failes, 26 Ill. 508, 519 (1861), or any document defining the extent of a disseisor's claim or purported claim, Cook v Norton, 43 Ill. 391 (1867), all have been held to be colors of title. In fact, "If there is nothing here requiring a deed, to establish a color of title, and under the former decisions of this court, color or title may exist without a deed." Baldwin v Ratcliff, 125 Ill. 376, 383 (1882); County of Piatt v Goodell, 97 Ill. 84 (1880); Smith v Ferguson, 91 Ill. 304 (1878); Hassett v Ridgely, 49 Ill. 197 (1868); Brooks v Bruyn, 35 Ill. 392 (1864); McCagg v Heacock, 34 Ill. 476 (1864); Bride v Watt, 23 Ill. 507 (1860); and Woodward v Blanchard, 16 Ill. 424 (1855) All of these cases being still valid and none being overruled, in effect, the statements in these cases are well established law. All of the documents described in these cases are the main avenues of claimed land ownership in America today, yet none actually conveys the true and allodial title. They in fact convey something quite different.

When it is stated that a color of title conveys only an appearance of or apparent title, such a statement is correct but perhaps too vague to be properly understood in its correct legal context. What are useful are the more pragmatic statements concerning titles. A title or color of title, in order to be effective in transferring the ownership or purported ownership of the land, must be a marketable or merchantable title. A marketable or merchantable title is one that is reasonably free from doubt. Austin v Barnum, 52 Minn. 136 (1892). This title must be as reasonably free from doubts as necessary to not affect the marketability or salability of the property, and must be a title a reasonably prudent person would be willing to accept. Robert v McFadden, 32 Tex-Civ.App. 471 74 S.W. 105 (1903). Such a title is often described as one, which would ensure to the purchaser a peaceful enjoyment of the property, Barnard v Brown, 112 Mich. 452, 70 N.W. 1038 (1897), and it is stated that such a title must be obvious, evident, apparent, certain, sure or indubitable. Ormsby v Graham, 123 La. 202, 98 N.W. 724 (1904). Marketable Title Acts, which have been adopted in several of the states, generally do not lend themselves to an interpretation that they might operate to provide a new foundation of title based upon a stray, accidental, or interloping conveyance. Their object is to provide, for the recorded fee simple ownership, an exemption from the burdens of old conditions which at each transfer of the property interferes with its marketability. Wichelman v Messner, 83 N.W. 2d 800 (1957) What each of these legal statements in the various factual situations says is that the color of title is never described as the absolute or actual title, rather each says that it is one of the types of titles necessary to convey ownership or apparent ownership. A marketable title, what a color of title must be in order to be effective, must be a title which is good of recent record, even if it may not be the actual title in fact. Close v Stuyvesant, 132 Ill. 607, 24 N.E. 868 (1890) "Authorities hold that to render a title marketable it is only necessary that it shall be free from reasonable doubt; in other words, that a purchaser is not entitled to demand a title absolutely free from every possible suspicion." Cummings v Dolan, 52 Wash. 496, 100 P. 989 (1909) The record being spoken of here is the title abstract and all documentary evidence pertaining to it. "It is an axiom of hornbook law that a purchaser has notice only of recorded instruments that are within his 'chain of title'." I R. Patton & C. Patton, Patton on Land Title, Section 69, at 230-233. (2nd ed. 1957); Sabo v Horvath, 559 P. 2d 1038, 1043 (Ak.1976). Title insurance then guarantees that a title is marketable, not absolutely free from doubt.

Thus, under the color or title system used most often in this country today, no individual operating under this type of title system has the absolute or allodial title. All that is really necessary to have a valid title is to have a relatively

clean abstract with a recognizable color of title as the operative marketable title within the chain of title. It therefore becomes necessarily difficult, if not impossible after a number of years, considering the inevitable contingencies that must arise and the title disputes that will occur, to ever properly guarantee an absolute title. This is not necessarily the fault of the seller, but it is the fault of the legal and real estate systems for allowing such a diluted form of title to be controlling in an area where it is imperative to have the absolute title. In order to correct this problem, it is important to return to those documents the early leaders or the nation created to properly ensure that property remained one of the inalienable rights that the newly established sovereign freeholders could rely on to always exist. This correction must be in the form of restricting or perhaps eliminating the widespread use of a marketable title and returning to the absolute title.

Other problems have developed because of the use of a color of title system for the conveyance of land. These problems arise in the area of terminology that succeed in only confusing and clouding the title to an even greater extent than merely using terms like marketability, salability or merchantability. When a person must also determine whether a title is complete, perfect, good and clear, or whether it is a bad, defective, imperfect and doubtful, there is any obvious possibility of destroying a chain of title because of an inability to recognize what is acceptable to a reasonable purchaser.

A complete title means that a person has the possession, right of possession and the right of property. Dingey v Paxton, 60 Miss. 1038 (1883) and Ehle v Quackenboss, 6 Hill (N.Y.) 537 (1844) A perfect title is exactly the same as a complete title, Donovan v Pitcher, 53 Ala. 411 (1875) and Converse v Kellogg, 7 Barb. (N. Y.) 590 (1850); and each simply means the type of title a well-informed, reasonable and prudent person would be willing to accept when paying full value for the property. Birge v Beck, 44 Mo. App. 69 (1890). In other words, a complete or perfect title is in reality a marketable or merchantable title, and is usually represented by a color of title.

A good title does not necessarily mean one perfect of record but consists of one which is both of rightful ownership and rightful possession of the property Bloch v Ryan, 4 App. Cas 283 (1894). It means a title free from litigation, palpable defects and grave doubts consisting of both legal and equitable titles and fairly deducible of record. Reynolds v Borel, 86 Cal. 538, 25 P. 67 (1890). "A good title means not merely a title valid in fact, but a marketable title, which can again be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence as security for a loan of money." Moore v Williams, 115 N.Y. 586, 22 N.E. 253 (1889) A clear title means there are no encumbrances on the land, Roberts v Bassett, 105 Mass. 409 (1870) Thus, when contracting to convey land, the use of the phrase "good and clear title" is surplusage, since the terms good title and clear title are in fact synonymous. Oakley v Cook, 41 N.J. Eq. 350, 7 A.2d 495 (1886) Therefore, the words good title and clear title, just like the words complete title and perfect title, describe nothing more than a marketable title or merchantable title, and as stated above, each can and almost always is represented in a transaction by a color of title. None of these types of title purports to be the absolute, or allodial title, and none of them are that type of title. None of these actually claims to be a fee simple absolute, and since these types of titles are almost always represented by a color of title, none represents that it passes the actual title. Each one does state that it passes what can be described as a title good enough to avoid the necessity of litigation to determine who actually has the title. If such litigation to determine titles is necessary, then the title has crossed the boundaries of usefulness and entered a different category of title descriptions and names.

This new category consists of titles, which are bad, defective, imperfect or doubtful. A bad title conveys no property to the purchaser of the estates. Heller v Cohen, 15 Misc. 378, 36 N.Y.S. 668 (1895). A title is defective when the party claiming to own the land has not the whole title, but some other person has title to a part or portion of it. Such a title is the same as no title whatsoever. Place v People, 192 Ill. 160, 61 N.E. (1901); See also Cospertini v Oppermann, 76 Cal. 181, 18 P. 256 (1888) imperfect title is one where something remains to be done by the granting power to pass the title to the land, Raschel v Perez,

7 Tex. 348 (1851); and a doubtful title is also one which conveys no property to the purchaser of the estate. Heller v Cohen, 15 Misc. 378, 36 N.Y.S. 668 (1895). Every title is described as doubtful which invites or exposes the party holding it to litigation. Herman v Somers, 158 PA.ST. 424, 27 A. 1050 (1893) Each of these types of titles describes exactly the same idea stated in many different ways, that because of some problem, defect, or question surrounding the title, no title can be conveyed, since no title exists. Yet in all of these situations some type of color of title was used as the operative instrument. What then makes one color of title complete, good or clear in one situation, and in another situation the same type of color of title could be described as bad, defective, imperfect or doubtful?

What is necessary to make what might otherwise be a doubtful title, a good title, is the belief of others in the community, whether or not properly justified, that the title is a good one which they would be willing to purchase. Moore v Williams, 115 N.Y. 586, 22 N.E. 253 (1889) The methods presently used to determine whether a title or color of title is good enough to not be doubtful, are the other two-thirds of the three possible requirements for the conveyance of a good or complete (marketable) title.

These two methods of properly ensuring that a title is a good or complete title are title abstracts, the complete documentary evidence of title, and title insurance. The legal title to land, based on a color of title, is made up of a series of documents required to be executed with the solemnities prescribed by law, and of facts not evidenced by documents, which show the claimant a person to whom the law gives the estate. Documentary evidences of title consist of voluntary grants by the sovereign, deeds of conveyances and wills by individuals, conveyances by statutory or judicial permission, deeds made in connection with the sale of land for delinquent taxes, proceedings under the power of eminent domain, and deeds executed by ministerial or fiduciary officers. These documentary evidences are represented by the land patent and the colors of title. {I G. Thompson, Commentaries on the Modern Law of Real Property, pp. 99-100 (5th ed. 1980)}

These instruments, relied upon to evidence the title, coupled with the outward assertive acts that import dominion, must be used by the abstractor in compiling the abstract, and the attorney must examine to determine the true status of the title. The abstract is the recorded history of the land and the various types of titles, mortgages and other liens, claims and interests that have been placed on the property. The abstract can determine the number of times the patent has been re-declared, who owns the mineral rights, what color of title is operable at any particular point in time, and what lien holder is in first position, but it does not convey or even attempt to convey any form of the title itself. As Thompson, supra has stated, it is necessary when operating with colors of titles to have an abstract to determine the status of the operable title and determine whether that title is good or doubtful. If the title is deemed good after this lengthy process, then the property may be transferred without doing anything more, since it is assumed that the seller was the owner of the property. This is not to say emphatically that the seller is the paramount or absolute owner. This does not even completely guarantee that he is the owner of the land against any adverse claimants. It is

not even that difficult to claim that the title holder has a good title due to the leniency and attitude now evidenced by the judicial authorities toward maintaining a stable and uniform system of land ownership, whether or not that ownership is justified. This however, does not explain the purpose and goal of a title abstract.

An abstract that has been properly brought up simply states that it is presumed the seller is the owner of the land, making the title marketable, and guaranteeing that he has a good title to sell. This is all an abstract can legally do since it is not the title itself and it does not state the owner has an absolute title. Therefore, the abstract can not guarantee unquestionably that the title is held by the owner. All of this rhetoric is necessary if the title is good; if there is some question concerning the title without making it defective, then the owner must turn to the last of the three alternatives to help pass a good title, title insurance. {G. Thompson, Title to Real Property, Preparation and Examination of Abstracts, Ch.111, Section 79r PP. 99-100 (1919)}

Title insurance is issued by title insurance companies to ensure the validity of the title against any defects, against any encumbrances affecting the designated property, and to protect the purchaser against any losses he sustains from the subsequent determination that his title is actually un-marketable. Title insurance extends to any defects of title. It protects against the existence of any encumbrances, provided only that any judgments adverse to the title shall be pronounced by a court of competent jurisdiction. It is not even necessary that a defect actually exist when the insurance policy was issued, it is simply necessary that there exists at the time of issuance of the policy and inchoate or potential defect which is rendered operative and substantial by the happening of some subsequent event. Since all one normally has is a color of title, the longer a title traverses history, the greater the possibility that the title will become defective. The greater the need for insurance simply to keep the title marketable, the easier it is to determine that the title possessed is not the true, paramount and absolute title. If a person had the paramount title, there would be no need for title insurance, though an abstract might be useful for record keeping and historical purposes. Title insurance and abstract record keeping are useful, primarily because of extensive reliance on colors of title, as the operative title for a piece of property.

This then supplies the necessary information concerning colors of title, title abstracts, and title insurance. This does not describe the relationship between the landowner and the government. As was stated in the instruction, in feudal England, the King has the power, right and authority to take a person's land away from him, if and when the King felt it necessary. The question is whether most of the American system of land ownership and titles is in reality any different and whether therefore the American-based system of ownership, is in reality nothing more than a feudal system of land ownership.

Land ownership in America presently is founded on colors of title, and though people believe they are the complete and total owners of their property; under a color of title system this is far from the truth. When people state that they are free and own their land, they in fact own it exactly to the extent the English barons owned their land in common-law England. They own their land so long as some "sovereign", the government or a creditor, states that they can own their land. If one recalls from the beginning of this memorandum, it was stated that if the King felt it justified, he could take the land from one person and give such land to another prospective baron. Today, in American color-of-title Property law, if the landowner does not pay income tax, estate tax, property tax, mortgages or even a security note on personal property, then the "sovereign", the government or the creditor can justify the taking of the property and the sale of that same property to another prospective "baron", while leaving the owner with only limited defenses to such actions.

The only real difference between this and common-law England is that now others besides the King can profit from the unwillingness or inability of the "landowner" to perform the socage or tenure required of every landowner of America. As such no one is completely safe or protected on his property; no one can afford to make one mistake or the consequences will be forfeiture of the property. If this were what the people in the mid 1700's wanted, there would have been no need to have an American Revolution, since the taxes were secondary to having a sound monetary system and complete ownership of the land. Why fight a Revolutionary War to escape sovereign control and virtual dictatorship over the land, when in the 1990's these exact problems are prevalent with this one exception, money now changes hands in order to give validity to the eventual and continuous takeover of the property between the parties. This is hardly what the forefathers planned for when creating the United States Constitution, and what they did strive for is the next segment of the memorandum of law, allodial ownership of the land via the land patent. The next segment will analyze the history of this type of title so that the patent can be properly understood, making it possible to comprehend the patent's true role in property law today.

SECTION III

LAND PATENTS AND WHY THEY WERE CREATED

As was seen in the previous sections, there is little to protect the landowner who holds title in the chain of title, when distressful economic or weather condition make it impossible to perform on the debt. Under the color-of-title system, the property, "one of those inalienable rights", can be taken for the nonperformance on loan obligations. This type of ownership is similar to the feudal ownership found in the Middle Ages.

Upon defeating the English in 1066 A.D., William the Conqueror pursuant to his 52nd and 58th laws, "...effectually reduced the lands of England to feuds, which were declared to be inheritable and from that time the maxim prevailed there that all lands in England are held from the King, and that all proceeded from his bounty. {I.E. Washburn, Treatise on The American Land Of Real Property, Section 65, p.44 (6th ed. 1902)}

All lands in Europe, prior to the creation of the feudal system in France and Germany, were allodial. Most of these lands were voluntarily changed to feudal lands as protection from the neighboring barons or chieftains. Since no documents protected one's freedom over his land, once the lands were pledged for protection, the lands were lost forever. This was not the case in England.

England never voluntarily relinquished its land to William I. In fact were it not for a tactical error by King Harold II men in the Battle of Hastings, England might never have become feudal. A large proportion of the Saxon lands prior to the Conquest of A.D. 1066, were held as allodial, that is, by an absolute ownership, without recognizing any superior to whom any duty was due on account thereof. The mode of conveying these allodial lands was most commonly done by a writing or charter, called a land-boc, or land allodial charter, which, for safekeeping between conveyances, was generally deposited in the monasteries. In fact, one portion of England, the County of Kent, was allowed to retain this form of land ownership while the rest of England became feudal. Therefore, when William I established feudalism in England to maintain control over his barons, such control created animosity over the next 2 centuries. {F.L. Ganshof, Feudalism, P. 114 (1964)}

As a result of such dictatorial control, some 25 barons joined forces to exert pressure on the then ruling monarch, King John, to gain some rights not all of which the common man would possess. The result of this pressure at Runnymede became known as the Magna Carta. The Magna Carta was the basis of modern common law, the common law being a series of judicial decisions and royal decrees interpreting and following that document. The Magna Carta protected the basic rights, the rights that gave all people more freedom and power. The rights that would slowly erode.

Among these rights was a particular section dealing with ownership of the land. The barons still recognized the king as the lord paramount, but the barons wanted some of the rights their ancestors had prior to A.D. 1066. {F. Goodwin, Treatise on The Law of Real Property, Ch. 1, p.3 (1905)} Under this theory, the barons would have several rights and powers over the land, as the visible owners, that had not existed in England for 150 years. The particular section of most importance was Section 62 giving the most powerful barons letters of patent, raising their land ownership close to the level found in the County of Kent. Other sections, i.e., 10, 11, 26, 27, 37, 43, 52, 56, 57, and 61 were written to protect the right to "own" property, to illustrate how debts affected this right to own property, and to secure the return of

property that was unjustly taken. All these paragraphs were written with the single goal of protecting the "landowner" and helping him retain possession of his land, acquired in the service of the King, from unjust seizures or improper debts. The barons attempted these goals with the intention of securing property to Pass to their heirs.

Unfortunately goals are often not attained. Having re-pledged their loyalty to King John, the barons quickly disbanded their armies. King John died in 1216, one year after signing the Magna Carta. The new king did not wish to grant such privileges found in that document. Finally, the barons who forced the signing of the Magna Carta died, and with them went the driving force that created this great charter. The Magna Carta may have still been alive, but the new kings had no armies at their door forcing them to follow policies, and the charter was to a great extent forced to lie dormant. The barons who received the letters of patent, as well as other landholders perhaps should have enforced their rights, but their heirs were not in a position to do so and eventually the fights contained in the charter were forgotten. Increasingly until the mid-1600's, the king's power waxed, abruptly ending with the execution of Charles I in 1649. By then however, the original intent of the Magna Carta was in part lost and the descendants of the original barons never required property protected, free land ownership. To this day, the freehold lands in England are still held to a great extent upon the feudal tenures. This lack of complete ownership in the land, as well as the most publicized search for religious freedom, drove the more adventurous Europeans to the Americas to be away from these restrictions.

The American colonists however soon adopted many of the same land concepts used in the old-world. The kings of Europe had the authority to still exert influence, and the American version of barons sought to retain large tracts of land. As an example, the first patent granted in New York went to Killian Van Rensselaer dated in 1630 and confirmed in 1685 and 1704. {A. Getman, Title to Real Property, Principles and Sources of Titles – Compensation For Lands and Waters, Part III, Ch. 17, p.229 (1921)} The colonial charters of these American colonies, granted by the king of England, had references to the lands in the County of Kent, effectively denying the more barbaric aspects of feudalism from ever entering the continent, but feudalism with its tenures did exist for some time. "It may be said that, at an early date, feudal tenures existed in this country to a limited extent." {C. Tiedeman, An Elementary Treatise on the American Law of Real Property, Ch. 11.} {The Principles of the Feudal System, Section 25, p.22 (2nd ed. 1892).} The result was a newly created form of feudal land ownership in America. As such, the feudal barons in the colonies could dictate who farmed their land, how their land was to be divided, and to a certain extent to whom the land should pass. But, just as the original barons discovered, this power was premised in part of the performance of duties for the king. Upon the failure of performance, the king could order the Grant revoked, and Grant the land to another willing to acquiesce to the king's authority. This authority, however, was premised on the belief that people, recently arrived and relatively independent, would follow the authority of a king based 3000 miles away. Such a premise was ill founded.

The colonists came to America to avoid taxation without representation, to avoid persecution of religious freedom, and to acquire a small tract of land that could be owned completely. When the colonists were forced to pay taxes and were required to allow their homes to be occupied by soldiers; they revolted, fighting the British, and declaring their Declaration of Independence.

The Supreme Court of the United States reflected on this in Chisholm v Georgia, 2 Dall. (U.S.) 419 (1793), stating: "...the revolution or rather the Declaration of Independence, found the people already united for general purposes,

and at the same time, providing for their more domestic concerns, by state conventions, and other temporary arrangements. From the crown of Great Britain, the sovereignty of their country passed to the people of it; and it was then not an uncommon opinion, that the un-appropriated lands, which belonged to that crown, passed, not to the people of the colony or states within those limits they were situated, but to the whole people;..."We the people of the United States, do ordain and establish this constitution." Here we see the people acting as sovereigns of the whole country; and in the language of sovereignty, establishing a constitution by which it was their will, that the state governments, should be bound, and to which the state constitutions should be made to conform. It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the prince as the sovereign, and the people his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a court of justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant, derives all franchises, immunities and privileges; it is easy to perceive, that such a sovereign could not be amenable to a court of justice, or subjected to judicial control and actual constraint. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the prince and the subject. No such ideas obtain here; at the revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects and have none to govern but themselves; the citizens of America are equal as fellow-citizens, and as joint tenants in the sovereignty. From the differences existing between feudal sovereignties and governments founded on compacts, it necessarily follows, that their respective prerogatives must differ. Sovereignty is the right to govern; a nation or state sovereign is the person or persons in whom that resides. In Europe, the sovereignty is generally ascribed to the prince; here it rests with the people; there the sovereign actually administers the government; here never in a single instance; our governors are the agents of the people, and at most stand in the same relation to their sovereign, in which the regents of Europe stand to their sovereigns. Their princes have personal powers, dignities, and preeminence, our rules have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens."

The Americans had a choice as to how they wanted their new government and country to be formed. Having broken away from the English sovereignty and establishing themselves as their own sovereigns, they had their choice of types of taxation, freedom of religion, and most importantly ownership of land. The American founding fathers chose allodial ownership of land for the system of ownership on this country. In the opinion of Judge Kent, the question of tenure as an incident to the ownership of lands "has become wholly immaterial in this country, where every vestige of tenure has been annihilated." At the present day there is little, if any, trace of the feudal tenures remaining in the American law of property. Lands in this country are now held to be absolutely allodial.

Upon the completion of the Revolutionary War, lands in the thirteen colonies were held under a different form of land ownership. As stated in *re Waltz et. al., Barlow v Security Trust & Savings Bank*, 240 p. 19 (1925), quoting *Matthews v Ward*, 10 Gill & J. (Md.) 443 (1839), "after the American Revolution, lands in this state (Maryland) became allodial, subject to no tenure, nor to any services incident thereto."

The tenure, as you will recall, was the feudal tenure and the services or taxes required to be paid to retain possession of the land under the feudal system. This new type of ownership was acquired in all thirteen states. *Wallace v Harmstead*, 44 Pa. 492 (1863) The American people, before developing a properly functioning stable government, developed a stable system of land ownership, whereby the people owned their land absolutely and in a manner

similar to the king in common-law England. As has been stated earlier, the original and true meaning of the word "fee" and therefore fee simple absolute is the same as fief or feud, this being in contradistinction to the term "allodium" which means or is defined as man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. Wendell v Crandall, 1 N. Y. 491 (1848) [27] Stated another way, the fee simple estate of early England was never considered as absolute, as were lands in allodium, but were subject to some superior on condition of rendering him services, and in which the such superior had the ultimate ownership of the land. In re Waltz, at page 20, quoting I Cooley's Blackstone, (4th ed.) p. 512. This type of fee simple is a Common-Law term and sometimes corresponds to what in civil law is a perfect title. United States v Sunset Cemetery Co., 132 F. 2d 163 (1943). It is unquestioned that the king held an allodial title which was different than the Common-Law fee simple absolute. This type of superior title was bestowed upon the newly established American people by the founding fathers. The people were sovereigns by choice, and through this new type of land ownership, the people were sovereign freeholders or kings over their own land, beholden to no lord or superior. As stated in Stanton v Sullivan, 7 A. 696 (1839), such an estate is an absolute estate in perpetuity and the largest possible estate a man can have, being, in fact allodial in its nature. This type of fee simple, as thus developed, has definite characteristics: (1) it is a present estate in land that is of indefinite duration; (2) it is freely alienable; (3) it carries with it the right of possession; and most importantly (4) the holder may make use of any portion of the freehold without being beholden to any person. (I. G. Thompson; Commentaries on the Modern Law of Real Property, Section 1856, p. 412 (1st ed. 1924)).

This fee simple estate means an absolute estate in lands wholly unqualified by any reservation, reversion, condition or limitation, or possibility of any such thing present or future, precedent or subsequent. Id.; Wichelman v Messner, 83 N.W. 2d 800, 806 (1957) It is the most extensive estate and interest one may possess in real property. Where an estate subject to an option is not in fee. In the case, Bradford v Martin, [28] 201 N.W. 574 (1925), the Iowa Supreme Court went into a lengthy discussion on what the terms fee simple and allodium means in American property law. The Court stated: "The word 'absolutely' in law has a varied meaning, but when unqualifiedly used with reference to titles or interest in land, its meaning is fairly well settled. Originally the two titles most discussed were 'fee simple' and 'allodium' (which meant absolute) See Bouvier's. Law Dictionary. (Rawle Ed.) 134; Wallace v Harmstead, 44 Pa. 492; McCartee v Orphan's Asylum, 9 Cow. (N.Y.) 437, 18 Am. Dec. 516.

Prior to Blackstone's time the allodial title was ordinarily called an "absolute title" and was superior to a "fee simple title," the latter being encumbered with feudal clogs which were laid upon the first feudatory when it was granted, making it possible for the holder of a fee-simple title to lose his land in the event he failed to observe his feudatory oath. The allodial title was not so encumbered. Later the term "fee simple," however rose to the dignity of the allodial or absolute estate, and since the days of Blackstone the words of "absolute" and "fee Simple" seem to have been generally used interchangeably; in fact, he so uses them.

The basis of English land law is the ownership of the realty by the sovereign, from the crown all titles flow. People v. Richardson, 269 M. 275, 109 N.E. 1033 (1914); see also Matthew v. Ward, 10 Gill & J (Md.) 443 (1844) The case, McConnell v. Wilcox, 1 Seam. (IR.) 344 (1837), stated it this way: "From what source does the title to the land derived from a government spring? In arbitrary governments, from the supreme head be he the emperor, king, or potentate; or by whatever name he is known. In a republic, from the law, making or authorizing to be made the grant or sale. In the first case, the party looks alone to his letters patent; in the second, to the law and the evidence of the

acts necessary to be done under the law, to a perfection of his grant, donation or purchase The law alone must be the fountain from whence the authority is drawn; and there can be no other source."

The American people, newly established sovereigns in this republic after the victory achieved during the Revolutionary War, became complete owners in their land, beholden to no lord or superior; sovereign freeholders in the land themselves. These freeholders in the original thirteen states now held allodial the land they possessed before the war only feudally. This new and more powerful title protected the sovereigns from unwarranted intrusions or attempted takings of their land, and more importantly it secured in them a right to own land absolutely in perpetuity. By definition, the word perpetuity means, "Continuing forever. Legally, pertaining to real property, any condition extending the inalienability..." Black's Law Dictionary, P-1027 (5th ed. 1980)

In terms of an allodial title, it is to have the property of in-alienability forever. Nothing more need be done to establish the ownership of the sovereigns to their land, although confirmations were usually required to avoid possible future title confrontations. The states, even prior to the creation of our present Constitutional government, were issuing titles to the unoccupied lands within their boundaries. In New York, even before the war was won, the state issued the first land patent in 1781, and only a few weeks, after the battle and victory at Yorktown in 1783, the state issued the first land patent to an individual. In fact, even before the United States was created, New York and other states had developed their own Land Offices with Commissioners. New York was first established in 1784 and was revised in 1786 to further provide for a more definite procedure for the sale of unappropriated State Lands. Id. The state courts held, "The validity of letters patent and the effectiveness to convey title depends on the proper execution and record generally been the law that public grants to be valid must be recorded. The record is not for purposes of notice under recording acts but to make the transfer effectual." Later, if there was deemed to be a problem with the title, the state grants could be confirmed by issuance of a confirmatory grant. This then, in part, explains the methods and techniques the original states used to pass title to their lands, lands that remained in the possession of the state unless Purchased by the still yet uncreated federal government, or by individuals in the respective states. Too much this same extent Texas, having been a separate country and republic, controlled and still controls its lands. In each of these instances, the land was not originally owned by the federal government and then later passed to the people and states. This then is a synopsis of the transition from colony to statehood and the rights to land ownership under each situation. This however has said nothing of the methods used by the states in the creation of the federal government and the eventual disposal of the federal lands.

The Constitution in its original form was ratified by a convention of the States, on September 17, 1787. The Constitution and the government formed under it were declared in effect on the first Wednesday of March 1789. Prior to this time, during the Constitutional Convention, there was serious debate on the disposal of what the convention called the "Western Territories," now the states of Ohio, Indiana, Illinois, Michigan, Wisconsin and part of Minnesota, more commonly known as the Northwest Territory. This tract of land was ceded to the new American republic in the treaty signed with Britain in 1783.

The attempts to determine how such a disposal of the Western territories should come about was the subject of much discussion in the records of the Continental Congress. Beginning in September 1783, there was continual discussion concerning the acquisition of and later disposition to the lands east of the Mississippi River. Journals of Congress, Papers of the Continental Congress, No. 25, 11, folio 255, p. 544-557 (September 13, 1783) "1/4 and whereas the

United States have succeeded to the sovereignty over the Western territory, and are thereby vested as one undivided and independent nation, with all and every power and right exercised by the king of Great Britain, over the said territory, or the lands lying and situated without the boundaries of the several states, and within the limits above described; and whereas the western territory ceded by France and Spain to Great Britain, relinquished to the United States by Great Britain, and guarantied to the United States by France as aforesaid, if properly managed, will enable the United States to comply with their promises of land to their officers and soldiers; will relieve their citizens from much of the weight of taxation;.... and if cast into new states, will tend to increase the happiness of mankind, by rendering the purchase of land easy, and the possession of liberty permanent; therefore Resolved, that a committee be appointed to report the territory lying without the boundaries of the several states; ... ; and also to report an establishment for a land office."

There was also serious discussion and later acquisition by the then technically nonexistent federal government of land originally held by the colonial governments. As the years progressed, the goal remained the same, a proper determination of a simple method of disposing of the western lands. "That an advantageous disposition of the western territory is an object worthy the deliberation of Congress." *Id.* February 14, 1786, at p. 68. In February 1787, the Continental Congress continued to hold discussions on how to dispose of all western territories. As part of the basis for such disposal, it was determined to divide the new northwestern territories into medians, ranges, townships, and sections, making for easy division of the land, and giving the new owners of such land a certain number of acres in fee. *Journals of Congress*, p. 21, February 1787, and *Committee Book, Papers of the Continental Congress*, No. 190, p. 132 (1788)

In September of that same year, there were most discussions on the methods of disposing the land. In those discussions, there were debates in the validity and solemnity of the state patents that has been issued in the past. Only a week earlier the Constitution was ratified by the conventions of the states. Finally, the future Senate and House of Representatives, though not officially a government for another one and a half years, held discussions on the possible creation of documents that would pass the title of lands from the new government to the people. In these discussions, the first patents were created and ratified, making the old land-boc, or land-allodial charters of the Saxon nobles, 750 years earlier, and the letters patent of the Magna Carta, guidelines by which the land would pass to the sovereign freeholders of America. *Id.*, July 2, 1788, pp.77-286.

As part of the method by which the new United States decided to dispose of its territories, it created in the Constitution an article, section, and clause, that specifically dealt with such disposal. Article IV, Section III, Clause 11, states in part, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States. " Thus, Congress was given the power to create a vehicle to divest the Federal Government of all its right and interest in the land. This vehicle, known as the land patent, was to forever divest the federal government of its land and was to place such total ownership in the hands of the sovereign freeholders who collectively created the government. *The land patents issued prior to the initial date of recognition of the United States Constitution were ratified by the members of Constitutional Congress.* Those Patents created by statute after March 1789, had only the power of the statutes and the Congressional intent behind such statutes as a reference and basis for the determination of their powers and operational effect originally and in the American system of land ownership today.

There have been dozens of statutes enacted pursuant to Article IV, Section 11, Clause 11. Some of these statutes had very specific intents of aiding soldiers of wars, or dividing lands in a very small region of one state, but all had the main goal of creating in the sovereigns, freeholders on their lands, beholden

to no lord or superior. Some of the statutes include, 12 Stat 392, 37th Congress, Sess. 11, Ch. 75, (1862) (the Homestead Act); 9 Stat. 520, 31st Congress, Sess. 1, Ch. 85 (1850) Military Bounty Service Act); 8 Stat. 123, 29th Congress, Sess. 11 Ch. 8, (1847) (Act to raise additional military force and for other purposes); 5 Stat 444, 21st Congress, Sess. 11, Ch. 30 (1831); 4 Stat 51, 18th Congress, Sess. 1, Ch. 174 (1824); 5 Stat 52, 18th Congress, Sess. 1, Ch. 173 (1824); 5 Stat 56, 18th Congress, Sess. 1, Ch. 172, (1824); 3 Stat. 566, 16th Congress, Sess. 1, Ch. 51, (1820) (the major land patent statute enacted to dispose of lands); 2 Stat 748, 12th Congress, Sess. 1. Ch. 99 (1812); 2 Stat. 728, 12th Congress, Sess. 1, Ch. 77, (1812); 2 Stat. 716, 12th Congress, Sess. 1, Ch. 68, (1812) (the act establishing the General Land-Office in the Department of Treasury); 2 Stat 590, 11th Congress, Sess. U, Ch. 3.5, (1810); 2 Stat 437, 9th Congress, Sess. H, Ch. 34, (1807); and 2 Stat 437, 9th Congress, Sess. H, Ch. 31, (1807) These, of course, are only a few of the statutes of enacted to dispose of public lands to the sovereigns. One of these acts however, was the main patent statute in reference to the intent Congress had when creating the patents. That status is 3 Stat 566,

In order to understand the validity of a patent, in today's property law, it is necessary to turn to other sources than the acts themselves. These sources include the congressional debates and case law citing such debates. For the best answer to this question, it is necessary to turn to the Abridgment of the Debates of Congress, Monday, March 6, 1820, in the Senate, considering the topic "The Public Lands." This abridgment and the actual debates found in its concern one of the most important of the land patent statutes, 3 Stat 566, 16th Congress, Sess. 1. Ch. 51, Stat. 1, (April 24, 1820)

In this important debate, the reason for such a particular act in general and the protection afforded by the patent in particular were discussed. As Senator Edwards states; "1/4 it is not my purpose to discuss, at length, the merits of the proposed change. I will, at present, content myself with an effort, merely, to shield the present settlers upon public lands from merciless speculators, whose cupidity and avarice would unquestionably be tempted by the improvements which those settlers have made with the sweat of their brows, and to which they have been encouraged by the conduct of the government itself, for though they might be considered as embraced by the letter of the law which provides against intrusion on public lands, yet, that their case has not been considered by the Government as within the mischief's intended to be prevented is manifest, not only from the forbearance to enforce the law, but from the positive rewards which others, in their situation, have received, by the several laws which have heretofore been granted to them by the same right if preemption which I now wish extended to the present settlers." Further, Senator King from New York stated, he considered the change as highly favorable to the poor man; and he argued at some length, that it was calculated to plant in the new country a population of independent, unembarrassed freeholders; that it would cut up speculation and monopoly; that the money paid for the lands would be carried from the State or country from which the purchaser should remove; that it would prevent the accumulation of an alarming debt, which experience proved never would and never could be paid.

In other statutes, the Court recognized much of these same ideas. In United States v. Reynes, 9 How. (U.S.) 127 (1850), the Supreme Court stated: "The object of the Legislature is manifest 1/4 it was intended to prevent speculation

by dealing for rights of preference before the public lands were in the market. The speculator acquired power over choice spots, by procuring occupants to seat themselves on them and who abandoned them as soon as the land was entered under their preemption right, and the speculation accomplished. Nothing could be more easily done than this, if contracts of this description could be enforced."

The act of 1830, however, proved to be of little avail and then came the Act of 1835 (5 Stat 251) which compelled the preemptor to swear that he had not made an arrangement by which the title might inure to the benefit of anyone except himself, or that he would transfer it to another at any subsequent time. This was preliminary to the allowing of his entry, and discloses the policy of Congress. "It is always to be borne in mind, in construing a congressional grant that the act by which it is made is a law as well as a conveyance and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law words of present grant, are operative, if at all, only as contracts to convey. But the rules of common law must yield in this, as in other cases, to the legislative will." Missouri, Kansas & Texas Railway Company v. Kansas Pacific Railway Company, 97 US 491, 497 (1878). "The administration of the land system in this country is vested in the Executive Department of the Government, first in the Treasury and now in the Interior Department, the officers charged with the disposal of the public domain under are required and empowered to determine so far as it relates to the extent and character of the rights claimed under them, and to be given, though their actions, to individuals. Government, and courts of justice must never interfere with it." Marks v. Dickson, 61 US (20 How) 501 (1857); see also Cousin v. Blanc's ex., 19 How. US 206, 209 (1856). "The Power of the Congress to dispose of its land cannot be interfered with, or its exercise embarrassed by any State legislation; nor can such legislation deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition." Gibson v. Chouteau, 13 Wal. (U. S.) 92, 93 (1871)

State statutes that give lesser authoritative ownership of title than the patent can not even be brought into federal court. Langdon v. Sherwood, 124 U.S. 74, 81 (1887) These acts of Congress making grants are not to be treated both law and grant, and the intent of Congress when ascertained is to control in the interpretation of the law. Wisconsin C. R. Co. v. Forsythe, 159 U.S. 46 (1895) "The intent to be searched for by the courts in a government Patent is the intent which the government had as that time, and not what it would have been had no mistake been made. The true meaning of a binding expression in a patent must be applied, no matter where such expressions are found in the document. It should be construed as to effectuate the primary object Congress had in view; and obviously a construction that gives effect to a patent is to be preferred to one that renders it inoperative and void. A grant must be interpreted by the law of the country in force at the time when it was made. The construction of federal grant by a state court is necessarily controlled by the federal decisions on the same subject. The United States may dispose of the public lands of such terms and conditions, and subject to such restrictions and limitations as in its judgment will best promote the public welfare, even if the condition is to exempt the land from sale on execution issued or judgment recovered in a State Court for a debt contracted before the patent issues." Miller v. Little, 47 Cal. 348, 350 (1874) Congress has the sole power to declare the dignity and effect of titles emanating from the United States and the whole legislation of the Government must be examined in the determination of such titles. Bagneu v. Broderick, 38 U.S. 436 (1839) It was clearly the policy of Congress, in passing the preemption and patent laws, to confer the benefits of those laws to actual settlers upon the land. Close v. Stuyvesant, 132 M. 607, 617. "The intent of Congress is manifest in the determinations of meaning, force and power vested in the patent. These cases all illustrate the power and dignity given to the patent. It was created to give the government of its lands, and to act as

a means of conveying such lands to the generations of people that would occupy those lands. This formula, "or his legal representatives," embraces representatives of the original grantee in the land, the contract, such as assignees or grantees, as well as the operation of law, and leaves the question open to inquiry in a court of justice as to the party to whom the patent, or confirmation, should enure." Hogan v. Page, 69 US 605 (1864)

The patent was and is the document and law that protects the settler from the merciless speculators, from the people that use avarice to unjustly benefit themselves against an unsuspecting nation. The patent was created with these high and grant intentions, and was created with such intentions for a sound reason. "The settlers as a rule seem to have been poor persons, and presumably without the necessary funds to improve and pay for their land, but it appears that in every case where the settlement was made under the preemption law, the settler entered and paid for the land at the expiration of the shortest period at which entry could be made." Close v. Snyvesant, 132 HI. 607, 623 (1890). "We must look to the benefit character of the acts that created this grants and patents and the peculiar objects they were intended to protect and secure.

A class of enterprising, hardy and valuable citizens has become the pioneers in the settlement and improvement of the new and distant lands of the government. McConnell v. Wilcox, 1 Seam. (M.) 344, 367 (1837). "In furtherance of what is deemed a wise policy, tending to encourage settlement, and to develop the resources of the country, it invites the heads of families to occupy small parcels of the public land. To deny Congress the power to make a valid and effective contract of this character would materially abridge its power of disposal, and seriously interfere with a favorite policy of the government, which fosters measures tending to a distribution of the lands to actual settlers at a nominal price." Miller v. Little, 47 Cal. 348, 351 (1874) The legislative acts, the Statutes at Large, enacted to divest the United States of its land and to sell that land to the true sovereigns of this republic, had very distinct intents. Congress recognized that the average settler of this nation would have little money, therefore Congress built into the patent, and its corresponding act, the understanding that these lands were to be free from avarice and cupidity, free from the speculators who preyed on the unsuspecting nation, and forever under the control and ownership of the freeholder, who by the sweat of his brow made the land produce the food that would feed himself and eventually the nation. Even today, the intent of Congress is to maintain a cheap food supply though the retention of the sovereign farmers on the land. United States v. Kimball Foods, Inc., 440 U.S. 715 (1979); see also Curry v. Block, 541 F. Supp. 506 (1982) Originally, the intent of Congress was to protect the sovereign freeholders and create a permanent system of land ownership in the country.

Today, the intent of Congress is to retain the small family farm and utilize the cheap production of these situations, it has been necessary to protect the sovereign on his parcel of land, and ensure that he remain in that position. The land patent and the patent acts were created to accomplish these goals. In other words, the patent or title deed being regular in its form, the law will not presume that such was obtained through fraud of the public right. This principle is not merely an arbitrary rule of law established by the courts, rather it is a doctrine which is founded upon reason and the soundest principles of public policy. It is one, which has been adopted in the interest of peace in the society and the permanent security of titles. Unless fraud is shown, this rule is held to apply to patents executed by the public authorities. State v. Hewitt Land Co., 134 P. 474, 479 (1913) It is therefore necessary to determine exact power and authority contained in a patent. Legal titles to lands cannot be conveyed except in the form provided by law. McGaffahan v. Mining Co., 96 U.S. 316 (1877) Legal title to property is contingent upon the patent issuing from the government. Sabo v. Horvath, 559 P.2d 1038, 1040 (Aka. 1976) "That the patent carries the fee and is the

best title known to a court of law is the settled doctrine of this court." Marshall v. Ladd, 7 Wall. (74 U.S.) 106 (1869) "A patent issued by the government of the United States is legal and conclusive evidence of title to the land described therein. No equitable interest, however strong, to land described in such a patent, can prevail at law, against the patent" {Land Patents, Opinions of the United States Attorney General's office, (September, 1969)} "A patent is the highest evidence of title, and is conclusive against the government and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal." Stone v. United States, 2 Wall. (67 U.S.) 765 (1865) The patent is the instrument which, under the laws of Congress, passes title from the United States and the patent when regular on its face, is conclusive evidence of title in the patentee. When there is a confrontation between two parties as to the superior legal title, the patent is conclusive evidence of title in the patentee. When there is a confrontation between two parties as to the superior legal title, the patent is conclusive evidence as to ownership. Gibson v. Chouteau, 13 Wall. 912 (1871) Congress having the sole power to declare the dignity and effect of its titles has declared the patent to be the superior and conclusive evidence of the legal title. Bagneff v. Brodrick, 38 US 438 (1839) "Issuance of a government patent granting title to land is the most accredited type of conveyance known to our Law". United States v. Creek Nation, 295 US 103, 111 (1935); see also United States v. Cherokee Nation, 474 F.2d 628,634 91973). The patent is prima facie conclusive evidence of the title. Marsh v. Brooks, 49 U.S. 223, 233 (1850). A patent, once issued, is the highest evidence of title, and is a final determination of the existence of all facts. Walton v. United States, 415 F.2d.121, 123 (10th Cir. 1969); see also United States v. Beaman, 242 F. 876 (1917) File v. Alaska, 593 P. 268, 270 (1979) (When the federal government grants land via a patent, the patent is the highest evidence of title). Patent rights to the land is the title in fee, City of Los Angeles v. Board of Supervisors of Mono County, 292 P.2d 539 (1956), the patent of the fee simple, Squire v. Capoeman, 351 U.S. 1,6 (1956), and the patent is required to carry the fee. Carter v. Rubby, 166 U.S. 493, 496 (1896); see also Klais v. Danowski, 129 N.W. 2d 414, 422 (1964) 1423 (Interposition of the patent or interposition of the fee title). The land patent is the muniment of title, such title being absolute in its nature, making the sovereigns absolute freeholders on their lands. Finally, the patent is the only evidence of the legal fee simple title. McConnell v. Wilcox, 1 Scam (ILL.) 381, 396 (1837) All these various cases and quotes illustrate one statement that should be thoroughly understood at this time, the patent is the highest evidence of title and is conclusive of the ownership of land in courts of competent jurisdiction. This however, does not examine the methods or possibilities of challenging a land patent.

In Hooper et al. v. Scheimer, 64 U.S. (23 How.) 235 (1859), the United States Supreme Court stated, "I affirm that a patent is unimpeachable at law, except, perhaps, when it appears on its own face to be void; and the authorities on this point are so uniform and unbroken in the courts, Federal and State, that little else will be necessary beyond a reference to them." Id. at 240 (1859) A patent cannot be declared void at law, nor can a party travel behind the patent to avoid it. Id. A patent cannot be avoided at law in a collateral, proceeding unless it is declared void by statute, or its nullity indicated by some equally explicit statutory denunciations. One perfect on its face is not to be avoided, in a trial at law, by anything save an elder patent. It is not to be affected by evidence or circumstances which might show that the impeaching party might prevail in a court of equity. A patent is evidence, in a court of law, of the regularity of all previous steps to it, and no facts behind it can be investigated. A patent cannot be collaterally avoided at law, even for fraud. A patent, being a superior title, must of course, prevail over colors of title; nor is it proper for any state legislation to give such titles, which are only equitable in nature with a recognized legal status in equity courts, precedence over the legal title in a court of law. The Hooper case has many of the maxims that apply to the powers and possible disabilities of a land patent, however there is extensive case law in the area.

The presumptions arise, from the existence of a patent, evidencing a grant of land from the United States, that all acts have been performed and all facts have been shown, which are prerequisites to its issuance, and that the right of the party, grantee therein, to have it issued, has been presented and passed upon by the proper authorities. Green v. Barber, 66 N.W. 1032 (1896) As stated in Bouvier's Law Dictionary, Vol. H, p. 1834 (1914): Misrepresentations knowingly made by the application for a patent will justify the government in proceedings to set it aside, as it has a right to demand a cancellation of a patent obtained by false and fraudulent misrepresentations. United States v. Manufacturing Co., 128 U.S. 673 (1888); but courts of equity cannot set aside, annul, or correct patents or other evidence of title obtained from the United States by fraud or mistake, unless on specific averment of the mistake or fraud, supported by clear and satisfactory proof, Maxelli Land Grant Cancellation, 11 How. (U.S.) 552 (1850); although a patent fraudulently obtained by one knowing at the time that another person has a prior right to the land may be set aside by an information in the nature of a bill in equity filed by the attorney of the United States for the district in which the land lies; Id. A court of equity, upon a bill filed for that purpose, will vacate a patent of the United States for a tract of land obtained by mistake from the officers of the land office, in order that a clear title may be transferred to the previous purchaser; Hughes v. United States, 4 Wall. (U.S.) 232 (1866); but a patent for land of the United States will not be declared void merely because the evidence to authorize its issue is deemed insufficient by the court. Milliken v. Starling's lessee, 16 Ohio 61. A state can impeach the title conveyed by it to a grantee only by a bill in chancery to cancel it, either for fraud on the part of the grantee or mistake of law; and until so canceled it cannot issue to any other party a valid patent for the same land. Chandler v. Manufacturing Co., 149 U.S. 79 (1893)

Other cases espouse these and other rules of law. A patentee can be deprived of his rights only by direct proceedings instituted by the government or by parties acting in its name, or by persons having a superior title to that acquired through the government. Putnum v. Ickes, 78 F.2d 233, denied 296 U.S. 612 (1935) It is not sufficient for the one challenging a patent to show that the patentee should not have received the patent; he must also show that he as the challenger is entitled to it. Kale v. United States, 489 F.2d 449, 454 (1973) A United States patent is protected from easy third party attacks. Fisher v. Rule, 248 U.S. 314, 318 (1919); see also Hooffagle v. Anderson, 20 U.S. (7 Wheat.) 212 (1822) A Patent issued by the United States of America so vests the title in the lands covered thereby, that it is the further general rule that, such patents are not open to collateral attack. Thomas v. Union Pacific Railroad Company, 588, 596 (1956) See also State v. Crawford, 475 P.2d 515 (Ariz. App. 1970) (A patent is prima facie valid, and if its validity can be attacked at all, the burden of proof is upon the defendant); State v. Crawford, 441 P.2d 586, 590 (Ariz. App. 1968) (A patent to land is the highest evidence of title and may not be collaterally attacked); and Dredge v. Husite Company 369 P.2d 676, 682 (1962) (A Patent is the act of legally instituted tribunal, done within its jurisdiction, and passes the title. Such a patent is a final judgment as well as a conveyance and is conclusive upon a collateral attack) Absent some facial invalidity, the patents are presumed valid. Murray v. State, 596 P.2d 805, 816 (1979) The government retains no power to nullify a patent except through a direct court proceeding. United States v. Reimann, 504 F.2d 135 (1974) See also Green v. Barker, 66 N.W. 1032, 1034 (1896) (The doctrine announced was that the deed upon its face, purported to have been issued in pursuance of the law, and was therefore only assailable in a direct proceeding by aggrieved parties to set it aside) Through these cases, it can be shown that the patent which passes the title from the United States to the sovereigns, was created to keep the speculators from the land, is only able in a direct proceeding for fraud or mistake. In no other situation is it allowable for the courts, to imply eliminate the patent. One question that may arise is what do the courts mean by a collateral attack and what can be done by courts of equity if a collateral attack is presented?

Perhaps the easiest means of defining a collateral attack is to show, the converse corollary, or a direct attack on a patent. As was stated in the previous paragraphs, a direct attack upon a land patent is an action for fraud or mistake brought by the government or a party acting in its place. Therefore, a collateral attack, by definition, is any attack upon a patent that is not covered within the direct attack list. Perhaps the most prevalent collateral attack in Property law today is a mortgage or deed of trust foreclosure on a color of title. In these instances, it is determined that the mortgagee or another purchases the complete title and interest in the land in his place. Such a determination displaces the patentee's ownership of the title without the court ever ruling that the patent was acquired through fraud or mistake. This is against public policy, legislative intent, and the overwhelming majority of case law. Therefore, it is now necessary to determine the patent's role in American property law today, to see what powers the courts of equity have in protecting the rights of the challengers of patents.

The attitude of the Courts is to promote simplicity and certainty in title transactions, thereby they follow what is in the chain of title, and not what is outside. Sabo v. Horvath, 559 P.2d 1038, 1044 (1976) However in equity courts, title under a patent from the government is subject to control, to protect the rights of parties acting in a fiduciary capacity. Sanford v. Sanford, 139 U.S. 290 (1891). This protection however does not include the invalidation of the patent. The determination of the land department in matters cognizable by it, in the alienation of lands and the validity of patents cannot be collaterally attacked or impeached.

Therefore the courts have had to devise another means to control the patentee, if not the patent itself, as stated in Raestle v. Whitson, 582 P.2d 170, 172 (1978), "The land patent is the highest evidence of title and is immune from collateral attack. This does not preclude a court from imposing a constructive trust upon the patentee for the benefit of the owners of an equitable interest" This then explains the most equitable way a court may effectively restrict the sometimes harsh justice handed down by a strict court of law. Equity courts will impose a trust upon the patentee until the debt has been paid. As has been stated, a patent can not be collaterally attacked, therefore the land can not be sold or taken by the courts unless there is strong evidence of fraud or mistake. However, the courts can require the patentee to pay a certain amount at regular intervals until the debt is paid, unless of course, there is a problem with the validity of the debt itself. This is the main purpose of the patent in this growing epidemic of farm foreclosures that defy the public policy of Congress, the legislative intent of the Statutes at large, and the legal authority as to the type of land ownership possessed in America. Why then is the rate of foreclosures on the rise?

Titles to land today, as was stated earlier in this memorandum, are normally in the form of colors of title. This is because of the trend in recent property law to maintain the status quo. The rule in most jurisdictions, and those which have adopted a grantor-grantee index in particular, is that a deed outside the chain of title does not act as a valid conveyance and does not serve notice of a defect of title on a subsequent purchaser. These deeds outside the chain of title are known as "wild deeds." Sabo v. Horvath, 559 P.2d 1038, 1043 (1976); See also Porter v. Buck, 335 So.2d 369, 371 (1976); The Exchange National Bank v. Lawndale National Bank, 41 ILL.2d 316, 243 N.E.2d 193, 195-96 (1968) (The chain of title for purposes of the marketable title act, may not be founded on a wild deed. These stray, accidental, or interloping conveyances are contrary to the intent of the marketable title act, which is to simplify and facilitate land title transactions); and Manson v. Berkman, 356 ILL. 20, 190 N. E. 77, 79 (1934) This liberal construction of what constitutes a valid conveyance has led to a thinning of the title to a point where the absolute and paramount title is almost impossible to guarantee. This thinning can be directly attributed to the constant use of the colors of title. Under the guise of being the fee simple absolute, these titles have operated freely, but in reality,

the evidence something much different. It was said in common-law England, that when a title was not completely alienable and not the complete title it was not a fee simple absolute. Rather it was some type of contingent conveyance that depended on the performance of certain tasks before the title was considered to be absolute. In fact, normally the title never did develop into a fee simple absolute. These types of conveyance were evidenced in part by the operable word, since the conveyance and in part by the manner in which the grantor could reclaim the property. If the title automatically reverted to the grantor upon the happening of a contingent action, then the title was by a fee simple determinable. Scheller v. Trustees of Schools of Township 41 North, 67 ILL. App.3d 857, 863 (1978) This is evidenced most closely today by deeds of trust in some states. If it required a court's ruling to reacquire the land and title, then the transaction and title were held by a fee simple with a condition subsequent. Mahrenholz v. Country Board of Trustees of Lawrence County, 93 Ill.App.3d 366, 370-74 (1981) This is most closely evidenced by a mortgage in a lien or intermediate-theory state. These analogies may be somewhat startling and new to some, but the analogies are accurate. When a mortgage is acquired on property, the mortgagee steps into the position of a grantor with the authority to create the contingent estate as required by the particular facts. This is exactly what the grantor in Common Law property law could acquire. All the grantor had to do was choose a particular type of contingency and use the necessary catch words, and almost invariably the land would one day be refused due to a violation of the contingency. In today's property law, the color of title has little power to protect the landowner.

When the sovereign is unable to pay the necessary principal and interest on the debt load, then the catch words and phrases found in the deed of trust or mortgage become operational. Upon the occurrence of that event, the mortgagee or speculator, having through a legal maneuver acquired the position of a grantor, is in a position to either automatically receive the property simply by advertising and selling it, or can acquire the position of the grantor and eventually the possession of the property by a court proceeding. In Common Law, the grantor of a fee simple determinable where the contingency was broken or violated, could automatically take the land from the grantee holder, by force if necessary. If however, the grant was a fee simple upon condition subsequent the grantor, when the contingency was broken, had to bring a legal proceeding to declare the contingency broken, to declare the grantee in violation, and to order the grantee to vacate the premises. These situations, though under different names and proceedings, occur every day in America. Is there really any serious debate therefore, that the colors of title used today, with the creation of a lien upon the property, become fee simple determinable and fee simples upon condition subsequent? Is this a legitimate method of ensuring a stable and permanent system of land ownership? If the color of title is weak, then how strong is a mortgage or deed of trust placed on the property?

Fee simple estates may be either legal or equitable. In each situation it is the largest estate in the land that the law will recognize. Hughes v. Miller's Mutual Fire Insurance Co., 246 S.W.23 (1922) If a mortgagee, upon the creation of a mortgage or deed of trust, steps into the shoes of the grantor upon a conditional fee simple, does it then mean the mortgagee has acquired one of the two halves of a fee simple, when cases have shown the fee simple is only evidenced by a patent? Actually, courts have held in many states that a mortgage is only a lien. United States v. Certain Interests in Property in Champaign County, State of Illinois, 165 F.Supp.474, 480 (1958) (In Illinois and other lien theory states, the mortgagee has only a lien and not a vested interest in the leasehold) See also Federal Farm Mortgage Corp. v. Ganswer, 146 Neb. 635, 20 N.W.2d 689 (1945) Even after a condition is broken or there is a default on a mortgage, a mortgagee only has an equitable lien which can be enforced in proper proceedings); South Omaha Bank v. Levy, 95 N.W.603 (1902) Strict foreclosure will not lie when mortgagor holds the legal title); First National Bank v. Sergeant, 65 Neb. 394, 91 N.W. 595 (1902) (Mortgagee cannot demand more than is legally due);

Morrill v. Skinner, 57 Neb. 164, 77 N.W. 375 (1898) (Mortgage conveys no estate but merely creates a lien); Barber v. Crowell, 55 Neb. 571, 75 N.W. 1 109 (1898) (Mortgage is mere security in form of conditional conveyance), Speer v. Haddock, 31 Freeman (HI.) 439, 443 (1863) (Assignments or conveyances of mortgages do not convey the fee simple, rather they hold only security interests) In lien and intermediate-theory states, these cases amply illustrate that a mortgage or deed of trust is only a lien. Even in title theory of mortgage states, courts of equity have determined that the fee simple title is not really conveyed, either in its equitable or legal state. See supra Barber, at 1110. A fee simple estate still exists even though the property is mortgaged or encumbered. Hughes v. Miller's Mutual Fire Insurance Co., 246 S.W. 23, 24 (1922) In fact, a creditor asserting a lien (mortgage) must introduce evidence or proof that will clearly demonstrate the basis of his lien. United States v. United States Chain Company, 212 F. Supp. 171 (N. D. If a mortgagee, even in the title theory states, has only a lien, yet when the mortgage or deed of trust is created he has a fee simple determinable or condition subsequent, then obviously the color of title used as the operative title has little force or power to protect the sovereign Freeholder. Nor can it be said that such a color of title is useful in the intendment of stable and permanent titles. The patent, in almost all cases has been originally issued to the first purchaser from the government. Theoretically then the public policy, Congressional intent from the 30's, and the Congressional intent of the last few decades should protect sovereign in the enjoyment and possession of his freehold. This however is not the case. Instead, vast mortgaging of the land has occurred. The agriculture debt alone has risen to over \$220,000,000,000 in the past three decades. This is in part due to the vast expansion of mortgaged holdings and part due to the rural sector's inability to repay existing loans requiring the increased mortgaging of the land. This is in exact contradiction to public policy and legislative intent of maintaining stable and simplistic land records; yet marketable titles (colors of title) were supposed to guarantee such records. Wichelman v. Messner, 83 N.W.2d 800, 805 357. Colors of title are ineffective against mortgages and promote the instability and complexity of the records of land titles by requiring abstracts and title insurance simply to guarantee a marketable title. Worse, an injustice has prevailed in some of the states of permitting actions to determine titles to be maintained upon warrants for land (warranty deeds) and other titles not complete or legal in their character. This practice is against the intent of the Constitution and the Acts of Congress. Bagnell v. Broderick, 38 U.S. 438 (1839). Such lesser titles have no value in actions brought in federal courts not with standing a State legislature, which may have provided otherwise. Hooper et. al. v. Scheimer, 64 U.S. (23 How.) 235 (1859) It is in fact possible that the state legislatures have even violated the Supremacy Clause of the United States Constitution. These actions are against the intent of the founding fathers and against the legislative intent of the Congressman who enacted the statutes at large creating the land patent or land grant This patent or grant, since the land grant has in some states, another name for the patent, the terms being synonymous, Northern Pacific Railroad Co. v. Barden, 46 F. 592, 617 (1891); prevented every problem that was created by the advent of colors of title, marketable titles, and mortgages. Therefore it is necessary to determine the validity of returning to the patent as the operative title.

Patents are issued (and theoretically passed) between sovereigns and deeds are executed by persons and private corporations without these sovereign powers. Leading Fighter v. County of Gregory, 230 N.W.2d 114, 116 (1975) As was stated earlier, the American people in creating the Constitution and the government formed under it, made such a document and government as sovereigns, retaining that status even after the creation of the government. Chisholm v. Georgia, 2 Dall. (U.S.) 419 (1793) The government as sovereign passes the title to the American people creating in them sovereign Freeholders. Therefore, it follows that the American people, as sovereigns, should also have this authority to transfer the fee simple title, through the patent, to others. Cases have been somewhat scarce in this area, but there is some case law to reinforce this idea. In Wilcox v. Calloway, 1 Wash. (Va.) 38, 38-41 (1823), the Virginia

Court of Appeals heard a case where the patent was brought up or reissued to the parties four separate times. Some patents were issued before the creation of the Constitutional United States government, and some occurred during the creation of that government. The courts determined the validity of those patents, recognizing each actual acquisition as being valid, but reconciling the differences by finding the first patent, properly secured with all the necessary requisite acts fulfilled, carried the title. The other patents and the necessary requisition a new patent each time yielded the phrase "lapsed patent." A lapsed Patent being one that must be required to perfect the title. *Id.* Subsequent patentees take subject to any reservations in the original patent. *State v. Crawford* 441 P.2d 586, 590 (1968). A patent regularly issued by the government is the best and only evidence of a perfect title. The actual patent should be secured to place at rest any question as to validity of entries (possession under a claim and color of title). *Young v. Miller*, 125 So.2d 257, 258 (1960). Under the color of title act, the Secretary of Interior may be required to issue a patent if certain conditions have been met, and the freeholder and his predecessors in title are in peaceful, adverse possession under claim and color of title for more than a specified period. *Beaver v. United States*, 350 F.2d 4, cert. denied, 387 U.S. 937 (1965). A description which will identify the lands (and possession) is all that is necessary for the validity of the patent, *Loring v. Shull*, 173 S.W.2d 1, 1 Mo. 342 (1943). A patent to two or more persons creates presumptively a tenancy in common in the patentees. *Stoll v. Gottbrecht*, 176 N.W. 932, 45 N.D. 158 (1920). A patent to be the original grantee or his legal representatives embrace the representatives by contract as well as by law. *Reichert v. Jerome H. Sheip, Inc.*, 131 So. 229, 222 Ala. 133 (1930). A patent has a double operation: In the first place, it is documentary evidence having the dignity of a record of the evidence of the title or such equities respecting the claim as to justify its recognition and later confirmation. In the second place, it is a deed of the United States, or a title deed. As a deed, its operation is that if a quitclaim or rather of a conveyance of such interest as the United States possess in the land; such interest in the land passing to the people or sovereign freeholders. 63 Am. Jur. 2d Section 97, p. 566.

Finally, the United States Supreme Court, in *Summa Corporation v. California ex rel. State Lands Commission, etc.*, 80 L.Ed.2d 237 (1984), made determinations as to the validity of a patent confirmed by the United States through the Treaty of Guadalupe Hidalgo, 9 Stat. 631 (1951). The State of California attempted to acquire land that belonged to the corporation. The State maintained that there was a public trust easement granting to the State authority to take the land without compensation for public use. The corporation relied in part on the intent of the treaty, in part on the intent of the patent and the statute creating it, and in part in the requisite challenge date of the patent expiring. The Summa Court followed the lengthy dissertation of the dissenting judge on the California Supreme Court, See 31 Cal. 3d 288, dissenting opinion, in determining that the patent which had been the apparent operative title throughout the years, was paramount and the actions by the State were against the manifest weight of the Treaty and the legislative intent of the patent statutes. In each of these cases it states that the patent, through possession, or claim and color of title, or through the term "his heirs and assigns forever", or through the necessary passage of title at the death of a joint tenant or tenant in common, is still the operable title and is required to secure the peaceful control of the land. These same ideas can also apply to state patents for lands that went to the state or remained in the hands of the state upon admission into the Union. *Oliphant v. Frazho*, 146 N.W.2d 685, 686, 687 (1966); *Fiedler v. Pipers*, 107 So.2d 409, 411-412 (1958) (Not even the State could be heard to question the validity of a patent signed by the Governor and the Register of the State Land Office). "No government can object to the intent and creation of a patent after such is issued, unless issued through fraud or mistake. The patent, either federal or state, has an intent to create sovereign freeholders in the land protected from the speculators, (any lending institution speculates upon land), and a public policy to maintain a simplistic, stable and permanent system of land records. Land patents were designed to

effectively insure that this intent and policy were retained. Colors of title can not provide this type of stability, since such titles are powerless against liens, mortgages, when the freeholder is unable to repay principle and interest on the accompanying promissory note. Equity will entertain jurisdiction at the instance of the owner of fee of lands to remove a cloud upon his title created by the sale of the premises and a deed issued thereto under a decree of foreclosure of a mortgage there-on." Hodgen v. Guttery, 58 Free. (i I 1.) 431, 438 (1871) (though this case dealt with an improper sale of land covered by a patent, any forced sales of lands covered by a patent is improper in view of the policy and intent of the Congress.)

Equity however will protect the mortgagee who stands to lose his interest in the property, thereby requiring a trust to be created until the debt is erased, making partners of the creditor and debtor. What then exists is a situation where the patent should be declared (confirmed or reissued), to protect the sovereign freeholder and to re-institute the policy and intent of Congress. The patent as the paramount title, fee simple absolute, can not be collaterally attacked, but when a debt can not be paid immediately placing the creditor in jeopardy, the courts will impose a constructive trust until the new "partners" can mutually eliminate the debt. If the debt can not be satisfactorily removed, it is still possible, considering the present intent of the government, to maintain sovereign freeholders on the property, immune from the loss of the land, since it is Congress' intent to keep the family farm in place. The use of colors of title to act as the operative title is inappropriate considering the rising number of foreclosures and the inability of the colors of title to restrain a mortgage or lien. However, the lending institutions, speculators on the land, maintain that the public policy of the country includes the eradication of the sovereign freeholders in the rural sector in an effort to implant upon the country, large corporate holdings. This last area must be effectively met and eliminated.

To those who framed the Constitution, the rights of the States and the rights of the people were two distinct and different things. Throughout their debates they had two objects foremost in their minds. First, to create a strong and effective national government, and secondly to protect the people and their rights from usurpation and tyranny by government. The people's liberties and individual rights and safeguards were to be kept forever beyond the control and dominion of the legislatures of the States, whom they distrusted, and against whom they so carefully guarded themselves. If such control and domination and unlimited powers were given to a few legislatures they could override every one of the reserved rights covered by the first ten Amendments (the bill of rights); they could change the government of limited powers to one of unlimited powers; they could declare themselves hereditary rulers; they could abolish religious freedoms, they could abolish free speech and the right of the people to petition for redress; they could not only abolish trial by jury, but even the rights to a day in court; and most importantly they could abolish free sovereign ownership of the land. The whole literature of the period of the adoption of the Constitution and the first ten amendments is one of great testimony to the insistence that the Constitution must be so amended as to safeguard unquestionably the rights and freedoms of the people so as to secure from any future interference by the new government, matters the people had not already given into its control, unless by their own consent. United States v. Sprague, 282 U.S. 716, 723-726 (1930) The problem has not in the lending institutions that simply practice good business on their part. The problem in the loss of freedoms by this present interference with allodial sovereign ownership lies with the state legislatures that created law, or marketable title acts, that claimed to enact new simplistic, stable land titles and actually created a watered-down version of the fee simple absolute that requires complicated tracing and protection, and is ineffective against mortgage foreclosures. None of these problems would occur if the patent were the operable title again, as long as the sovereigns recognized the powers and disabilities of

their fee simple title. The patent was meant to keep the sovereign freeholder on the land, but the land was also to be kept free of debt, since that debt was recognized in 1820 as un-repayable, and today is un-repayable. The re-declaration of the patent is essential in the protection of the rural sector of sovereign freeholders, but also essential is the need to impress the state legislatures that have strayed from their enumerated powers with the knowledge that they have enacted laws that have defeated the intent and goal of man since the middle ages. That intent, of course, is to own a small tract of land absolutely, whether by land-bloc or patent, on which the freeholder is beholden to no lord or superior. The patent makes sovereign freeholders of each person who own his/her land. A return to the patent must occur if those sovereign freeholders wish to protect that land from the encroachment of the state legislatures and the speculators that benefit from such legislation.

SECTION IV
CONCLUSION

As has been seen, man is always striving to protect his rights, the most dear being the absolute right to ownership of the land. This right was guaranteed by the land patent, the public policy of the Congress, and the legislative intent behind the Statutes at Large. Such rights must be reacquired through the re-declaration of the patent in the color of title claimant's name, based on his color of title and possession. With such reborn rights, the land is protected from the forced sale because of delinquency on a promissory note and foreclosure on the mortgage. This protected land will not eliminate the debt, a trust must be created whereby "partners" will work together to repay it. These rights must be recaptured from the state legislated laws, or the freedoms guaranteed in the Bill of Rights and Constitution will be lost. Once lost, those rights will be exceedingly hard, if not impossible to reclaim, and quite possibly, as Thomas Jefferson said, the children of this generation may someday wake up homeless on the land their forefathers founded. This Court has the opportunity, nay the obligation to uphold the original intent of the founding fathers, and the Congress in the protection of our most valued unalienable right, the right to allodial property.

Respectfully Submitted,

The Eighth day of January in the year of our Lord two thousand and thirteen, and in the two hundred and thirty- seven year of our Sovereignty and Independence of the United States of America.

§
by Shelton L. Hoffman

SHELTON L. HOFFMAN

ATTEST: TRUE COPY
Wingia
CLERK C-1
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF Orangeburg

SCBT, NA,

Plaintiff,

vs.

Shelton Hoffman,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 12-CP-38-0030

PLAINTIFF'S MOTION TO QUASH
SUBPOENA OF BRUCE RHENEY AND
DIANNE DUKES AND MOTION TO
AWARD SANCTIONS

(016555-00055 HPW)

Pursuant to Rule 45 of the *South Carolina Rules of Civil Procedure*, Plaintiff SCBT, NA ("Plaintiff"), respectfully moves the court for an Order Quashing the Subpoena of Bruce Rheney and Dianne Dukes and an Order Awarding Sanctions against Defendant Hoffman and/or Defendant's attorney Margaret Collins. This motion is based on the following grounds:

1. Defendant failed to allow Plaintiff a reasonable time for compliance by serving the subpoena at 3:40 p.m. the day before trial. Rule 45(c)(3)(A)(i), SCRPC.
2. The tardy service of the subpoena subjects the Plaintiff to undue burden. Rule 45(c)(3)(A)(iv), SCRPC.
3. The attorney responsible for the issuance and service of the subpoena did not take reasonable steps to avoid imposing an undue burden on the person subject to the subpoena and is subject to sanctions which may include, but is not limited to, lost earnings and reasonable attorney's fees. Rule 45(c)(1), SCRPC.
4. Plaintiff has adequate cause for failure to obey the subpoena as Defendant served the subpoena without providing Plaintiff with an adequate time to respond. Rule 45(e), SCRPC.
5. Defendant did not make proper service on the named individuals named in the subpoena because they are not parties to this action. Rule 45(b)(1), SCRPC.

The undersigned counsel for Plaintiff affirms that prior to the service and filing of the foregoing motion, she communicated with opposing counsel in a good-faith effort to resolve the matter but such efforts were unsuccessful.

The undersigned, counsel for Plaintiff, has spent more than two and a half (2.5) hours at \$250/hour attempting to resolve this issue, researching the legal authorities, and preparing this Motion to Quash, for a total of \$625.00.

Respectfully submitted,

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

Harriet Pollitt Wallace (SC Bar # 69454)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive – Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR THE PLAINTIFF

February 11, 2013
Columbia, South Carolina

CERTIFICATE OF SERVICE BY MAIL

Civil Action Number 2012-CP-38-0030

I, Missie Wessinger, an employee for the firm of Rogers Townsend & Thomas, PC hereby certify that on the February 11, 2013 I caused a copy of the following to be sent by electronic mail, postage prepaid to the parties shown below:

Documents Served:

Plaintiff's Motion to Quash Subpoena of Bruce Rheney and Dianne Dukes and Motion to Award Sanctions

Parties Served:

Margaret A. Collins, Esquire
Collins & Burkett Law Firm, LLC
1087 Harbor Drive (Suite B)
West Columbia, SC 29169
meg@collinsburkett.com


Missie Wessinger

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs-)

MOTION TO COMPEL

Shelton Hoffman a/k/a Shelton L.)

Hoffman; South Carolina)

Department of Revenue; The)

United States of American acting)

By and through its agency the)

Internal Revenue Service; Baird)

Transport, Inc.,)

Defendant.)

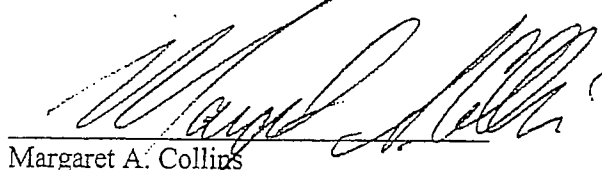
TO: HARRIET WALLACE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF AND TO THE
PLAINTIFF ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE, that the Defendant, Shelton Hoffman, by his undersigned attorney, will move before the Special Referee of the Orangeburg County on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order, pursuant to Rules 26, 33, and 34 of the South Carolina Rules of Civil Procedure, compelling the Plaintiff to answer Defendant's Requests for Production, copies of which are attached hereto. This discovery was served by mail on or about June 22, 2012 but the original Note dated October 21, 2003 and referenced in paragraph seven (7) of Plaintiff's Complaint has been received to date. Specifically, Plaintiff produced original documents twice to Defendant or Defendant's representative. No disclosure was made that the October 21, 2003 Note was a copy at any time. However, Defendant's expert has provided evidence that the October 21, 2003 Note was not an original. The undersigned has

CLERK OF COURT
ORANGEBURG COUNTY, SC

communicated with Plaintiff by email dated January 22, 2013 requesting responses to its discovery, more specifically to allow inspection of the original note in this matter, in an attempt to resolve the issue contained in this motion, a copy of which is also attached hereto. And, pursuant to Rule 37(a), for an Order requiring the Plaintiff to pay to the Defendant Hoffman the amount of reasonable expenses incurred in obtaining the Order, including reasonable attorneys' fees and expert fees.

Respectfully submitted,
COLLINS & BURKETT LAW FIRM, LLC



Margaret A. Collins
1087 Harbor Drive Suite B
West Columbia, SC 29169
Tel: 803-708-7442
Fax: 803-753-9352
Attorneys for the Defendant Hoffman

February 5, 2013

West Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)
Plaintiff,)
-vs-)

C/A#: 2012-CP-38-0030

Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)
Defendant.)

DEFENDANT SHELTON HOFFMAN'S
FIRST SET OF REQUESTS TO
PRODUCE TO PLAINTIFF

FILED FOR RECORD
2013 FEB - 6 AM 10:13

TO: PLAINTIFF BY AND THROUGH ITS ATTORNEY, TERI K. STOMSKI, ESQUIRE:

Defendant Shelton Hoffman requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Plaintiff produce and permit the inspection, copying and/or photographing of:

1. Any and all documents, of any kind, referenced in Plaintiff's Answers to Defendant's Interrogatories.
2. All statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the incident as set forth in the Complaint.
3. Any documents, of any kind, used or consulted when answering Defendant's Interrogatories to Plaintiff.
4. Originals of all documents signed in connection with the loan which was obtained to purchase the property which is the subject of this action. If the original is not available, specify the reason and whether or not the original still exists.

Wynne B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, S

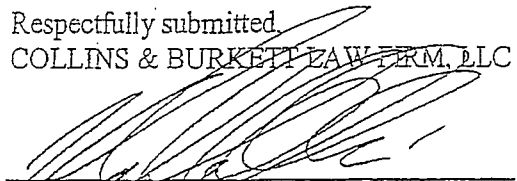
5. Allow for inspection of all original notes, mortgages and modification documents.
6. Produce and provide the complete ledger statement for this loan from the date of inception to June 15, 2012.
- ✓ 7. Produce and provide all correspondence, notes, documents, emails and telephone logs transmitted between Attorney Ronald E. Hutto and any employee, officer or agent of Plaintiff between the dates of September 01, 2003 and December 31, 2003 relative to this loan transaction.
- ✓ 8. Produce and provide all attorney billing statements associated with this action, as well as any invoices charged to Plaintiff for collection costs.
9. Produce and provide the telephone log for Plaintiff that is associated with the loan and collection of same.
10. Produce and provide all correspondence between Defendant and Plaintiff relating to this loan and collection of same.
- ✓ 11. Produce and provide the Plaintiff bank's complete closing package for this loan, as well as all documentation required for each modification.
- ✓ 12. Produce and provide the original bond received by Plaintiff which the Defendant purports satisfies this loan, as well as all internal documents, communications, notes, ledger entries and emails relating to the receipt and processing of the bond.

If you contend any item need not be produced, identify such item and set forth the basis for your failure to produce same.

It is requested that this production be made within thirty (30) days after the date of service of this request at the office of Collins & Burkett Law Firm, LLC, 1087 Harbor Drive,

Suite B, West Columbia, South Carolina. Visual inspection and copies may be made of any and all documents.

Respectfully submitted,
COLLINS & BURKETT LAW FIRM, LLC



Margaret A. Collins
1087 Harbor Drive, Suite B
West Columbia, SC 29169
P: (803) 708-7442
F: (803) 753-9352
meg@cb-lawsc.com
Attorney for the Defendant, Shelton
Hoffman

June 14th, 2012.

West Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)
Plaintiff,)

C/A#: 2012-CP-38-0030

-vs-)

CERTIFICATE OF SERVICE

Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)
Defendant.)

FILED FOR RECORD
2012 FEB - 6 AM 10:13

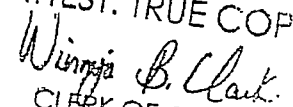
I, Anna Lacke, the undersigned employee of Collins & Burkett Law Firm, LLC attorneys for Shelton Hoffman do hereby certify that I have served a copy of the foregoing Defendant's First Set of Requests to Produce to Plaintiff and Defendant's First Set of Interrogatories to Plaintiff as well as a Notice of Deposition in connection with the above referenced case by First Class Mail, postage prepaid on June 14, 2012 to the following address:

Terri K. Stomski, Esquire
Attorney for SCBT, N.A.
220 Executive Center Drive
Columbia, SC 29210

June 14, 2012

West Columbia, South Carolina


Anna Lacke

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CASE NO. 12-CP-38-0030

MOTION INFORMATION
FORM
AND COVER SHEET

SCBT, N.A.

☒ Plaintiff

v.

Shelton Hoffman aka Shelton L. Hoffman, et al. ☐ Defendant

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Harriet Pollitt Wallace (SC Bar # 69454)

Rogers Townsend & Thomas, PC

220 Executive Center Drive (29210)

P.O. Box 100200

Columbia, SC 29202-3200

(803) 771-7900 tel. #

(803) 343-7017 fax #

name, S.C. Bar no. and address of Defendant's attorney

telephone:

fax:

email:

other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion Quash Subpoena of Bruce Rheney and Dianne Dukes and Award Sanctions

Estimated Time Needed: 15 minutes

Court Reporter Needed: YES

SECTION II: Motion Fee

☒ PAID — AMOUNT: \$ 25.00☐ EXEMPT:☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent status☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication☐ Motion for Execution (Rule 69, SCRCP)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

SECTION III: Motion Type

☒ Written motion attached☐ Form Motion —

I hereby move for relief of action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff

2-12-13

Date submitted

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.☐ Other

JUDGE

CODE: _____

Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

(print name)

☐ MOTION FEE COLLECTED: _____☐ CONTESTED — AMOUNT DUE: _____

SCCA/233 (11/2003) 016555-00055

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-38-0030

SCBT, N.A.,)
Plaintiff,)

v.)

Shelton Hoffman a/k/a Shelton)
L. Hoffman; South Carolina)
Department of Revenue; The)
United States of America acting)
by and through its agency the)
Internal Revenue Service; Baird.)
Transport, Inc.,)

Defendants.)

**NOTICE OF HEARING
FOR FEBRUARY 12, 2013**

TO THE PARTIES ABOVE NAMED:

Please be advised that a Hearing in this matter will take place on Tuesday, February 12, 2013 at 10:00 a.m. before James E. Reeves, Esquire as Special Referee for Orangeburg County, South Carolina at the Orangeburg County Courthouse, 151 Docket Street, Orangeburg, SC 29115 in the Third Floor Courtroom. The Court will hear the Motion of Collins and Burkett Law Firm, LLC to be relieved of counsel for the Defendant, Shelton Hoffman a/k/a Shelton L. Hoffman, and also the trial of Plaintiff's Complaint. The parties are again notified that the Court is not inclined to delay this case any further. In light of the pending Motion to be Relieved, the Defendant, Shelton Hoffman, is again advised to immediately seek counsel or be prepared to appear without the assistance of counsel.

JAMES E. REEVES, P.A.

By: James E. Reeves
James E. Reeves, Esquire
Special Referee for Orangeburg County
400 North Cedar Street
Summerville, South Carolina 29483
Phone: (843) 832-7337
Fax: 1-888-466-8615

Summerville, South Carolina
January 22, 2013

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG)	Case No.: 2012-CP-38-0030
SCBT, N.A.,)	
Plaintiff,)	
v.)	
	CERTIFICATE OF SERVICE
Shelton Hoffman a/k/a Shelton)	
L. Hoffman; South Carolina)	
Department of Revenue; The)	
United States of America acting)	
by and through its agency the)	
Internal Revenue Service; Baird)	
Transport, Inc.,)	
Defendants.)	

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2013, I caused a true and correct copy of:

NOTICE OF HEARING FOR FEBRUARY 12, 2013

To be mailed, via United States Mail with sufficient postage thereon and emailed, to:

Harriet P. Wallace, Esquire, attorney for the Plaintiff
 Rogers Townsend & Thomas, PC
 P. O. Box 100200
 Columbia, SC 29202-3200
 Email: harriet.wallace@rtt-law.com

Thomas M. Gore, Esquire, attorney for the Defendant, Baird Transport, Inc.
 McCorkle & Johnson, LLP
 319 Tattnal Street
 Savannah, GA 31404
 Email: TMG@mccorklejohnson.com

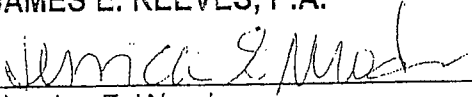
Margaret A. Collins, Esquire, attorney for the Defendant, Shelton Hoffman
 Collins & Burkett Law Firm, LLC
 1087 Harbor Drive, Suite B
 West Columbia, SC 29161
 Email: meg@cb-lawsc.com

In addition, to be mailed, via United States Mail with sufficient postage thereon and by facsimile, to:

Milton G. Kimpson, Esquire, attorney for the Defendant,
South Carolina Department of Revenue
P. O. Box 12265
Columbia, SC 29211
Facsimile: 803-898-5147

JAMES E. REEVES, P.A.

By:


Jessica E. Woods

Summerville, SC
January 22, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

FIRST JUDICIAL CIRCUIT)

COUNTY OF ORANGEBURG)

CASE NO.: 2012 -CP-38-0030)

SCBT, N.A.,)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff,)

vs.)

Shelton Hoffman a/k/a Shelton L. Hoffman;
South Carolina Department of Revenue; The
United States of American acting by and
through its agency the Internal Revenue
Service; Baird Transport, Inc.,)

Defendant.)

Plaintiff's Attorney:

Harriett Wallace, Bar No. 13290

Address:

220 Executive Center Drive

Columbia, SC 29210

Phone: (803) 744-1926 Fax (803) 343-7017

E-mail: harriet.wallace@rtt-law.com Other: _____

Defendant's Attorney:

Margaret A. Collins, Bar No. 13290

Address:

1087 Harbor Drive, Suite B

West Columbia, SC 29169

Phone: (803) 708-7442 Fax (803) 753-9352

E-mail: meg@cb-lawsc.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Compel

Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

ATTEST: TRUE COPY

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____
CLERK OF COURT
ORANGEBURG COUNTY, SC

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;
South Carolina Department of Revenue; The
United States of America acting by and through
its agency the Internal Revenue Service;
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-38-0030

OBJECTION TO MOTION TO
BE RELIEVED AS COUNSEL

MOTION TO DELAY
FORECLOSURE HEARING

FILED
WITH
CLERK
OF
COURT
ORANGEBURG
COUNTY
SOUTH
CAROLINA

2013 JAN -2 PM 12:01

This motion is filed by Shelton L. Hoffman, *Pro Se* defendant:

FACTUAL BACKGROUND

On or about January 6, 2012, Plaintiff filed an illegal and fraudulent foreclosure Complaint for properties described in Attachment A ("The Property") against Defendant Hoffman. Defendant Hoffman, acting as *Pro Se* and under the advice of debt counselors, answered the Complaint and requested that Plaintiff provide proof of claim that the matter has not already been settled and closed between the parties, SHELTON L. HOFFMAN AND DONALD E. PICKETT, CHIEF FINANCIAL OFFICER OF SCBT, NA, through a private Administrative Agreement referenced under South Carolina UCC-1 File Number # 111209-1607330. Defendant Hoffman demanded that Plaintiff show cause why their Complaint should not be dismissed. Defendant Hoffman has received no response to that answer. Additionally, Defendant Hoffman has asked Plaintiff to prove its ownership of the mortgage in question, and proof of their standing as a real party in interest

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Case No.: 2012-CP-38-0030

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under Fed. R. Civ. P. 17.¹ Shortly after receiving the Complaint, research conducted by Defendant Hoffman personally, led him to believe that Plaintiff was not, in fact the owner of the subject mortgage. He then found no legally filed assignments of beneficiary or transfers of beneficial interest of the mortgage, in violation of Contract Law that any 5th grader could understand.² Defendant Hoffman also noted that the original Complaint was fraudulent and illegal, since it requires a non-jury foreclosure. Plaintiff's solicitation to the Court that it be allowed to overturn Defendants' right to trial by jury is fraudulent, see U.S.C.A. **Amend. 7 Trial by jury in civil cases:** "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

In Plaintiff's original foreclosure complaint, it referred to other Defendants and debts that do not belong to Defendant Shelton L. Hoffman, but may be related to a relative of his. By making this egregious error, and serving this Complaint and other documents (including, but not limited to the hearing notice) to parties unrelated to Defendant Shelton L. Hoffman, Plaintiff has violated Defendant Hoffman's privacy and slandered his good name. Defendant Hoffman is reviewing his rights in this matter, and will likely bring suit against Plaintiff and its attorneys, Rogers, Townsend

¹ A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975))]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S. 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

² "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

and Thomas, PC, as they have a duty to ensure the facts in any case with which they are associated, before proceeding with erroneous and damaging information. Their failure to do their due diligence has damaged Defendant Hoffman irreparably, has violated their Code of Ethics, and Defendant Hoffman will seek punitive action in a separate case before this court or another appropriate one.

Mr. Hoffman was acting under the belief that his Answer to the original Complaint was sufficient to allow him time to gather facts surrounding the case, and present the evidence of fraud, lack of standing, and lack of damage to Plaintiff. However, upon retaining the counsel of Margaret Collins, the subject of the Motion to be Relieved, he learned that his Answer had been deficient. Ms. Collins attempted to plead for the opportunity to amend the answer, and although that matter was not officially determined in a court of law, she advised that the time for that had passed.

However research by Mr. Hoffman has found that there is no precedence where rigid principles and technicalities should allow a party to prevail when justice has not been served. Historically, equitable courts developed to provide a forum of justice for litigants when law courts, which contained rigid principles and restrictive technicalities, were deficient. *See Hedges v. Lysek*, 84 So. 2d 28, 31 (Fla. 1955). As such, equity courts were created to do justice between the litigants. *See e.g. Banks v. Shaw*, 144 Fla. 550, 198 So. 341 (1940); *Atlantic Nat. Bank of Jacksonville v. Simpson*, 136 Fla. 809, 188 So. 636 (1938). Therefore, "a court of equity is a court of conscience; it should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience." *Demorizi v. Demorizi*, 851 So.2d 243, 246 (Fla. 3d DCA 2003), *appeal dismissed* 851 So. 2d 168 (Fla. 3d DCA 2003) (quoting *Wicker v. Board of Public Instruction of Dade County*, 106 So.2d 550, 558 (Fla.1958)). Finally, with respect to foreclosures, "the general rule is that... [the] foreclosure must not be unconscionable or inequitable." *Pezzimenti v. Cirou*, 466 So.2d 274, 276 (Fla. 2d DCA 1985). By the Plaintiff(s)' failure to verify and validate their claim, and attempting to foreclose on properties that were not related to the original mortgage,

Plaintiff has attempted to place the court in a position of awarding an inequitable and unconscionable foreclosure.

Further, Mr. Hoffman has not waived his appraisal rights, under Section 29-3-680, as any purported waiver would be against public policy pursuant to SCN Mortgage Corp v. White, 312 SC 384, 440 S.E.2d 868 (1994). The Supreme Court of South Carolina held it was against public policy to require a waiver of this right in advance. Therefore, Defendant reserves the right to prove that the attempt to foreclose on the properties for such a small debt claimed, and yet to be verified, is inequitable and unlawful. By attempting to foreclose on multiple properties Plaintiff is committing theft. Individual properties must be foreclosed upon one parcel at a time because the amount secured by Plaintiff exceeds any one parcel.

WHEREFORE, Defendant Hoffman prays for judgment as follows:

- A. That Ms. Collins' Motion to be Relieved as Counsel be denied until such time as Mr. Hoffman is able to locate suitable replacement counsel.
- B. That the foreclosure hearing scheduled for January 10, 2013, be delayed for at least ninety (90) days to allow Mr. Hoffman to locate competent counsel to represent him at his foreclosure hearing, or in the alternative to adequately prepare his *pro se* defense. Further, if Mr. Hoffman finds he must represent himself *pro se*, he requests that he be allowed to be assisted at his hearing by his son, Ronnie Hoffman, POA, due to Mr. Hoffman's disabilities. Mr. Hoffman suffers from heart disease, and has anxiety and panic attacks, and is legally blind. While he is able to prepare his remarks, it would be necessary that he be able to read them in a hearing setting, in order to prevent overwhelming and potentially life-threatening anxiety, and since he is blind, he cannot do that. He requests that his son be able to read his defenses and remarks for him at any subsequent hearing(s).

- C. For a determination in his favor allowing an amended answer to be filed, in order to state the facts of the case and his defenses, in order to ensure his due process.
- D. For a temporary restraining order, preliminary and permanent injunction directing the Special Referee to refrain from executing any foreclosure orders with respect to The Property.
- E. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiff, or anyone acting under or in concert with them, from collecting on the subject loan and from causing The Property to be sold or assigned to a third party.

DATED this 27th day of December, 2012.

Respectfully submitted,



SHELTON L HOFFMAN, Pro Se

Shelton L. Hoffman
2950 Redmond Mill Road
North, SC 29112
(803) 707-5944
dbboxh@aol.com
Pro Se

North, SC
December 27, 2012

ATTACHMENT A

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Description of Properties:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

All that certain piece, parcel or tract of land; containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

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ORANGEBURG COUNTY, SC

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightening Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodor Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001

0089-00-03-003

Property Address: 3897 North Road, Orangeburg, SC 29115

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION

SCBT NA

Plaintiff,

vs.

SHELTON HOFFMAN a/k/a SHELTON L
HOFFMAN; SOUTH CAROLINA

DEPARTMENT OF REVENUE; THE UNITED
STATES OF AMERICA ACTING BY AND
THROUGH ITS AGENCY THE INTERNAL
REVENUE SERVICE; BAIRD TRANSPORT,
INC

Defendants,

Case No.: 2012-CP-38-0030

DEFENDANTS MEMORANDUM IN SUPPORT
FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDEMENT

Defendant submits this Memorandum with regards to the factors the Defendants deems
Necessary for the Courts understanding in considering the present action for Injunctive and Declaratory
Relief.

by *Shelton L Hoffman*

SHELTON L HOFFMAN

I Hereby certify that a copy of the foregoing was mailed on 01/08/2013 to ROGERS TOWNSEND &
THOMAS, PO Box 100200 Columbia, SC 29202, ATTORNEY FOR PLAINTIFF.

Ram

Authorized Representative

ATTEST: TRUE COPY

Wanda R. Lee
CLERK OF COURT
ORANGEBURG COUNTY, SC

MEMORANDUM OF LAW
HISTORY FORCE & EFFECT OF THE LAND PATENT

SECTION I
ALLODIAL v. FEUDAL TITLES

This memorandum will be construed to comply with provisions necessary to establish presumed fact (Rule 301, Federal Rules of Evidence, and attending State rules) should interested parties fail to rebut any given allegation or matter of law addressed herein. The position will be construed as adequate to meet requirements of judicial notice, thus preserving fundamental law. Matters addressed herein, if not rebutted, will be construed to have general application.

In America today, there is a phenomenon occurring that has not been experienced since the mid-1930's. That phenomenon is increasingly, rising number of foreclosures, both in the rural sector and in the cities. This phenomenon is occurring because of the inability of the debtor to pay the creditor the necessary interest and principle on a rising debt load that is expanding across the country. As a defense, the land patent or fee simple title to the land and the congressional intent that accompanies the patent is hereby being presented. In order to properly evaluate the patent, in any given situation, it is necessary to understand what a patent is, why it was created, what existed before the patent, particularly in common-law England. These questions must be answered in order to effectively understand the association between the government, the land, and the people.

First, what existed before land patents? Since it is imperative to understand what the land patent is and why it was created, the best method is a study of the converse, or the common-law English land titles. This method thus allows us to fully understand what we are presently supposed to have by way of actual ownership of land.

In England, at least until the mid-1600's, and arguably until William Blackstone's time in the mid-1700's, property was exclusively owned by the King. In arbitrary governments; the title is held by and springs from the supreme head, be he the emperor, king, potentate; or by whatever name he is known. McConnell v. Wilcox, 1 Seam (111.) 344, 367 (1837) The king was the true and complete owner, giving him the authority to take and grant the land from the people in his kingdom who either lost or gained his favor. The authority to take the land may have required a justifiable reason, but the king, leaving the dis-seised former holder of the land wondering what it was that had brought the King's wrath to bear upon him could conceivably have fabricated such a reason. At the same time the beneficiary of such a gift, while undoubtedly knowing the circumstances behind such a gift, may still not have known how the facts were discovered and not knowing how such facts occurred, may have been left to wonder if the same fate awaited him if ever he fell into disfavor with the king.

The King's gifts were called fiefs, a fief being the same as a feud, which is described as an estate in land held of a superior on condition of rendering him services. {2 Blackstone's Commentaries, p. 105.} It is also described as an inheritable right to the use and occupation of lands, held on condition of rendering services to the lord or proprietor, who himself retains the ownership in the lands, {Black's Law Dictionary, 4th Edition p. 748 (1968).} Thus, the people had land they occupied, devised, inherited, alienated, or disposed of as they saw fit, so long as they remained in favor with the King. {F. L. Ganshof, Feudalism, p. 113 (1964).} "This holding of lands under another was called a tenure, and was not limited

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to the relation of the first or paramount lord and vassal. It extended to those to whom such vassal, within the rules of feudal law, may have parted out his own feud to his own vassals, whereby he became the mesne lord between his vassals and his own or lord paramount. Those who held directly to the king were called his "tenants in ... chief." {I E. Washburn, Treatise on the American Law of Real Property, Ch. 11, Section 58, P. 42 (6th Ed. 1902).} In this manner, the lands, which had been granted to the barons principal lands were again subdivided, and granted by them to sub-feudatories to be held of themselves. {Id., Section 65, p.44.} The size of the gift of the land could vary from a few acres to thousands of acres depending on the power and prestige of the lord. {See supra Ganshof at 113.} The fiefs were built in the same manner as a pyramid, with the King, the true owner of the land, being at the top, and from the bottom up there existed a system of small to medium sized to large to large sized estates on which the persons directly beneath one estate owed homage to the lord of that estate as well as to the King. {Id. at 114}

At the lowest level of this pyramid through at least the 14th and 15th centuries existed to serfs or villains, the class of people that had no rights and were recognized as nothing more than real property. {F. Goodwin, Treatise on The Law of Real Property, Ch. 1, p. 10 (1905)} This system of hierarchical land holdings required an elaborate system of payment. These fiefs to the land might be recompenses in any number of ways.

One of the more common types of fiefs, or the payment of a rent or obligation to perform rural labor upon the lord's lands known as socage, was the crops field. {Id. at 8} Under this type of fief a certain portion of the grain harvested each year would immediately be turned over to the lord above that particular fief even before the shares from the lower lords and then serfs of the fief would be distributed. A more interesting type of fief for purposes of this memorandum was the money fief. In most cases, the source of money was not specified, and the payment was simply made from the fief holder's treasury, but the fief might also consist of a fixed revenue to be paid from a definite source in annual payments in order for the tenant owner of the fief to be able to remain on the property. {Gilsebert of Mons, Chronique, cc. 69 and 115, pp. 109, 175 ed. Vanderkindere}}

The title held by such tenant-owners over their land was described as a fee simple absolute. "Fee simple, Fee commeth of the French fief, i.e., praedium beneficium, and legally signifieth inheritance as our author himself hereafter expoundeth it and simple is added, for that it is descendible to his heirs generally, that is, simply, without restraint to the heirs of his body, or the like, *Feodum est quod quis tenet ex quacunque causa sive sit tenementum sive redditus*, etc. In Domesday it is called feodum." {Littleton, Tenures, Sec. 1b, Fee Simple} In Section 11, fee simple is described as the largest form of inheritance. Id. In modern English tenures, the term fee signifies an inheritable estate, being the highest and most extensive interest the common man or noble, other than the King, could have in the feudal system. {2 Blackstone's Commentaries, p. 106}

Thus, the term fee simple absolute in common-law England denotes the most and best title a person could have as long as the King allowed him to retain possession of (own) the land. It has been commented that the basis of English land law is the ownership of all reality by the sovereign. From the crown, all titles flow. The original and true meaning of the word "fee" and therefore fee simple absolute is the same as fief or feud, this being in contradiction to the term "allodium" which means or is defined as a man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. Wendell v Crandall, 1 N. Y. 491 (1848) Therefore on common-law England practically everybody who was allowed to retain land, had the type of fee simple absolute often used or defined by courts, a fee simple that grants or gives the occupier as much of a title as the "sovereign" allows such

occupier to have at that time. The term became a synonym with the supposed ownership of land under the feudal system of England at common law. Thus, even though the word absolute was attached to the fee simple, it merely denoted the entire estate that could be assigned or passed to heirs, and the fee being the operative word; fee simple absolute dealt with the entire fief and its divisibility, alienability and inheritability. Friedman v Steiner, 107 Ill. 131 (1883). If a fee simple absolute in common-law England denoted or was synonymous with only as much title as the King allowed his barons to possess, then what did the King have by way of a title?

The King of England held ownership of land under a different title and with far greater powers than any of his subjects. Though the people of England held fee simple titles to their land, the King actually owned all the land in England through his allodial title, and though all the land was in the feudal system, none of the fee simple titles were of equal weight and dignity with the King's title, the land always remaining allodial in favor of the King. {Gilsbert of Mons, *Chronique*, Ch. 43, p. 75 (ed. Vanderkindere)}

Thus, it is relatively easy to deduce that allodial lands and titles are the highest form of lands and titles known to Common-Law. An estate of inheritance without condition, belonging to the owner, and alienable by him, transmissible to his heirs absolutely and simply, is an absolute estate in perpetuity and the largest possible estate a man can have, being in fact allodial in its nature. *Stanton v Sullivan*, 63 R.I. 216, 7 A. 696 (1839) "The original meaning of a perpetuity is an inalienable, indestructible interest." *Bouvier's Law Dictionary*, Volume 3, p. 2570 (1914)

The King had such a title in land. As such, during the classical feudalistic period of common-law England, the King answered to no one concerning the land. Allodial titles, being held by sovereigns, and being full and complete titles, allowed the King of England to own and control the entire country in the form of one large estate belonging to the Crown. Allodial estates owned by individuals exercising full and complete ownership, on the other hand, existed only to a limited extent in the County of Kent.

In summary of Common-Law England:

- 1) the King was the only person (sovereign) to hold complete and full title to a land (allodial title);
- 2) the people who maintained estates of land, (either called manors or fiefs) held title by fee simple absolute.
- 3) this fee simple absolute provided the means by which the "supposed owner could devise, alienate, or pass by inheritance the estates of land (manors or fiefs);
- 4) this fee simple absolute in feudal England, being not the full title, did not protect the "owner" if the King found disfavor with the "owner",
- 5) the "owner" therefore had to pay a type of homage to the King or a higher baron each year to discharge the obligation of his fief,
- 6) this homage of his fief could take the form of a revenue or tax, an amount of grain, or a set and permanent amount of money,
- 7) and therefore as long as the "owner" of the fief in fee simple absolute paid homage to the king or sovereign, who held the entire country under an allodial title, then the "owner" could remain on the property with full rights to sell, devise or pass it by inheritance as if the property was really his.

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SECTION II
LAND OWNERSHIP IN AMERICA TODAY
THE AMERICAN FEUDALISTIC SOCIETY

The private ownership of land in America is one of those rights people have proclaimed to be fundamental and essential in maintaining this republic. The necessary question in discussing this topic however is whether ownership of land in America today really is a true and complete ownership of land under an allodial concept, or is it something much different. In other words, are we living in an actual allodial freehold or are we living in an updated version of feudalistic Common Law.

The answer is crucial in determining what rights we have in the protection of our reality against improper seizures and encumbrances by our government and creditors. The answer appears to be extremely clear upon proper reflection of our rights when payments are missed on mortgages, or taxes, for whatever reason, are not paid. If mortgage payments are missed or taxes are not paid, we actually fall into disfavor with the parties who have the power, and these powers, through court proceedings or otherwise, take our land as a penalty. When one understands, when he is unable to perform as the government or his creditors request, and for such failures of performance his land can be forfeited, then he can begin to understand exactly what type of land-ownership system controls his life, and he should recognize the inherent unjustness of such constitutional violations.

The American-based system of land ownership today consists of three key requirements. These three are the warranty deed or some other type of deed purporting to convey ownership of land, title abstracts to chronologically follow the development of these different types of deeds to a piece of property, and title insurance to protect the ownership of that land. These three ingredients must work together to ensure a systematic and orderly conveyance of a piece of property; none of these three by itself can act to completely convey possession of the land from one person to another. At least two of the three are always deemed necessary to adequately satisfy the legal system and real estate agents that the titles to the property had been placed in the hands of the purchaser. Often-times, all three are necessary to properly pass the ownership of the land to the purchaser. Yet does the absolute title and therefore the ownership of the land really pass from the seller to purchaser with the use of any one of these three instruments or in any combination thereof? None of the three by itself passes the absolute or allodial title to the land, the system of land ownership America originally operated under, and even combined all three can not convey this absolute type of ownership.

What then is the function of these three instruments that are used in land- conveyances and what type of title the three conveys? Since the abstract only traces the title and the title insurance only insures the title, the most important and therefore first group examined are the deeds that purportedly convey the fee from seller to purchaser. These deeds include the ones as follows: warranty deed, quit claim deed, sheriff's deed, trustee's deed, judicial deed, tax deed, wig or any other instrument that purportedly conveys the title. All of these documents state that it conveys the ownership to the land. Each of these, however, is actually a color of title. (G. Thompson, Title to Real Property, Preparation and Examination of Abstracts, Ch. 3, Section 73, p.93 (1919))

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A color of title is that which in appearance is title, but which in reality is not title. Wright v Mattison, 18 How. (U.S.) 50 (1855) In fact, any instrument may constitute color of title when it purports to convey the title of the land, as well the land itself, although it is void as a muniment of title.

Joplin Brewing Co. v Payne, 197 No. 422, 94 S.W. 896 (1906)

The Supreme Court of Missouri has stated, "that when we say a person has a color of title, whatever may be the meaning of the phrase, we express the idea, at least, that some act has been previously done... by which some title, good or bad, to a parcel of land of definite extent had been conveyed to him."

St. Louis v German, 29 Mo. 593 (1860)

In other words, a color of title is an appearance or apparent title, and "image" of the true title, hence the phrase "color of" which, when coupled with possession purports to convey the ownership of the land to the purchaser. This however does not say that the color of title is the actual and true title itself nor does it say that the color of title itself actually conveys ownership. In fact, the claimant or holder of a color of title is not even required to trace the title through the chain down to his instrument.

Rawson v Fox, 65 Ill. 200 (1872)

Rather it may be said that a color of title is prima facie evidence of ownership of and rights to possession of land until such time as that presumption of ownership is disproved by a better title or the actual title itself. If such cannot be proven to the contrary, then ownership of the land is assumed to have passed to occupier of the land. To further strengthen a color title-holder's position, courts have held that the good faith of the holder to a color of title is presumed in the absence of evidence to the contrary. David v Hall, 92 R. 1. 85 (1879); see also Morrison v Norman, 47 Ill. 477 (1868); and McConnell v Street, 17 Ill. 253 (1855) With such knowledge of what a color of title is, it is interesting what constitutes colors of title. A warranty deed is like any other deed of conveyance.

Mahrenholz v County Board of School Trustees of Lawrence County, et. al., 93 Ill. app. 3d 366 (1981) A warranty deed or deed of conveyance is a color of title, as stated in Dempsey v Burns, 281 Ill. 644, 650 (1917) (Deeds constitute colors of title); see also Dryden v Newman, 116 Ill. 186 (1886) (A deed that purports to convey interest in the land is a color of title) Hinckley v Green 52 Ill. 223 (1869) (A deed which, on its face, purports to convey a title, constitutes a claim and color of title); Busch v Huston, 75 Ill. 343 (1874); Chicking v Failes, 26 Ill. 508 (1861) A quit claim deed is a color of title as stated in Safford v Stubbs, 1 17 Ill. 389 [1886]; see also Hooway v Clark, 27 Ill. 483 (1861) and McCellan v Kellogg, 17 Ill. 498 (1855) Quit claim deeds can pass the title as effectively as a warrant with full covenants. Grant v Bennett, 96 Ill. 513, 525 (1880) See also Morgan v Clayton, 61 Ill. 35 (1871); Brady v Spurck, 27 Ill. 478 (1861); Butterfield v Smith, Ill. 11 1. 485 (1849) Sheriffs deeds also are colors of title. Kendrick v Latham, 25 Fla. 819 (1889); as is a judicial deed, Huls v Buntin, 47 Ill. 396 (1865). The Illinois Supreme Court went into detail in its determination that a tax deed is only color of title. "there the complainant seem to have relied upon the tax deed as conveying to him the fee, and to sustain such a bill, it was incumbent of him to show that all the requirements of the law had been complied with."

A simple tax deed by itself is only a color of title. Fee simple can only be acquired through adverse possession via payment of taxes; claim and color of title, plus seven years of payment of taxes. Thus any tax deed purports, on its face, to convey title is a good color of title. Walker v Converse, 148 Ill. 622, 629 (1894); see also Peadro v Carriker, 168 Ill. 570 (1897); Chicago v Middlebrooke, 143 Ill. 265 (1892); Piatt County v Gooden, 97 Ill. 84 (1880);

Stubblefield v Borders, 92 Ill. 570 (1897); Coleman v Billings 89 Ill. 183 (1878); Whitney v Stevens, 89 Ill. 53 (1878); Holloway v Clarke, 27 Ill. 483 (1861), Thomas v Eckard, 88 Ill. 593 (1878) color of title. Baldwin v Ratcliff, 125 Ill. 376 (1888); Bradley v Rees, 113 Ill. 327 (1885) (A wig can pass only so much as the testator owns, though it may attempt to pass more). A trustee's deed, a mortgages and strict foreclosure, Chickering v Failes, 26 Ill. 508, 519 (1861), or any document defining the extent of a disseisor's claim or purported claim, Cook v Norton, 43 Ill. 391 (1867), all have been held to be colors of title. In fact, "If there is nothing here requiring a deed, to establish a color of title, and under the former decisions of this court, color or title may exist without a deed." Baldwin v Ratcliff, 125 Ill. 376, 383 (1882); County of Piatt v Goodell, 97 Ill. 84 (1880); Smith v Ferguson, 91 Ill. 304 (1878); Hassett v Ridgely, 49 Ill. 197 (1868); Brooks v Bruyn, 35 Ill. 392 (1864); McCagg v Heacock, 34 Ill. 476 (1864); Bride v Watt, 23 Ill. 507 (1860); and Woodward v Blanchard, 16 Ill. 424 (1855) All of these cases being still valid and none being overruled, in effect, the statements in these cases are well established law. All of the documents described in these cases are the main avenues of claimed land ownership in America today, yet none actually conveys the true and allodial title. They in fact convey something quite different.

When it is stated that a color of title conveys only an appearance of or apparent title, such a statement is correct but perhaps too vague to be properly understood in its correct legal context. What are useful are the more pragmatic statements concerning titles. A title or color of title, in order to be effective in transferring the ownership or purported ownership of the land, must be a marketable or merchantable title. A marketable or merchantable title is one that is reasonably free from doubt. Austin v Bamum, 52 Minn. 136 (1892). This title must be as reasonably free from doubts as necessary to not affect the marketability or salability of the property, and must be a title a reasonably prudent person would be willing to accept. Robert v McFadden, 32 Tex-Civ.App. 471 74 S.W. 105 (1903). Such a title is often described as one, which would ensure to the purchaser a peaceful enjoyment of the property, Barnard v Brown, 112 Mich. 452, 70 N.W. 1038 (1897), and it is stated that such a title must be obvious, evident, apparent, certain, sure or indubitable. Ormsby v Graham, 123 La. 202, 98 N.W. 724 (1904). Marketable Title Acts, which have been adopted in several of the states, generally do not lend themselves to an interpretation that they might operate to provide a new foundation of title based upon a stray, accidental, or interloping conveyance. Their object is to provide, for the recorded fee simple ownership, an exemption from the burdens of old conditions which at each transfer of the property interferes with its marketability. Wichelma v Messner, 83 N.W. 2d 800 (1957) What each of these legal statements in the various factual situations says is that the color of title is never described as the absolute or actual title, rather each says that it is one of the types of titles necessary to convey ownership or apparent ownership. A marketable title, what a color of title must be in order to be effective, must be a title which is good of recent record, even if it may not be the actual title in fact. Close v Stuyvesant, 132 Ill. 607, 24 N.E. 868 (1890) "Authorities hold that to render a title marketable it is only necessary that it shall be free from reasonable doubt; in other words, that a purchaser is not entitled to demand a title absolutely free from every possible suspicion." Cummings v Dolan, 52 Wash. 496, 100 P. 989 (1909) The record being spoken of here is the title abstract and all documentary evidence pertaining to it. "It is an axiom of hornbook law that a purchaser has notice only of recorded instruments that are within his 'chain of title'." I R. Patton & C. Patton, Patton on Land Title, Section 69, at 230-233. (2nd ed. 1957); Sabo v Horvath, 559 P. 2d 1038, 1043 (Ak.1976). Title insurance then guarantees that a title is marketable, not absolutely free from doubt.

Thus, under the color or title system used most often in this country today, no individual operating under this type of title system has the absolute or allodial title. All that is really necessary to have a valid title is to have a relatively

clean abstract with a recognizable color of title as the operative marketable title within the chain of title. It therefore becomes necessarily difficult, if not impossible after a number of years, considering the inevitable contingencies that must arise and the title disputes that will occur, to ever properly guarantee an absolute title. This is not necessarily the fault of the seller, but it is the fault of the legal and real estate systems for allowing such a diluted form of title to be controlling in an area where it is imperative to have the absolute title. In order to correct this problem, it is important to return to those documents the early leaders or the nation created to properly ensure that property remained one of the inalienable rights that the newly established sovereign freeholders could rely on to always exist. This correction must be in the form of restricting or perhaps eliminating the widespread use of a marketable title and returning to the absolute title.

Other problems have developed because of the use of a color of title system for the conveyance of land. These problems arise in the area of terminology that succeed in only confusing and clouding the title to an even greater extent than merely using terms like marketability, salability or merchantability. When a person must also determine whether a title is complete, perfect, good and clear, or whether it is a bad, defective, imperfect and doubtful, there is any obvious possibility of destroying a chain of title because of an inability to recognize what is acceptable to a reasonable purchaser.

A complete title means that a person has the possession, right of possession and the right of property. Dingey v Paxton, 60 Miss. 1038 (1883) and Ehle v Quackenboss, 6 Hill (N.Y.) 537 (1844) A perfect title is exactly the same as a complete title, Donovan v Pitcher, 53 Ala. 411 (1875) and Converse v Kellogg, 7 Barb. (N. Y.) 590 (1850); and each simply means the type of title a well-informed, reasonable and prudent person would be willing to accept when paying full value for the property. Birge v Beck, 44 Mo. App. 69 (1890). In other words, a complete or perfect title is in reality a marketable or merchantable title, and is usually represented by a color of title.

A good title does not necessarily mean one perfect of record but consists of one which is both of rightful ownership and rightful possession of the property Bloch v Ryan, 4 App. Cas 283 (1894). It means a title free from litigation, palpable defects and grave doubts consisting of both legal and equitable titles and fairly deducible of record. Reynolds v Borel, 86 Cal. 538, 25 P. 67 (1890). "A good title means not merely a title valid in fact, but a marketable title, which can again be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence as security for a loan of money." Moore v Williams, 115 N.Y. 586, 22 N.E. 253 (1889) A clear title means there are no encumbrances on the land, Roberts v Bassett, 105 Mass. 409 (1870) Thus, when contracting to convey land, the use of the phrase "good and clear title" is surplusage, since the terms good title and clear title are in fact synonymous. Oakley v Cook, 41 N.J. Eq. 350, 7 A.2d 495 (1886) Therefore, the words good title and clear title, just like the words complete title and perfect title, describe nothing more than a marketable title or merchantable title, and as stated above, each can and almost always is represented in a transaction by a color of title. None of these types of title purports to be the absolute, or allodial title, and none of them are that type of title. None of these actually claims to be a fee simple absolute, and since these types of titles are almost always represented by a color of title, none represents that it passes the actual title. Each one does state that it passes what can be described as a title good enough to avoid the necessity of litigation to determine who actually has the title. If such litigation to determine titles is necessary, then the title has crossed the boundaries of usefulness and entered a different category of title descriptions and names.

This new category consists of titles, which are bad, defective, imperfect or doubtful. A bad title conveys no property to the purchaser of the estates. Heller v Cohen, 15 Misc. 378, 36 N.Y.S. 668 (1895). A title is defective when the party claiming to own the land has not the whole title, but some other person has title to a part or portion of it. Such a title is the same as no title whatsoever. Place v People, 192 Ill. 160, 61 N.E. (1901); See also Cospertini v Oppermann, 76 Cal. 181, 18 P. 256 (1888) imperfect title is one where something remains to be done by the granting power to pass the title to the land, Raschel v Perez,

7 Tex. 348 (1851); and a doubtful title is also one which conveys no property to the purchaser of the estate. Heller v Cohen, 15 Misc. 378, 36 N.Y.S. 668 (1895). Every title is described as doubtful which invites or exposes the party holding it to litigation. Herman v Somers, 158 PA.ST. 424, 27 A. 1050 (1893) Each of these types of titles describes exactly the same idea stated in many different ways, that because of some problem, defect, or question surrounding the title, no title can be conveyed, since no title exists. Yet in all of these situations some type of color of title was used as the operative instrument. What then makes one color of title complete, good or clear in one situation, and in another situation the same type of color of title could be described as bad, defective, imperfect or doubtful?

What is necessary to make what might otherwise be a doubtful title, a good title, is the belief of others in the community, whether or not properly justified, that the title is a good one which they would be willing to purchase. Moore v Williams, 115 N.Y. 586, 22 N.E. 253 (1889) The methods presently used to determine whether a title or color of title is good enough to not be doubtful, are the other two-thirds of the three possible requirements for the conveyance of a good or complete (marketable) title.

These two methods of properly ensuring that a title is a good or complete title are title abstracts, the complete documentary evidence of title, and title insurance. The legal title to land, based on a color of title, is made up of a series of documents required to be executed with the solemnities prescribed by law, and of facts not evidenced by documents, which show the claimant a person to whom the law gives the estate. Documentary evidences of title consist of voluntary grants by the sovereign, deeds of conveyances and wills by individuals, conveyances by statutory or judicial permission, deeds made in connection with the sale of land for delinquent taxes, proceedings under the power of eminent domain, and deeds executed by ministerial or fiduciary officers. These documentary evidences are represented by the land patent and the colors of title. {I G. Thompson, Commentaries on the Modern Law of Real Property, pp. 99-100 (5th ed. 1980)}

These instruments, relied upon to evidence the title, coupled with the outward assertive acts that import dominion, must be used by the abstractor in compiling the abstract, and the attorney must examine to determine the true status of the title. The abstract is the recorded history of the land and the various types of titles, mortgages and other liens, claims and interests that have been placed on the property. The abstract can determine the number of times the patent has been re-declared, who owns the mineral rights, what color of title is operable at any particular point in time, and what lien holder is in first position, but it does not convey or even attempt to convey any form of the title itself. As Thompson, *supra* has stated, it is necessary when operating with colors of titles to have an abstract to determine the status of the operable title and determine whether that title is good or doubtful. If the title is deemed good after this lengthy process, then the property may be transferred without doing anything more, since it is assumed that the seller was the owner of the property. This is not to say emphatically that the seller is the paramount or absolute owner. This does not even completely guarantee that he is the owner of the land against any adverse claimants. It is

not even that difficult to claim that the title holder has a good title due to the leniency and attitude now evidenced by the judicial authorities toward maintaining a stable and uniform system of land ownership, whether or not that ownership is justified. This however, does not explain the purpose and goal of a title abstract.

An abstract that has been properly brought up simply states that it is presumed the seller is the owner of the land, making the title marketable, and guaranteeing that he has a good title to sell. This is all an abstract can legally do since it is not the title itself and it does not state the owner has an absolute title. Therefore, the abstract can not guarantee unquestionably that the title is held by the owner. All of this rhetoric is necessary if the title is good; if there is some question concerning the title without making it defective, then the owner must turn to the last of the three alternatives to help pass a good title, title insurance. {G. Thompson, Title to Real Property, Preparation and Examination of Abstracts, Ch.111, Section 79r PP- 99-100 (1919)}

Title insurance is issued by title insurance companies to ensure the validity of the title against any defects, against any encumbrances affecting the designated property, and to protect the purchaser against any losses he sustains from the subsequent determination that his title is actually un-marketable. Title insurance extends to any defects of title. It protects against the existence of any encumbrances, provided only that any judgments adverse to the title shall be pronounced by a court of competent jurisdiction. It is not even necessary that a defect actually exist when the insurance policy was issued, it is simply necessary that there exists at the time of issuance of the policy and inchoate or potential defect which is rendered operative and substantial by the happening of some subsequent event. Since all one normally has is a color of title, the longer a title traverses history, the greater the possibility that the title will become defective. The greater the need for insurance simply to keep the title marketable, the easier it is to determine that the title possessed is not the true, paramount and absolute title. If a person had the paramount title, there would be no need for title insurance, though an abstract might be useful for record keeping and historical purposes. Title insurance and abstract record keeping are useful, primarily because of extensive reliance on colors of title, as the operative title for a piece of property.

This then supplies the necessary information concerning colors of title, title abstracts, and title insurance. This does not describe the relationship between the landowner and the government. As was stated in the instruction, in feudal England, the King has the power, right and authority to take a person's land away from him, if and when the King felt it necessary. The question is whether most of the American system of land ownership and titles is in reality any different and whether therefore the American-based system of ownership, is in reality nothing more than a feudal system of land ownership.

Land ownership in America presently is founded on colors of title, and though people believe they are the complete and total owners of their property; under a color of title system this is far from the truth. When people state that they are free and own their land, they in fact own it exactly to the extent the English barons owned their land in common-law England. They own their land so long as some "sovereign", the government or a creditor, states that they can own their land. If one recalls from the beginning of this memorandum, it was stated that if the King felt it justified, he could take the land from one person and give such land to another prospective baron. Today, in American color-of-title Property law, if the landowner does not pay income tax, estate tax, property tax, mortgages or even a security note on personal property, then the "sovereign", the government or the creditor can justify the taking of the property and the sale of that same property to another prospective "baron", while leaving the owner with only limited defenses to such actions.

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The only real difference between this and common-law England is that now others besides the King can profit from the unwillingness or inability of the "landowner" to perform the socage or tenure required of every landowner of America. As such no one is completely safe or protected on his property; no one can afford to make one mistake or the consequences will be forfeiture of the property. If this were what the people in the mid 1700's wanted, there would have been no need to have an American Revolution, since the taxes were secondary to having a sound monetary system and complete ownership of the land. Why fight a Revolutionary War to escape sovereign control and virtual dictatorship over the land, when in the 1990's these exact problems are prevalent with this one exception, money now changes hands in order to give validity to the eventual and continuous takeover of the property between the parties. This is hardly what the forefathers planned for when creating the United States Constitution, and what they did strive for is the next segment of the memorandum of law, allodial ownership of the land via the land patent. The next segment will analyze the history of this type of title so that the patent can be properly understood, making it possible to comprehend the patent's true role in property law today.

SECTION III LAND PATENTS AND WHY THEY WERE CREATED

As was seen in the previous sections, there is little to protect the landowner who holds title in the chain of title, when distressful economic or weather condition make it impossible to perform on the debt. Under the color-of-title system, the property, "one of those inalienable rights", can be taken for the nonperformance on loan obligations. This type of ownership is similar to the feudal ownership found in the Middle Ages.

Upon defeating the English in 1066 A.D., William the Conqueror pursuant to his 52nd and 58th laws, "...effectually reduced the lands of England to feuds, which were declared to be inheritable and from that time the maxim prevailed there that all lands in England are held from the King, and that all proceeded from his bounty. {I.E. Washburn, Treatise on The American Land of Real Property, Section 65, p.44 (6th ed. 1902)}

All lands in Europe, prior to the creation of the feudal system in France and Germany, were allodial. Most of these lands were voluntarily changed to feudal lands as protection from the neighboring barons or chieftains. Since no documents protected one's freedom over his land, once the lands were pledged for protection, the lands were lost forever. This was not the case in England.

England never voluntarily relinquished its land to William I. In fact were it not for a tactical error by King Harold II men in the Battle of Hastings, England might never have become feudal. A large proportion of the Saxon lands prior to the Conquest of A.D. 1066, were held as allodial, that is, by an absolute ownership, without recognizing any superior to whom any duty was due on account thereof. The mode of conveying these allodial lands was most commonly done by a writing or charter, called a land-boc, or land allodial charter, which, for safekeeping between conveyances, was generally deposited in the monasteries. In fact, one portion of England, the County of Kent, was allowed to retain this form of land ownership while the rest of England became feudal. Therefore, when William I established feudalism in England to maintain control over his barons, such control created animosity over the next 2 centuries. {F.L. Ganshof, Feudalism, P. 114 (1964)}

As a result of such dictatorial control, some 25 barons joined forces to exert pressure on the then ruling monarch, King John, to gain some rights not all of which the common man would possess. The result of this pressure at Runnymede became known as the Magna Carta. The Magna Carta was the basis of modern common law, the common law being a series of judicial decisions and royal decrees interpreting and following that document. The Magna Carta protected the basic rights, the rights that gave all people more freedom and power. The rights that would slowly erode.

Among these rights was a particular section dealing with ownership of the land. The barons still recognized the king as the lord paramount, but the barons wanted some of the rights their ancestors had prior to A.D. 1066. {F. Goodwin, Treatise on The Law of Real Property, Ch. 1, p.3 (1905)} Under this theory, the barons would have several rights and powers over the land, as the visible owners, that had not existed in England for 150 years. The particular section of most importance was Section 62 giving the most powerful barons letters of patent, raising their land ownership close to the level found in the County of Kent. Other sections, i.e., 10, 11, 26, 27, 37, 43, 52, 56, 57, and 61 were written to protect the right to "own" property, to illustrate how debts affected this right to own property, and to secure the return of

property that was unjustly taken. All these paragraphs were written with the single goal of protecting the "landowner" and helping him retain possession of his land, acquired in the service of the King, from unjust seizures or improper debts. The barons attempted these goals with the intention of securing property to Pass to their heirs.

Unfortunately goals are often not attained. Having re-pledged their loyalty to King John, the barons quickly disbanded their armies. King John died in 1216, one year after signing the Magna Carta. The new king did not wish to grant such privileges found in that document. Finally, the barons who forced the signing of the Magna Carta died, and with them went the driving force that created this great charter. The Magna Carta may have still been alive, but the new kings had no armies at their door forcing them to follow policies, and the charter was to a great extent forced to lie dormant. The barons who received the letters of patent, as well as other landholders perhaps should have enforced their rights, but their heirs were not in a position to do so and eventually the rights contained in the charter were forgotten. Increasingly until the mid-1600's, the king's power waxed, abruptly ending with the execution of Charles I in 1649. By then however, the original intent of the Magna Carta was in part lost and the descendants of the original barons never required property protected, free land ownership. To this day, the freehold lands in England are still held to a great extent upon the feudal tenures. This lack of complete ownership in the land, as well as the most publicized search for religious freedom, drove the more adventurous Europeans to the Americas to be away from these restrictions.

The American colonists however soon adopted many of the same land concepts used in the old-world. The kings of Europe had the authority to still exert influence, and the American version of barons sought to retain large tracts of land. As an example, the first patent granted in New York went to Killian Van Rensselaer dated in 1630 and confirmed in 1685 and 1704. {A. Getman, Title to Real Property, Principles and Sources of Titles – Compensation For Lands and Waters, Part III, Ch. 17, p.229 (1921)} The colonial charters of these American colonies, granted by the king of England, had references to the lands in the County of Kent, effectively denying the more barbaric aspects of feudalism from ever entering the continent, but feudalism with its tenures did exist for some time. "It may be said that, at an early date, feudal tenures existed in this country to a limited extent." {C. Tiedeman, An Elementary Treatise on the American Law of Real Property, Ch. 11.} {The Principles of the Feudal System, Section 25, p.22 (2nd ed. 1892).} The result was a newly created form of feudal land ownership in America. As such, the feudal barons in the colonies could dictate who farmed their land, how their land was to be divided, and to a certain extent to whom the land should pass. But, just as the original barons discovered, this power was premised in part of the performance of duties for the king. Upon the failure of performance, the king could order the Grant revoked, and Grant the land to another willing to acquiesce to the king's authority. This authority, however, was premised on the belief that people, recently arrived and relatively independent, would follow the authority of a king based 3000 miles away. Such a premise was ill founded.

The colonists came to America to avoid taxation without representation, to avoid persecution of religious freedom, and to acquire a small tract of land that could be owned completely. When the colonists were forced to pay taxes and were required to allow their homes to be occupied by soldiers; they revolted, fighting the British, and declaring their Declaration of Independence.

The Supreme Court of the United States reflected on this in Chisholm v Georgia, 2 Dall. (U.S.) 419 (1793), stating: "...the revolution or rather the Declaration of Independence, found the people already united for general purposes,

and at the same time, providing for their more domestic concerns, by state conventions, and other temporary arrangements. From the crown of Great Britain, the sovereignty of their country passed to the people of it; and it was then not an uncommon opinion, that the un-appropriated lands, which belonged to that crown, passed, not to the people of the colony or states within those limits they were situated, but to the whole people;..."We the people of the United States, do ordain and establish this constitution." Here we see the people acting as sovereigns of the whole country; and in the language of sovereignty, establishing a constitution by which it was their will, that the state governments, should be bound, and to which the state constitutions should be made to conform. It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the prince as the sovereign, and the people his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a court of justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant, derives all franchises, immunities and privileges; it is easy to perceive, that such a sovereign could not be amenable to a court of justice, or subjected to judicial control and actual constraint. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the prince and the subject. No such ideas obtain here; at the revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects and have none to govern but themselves; the citizens of America are equal as fellow-citizens, and as joint tenants in the sovereignty. From the differences existing between feudal sovereignties and governments founded on compacts, it necessarily follows, that their respective prerogatives must differ. Sovereignty is the right to govern; a nation or state sovereign is the person or persons in whom that resides. In Europe, the sovereignty is generally ascribed to the prince; here it rests with the people; there the sovereign actually administers the government; here never in a single instance; our governors are the agents of the people, and at most stand in the same relation to their sovereign, in which the regents of Europe stand to their sovereigns. Their princes have personal powers, dignities, and preeminence, our rules have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens."

The Americans had a choice as to how they wanted their new government and country to be formed. Having broken away from the English sovereignty and establishing themselves as their own sovereigns, they had their choice of types of taxation, freedom of religion, and most importantly ownership of land. The American founding fathers chose allodial ownership of land for the system of ownership on this country. In the opinion of Judge Kent, the question of tenure as an incident to the ownership of lands "has become wholly immaterial in this country, where every vestige of tenure has been annihilated." At the present day there is little, if any, trace of the feudal tenures remaining in the American law of property. Lands in this country are now held to be absolutely allodial.

Upon the completion of the Revolutionary War, lands in the thirteen colonies were held under a different form of land ownership. As stated in *re Waltz et. al.*, Barlow v Security Trust & Savings Bank, 240 p. 19 (1925), quoting Matthews v Ward, 10 Gill & J. (Md.) 443 (1839), "after the American Revolution, lands in this state (Maryland) became allodial, subject to no tenure, nor to any services incident thereto."

The tenure, as you will recall, was the feudal tenure and the services or taxes required to be paid to retain possession of the land under the feudal system. This new type of ownership was acquired in all thirteen states. Wallace v Harmstead, 44 Pa. 492 (1863) The American people, before developing a properly functioning stable government, developed a stable system of land ownership, whereby the people owned their land absolutely and in a manner

similar to the king in common-law England. As has been stated earlier, the original and true meaning of the word "fee" and therefore fee simple absolute is the same as fief or feud, this being in contradistinction to the term "allodium" which means or is defined as man's own land, which he possesses merely in his own right, without owing any rent or service to any superior. Wendell v Crandall, 1 N. Y. 491 (1848) [27] Stated another way, the fee simple estate of early England was never considered as absolute, as were lands in allodium, but were subject to some superior on condition of rendering him services, and in which the such superior had the ultimate ownership of the land. In re Waltz, at page 20, quoting I Cooley's Blackstone, (4th ed.) p. 512. This type of fee simple is a Common-Law term and sometimes corresponds to what in civil law is a perfect title. United States v Sunset Cemetery Co., 132 F. 2d 163 (1943). It is unquestioned that the king held an allodial title which was different than the Common-Law fee simple absolute. This type of superior title was bestowed upon the newly established American people by the founding fathers. The people were sovereigns by choice, and through this new type of land ownership, the people were sovereign freeholders or kings over their own land, beholden to no lord or superior. As stated in Stanton v Sullivan, 7 A. 696 (1839), such an estate is an absolute estate in perpetuity and the largest possible estate a man can have, being, in fact allodial in its nature. This type of fee simple, as thus developed, has definite characteristics: (1) it is a present estate in land that is of indefinite duration; (2) it is freely alienable; (3) it carries with it the right of possession; and most importantly (4) the holder may make use of any portion of the freehold without being beholden to any person. {I G. Thompson, Commentaries on the Modern Law of Real Property, Section 1856, p. 412 (1st ed. 1924)}.

This fee simple estate means an absolute estate in lands wholly unqualified by any reservation, reversion, condition or limitation, or possibility of any such thing present or future, precedent or subsequent. Id.; Wichel'man v Messner, 83 N.W. 2d 800, 806 (1957) It is the most extensive estate and interest one may possess in real property. Where an estate subject to an option is not in fee. In the case, Bradford v Martin, [28] 201 N.W. 574 (1925), the Iowa Supreme Court went into a lengthy discussion on what the terms fee simple and allodium means in American property law. The Court stated: "The word 'absolutely' in law has a varied meaning, but when unqualifiedly used with reference to titles or interest in land, its meaning is fairly well settled. Originally the two titles most discussed were 'fee simple' and 'allodium' (which meant absolute) See Bouvier's. Law Dictionary. (Rawle Ed.) 134; Wallace v Harmstead, 44 Pa. 492; McCartee v Orphan's Asylum, 9 Cow. (N.Y.) 437, 18 Am. Dec. 516.

Prior to Blackstone's time the allodial title was ordinarily called an "absolute title" and was superior to a "fee simple title," the latter being encumbered with feudal clogs which were laid upon the first feudatory when it was granted, making it possible for the holder of a fee-simple title to lose his land in the event he failed to observe his feudatory oath. The allodial title was not so encumbered. Later the term "fee simple," however rose to the dignity of the allodial or absolute estate, and since the days of Blackstone the words of "absolute" and "fee Simple" seem to have been generally used interchangeably; in fact, he so uses them.

The basis of English land law is the ownership of the realty by the sovereign, from the crown all titles flow. People v. Richardson, 269 M. 275, 109 N.E. 1033 (1914); see also Matthew v. Ward, 10 Gill & J (Md.) 443 (1844) The case, McConnell v. Wilcox, 1 Seam. (IR.) 344 (1837), stated it this way: "From what source does the title to the land derived from a government spring? In arbitrary governments, from the supreme head be he the emperor, king, or potentate; or by whatever name he is known. In a republic, from the law, making or authorizing to be made the grant or sale. In the first case, the party looks alone to his letters patent; in the second, to the law and the evidence of the

acts necessary to be done under the law, to a perfection of his grant, donation or purchase. The law alone must be the fountain from whence the authority is drawn; and there can be no other source."

The American people, newly established sovereigns in this republic after the victory achieved during the Revolutionary War, became complete owners in their land, beholden to no lord or superior; sovereign freeholders in the land themselves. These freeholders in the original thirteen states now held allodial the land they possessed before the war only feudally. This new and more powerful title protected the sovereigns from unwarranted intrusions or attempted takings of their land, and more importantly it secured in them a right to own land absolutely in perpetuity. By definition, the word perpetuity means, "Continuing forever. Legally, pertaining to real property, any condition extending the inalienability..." Black's Law Dictionary, P-1027 (5th ed. 1980)

In terms of an allodial title, it is to have the property of in-alienability forever. Nothing more need be done to establish the ownership of the sovereigns to their land, although confirmations were usually required to avoid possible future title confrontations. The states, even prior to the creation of our present Constitutional government, were issuing titles to the unoccupied lands within their boundaries. In New York, even before the war was won, the state issued the first land patent in 1781, and only a few weeks, after the battle and victory at Yorktown in 1783, the state issued the first land patent to an individual. In fact, even before the United States was created, New York and other states had developed their own Land Offices with Commissioners. New York was first established in 1784 and was revised in 1786 to further provide for a more definite procedure for the sale of unappropriated State Lands. *Id.* The state courts held, "The validity of letters patent and the effectiveness to convey title depends on the proper execution and record generally been the law that public grants to be valid must be recorded. The record is not for purposes of notice under recording acts but to make the transfer effectual." Later, if there was deemed to be a problem with the title, the state grants could be confirmed by issuance of a confirmatory grant. This then, in part, explains the methods and techniques the original states used to pass title to their lands, lands that remained in the possession of the state unless Purchased by the still yet uncreated federal government, or by individuals in the respective states. Too much this same extent Texas, having been a separate country and republic, controlled and still controls its lands. In each of these instances, the land was not originally owned by the federal government and then later passed to the people and states. This then is a synopsis of the transition from colony to statehood and the rights to land ownership under each situation. This however has said nothing of the methods used by the states in the creation of the federal government and the eventual disposal of the federal lands.

The Constitution in its original form was ratified by a convention of the States, on September 17, 1787. The Constitution and the government formed under it were declared in effect on the first Wednesday of March 1789. Prior to this time, during the Constitutional Convention, there was serious debate on the disposal of what the convention called the "Western Territories," now the states of Ohio, Indiana, Illinois, Michigan, Wisconsin and part of Minnesota, more commonly known as the Northwest Territory. This tract of land was ceded to the new American republic in the treaty signed with Britain in 1783.

The attempts to determine how such a disposal of the Western territories should come about was the subject of much discussion in the records of the Continental Congress. Beginning in September 1783, there was continual discussion concerning the acquisition of and later disposition to the lands east of the Mississippi River. Journals of Congress, Papers of the Continental Congress, No. 25, 11, folio 255, p. 544-557 (September 13, 1783) "1/4 and whereas the

United States have succeeded to the sovereignty over the Western territory, and are thereby vested as one undivided and independent nation, with all and every power and right exercised by the king of Great Britain, over the said territory, or the lands lying and situated without the boundaries of the several states, and within the limits above described; and whereas the western territory ceded by France and Spain to Great Britain, relinquished to the United States by Great Britain, and guarantied to the United States by France as aforesaid, if properly managed, will enable the United States to comply with their promises of land to their officers and soldiers; will relieve their citizens from much of the weight of taxation;.... and if cast into new states, will tend to increase the happiness of mankind, by rendering the purchase of land easy, and the possession of liberty permanent; therefore Resolved, that a committee be appointed to report the territory lying without the boundaries of the several states; ... ; and also to report an establishment for a land office."

There was also serious discussion and later acquisition by the then technically nonexistent federal government of land originally held by the colonial governments. As the years progressed, the goal remained the same, a proper determination of a simple method of disposing of the western lands. "That an advantageous disposition of the western territory is an object worthy the deliberation of Congress." *Id.* February 14, 1786, at p. 68. In February 1787, the Continental Congress continued to hold discussions on how to dispose of all western territories. As part of the basis for such disposal, it was determined to divide the new northwestern territories into medians, ranges, townships, and sections, making for easy division of the land, and giving the new owners of such land a certain number of acres in fee. *Journals of Congress*, p. 21, February 1787, and *Committee Book, Papers of the Continental Congress*, No. 190, p. 132 (1788)

In September of that same year, there were most discussions on the methods of disposing the land. In those discussions, there were debates in the validity and solemnity of the state patents that has been issued in the past. Only a week earlier the Constitution was ratified by the conventions of the states. Finally, the future Senate and House of Representatives, though not officially a government for another one and a half years, held discussions on the possible creation of documents that would pass the title of lands from the new government to the people. In these discussions, the first patents were created and ratified, making the old land-boc, or land-allodial charters of the Saxon nobles, 750 years earlier, and the letters patent of the Magna Carta, guidelines by which the land would pass to the sovereign freeholders of America. *Id.*, July 2, 1788, pp.77-286.

As part of the method by which the new United States decided to dispose of its territories, it created in the Constitution an article, section, and clause, that specifically dealt with such disposal. Article IV, Section 111, Clause 11, states in part, "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other property belonging to the United States." Thus, Congress was given the power to create a vehicle to divest the Federal Government of all its right and interest in the land. This vehicle, known as the land patent, was to forever divest the federal government of its land and was to place such total ownership in the hands of the sovereign freeholders who collectively created the government. *The land patents issued prior to the initial date of recognition of the United States Constitution were ratified by the members of Constitutional Congress.* Those Patents created by statute after March 1789, had only the power of the statutes and the Congressional intent behind such statutes as a reference and basis for the determination of their powers and operational effect originally and in the American system of land ownership today.

There have been dozens of statutes enacted pursuant to Article IV, Section 11, Clause 11. Some of these statutes had very specific intents of aiding soldiers of wars, or dividing lands in a very small region of one state, but all had the main goal of creating in the sovereigns, freeholders on their lands, beholden

to no lord or superior. Some of the statutes include, 12 Stat 392, 37th Congress, Sess. 11, Ch. 75, (1862) (the Homestead Act); 9 Stat. 520, 31st Congress, Sess. 1, Ch. 85 (1850) Military Bounty Service Act; 8 Stat. 123, 29th Congress, Sess. 11 Ch. 8, (1847) (Act to raise additional military force and for other purposes); 5 Stat 444, 21st Congress, Sess. 11, Ch. 30 (1831); 4 Stat 51, 18th Congress, Sess. I, Ch. 174 (1824); 5 Stat 52, 18th Congress, Sess. 1, Ch. 173 (1824); 5 Stat 56, 18th Congress, Sess. 1, Ch. 172, (1824); 3 Stat. 566, 16th Congress, Sess. 1, Ch. 51, (1820) (the major land patent statute enacted to dispose of lands); 2 Stat 748, 12th Congress, Sess. 1. Ch. 99 (1812); 2 Stat. 728, 12th Congress, Sess. 1, Ch. 77, (1812); 2 Stat. 716, 12th Congress, Sess. 1, Ch. 68, (1812) (the act establishing the General Land-Office in the Department of Treasury); 2 Stat 590, 11th Congress, Sess. U, Ch. 3.5, (1810); 2 Stat 437, 9th Congress, Sess. H, Ch. 34, (1807); and 2 Stat 437, 9th Congress, Sess. H, Ch. 31, (1807) These, of course, are only a few of the statutes of enacted to dispose of public lands to the sovereigns. One of these acts however, was the main patent statute in reference to the intent Congress had when creating the patents. That status is 3 Stat 566,

In order to understand the validity of a patent, in today's property law, it is necessary to turn to other sources than the acts themselves. These sources include the congressional debates and case law citing such debates. For the best answer to this question, it is necessary to turn to the Abridgment of the Debates of Congress, Monday, March 6, 1820, in the Senate, considering the topic "The Public Lands." This abridgment and the actual debates found in its concern one of the most important of the land patent statutes, 3 Stat 566, 16th Congress, Sess. 1. Ch. 51, Stat. 1, (April 24, 1820)

In this important debate, the reason for such a particular act in general and the protection afforded by the patent in particular were discussed. As Senator Edwards states; "1/4 it is not my purpose to discuss, at length, the merits of the proposed change. I will, at present, content myself with an effort, merely, to shield the present settlers upon public lands from merciless speculators, whose cupidity and avarice would unquestionably be tempted by the improvements which those settlers have made with the sweat of their brows, and to which they have been encouraged by the conduct of the government itself, for though they might be considered as embraced by the letter of the law which provides against intrusion on public lands, yet, that their case has not been considered by the Government as within the mischief's intended to be prevented is manifest, not only from the forbearance to enforce the law, but from the positive rewards which others, in their situation, have received, by the several laws which have heretofore been granted to them by the same right if preemption which I now wish extended to the present settlers." Further, Senator King from New York stated, he considered the change as highly favorable to the poor man; and he argued at some length, that it was calculated to plant in the new country a population of independent, unembarrassed freeholders; that it would cut up speculation and monopoly; that the money paid for the lands would be carried from the State or country from which the purchaser should remove; that it would prevent the accumulation of an alarming debt, which experience proved never would and never could be paid.

In other statutes, the Court recognized much of these same ideas. In United States v. Reynes, 9 How. (U.S.) 127 (1850), the Supreme Court stated: "The object of the Legislature is manifest 1/4 it was intended to prevent speculation

by dealing for rights of preference before the public lands were in the market. The speculator acquired power over choice spots, by procuring occupants to seat themselves on them and who abandoned them as soon as the land was entered under their preemption right, and the speculation accomplished. Nothing could be more easily done than this, if contracts of this description could be enforced."

The act of 1830, however, proved to be of little avail and then came the Act of 1835 (5 Stat 251) which compelled the preemptor to swear that he had not made an arrangement by which the title might inure to the benefit of anyone except himself, or that he would transfer it to another at any subsequent time. This was preliminary to the allowing of his entry, and discloses the policy of Congress. "It is always to be borne in mind, in construing a congressional grant that the act by which it is made is a law as well as a conveyance and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law words of present grant, are operative, if at all, only as contracts to convey. But the rules of common law must yield in this, as in other cases, to the legislative will." Missouri, Kansas & Texas Railway Company v. Kansas Pacific Railway Company, 97 US 491, 497 (1878). "The administration of the land system in this country is vested in the Executive Department of the Government, first in the Treasury and now in the Interior Department, the officers charged with the disposal of the public domain under are required and empowered to determine so far as it relates to the extent and character of the rights claimed under them, and to be given, though their actions, to individuals. Government, and courts of justice must never interfere with it." Marks v. Dickson, 61 US (20 How) 501 (1857); see also Cousin v. Blanc's ex., 19 How. US 206, 209 (1856). "The Power of the Congress to dispose of its land cannot be interfered with, or its exercise embarrassed by any State legislation; nor can such legislation deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition." Gibson v. Chouteau, 13 Wal. (U. S.) 92, 93 (1871)

State statutes that give lesser authoritative ownership of title than the patent can not even be brought into federal court. Langdon v. Sherwood, 124 U.S. 74, 81 (1887). These acts of Congress making grants are not to be treated both law and grant, and the intent of Congress when ascertained is to control in the interpretation of the law. Wisconsin C. R. Co. v. Forsythe, 159 U.S. 46 (1895). "The intent to be searched for by the courts in a government Patent is the intent which the government had at that time, and not what it would have been had no mistake been made. The true meaning of a binding expression in a patent must be applied, no matter where such expressions are found in the document. It should be construed as to effectuate the primary object Congress had in view; and obviously a construction that gives effect to a patent is to be preferred to one that renders it inoperative and void. A grant must be interpreted by the law of the country in force at the time when it was made. The construction of federal grant by a state court is necessarily controlled by the federal decisions on the same subject. The United States may dispose of the public lands of such terms and conditions, and subject to such restrictions and limitations as in its judgment will best promote the public welfare, even if the condition is to exempt the land from sale on execution issued or judgment recovered in a State Court for a debt contracted before the patent issues." Miller v. Little, 47 Cal. 348, 350 (1874). Congress has the sole power to declare the dignity and effect of titles emanating from the United States and the whole legislation of the Government must be examined in the determination of such titles. Bagneu v. Broderick, 38 U.S. 436 (1839). It was clearly the policy of Congress, in passing the preemption and patent laws, to confer the benefits of those laws to actual settlers upon the land. Close v. Stuyvesant, 132 M. 607, 617. "The intent of Congress is manifest in the determinations of meaning, force and power vested in the patent. These cases all illustrate the power and dignity given to the patent. It was created to give the government of its lands, and to act as

a means of conveying such lands to the generations of people that would occupy those lands. This formula, "or his legal representatives," embraces representatives of the original grantee in the land, the contract, such as assignees or grantees, as well as the operation of law, and leaves the question open to inquiry in a court of justice as to the party to whom the patent, or confirmation, should enure." Hogan v. Page, 69 US 605 (1864)

The patent was and is the document and law that protects the settler from the merciless speculators, from the people that use avarice to unjustly benefit themselves against an unsuspecting nation. The patent was created with these high and grand intentions, and was created with such intentions for a sound reason. "The settlers as a rule seem to have been poor persons, and presumably without the necessary funds to improve and pay for their land, but it appears that in every case where the settlement was made under the preemption law, the settler entered and paid for the land at the expiration of the shortest period at which entry could be made." Close v. Stuyvesant, 132 HL. 607, 623 (1890). "We must look to the benefit character of the acts that created this grants and patents and the peculiar objects they were intended to protect and secure.

A class of enterprising, hardy and valuable citizens has become the pioneers in the settlement and improvement of the new and distant lands of the government. McConnell v. Wilcox, 1 Seam. (M.) 344, 367 (1837). "In furtherance of what is deemed a wise policy, tending to encourage settlement, and to develop the resources of the country, it invites the heads of families to occupy small parcels of the public land. To deny Congress the power to make a valid and effective contract of this character would materially abridge its power of disposal, and seriously interfere with a favorite policy of the government, which fosters measures tending to a distribution of the lands to actual settlers at a nominal price." Miller v. Little, 47 Cal. 348, 351 (1874) The legislative acts, the Statutes at Large, enacted to divest the United States of its land and to sell that land to the true sovereigns of this republic, had very distinct intents. Congress recognized that the average settler of this nation would have little money, therefore Congress built into the patent, and its corresponding act, the understanding that these lands were to be free from avarice and cupidity, free from the speculators who preyed on the unsuspecting nation, and forever under the control and ownership of the freeholder, who by the sweat of his brow made the land produce the food that would feed himself and eventually the nation. Even today, the intent of Congress is to maintain a cheap food supply through the retention of the sovereign farmers on the land. United States v. Kimball Foods, Inc., 440 U.S. 715 (1979); see also Curry v. Block, 541 F. Supp. 506 (1982) Originally, the intent of Congress was to protect the sovereign freeholders and create a permanent system of land ownership in the country.

Today, the intent of Congress is to retain the small family farm and utilize the cheap production of these situations, it has been necessary to protect the sovereign on his parcel of land, and ensure that he remain in that position. The land patent and the patent acts were created to accomplish these goals. In other words, the patent or title deed being regular in its form, the law will not presume that such was obtained through fraud of the public right This principle is not merely an arbitrary rule of law established by the courts, rather it is a doctrine which is founded upon reason and the soundest principles of public policy. It is one, which has been adopted in the interest of peace in the society and the permanent security of titles. Unless fraud is shown, this rule is held to apply to patents executed by the public authorities. State v. Hewitt Land Co., 134 P. 474, 479 (1913) It is therefore necessary to determine exact power and authority contained in a patent. Legal titles to lands cannot be conveyed except in the form provided by law. McGaffahan v. Mining Co., 96 U.S. 316 (1877) Legal title to property is contingent upon the patent issuing from the government. Sabo v. Horvath, 559 P.2d 1038, 1040 (Aka. 1976) "That the patent carries the fee and is the

best title known to a court of law is the settled doctrine of this court." Marshall v. Ladd, 7 Wall. (74 U.S.) 106 (1869) "A patent issued by the government of the United States is legal and conclusive evidence of title to the land described therein. No equitable interest, however strong, to land described in such a patent, can prevail at law, against the patent" {Land Patents, Opinions of the United States Attorney General's office, (September, 1969)} "A patent is the highest evidence of title, and is conclusive against the government and all claiming under junior patents or titles, until it is set aside or annulled by some judicial tribunal." Stone v. United States, 2 Wall. (67 U.S.) 765 (1865) The patent is the instrument which, under the laws of Congress, passes title from the United States and the patent when regular on its face, is conclusive evidence of title in the patentee. When there is a confrontation between two parties as to the superior legal title, the patent is conclusive evidence of title in the patentee. When there is a confrontation between two parties as to the superior legal title, the patent is conclusive evidence as to ownership. Gibson v. Chouteau, 13 Wall. 912. (1871) Congress having the sole power to declare the dignity and effect of its titles has declared the patent to be the superior and conclusive evidence of the legal title. Bagneff v. Brodrick, 38 US 438 (1839) "Issuance of a government patent granting title to land is the most accredited type of conveyance known to our Law". United States v. Creek Nation, 295 US 103, 111 (1935); see also United States v. Cherokee Nation, 474 F.2d 628,634 91973). The patent is prima facie conclusive evidence of the title. Marsh v. Brooks, 49 U.S. 223, 233 (1850). A patent, once issued, is the highest evidence of title, and is a final determination of the existence of all facts. Walton v. United States, 415 F. 2d 121, 123 (10th Cir. 1969); see also United States v. Beaman, 242 F. 876 (1917) File v. Alaska, 593 P. 268, 270 (1979) (When the federal government grants land via a patent, the patent is the highest evidence of title). Patent rights to the land is the title in fee, City of Los Angeles v. Board of Supervisors of Mono County, 292 P.2d 539 (1956), the patent of the fee simple, Squire v. Capoeman, 351 U.S. 1,6 (1956), and the patent is required to carry the fee. Carter v. Rubby, 166 U.S. 493, 496 (1896); see also Klais v. Danowski, 129 N.W. 2d 414, 422 (1964) 1423 (Interposition of the patent or interposition of the fee title). The land patent is the muniment of title, such title being absolute in its nature, making the sovereigns absolute freeholders on their lands. Finally, the patent is the only evidence of the legal fee simple title. McConnell v. Wilcox, 1 Scam (ILL.) 381, 396 (1837) All these various cases and quotes illustrate one statement that should be thoroughly understood at this time, the patent is the highest evidence of title and is conclusive of the ownership of land in courts of competent jurisdiction. This however, does not examine the methods or possibilities of challenging a land patent.

In Hooper et al. v. Scheimer, 64 U.S. (23 How.) 235 (1859), the United States Supreme Court stated, "I affirm that a patent is unimpeachable at law, except, perhaps, when it appears on its own face to be void; and the authorities on this point are so uniform and unbroken in the courts, Federal and State, that little else will be necessary beyond a reference to them." Id. at 240 (1859) A patent cannot be declared void at law, nor can a party travel behind the patent to avoid it. Id. A patent cannot be avoided at law in a collateral, proceeding unless it is declared void by statute, or its nullity indicated by some equally explicit statutory denunciations. One perfect on its face is not to be avoided, in a trial at law, by anything save an elder patent. It is not to be affected by evidence or circumstances which might show that the impeaching party might prevail in a court of equity. A patent is evidence, in a court of law, of the regularity of all previous steps to it, and no facts behind it can be investigated. A patent cannot be collaterally avoided at law, even for fraud. A patent, being a superior title, must of course, prevail over colors of title; nor is it proper for any state legislation to give such titles, which are only equitable in nature with a recognized legal status in equity courts, precedence over the legal title in a court of law. The Hooper case has many of the maxims that apply to the powers and possible disabilities of a land patent, however there is extensive case law in the area.

The presumptions arise, from the existence of a patent, evidencing a grant of land from the United States, that all acts have been performed and all facts have been shown, which are prerequisites to its issuance, and that the right of the party, grantee therein, to have it issued, has been presented and passed upon by the proper authorities. Green v. Barber, 66 N.W. 1032 (1896) As stated in Bouvier's Law Dictionary, Vol. H, p. 1834 (1914): Misrepresentations knowingly made by the application for a patent will justify the government in proceedings to set it aside, as it has a right to demand a cancellation of a patent obtained by false and fraudulent misrepresentations. United States v. Manufacturing Co., 128 U.S. 673 (1888); but courts of equity cannot set aside, annul, or correct patents or other evidence of title obtained from the United States by fraud or mistake, unless on specific averment of the mistake or fraud, supported by clear and satisfactory proof, Maxelli Land Grant Cancellation, 11 How. (U.S.) 552 (1850); although a patent fraudulently obtained by one knowing at the time that another person has a prior right to the land may be set aside by an information in the nature of a bill in equity filed by the attorney of the United States for the district in which the land lies; Id. A court of equity, upon a bill filed for that purpose, will vacate a patent of the United States for a tract of land obtained by mistake from the officers of the land office, in order that a clear title may be transferred to the previous purchaser; Hughes v. United States, 4 Wall. (U.S.) 232 (1866); but a patent for land of the United States will not be declared void merely because the evidence to authorize its issue is deemed insufficient by the court. Milliken v. Starling's lessee, 16 Ohio 61 A state can impeach the title conveyed by it to a grantee only by a bill in chancery to cancel it, either for fraud on the part of the grantee or mistake of law; and until so canceled it cannot issue to any other party a valid patent for the same land. Chandler v. Manufacturing Co., 149 U.S. 79 (1893)

Other cases espouse these and other rules of law. A patentee can be deprived of his rights only by direct proceedings instituted by the government or by parties acting in its name, or by persons having a superior title to that acquired through the government. Putnum v. Ickes, 78 F.2d 233, denied 296 U.S. 612 (1935) It is not sufficient for the one challenging a patent to show that the patentee should not have received the patent; he must also show that he as the challenger is entitled to it. Kale v. United States, 489 F.2d 449, 454 (1973) A United States patent is protected from easy third party attacks. Fisher v. Rule, 248 U.S. 314, 318 (1919); see also Hoofflag v. Anderson, 20 U.S. (7 Wheat.) 212 (1822) A Patent issued by the United States of America so vests the title in the lands covered thereby, that it is the further general rule that, such patents are not open to collateral attack. Thomas v. Union Pacific Railroad Company, 588, 596 (1956) See also State v. Crawford, 475 P.2d 515 (Ariz. App. 1970) (A patent is prima facie valid, and if its validity can be attacked at all, the burden of proof is upon the defendant); State v. Crawford, 441 P. 2d 586, 590 (Ariz. App. 1968) (A patent to land is the highest evidence of title and may not be collaterally attacked); and Dredge v. Husite Company 369 P.2d 676, 682 (1962) (A Patent is the act of legally instituted tribunal, done within its jurisdiction, and passes the title. Such a patent is a final judgment as well as a conveyance and is conclusive upon a collateral attack) Absent some facial invalidity, the patents are presumed valid. Murray v. State, 596 P.2d 805, 816 (1979) The government retains no power to nullify a patent except through a direct court proceeding. United States v. Reimann, 504 F.2d 135 (1974) See also Green v. Barker, 66 N.W. 1032, 1034 (1896) (The doctrine announced was that the deed upon its face, purported to have been issued in pursuance of the law, and was therefore only assailable in a direct proceeding by aggrieved parties to set it aside) Through these cases, it can be shown that the patent which passes the title from the United States to the sovereigns, was created to keep the speculators from the land, is only able in a direct proceeding for fraud or mistake. In no other situation is it allowable for the courts, to imply eliminate the patent. One question that may arise is what do the courts mean by a collateral attack and what can be done by courts of equity if a collateral attack is presented?

Perhaps the easiest means of defining a collateral attack is to show, the converse corollary, or a direct attack on a patent. As was stated in the previous paragraphs, a direct attack upon a land patent is an action for fraud or mistake brought by the government or a party acting in its place. Therefore, a collateral attack, by definition, is any attack upon a patent that is not covered within the direct attack list. Perhaps the most prevalent collateral attack in Property law today is a mortgage or deed of trust foreclosure on a color of title. In these instances, it is determined that the mortgagee or another purchases the complete title and interest in the land in his place. Such a determination displaces the patentee's ownership of the title without the court ever ruling that the patent was acquired through fraud or mistake. This is against public policy, legislative intent, and the overwhelming majority of case law. Therefore, it is now necessary to determine the patent's role in American property law today, to see what powers the courts of equity have in protecting the rights of the challengers of patents.

The attitude of the Courts is to promote simplicity and certainty in title transactions, thereby they follow what is in the chain of title, and not what is outside. Sabo v. Horvath, 559 P.2d 1038, 1044 (1976) However in equity courts, title under a patent from the government is subject to control, to protect the rights of parties acting in a fiduciary capacity. Sanford v. Sanford, 139 U.S. 290 (1891). This protection however does not include the invalidation of the patent. The determination of the land department in matters cognizable by it, in the alienation of lands and the validity of patents cannot be collaterally attacked or impeached.

Therefore the courts have had to devise another means to control the patentee, if not the patent itself, as stated in Raestle v. Whitson, 582 P.2d 170, 172 (1978), "The land patent is the highest evidence of title and is immune from collateral attack. This does not preclude a court from imposing a constructive trust upon the patentee for the benefit of the owners of an equitable interest" This then explains the most equitable way a court may effectively restrict the sometimes harsh justice handed down by a strict court of law. Equity courts will impose a trust upon the patentee until the debt has been paid. As has been stated, a patent can not be collaterally attacked, therefore the land can not be sold or taken by the courts unless there is strong evidence of fraud or mistake. However, the courts can require the patentee to pay a certain amount at regular intervals until the debt is paid, unless of course, there is a problem with the validity of the debt itself. This is the main purpose of the patent in this growing epidemic of farm foreclosures that defy the public policy of Congress, the legislative intent of the Statutes at large, and the legal authority as to the type of land ownership possessed in America. Why then is the rate of foreclosures on the rise?

Titles to land today, as was stated earlier in this memorandum, are normally in the form of colors of title. This is because of the trend in recent property law to maintain the status quo. The rule in most jurisdictions, and those which have adopted a grantor-grantee index in particular, is that a deed outside the chain of title does not act as a valid conveyance and does not serve notice of a defect of title on a subsequent purchaser. These deeds outside the chain of title are known as "wild deeds." Sabo v. Horvath, 559 P.2d 1038, 1043 (1976); See also Porter v. Buck, 335 So.2d 369, 371 (1976); The Exchange National Bank v. Lawndale National Bank, 41 ILL.2d 316, 243 N.E.2d 193, 195-96 (1968) (The chain of title for purposes of the marketable title act, may not be founded on a wild deed. These stray, accidental, or interloping conveyances are contrary to the intent of the marketable title act, which is to simplify and facilitate land title transactions); and Manson v. Berkman, 356 ILL. 20, 190 N. E. 77, 79 (1934) This liberal construction of what constitutes a valid conveyance has led to a thinning of the title to a point where the absolute and paramount title is almost impossible to guarantee. This thinning can be directly attributed to the constant use of the colors of title. Under the guise of being the fee simple absolute, these titles have operated freely, but in reality,

the evidence something much different. It was said in common-law England, that when a title was not completely alienable and not the complete title it was not a fee simple absolute. Rather it was some type of contingent conveyance that depended on the performance of certain tasks before the title was considered to be absolute. In fact, normally the title never did develop into a fee simple absolute. These types of conveyance were evidenced in part by the operable word, since the conveyance and in part by the manner in which the grantor could reclaim the property. If the title automatically reverted to the grantor upon the happening of a contingent action, then the title was by a fee simple determinable. Scheller v. Trustees of Schools of Township 41 North, 67 ILL. App.3d 857, 863 (1978) This is evidenced most closely today by deeds of trust in some states. If it required a court's ruling to reacquire the land and title, then the transaction and title were held by a fee simple with a condition subsequent. Mahrenholz v. Country Board of Trustees of Lawrence County, 93 Ill.App.3d 366, 370-74 (1981) This is most closely evidenced by a mortgage in a lien or intermediate-theory state. These analogies may be somewhat startling and new to some, but the analogies are accurate. When a mortgage is acquired on property, the mortgagee steps into the position of a grantor with the authority to create the contingent estate as required by the particular facts. This is exactly what the grantor in Common Law property law could acquire. All the grantor had to do was choose a particular type of contingency and use the necessary catch words, and almost invariably the land would one day be refused due to a violation of the contingency. In today's property law, the color of title has little power to protect the landowner.

When the sovereign is unable to pay the necessary principal and interest on the debt load, then the catch words and phrases found in the deed of trust or mortgage become operational. Upon the occurrence of that event, the mortgagee or speculator, having through a legal maneuver acquired the position of a grantor, is in a position to either automatically receive the property simply by advertising and selling it, or can acquire the position of the grantor and eventually the possession of the property by a court proceeding. In Common Law, the grantor of a fee simple determinable where the contingency was broken or violated, could automatically take the land from the grantee holder, by force if necessary. If however, the grant was a fee simple upon condition subsequent the grantor, when the contingency was broken, had to bring a legal proceeding to declare the contingency broken, to declare the grantee in violation, and to order the grantee to vacate the premises. These situations, though under different names and proceedings, occur every day in America. Is there really any serious debate therefore, that the colors of title used today, with the creation of a lien upon the property, become fee simple determinable and fee simples upon condition subsequent? Is this a legitimate method of ensuring a stable and permanent system of land ownership? If the color of title is weak, then how strong is a mortgage or deed of trust placed on the property?

Fee simple estates may be either legal or equitable. In each situation it is the largest estate in the land that the law will recognize. Hughes v. Miller's Mutual Fire Insurance Co., 246 S.W.2d 3 (1922) If a mortgagee, upon the creation of a mortgage or deed of trust, steps into the shoes of the grantor upon a conditional fee simple, does it then mean the mortgagee has acquired one of the two halves of a fee simple, when cases have shown the fee simple is only evidenced by a patent? Actually, courts have held in many states that a mortgage is only a lien. United States v. Certain Interests in Property in Champaign County, State of Illinois, 165 F.Supp.474, 480 (1958) (In Illinois and other lien theory states, the mortgagee has only a lien and not a vested interest in the leasehold) See also Federal Farm Mortgage Corp. v. Ganswer, 146 Neb. 635, 20 N.W.2d 689 (1945) Even after a condition is broken or there is a default on a mortgage, a mortgagee only has an equitable lien which can be enforced in proper proceedings); South Omaha Bank v. Levy, 95 N.W.603 (1902) Strict foreclosure will not lie when mortgagor holds the legal title); First National Bank v. Sergeant, 65 Neb. 394, 91 N.W. 595 (1902) (Mortgagee cannot demand more than is legally due);

Morrill v. Skinner, 57 Neb. 164, 77 N.W. 375 (1898) (Mortgage conveys no estate but merely creates a lien); Barber v. Crowell, 55 Neb. 571, 75 N. W. 1 109 (1898) (Mortgage is mere security in form of conditional conveyance), Speer v. Haddock, 31 Freeman (HI.) 439, 443 (1863) (Assignments or conveyances of mortgages do not convey the fee simple, rather they hold only security interests) In lien and intermediate-theory states, these cases amply illustrate that a mortgage or deed of trust is only a lien. Even in title theory of mortgage states, courts of equity have determined that the fee simple title is not really conveyed, either in its equitable or legal state. See supra Barber, at 1110. A fee simple estate still exists even though the property is mortgaged or encumbered. Hughes v. Miller's Mutual Fire Insurance Co., 246 S.W. 23, 24 (1922) In fact, a creditor asserting a lien (mortgage) must introduce evidence or proof that will clearly demonstrate the basis of his lien. United States v. United States Chain Company, 212 F. Supp. 171 (N. D. If a mortgagee, even in the title theory states, has only a lien, yet when the mortgage or deed of trust is created he has a fee simple determinable or condition subsequent, then obviously the color of title used as the operative title has little force or power to protect the sovereign Freeholder. Nor can it be said that such a color of title is useful in the intendance of stable and permanent titles. The patent, in almost all cases has been originally issued to the first purchaser from the government. Theoretically then the public policy, Congressional intent from the 30's, and the Congressional intent of the last few decades should protect sovereign in the enjoyment and possession of his freehold. This however is not the case. Instead, vast mortgaging of the land has occurred. The agriculture debt alone has risen to over \$220,000,000,000 in the past three decades. This is in part due to the vast expansion of mortgaged holdings and part due to the rural sector's inability to repay existing loans requiring the increased mortgaging of the land. This is in exact contradiction to public policy and legislative intent if maintaining stable and simplistic land records; yet marketable titles (colors of title) were supposed to guarantee such records. Wichelman v. Messner, 83 N.W.2d 800, 805 357. Colors of title are ineffective against mortgages and promote the instability and complexity of the records of land titles by requiring abstracts and title insurance simply to guarantee a marketable title. Worse, an injustice has prevailed in some of the states of permitting actions to determine titles to be maintained upon warrants for land (warranty deeds) and other titles not complete or legal in their character. This practice is against the intent of the Constitution and the Acts of Congress. Bagnell v. Broderick, 38 U.S. 438 (1839). Such lesser titles have no value in actions brought in federal courts not with standing a State legislature, which may have provided otherwise. Hooper et. al. v. Scheimer, 64 U.S. (23 How.) 235 (1859) It is in fact possible that the state legislatures have even violated the Supremacy Clause of the United States Constitution. These actions are against the intent of the founding fathers and against the legislative intent of the Congressman who enacted the statutes at large creating the land patent or land grant This patent or grant, since the land grant has in some states, another name for the patent, the terms being synonymous, Northern Pacific Railroad Co. v. Barden, 46 F. 592, 617 (1891); prevented every problem that was created by the advent of colors of title, marketable titles, and mortgages. Therefore it is necessary to determine the validity of returning to the patent as the operative title.

Patents are issued (and theoretically passed) between sovereigns and deeds are executed by persons and private corporations without these sovereign powers. Leading Fighter v. County of Gregory, 230 N.W.2d 114, 116 (1975) As was stated earlier, the American people in creating the Constitution and the government formed under it, made such a document and government as sovereigns, retaining that status even after the creation of the government. Chisholm v. Georgia, 2 Dall. (U.S.) 419 (1793) The government as sovereign passes the title to the American people creating in them sovereign Freeholders. Therefore, it follows that the American people, as sovereigns, should also have this authority to transfer the fee simple title, through the patent, to others. Cases have been somewhat scarce in this area, but there is some case law to reinforce this idea. In Wilcox v. Calloway, 1 Wash. (Va.) 38, 38-41 (1823), the Virginia

Court of Appeals heard a case where the patent was brought up or reissued to the parties four separate times. Some patents were issued before the creation of the Constitutional United States government, and some occurred during the creation of that government. The courts determined the validity of those patents, recognizing each actual acquisition as being valid, but reconciling the differences by finding the first patent, properly secured with all the necessary requisite acts fulfilled, carried the title. The other patents and the necessary requisition a new patent each time yielded the phrase "lapsed patent." A lapsed Patent being one that must be required to perfect the title. *Id.* Subsequent patentees take subject to any reservations in the original patent. State v. Crawford 441 P.2d 586,590 (1968). A patent regularly issued by the government is the best and only evidence of a perfect title. The actual patent should be secured to place at rest any question as to validity of entries (possession under a claim and color of title). Young v. Miller, 125 So.2d 257, 258 (1960). Under the color of title act, the Secretary of Interior may be required to issue a patent if certain conditions have been met, and the freeholder and his predecessors in title are in peaceful, adverse possession under claim and color of title for more than a specified period. Beaver v. United States, 350 F.2d 4, cert. denied, 387 U.S. 937 (1965). A description which will identify the lands (and possession) is all that is necessary for the validity of the patent, Lossing v. Shull, 173 S.W.2d 1, 1 Mo. 342 (1943). A patent to two or more persons creates presumptively a tenancy in common in the patentees. Stoll v. Gottbreht, 176 N.W. 932, 45 N.D. 158 (1920). A patent to be the original grantee or his legal representatives embrace the representatives by contract as well as by law. Reichert v. Jerome H. Sheip, Inc., 131 So. 229, 222 Ala. 133 (1930). A patent has a double operation. In the first place, it is documentary evidence having the dignity of a record of the evidence of the title or such equities respecting the claim as to justify its recognition and later confirmation. In the second place, it is a deed of the United States, or a title deed. As a deed, its operation is that if a quitclaim or rather of a conveyance of such interest as the United States possess in the land, such interest in the land passing to the people or sovereign freeholders. 63 Am. Jur. 2d Section 97, p. 566.

Finally, the United States Supreme Court, in Summa Corporation v. California ex rel. State Lands Commission, etc., 80 L.Ed.2d 237 (1984), made determinations as to the validity of a patent confirmed by the United States through the Treaty of Guadalupe Hidalgo, 9 Stat. 631 (1951). The State of California attempted to acquire land that belonged to the corporation. The State maintained that there was a public trust easement granting to the State authority to take the land without compensation for public use. The corporation relied in part on the intent of the treaty, in part on the intent of the patent and the statute creating it, and in part in the requisite challenge date of the patent expiring. The Summa Court followed the lengthy dissertation of the dissenting judge on the California Supreme Court, See 31 Cal. 3d 288, dissenting opinion, in determining that the patent which had been the apparent operative title throughout the years, was paramount and the actions by the State were against the manifest weight of the Treaty and the legislative intent of the patent statutes. In each of these cases it states that the patent, through possession, or claim and color of title, or through the term "his heirs and assigns forever", or through the necessary passage of title at the death of a joint tenant or tenant in common, is still the operable title and is required to secure the peaceful control of the land. These same ideas can also apply to state patents for lands that went to the state or remained in the hands of the state upon admission into the Union. Oliphant v. Frazho, 146 N.W.2d 685, 686,687 (1966); Fiedier v. Pipers, 107 So.2d 409, 411-412 (1958) (Not even the State could be heard to question the validity of a patent signed by the Governor and the Register of the State Land Office). "No government can object to the intent and creation of a patent after such is issued, unless issued through fraud or mistake. The patent, either federal or state, has an intent to create sovereign freeholders in the land protected from the speculators, (any lending institution speculates upon land), and a public policy to maintain a simplistic, stable and permanent system of land records. Land patents were designed to

effectively insure that this intent and policy were retained. Colors of title can not provide this type of stability, since such titles are powerless against liens, mortgages, when the freeholder is unable to repay principle and interest on the accompanying promissory note. Equity will entertain jurisdiction at the instance of the owner of fee of lands to remove a cloud upon his title created by the sale of the premises and a deed issued thereto under a decree of foreclosure of a mortgage there-on. "Hodgen v. Guttery, 58 Free. (i I 1.) 431, 438 (1871) (though this case dealt with an improper sale of land covered by a patent, any forced sales of lands covered by a patent is improper in view of the policy and intent of the Congress.)

Equity however will protect the mortgagee who stands to lose his interest in the property, thereby requiring a trust to be created until the debt is erased, making partners of the creditor and debtor. What then exists is a situation where the patent should be declared (confirmed or reissued), to protect the sovereign freeholder and to re-institute the policy and intent of Congress. The patent as the paramount title, fee simple absolute, can not be collaterally attacked, but when a debt can not be paid immediately placing the creditor in jeopardy, the courts will impose a constructive trust until the new "partners" can mutually eliminate the debt. If the debt can not be satisfactorily removed, it is still possible, considering the present intent of the government, to maintain sovereign freeholders on the property, immune from the loss of the land, since it is Congress' intent to keep the family farm in place. The use of colors of title to act as the operative title is inappropriate considering the rising number of foreclosures and the inability of the colors of title to restrain a mortgage or lien. However, the lending institutions, speculators on the land, maintain that the public policy of the country includes the eradication of the sovereign freeholders in the rural sector in an effort to implant upon the country, large corporate holdings. This last area must be effectively met and eliminated.

To those who framed the Constitution, the rights of the States and the rights of the people were two distinct and different things. Throughout their debates they had two objects foremost in their minds. First, to create a strong and effective national government, and secondly to protect the people and their rights from usurpation and tyranny by government. The people's liberties and individual rights and safeguards were to be kept forever beyond the control and dominion of the legislatures of the States, whom they distrusted, and against whom they so carefully guarded themselves. If such control and domination and unlimited powers were given to a few legislatures they could override every one of the reserved rights covered by the first ten Amendments (the bill of rights); they could change the government of limited powers to one of unlimited powers; they could declare themselves hereditary rulers; they could abolish religious freedoms, they could abolish free speech and the right of the people to petition for redress; they could not only abolish trial by jury, but even the rights to a day in court; and most importantly they could abolish free sovereign ownership of the land. The whole literature of the period of the adoption of the Constitution and the first ten amendments is one of great testimony to the insistence that the Constitution must be so amended as to safeguard unquestionably the rights and freedoms of the people so as to secure from any future interference by the new government, matters the people had not already given into its control, unless by their own consent. United States v. Sprague, 282 U.S. 716, 723-726 (1930) The problem has not in the lending institutions that simply practice good business on their part. The problem in the loss of freedoms by this present interference with allodial sovereign ownership lies with the state legislatures that created law, or marketable title acts, that claimed to enact new simplistic, stable land titles and actually created a watered-down version of the fee simple absolute that requires complicated tracing and protection, and is ineffective against mortgage foreclosures. None of these problems would occur if the patent were the operable title again, as long as the sovereigns recognized the powers and disabilities of

their fee simple title. The patent was meant to keep the sovereign freeholder on the land, but the land was also to be kept free of debt, since that debt was recognized in 1820 as un-repayable, and today is un-repayable. The re-declaration of the patent is essential in the protection of the rural sector of sovereign freeholders, but also essential is the need to impress the state legislatures that have strayed from their enumerated powers with the knowledge that they have enacted laws that have defeated the intent and goal of man since the middle ages. That intent, of course, is to own a small tract of land absolutely, whether by land-bloc or patent, on which the freeholder is beholden to no lord or superior. The patent makes sovereign freeholders of each person who own his/her land. A return to the patent must occur if those sovereign freeholders wish to protect that land from the encroachment of the state legislatures and the speculators that benefit from such legislation.

SECTION IV
CONCLUSION

As has been seen, man is always striving to protect his rights, the most dear being the absolute right to ownership of the land. This right was guaranteed by the land patent, the public policy of the Congress, and the legislative intent behind the Statutes at Large. Such fights must be reacquired through the re-declaration of the patent in the color of title claimant's name, based on his color of title and possession. With such reborn rights, the land is protected from the forced sale because of delinquency on a promissory note and foreclosure on the mortgage. This protected land will not eliminate the debt, a trust must be created whereby "partners" will work together to repay it. These rights must be recaptured from the state legislated laws, or the freedoms guaranteed in the Bill of Rights and Constitution will be lost. Once lost, those rights will be exceedingly hard, if no impossible to reclaim, and quite possibly, as Thomas Jefferson said, the children of this generation may someday wake up homeless on the land their forefathers founded. This Court has the opportunity, nay the obligation to uphold the original intent of the founding fathers, and the Congress in the protection of our most valued unalienable right, the right to allodial property.

Respectfully Submitted,

The Eighth day of January in the year of our Lord two thousand and thirteen, and in the two hundred and thirty-seven year of our Sovereignty and Independence of the United States of America.

§
by Shelton L. Hoffman

SHELTON L. HOFFMAN

ATTEST: TRUE COPY
Wingia S. Lewis
CLERK OF COURT
ORANGEBURG COUNTY, S.C.

Page 29 of 29

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION

SCBT NA

Plaintiff,

vs.

SHELTON HOFFMAN a/k/a SHELTON L

HOFFMAN; SOUTH CAROLINA

DEPARTMENT OF REVENUE; THE UNITED

STATES OF AMERICA ACTING BY AND

THROUGH ITS AGENCY THE INTERNAL

REVENUE SERVICE; BAIRD TRANSPORT,

INC

Defendants,

Case No.: 2012-CP-38-0030

DEFENDANTS MEMORANDUM IN SUPPORT
FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDGEMENT

FILED FOR RECORD
JAN 8 2013
CLERK OF COURT
ORANGEBURG COUNTY, SC

Defendant submits this Memorandum with regards to the factors the Defendants deems

Necessary for the Courts understanding in considering the present action for Injunctive and Declaratory Relief.

by *S. Hoffman*

SHELTON L HOFFMAN

I Hereby certify that a copy of the foregoing was mailed on 01/08/2013 to ROGERS TOWNSEND & THOMAS, PO Box 100200 Columbia, SC 29202, ATTORNEY FOR PLAINTIFF.

R. Thomas

Authorized Representative

ATTEST: TRUE COPY!

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

vs.

Shelton Hoffman a/k/a Shelton L. Hoffman,
South Carolina Department of Revenue, and
Baird Transport, Inc.,

Defendants.

(016555-00055 HPW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 12-CP-38-0030

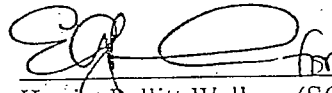
NOTICE OF HEARING

FILED FOR RECORD
JANUARY 10, 2013
CLERK OF COURT
ORANGEBURG, SC

2012 DEC 18 PM 12:53

TO THE DEFENDANTS ABOVE NAMED:

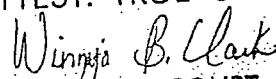
YOU WILL PLEASE TAKE NOTICE THAT, that a hearing on the Motion to Be
Relieved as Counsel filed by Margaret A. Collins and Collins & Burkett Law Firm, LLC, been
scheduled for January 10, 2013 at 2:00 p.m. before the Honorable James E. Reeves, Special
Referee, at the Orangeburg County Courthouse, 151 Docket Street, Third Floor, Orangeburg, SC
29115.



Harriet Pollitt Wallace (SC Bar # 69454)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR Plaintiff

Dated: December 14, 2012

ATTEST: TRUE COPY


CLERK OF COURT
ORANGEBURG COUNTY, SC

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 12-CP-38-0030

I, Missie Wessinger, an employee for the law firm of Rogers Townsend & Thomas, PC,
do hereby certify that I have on served a copy of the following documents upon counsel of
record by U.S. Mail, postage prepaid, on December 14, 2012, at the following addresses:

Documents Served:

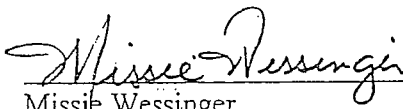
Notice of Hearing

Counsel Served:

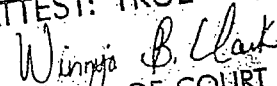
Thomas M. Gore, Esquire
McCorkle & Johnson, LLP
319 Tattnall Street
Savannah, GA 31404

Milton G. Kimpson, Esquire
SC Department of Revenue
P.O. Box 12265
Columbia, SC 29211

Margaret A. Collins, Esquire
Collins & Burkett Law Firm, LLC
1087 Harbor Drive (Suite B)
West Columbia, SC 29169


Missie Wessinger

2012 DEC 18 PM 12:53
FILED FOR RECORD
VIRGINIA S. CLARK
CLERK OF COURT
ORANGEBURG, SC

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CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

vs.

Shelton Hoffman a/k/a Shelton L. Hoffman,
South Carolina Department of Revenue, and
Baird Transport, Inc.,

Defendants.

(016555-00055 HPW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 12-CP-38-0030

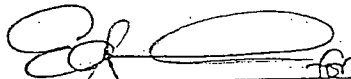
NOTICE OF HEARING

FILED FOR RECORD
MINUTE BOOK
CLERK OF COURT
ORANGEBURG, SC

2012 DEC 18 PM 12:43

TO THE DEFENDANTS ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE THAT, by virtue of the Order of Reference issued in the above matter, James E. Reeves, as Special Referee of Orangeburg County, has appointed January 10, 2013 at 2:00 p.m. at the Orangeburg County Courthouse, 151 Docket Street, Third Floor, Orangeburg, SC 29115, as the time and place for holding a hearing on the merits, at which time and place all interested parties will appear.



Harriet Pollitt Wallace (SC Bar # 69454)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
ATTORNEYS FOR Plaintiff

Dated: December 14, 2012

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 12-CP-38-0030

I, Missie Wessinger, an employee for the law firm of Rogers Townsend & Thomas, PC,
do hereby certify that I have on served a copy of the following documents upon counsel of
record by U.S. Mail, postage prepaid, on December 14, 2012, at the following addresses:

Documents Served:

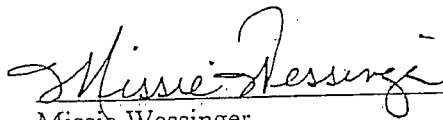
Notice of Hearing

Counsel Served:

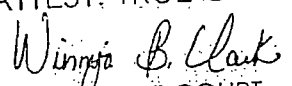
Thomas M. Gore, Esquire
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Columbia, SC 29211

Margaret A. Collins, Esquire
Collins & Burkett Law Firm, LLC
1087 Harbor Drive (Suite B)
West Columbia, SC 29169


Missie Wessinger

2012 DEC 18 PM 12:43
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ORANGEBURG, SC

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CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, N.A.,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman,
South Carolina Department of Revenue, The
United States of America acting By and
through its agent The Internal Revenue
Service, and Baird Transport, Inc.,

Defendants.

(016555-00055 HPW)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 2012-CP-38-0030

**NOTICE OF MOTION AND MOTION
FOR ORDER OF REFERENCE**

FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG COUNTY, SC

2012 OCT -9 PM 2:47

TO THE DEFENDANTS ABOVE NAMED:

Please take notice that the Plaintiff in the above captioned action will move for an Order referring the above captioned action to James E. Reeves, as Special Referee with finality before a Circuit Judge for Orangeburg County, Orangeburg County Courthouse, Orangeburg, South Carolina, on the tenth day after service hereof or at such later time as designated.

Movant requests that a hearing on the merits of the foreclosure action will be heard as soon as possible after resolution of this motion.

In support of its motion for an Order of Reference in the above matter, Plaintiff represents as follows:

(1) This is a mortgage foreclosure action. None of the answering Defendants requested a jury trial. Referral of this matter is appropriate and will aid in the efficient conclusion of this matter.

(2) O. David Burdorf is the standing Master in Equity in this matter.

(3) This matter was referred to Judge Burdorf by Order on February 27, 2012.

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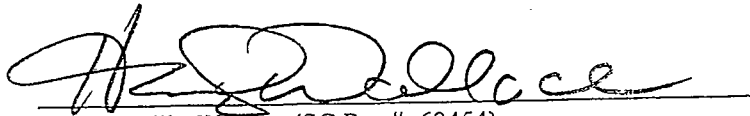
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

(4) Judge Burgdorf recused himself from this matter and remanded it back to the Clerk of Court to appoint a Special Referee. Please see the Form 4 filed September 5, 2012 and attached hereto as Exhibit A.

(5) Margaret A. Collins, attorney for Defendant Shelton Hoffman, filed a Motion to be Relieved as Counsel on or about September 12, 2012.

(6) James E. Reeves has a high degree of expertise in hearing similar matters.

(7) Plaintiff has consulted with Ms. Collins and she neither consents nor objects to the appointment of James E. Reeves as the Special Referee.

A handwritten signature in black ink, appearing to read "Harriet Pollitt Wallace", written over a horizontal line.

Harriet Pollitt Wallace (SC Bar #: 69454)
ROGERS TOWNSEND & THOMAS, PC
Post Office Box 100200
109 Executive Center Drive (29210)
Columbia, SC 29202
803-771-7900

ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
October 5, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs-)

**NOTICE OF MOTION AND MOTION TO
BE RELIEVED AS COUNSEL**

Shelton Hoffman a/k/a Shelton L.)

Hoffman; South Carolina)

Department of Revenue; The)

United States of American acting)

By and through its agency the)

Internal Revenue Service; Baird)

Transport, Inc.,)

Defendants.)

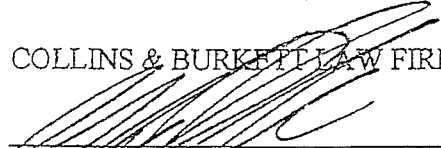
TO: THE DEFENDANT SHELTON HOFFMAN AND THE REMAINING PARTIES:

PLEASE TAKE NOTICE that the Petitioners, Margaret A. Collins Attorney at Law and Collins & Burkett Law Firm, LLC, will move before the Special Referee on the tenth (10th) day after service hereof, or at such other time and place as is convenient to the Court for an Order relieving the Petitioners as Counsel for Defendant Shelton Hoffman.

Said *Motion* being based on Rule 1.16 of the *South Carolina Rules of Professional Conduct*, all other applicable statutory and case law, as well as supporting memorandum to be submitted to the Court prior to the hearing in this matter. Specifically, Petitioners would aver as follows: (1) pursuant to Rule 1.16(b) of the Rules of Professional Conduct, privileged communications has made it clear to Petitioners that the necessary bond of trust and confidence has been impaired to the point that Petitioners concludes that this client should have a fresh start and new counsel; (2) Petitioners believe that continued representation may place Petitioners in a position that continued representation would be impossible or impracticable pursuant to Rule

1.16; and (3) Client has failed to abide by the contract between the Petitioners and the Client.

COLLINS & BURKETT LAW FIRM, LLC



Margaret A. Collins

Attorney for Defendant Shelton Hoffman

Collins & Burkett Law Firm, LLC

1087 Harbor Drive (Suite B)

West Columbia, SC 29169

Phone: (803)708-7442

Facsimile: (803)753-9352

Meg@CB-LawSC.com

September 12, 2012

West Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs-)

CERTIFICATE OF SERVICE

Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)

Defendant.)

I, JoAnn W. Pigate, a paralegal at Collins & Burkett Law Firm, LLC attorneys for Defendant
Shelton Hoffman do hereby certify that I have served a copy of the foregoing **Notice of Motion and
Motion to be Relieved as Counsel** in connection with the above referenced case by the United States
Postal Service, First Class Mail, postage prepaid on September 12, 2012 to the following addresses:

Harriett Wallace, Esquire
Attorney for SCBT, N.A.
220 Executive Center Drive
Columbia, SC 29210

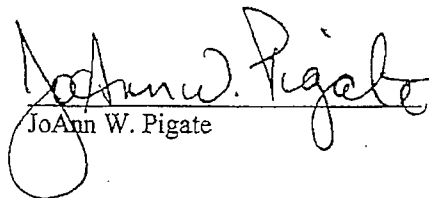
Milton G. Kimpson, Esquire
SC Department of Revenue
PO Box 12265
Columbia, SC 29211

Thomas M. Gore, Esquire
Attorney for Baird Transport, Inc.
McCorkle & Johnson, LLP
319 Tattnall Street
Savannah, GA 31401

Shelton Hoffman
2950 Redmond Mill Road
North, SC 29112

September 12, 2012

West Columbia, South Carolina


JoAnn W. Pigate

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-38-00030

2012 SEP 12 PM 3:07

SCBT, NA	Shelton Hoffman a/k/a Shelton L. Hoffman, et al
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Master-In-Equity Judge	Attorney for : ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

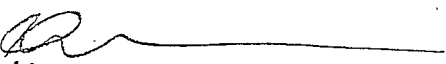
Judge Burgdorf is recusing himself from this case and remanding it back to the Clerk of Court to have a Special Referee appointed.

Wing B. Clark
CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Master in Equity 	Judge's Code: 3038	Date: Sept. 5, 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)		ATTORNEY(S) FOR THE DEFENDANT(S)
		CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
SCBT, N.A.,)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2012 JUN 22 PM 3:36

C/A#: 2012-CP-38-0030

Plaintiff,
-vs-

FILED FOR RECORD

WINNIE B. CIDEKENDANT HOFFMAN'S

CLERK OF COURT

ORANGEBURG, SC

FIRST SUPPLEMENTAL

NOTICE OF MOTION, MOTION

TO STRIKE PLAINTIFF'S ANSWER,

OR IN THE ALTERNATIVE, MOTION

TO REQUIRE AMENDMENT OF

COMPLAINT AND MOTION TO ADD

INDESPENSABLE PARTY AND

MOTION FOR CONTINUANCE

Shelton Hoffman a/k/a Shelton L.
Hoffman; South Carolina
Department of Revenue; The
United States of American acting
By and through its agency the
Internal Revenue Service; Baird
Transport, Inc.,
Defendant.

TO: PLAINTIFF SCBT, NA, SOUTH CAROLINA DEPARMENT OF REVENUE, UNITED STATES OF AMERICA/IRS AND BAIRD TRANSPORT, BY AND THROUGH THEIR RESPECTIVE COUNSELS OF RECORD:

You will please take notice that Defendant Shelton Hoffman, by and through the undersigned counsel, will move before the Master in Equity for the following relief, ten (10) days from today's date or as soon after as it may be heard, for the following relief:

(1) Defendant hereby Moves to Strike Plaintiff's Complaint in its entirety for the following reasons:

(a) Plaintiff failed to attach to its Complaint a Verified Statement of Account, which is a compulsory requirement pursuant to Rule 9 (i), SCRCF. The Complaint also fails to include any Verification or enough detailed information in its Complaint relating to the purported debt to stand alone with a mere Verification. As such, Plaintiff has failed to comply with Rule 9(i), SCRCF and the Complaint should be stricken as a matter of law.

(b) Plaintiff fails to name an indispensable party pursuant to Rule 19, SCRPC.

Specifically, Plaintiff has provided discovery responses on or about June 19, 2012 that indicate Plaintiff had actual knowledge of a secured party claim resulting from the UCC Financing Statement attached hereto and incorporated herein by reference as Exhibit A, as amended in Exhibit B. Notwithstanding the purported validity of any lien resulting from these Financing Statements, Defendant Hoffman the filer is an indispensable party, in that could failure to name this party could result in Defendant Hoffman having duplicate secured claims for the same property and/or debt.

(2) In the alternative and for the foregoing reasons, Plaintiff should be required to amend its Complaint to comply with Rule 9 (i), SCRPC and name all indispensable parties and address the aforementioned purported lien.

(3) Defendant Hoffman requests a continuance of the hearing scheduled for June 26, 2012 for the following reasons:

(a) Due to Defendant Hoffman's failing health, he is unable to continue *pro se*.

Specifically, Defendant Hoffman is legally blind and unable to personally review documents; he suffers from occupational COPD and regularly suffers TIA's ("mini-strokes") upon becoming stressed. Mr. Hoffman has other medical issues that hinder his ability to participate in the defense of this case.

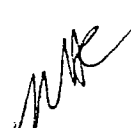
For these reasons, his son's Motion to Proceed by his Power of Attorney was filed and then properly denied. Defendant thereafter retained an attorney.¹

¹Defendant scheduled a consultation with the undersigned counsel on May 23, but was unable to make it because of his health. The consultation was rescheduled for May 29 and counsel received a personal check to create a deposit account this date that was deposited May 30, but

- (b) Defendant's counsel issued discovery responses within eight (8) days of receiving Defendant's entire litigation file.² To date, full responses have not been received.
- (c) By way of a prior pending Motion and pursuant to discussions between the attorneys, Defendant Hoffman avers that Mr. Hutto (the "closing" attorney) was not present during the real estate closing. As such, Defendant Hoffman has requested documents necessary to prove or disprove this allegation.
- (d) Plaintiff has failed to provide the full closing package. Specifically, Plaintiff has provided a Note, Mortgage and Settlement Statement. Plaintiff has specifically requested the closing package, all documents signed as part of this loan, all communications between Mr. Hutto and Plaintiff and much more that has not been provided. This includes the requisite information required to prove or disprove Mr. Hoffman's unauthorized practice of law allegation. Upon information and belief, Federal regulatory/OCC requirements on Plaintiff indicate additional closing documents should exist that have not been provided.

was not provided Defendant's complete litigation file. On June 6, counsel again met with Defendant Hoffman, completed the consultation and received the remaining portions of the litigation file.

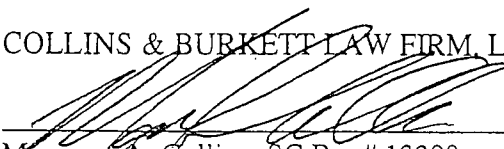
² As additional explanation for the slight delay in issuance of deposition and discovery requests, Mr. Hoffman, first individually then by Power of Attorney, requested his real estate closing file from the closing attorney on June 6 in an effort to avoid the necessity for discovery. Plaintiff's counsel was advised of this and it was explained that earnest efforts to obtain this file were met with great resistance. Specifically, Mr. Hoffman or his representative made no less than four (4) requests for this file, and Defendant's counsel also made a request for that same real estate file. Notwithstanding these multiple requests, a partial file was not received until June 20, 2012.



- (e) Defendant's counsel needed additional documents to argue the pending Motion before the Court that also have not been provided. Additionally, the existing Motion or this Supplemental Motion may be dispositive and should be adjudicated prior to the hearing date for purposes of judicial economy.
- (f) Due to Plaintiff's failure to provide a full verified statement of account, Defendant Hoffman requested a full ledger for the history of the loan since inception. Plaintiff has only provided a portion of the dates. As such, Defendant needs additional information before being able to properly audit and reconcile the amounts claimed by Plaintiff.
- (g) Plaintiff is alleging that the matter should go forward and is correctly claiming the discovery requests and notices of deposition were not timely served. However, Defendant Hoffman's counsel attempted to prepare the requests and notices in as expeditious manner as possible, in light of counsel's litigation schedule, appointments and general caseload obligations. Finally, Defendant's counsel could not get document requests and interrogatories out and still give the requisite notice because of the short time between being retained and the hearing date, even if discovery requests had been completed the date of the first consultation. Defendant Hoffman also that it would be prejudicial for the matter to proceed with newly retained counsel that was recently required because of Defendant's health on such short notice. Additionally, Defendant further avers that it would be more prejudicial for the new counsel to have to try the case without the opportunity to engage in full and fair discovery and depositions.
- 

This Motion relies upon the aforementioned allegations, as well as upon such Affidavits, discovery responses, testimony, pleadings, case and statutory law as may be presented at or prior to the hearing thereof.

COLLINS & BURKETT LAW FIRM, LLC


Margaret A. Collins, SC Bar # 13290

Attorney for Defendant Hoffman

1087 Harbor Drive, Suite B

West Columbia, SC 29169

(803) 708-7442

June 22, 2012

Exhibit A

FILED FOR RECORD
WINNIEA D. CLARK
CLERK OF COURT
ORANGEBURG, SC

2012 JUN 22 PM 3:37

CLERK OF COURT
ORANGEBURG, SC

AFFIDAVIT OF INDIVIDUAL SURETY

(See Instructions on reverse)

OMB Number: 9000-0001
Expires: 6/30/2011

Public reporting burden for this collection of information is estimated to average 0.4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Regulatory Secretariat (VPR), Office of Acquisition Policy, GSA, Washington, DC 20405.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	SS.

I, the undersigned, being duly sworn, depose and say that I am: (1) the surety to the attached bond(s); (2) a citizen of the United States; and of full age and legally competent. I also depose and say that, concerning any stocks or bonds included in the assets listed below, that there are no restrictions on the resale of these securities pursuant to the registration provisions of Section 5 of the Securities Act of 1933. I recognize that statements contained herein concern a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious or fraudulent statement may render the maker subject to prosecution under Title 18, United States Code Sections 1001 and 494. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

1. NAME (First, Middle, Last) (Type or Print) JAMES CHAPPELL DEW JR	2. HOME ADDRESS (Number, Street, City, State, ZIP Code) B C BOND # 132-54-110777 @ 730 Main Street Number 375 North Myrtle Beach SOUTH CAROLINA 29582
3. TYPE AND DURATION OF OCCUPATION SURETY / LIFETIME	4. NAME AND ADDRESS OF EMPLOYER (If Self-employed, so State) South Carolina Bank and Trust, N.A. 520 Gervais Street Columbia SC 29201
5. NAME AND ADDRESS OF INDIVIDUAL SURETY BROKER USED (Number, Street, City, State, ZIP Code) DEPOSITORY TRUST COMPANY 55 WATER STREET NEW YORK NY 10041	6. TELEPHONE NUMBER HOME - BUSINESS -

7. THE FOLLOWING IS A TRUE REPRESENTATION OF THE ASSETS I HAVE PLEDGED TO THE UNITED STATES IN SUPPORT OF THE ATTACHED BOND:
(a) Real estate (Include a legal description, street address and other identifying description; the market value; attach supporting certified documents including recorded lien; evidence of title and the current tax assessment of the property. For market value approach, also provide a current appraisal.)

PLEASE SEE ATTACHED GSA OPTIONAL FORM 90, RELEASE OF LIEN ON REAL PROPERTY AND GSA OPTIONAL FORM 91, RELEASE OF PERSONAL PROPERTY FROM ESCROW FOR SHELTON HOFFMAN, SOUTH CAROLINA BANK AND TRUST, N.A. LOAN/ACCOUNT NUMBER 11283108 UNDER CHRISTIAN LAW. PLEASE BRING FORTH ANYTHING I HAVE FORGOTTEN.

(b) Assets other than real estate (describe the assets, the details of the escrow account, and attach certified evidence thereof).

8. IDENTIFY ALL MORTGAGES, LIENS, JUDGEMENTS, OR ANY OTHER ENCUMBRANCES INVOLVING SUBJECT ASSETS INCLUDING REAL ESTATE TAXES DUE AND PAYABLE.

9. IDENTIFY ALL BONDS, INCLUDING BID GUARANTEES, FOR WHICH THE SUBJECT ASSETS HAVE BEEN PLEDGED WITHIN 3 YEARS PRIOR TO THE DATE OF EXECUTION OF THIS AFFIDAVIT.

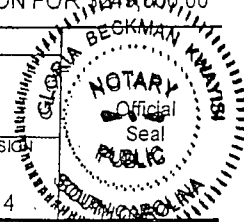
B C BOND # 132-54-110777

DOCUMENTATION OF THE PLEDGED ASSET MUST BE ATTACHED.

10. SIGNATURE 	11. BOND AND CONTRACT TO WHICH THIS AFFIDAVIT RELATES (Where Appropriate) BC BOND# 132-54-110777 *1-RBPN FOR \$249,000.00* *REFERENCE COPY AFVRFV COUPON FOR \$249,000.00*

12. SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

a. DATE OATH ADMINISTERED MONTH DAY YEAR 7 6 2011			b. CITY AND STATE (Or other jurisdiction) LEXINGTON SOUTH CAROLINA
c. NAME AND TITLE OF OFFICIAL ADMINISTERING OATH (Type or print) Gloria Kwayisi, Notary		d. SIGNATURE 	e. MY COMMISSION EXPIRES 11/02/2014



FOR LOCAL REPRODUCTION
this edition is not usable

STANDARD FORM 28 (REV. 6/2003)
Prescribed by GSA-FAR (48 CFR) 53.228(e)

Exhibit B

FILED FOR RECORD
WINNIE A. E. CLARK
CLERK OF COURT
ORANGEBURG, SC
2012 JUN 22 PM 3:37

Winnifred Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] James-Chappell Jr; Dew 843-385-3838
B. SEND ACKNOWLEDGMENT TO: (Name and Address) James-Chappell Jr; Dew 843-385-3838 c/o SC NOTARY PUBLIC GLORIA KWAYISI c/o 701 Gervais Street, Suite 150-127 Columbia South Carolina ZZ near [29201]

Date of Filing : 07/05/2011

Time of Filing : 12:27:00 PM

File Number : 2011-186-7590-0

Lapse Date : 09/04/2015

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

2010-247-8945-1

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☒ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor, or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party.

☐ DELETE name: Give record name to be deleted in item 6a or 6b.

☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

520 GERVAIS ST

CITY

PICKETT

STATE POSTAL CODE

COUNTRY

COLUMBIA

SC 29201

USA

7d. SEE INSTRUCTIONS

ADD'L INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, if any

☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

THIS IS ACTUAL AND CONSTRUCTIVE NOTICE

The following property is being assigned by the Secured Party:

Private Registered Bonded Promissory Note No. JCD2PN0068

Under Contract: United States Postal Service Registered Mail No. RB 607 904 483 US

Value of Collateral: Two Hundred Forty nine Thousand and 00/100 Dollars-USD \$249,000.00

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment

9a. ORGANIZATION'S NAME

OR 9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

Dew

James

Chappell

Jr

10. OPTIONAL FILER REFERENCE DATA

Registered Bonded Promissory Note JCD2PN0068 - \$249,000.00 - in Contract RB 607 904 483 US

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)
Plaintiff,)

C/A#: 2012-CP-38-0030

-vs-

CERTIFICATE OF SERVICE

Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)
Defendant.)

2012 JUN 22 PM 3:37
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC

I, JoAnn W. Pigate, the undersigned employee of Collins & Burkett Law Firm, LLC attorneys for Defendant, Shelton Hoffman do hereby certify that I have served a copy of the foregoing Defendant Hoffman's First Supplemental Notice of Motion, Motion to Strike Plaintiff's Answer, or in the Alternative, Motion to Require Amendment of Complaint, Motion to Add Indispensable Party and Motion for Continuance in connection with the above referenced case by, First Class Mail, postage prepaid on June 22, 2012 to the following address:

Teri K. Stomski, Esquire Attorney for SCBT, N.A. 220 Executive Center Drive Columbia, SC 29210	Milton G. Kimpson, Esquire SC Department of Revenue PO Box 12265 Columbia, SC 29211
Matthew J. Modica, Esquire Assistant US Attorney, District of SC 151 Meeting Street, Suite 200 Charleston, SC 29401	Thomas M. Gore, Esquire Attorney for Baird Transport, Inc. McCorkle & Johnson, LLP 319 Tattnall Street Savannah, GA 31401

June 22, 2012

West Columbia, South Carolina

JoAnn W. Pigate

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs-)

AMENDED CERTIFICATE OF SERVICE

Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)

Defendant.)

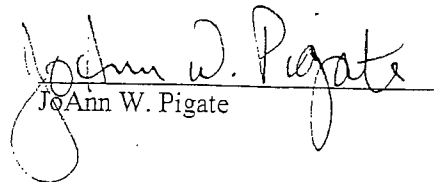
FILED FOR RECORD
WINNIE B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2012 JUN 22 PM 3:17

I, JoAnn W. Pigate, the undersigned employee of Collins & Burkett Law Firm, LLC attorneys for Defendant, **Shelton Hoffman** do hereby certify that I have served a copy of the foregoing Defendant **Shelton Hoffman's Second Set of Requests to Produce To Plaintiff and Supplement to First Set of Requests to Produce** in connection with the above referenced case by, First Class Mail, postage prepaid on June 22, 2012 to the following address:

<u>Via Hand Delivery Only</u> Teri K. Stomski, Esquire Attorney for SCBT, N.A. 220 Executive Center Drive Columbia, SC 29210	Milton G. Kimpson, Esquire SC Department of Revenue PO Box 12265 Columbia, SC 29211
Matthew J. Modica, Esquire Assistant US Attorney, District of SC 151 Meeting Street, Suite 200 Charleston, SC 29401	Thomas M. Gore, Esquire Attorney for Baird Transport, Inc. McCorkle & Johnson, LLP 319 Tattnall Street Savannah, GA 31401

June 22, 2012

West Columbia, South Carolina


JoAnn W. Pigate

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs.-)

**DEFENDANT SHELTON HOFFMAN'S
FIRST SET OF INTERROGATORIES
TO PLAINTIFF**

Shelton Hoffman a/k/a Shelton L.
Hoffman; South Carolina
Department of Revenue; The
United States of American acting
By and through its agency the
Internal Revenue Service; Baird
Transport, Inc.,)

Defendant.)

TO: PLAINTIFF BY AND THROUGH ITS ATTORNEY, TERI K. STOMSKI, ESQUIRE:

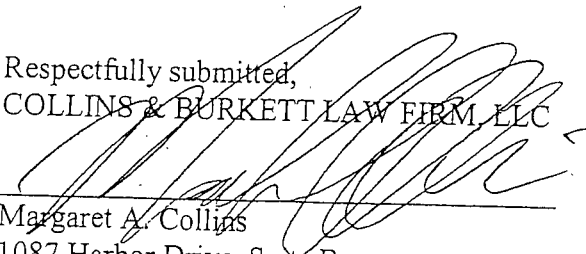
YOU ARE HEREBY SERVED the following written Interrogatories to be answered separately and in writing within thirty (30) days from date of service, pursuant to and in accordance with the provisions of Rule 33 of the South Carolina Rules of Civil Procedure:

1. Give the names, addresses, and telephone numbers of all persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements, and set forth a summary sufficient to inform the Defendant of the important facts known to or observed by such witnesses.
2. Set forth a list of photographs, plats, sketches, or other prepared documents or tangible materials in possession of the Plaintiff or counsel that relate to any claim or the defense of the case.
3. List the names and addresses of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case.

4. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
5. State whether or not Plaintiff or you have a copy of any statement which the Defendant has previously made concerning this action or its subject matter and which is in your possession, custody or control.
6. Describe in detail any conversation Plaintiff or you have had with the Defendant or Defendant's representative prior to the filing, or after the filing of this action.
7. Identify the specific facts that prove the Plaintiff's position or disprove the Defendant's position in this lawsuit, also identifying as to each fact the witnesses or exhibits you propose to use to establish such facts.
8. List the names of the parties present during the loan closing including acknowledgement of the presence of the witnesses and notaries indicated on the mortgage which is the subject of this action.
9. Identify that specific dates of funding for the original loan, all modifications and advances to the loan that is the subject of this action. Include an accounting of Defendant's deposit accounts that show the amount of each deposit of such funds.
10. Indicate with specificity the amount Plaintiff avers is owed on the account and the specific itemized listing of what comprises this total, including but not limited to, principle, interest, interim interest, attorney's fees, itemized collection costs and any other specific charges towards this account.

These Interrogatories shall be deemed continuing so as to require supplemental answers if the party, any representative, or counsel obtains further information between the time the answers are served and the time of trial.

Respectfully submitted,
COLLINS & BURKETT LAW FIRM, LLC



Margaret A. Collins
1087 Harbor Drive, Suite B
West Columbia, SC 29169
P: (803) 708-7442
F: (803) 753-9352
meg@cb-lawsc.com
Attorney for the Defendant, Shelton
Hoffman

June 14, 2012.

West Columbia, South Carolina

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

C/A#: 2012-CP-38-0030

-VS-

CERTIFICATE OF SERVICE

Defendant.

Terri K. Stomski, Esquire
Attorney for SCBT, N.A.
220 Executive Center Drive
Columbia, SC 29210

Anna Lacke

West Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs-)

Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)

Defendant.)

**DEFENDANT SHELTON HOFFMAN'S
FIRST SET OF REQUESTS TO
PRODUCE TO PLAINTIFF**

TO: PLAINTIFF BY AND THROUGH ITS ATTORNEY, TERI K. STOMSKI, ESQUIRE:

Defendant Shelton Hoffman requests, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, that the Plaintiff produce and permit the inspection, copying and/or photographing of:

1. Any and all documents, of any kind, referenced in Plaintiff's Answers to Defendant's Interrogatories.
2. All statements of possible witnesses, whether written, oral, summarized, or otherwise reproduced in any manner, relating to the incident as set forth in the Complaint.
3. Any documents, of any kind, used or consulted when answering Defendant's Interrogatories to Plaintiff.
4. Originals of all documents signed in connection with the loan which was obtained to purchase the property which is the subject of this action. If the original is not available, specify the reason and whether or not the original still exists.

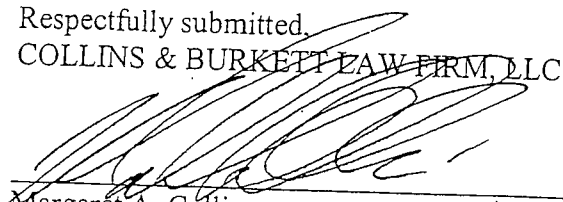
5. Allow for inspection of all original notes, mortgages and modification documents.
6. Produce and provide the complete ledger statement for this loan from the date of inception to June 15, 2012.
- ✓ 7. Produce and provide all correspondence, notes, documents, emails and telephone logs transmitted between Attorney Ronald E. Hutto and any employee, officer or agent of Plaintiff between the dates of September 01, 2003 and December 31, 2003 relative to this loan transaction.
- ✓ 8. Produce and provide all attorney billing statements associated with this action, as well as any invoices charged to Plaintiff for collection costs.
9. Produce and provide the telephone log for Plaintiff that is associated with the loan and collection of same.
10. Produce and provide all correspondence between Defendant and Plaintiff relating to this loan and collection of same.
- ✓ 11. Produce and provide the Plaintiff bank's complete closing package for this loan, as well as all documentation required for each modification.
- ✓ 12. Produce and provide the original bond received by Plaintiff which the Defendant purports satisfies this loan, as well as all internal documents, communications, notes, ledger entries and emails relating to the receipt and processing of the bond.

If you contend any item need not be produced, identify such item and set forth the basis for your failure to produce same.

It is requested that this production be made within thirty (30) days after the date of service of this request at the office of Collins & Burkett Law Firm, LLC, 1087 Harbor Drive,

Suite B, West Columbia, South Carolina. Visual inspection and copies may be made of any and all documents.

Respectfully submitted,
COLLINS & BURKETT LAW FIRM, LLC



Margaret A. Collins
1087 Harbor Drive, Suite B
West Columbia, SC 29169
P: (803) 708-7442
F: (803) 753-9352
meg@cb-lawsc.com
Attorney for the Defendant, Shelton
Hoffman

June 14th, 2012.

West Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

SCBT, N.A.,)

C/A#: 2012-CP-38-0030

Plaintiff,)

-vs-)

NOTICE OF APPEARANCE

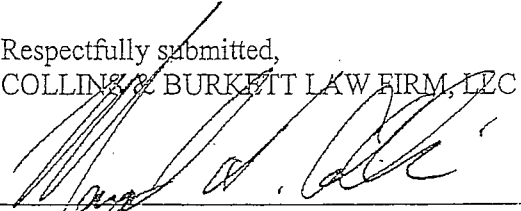
Shelton Hoffman a/k/a Shelton L.)
Hoffman; South Carolina)
Department of Revenue; The)
United States of American acting)
By and through its agency the)
Internal Revenue Service; Baird)
Transport, Inc.,)

Defendant.)

TO: PLAINTIFF BY AND THROUGH ITS ATTORNEY, TERI K. STOMSKI, ESQUIRE:

Please be advised, the undersigned, as attorney for the Defendant, Shelton Hoffman a/k/a Shelton L. Hoffman, hereby notifies and advises the Court, the party above-named and its attorney, that she is appearing on behalf of the Defendant in this action. Please forward all future correspondence concerning this matter to the undersigned.

Respectfully submitted,
COLLINS & BURKETT LAW FIRM, LLC


Margaret A. Collins
1087 Harbor Drive, Suite B
West Columbia, SC 29169
P: (803) 708-7442
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meg@cb-lawsc.com

May 30, 2012.

West Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;
South Carolina Department of Revenue; The
United States of America acting by and through
its agency the Internal Revenue Service;
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-38-0030

AMENDED
MOTION TO CANCEL HEARING AND
MOTION TO DISMISS
FORECLOSURE ACTION AND
ALL RELATED ACTIONS

This motion is filed by Shelton L. Hoffman, *Pro Se* defendant, as represented by Ronald Hoffman, his father's attorney in fact, *Pro Se*:

FACTUAL BACKGROUND

On or about January 6, 2012, Plaintiff filed an illegal and fraudulent foreclosure Complaint for properties described in Attachment A ("The Property") against Defendant Hoffman. Defendant Hoffman answered the Complaint and requested that Plaintiff provide proof of claim that the matter has not already been settled and closed between the parties, SHELTON L. HOFFMAN AND DONALD E. PICKETT, CHIEF FINANCIAL OFFICER OF SCBT, NA, through a private Administrative Agreement referenced under South Carolina UCC-1 File Number # 111209-1607330. Defendant Hoffman demanded that Plaintiff show cause why their Complaint should not be dismissed. Defendant Hoffman has received no response to that answer. Additionally, Defendant Hoffman has asked Plaintiff to prove its ownership of the mortgage in question, and

Case No.: 2012-CP-38-0030

MOTION FOR DISMISSAL

ATTEST: TRUE COPY
Winnie B. Clark
CLERK OF COURT
ORANGEBURG COUNTY SC

proof of their standing as a real party in interest under Fed. R. Civ. P. 17.¹ Shortly after receiving the Complaint, research conducted by Defendant Hoffman personally, led him to believe that Plaintiff was not, in fact the owner of the subject mortgage. He then found no legally filed assignments of beneficiary or transfers of beneficial interest of the mortgage, in violation of Contract Law that any 5th grader could understand.² Defendant Hoffman also noted that the original Complaint was fraudulent and illegal, since it requires a non-jury foreclosure. Plaintiff's solicitation to the Court that it be allowed to overturn Defendants' right to trial by jury is fraudulent, see U.S.C.A. Amend. 7 Trial by jury in civil cases: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

In Plaintiff's original foreclosure complaint, it referred to other Defendants and debts that do not belong to Defendant Shelton L. Hoffman, but may be related to a relative of his. By making this egregious error, and serving this Complaint and other documents (including, but not limited to the hearing notice) to parties unrelated to Defendant Shelton L. Hoffman, Plaintiff has violated Defendant Hoffman's privacy and slandered his good name. Defendant Hoffman is reviewing his

¹ A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975))]. Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S. 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

² "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

rights in this matter, and will likely bring suit against Plaintiff and its attorneys, Rogers, Townsend and Thomas, PC, as they have a duty to ensure the facts in any case with which they are associated, before proceeding with erroneous and damaging information. Their failure to do their due diligence has damaged Defendant Hoffman irreparably, has violated their Code of Ethics, and Defendant Hoffman will seek punitive action in a separate case before this court.

However, Plaintiff, upon being notified of their errors and without responding to any requests by Defendant Hoffman, pursued the case, and has notified Defendant Hoffman, as well as other unrelated Defendants, that a foreclosure hearing is scheduled for May 8, 2012. There is no indication that Plaintiff intends to produce the "wet ink" note requested by Defendant Hoffman, proving that they, in fact, own the mortgage and have standing to request this hearing or to bring a complaint of foreclosure. Defendant Hoffman avers that requesting a hearing without granting him his request to view the note and any other documents proving Plaintiff's standing, is a violation of his due process and cannot be allowed to proceed.

It is also important to note that Plaintiff modified the mortgage in question several times without the use of an attorney, which is illegal in South Carolina, and can render the mortgage invalid.³

³ "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511, S.E. 2d 372, 379 (Ct.App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E. 2d 735, 738 (1943). "Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts. She argues that Wachovia committed the unauthorized practice of law, and, therefore, Wachovia came into court with unclean hands. We agree." "As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that the loan closing had to be supervised by an attorney. See *State v. Buyers Serv. Co.*, 292 S.C. 426, 431-434, 357 S.E.2d 15, 18-19 (1987) (holding that a commercial title company's employment of attorneys to review mortgage loan closing documents did not save the company's preparation of those documents from constituting the unauthorized practice of law and that the closings should be conducted only under an attorney's supervision), modified by *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); see also *Doe Law Firm v. Richardson*, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (citing *Buyers and McMaster*) (clarifying that a lender may prepare legal documents for use in financing or refinancing a real property loan as long as an independent attorney reviews them and makes any corrections necessary to ensure their compliance with the law and reaffirming that mortgage loan closings should be conducted only under an attorney's supervision). " *Wachovia Bank v. Ann T. Coffee and Bank of America, N.A.*, SC Court of Appeals, No. 4685, May 6, 2010.

Plaintiffs continue to harass Defendant Hoffman, causing much stress and distress, without providing to him any proof of validity of their claim. Plaintiff is proceeding fraudulently into a hearing that must be cancelled, related to a foreclosure action that must be dismissed unless and until Plaintiff can show proof of claim and standing to bring this action.

SPECIFIC VIOLATIONS

1. Violation of Truth in Lending Act – 15 U.S.C. §1601, *et. seq.* (Against Plaintiff)

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA.

Plaintiff is a “creditor” as that term is defined by 15 U.S.C. §1602. The transaction between Plaintiff and Defendant Hoffman was a consumer loan transaction wherein Plaintiff (or other parties not divulged to Defendant Hoffman) extended credit to Defendant Hoffman and such credit was secured by an interest purportedly held by the Plaintiff in The Property.

As a consumer credit transaction, the Plaintiff was required to provide to Defendant Hoffman mandatory Truth-In-Lending disclosure statements and notice of the borrower’s right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. § 1635(a) and (f); 12 CFR § 226.23(b)(5). If the borrower timely exercises his/her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiff violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendant Hoffman certain notices required by statute; placing terms prohibited by

statute into the transaction; and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed – also in violation of Defendant Hoffman's intangible rights to honest services.

Records from the transaction indicate that Plaintiffs extended credit to Defendant Hoffman without regard to his ability to pay, and even falsified relevant income and asset data to get the loan approved. Defendant Hoffman is informed and believes and thereon alleges that Plaintiffs have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers' repayment ability.

Because of these violations, Defendant Hoffman has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendant Hoffman hereby gives notice of rescission by and through this Motion.

Because of these violations, Plaintiff is liable to Defendant Hoffman in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendant Hoffman is also entitled: Rescission of the loan transaction; an order requiring Plaintiff to take all actions necessary to terminate any security interest in The Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendant Hoffman of any money given by Plaintiff to anyone, including Plaintiff, in connection with the loan transaction; statutory damages; costs and reasonable attorney's fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiff's misconduct, Defendant Hoffman has suffered and continues to suffer damages in an amount to be proven at trial, which he is entitled to recover. Moreover,

Plaintiff's misconduct including perjury and other false impersonations was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiff's misconduct, the loans were void and unenforceable as of their inception, and therefore Defendant Hoffman is entitled to rescind the loan agreements and promissory notes and do hereby demand rescission.

As a result of Plaintiff's misconduct, Defendant Hoffman is entitled to declaratory and injunctive relief preventing Plaintiffs from taking any action to collect on the loan, and/or to foreclose upon The Property, and/or to transfer The Property.

2. Violation of RESPA – 12 U.S.C. §2601, *et. seq.* (Against Plaintiff)

The loan transaction between Plaintiff and Defendant Hoffman is a mortgage loan covered by RESPA based on using the status of "owner-occupied" in loan applications by lenders.

Defendant Hoffman is not certain at this time if the Plaintiff was actually the servicer of the loan at any given time, although he believed that the loan servicer was the Plaintiff at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiff's general failure to properly advise Defendant Hoffman as to the roles and identities of the various entities that were purportedly handling his loan at any given time, these allegations are made as to Plaintiff and any others who may have been involved at any time during the life of this loan.

Plaintiff violated RESPA at the time of closing on the sale of The Property by failing to correctly and accurately comply with disclosures required by law.

Plaintiff violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendant Hoffman's Qualified Written Request not later than 60 days after receipt of the request.

Defendant Hoffman is informed and believes, and thereon alleges, that Plaintiff has engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA, as set forth in 12 U.S.C. §2605.

As a result of Plaintiff's failure to comply with RESPA, Defendant Hoffman has suffered and continues to suffer damages and cost of suit. Defendant Hoffman is entitled to recover statutory damages of \$1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees.

3. Fair Debt Collection Practices Act (Against Plaintiff)

Plaintiff's actions constitute a violation of the FDCPA in that they threatened to take actions not permitted by law, including, but not limited to: Foreclosing upon a void security interest; foreclosing upon a note of which they were not in possession nor otherwise entitled to payment; falsely stating the amount of a debt; increasing the amount of a debt by including amounts that are not permitted by law or contract; and using unfair and unconscionable means in an attempt to collect a debt.

Similarly, the law firm retained by Plaintiff is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Rogers, Townsend & Thomas Law Firm to verify actual ownership and factual, legal debt.

Plaintiff's actions have caused Defendant Hoffman actual damages, including, but not limited to: Severe emotional distress, including, but not limited to, loss of appetite, frustration, fear, anger, helplessness, nervousness, anxiety, sleeplessness, sadness and depression.

As a result of Plaintiff's actions, Defendant Hoffman is entitled to statutory damages in an amount to be determined at trial, actual damages according to proof, and costs and reasonable attorney's fees.

4. Quiet Title (Against Plaintiff)

Plaintiff claims an interest adverse to Defendant Hoffman's interest in The Property, in the form of the Mortgage recorded pursuant to the loan transaction, and Defendant Hoffman is seeking to quiet title against the claims of Plaintiff under such Mortgage.

Defendant Hoffman desires and is entitled to a judicial declaration quieting title in Defendant Hoffman's name as of October 21, 2003, the date on which the loan transaction was consummated.

5. Wrongful Foreclosure (Against Plaintiff)

UCC §3 specifically identifies the persons who are entitled to enforce a security interest, such as instituting a foreclosure sale under a deed of trust. The statute is exclusive rather than inclusive in nature, and those who are not identified do not have the right to enforce such an interest.

Defendant Hoffman is informed and believes and thereon alleges that Plaintiff was not and is not in possession of the Note, and is not otherwise entitled to payment. Moreover, Defendant Hoffman is informed and believes and thereon alleges that said Plaintiff is not a "person[s] entitled to enforce" the security interest on The Property, as that term is defined in UCC §3.

In the foreclosure Complaint, Plaintiff claimed that it was the holder of the beneficial interest under the Mortgage as of October 21, 2003. Defendant Hoffman is informed and believes and thereon alleges that such claim was false, and Plaintiff had reason to know that such claim was false. Moreover, Defendant Hoffman is informed and believes and thereon alleges that Plaintiff was not in possession of the Note, and was not entitled to enforce the security interest on the Property.

Said Plaintiff's failure to comply with statutory notice requirements denied Defendant Hoffman the opportunity to exercise the rights that the statutory notice is specifically designed to protect.

Said Plaintiff did not have the right to seek to foreclose upon the Property under the law. Even assuming, arguendo, that Plaintiff did have some right to enforce the security interest, the procedures used violated statutory requirements governing foreclosures.

As a direct and proximate result of said Plaintiff's wrongful actions, Defendant Hoffman has suffered damages, including, but not limited to, direct monetary loss, consequential damages and emotional distress.

In committing the wrongful acts herein, Plaintiff acted with malice, oppression, fraud, and perjury by written testimony in a court of law. Said Plaintiff's willful conduct warrants an award of exemplary damages in an amount sufficient to punish the wrongful conduct and deter such misconduct in the future.

6. Slander of Title (Against Plaintiff)

Plaintiff disparaged Defendant Hoffman's exclusive valid title in 2012, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint and Notice of Hearing or Other Means of Loss Mitigation. Said Plaintiff knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiff had no right, title or interest in The Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendant Hoffman's legal title to The Property. By posting, publishing, and recording, said documents, Plaintiff's disparagement of Defendant Hoffman's legal title was made to the world at large. Similarly, the law firm retained by Plaintiff is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Rogers, Townsend & Thomas Law Firm to verify actual ownership and factual, legal debt.

As a direct and proximate result of Plaintiff's conduct in publishing these documents, Defendant Hoffman's title to The Property has been disparaged and slandered, and there is a cloud on Defendant Hoffman's title, and Defendant Hoffman has suffered, and continues to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiff's conduct, Defendant Hoffman has incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to The Property. Moreover, these expenses are continuing, and Defendant Hoffman will incur additional charges for such purpose until the cloud on Defendant Hoffman's title to The Property has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiff's egregious conduct, Defendant Hoffman has suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and well-being, and continues to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiff, Plaintiff knew the documents were false and created and published them with the malicious intent to injure Defendant Hoffman and deprive him of his exclusive right, title, and interest in The Property, and to obtain The Property for their own use by unlawful means. Plaintiff committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiff in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendant Hoffman is entitled to an award of punitive damages in an amount sufficient to punish Plaintiff for their malicious conduct and deter such misconduct in the future.

7. Civil Conspiracy (Against Plaintiff)

Defendant Hoffman is informed and believes, and thereon alleges, that Plaintiff conspired and agreed to implement a scheme to defraud and victimize Defendant Hoffman through the predatory lending practices and other unlawful acts alleged herein.

Defendant Hoffman is informed and believed and thereon alleged that Plaintiff did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendant Hoffman, and use tainted court processes to steal Defendant Hoffman's property.

Defendant Hoffman is informed and believes that Plaintiff's committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendant Hoffman resulting from the conspiracy, see *Salinas v. United States*, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to public, and so punishable in itself."

As the direct and proximate result of Plaintiff's conspiracy to defraud and victimize Defendant Hoffman, Defendant Hoffman has suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendant Hoffman, and in committing the wrongful acts alleged herein, Plaintiff acted with malice, oppression, and fraud including perjury by written testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

8. Unfair Business Practices – South Carolina Unfair Trade Practices Act (Against Plaintiff)

Defendant Hoffman is informed and believes and thereon alleges that Plaintiff committed unlawful, unfair and/or fraudulent business practices, as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiff's wrongful conduct, Defendant Hoffman has suffered various damages and injuries.

Defendant Hoffman seeks injunctive relief enjoining Plaintiff from engaging in the unfair business practices described herein.

Defendant Hoffman further seeks restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

9. Fraud and Swindle 19 U.S.C. §1346 any scheme or artifice to defraud; 18 U.S.C. §1001

statement or entries generally (Against Plaintiff)

As alleged herein, Plaintiff has made several representations to Defendant Hoffman with regard to important facts.

These representations made by Plaintiff were false.

Plaintiff knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiff intended that Defendant Hoffman rely on these representations.

Defendant Hoffman reasonably relied on said representations.

As a result of Defendant Hoffman's reliance, he was harmed and suffered damages. Defendant Hoffman's reliance on Plaintiff's false representations was a substantial factor in causing Defendant Hoffman's harm.

Plaintiff is guilty of malice, fraud or oppression, and Plaintiff's actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendant Hoffman, in that the actions were calculated to injure Defendant Hoffman.⁴ As such, Defendant Hoffman is entitled to

⁴ South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing

recover, in addition to actual damages, punitive damages to punish Plaintiff and to deter future misconduct.

WHEREFORE, Defendant Hoffman prays for judgment and an order against Plaintiff as follows:

- A. That Foreclosure Hearing scheduled for May 8, 2012 be cancelled.
- B. That judgment be entered in his favor and against Plaintiff.
- C. For an order and judgment stating that the Mortgage claimed by Plaintiff is adjudged void and of no legal force and effect and shall be cancelled, stricken, and or rescinded forthwith.
- D. For a temporary restraining order, preliminary and permanent injunction directing the Master in Equity to refrain from executing any foreclosure orders with respect to The Property.
- E. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiffs, or anyone acting under or in concert with them, from collecting on the subject loan and from causing The Property to be sold or assigned to a third party.
- F. For an order stating that Plaintiff engaged in unfair business practices.
- G. For an order stating that the Mortgages, Foreclosure Complaint or any related Notices, constitute slander of title to Defendant Hoffman and The Property.
- H. For an order and judgment quieting title to The Property for Defendant Hoffman.
- I. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices.
- J. For compensatory and statutory damages, attorney's fees and costs.
- K. For exemplary damages in an amount sufficient to punish Plaintiff's wrongful conduct and deter future misconduct.

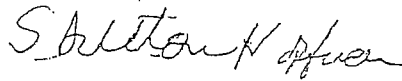
evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

L. For mandatory prosecution of Plaintiff and seizure of all their assets as fruits of a racketeering enterprise.

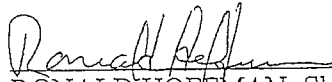
M. For such other and further relief as the Court may deem just and proper.

DATED this 3rd day of May, 2012.

Respectfully submitted,



SHELTON L HOFFMAN, Pro Se



RONALD HOFFMAN, Shelton Hoffman's Attorney In Fact, Pro Se

Shelton L. Hoffman
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(803) 707-5944
dboxh@aol.com
Pro Se

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225 Lightening Hill Road
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good2gorh@aol.com
Pro Se

North, SC
May 3, 2012

ATTACHMENT A.

Description of Properties:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

All that certain piece, parcel or tract of land; containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:
Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.
Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of

Case No.: 2012-CP-38-0030

MOTION FOR DISMISSAL

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURTS
ORANGEBURG COUNTY

Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightening Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodor Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001

0089-00-03-003

Property Address: 3897 North Road, Orangeburg, SC 29115

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;
South Carolina Department of Revenue; The
United States of America acting by and through
its agency the Internal Revenue Service;
Baird Transport, Inc.,

Defendant(s).

IN THE COURT OF COMMON PLEAS

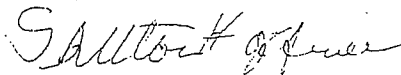
C/A NO.: 2012-CP-38-0030

AMENDED
MOTION TO CANCEL HEARING AND
MOTION TO DISMISS
FORECLOSURE ACTION AND
ALL RELATED ACTIONS

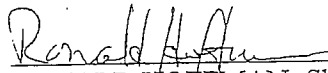
On this date, the Amended Motion to Cancel Hearing and Motion to Dismiss was mailed by certified mail to the parties listed below:

Rogers, Townsend & Thomas, PC, Attorneys for Plaintiff
220 Executive Center Drive, Suite 109
Columbia, SC 29202

Respectfully submitted,



SHELTON L. HOFFMAN, Pro Se

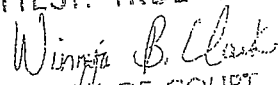


RONALD HOFFMAN, Shelton Hoffman's Attorney In Fact, Pro Se

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North, SC
May 3, 2012

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;
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IN THE COURT OF COMMON PLEAS

C/A NO.: 2012-CP-38-0030

MOTION TO CANCEL HEARING AND
MOTION TO DISMISS
FORECLOSURE ACTION AND
ALL RELATED ACTIONS

This motion is filed by Shelton L. Hoffman, *Pro Se* defendant:

FACTUAL BACKGROUND

On or about January 6, 2012, Plaintiff filed an illegal and fraudulent foreclosure Complaint for properties described in Attachment A ("The Property") against Defendant Hoffman. Defendant Hoffman answered the Complaint and requested that Plaintiff provide proof of claim that the matter has not already been settled and closed between the parties, SHELTON L. HOFFMAN AND DONALD E. PICKETT, CHIEF FINANCIAL OFFICER OF SCBT, NA, through a private Administrative Agreement referenced under South Carolina UCC-1 File Number # 111209-1607330. Defendant Hoffman demanded that Plaintiff show cause why their Complaint should not be dismissed. Defendant Hoffman has received no response to that answer. Additionally, Defendant Hoffman has asked Plaintiff to prove its ownership of the mortgage in question, and proof of their standing as a real party in interest under Fed. R. Civ. P. 17.¹ Shortly after receiving

¹ A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975))]. Constitutional standing under Article III requires, at a minimum, that a party must

Case No.: 2012-CP-38-0030

MOTION FOR DISMISSAL

CLERK OF COURT
ORANGEBURG COUNTY, SC
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the Complaint, research conducted by Defendant Hoffman personally, led him to believe that Plaintiff was not, in fact the owner of the subject mortgage. He then found no legally filed assignments of beneficiary or transfers of beneficial interest of the mortgage, in violation of Contract Law that any 5th grader could understand.² Defendant Hoffman also noted that the original Complaint was fraudulent and illegal, since it requires a non-jury foreclosure. Plaintiff's solicitation to the Court that it be allowed to overturn Defendants' right to trial by jury is fraudulent, see U.S.C.A. Amend. 7 **Trial by jury in civil cases:** "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

In Plaintiff's original foreclosure complaint, it referred to other Defendants and debts that do not belong to Defendant Shelton L. Hoffman, but may be related to a relative of his. By making this egregious error, and serving this Complaint and other documents (including, but not limited to the hearing notice) to parties unrelated to Defendant Shelton L. Hoffman, Plaintiff has violated Defendant Hoffman's privacy and slandered his good name. Defendant Hoffman is reviewing his rights in this matter, and will likely bring suit against Plaintiff and its attorneys, Rogers, Townsend and Thomas, PC, as they have a duty to ensure the facts in any case with which they are associated,

have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S. 464, 472 (1982).

Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest."

² "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

before proceeding with erroneous and damaging information. Their failure to do their due diligence has damaged Defendant Hoffman irreparably, has violated their Code of Ethics, and Defendant Hoffman will seek punitive action in a separate case before this court.

However, Plaintiff, upon being notified of their errors and without responding to any requests by Defendant Hoffman, pursued the case, and has notified Defendant Hoffman, as well as other unrelated Defendants, that a foreclosure hearing is scheduled for May 8, 2012. There is no indication that Plaintiff intends to produce the "wet ink" note requested by Defendant Hoffman, proving that they, in fact, own the mortgage and have standing to request this hearing or to bring a complaint of foreclosure. Defendant Hoffman avers that requesting a hearing without granting him his request to view the note and any other documents proving Plaintiff's standing, is a violation of his due process and cannot be allowed to proceed.

It is also important to note that Plaintiff modified the mortgage in question several times without the use of an attorney, which is illegal in South Carolina, and can render the mortgage invalid.³

Plaintiffs continue to harass Defendant Hoffman, causing much stress and distress, without providing to him any proof of validity of their claim. Plaintiff is proceeding fraudulently into a

³ "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 568, 511, S.E. 2d 372, 379 (Ct.App. 1998). "The expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others." *Arnold v. City of Spartanburg*, 201 S.C. 523, 532, 23 S.E. 2d 735, 738 (1943). "Mrs. Coffey asserts that the doctrine of unclean hands bars Wachovia from seeking equitable relief from our courts. She argues that Wachovia committed the unauthorized practice of law, and, therefore, Wachovia came into court with unclean hands. We agree." "As early as 1987, lending institutions doing business in South Carolina were on notice that they could not prepare legal documents in connection with a mortgage loan without review by an independent attorney and that the loan closing had to be supervised by an attorney. See *State v. Buyers Serv. Co.*, 292 S.C. 426, 431-434, 357 S.E.2d 15, 18-19 (1987) (holding that a commercial title company's employment of attorneys to review mortgage loan closing documents did not save the company's preparation of those documents from constituting the unauthorized practice of law and that the closings should be conducted only under an attorney's supervision), modified by *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); see also *Doe Law Firm v. Richardson*, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006) (citing *Buyers and McMaster*) (clarifying that a lender may prepare legal documents for use in financing or refinancing a real property loan as long as an independent attorney reviews them and makes any corrections necessary to ensure their compliance with the law and reaffirming that mortgage loan closings should be conducted only under an attorney's supervision). " *Wachovia Bank v. Ann T. Coffee and Bank of America, N.A.*, SC Court of Appeals, No. 4685, May 6, 2010.

hearing that must be cancelled, related to a foreclosure action that must be dismissed unless and until Plaintiff can show proof of claim and standing to bring this action.

SPECIFIC VIOLATIONS

1. Violation of Truth in Lending Act – 15 U.S.C. §1601, *et. seq.* (Against Plaintiff)

The loan transaction at issue is a consumer credit transaction subject to the provisions of TILA.

Plaintiff is a “creditor” as that term is defined by 15 U.S.C. §1602. The transaction between Plaintiff and Defendant Hoffman was a consumer loan transaction wherein Plaintiff (or other parties not divulged to Defendant Hoffman) extended credit to Defendant Hoffman and such credit was secured by an interest purportedly held by the Plaintiff in The Property.

As a consumer credit transaction, the Plaintiff was required to provide to Defendant Hoffman mandatory Truth-In-Lending disclosure statements and notice of the borrower’s right to rescind, specifying the date on which the three-day rescission period expires. If the lending institution fails to provide the rescission information, the borrower may rescind the loan within three years after it was consummated. 15 U.S.C. § 1635(a) and (f); 12 CFR § 226.23(b)(5). If the borrower timely exercises his/her right to rescind, the security interest giving rise to the right of rescission becomes void. *Ibid.*

In the course of the transaction described herein, Plaintiff violated TILA in numerous ways, including, but not limited to: Failing to provide required disclosures prior to consummation of the transaction; failing to make required disclosures clearly and conspicuously in writing; failing to timely deliver to Defendant Hoffman certain notices required by statute; placing terms prohibited by statute into the transaction; and failing to disclose all finance charge details and the annual percentage rate based upon properly calculated and disclosed finance charges and amounts financed – also in violation of Defendant Hoffman’s intangible rights to honest services.

Records from the transaction indicate that Plaintiffs extended credit to Defendant Hoffman without regard to his ability to pay, and even falsified relevant income and asset data to get the loan approved. Defendant Hoffman is informed and believes and thereon alleges that Plaintiffs have a pattern and practice of extending credit to consumers under high rate mortgages without regard to the consumers' repayment ability.

Because of these violations, Defendant Hoffman has a continuing right to rescind the loan transaction for up to three years after consummation of the transaction. Defendant Hoffman hereby gives notice of rescission by and through this Motion.

Because of these violations, Plaintiff is liable to Defendant Hoffman in the amount of twice the finance charge, actual damages to be established at trial, and costs in accordance with 15 U.S.C. § 1640(a). Defendant Hoffman is also entitled: Rescission of the loan transaction; an order requiring Plaintiff to take all actions necessary to terminate any security interest in The Property created under the transaction and a declaration by the Court that the security interest is void; expungement of any foreclosure instruments, including but not limited to any Notice of Default, relating to the transaction from any public record; removal of any derogatory information reported to any credit reporting agency or credit reporting bureau relating to the transaction; the return to Defendant Hoffman of any money given by Plaintiff to anyone, including Plaintiff, in connection with the loan transaction; statutory damages; costs and reasonable attorney's fees; and such other relief as the Court may deem just and proper.

As a result of Plaintiff's misconduct, Defendant Hoffman has suffered and continues to suffer damages in an amount to be proven at trial, which he is entitled to recover. Moreover, Plaintiff's misconduct including perjury and other false impersonations was willful, malicious, and outrageous, and therefore punitive damages are warranted and demanded.

As a result of Plaintiff's misconduct, the loans were void and unenforceable as of their inception, and therefore Defendant Hoffman is entitled to rescind the loan agreements and promissory notes and do hereby demand rescission.

As a result of Plaintiff's misconduct, Defendant Hoffman is entitled to declaratory and injunctive relief preventing Plaintiffs from taking any action to collect on the loan, and/or to foreclose upon The Property, and/or to transfer The Property.

2. Violation of RESPA – 12 U.S.C. §2601, *et. seq.* (Against Plaintiff)

The loan transaction between Plaintiff and Defendant Hoffman is a mortgage loan covered by RESPA based on using the status of "owner-occupied" in loan applications by lenders.

Defendant Hoffman is not certain at this time if the Plaintiff was actually the servicer of the loan at any given time, although he believed that the loan servicer was the Plaintiff at the time of the foreclosure. However, due to the conspiratorial nature of the misdeeds alleged herein, and also due to Plaintiff's general failure to properly advise Defendant Hoffman as to the roles and identities of the various entities that were purportedly handling his loan at any given time, these allegations are made as to Plaintiff and any others who may have been involved at any time during the life of this loan.

Plaintiff violated RESPA at the time of closing on the sale of The Property by failing to correctly and accurately comply with disclosures required by law.

Plaintiff violated RESPA, 12 U.S.C. §2605(e)(2) by failing and refusing to provide a written explanation or response to Defendant Hoffman's Qualified Written Request not later than 60 days after receipt of the request.

Defendant Hoffman is informed and believes, and thereon alleges, that Plaintiff has engaged in a pattern or practice of non-compliance with the requirements of the mortgage servicer provisions of RESPA, as set forth in 12 U.S.C. §2605.

As a result of Plaintiff's failure to comply with RESPA, Defendant Hoffman has suffered and continues to suffer damages and cost of suit. Defendant Hoffman is entitled to recover statutory damages of \$1,000.00, actual damages in an amount to be determined at trial, and costs and reasonable attorney's fees.

3. Fair Debt Collection Practices Act (Against Plaintiff)

Plaintiff's actions constitute a violation of the FDCPA in that they threatened to take actions not permitted by law, including, but not limited to: Foreclosing upon a void security interest; foreclosing upon a note of which they were not in possession nor otherwise entitled to payment; falsely stating the amount of a debt; increasing the amount of a debt by including amounts that are not permitted by law or contract; and using unfair and unconscionable means in an attempt to collect a debt.

Similarly, the law firm retained by Plaintiff is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Rogers, Townsend & Thomas Law Firm to verify actual ownership and factual, legal debt.

Plaintiff's actions have caused Defendant Hoffman actual damages, including, but not limited to: Severe emotional distress, including, but not limited to, loss of appetite, frustration, fear, anger, helplessness, nervousness, anxiety, sleeplessness, sadness and depression.

As a result of Plaintiff's actions, Defendant Hoffman is entitled to statutory damages in an amount to be determined at trial, actual damages according to proof, and costs and reasonable attorney's fees.

4. Quiet Title (Against Plaintiff)

Plaintiff claims an interest adverse to Defendant Hoffman's interest in The Property, in the form of the Mortgage recorded pursuant to the loan transaction, and Defendant Hoffman is seeking to quiet title against the claims of Plaintiff under such Mortgage.

Defendant Hoffman desires and is entitled to a judicial declaration quieting title in Defendant Hoffman's name as of October 21, 2003, the date on which the loan transaction was consummated.

5. Wrongful Foreclosure (Against Plaintiff)

UCC §3 specifically identifies the persons who are entitled to enforce a security interest, such as instituting a foreclosure sale under a deed of trust. The statute is exclusive rather than inclusive in nature, and those who are not identified do not have the right to enforce such an interest.

Defendant Hoffman is informed and believes and thereon alleges that Plaintiff was not and is not in possession of the Note, and is not otherwise entitled to payment. Moreover, Defendant Hoffman is informed and believes and thereon alleges that said Plaintiff is not a "person[s] entitled to enforce" the security interest on The Property, as that term is defined in UCC §3.

In the foreclosure Complaint, Plaintiff claimed that it was the holder of the beneficial interest under the Mortgage as of October 21, 2003. Defendant Hoffman is informed and believes and thereon alleges that such claim was false, and Plaintiff had reason to know that such claim was false. Moreover, Defendant Hoffman is informed and believes and thereon alleges that Plaintiff was not in possession of the Note, and was not entitled to enforce the security interest on the Property.

Said Plaintiff's failure to comply with statutory notice requirements denied Defendant Hoffman the opportunity to exercise the rights that the statutory notice is specifically designed to protect.

Said Plaintiff did not have the right to seek to foreclose upon the Property under the law. Even assuming, arguendo, that Plaintiff did have some right to enforce the security interest, the procedures used violated statutory requirements governing foreclosures.

As a direct and proximate result of said Plaintiff's wrongful actions, Defendant Hoffman has suffered damages, including, but not limited to, direct monetary loss, consequential damages and emotional distress.

In committing the wrongful acts herein, Plaintiff acted with malice, oppression, fraud, and perjury by written testimony in a court of law. Said Plaintiff's willful conduct warrants an award of exemplary damages in an amount sufficient to punish the wrongful conduct and deter such misconduct in the future.

6. Slander of Title (Against Plaintiff)

Plaintiff disparaged Defendant Hoffman's exclusive valid title in 2012, by and through the preparing, posting, publishing and recording of the documents previously described herein, including, but not limited to, the foreclosure Complaint and Notice of Hearing or Other Means of Loss Mitigation. Said Plaintiff knew or should have known that such documents were improper in that at the time of the execution and delivery of said documents, Plaintiff had no right, title or interest in The Property. These documents were naturally and commonly to be interpreted as denying, disparaging, and casting doubt upon Defendant Hoffman's legal title to The Property. By posting, publishing, and recording, said documents, Plaintiff's disparagement of Defendant Hoffman's legal title was made to the world at large. Similarly, the law firm retained by Plaintiff is also culpable, as they are in the business of collection of consumer debts, either on behalf of itself or others, and are therefore under the authority of the Fair Debt Collection Practices Act Titles 15 and 18 U.S.C. which requires Rogers, Townsend & Thomas Law Firm to verify actual ownership and factual, legal debt.

As a direct and proximate result of Plaintiff's conduct in publishing these documents, Defendant Hoffman's title to The Property has been disparaged and slandered, and there is a cloud on Defendant Hoffman's title, and Defendant Hoffman has suffered, and continues to suffer, damages in an amount to be proved including loss of business and business goodwill. As a further proximate result of Plaintiff's conduct, Defendant Hoffman has incurred, and will continue to incur, expenses, including reasonable attorney's fees, in order to clear title to The Property. Moreover, these expenses are continuing, and Defendant Hoffman will incur additional charges for such purpose until the cloud on Defendant Hoffman's title to The Property has been removed. The amounts of future expenses and damages are not ascertainable at this time.

As a further direct and proximate result of Plaintiff's egregious conduct, Defendant Hoffman has suffered loss of business, humiliation, mental anguish, anxiety, depression, and emotional and physical distress, resulting in the loss of sleep and other injuries to his health and well-being, and continues to suffer such injuries on an ongoing basis. The amount of such damages shall be proven upon request by the court.

At the time that the false and disparaging documents were created and published by the Plaintiff, Plaintiff knew the documents were false and created and published them with the malicious intent to injure Defendant Hoffman and deprive him of his exclusive right, title, and interest in The Property, and to obtain The Property for their own use by unlawful means. Plaintiff committed perjury before the court by asserting they had ownership based on void and false documents.

The conduct of the Plaintiff in publishing the documents described above was fraudulent, oppressive, and malicious. Therefore, Defendant Hoffman is entitled to an award of punitive damages in an amount sufficient to punish Plaintiff for their malicious conduct and deter such misconduct in the future.

7. Civil Conspiracy (Against Plaintiff)

Defendant Hoffman is informed and believes, and thereon alleges, that Plaintiff conspired and agreed to implement a scheme to defraud and victimize Defendant Hoffman through the predatory lending practices and other unlawful acts alleged herein.

Defendant Hoffman is informed and believed and thereon alleged that Plaintiff did the acts and things alleged herein pursuant to and in furtherance of their conspiracy to defraud and victimize Defendant Hoffman, and use tainted court processes to steal Defendant Hoffman's property.

Defendant Hoffman is informed and believes that Plaintiff's committed acts in furtherance of the conspiracy, and/or lent aid and encouragement to their co-conspirators and/or ratified and adopted the acts of their co-conspirators, and are thus jointly and severally liable for all harm to Defendant Hoffman resulting from the conspiracy, see *Salinas v. United States*, 118 S. Ct. 469 (1997) at pg. 470: "...conspiracy is distinct evil, dangerous to public, and so punishable in itself."

As the direct and proximate result of Plaintiff's conspiracy to defraud and victimize Defendant Hoffman, Defendant Hoffman has suffered damages, including, but not limited to, direct monetary loss, consequential damages, and emotional distress.

In conspiring to defraud and victimize Defendant Hoffman, and in committing the wrongful acts alleged herein, Plaintiff acted with malice, oppression, and fraud including perjury by written testimony in a court of law, thus justifying an award of exemplary damages in an amount sufficient to punish their wrongful conduct and deter such misconduct in the future.

8. Unfair Business Practices – South Carolina Unfair Trade Practices Act (Against Plaintiff)

Defendant Hoffman is informed and believes and thereon alleges that Plaintiff committed unlawful, unfair and/or fraudulent business practices, as defined by South Carolina Unfair Trade Practices Act by engaging in the unlawful, unfair, and fraudulent business practices alleged herein.

As a result of Plaintiff's wrongful conduct, Defendant Hoffman has suffered various damages and injuries.

Defendant Hoffman seeks injunctive relief enjoining Plaintiff from engaging in the unfair business practices described herein.

Defendant Hoffman further seeks restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorney's fees, and such other and further relief as the Court may deem just and proper.

9. Fraud and Swindle 19 U.S.C. §1346 any scheme or artifice to defraud; 18 U.S.C. §1001 statement or entries generally (Against Plaintiff)

As alleged herein, Plaintiff has made several representations to Defendant Hoffman with regard to important facts.

These representations made by Plaintiff were false.

Plaintiff knew that these representations were false when made, or these representations were made with reckless disregard for the truth.

Plaintiff intended that Defendant Hoffman rely on these representations.

Defendant Hoffman reasonably relied on said representations.

As a result of Defendant Hoffman's reliance, he was harmed and suffered damages.

Defendant Hoffman's reliance on Plaintiff's false representations was a substantial factor in causing Defendant Hoffman's harm.

Plaintiff is guilty of malice, fraud or oppression, and Plaintiff's actions were malicious and done willfully, in conscious disregard of the rights and safety of Defendant Hoffman, in that the actions were calculated to injure Defendant Hoffman.⁴ As such, Defendant Hoffman is entitled to

⁴ South Carolina allows punitive damages, except in actions against the state or other governmental entity and in product liability actions based on strict liability. Punitive damages are allowed upon a showing by clear and convincing

recover, in addition to actual damages, punitive damages to punish Plaintiff and to deter future misconduct.

WHEREFORE, Defendant Hoffman prays for judgment and an order against Plaintiff as follows:

A. That Foreclosure Hearing scheduled for May 8, 2012 be cancelled.

B. That judgment be entered in his favor and against Plaintiff.

C. For an order and judgment stating that the Mortgage claimed by Plaintiff is adjudged void and of no legal force and effect and shall be cancelled, stricken, and or rescinded forthwith.

D. For a temporary restraining order, preliminary and permanent injunction directing the Master in Equity to refrain from executing any foreclosure orders with respect to The Property.

E. For a temporary restraining order, preliminary and permanent injunction preventing Plaintiffs, or anyone acting under or in concert with them, from collecting on the subject loan and from causing The Property to be sold or assigned to a third party.

F. For an order stating that Plaintiff engaged in unfair business practices.

G. For an order stating that the Mortgages, Foreclosure Complaint or any related Notices, constitute slander of title to Defendant Hoffman and The Property.

H. For an order and judgment quieting title to The Property for Defendant Hoffman.

I. For damages, disgorgement, and injunctive relief under South Carolina's common and statutory law of unfair business practices.

J. For compensatory and statutory damages, attorney's fees and costs.

K. For exemplary damages in an amount sufficient to punish Plaintiff's wrongful conduct and deter future misconduct.

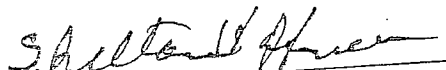
evidence of malice, ill will, a conscious indifference to the rights of others, or a reckless disregard thereof. *King v. Allstate Ins. Co.*, 251 S.E. 2d 762 (S.C. 1979). S.C. Code § 15-33-135.

L. For mandatory prosecution of Plaintiff and seizure of all their assets as fruits of a racketeering enterprise.

M. For such other and further relief as the Court may deem just and proper.

DATED this 23rd day of April, 2012.

Respectfully submitted,



SHELTON L. HOFFMAN, Pro Se

Shelton L. Hoffman
2950 Redmond Mill Road
North, SC 29112
(803) 707-5944 or (803) 568-3419
dboxh@aol.com
Pro Se

North, SC
April 23, 2012

ATTACHMENT A

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Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of

Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightening Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodor Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001

0089-00-03-003

Property Address: 3897 North Road, Orangeburg, SC 29115

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
SCBT, NA,

Plaintiff,

Vs.

Shelton Hoffman a/k/a Shelton L. Hoffman;
South Carolina Department of Revenue; The
United States of America acting by and through
its agency the Internal Revenue Service;
Baird Transport, Inc.,
Defendant(s).

IN THE COURT OF COMMON PLEAS

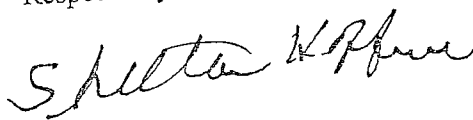
C/A NO.: 2012-CP-38-0030

MOTION TO CANCEL HEARING AND
MOTION TO DISMISS
FORECLOSURE ACTION AND
ALL RELATED ACTIONS

On this date, the Motion to Cancel Hearing and Motion to Dismiss was mailed by certified mail to the parties listed below:

Rogers, Townsend & Thomas, PC, Attorneys for Plaintiff
220 Executive Center Drive, Suite 109
Columbia, SC 29202

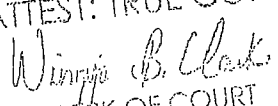
Respectfully submitted,



SHELTON L HOFFMAN, Pro Se

Shelton L. Hoffman
2950 Redmond Mill Road
North, SC 29112
(803) 707-5944 or (803) 568-3419
dboxh@aol.com
Pro Se

North, SC
April 23, 2012

ATTEST: TRUE COPY

CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CIVIL ACTION

SCBT NA

Case No.: 2012-CP-38-0030

Plaintiff,

ANSWER

vs.

SHELTON HOFFMAN a/k/a SHELTON L HOFFMAN;

SOUTH CAROLINA DEPARTMENT OF REVENUE; THE

UNITED STATES OF AMERICA ACTING BY AND

THROUGH ITS AGENCY THE INTERNAL REVENUE

SERVICE; BAIRD TRANSPORT, INC

Defendants,

Now comes Defendant, SHELTON L HOFFMAN, and Conditionally accepts plaintiff allegations in paragraphs 1-27 upon proof of claim; that the matter has not already been settled and closed between the parties, SHELTON L HOFFMAN and DONALD E PICKETT, CHIEF FINANCIAL OFFICER of SCBT NA, through a Private Administrative Agreement Referenced under South Carolina UCC-1 File Number # 111209-1607330 and Demands. Plaintiff show cause why this Complaint Should Not Be Dismissed.

SHELTON L HOFFMAN

I Hereby certify that a copy of the foregoing was mailed on 02/10/2012 to ROGERS TOWNSEND & THOMAS, PO Box 100200 Columbia, SC 29202, ATTORNEY FOR PLAINTIFF.

ATTEST: TRUE COPY
Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

Authorized Representative

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, N.A.,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; The United States of America acting by and through its agency the Internal Revenue Service; Baird Transport, Inc.

Defendant(s).

(016555-00055)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2012-LP-38-016
2012-CP-38-0030

LIS PENDENS

Deficiency Judgment Demanded

FILED
JUN 12 PM 2:00
CLERK OF COURT

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Shelton Hoffman a/k/a Shelton L. Hoffman to South Carolina Bank and Trust, N.A. dated October 21, 2003, and recorded in the Office of the RMC/ROD for Orangeburg County on October 21, 2003, in Mortgage Book 1394 at Page 239. Subsequently South Carolina Bank and Trust, N.A., changed its name to SCBT, N.A.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

TEST: TRUE COPY
Wings B. Clark
CLERK OF COURT
ORANGEBURG COUNTY SC

Also:

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as

Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:
Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.
Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

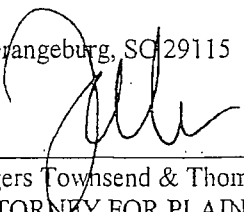
Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightning Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodor Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001
0089-00-03-003

Property Address: 3897 North Road, Orangeburg, SC 29115



Rogers Townsend & Thomas, PC
ATTORNEY FOR PLAINTIFF

Teri K. Stomski (SC Bar # 65250)
220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 744-4444

Columbia, South Carolina
January 6, 2012

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, N.A.,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; The United
States of America acting by and through its agency
the Internal Revenue Service; Baird Transport,
Inc.

Defendant(s).

(016555-00055)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2012 - CP - 3856030

SUMMONS AND NOTICES

(NON-JURY)

COMMERCIAL FORECLOSURE OF REAL

ESTATE MORTGAGE

Deficiency Judgment Demanded

FILED
JAN 12 11:30 AM
CLERK OF COURT
ORANGEBURG COUNTY, SC

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by SCBT, N.A.

Rogers Townsend & Thomas, PC

ATTORNEY FOR PLAINTIFF

Teri K. Stomski (SC Bar # 65250)

220 Executive Center Drive

Columbia, SC 29210

Post Office Box 100200 (29202)

(803) 771-7900

Columbia, South Carolina

January 6, 2012

ATTEST: TRUE COPY

Wingia B. White

CLERK OF COURT

ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, N.A.,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; The United States of America acting by and through its agency the Internal Revenue Service; Baird Transport, Inc.

Defendant(s).

(016555-00055)

IN THE COURT OF COMMON PLEAS

DOCKET NO.

2012 - CP - 38E 0030

COMPLAINT

(NON-JURY)

FORECLOSURE OF COMMERCIAL REAL
ESTATE MORTGAGE

Deficiency Judgment Demanded

FILED
JUN 12 PM 2:00
CLERK OF COURT

Plaintiff alleges:

1. This is an action for the foreclosure of a commercial mortgage upon certain real estate in Orangeburg County, South Carolina, and for entry of judgment(s) for breach of a promissory note and breach of a guaranty payment.

2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.

3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. This action involves the foreclosure of a commercial loan secured by a non-owner-occupied dwelling and is not subject to the Home Affordable Modification Program ("HMP") for residential loans owned, securitized, or guaranteed by the Federal National Mortgage Association ("Fannie Mae") or the Federal Home Loan Mortgage Corporation ("FHLMC") or any other section of the Making Home Affordable Program.

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.

6. The Defendant(s) herein described as judgment creditors, if any, have by filing said

WINGO B. CLARK

CLERK OF COURT

judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.

7. Heretofore, for value received, on or about October 21, 2003, Shelton Hoffman, made, executed and delivered a certain promissory note ("Original Note") in the principal sum of \$100,660.00, together with interest therein from that date at the rate specified in the promissory note. On January 7, 2004, Shelton Hoffman executed and delivered to South Carolina Bank and Trust, NA a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("First Amendment"). On August 12, 2004, Shelton Hoffman executed and delivered to South Carolina Bank and Trust, NA a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Second Amendment"). On March 31, 2005 Shelton Hoffman executed and delivered to South Carolina Bank & Trust, N.A. a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Third Amendment"). On December 2, 2005, Shelton Hoffman, executed and delivered to South Carolina Bank & Trust, N.A. a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Fourth Amendment"). On June 14, 2006, Shelton Hoffman executed and delivered to South Carolina Bank & Trust, N.A. a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Fifth Amendment"). On January 19, 2007, Shelton Hoffman executed and delivered to South Carolina Bank & Trust, NA a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Sixth Amendment"). On August 28, 2007, Shelton Hoffman executed and delivered to South Carolina Bank & Trust, NA a Commercial Loan Modification Agreement, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Seventh Amendment"). On February 20, 2008, Shelton Hoffman executed and delivered to South Carolina Bank & Trust, NA a renewal of the original note, in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Eighth Amendment"). Subsequently South Carolina Bank & Trust, NA changed its name to SCBT, NA. On April 27, 2009, Shelton Hoffman executed and delivered to SCBT, NA a renewal of the original note in writing, according to the terms and conditions set out therein, which amended certain terms of the Original Note ("Ninth Amendment"). Original Note, the First Amendment, Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, Seventh Amendment are referred to herein collectively as the ("Note"). A copy of the Note, including all amendments thereto, is attached hereto, incorporated by reference, and marked as Exhibit "A".

8. In order to secure the payment of the Note according to the terms and conditions

thereof, Shelton Hoffman made, executed and delivered unto South Carolina Bank & Trust, N.A. n/k/a SCBT, N.A. a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightning Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodor Koins Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0143-19-06-001

9. The Mortgage was signed, witnessed and probated October 21, 2003; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Orangeburg County on October 21, 2003, in Mortgage Book 1394 at Page 239. A copy of the Mortgage is attached hereto, incorporated by reference herein and marked as Exhibit "B".

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

11. In order to better secure payment and performance of the said Note and Mortgage, and also as a condition of Plaintiff, or Plaintiff's predecessor in interest, agreeing to extend the loan to the Borrower, Defendant Shelton Hoffman executed and delivered a Commercial Security Agreement in favor of Plaintiff, or Plaintiff's predecessor in interest, its successors and assigns, dated November 13, 2008. A copy of the Agreement is attached hereto, incorporated by reference herein and marked as Exhibit "C".

12. In order to better secure payment and performance of the said Note and Mortgage, and also as a condition of Plaintiff, or Plaintiff's predecessor in interest, agreeing to extend the loan to the Borrower, Defendant Shelton Hoffman executed and delivered a UCC in favor of Plaintiff, or Plaintiff's predecessor in interest, its successors and assigns and recorded in the South Carolina Secretary of State as File No. 060819-1542432. A copy of the UCC is attached hereto, incorporated by reference herein and marked as Exhibit "D".

13. The Note, Mortgage Agreement and UCC are collectively referred to herein as the "Loan Documents".

14. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default, and the conditions of the Loan Documents have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due the principal sum of \$81,858.19, with interest, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

15. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as

follows:

A. The United States of America acting by and through its agency the Internal Revenue Service by virtue of a Tax Lien, including but not limited to, a lien against Shelton L. Hoffman; Tax Lien No. 812541411; recorded October 10, 2011; in the amount of \$55,126.43; in Book 37 at page 120.

B. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Shelton Hoffman; Tax Lien No.: 3-50773619-9; Dated: December 6, 2006; Recorded: January 16, 2007; in the amount of \$846.69; in Book 214 at Page 15.

C. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Hoffman Electric Inc.; Tax Lien No.: 3-508001890-0; Dated: February 1, 2007; Recorded: May 2, 2007; in the amount of \$533.27; in Book 216 at Page 171.

D. Baird Transport, Inc., by virtue of a Judgment, including but not limited to, a lien against Hoffman Produce (Shelton Hoffman) Judgment Roll Number 2007-899; recorded August 21, 2007; in the amount of \$2958.10.

FOR A FIRST CAUSE OF ACTION

**(Against Defendant Shelton Hoffman a/k/a Shelton L. Hoffman)
(Foreclosure of Mortgage and Deficiency Judgment)**

16. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

17. That according to the terms and conditions of the Note, it is provided that, in the event of default in the payment of any installment when due, or in the event of default under the Mortgage, the unpaid principal balance of the Note, all unpaid accrued interest and all other indebtedness or charges secured or to be secured by the Mortgage, may be declared by the holder immediately due and payable.

18. Pursuant to the Loan Documents, the unpaid principal balance of the Note, all unpaid accrued interest and all other indebtedness or charges secured or to be secured by the Mortgage, has been declared by the Plaintiff immediately due and payable.

19. Plaintiff has made demand upon Borrower for immediate payment in full of the total amount then due and owing on the Note, in response to which Borrower failed to provide payment in full.

20. The Mortgage provides that if Plaintiff institutes any suit or action to enforce any of the terms of the Mortgage, Plaintiff shall be entitled to recover all costs and expenses incurred by Plaintiff, including but not limited to attorney's fees, court costs and other legal expenses.

follows:

A. The United States of America acting by and through its agency the Internal Revenue Service by virtue of a Tax Lien, including but not limited to, a lien against Shelton L. Hoffman; Tax Lien No. 812541411; recorded October 10, 2011; in the amount of \$55,126.43; in Book 37 at page 120.

B. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Shelton Hoffman; Tax Lien No.: 3-50773619-9; Dated: December 6, 2006; Recorded: January 16, 2007; in the amount of \$846.69; in Book 214 at Page 15.

C. The South Carolina Department of Revenue by virtue of a Tax Lien, including but not limited to, a lien against Hoffman Electric Inc.; Tax Lien No.: 3-508001890-0; Dated: February 1, 2007; Recorded: May 2, 2007; in the amount of \$533.27; in Book 216 at Page 171.

D. Baird Transport, Inc., by virtue of a Judgment, including but not limited to, a lien against Hoffman Produce (Shelton Hoffman) Judgment Roll Number 2007-899; recorded August 21, 2007; in the amount of \$2958.10.

FOR A FIRST CAUSE OF ACTION

(Against Defendant Shelton Hoffman a/k/a Shelton L. Hoffman)

(Foreclosure of Mortgage and Deficiency Judgment)

16. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

17. That according to the terms and conditions of the Note, it is provided that, in the event of default in the payment of any installment when due, or in the event of default under the Mortgage, the unpaid principal balance of the Note, all unpaid accrued interest and all other indebtedness or charges secured or to be secured by the Mortgage, may be declared by the holder immediately due and payable.

18. Pursuant to the Loan Documents, the unpaid principal balance of the Note, all unpaid accrued interest and all other indebtedness or charges secured or to be secured by the Mortgage, has been declared by the Plaintiff immediately due and payable.

19. Plaintiff has made demand upon Borrower for immediate payment in full of the total amount then due and owing on the Note, in response to which Borrower failed to provide payment in full.

20. The Mortgage provides that if Plaintiff institutes any suit or action to enforce any of the terms of the Mortgage, Plaintiff shall be entitled to recover all costs and expenses incurred by Plaintiff, including but not limited to attorney's fees, court costs and other legal expenses.

21. Plaintiff has been or may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

22. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

23. Plaintiff has the right to seek a deficiency judgment against the Borrower, Defendant Shelton Hoffman that in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant in the amount of such deficiency.

FOR A SECOND CAUSE OF ACTION

(Against Defendant Shelton Hoffman a/k/a Shelton L. Hoffman)
(Breach of Contract)

24. Plaintiff hereby reiterates all of the foregoing allegations fully as if set forth verbatim, and which are incorporated herein by reference.

25. Plaintiff made demand upon Borrower for immediate payment in full of the total amount then due and owing on the Note, in response to which Borrower failed to provide payment in full.

26. It has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action, and that the fee for the services of the Plaintiff's counsel should, according to the terms of the Note, be added to the amount of the debt.

27. There is currently due and owing on the Note the principal sum of \$81,858.19, with interest from and after the date of default, at the rate or rates, as provided in the Note, as well as all accrued and unpaid interest, all costs of collection, including, but not limited to, reasonable attorneys' fees and court costs; and Plaintiff is entitled to judgment against Borrower in that amount.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

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

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

First, to the costs and expenses of the within action and sale;

Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

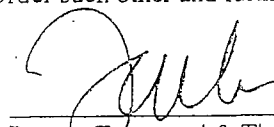
(6) Issue an order directing the Sheriff of Orangeburg County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7) Order that the subject premises be sold free and clear of any liens, or interests, including but not limited to any liens or interests of South Carolina Department of Revenue and the United States of America acting and through its agency the Internal Revenue Service and Baird Transport, Inc.;

(8) Award the Plaintiff a deficiency judgment against Defendant Shelton Hoffman, in the event that the proceeds of the sale of the mortgaged property are insufficient to pay in full the indebtedness, including costs of collection;

(9) On the Second Cause of Action, for an order granting Plaintiff a judgment against Borrower in the amount set forth above;

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



Rogers Townsend & Thomas, PC

ATTORNEY FOR PLAINTIFF

Teri K. Stomski (SC Bar # 65250)

220 Executive Center Drive

Columbia, SC 29210

Post Office Box 100200 (29202)

(803) 771-7900

Columbia, South Carolina

January 6, 2012

EXHIBIT A

BORROWER'S NAME AND ADDRESS SHELTON HOFFMAN 8867 NORTH RD. ORANGEBURG, SC 29115	LENDER'S NAME AND ADDRESS SOUTH CAROLINA BANK AND TRUST, N.A. 800 JUNE C. CALHOUN DRIVE ORANGEBURG, SC 29115	REF. CODE 628 Loan Number <u> </u> Date <u>10-21-2002</u> Maturity Date <u>01-04-2004</u> Loan Amount <u>\$ 100,880.00</u> Renewal Of <u> </u>

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of ONE HUNDRED THOUSAND SIX HUNDRED
SIXTY AND NO/100 Dollars \$ 100,880.00

- ☒ Single Advance: I will receive all of this principal sum on 10-21-2002. No additional advances are contemplated under this note.
- ☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On
 I will receive the amount of \$ and future principal advances are contemplated.
- Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on .

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 10-21-2002 at the rate of 6.500%
 per year until 01-04-2004.

☐ Variable Rate: This rate may then change as stated below.

☐ Index Rate: The future rate will be the following index rate:

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as
 A change in the interest rate will take effect

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than % or less than %.
 The rate may not change more than % each

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐

ACCURAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY DATE: I agree to pay interest on the unpaid balance of the loan after the maturity date until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT
WITH A MAX OF \$100.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above

PAYMENTS: I agree to pay this note as follows:

1. PAYMENT OF \$102,021.10 ON 01-04-2004.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date) MORTGAGE DATED 10-21-2002

(This section is for your internal use. Failure to file a separate security document does not waive the (a)(1)(ii)(iii) will not secure this note.)

PURPOSE: The purpose of this loan is TO PROVIDE FUNDS FOR
OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2. I have received a copy on today's date.

Signature for Lender

SHELTON HOFFMAN
 SHELTON HOFFMAN

BRUCE RHENEY

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page 2 of 2

BORROWER'S NAME AND ADDRESS SHELTON HOFFMAN 3067 SOUTH RD. ORANGEBURG, SC 29116	LENDER'S NAME AND ADDRESS SOUTH CAROLINA BANK AND TRUST, N.A. 820 JOHN C. CALHOUN DRIVE ORANGEBURG, SC 29116	REF CODE 328 Loan Number: <u> </u> Date: <u>01-07-2004</u> Maturity Date: <u>07-07-2004</u> Loan Amount: <u>\$ 100,000.00</u> Renewal Of: <u> </u>

For value received, I promise to pay to You, or your order, at your address listed above the PRINCIPAL sum of ONE HUNDRED THOUSAND AND NO/100 Dollars \$ 100,000.00

☒ **Single Advances:** I will receive all of this principal sum on 01-07-2004. No additional advances are contemplated under this note.
☐ **Multiple Advances:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$ and future principal advances are contemplated.
 Conditions: The conditions for future advances are

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on .
☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 01-07-2004 at the rate of 6.000% per year until 01-08-2004.

☒ **Variable Rate:** This rate may then change as stated below. the following index rate: THE HIGHEST RATE ON CORPORATE LOANS POSTED BY AT LEAST TEN OF THE USA'S THIRTY LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.
☒ **Frequency and Timing:** The rate on this note may change as often as EVERY DAY BEGINNING 01-08-2004. A change in the interest rate will take effect ON THE FOLLOWING DAY.
☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than % or less than % each.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
☐ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.
POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).
☐ at a rate equal to

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:
 1 PAYMENT OF \$109,033.33 ON 07-07-2004. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ **SECURITY:** This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

Bruce Rhoney
 BRUCE RHONEY

PURPOSE: The purpose of this loan is TO PROVIDE FUNDS FOR OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Shelton Hoffman
 SHELTON HOFFMAN

SHELTON HOFFMAN
3827 NORTH ROAD
ORANGEBURG, SC 29118

SOUTH CAROLINA BANK AND TRUST, N.A.
JOHN C. CALHOUN BRANCH
ORANGEBURG, SC 29118

RESP CODE 6
Loan Number 1001
Date 08-17-2004
Maturity Date 08-18-2005
Loan Amount \$ 28,856.24
Renewal Of 1001 08-17-2004

BORROWER'S NAME AND ADDRESS
If multiple, each borrower (jointly, jointly, separately).

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SEVENTY EIGHT THOUSAND SIX HUNDRED EIGHTY SIX AND 24/100 Dollars \$ 78,656.24

☒ Single Advance: I will receive all of this principal sum on 08-17-2004. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 08-31-2004 at the rate of 8.250% per year until 08-31-2004

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: THE BASE RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE NATION'S 500 LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 08-31-2004

A change in the interest rate will take effect ON THE FOLLOWING DAY

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on an ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

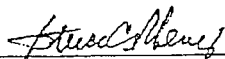
1 PAYMENT OF \$81,284.48 ON 03-10-2005. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): A MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

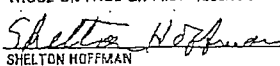
Signature for Lender:



BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEWAL OF EXISTING DEBT
ORIGINALLY USED TO SUPPORT OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.


SHELTON HOFFMAN

SHELTON HOFFMAN
3927 NORTH ROAD
ORANGEBURG, SC 29116

S. CAROLINA BANK AND TRUST, N.A.
JOHN C. GALLAGHER DRIVE
ORANGEBURG, SC 29115

RESP CODE
Loan Number
Date 03-31-2005
Maturity Date 10-05-2005
Loan Amount \$ 55,000.00
Renewal Of

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY FIVE THOUSAND AND NO/100

Dollars \$ 55,000.00

☒ Single Advance: I will receive all of this principal sum on 03-31-2005. No additional advances are contemplated under this note.

☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On

I will receive the amount of \$ and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 03-31-2005 at the rate of 7.750% per year until 04-01-2005

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any interest or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 04-01-2005

A change in the interest rate will take effect ON THE SAME DAY

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than % or less than %

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a ACTUAL/360 basis

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 30 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00

☐ ADDITIONAL CHARGE: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$57,225.87 ON 10-05-2005. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEW EXISTING LOAN FOR OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.

SHELTON HOFFMAN
SHELTON HOFFMAN

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

is for a business purpose I agree to waive the right to five days' notice and a pre-seizure hearing prior to seizure of any personal property which may secure this loan.

[illegible]

ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST
PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year. *SH*

BORROWER'S NAME AND ADDRESS SHELTON HOFFMAN 5827 NORTH ROAD ORANGEBURG, SC 29116	LENDER'S NAME AND ADDRESS SOUTH CAROLINA BANK AND TRUST, N.A. 605 JOHN C. CALHOUN DRIVE FULTON, SC 29507 ORANGEBURG, SC 29116	RESP NOTE 32 Loan Number <u>1000000000</u> Date <u>12-02-2008</u> Maturity Date <u>08-02-2009</u> Loan Amount <u>\$ 55,150.00</u> Renewal Of <u>None</u>

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SEVENTY FIVE THOUSAND ONE HUNDRED FIFTY AND NO/100 Dollars \$ 55,150.00

☒ Single Advance: I will receive all of this principal sum on 12-02-2008. No additional advances are contemplated under this note.
☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____, and future principal advances are contemplated.
 Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____
☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 12-02-2008 at the rate of 8.000% per year until 12-03-2009

☒ Variable Rate: This rate may then change as stated below.
☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.
☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 12-03-2008
 A change in the interest rate will take effect ON THE SAME DAY
☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000 %. The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
☐ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:
☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).
☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$ 100.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$57,858.33 ON 08-02-2009. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

PURPOSE: The purpose of this loan is RENEW ORIGINAL LOAN FOR OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Shelton Hoffman
 SHELTON HOFFMAN

BRUCE RHENEY

DEFINITIONS: As used on page 1, "I" means the Lender that apply to this loan. "I," "me" or "my" means each Borrower who signs this note and each other person or legal entity (including guarantors, endorser, and sureties) who agrees to pay this note (together referred to as "us"). "You" or "your" means the Lender and its successors and assigns.

APPLICABLE LAW: The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

COMMISSIONS OR OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

[illegible]

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one advance, each advance will start to earn interest only when I receive the advance. The interest rate in effect for this note on any given time will be the rate then in effect as announced at the time. Notwithstanding anything to the contrary, I do not agree to pay and you do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law for the extension of credit that is agreed to here (either before or after maturity). If any notice of default is sent to me, I agree to pay the interest then due on the amount due, and you actually collect more interest than allowed by law and this agreement, you agree to refund it to me.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand immediate payment of the charges.

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Right to receive money from you" means:

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who has not agreed to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement. Your right of set-off does not apply to an account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1840. Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all loans you under this note (principal, accrued unpaid interest and other accrued charges).

(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.

(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.

(4) You may refuse to make advances to me or allow purchases on credit by me.

By selecting any one or more of these remedies you do not give up

your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the event as a default if it continues or happens again.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replays or any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fees you incur with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

I waive any defenses I have based on suretyship or impairment of collateral.

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us

together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note. Any extension of new credit to any of us, or renewal of this note by all or less than all of us, will not release me from my duty to pay it. 10/

course, you are entitled to only one payment in full.) I agree that you may at your option extend this note or the debt represented by this note, or

any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note. I will not assign my obligation under this agreement without your prior written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security and I will still be obligated to pay this loan.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to inform you in writing of any change in my address. I will give you notice to you by mailing it first class to your address stated on page 1 of this instrument, or to any other address that you have designated.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a prehearing hearing prior to seizure of any personal property which may secure this loan.

[illegible]

ATTACHMENT FOR
SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year.

S.H.

SHELTON HOFFMAN
5407 NORTH ROAD
ORANGEBURG, SC 29116

SOUTH CAROLINA BANK AND TRUST, N.A.
c/o JOHN C. CALHOUN DRIVE
PO BOX 8007
ORANGEBURG, SC 29115

RESP CODE 02
Loan Number
Date 08-14-2008
Maturity Date 01-02-2009
Loan Amount \$53,428.35
Renewal 08-14-2008

BORROWER'S NAME AND ADDRESS
* Includes each borrower's name, birth date and address.

LENDER'S NAME AND ADDRESS
* "You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SEVENTY FIVE THOUSAND THREE HUNDRED TWENTY FIVE AND NO/100 Dollars \$ 75,325.00

☒ Simple Advance: I will receive all of this principal sum on 08-14-2008. No additional advances are contemplated under this note.
☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 08-14-2008 at the rate of 10.000% per year until 08-15-2008

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 08-15-2008

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000%. The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCUMULATED METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$ 25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$53,428.35 ON 01-02-2009. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): A MORTGAGE DATED 10-21-2003

(THIS SECTION IS FOR YOUR INTERNAL USE. FAILURE TO SIGN A SEPARATE SECURITY DOCUMENT DOES NOT MEAN THE AGREEMENT WILL NOT SECURE THIS NOTE.)

Signature for Lender

BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEW ORIGINAL LOAN FOR OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

SHELTON HOFFMAN

SOUTH CAROLINA - UNIVERSAL NOTE

EXP-1 © 1994, 1997 Bankers Systems, Inc., St. Cloud, MN Form UN-SC 2/7/2003

(page 1 of 2)

APPLICABLE LAW: The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your

expresses written consent. Time is of the essence in this agreement.

COMMISSIONS ON OTHER REMUNERATION: I understand and agree that any insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

In addition, I understand and agree that some other payments to third parties as part of this note may also involve money retained by you or paid back to you as commissions or other remuneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce the outstanding principal. If I make a payment which is less than the amount due, my application of payments, we will describe our agreement on this note, I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full. If I make a partial prepayment, you and I agree in writing to the

INTEREST: Interest accrues on the principal remaining unpaid from time to time, until paid in full. If I receive the principal in more than one payment, interest will continue to accrue on the unpaid balance until the full advance. The interest rate in effect on this note at any given time will apply to the entire principal advanced at that time. I do not intend to charge any rate of interest that is higher than the maximum rate of interest you could charge under applicable law, and I do not intend to charge you more than the maximum rate of interest permitted by law. If any notice of interest accrual is sent and I or we mutually agree to correct it, and if you actually receive more interest than allowed by law and this is due to a clerical error, I or we will refund the excess interest to you.

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

ACCRUAL METHOD: The amount of interest that I will pay on this loan will be calculated using the interest rate and accrual method stated on page 1 of this note. For the purpose of interest calculation, the accrual method will determine the number of days in a "year." If no accrual method is stated, then you may use any reasonable accrual method for calculating interest.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

SINGLE ADVANCE LOANS: If this is a single advance loan, you and I expect that you will make only one advance of principal. However, you may add other amounts to the principal if you make any payments described in the "PAYMENTS BY LENDER" paragraph below.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

PAYMENTS BY LENDER: If you are authorized to pay, on my behalf, charges I am obligated to pay (such as property insurance premiums), then you may treat those payments made by you as advances and add them to the unpaid principal under this note, or you may demand

SET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

- (1) any deposit account balance I have with you;
- (2) any money owed to me on an item presented to you or in your possession for collection or exchange; and
- (3) any repurchase agreement or other nondeposit obligation.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due date for which you properly accelerate under this note.

If my right to receive money from you is also owned by someone who does not agree to pay this note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my note request or endorsement. Your right of set-off does not apply to any account or other obligation where my rights are only as a representative. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

REAL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

and your remedies for such a default will be determined by applicable law, by the terms of any separate instrument, creating the security interest and, to the extent not prohibited by law and not contrary to the terms of the separate security instrument, by the "Default" and "Remedies" paragraphs herein.

DEFAULT: I will be in default if any one or more of the following occur:
(1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any

promise, on any debt or agreement I have entered into; (6) to bind him through court action, including, but not limited to, the filing of a lawsuit; (7) to bind him through court proceedings; (8) I did, as declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts); (9) I have provided, or intend to provide, any financial information that is untrue or inaccurate at the time it was provided; (10) I do or fail to do anything which causes you to believe that you are dealing with me; (11) this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (12) I change my name or assume an additional name without first notifying you; (13) before making this note, I have been convicted of a crime involving fraud or dishonesty; (14) I am a producer of crops; (15) any loan proceeds are used for a purpose that will contribute to excessive wear and tear of highly erodible land or to the conversion of wildlife habitat to agricultural commodity, as such as explained in 7 C.F.R., Part 168.0, Subpart G, Exhibit M.

REMEDIES: If I am in default on this note you have, but are not limited to, the following remedies:

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).

(2) You may set off this debt against any right I have to the payment of money from you, subject to the terms of the "SET-OFF" paragraph herein.

(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.

(4) You may refuse to make advances to me or allow purchases on credit by me.

By selecting any one or more of these remedies you do not give up your right to later use any other remedy. By waiving your right to declare an event to be a default, you do not waive your right to later consider the

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, repayment or any other or similar type of cost that I am in default. In addition, if you hire an attorney to collect this debt, I also agree to pay any and all your incurred legal costs, including attorney's fees and costs (except where prohibited by law), to the extent permitted by the United States Bankruptcy Code. I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

WAIVER: I give up my rights to require you to do certain things. I will not

require you to:

- (1) demand payment of amounts due (presentment);
- (2) obtain a final resolution of nonpayment (arbitration); or

(3) give notice that amounts due have not been paid (notice of dishonor)

I waive any defenses I have based on surprise or impairment of

collateral.
 OBLIGATIONS INDEPENDENT: I understand that I must pay this note

even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us

together, to collect this note. You may without notice release any party to this agreement without releasing any other party. If you give up any of your rights, with or without notice, it will not affect my duty to pay this note.

note. Any extension of new credit to any of us, or renewal of this note by
oil or less than \$10,000 will not release me from my duty to pay it. (Of
course, you are entitled to only one payment in full.) I agree that you may
at your option extend this note of the debt represented by this note, or

any portion of the note or debt, from time to time without limit or notice and for any term without affecting my liability for payment of the note, I will not assign my obligation under this agreement without your prior

written approval. You may, without notice, fail to perfect your security interest in, impair, or release any security, and I will still be obligated to pay this loan.

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will be accurate, correct and complete.

NOTICE: Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by first class mail addressed to me at my last known address. My current address is on page 1. I agree to

Inform you in writing of any change in my address. I will give any notice to you by mailing it first class to your address stated on page 1 of this agreement, or to any other address that you have designated.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and a prehearing hearing prior to seizure of any personal property which may secure this loan.

[illegible]

ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST
PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year.

S.W.

SHELTON HOFFMAN
3547 NORTH ROAD
ORANGEBURG, SC 29115

SOUTH CAROLINA BANK AND TRUST, N.A.
956 JOHN C. CALHOUN DRIVE
PO BOX 8007
ORANGEBURG, SC 29115

RESP CODE 5
Loan Number
Date 01-18-2007
Maturity Date 08-01-2007
Loan Amount \$ 56,000.00
Renewal 08-01-2007

BORROWER'S NAME AND ADDRESS
* Includes each borrower, spouse, jointly and separately.

LENDER'S NAME AND ADDRESS
* You means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY SIX THOUSAND EIGHTY AND NO/100
Dollars \$ 56,000.00

☒ Single Advance: I will receive all of this principal sum on 01-18-2007. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____
I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 01-18-2007 at the rate of 10.250%
per year until 01-20-2007

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 01-20-2007

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000%. The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

☐

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT
WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$59,177.64 ON 08-01-2007. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADD[ITIONAL] TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): A MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEWAL

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

SHELTON HOFFMAN
SHELTON HOFFMAN

APPLICABLE LAW: The law of the state of South Carolina will govern this note. Any term of this note which is contrary to applicable law will not be effective, unless the law permits you and me to agree to such a variation. If any provision of this agreement cannot be enforced according to its terms, this fact will not affect the enforceability of the remainder of this agreement. No modification of this agreement may be made without your express written consent. Time is of the essence in this agreement.

INSURANCE: I, OTHER INSURANCE: I understand and agree that some insurance premiums paid to insurance companies as part of this note will involve money retained by you or paid back to you as commissions or other remuneration.

PAYMENTS: Each payment I make on this note will first reduce the amount I owe you for charges which are neither interest nor principal. The remainder of each payment will then reduce accrued unpaid interest, and then unpaid principal. If you and I agree to a different application of payments, we will describe our agreement on this note. I may prepay a part of, or the entire balance of this loan without penalty, unless we specify to the contrary on this note. Any partial prepayment will not excuse or reduce any later scheduled payment until this note is paid in full (unless, when I make the prepayment, you and I agree in writing to the contrary).

INDEX RATE: The index will serve only as a device for setting the rate on this note. You do not guarantee by selecting this index, or the margin, that the rate on this note will be the same rate you charge on any other loans or class of loans to me or other borrowers.

POST MATURITY RATE: For purposes of deciding when the "Post Maturity Rate" (shown on page 1) applies, the term "maturity" means the date of the last scheduled payment indicated on page 1 of this note or the date you accelerate payment on the note, whichever is earlier.

MULTIPLE ADVANCE LOANS: If this is a multiple advance loan, you and I expect that you will make more than one advance of principal. If this is closed end credit, repaying a part of the principal will not entitle me to additional credit.

ET-OFF: I agree that you may set off any amount due and payable under this note against any right I have to receive money from you.

"Any amount due and payable under this note" means the total amount of which you are entitled to demand payment under the terms of this note at the time you set off. This total includes any balance due to you for which you properly accelerate under this note.

You will not be liable for the dishonor of any check when the dishonor occurs because you set off this debt against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

state of a residence that is personal property. The existence of a direct

DEFAULT: I will be in default if any one or more of the following occur: (1) I fail to make a payment on time or in the amount due; (2) I fail to keep the property insured, if required; (3) I fail to pay, or keep any promise, on any debt or agreement I have with you; (4) any other creditor of mine attempts to collect any debt I owe him through court proceedings; (5) I die, am declared incompetent, make an assignment for the benefit of creditors, or become insolvent (either because my liabilities exceed my assets or I am unable to pay my debts as they become due); (6) I make any written statement or provide any financial information that is untrue or inaccurate at the time it was provided; (7) I do or fail to do something which causes you to believe that you will have difficulty collecting the amount I owe you; (8) any collateral securing this note is used in a manner or for a purpose which threatens confiscation by a legal authority; (9) I change my name or assume an additional name without first notifying you before making such a change; (10) I fail to plant, cultivate and harvest crops in due season if I am a producer of crops; (11) any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

(1) You may demand immediate payment of all I owe you under this note (principal, accrued unpaid interest and other accrued charges).

(3) You may demand security, additional security, or additional parties to be obligated to pay this note as a condition for not using any other remedy.

(5) You may use any remedy you have under state or federal law.

COLLECTION COSTS AND ATTORNEY'S FEES: I agree to pay all costs of collection, replacement, and return of this note, and any other or similar type of cost if I am in default. In addition, if you hire an attorney to collect this note, I also agree to pay any fee you incur, with such attorney plus court costs (except where prohibited by law). To the extent permitted by the United States Bankruptcy Code, I also agree to pay the reasonable attorney's fees and costs you incur to collect this debt as awarded by any court exercising jurisdiction under the Bankruptcy Code.

- (1) demand payment of amounts due (presentment);
- (2) obtain official certification of nonpayment (protest); or
- (3) give notice that amounts due have not been paid (notice of dishonor).

OBLIGATIONS INDEPENDENT: I understand that I must pay this note even if someone else has also agreed to pay it (by, for example, signing this form or a separate guarantee or endorsement). You may sue me alone, or anyone else who is obligated on this note, or any number of us

course, you are entitled to only one payment in full.) I agree that you may
 your option extend this note or the debt represented by this note, or
 any portion of the note or debt, from time to time without limit or notice
 for any term without affecting my liability for payment of the note. I

FINANCIAL INFORMATION: I agree to provide you, upon request, any financial statement or information you may deem necessary. I warrant that the financial statements and information I provide to you are or will

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose I agree to waive the right to five days' notice and to proceed with hearing rules to seizure of any personal property which

[page 2 of 2]

ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST
PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year.

SH.



RECEIVED AUG 29 2007

COMMERCIAL LOAN MODIFICATION AGREEMENT

CUSTOMER NAME: Shelton Hoffman

COMMERCIAL LOAN # [REDACTED] DATE 8/28/07

We have hereby agreed to the following change(s) on the above loan.

☐ INTEREST RATE ADJUSTMENT:

The current interest rate on this loan is . Effective the interest rate will become

☐ REPAYMENT ADJUSTMENT:

Effective the following repayment schedule will begin.

☐ Installment: Principal and interest are payable in installments of:

☐ \$, which includes interest, beginning . Remaining installments will be due on the same day each succeeding period until all outstanding indebtedness has been repaid. The final installment of principal and interest will be due

☐ \$, principal, plus interest, beginning . Remaining installments will be due on the same day each succeeding period until all outstanding indebtedness has been repaid. The final installment of principal and interest will be due

☒ Other: Extend maturity to 2/1/08.

ACCEPTED BY: (Customer)

Shelton Hoffman
Shelton Hoffman

BANK APPROVAL:

Bruce C. Rheney
Bruce C. Rheney
Senior Vice President

THIS SECTION FOR BANK USE ONLY

OFFICER COMMENTS (reason for modification):

APPROVAL (requirements based on lending authority level):

APPROVED BY: _____ DATE: _____

APPROVED BY: _____ DATE: _____

(immediate supervisor)

APPROVED BY: _____ DATE: _____

(immediate supervisor)

APPROVED BY: _____ DATE: _____

(immediate supervisor)

SHELTON L. HOFFMAN
2850 RECLAMATION ROAD
NORTH, SC 29116

SOUTH CAROLINA BANK AND TRUST, N.A.
P50 JOHN C. CALHOUN DRIVE
PO BOX 9007
ORANGEBURG, SC 29116-9007

RESP CODE 228

Loan Number R

Date 02-20-2008

Maturity Date 02-20-2009

Loan Amount \$ 58,399.00

Renews: 02-20-2009

BORROWER'S NAME AND ADDRESS

* Includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS

"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY SIX THOUSAND THREE HUNDRED
NINETY NINE AND NO/100 Dollars \$ 56,399.00

☒ Single Advance: I will receive all of this principal sum on 02-20-2008. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On
I will receive the amount of \$ and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 02-20-2008 at the rate of 6.000% per year until 02-21-2008

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SCBT PRIME RATE
DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 02-21-2008

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000 %. The rate may not change more than % each

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

☐

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below.

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 6.000% OF THE LATE AMOUNT
WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

* PAYMENT OF \$60,986.12 ON 02-20-2009. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): REAL ESTATE MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is RENEWAL OF WORKING CAPITAL
LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender

S. L. Hoffman
SHELTON L. HOFFMAN

BRUCE RHENEY

213

SHILTON L. HOFFMAN 2650 REDFORD ROAD NORTH, SC 29112	SCRT, N.A. 950 JOHN C. CALHOUN DRIVE PO BOX 8087 ORANGEBURG, SC 29116-9087	RESP CODE 324 Loan Number <u>112831108</u> Date <u>06-27-2009</u> Maturity Date <u>05-05-2014</u> Loan Amount \$ <u>92,588.00</u> Renewal <u>05-05-2014</u>
BORROWER'S NAME AND ADDRESS "I" indicates each borrower above, jointly and severally.	LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of NINETY TWO THOUSAND FIVE HUNDREN SIXTY EIGHT AND NO/100 Dollars \$ 92,588.00

☒ **Single Advance:** I will receive all of this principal sum on 04-27-2009. No additional advances are contemplated under this note.

☐ **Multiple Advances:** The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ **Open End Credit:** You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ **Closed End Credit:** You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 04-27-2009 at the rate of 7.000% per year until 05-05-2014

☐ **Variable Rate:** This rate may than change as stated below.

☐ **Index Rate:** The future rate will be _____ the following index rate: _____

☐ **No Index:** The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ **Frequency and Timing:** The rate on this note may change as often as _____
A change in the interest rate will take effect _____

☐ **Limitations:** During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

☐ _____

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ **LATE CHARGE:** If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ **ADDITIONAL CHARGES:** In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

59 MONTHLY PAYMENTS OF \$1,081.48 BEGINNING 06-05-2009 AND 1 BALLOON PAYMENT OF \$55,558.10 ON 05-05-2014.

ADDITIONAL TERMS: PREPAYMENT PROVISION: IF ANY AMOUNT OF PRINCIPAL IS PREPAID, BORROWER AGREES TO PAY TO LENDER, AT THE TIME OF PREPAYMENT, 3% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE FIRST ANNIVERSARY DATE OF THE NOTE, 2% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE SECOND ANNIVERSARY DATE OF THE NOTE AND 1% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE THIRD ANNIVERSARY DATE OF THE NOTE.

☒ **SECURITY:** This note is separately secured by separate document by type and date: REAL ESTATE MORTGAGE DATED 10-21-2003
INJO SHILTON HOFFMAN AKA SHILTON L. HOFFMAN & SECURITY AGREEMENT
DATED 11-13-2008
(This section is for your internal use. Failure to get a separate security agreement does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is CONSOLIDATION OF LOANS
#112831108 & 11458204

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.

Signature for Lender

Shilton Hoffman
 SHILTON L. HOFFMAN

BRUCE RHENEY

215

EXHIBIT B

1394
5239

Phone: (803) 681-1111
WARRBROUGH, HUTTO & JACKSON
ATTORNEYS AT LAW
POST OFFICE BOX 2208
ORANGEBURG, SC 29116-2208

03-3317

This document was prepared by (name, address, phone): SOUTH CAROLINA BANK AND TRUST, N.A.
650 JOHN C. CALHOUN DRIVE ORANGEBURG, SC 29115

(SC) 55-2175

GAIL LANEY
REGISTER OF DEEDS
ORANGEBURG CO., S.C.

State of South Carolina _____ Space Above This Line For Recording Date _____

REAL ESTATE MORTGAGE (With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 10-21-2003 and the parties and their addresses are as follows:

MORTGAGOR: SHELTON HOFFMAN A/K/A SHELTON L. HOFFMAN
3607 NORTH RD.
ORANGEBURG, SC 29115

☐ Refer to the Addendum, which is attached and incorporated herein for additional Mortgages.

LENDER: SOUTH CAROLINA BANK AND TRUST, N.A.
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
650 JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29115

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property: SEE ATTACHMENT FOR FULL LEGAL DESCRIPTION

The property is located in ORANGEBURG at 3607 NORTH RD.
(County) (City) South Carolina 29115
(Address) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FARM, FARM, FARM OR FARM USE AND NOT FOR CONSUMER PURPOSES)

EX-100 01994, 2001 Barbers Systems, Inc., St. Cloud, MN Form AGCO-RESL-SC 9/24/2001

(page 1 of 1)

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3. **MAXIMUM COLLATERAL LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 100,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgages shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

- A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt): A NOTE DATED 10-21-2003 IN THE AMOUNT OF \$100,000.00
THE NAME OF BORROWER MORTGAGEE

(e.g., borrower's name, note amount, interest rate, maturity date)

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
 6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
 7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
 8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
 A. To make all payments when due and to perform or comply with all covenants.
 B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
 9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 681), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

39496240

G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

16. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

18. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims,

demand, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.

- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

18. **CONDEMNATION.** Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any power, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

20. **INSURANCE.** Mortgagor agrees to maintain insurance as follows:

- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

21. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

22. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

23. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend

modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

24. APPLICABLE LAW; SEVERABILITY; INTERPRETATION. This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

25. NOTICE. Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

26. WAIVER OF HOMESTEAD. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

27. U.C.C. PROVISIONS. If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Future Pledg.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops; Timber; Minerals; Rents, Issues, and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").
- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Pledg. As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

28. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**
- ☐ **Additional Terms.**

(page 6 of 7)

S.H.

BR 1394 PG 244

1199
5245

REMARKS: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in all
instruments. Mortgagor also acknowledged receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____

Entity Name: _____

Shelton Hoffman (Signed)
(Signature) SHELTON HOFFMAN (Print)

A. - K. A. Shelton L. Hoffman (Signed)
(Signature) A/K/A SHELTON L. HOFFMAN (Print)

Signed, Sealed and delivered in the presence of:

Jonna Martin
(Witness)

Amel Effendi
(Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages, signatures and
acknowledgments.

PROSTATE:

STATE OF SOUTH CAROLINA, COUNTY OF CHARLESTON } ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the
Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together
with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 21ST day

of NOVEMBER, 2003
Amel Effendi (Seal)
Notary Public for South Carolina

Jonna Martin

My commission expires: 2/9/2008

13946245

"EXHIBIT A" - ATTACHMENT TO MORTGAGE FROM SHELTON HOFFMAN A/E/A
SHELTON L. HOFFMAN TO SOUTH CAROLINA BANK AND TRUST, N.A.

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden, et al. by W. F. Stokes, RLS dated March 13, 1980 and recorded in the office of the Register of Deeds for Orangeburg County in Plat Book 49 at Page 99 and being bounded and measuring as follows: On the Northeast by U.S. Highway 178 and measuring thereon 195 feet; on Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50-foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

ALSO:

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden, et al. by W. F. Stokes, RLS dated March 13, 1980 and recorded in the office of the Register of Deeds for Orangeburg County in Plat Book 49 at Page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on Northeast by lands now or formerly of Bradshaw and measuring thereon 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50-foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

1. Deed of Beulah S. Nash, et al. dated October 3, 1983 and recorded in the office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at Page 963.
2. Deed of Ruth N. Hayden, et al. dated October 13, 1983 and recorded in the office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at Page 969.

ALSO:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T. K. Hoffman; on the Southwest, again, by property now or formerly known as the home place of T. K. Hoffman; and on the Northwest, again, by the right of way of Lightning Hill Road.

8/4. 10-21-03

EX 1391 PC 246

1204
B247

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Kohn Hoffman which was duly admitted to probate and filed in the office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

S.H. 10-21-03

EX-1394P6247

Recorded this 27 day of Oct
2010 in Nt
Book 1394 at Page 239
Sam
REGISTER OF DEEDS
ORANGEBURG CO., S.C.

BK 1394 PG 248

EXHIBIT C

DEBTOR NAME AND ADDRESS	SECURED PARTY NAME AND ADDRESS
SHELTON HOFFMAN 2950 REDMON WILL RD NORTH, SC 29112	SCBT, N.A. 950 JOHN CALHOUN DRIVE PO BOX 180075 ORANGEBURG, SC 29116-0007
	57-0219408

Type: ☒ individual ☐ partnership ☐ corporation ☐ _____
 State of organization/registration (if applicable) SC
☐ If checked, refer to addendum for additional Debtors and signatures.

COMMERCIAL SECURITY AGREEMENT

The date of this Commercial Security Agreement (Agreement) is 11-13-2008

SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ _____ (Borrower) owes to Secured Party:

☐ Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

☒ All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

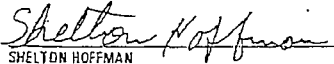
SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

PROPERTY DESCRIPTION. The Property is described as follows:

- ☐ Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- ☐ Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- ☐ Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- ☐ Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- ☐ Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- ☐ Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

LINK BELT EXCAVATOR - SERIAL NO. 88H8443; 1979 INTL TRUCK VIN# AF 195JCA19321; DUMP WAGON #5563; AND 1994 LANDOLL 30 TON LOWBODY #71H323LH5R1007153

USE OF PROPERTY. The Property will be used for ☐ personal ☐ business ☐ agricultural ☐ _____ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.	
DEBTOR	SECURED PARTY
 SHELTON HOFFMAN	SCBT, N.A.  BRUCE RHONEY

GENERAL PROVISIONS. Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

APPLICABLE LAW. This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION. Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence; if Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

WARRANTIES AND REPRESENTATIONS. Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. This Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY. Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or the returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST. Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE. Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amount Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM. Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement.

If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property. Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST. If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT. Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION. Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a pre-seizure hearing prior to seizure of the Property.

REMEDIES. After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER. Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS. Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

EXHIBIT D

SEP 26 2005
IMAGED

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

SOUTH CAROLINA BANK AND TRUST, N.A.
950 JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29115

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME

HUFFMAN

FIRST NAME

SHELTON

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

3897 NORTH ROAD

CITY

ORANGEBURG

STATE

SC

POSTAL CODE

29118

COUNTRY

1d. TAX ID #

SSN OR EIN

ADD'L INFO RE

ORGANIZATION

DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #

SSN OR EIN

ADD'L INFO RE

ORGANIZATION

DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

950 JOHN C. CALHOUN DRIVE

ORANGEBURG

SC

29115

4. This FINANCING STATEMENT covers the following collateral

LINK BELT EXCAVATOR - SERIAL NO. B8H8443; DUMP WAGON #5563.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ THE FINANCING STATEMENT is to be filed (for record) (for recorded) in the REAL ESTATE RECORDS. ☐ If so, check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

7. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY - NATIONAL UCC F

050819-1542432

UCC-1 FINANCING STATEMENT

Lapse Date: 08/19/2010 03:42:43 Filing Fee: 8 ORIG

na, Inc., St. Cloud, MN Form UCC-1-LAZ 6/30/2001

11634961-2

EC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

SOUTH CAROLINA BANK AND TRUST, N.A.
850 JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29115

11634961

250-58-2102

Sheldon Hoffman

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

1b. INDIVIDUAL'S LAST NAME

HOFFMAN

FIRST NAME

SHELTON

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

3897 NORTH ROAD

CITY

ORANGEBURG

STATE

SC

POSTAL CODE

29118

COUNTRY

1d. TAX ID #, SSN OR EIN

ADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

1f. JURISDICTION OF ORGANIZATION

1g. ORGANIZATIONAL ID #, if any

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #, SSN OR EIN

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR(S)) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

950 JOHN C. CALHOUN DRIVE

CITY

ORANGEBURG

STATE

SC

POSTAL CODE

29115

COUNTRY

4. This FINANCING STATEMENT covers the following collateral:

1994 LANDOLL 30 TON LOWBOY #1LH323LH5R1007153

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOER ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING6. ☐ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum (if applicable) 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) (optional) ☐ All Debtors ☒ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

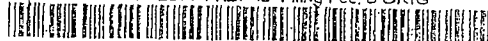
060313-1127451

UCC-1 FINANCING STATEMENT

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ams, Inc., St. Cloud, MN Form UCC-1-LAZ 5/30/2001

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11053105-02

UCC FINANCING STATEMENT AMENDMENT

EC-2

JUN 14 78

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)
Jessie R Goodwin 803-268-9488

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

SBCT, NA
QUALITY CONTROL
PO BOX 100113
COLUMBIA, SC 29202-3113

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #
050819-1542432

1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects: ☐ Debtor ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name. Give record name to be deleted in item 6a or 6b. ☐ ADD name. Complete item 7a or 7b, and also item 7c. Also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR 6b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

HOFFMAN SHELTON

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR 7b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

7c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3897 NORTH ROAD ORANGEBURG SC 29118

7d. JURISDICTION OF ORGANIZATION 7e. ORGANIZATIONAL ID #, if any

7f. ADDITIONAL INFO RE ORGANIZATION DEBTOR 7g. ORGANIZATIONAL ID #, if any

8. AMENDMENT (COLLATERAL CHANGE): Check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment

9a. ORGANIZATION'S NAME

SCBT, NA

OR 9b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

10. OPTIONAL FILER REFERENCE DATA

11283108-02

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY.

A. NAME & PHONE OF CONTACT AT FILER (optional):

Jessie R Goodwin 803-268-9488

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

SBCT, NA
QUALITY CONTROL
PO BOX 100113
COLUMBIA, SC 29202-3113

EC-11

JUL 27 16

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY.

3a. INITIAL FINANCING STATEMENT FILE #

050819-1542432

7b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.

2. ☒ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☒ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c, and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects: ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c, also complete items 7d-7e (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

6b. INDIVIDUAL'S LAST NAME

HOFFMAN

FIRST NAME

SHELTON

MIDDLE NAME

SUFFIX

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

3897 NORTH ROAD

CITY

ORANGEBURG

STATE

SC

POSTAL CODE

29118

COUNTRY

ADD INFO RE
ORGANIZATION
DEBTOR

7d. TYPE OF ORGANIZATION

7e. JURISDICTION OF ORGANIZATION

7f. ORGANIZATIONAL ID #, if any

☐ NONE

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ revised collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

SBCT, NA

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

10. OPTIONAL FILER REFERENCE DATA

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100516-1326301

UCC-3 CONTINUATION

Lapse Date: 03/19/2015 01:20:30 Filing Fee: 8 ORIG



Hearing

State of South Carolina	)	
	)	
County of Orangeburg	)	
SCBT, NA,	)	In the Court of Common Pleas
	)	
Plaintiff,	)	
	)	2012-CP-38-0030
vs.	)	
	)	
Shelton Hoffman a/k/a	)	
Shelton L. Hoffman,	)	Transcript
South Carolina	)	
Department of Revenue,	)	of
and Baird Transport,	)	
Inc.,	)	Hearing
	)	
Defendants.	)	

The within hearing, taken before Olivia Michelle Crocker, a notary public in and for the State of South Carolina, commencing at the hour of 10:00 a.m., Tuesday, February 12, 2013, at the Orangeburg County Courthouse, 151 Docket Street, Orangeburg, South Carolina.

Reported by
Olivia Michelle Crocker

APPEARANCES

Presiding: Special Referee James E. Reeves

For the Plaintiff: Harriet Pollitt Wallace, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210

For the Defendant: Margaret A. Collins, Esq.
Collins & Burkett Law Firm, LLC
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West Columbia, South Carolina 29169

Shelton L. Hoffman, Pro Se
2950 Redmond Mill Road
North, South Carolina 29112

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PROCEEDINGS

1
2 SPECIAL REFEREE REEVES: Good to see everybody. I'm
3 Jimmy Reeves. I've been appointed as a special
4 referee in this matter, and I appreciate y'all
5 letting me have the opportunity to hopefully work
6 out a resolution to this case. I understand we've
7 got a couple of motions pending besides the actual
8 foreclosure case. And just for the record, Madam
9 Court Reporter -- there you are -- thank you for
10 being here.

11 This is the case of "South Carolina Bank and
12 Trust v. Shelton Hoffman, et al.," Case Number
13 2012-CP-38-0030. I've been e-mailed some
14 information. My understanding right now is we've
15 got a -- a motion to be relieved of counsel. We've
16 got a motion to quash subpoenas, and we also have a
17 motion to compel in addition to the actual
18 foreclosure case; is that correct?

19 MS. COLLINS: Yes, Your Honor. There's also some
20 ancillary motions that were still pending from way
21 back --

22 SPECIAL REFEREE REEVES: Okay.

23 MS. COLLINS: -- pursuant to my motion. One second,
24 Your Honor. I'm sorry. It's a supplemental motion
25 by the defendant. First supplemental notice of motion,

1 motion to strike plaintiff's answer, and the alternative
2 motion to require amendments. So
3 that's --
4 SPECIAL REFEREE REEVES: Okay. Let me --
5 MS. COLLINS: -- still pending.
6 SPECIAL REFEREE REEVES: Let me do this, and I
7 apologize. I should've done this to begin with.
8 Just for the -- for the record, let's -- let's just
9 introduce ourselves for -- and if you don't mind
10 starting right here, please, ma'am.
11 MS. WALLACE: I'm Harriet Wallace --
12 SPECIAL REFEREE REEVES: Okay.
13 MS. WALLACE: -- with Rogers Townsend, and I represent
14 the plaintiff, SCBT, in this matter.
15 SPECIAL REFEREE REEVES: Okay. And -- and who is
16 sitting next to you, please, ma'am?
17 MS. WALLACE: This is Jim Boyd, and he is a
18 representative of SCBT. And he will be our witness
19 in this matter.
20 SPECIAL REFEREE REEVES: Very good. And I'm sorry.
21 Please introduce yourself, please, ma'am.
22 MS. COLLINS: Yes. I'm sorry, Your Honor. Margaret
23 Collins, attorney of record to the defendant.
24 SPECIAL REFEREE REEVES: Okay. And who is sitting next
25 to you?

Hearing

1 MS. COLLINS: Oh, I'm sorry. This is Mr. Ronnie
2 Hoffman. This is the son of the defendant, Shelton
3 Hoffman, who is sitting on his other side.

4 SPECIAL REFEREE REEVES: Okay. Very, very good. All
5 right. Thank -- thank you so --

6 MS. COLLINS: And just some housekeeping measures, just
7 as a reminder for -- for future reference: Mr.
8 Hoffman, I think, has a little difficulty hearing,
9 so if we could, speak up. And, of course, he also
10 has vision issues --

11 SPECIAL REFEREE REEVES: Okay.

12 MS. COLLINS: -- just to give the court a heads-up on
13 that.

14 SPECIAL REFEREE REEVES: Very good. And y'all just let
15 -- let me know if I'm not speaking loud enough.

16 MR. RONNIE HOFFMAN: Yes, sir.

17 SPECIAL REFEREE REEVES: And I'll be more -- more than
18 happy to -- to --

19 MR. RONNIE HOFFMAN: Yes, sir.

20 SPECIAL REFEREE REEVES: -- to assist. Ms. Wallace, Ms.
21 Collins just said there were some other motions
22 besides what I just listed. Do you -- do you agree
23 with that?

24 MS. WALLACE: No, Your Honor. In -- in the hearing on
25 June 26th, 2012, everything was resolved, and the

Hearing

1 prior motions were withdrawn. There were some
2 stipulations entered at that time, and the only
3 pending issue is whether or not Matrix applied in
4 this case. And, of course, that was before the
5 "BAC v. Kinder" case came out kind of clarifying
6 the date -- the effectiveness of -- of Matrix.

7 SPECIAL REFEREE REEVES: And that was part of Judge
8 Bergdorf's order; is that -- is that correct?

9 MS. WALLACE: Yes, Your Honor. And that was from -- I
10 believe it was June 26th was when that was --

11 SPECIAL REFEREE REEVES: Ms. Collins?

12 MS. WALLACE: -- when the hearing was.

13 MS. COLLINS: Your Honor, my client's position is that
14 the motion for continuance was granted. The rest
15 of the motion was not ruled upon. Their pro se
16 motions were resolved in that hearing, but the --
17 the motion filed by me, just the motion for
18 continuance was resolved in that.

19 SPECIAL REFEREE REEVES: Okay. This is what I'm
20 thinking I'm going to do on this is that -- Ms.
21 Collins, I do recognize you've got a motion to be
22 relieved of -- of counsel at -- at this point in
23 time. The -- however, I do believe there were two
24 motions that were filed since the last time we
25 spoke in the status conference: a motion to

1 compel, I believe filed by you -- you, Ms. Collins,
2 and also a motion to quash subpoenas, filed by you,
3 Ms. Wallace; is that correct?

4 MS. WALLACE: Yes, Your Honor. And I do have the
5 clocked copy that I clocked in this morning if you
6 would like it.

7 SPECIAL REFEREE REEVES: That -- that won't -- actually
8 that's not necessary. I believe I've got -- well,
9 maybe -- maybe you better.

10 MS. WALLACE: Okay.

11 SPECIAL REFEREE REEVES: I thought that I had printed
12 that off before I -- before I left. Thank you so
13 much. Ms. Collins, I think what I would like to do
14 is: I'd like to deal with those two discovery
15 motions and then, frankly, deal with your motion to
16 be relieved of counsel at that -- that point in
17 time, okay?

18 MS. COLLINS: Yes, sir.

19 SPECIAL REFEREE REEVES: So first of all, let me hear
20 the issues. And, first, Ms. Wallace, let me --
21 well, I'll let you address these, whether or not
22 you believe they were timely filed. I think I saw
23 some information in the file that you were going to
24 take that position, but I'll go ahead --

25 MS. WALLACE: Yes, sir.

1 SPECIAL REFEREE REEVES: -- and hear Ms. Collins. Why
2 don't you -- let's -- let's address this motion to
3 compel to -- to begin with, okay?

4 MOTION TO COMPEL

5 MS. COLLINS: Yes, Your Honor. This predates my
6 involvement in this case. It did start as a pro se
7 matter. The defendant had requested review of all
8 the original documents associated with -- with this
9 transaction, and they were presented by Ms.
10 Stomski, who -- from Rogers Townsend of -- counsel
11 with Rogers Townsend.

12 My client, at that point -- and the documents
13 were produced at a hearing and presented to my
14 client, according to him, as the originals. I was
15 not present at this hearing. They recognized one
16 as not being the original, and so after my motion
17 to be relieved, my client informed me he wanted to
18 look at those documents again by and through his
19 son because my client is blind in all honesty. So
20 based upon their belief that one of them was a
21 copy, they brought an expert who's present today.
22 And the expert has an -- a report that may or may
23 not be introduced that indicated that it was a
24 copy.

25 It is the underlying original note in the

1 document. There's been a bunch of extensions and
2 restatements of the notes and those types of
3 things. So my client wants to see the original,
4 and the discovery request was either to produced
5 the original or explain what happened to the
6 original and where it was. So my client asked me
7 to file the motion to compel, and that was done.

8 SPECIAL REFEREE REEVES: Okay. Ms. Collins, let me just
9 ask you: As -- as far as -- before Ms. Wallace
10 speaks -- as far as the reason, what -- why -- my
11 understanding is that the plaintiff is not
12 foreclosing on this original note -- the -- the
13 initial note; is that correct?

14 MS. COLLINS: Well, it was indicated as being the
15 consideration in the original pleadings.

16 SPECIAL REFEREE REEVES: Okay.

17 MS. COLLINS: And without knowing completely my client's
18 position, the defense in their answer was: If this
19 note has not been satisfied and if it's a valid
20 note and a valid debt, they concurred with the rest
21 of the complaint. So it's crucial to their
22 defense, in their opinion, that they be -- it be
23 produced --

24 SPECIAL REFEREE REEVES: Okay.

25 MS. COLLINS: -- because of their -- their assertion as

1 to their defense.

2 SPECIAL REFEREE REEVES: Right. Ms. Wallace?

3 MS. WALLACE: Yes, Your Honor. Our -- our position is:

4 I -- I think this is an issue of we provided too
5 much information, and it may have confused the
6 issue. Sometimes I like to err on providing too
7 much information on the -- out of an abundance of
8 caution. Nobody ever thought that this 2003 note
9 was an original. Had fax copy stuff. Nobody --you
10 know, anybody could -- you don't need an expert to
11 tell you that -- that it's not an original. And we
12 will stipulate to that, so I don't know that we
13 need an expert to tell us that.

14 The mortgage has the -- a future-advance
15 clause pursuant to Section 29-350 of the South
16 Carolina code, and so the mortgage was executed in
17 2003 and recorded in 2003 along with this 2003
18 note. And so that note was a single-pay note. And
19 it was paid out after the year, and then shortly
20 thereafter or about that same time, Mr. Hoffman got
21 a new note with new money and then -- either that
22 was a single pay. Or, anyway, there's been some
23 renewals and stuff. But they -- all the notes
24 reference back to this mortgage. So we were
25 intending -- because when you see a 2003 mortgage

1 then a 2009 note, sometimes that raises red flags.
2 So we were intending to kind of show the chain and
3 -- and everything associated with that mortgage.
4 But, obviously, you know, it's been well settled
5 that renewals of notes or new notes with knowledge
6 of any defense of an original document operates as
7 a waiver of any rights to a prior note.

8 And plus, that note has been paid out. I
9 think -- well, I know the plaintiff was stipulated
10 to that, so I don't really think that that's an
11 issue here. The timeliness of -- of the motion,
12 you know, aside, I mean I think there's been a lot
13 of last-minute request here. But with all of that
14 aside, as a matter of law, it's just not relevant
15 to this case, Your Honor.

16 SPECIAL REFEREE REEVES: What does Judge Bergdorf's
17 earlier order have to say?

18 MS. WALLACE: It didn't address this issue because,
19 honestly, it didn't come up until the day before
20 the January hearing.

21 SPECIAL REFEREE REEVES: Okay.

22 MS. WALLACE: But we did have the original documents
23 ready to be produced to the clients on two
24 depositions that were scheduled of Mr. Rainey, were
25 scheduled prior to the June deposition within four

1 days notice. And we had him ready for depositions,
2 and they were canceled by the defendants. And we
3 had the original documents then. Ms. Stomski
4 showed the same documents to Mr. Hoffman's sons at
5 -- before the June hearing. I don't know if --
6 what date -- February or something. And so we're
7 -- we're not trying to keep anything from anybody.
8 We -- we've shown the same documents, and we were
9 contacted a day or two before the January hearing
10 wanting to all of a sudden see them after Judge
11 Bergdorf -- he had said that discovery was supposed
12 to be done by August 10th. He said the final
13 hearing was supposed to take place by August 10th.
14 He continued the motion solely to continue
15 discovery, but contingent on the fact that the
16 final hearing be ready to be heard August 10th.
17 Then because Mr. -- Judge Bergdorf -- Bergdorf's --
18 I'm sorry -- because of his pending retirement, he
19 decided to recuse himself because he no longer
20 wanted to take anything that was contested. And
21 that was -- took some time to get that through the
22 court, and that was how --

23 SPECIAL REFEREE REEVES: Frankly, that's how I came into
24 the case.

25 MS. WALLACE: That's right, Your Honor. And because we

1 believed discovery was over by August 10th, we did
2 not engage in any discovery. I feel like we've
3 been prejudiced because had we known discovery was
4 still open, we would've done some discovery. If we
5 had known a document expert was going to look at
6 the documents, we would've tried to depose him. We
7 would've -- although, you know, looking at the --
8 at the report from the document examiner that they
9 retained -- I'm not going to stipulate that he's an
10 expert or not an expert at this time -- but we
11 don't see anything in that -- in that report that
12 doesn't support what we're doing here today. The
13 note that we're foreclosing, he says that's an
14 original. He says the mortgage is an original. So
15 I don't really know what the dispute is all about.

16 SPECIAL REFEREE REEVES: Is the -- is the -- this
17 initial note back from 2003, is -- is it the
18 plaintiff's position that that note has been paid?

19 MS. WALLACE: Yes, sir.

20 SPECIAL REFEREE REEVES: Okay. All right.

21 MS. WALLACE: I think it even says "paid" on it or
22 something.

23 SPECIAL REFEREE REEVES: All right. And so your -- your
24 complaint in foreclosure is not based on this
25 initial note in 2003. It is based on subsequent

1 notes and the -- and the mortgage that it -- that
2 those notes relate to. Am I --

3 MS. WALLACE: Yes, sir.

4 SPECIAL REFEREE REEVES: Am I understanding your
5 position?

6 MS. WALLACE: Yes, sir.

7 SPECIAL REFEREE REEVES: I'm not trying to make your
8 argument. I just want to make sure I understand.

9 MS. WALLACE: That -- that's exactly right, Your Honor.

10 MS. COLLINS: Just briefly, Your Honor, this -- I -- I
11 did a notice of appearance on -- on May 31st. I
12 received the file June 8th-ish. Don't hold me to
13 that date. My discovery requests were out on -- on
14 June 14th. So this has been pending since June
15 14th. And the -- the discovery requests, based on
16 my initial consultations, was for the original
17 documents or an explanation of where the original
18 documents were. They were presented as original
19 documents to my client on two occasions without any
20 indication that there was a copy being presented at
21 all. So that's -- that -- that brings a lot into
22 the factor for the motion to compel.

23 SPECIAL REFEREE REEVES: What -- what are the
24 allegations though, Ms. Collins? Are -- are the
25 allegations that the -- that a copy that -- has

1 somehow been altered or something?

2 MS. COLLINS: I -- I can't speak -- I would prefer for
3 my client to argue his case on that point. I think
4 it has to do with the holder-in-due-course
5 arguments and those types of issues. But, like I
6 said, Your Honor, I would prefer for my client to
7 -- to -- but it was clearly requested where either
8 the original be produced or an explanation of where
9 the original is. And apparently it has been marked
10 "satisfied." Even a copy of the one that has been
11 marked "paid" has not been provided to my client.

12 SPECIAL REFEREE REEVES: But it sounds to me like she's
13 -- that the plaintiff is stipulating to that at
14 this point in time. Am I correct there?

15 MS. WALLACE: That is correct, Your Honor.

16 SPECIAL REFEREE REEVES: Okay.

17 MS. COLLINS: That -- that is what she's indicating, but
18 the holder-in-due-course argument, which I would
19 think that my client may bring up, may be the
20 reason why. I can't --

21 SPECIAL REFEREE REEVES: But your client did request
22 this motion to be compelled. I mean, the -- the
23 files that I have on this shows February 6th, which
24 -- which is not even a week ago, so the -- the --
25 even though the discovery requests were -- you said

Hearing

1 were filed or served back in -- in June, your
2 client didn't request this motion to compel be
3 filed until -- until just last week.

4 MS. COLLINS: Yes, sir. And you will see that there was
5 a follow-up. The minute I got the expert's report,
6 I sent it because I had no knowledge that it was a
7 copy versus an original. The minute I had
8 knowledge of it, I asked for clarification of where
9 the original was or where a copy was. I didn't get
10 a response for quite a while. And by the time I
11 got the response, it was not timely to file the
12 motion. But I did try to follow up with it the
13 minute I got the expert's report.

14 SPECIAL REFEREE REEVES: Do you agree or disagree that
15 Judge Bergdorf's order was that discovery was to be
16 completed back in August?

17 MS. COLLINS: To the extent that it should be issued and
18 responded to, that is correct. But I mean I -- as
19 far as -- I think my client has e-mails that said,
20 "I will bring the originals to court." He looked
21 at the originals, he thought. He didn't get the
22 originals. He subsequently hired Mr. Dawson, who's
23 also in the courtroom. He went to go look again.
24 There were presented as originals again. So that's
25 -- that's part of the issue, Your Honor.

1 SPECIAL REFEREE REEVES: Ms. Wallace, anything else?

2 MS. WALLACE: I just wanted to point out: On June 18th,
3 four days after the requests for production were
4 served on the plaintiff, we did respond saying
5 that, "Plaintiff will allow defendant to inspect
6 all original notes, mortgages, modification
7 documents at a reasonable time and date suitable to
8 the parties." And it wasn't until January that
9 they requested to come see it, even though we had
10 two dates in June in which they could've come see
11 it -- seen the documents and raised any issue at
12 that time.

13 Also, I think it's important to note that Mr.
14 Hoffman is not disputing that he signed the 2003
15 note. He's not disputing that he borrowed the
16 money and that he signed the mortgage. He's,
17 according to Ms. Collins -- is -- thinks that this
18 is some sort of evidence for a holder-in-due-course
19 argument, which this note has never been
20 transferred. So we don't even have a holder-in-
21 due-course issue here. SCBT was the original
22 lender and they're still the lender, so there's no
23 issue regarding holder in due course.

24 Plus, South Carolina has no -- there's no
25 requirement that you have the original note unless

Hearing

1 there was certain requirements that you have a
2 dispute between people claiming, you know, that
3 they're a holder on a certain note. Since that's
4 not the case, I don't know what -- and the other
5 issue is we don't have the original to produce. So
6 even if the motion to compel were granted, we -- we
7 don't know what we could do to accommodate that.

8 SPECIAL REFEREE REEVES: Okay. So what I'm hearing you
9 say is that the -- the plaintiff is stipulating
10 that that initial note, which I believe was back in
11 2003, has been paid. That is not what you are
12 foreclosing on here today and that also you are
13 representing the course that -- to the court that
14 you do not even have the original note at this
15 point in time.

16 MS. WALLACE: Yes, Your Honor.

17 SPECIAL REFEREE REEVES: Ms. Collins, I -- I'm having
18 some concerns about just the -- the -- based on
19 that stipulation, just what is the relevance of --
20 of this document. And I realize discovery is
21 broader than that and what documents would lead to
22 the discovery of admissible -- admissible evidence.
23 So -- and, based on that, I'm going to deny the
24 motion to -- to compel. And if there is some issue
25 that your client wants to argue that -- that

1 somehow this copy of the note that there was some
2 language or something on the original note that
3 somehow impacts this case, I'll be more than happy
4 to -- to listen to that, okay?

5 MS. COLLINS: Thank you, Your Honor.

6 SPECIAL REFEREE REEVES: And the -- the next motion, I
7 believe we have a motion to quash subpoenas. And I
8 -- I received an e-mail copy of that. Actually, I
9 didn't really read it until early this morning. It
10 looked like it came in last night some time. I --
11 I did not receive copies of the actual subpoenas.

12 MS. WALLACE: I apologize.

13 SPECIAL REFEREE REEVES: And so I'm not exactly sure
14 what -- what were trying to -- to quash, but I'll
15 be more than happy to hear you on that.

16 MOTION TO QUASH SUBPOENAS

17 MS. WALLACE: I apologize, Your Honor. That was an
18 oversight. We -- some subpoenas were dropped off
19 at our office about 3:40 yesterday afternoon by Ms.
20 Collins' office. And they were subpoenas to have
21 two SCBT employees appear today in court. One is
22 Bruce Rainey, who, like I mentioned earlier, he was
23 available twice for depositions, and he was
24 available at all of the prior hearing dates.
25 However, he had a doctor's appointment today and

1 was unable to change it. Somebody in his family is
2 getting chemotherapy, and it was not the type of
3 appointment that I was comfortable even requesting
4 that he change.

5 SPECIAL REFEREE REEVES: Okay.

6 MS. WALLACE: And we had also -- we -- that late in the
7 day, we were unable to get in touch with Ms. Dianne
8 Dukes with SCBT, and so the motion to quash covers
9 quashing her appearance as well. However, this
10 morning we got in touch with Ms. Dukes, and she is
11 here today. So we are trying to cooperate and --
12 and -- in good faith and -- and do what we can on
13 such short notice.

14 SPECIAL REFEREE REEVES: Okay. Ms. Collins, can I hear
15 you on the motion to quash?

16 MS. COLLINS: Yes, Your Honor. These are the same two
17 witnesses that have been subpoenaed three times in
18 a row. I've issued checks for appearances three
19 times, and we released Mr. Rainey last hearing
20 scheduled because of this family illness. We are
21 trying to accommodate, too. I just wanted to cover
22 the bases if he was available for his appearance.
23 I understand he was supposed to be available after
24 two if this hearing is still continued at two. He
25 is the loan officer. He's the one that my client

1 indicates represented what would be secured and not
2 secured and those types of things. So that's why
3 he is relevant to the case, but without --
4 notwithstanding, you know, I understand if there's
5 a medical situation. I -- insofar as the request
6 for sanctions, Your Honor, these are the same three
7 -- same two witnesses subpoenaed every time, and I
8 did apologize for the late notice. But I think it
9 was on both parties to kind of coordinate on
10 witnesses. Unfortunately, I delegated the -- make
11 sure that these motions were continuing -- deemed
12 continuing, and that wasn't done. And then I had
13 immediate, "No. They are not deemed continuing"
14 for the second or third time actually. So I sent
15 out another subpoena, so that's kind of the
16 history.

17 Of course, if the gentleman has a medical
18 issue in his family, that's understandable.

19 SPECIAL REFEREE REEVES: Ms. Wallace?

20 MS. WALLACE: Just Mr. Rainey -- although he did have a
21 doctor's appointment last time, but he did kind of
22 jump through hoops to make sure that he was
23 available at -- for the last hearing, although that
24 did get continued. I don't know that there's
25 anything else to say, although -- except for that

Hearing

1 we just can't have him here today. And, you know,
2 with the late notice and everything, it just didn't
3 seem reasonable to have to drop everything to try
4 to make that happen.

5 SPECIAL REFEREE REEVES: Is there any type of agreement
6 from the last hearing or hearings that -- that
7 subpoenas issued before would be continuing to --
8 to subsequent hearings?

9 MS. WALLACE: Not that I recall, Your Honor.

10 SPECIAL REFEREE REEVES: Ms. Collins?

11 MS. COLLINS: No, Your Honor. No such agreement was
12 made because it was judicially granted so that's
13 kind of . . .

14 SPECIAL REFEREE REEVES: Okay. All right. I'm going to
15 -- I'm glad that Ms. Dukes is here. Thank you very
16 much, ma'am, for -- for being with us, and I'm
17 going to -- to quash as far as Mr. -- Mr. Rainey
18 goes. Okay. All right.

19 MS. WALLACE: Thank you.

20 SPECIAL REFEREE REEVES: Ms. Collins, we also have a
21 motion to -- for you to be relieved of counsel. Is
22 that correct?

23 MS. COLLINS: Yes, Your Honor.

24 SPECIAL REFEREE REEVES: Is that still pending --

25 MS. COLLINS: It is still pending. Definitely.

Hearing

1 SPECIAL REFEREE REEVES: -- at this point in time?

2 MS COLLINS: Yes, Your Honor.

3 Okay. All right. Let me -- let me hear you on that
4 then, please, ma'am.

5 MOTION TO RELIEVE

6 MS. COLLINS: Well, Your Honor, the -- the motion
7 indicates specifically that it was beyond just your
8 retainer-agreement issue and pursuant to Rule 11 --
9 rule -- the rules of professional conduct. I feel
10 I need to be relieved as counsel. And so that is
11 why my motion is now pending. I would illustrate
12 that the return to the motion doesn't necessarily
13 indicate objection to my being relieved; it just
14 indicates that they needed additional time. And
15 also because of Mr. Hoffman's health, which is
16 poor, that they needed some assistance with this
17 trial in the case.

18 SPECIAL REFEREE REEVES: Okay. Thank you. Before I
19 hear from Mr. Hoffman, Ms. Wallace, what -- what is
20 the plaintiff's position on this motion to be
21 relieved?

22 MS. WALLACE: Your Honor, as far as our position on her
23 -- the motion to be relieved, we don't have a
24 strong position as to whether or not Ms. Collins
25 stays on the case. I certainly understand that

1 situations arise when attorneys need to be relieved
2 as counsel. Our concern is any delay in the case
3 due to whether or not Mr. Hoffman can represent
4 himself in this matter. I assume since he's here
5 and since this is going forward that he can since
6 he hasn't retained other counsel. We do have
7 concerns with -- to the -- I guess maybe I'm
8 anticipating a little bit -- but to the extent that
9 they're -- Mr. Hoffman's sons are -- attempt to
10 engage in any unauthorized practice of law. I can
11 understand some help in passing out papers and --
12 and kind of secretarial-type --

13 SPECIAL REFEREE REEVES: Right.

14 MS. WALLACE: -- duties, but we would have objection to,
15 you know, hearsay objections and unauthorized-
16 practice-of-law objections, but other than that,
17 you know, I certainly don't want to impose myself
18 to force Ms. Collins to -- to represent Mr.
19 Hoffman.

20 SPECIAL REFEREE REEVES: Sure. I understand. Mr.
21 Hoffman -- Shelton Hoffman, I am -- you can stay
22 seated. You don't need to stand. Thank you very
23 much. I'm Jimmy Reeves. I'm a special referee, a
24 special judge, that's been appointed to -- to rule
25 on this case. Your attorney, Ms. Collins, has

1 filed a motion to be relieved of counsel. And she
2 has filed that motion not only based on possibly a
3 fee-retainer situation but also she has filed a
4 motion based on our rules of professional conduct
5 as an attorney. Okay. And I believe in the file
6 that you filed an objection to her being relieved
7 of counsel. Do you still object to her being
8 relieved as your -- as your counsel?

9 MR. SHELTON HOFFMAN: No, sir.

10 SPECIAL REFEREE REEVES: You do not object?

11 MR. HOFFMAN: No, sir.

12 SPECIAL REFEREE REEVES: Okay. Very good. Now, let me

13 -- let me make sure that you understand as well.

14 Now, I understand that your son, Mr. Ronnie

15 Hoffman, is sitting --

16 MR. RONNIE HOFFMAN: Yes, sir.

17 SPECIAL REFEREE REEVES: -- seated next to you. Now,

18 under our rules and under the laws of the State of

19 South Carolina, my understanding, Mr. Ronnie

20 Hoffman, you are -- you are not a licensed South

21 Carolina attorney; is that correct?

22 MR. RONNIE HOFFMAN: No, sir. Just --

23 SPECIAL REFEREE REEVES: Okay.

24 MR. RONNIE HOFFMAN: Just acting as POA for him --

25 SPECIAL REFEREE REEVES: Okay.

1 MR. RONNIE HOFFMAN: -- as I -- to --

2 SPECIAL REFEREE REEVES: All right.

3 MR. RONNIE HOFFMAN: -- to -- and to make sure he

4 understands what's going on. I would like to make
5 sure that he understands about the objection.

6 SPECIAL REFEREE REEVES: Sure. And -- and I -- what --

7 Mr. Hoffman, your son, Ronnie Hoffman, is not going
8 to be allowed to be able to speak on your behalf.

9 Okay. You're going to have to answer questions and
10 do -- and do things yourself unless you have a
11 South Carolina attorney here who -- which I do not
12 believe that you have. Now, your son can certainly
13 assist you at the table. You can certainly talk
14 with him. He can help you with some papers and
15 things of that nature, but you're going to have to
16 represent yourself unless you have another attorney
17 here. Do you understand that?

18 MR. SHELTON HOFFMAN: Yes, sir.

19 SPECIAL REFEREE REEVES: Okay.

20 MR. SHELTON HOFFMAN: I couldn't -- I couldn't get
21 another attorney --

22 SPECIAL REFEREE REEVES: I understand.

23 MR. SHELTON HOFFMAN: -- until Ms. Collins was relieved
24 by the court.

25 SPECIAL REFEREE REEVES: All right. And, Mr. Shelton

1 Hoffman, I'm going to allow you a few minutes if
2 you would like to -- to speak with your son, Ronnie
3 Hoffman, as far as the things that we have just
4 talked about, okay?

5 MR. RONNIE HOFFMAN: Yes, sir.

6 SPECIAL REFEREE REEVES: So, if you want to, take a few
7 minutes and to do that.

8 MR. RONNIE HOFFMAN: Thank you, sir.

9 SPECIAL REFEREE REEVES: You're welcome.

10 (Off the record briefly at
11 10:24 a.m.)

12 SPECIAL REFEREE REEVES: Okay. Mr. Shelton Hoffman, do
13 you want to say something now?

14 MR. RONNIE HOFFMAN: Your Honor, his health has really
15 deteriorated in the last six months.

16 SPECIAL REFEREE REEVES: I understand. You take your
17 time.

18 MR. SHELTON HOFFMAN: Can he tell you for me, sir?

19 SPECIAL REFEREE REEVES: No, sir. He cannot.

20 MR. SHELTON HOFFMAN: Well, can I have some time to
21 secure legal counsel?

22 SPECIAL REFEREE REEVES: No. No, sir. You're not. We
23 -- we talked about that in -- in several of the
24 orders and the status conference. We've had
25 sufficient time to do that, so no, sir, I'm -- I'm

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1 ready to proceed right now. So -- so my -- my
2 question to you right now is -- is: Do you object
3 to the relief of Ms. Collins as your counsel?
4 MR. SHELTON HOFFMAN: Well, sir --
5 MR. RONNIE HOFFMAN: Your Honor, I'm going to have to
6 speak for him. I have POA. Dad, do you have -- do
7 you give me permission to speak on your behalf?
8 MR. SHELTON HOFFMAN: Oh, yes.
9 MR. RONNIE HOFFMAN: Your Honor, we will have --
10 SPECIAL REFEREE REEVES: Mr. Ronnie Hoffman, I'm sorry.
11 I'm not --
12 MR. RONNIE HOFFMAN: -- you will have to give us
13 permission.
14 SPECIAL REFEREE REEVES: No, sir. Mr. Hoffman, I am not
15 going to allow you to speak on his behalf. It is
16 the practice --
17 MR. RONNIE HOFFMAN: Put it on the --
18 SPECIAL REFEREE REEVES: -- of law without a license,
19 which is a criminal offense.
20 MR. RONNIE HOFFMAN: Sir --
21 SPECIAL REFEREE REEVES: No, sir.
22 MR. RONNIE HOFFMAN: -- I want on the record --
23 SPECIAL REFEREE REEVES: No, sir.
24 MR. RONNIE HOFFMAN: -- you are not denying --
25 SPECIAL REFEREE REEVES: No, sir. Okay. Mr. Shelton

Hearing

1 Hoffman, are you objecting to the relief of your
2 attorney in this case?

3 MR. RONNIE HOFFMAN: Yes.

4 MR. SHELTON HOFFMAN: I have to, yes, sir.

5 SPECIAL REFEREE REEVES: Okay. He is objecting. I've
6 -- I've heard his objection, and I've heard your
7 motion. And I've also heard plaintiff's position.
8 Ms. Collins, I'm hereby relieving you of counsel in
9 this case. You -- you're more than willing to --
10 welcome to leave at this point in time, okay?

11 MS. COLLINS: Thank you, sir. Judge, I'm just going to
12 make sure I've left all the originals if you'd give
13 me just a second. I think I went through it
14 beforehand but I just want to --

15 SPECIAL REFEREE REEVES: That'll be fine.

16 MS. COLLINS: Yes, sir. Thank you.

17 SPECIAL REFEREE REEVES: Ms. Collins, if you need any --
18 do you need any further time to -- to speak with
19 him or anything of that nature? I'll be more than
20 happy to allow that.

21 MS. COLLINS: No, sir. I think I've -- I've dealt with
22 the issues on that.

23 SPECIAL REFEREE REEVES: Very good.

24 MS. COLLINS: Sir, thank you. I appreciate it.

25 SPECIAL REFEREE REEVES: Thank you, ma'am.

Hearing

1 Ms. Wallace, I'm ready to begin with the
2 underlying foreclosure case at this point in time.
3 If you would -- if you would like to give an
4 opening statement, you can. I've -- I've read the
5 pleadings and -- but if you're also willing to call
6 your first witness, I'll -- I'll be doing that as
7 well. But before you -- before you do that, Mr.
8 Shelton Hoffman, do you -- do you have something to
9 say at this point in time?

10 MR. SHELTON HOFFMAN: Yeah. Yes, sir. I would like for
11 it to be on the record that you are not allowing me
12 time to seek legal counsel after removing my
13 original counsel.

14 SPECIAL REFEREE REEVES: Thank you, sir. That -- that
15 is now on the record. Okay. Your position.

16 Ms. Wallace?

17 MS. WALLACE: Yes, Your Honor. I don't have an opening
18 statement. I know that you have read the
19 pleadings. I was going to go through the summary,
20 but if you don't think that's necessary, I can go
21 ahead and call my first witness. I have Jim Boyd
22 with SCBT that I would like to call to the stand,
23 please.

24 SPECIAL REFEREE REEVES: Very good. Mr. Boyd.

25 (The witness is sworn.)

1 SPECIAL REFEREE REEVES: Mr. Boyd, please take the
2 stand, and -- and for the court reporter and for
3 the record, if you don't mind, just please stating
4 your name, please, sir.

5 MR. BOYD: James W. Boyd.

6 (Off the record briefly at
7 10:29 a.m.)

8 SPECIAL REFEREE REEVES: Mr. Boyd, I'm sorry. Would
9 you, please, repeat your name for the record?

10 MR. BOYD: James W. Boyd.

11 SPECIAL REFEREE REEVES: Okay. Ms. Wallace.

12 THE EXAMINATION OF MR. BOYD

13 BY MS. WALLACE:

14 Q Mr. Boyd, would you -- well you just stated your
15 full name for the record, but could you please, for
16 the record, give the name of the company that you
17 work for?

18 A South Carolina Bank and Trust.

19 Q Are they now known as SCBT?

20 A SCBT.

21 Q Where is the physical location of your office?

22 A 520 Gervais Street in Columbia.

23 Q And what is your job title?

24 A I'm a senior vice president, special assets
25 division.

1 Q And what are some of your job duties as special
2 assets manager?

3 A I handle all the foreclosures, bankruptcies, and
4 litigation for accounts assigned to me.

5 Q Are you authorized to testifying on behalf of SCBT
6 today at this foreclosure hearing?

7 A Yes. Uh-huh.

8 Q In the ordinary course of business, does SCBT
9 maintain records for its mortgage loans?

10 A Yes. It does.

11 Q Does SCBT maintain records for the mortgage loan
12 which is the subject of this action?

13 A Yes.

14 Q As part of your job duties, are you familiar with
15 the records maintained by your company in
16 connection with this loan?

17 A Yes.

18 Q Do you have personal knowledge of this mortgage
19 loan based on your review of such records?

20 A Yes.

21 Q In the ordinary course of business, does SCBT
22 maintain electronic payment histories for its
23 loans?

24 A Yes.

25 Q And do these electronic payment histories record

Hearing

1 credits and charges to the loan?

2 A Yes.

3 Q Are payment histories updated at or near the time
4 that those credits and charges occur?

5 A Yes.

6 Q Does SCBT maintain an electronic payment history
7 for Mr. Hoffman's loan?

8 A Yes.

9 Q Have you reviewed the electronic payment history
10 for this loan?

11 A Yes. I have.

12 Q And have you reviewed the loan documents which are
13 the subject of this loan?

14 A Yes.

15 MS. WALLACE: At this time, Your Honor, I'd
16 like to -- with your permission, I'd like to
17 approach the witness and -- with a exhibit
18 that I'm going to ask to be admitted. And let
19 the record show that I'm also giving a copy to
20 Mr. Hoffman.

21 SPECIAL REFEREE REEVES: Thank you.

22 Plaintiff's Exhibit Number 1, Copy of
23 Note, dated 4/27/09.

24 Q Mr. Boyd, I'm handing you what we've premarked as
25 Plaintiff's Exhibit 1. Is this a copy of the note

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1 which is the subject of this action?

2 A Yes.

3 Q Do you also have the original note with you today
4 in case the court would like to examine it?

5 A Yes.

6 Q According to the note, who is the borrower?

7 A Sheldon (as spoken) L. Hoffman.

8 Q And when was the note signed?

9 A The note was signed 4/27/2009.

10 Q And who signed the note?

11 A Sheldon (as spoken) Hoffman.

12 Q And who is the lender?

13 A The lender is SCBT, NA, which was our designation
14 at the time.

15 Q And is that the plaintiff in this action?

16 A Yes.

17 Q And how is SCBT, NA connected with SCBT?

18 A We had a name change and a charter change a few
19 months ago.

20 Q Okay. Has this note been assigned to anybody else?

21 A No.

22 MS. WALLACE: At this time, Your Honor, I'd
23 like to offer the note into evidence as
24 Exhibit 1.

25 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman,

1 the plaintiff is asking that this Plaintiff's
2 Exhibit Number 1 be admitted into evidence.
3 And, again, feel free to talk with your son
4 there, but I need to know whether or not you
5 object to this exhibit coming into evidence.

6 (Sotto voce discussion between Mr.
7 Ronnie Hoffman and Mr. Shelton
8 Hoffman.)

9 MR. SHELTON HOFFMAN: No, sir.

10 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman,
11 let me make sure -- make sure I'm talking --
12 you were talking to me. Do you object to this
13 -- this -- this Plaintiff's Exhibit Number 1
14 coming into evidence, yes or no?

15 MR. SHELTON HOFFMAN: Would you -- would you
16 explain one thing for me --

17 SPECIAL REFEREE REEVES: I'll --

18 MR. SHELTON HOFFMAN: -- in just what you were
19 saying?

20 SPECIAL REFEREE REEVES: I'll do my best.

21 MR. SHELTON HOFFMAN: This that I borrowed
22 some great amount of money --

23 MR. RONNIE SHELTON: (To Mr. Shelton Hoffman)
24 \$92,568 on April the 27th of '09.

25 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman --

1 and you can certainly as part of your cross-
2 examination or part of the presentation of
3 your evidence, you can certainly dispute any
4 of the allegations, okay? So I'm not asking
5 you to agree as to whether or not you borrowed
6 any money whatsoever. I'm -- I'm -- I'm just
7 particularly asking you whether or not you
8 have any objections to this document, whether
9 you agree with it or not, Plaintiff's Exhibit
10 Number 1, coming into evidence, yes or no?

11 MR. SHELTON HOFFMAN: I can't see where it
12 would be -- you know, it's not true, but it
13 can go in, yes, sir.

14 SPECIAL REFEREE REEVES: Okay. There's --
15 it's admitted into evidence without objection,
16 Plaintiff's Exhibit Number 1.

17 MS. WALLACE: Thank you, Your Honor.

18 Q Mr. Boyd --

19 SPECIAL REFEREE REEVES: And I apologize. Let
20 me -- let me interrupt. (To Mr. Hoffman) And
21 she's more than likely going to be presenting
22 other documents such as this. Okay. And so,
23 again, the questions that I'm going to be
24 asking you is not necessarily whether or not
25 you agree with this, okay, or -- and if you

1 dispute, that's -- that's -- again, can be
2 part of your -- part of your case. It's going
3 to be more of: Is it okay -- acceptable to
4 you for this document to come into evidence?
5 Okay.

6 I'm sorry, Ms. Wallace. Go ahead.

7 MS. WALLACE: That's okay, Your Honor.

8 Q Mr. Boyd, is the note which has been marked
9 Plaintiff's Exhibit 1 in default?

10 A Yes. It is.

11 Q And why is the note in default?

12 A Failure to pay the scheduled payments.

13 Q Okay. And what was the purpose of this loan?

14 A Working capital and a debt consolidation. Combined
15 two of our notes.

16 Q And what was the original amount of the loan?

17 A On this \$92,568.

18 Q And is this a commercial loan?

19 A Yes. It is.

20 Q And is this note secure?

21 A Yes.

22 Q And what is -- what secures this note?

23 A Real estate mortgage from 10/21 of 2003 and a
24 security agreement from 11/13/2008.

25 Q And is that indicated on the note itself?

1 A Yes. It is. Uh-huh.

2 Q And is the mortgage referenced in the note the
3 mortgage being foreclosed today?

4 A Yes.

5 MS. WALLACE: Your Honor, at this time I'd
6 like to give the witness what we are intending
7 to offer into evidence as Plaintiff's
8 Exhibit 2.

9 SPECIAL REFEREE REEVES: Yes, ma'am.

10 MS. WALLACE: And let the record show that I'm
11 also providing a copy to Mr. Hoffman.

12 Plaintiff's Exhibit Number 2, Copy of
13 real estate mortgage, dated 10/21/03.

14 SPECIAL REFEREE REEVES: Do you -- do you want
15 to give that one to me?

16 MS. WALLACE: It --

17 SPECIAL REFEREE REEVES: Oh, it's -- very
18 good.

19 MS. WALLACE: Yes, sir.

20 Q Mr. Boyd, can you identify the document that I've
21 just handed you as Plaintiff's Exhibit 2?

22 A Yes. It's a real estate mortgage.

23 Q And is this the mortgage referenced in the note?

24 A Yes. It is.

25 Q And do you have the original mortgage with you

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1 today in case the court would like to examine it?

2 A Yes. I believe it's in your files there.

3 Q Yes, sir. And what is the date of this mortgage?

4 A 10/21/2003.

5 Q And can you determine when the mortgage was
6 recorded?

7 A October 21st, the same day.

8 Q Okay. And does this mortgage constitute a first-
9 mortgage lien on Lots 22 and 23 in Eldorado
10 Subdivision?

11 A Yes..

12 Q And does it constitute a first-mortgage lien on the
13 55 acres in Elizabeth Township?

14 A Yes. It does.

15 Q And who signed this mortgage?

16 A Sheldon (as spoken) Hoffman.

17 Q Okay. Does -- is there an a/k/a as well?

18 A Yes. It's a/k/a Sheldon -- Shelton L. Hoffman.

19 Q And who was the mortgagee?

20 A South Carolina Bank and Trust, NA.

21 Q And what is SCBT's relation to the South Carolina
22 Bank and Trust, NA?

23 A Same institution just different name.

24 MS. WALLACE: At this time, Your Honor, I'd
25 like to offer the mortgage into evidence as

1 Plaintiff's Exhibit 2.

2 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman,
3 same question that I went through before with
4 you with the note. Now the plaintiff is
5 asking that this Plaintiff's Exhibit Number 2,
6 a copy of the mortgage, be admitted into
7 evidence. Again, I'm not asking you to --
8 whether or not you dispute that or whether or
9 not you agree with it. I'm just asking you
10 whether or not you have objections to this
11 piece of paper coming into evidence.

12 MR. SHELTON HOFFMAN: No, sir.

13 SPECIAL REFEREE REEVES: Okay. For the
14 record, he -- he is indicating he does not
15 have any objections, so Plaintiff's Exhibit
16 Number 2 and Plaintiff's Exhibit Number 1 are
17 admitted into evidence without objection.

18 MS. WALLACE: Thank you, Your Honor.

19 Q Mr. Boyd, I'd like to draw your attention to
20 Paragraph 4 of the mortgage.

21 A Uh-huh.

22 Q Can you explain to the court the relevancy of that
23 paragraph?

24 A Yes. That's where the debt is defined and also
25 covers future advances from the lender to the.

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1 mortgagor.

2 Q Based on your review of the loan file, at any time
3 did Mr. Hoffman request that this mortgage be
4 satisfied or canceled?

5 A No.

6 Q So the plaintiff is the current owner of the note
7 and mortgage provided to you as Plaintiff's
8 Exhibit 1 and 2; is that correct?

9 A That's correct.

10 Q Does the mortgage provide who will pay attorney's
11 fees in the event of a default?

12 A Yes. It does.

13 Q And -- and who will pay those?

14 A It's the mortgage signer.

15 Q And I should've asked you this with Exhibit 1, but
16 I believe it's still in front of you. Does the
17 note also provide who will pay attorney's fees --

18 A Yes.

19 Q -- in the event there's a default?

20 A It's the borrower.

21 Q Next I'd like to provide you with another document,
22 which I am also giving a copy to Mr. Hoffman.

23 SPECIAL REFEREE REEVES: Thank you.

24 MS. WALLACE: I'm going to request that this
25 be Plaintiff's Exhibit 3.

Hearing

1 Plaintiff's Exhibit Number 3, Commercial
2 Security Agreement, dated 11/13/08.

3 Q Mr. Boyd, can you identify Plaintiff's Exhibit 3
4 for the record?

5 A Yes. This was a commercial security agreement that
6 was signed by Mr. Hoffman pledging collateral to
7 the bank.

8 Q Can you read into the record the specific equipment
9 covered in the security agreement?

10 A Yes. It was a link belt excavator, with the serial
11 number; a 1979 international truck, also listed
12 with the serial number; a dump wagon; and a 1994
13 Landoll 30-ton Lowboy.

14 Q And I should've asked you this before, but what is
15 the date of the security agreement?

16 A November 13th, 2008.

17 Q And is this the same security agreement identified
18 in the note previously marked as Exhibit 1?

19 A Yes. It is.

20 Q And who is listed as the debtor?

21 A Shelton Hoffman.

22 Q And who signed the security agreement?

23 A Shelton Hoffman.

24 Q And who is listed as the secured party?

25 A SCBT, NA.

1 Q And this is also the plaintiff in the action,
2 correct?

3 A That's correct.

4 Q And what debt does this security agreement secure?

5 A Now, the debt of the note that you listed as
6 Exhibit 1.

7 Q Thank you. Was a UCC-1 filed?

8 A Yes. It was.

9 Q Is SCBT seeking a claim and delivery action --

10 A Yes.

11 Q -- at this time?

12 A Yes. It is.

13 Q Are they seeking delivery of the equipment in this
14 action?

15 A No. No. Only after we are able to see if there's
16 a deficiency.

17 MS. WALLACE: At this time, Your Honor, I
18 don't think I offered Plaintiff's Exhibit 3
19 into evidence.

20 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman,
21 same situation. Same question again with this
22 Plaintiff's Exhibit Number 3. Do you object
23 to this being admitted into evidence?

24 MR. SHELTON HOFFMAN: Without proper counsel,
25 sir, I -- I don't know what else to do, but --

Hearing

1 SPECIAL REFEREE REEVES: Okay.

2 MR. SHELTON HOFFMAN: -- no. I don't object.

3 SPECIAL REFEREE REEVES: Okay. Very good.

4 Without objection, please.

5 MR. SHELTON HOFFMAN: (To Mr. Ronnie Hoffman)

6 I don't know what to do. Object. Is that

7 what I'm supposed to do?

8 SPECIAL REFEREE REEVES: Go ahead, Ms.

9 Wallace.

10 MS. WALLACE: Okay.

11 Q Mr. Boyd, have you had the chance to review the

12 payment history on this loan?

13 A Yes. I did.

14 Q And did you prepare any notes to help you with the

15 judgment figures for today?

16 A Yes.

17 MS. WALLACE: Your Honor, may I hand him his

18 note so that he --

19 SPECIAL REFEREE REEVES: Sure.

20 MS. WALLACE: (To Mr. Boyd) Is this it?

21 MR. BOYD: Just in that folder there.

22 MS. WALLACE: This folder?

23 MR. BOYD: Yeah. Thank you.

24 Q At some point, did the -- did Mr. Hoffman fall

25 behind in his monthly payments?

1 A Yes. He did.

2 Q Do you recall when that was?

3 A I didn't put that down on here.

4 Q I have the payment history if --

5 A Yeah. That would be --

6 Q -- if you would like that.

7 A That would do it.

8 MS. WALLACE: And, Your Honor, I -- I can --

9 I'll give a copy of this as well to Mr.

10 Hoffman. I don't know if we need to have this

11 admitted into evidence, but . . .

12 Q Is that the payment history that you provided our
13 office?

14 A Yes. It is. And the last time he made a payment
15 was June 13th, 2011.

16 Q Was Mr. Hoffman notified of the default?

17 A Yes. He was.

18 MS. WALLACE: May I approach, Your Honor?

19 SPECIAL REFEREE REEVES: Yes. You may.

20 MS. WALLACE: Let the record show that I'm
21 giving Mr. Hoffman copies of two documents.

22 Plaintiff's Exhibit Number 4, Copy of
23 Right to Cure, dated 8/16/11.

24 Plaintiff's Exhibit Number 5, Letter
25 demanding balance to Mr. Hoffman, dated

1 10/25/11.

2 SPECIAL REFEREE REEVES: Thank you.

3 Q I'm handing you what we've just marked as
4 Plaintiff's Exhibits 4 and 5. Can you identify
5 Exhibit 4 for the record, please?

6 A Yes. It's a default. It's a right-to-cure letter
7 that we use to notify people they're in default
8 giving the opportunity to make payment.

9 Q And what collateral does it indicate is secured by
10 the loan that's in default?

11 A 3897 North Road in Orangeburg, a 1979 International
12 Dump Truck, 1991 Link Belt Excavator, a 1994
13 Landoll 30-ton Lowboy, and 55 acres of land.

14 Q And is that consistent with the security agreement
15 and mortgage that we've already looked at today?

16 A Yes. It does.

17 Q And what about Plaintiff's Exhibit 5? Could you
18 identify that for the record?

19 A Yes. That was a default notice that the -- hadn't
20 made -- final demand for balance actually.

21 Q At this time I'd like to offer the -- you can't
22 really see that. Oh, at the bottom of -- I'm
23 sorry. For the record, Mr. Boyd, could you,
24 please, provide the date of Plaintiff's Exhibit 4?

25 A The postmark was 8/16/11. That copy happened to be

1 right over the date of the -- of the notice, but
2 typically it's mailed the same day it's generated.

3 Q I believe there's a date at the bottom, too; is
4 that correct?

5 A Oh, yes. I'm sorry. Yeah. Sure is.

6 MS. WALLACE: At this time, Your Honor, I'd
7 like to offer the August 16th, '11 right-to-
8 cure letter into evidence as Plaintiff's
9 Exhibit 4.

10 SPECIAL REFEREE REEVES: Any objections to
11 Plaintiff's Exhibit Number 4 coming into
12 evidence, Mr. Hoffman?

13 MR. SHELTON HOFFMAN: Without counsel, yes,
14 sir, I do.

15 SPECIAL REFEREE REEVES: You do object to
16 Plaintiff's Exhibit Number 4. What -- what is
17 the basis of your objection, Mr. Hoffman?

18 MR. SHELTON HOFFMAN: I do not understand it
19 as an attorney.

20 SPECIAL REFEREE REEVES: Okay. Ms. Wallace,
21 I'll admit Plaintiff's Exhibit Number 4 into
22 evidence.

23 MS. WALLACE: Okay. Thank you, Your Honor.

24 Q And at this time, I'd also -- well, Mr. Boyd, would
25 you please identify the date on what I've shown you

1 as Plaintiff's Exhibit 5?

2 A Yeah. It's October 25th, 2011.

3 MS. WALLACE: At this time, Your Honor, I'd
4 also like to admit Plaintiff's Exhibit 5 into
5 evidence.

6 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman,
7 same question. Is that going to be your
8 continuing objection to -- to these documents
9 that -- that you don't have counsel? Is that
10 your objection?

11 MR. SHELTON HOFFMAN: Yes, sir. You are --
12 you are denying me legal counsel in this.

13 SPECIAL REFEREE REEVES: Okay. I'm -- I'm
14 going to disagree with you there, but I'm
15 going to go ahead and admit Plaintiff's
16 Exhibit Number 5.

17 MS. WALLACE: Thank you, Your Honor.

18 Q Mr. Boyd, was payment received on this loan after
19 either one of these letters were sent?

20 A No.

21 Q Does SCBT participate in the HAMP loan modification
22 program?

23 A No.

24 Q To your knowledge, does the HAMP loan modification
25 program apply in commercial transactions?

1 A No. It does not.

2 Q And for the record, was this a consumer loan?

3 A No. It was a commercial loan.

4 Q So, Mr. Boyd, did the borrower default under the
5 terms of the note and mortgage?

6 A Yes. He did.

7 Q Does the borrower owe certain sums of money to the
8 plaintiff?

9 A Yes.

10 Q And have you reviewed the records of SCBT to
11 determine the amount that's owed?

12 A Yes.

13 Q And I believe you have a summary of the charges
14 that are owed to date.

15 A Yes. The --

16 Q Go ahead.

17 A The total amount -- the total amount is one hundred
18 thirty-six dollars -- four hundred forty-one point
19 forty-three.

20 Q So that's \$136,441 --

21 A -- 6,441.43.

22 Q And does that include all the attorney's fees and
23 cost, which SCBT has --

24 A -- has incurred thus far, yes.

25 Q But may not include attorney's fees that SCBT --

Hearing

1 A That's right.

2 Q -- hasn't received bills on or paid?

3 A That's right. Just what we've paid to date.

4 Q Do you request that the court consider an affidavit
5 of attorney's fees regarding all the attorney's
6 fees and costs --

7 A Yes.

8 Q -- to date?

9 And just for the record, I'd like for you to
10 break the total amount due down some. For example,
11 what is the principal amount due at this time?

12 A Principal is 81,858.19.

13 Q And what is the interest due?

14 A The interest due today is 9,838.45.

15 Q And what about the late fees?

16 A Late fees \$540.18.

17 Q And what about -- do you have any escrow advances?

18 A No.

19 Q Okay. There was -- back in June, I know you
20 weren't in the hearings with Ms. Collins and I, but
21 at that time, I believe, you were informed that we
22 stipulated if Mr. Hoffman provided us with proof of
23 insurance during the times that there was forced-
24 placed insurance that SCBT would credit his
25 account. Do you recall that?

1 A Yes.

2 Q Okay. One thing, you have -- just for the record,
3 I'd like to get in the interest rate that's --
4 that's accruing. Do you have that on Plaintiff's
5 Exhibit 1?

6 A Seven percent.

7 Q And that's a fixed interest rate, correct?

8 A Yes.

9 Q And in your notes, do you have what the per diem is
10 for interest?

11 A \$15.92.

12 Q And does SCBT demand a deficiency judgment against
13 Mr. Hoffman should the properties not sell --

14 A Yes.

15 Q -- in an amount to pay the loans?

16 MS. WALLACE: At -- at this time, Your Honor,
17 I have nothing else for this witness. Mr.
18 Boyd, please answer any questions Mr. Hoffman
19 may have.

20 SPECIAL REFEREE REEVES: Real quickly there
21 before Mr. Hoffman -- Mr. Boyd, tell me,
22 again, the -- the principal amount. I'm
23 sorry. I just didn't catch that.

24 MR. BOYD: \$81,858.19.

25 SPECIAL REFEREE REEVES: -- 19. Thank you.

1. Okay. Mr. Hoffman, she's asked questions
2 of this particular witness, and now you have
3 an opportunity to ask him any questions that
4 -- that you may -- may have. This is not a
5 time to make a statement. That -- that will
6 come later, and you can say to the court
7 whatever you need to -- feel you need to say.
8 Right now this is just answering -- asking
9 questions for this particular witness. So if
10 you have any questions, feel free to ask him
11 at this point in time. Do you have any
12 questions?

13 MR. SHELTON HOFFMAN: Sir, I repeat again, for
14 the records, that I am being denied due
15 process without legal counsel.

16 SPECIAL REFEREE REEVES: Okay. Do you have
17 any questions for Mr. Boyd?

18 MR. SHELTON HOFFMAN: No, sir.

19 SPECIAL REFEREE REEVES: Okay. If Mr. Hoffman
20 doesn't have any questions, Ms. Wallace, are
21 you finished with this witness?

22 MS. WALLACE: Yes, Your Honor.

23 SPECIAL REFEREE REEVES: Okay. Mr. Boyd, thank you very
24 much.

25 MR. BOYD: Thank you.

1 SPECIAL REFEREE REEVES: Is this witness excused to
2 leave? Do you need anything else further from him?

3 MS. WALLACE: Well, I'd like for him to --

4 SPECIAL REFEREE REEVES: He's going to stay.

5 MS. WALLACE: -- to stay. He's --

6 SPECIAL REFEREE REEVES: Okay. Very good.

7 MS. WALLACE: At this time, Your Honor, I'd like to
8 offer our attorney fee affidavit into evidence for
9 consideration. I do have a draft judgment package
10 if you would like to see it. Some of the -- like
11 the waiving of the forced-placed insurance at this
12 time wasn't taken off of there, so I don't know if
13 you want to see the draft of it now.

14 SPECIAL REFEREE REEVES: Let's just --

15 MS. WALLACE: Or --

16 SPECIAL REFEREE REEVES: Let's just wait until you --

17 MS. WALLACE: Okay.

18 SPECIAL REFEREE REEVES: -- until you make whatever
19 adjustments you need to make.

20 MS. WALLACE: And please let the record show I'm also
21 giving a copy of the affidavit of attorney's fees
22 to Mr. Hoffman. And, I guess, let's have this
23 marked as Plaintiff Exhibit 6, I believe.

24 SPECIAL REFEREE REEVES: Yes.

25 Plaintiff's Exhibit Number 6, Affidavit

1 of Attorney's Fees.

2 MS. WALLACE: And attached is a breakdown of the fees
3 and costs.

4 SPECIAL REFEREE REEVES: Thank you.

5 MS. WALLACE: Also, Your Honor, one thing the plaintiff
6 would also like to stipulate to is: After -- at
7 some -- a few months ago, Ms. Collins had brought
8 to our attention that there was a portion of the 55
9 acre -- acres that had been deeded out prior to the
10 mortgage. About 1.35 acres was deeded to Mr. Alan
11 Hoffman. And that's pursuant to a deed dated
12 October 1st, 1996 and recorded in Deed Book 634,
13 Page 1031. I do have a copy of that deed as well.
14 The plaintiff is stipulating to less and except
15 that portion of the property from the 55.5 acres.

16 SPECIAL REFEREE REEVES: Is that property -- is that
17 part of the property description that is -- is in
18 your complaint?

19 MS. WALLACE: Yes. It's included in the big 55 acres,
20 and we received a copy of the deed from Ms. Collins
21 a few months ago, and so we've agreed that we will
22 not seek a judgment covering that property.

23 SPECIAL REFEREE REEVES: Very good. So that -- that
24 property had been deeded out prior to this
25 mortgage?

1 MS. WALLACE: Yes, sir.

2 SPECIAL REFEREE REEVES: Okay. Very good. And you're
3 -- you're going to make that adjustment?

4 MS. WALLACE: Yes, sir. And that's in my proposed
5 judgment package. And I do have the deed. Would
6 it be cleaner if we submitted the deed into the
7 record?

8 SPECIAL REFEREE REEVES: You certainly can. That would
9 be -- that would be fine.

10 Plaintiff's Exhibit Number 7, Copy of
11 Deed, dated 10/1/1996.

12 MS. WALLACE: Just want to make sure that there's no
13 title issues later on.

14 SPECIAL REFEREE REEVES: Mr. Hoffman, what she is saying
15 is that the plaintiff is stipulating that prior to
16 the mortgage -- and, again, I'm not -- I realize
17 you may be disputing that you signed the mortgage.
18 Okay. But what they're stipulating is: Prior to
19 that mortgage, there was a portion of this property
20 that had been conveyed out to another individual,
21 so what they are stipulating to is -- is that their
22 mortgage foreclosure action is not applying to that
23 prior conveyance out. Okay. And what she is
24 handing to me -- Ms. Wallace, and please correct me
25 if I'm wrong -- is that what you have marked here

1 as Plaintiff's Exhibit Number 7 appears to be a
2 deed from Shelton Hoffman to Alan Hoffman for a
3 smaller parcel that came out of the property that
4 -- that your client is attempting to foreclose on;
5 is that correct?

6 MS. WALLACE: That is correct, Your Honor. We were not
7 aware of it until into the case. And we agree with
8 Ms. Collins that we would less and except that.

9 SPECIAL REFEREE REEVES: Okay. Very good.

10 MS. WALLACE: The -- with that, the plaintiff rest, Your
11 Honor.

12 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman, the
13 plaintiff has now rested with calling this one
14 witness and these documents that they have
15 submitted. You have an opportunity at this point
16 in time to call your own witnesses and ask them
17 questions, or you also have the opportunity to give
18 testimony yourself. All right. And this would be
19 sworn testimony. Do you -- or would you like to
20 call witnesses, or would you like to testify
21 yourself?

22 MR. SHELTON HOFFMAN: Without legal counsel, I have
23 nothing to say.

24 SPECIAL REFEREE REEVES: Okay.

25 MR. SHELTON HOFFMAN: You have denied me my rights, and

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1 I -- by excusing my legal counsel and not giving me
2 time to secure another one. One attorney doesn't
3 take the job, then another attorney has it.

4 SPECIAL REFEREE REEVES: Okay.

5 MR. SHELTON HOFFMAN: And that's --

6 SPECIAL REFEREE REEVES: So my --

7 MR. SHELTON HOFFMAN: That's the whole story right
8 there, sir.

9 SPECIAL REFEREE REEVES: Okay. So my -- my --

10 MR. SHELTON HOFFMAN: That's it right there.

11 SPECIAL REFEREE REEVES: My understanding is you're not
12 calling any witnesses, correct?

13 MR. SHELTON HOFFMAN: No. I'm not.

14 SPECIAL REFEREE REEVES: Okay. All right. Ms. Wallace,
15 do you have a -- a closing statement to make?

16 MS. WALLACE: No, Your Honor. I believe plaintiff has
17 proven its foreclosure action. We request
18 foreclosure of the property as set forth in the
19 mortgage less and except the property described in
20 the deed to Alan Hoffman. And we request a
21 foreclosure judgment in the total amount of the
22 numbers that Mr. Boyd entered, which was
23 \$136,441.43 plus the unpaid attorney's fees which
24 are shown in the attorney fee affidavit that I've
25 provided to you and don't have -- because I have to

Hearing

1 subtract out some of the other numbers, I don't --
2 I can't tell you exactly what that number is right
3 now. But it's -- it's going to be less than
4 152,000. And we request a foreclosure sale date at
5 the next available sales date -- which what is
6 today? February. So I believe that will be April.
7 And -- and we are demanding a deficiency judgment,
8 Your Honor.

9 SPECIAL REFEREE REEVES: Okay. Mr. Hoffman, what --
10 what is your address, please, sir? What is your
11 address?

12 MR. SHELTON HOFFMAN: 2950 Redmond Mill Road, North, SC
13 29112.

14 SPECIAL REFEREE REEVES: Do you have -- do you have
15 e-mail?

16 MR. SHELTON HOFFMAN: No, sir.

17 SPECIAL REFEREE REEVES: No, sir. Okay. Mr. Ronnie
18 Hoffman, I -- also I'm showing an address of 225
19 Lightning Hill Road. Is that your address?

20 MR. RONNIE HOFFMAN: Yes, sir.

21 SPECIAL REFEREE REEVES: And, Mr. Ronnie Hoffman, I've
22 got e-mail addresses of -- well, let me just -- do
23 you have e-mail address?

24 MR. RONNIE HOFFMAN: Yes, sir.

25 SPECIAL REFEREE REEVES: What -- what is that address,

1 please, sir?

2 MR. RONNIE HOFFMAN: G -- Golf Oscar Oscar Delta 2 Golf
3 Oscar Romeo Hotel at aol.com.

4 SPECIAL REFEREE REEVES: Okay. Very good. Thank you.

5 All right. Mr. Shelton Hoffman, at this point in
6 time, the -- the plaintiff has rested, and it
7 sounds like you have also rested. I'm going to
8 give you at this point in time -- today is February
9 the 12th. I'm going to give you ten days in which
10 to file with the court and send to me any
11 memorandum, documents, anything that you would like
12 for this court to you consider. Okay. I'm going
13 to give that opportunity to you, and then I'm also
14 going to then review the various papers and the
15 pleadings here. And then I will make my decision.

16 Now, Ms. Wallace, you also, during that ten-
17 day period of time, can present to you the court
18 anything that you would like to present. Now, if
19 you have a proposed order or a judgment package, I
20 would like for you to present that to me within a
21 period of -- of ten days, which would be the 22nd
22 of February by -- that's a Friday -- by 5 p.m.

23 Okay. Now --

24 MS. WALLACE: Yes, sir.

25 SPECIAL REFEREE REEVES: -- the -- as far as -- Mr.

1 Shelton Hoffman, if you have a memorandum, anything
2 of that nature, my -- what I'm going to instruct
3 you to do is not only send it to me -- my office is
4 in Summerville -- but also file it with the clerk's
5 office here so it becomes an official part of the
6 record -- okay -- of the court record.

7 Now, Ms. Wallace, as far as if you have a
8 proposed order, obviously, you do not need to send
9 that to the clerk's office for filing. You can
10 send it to me along with a copy directly to Mr.
11 Hoffman. And that's the reason I wanted him to put
12 his address so we would make sure that we're
13 sending things to -- to the correct place, okay?

14 MS. WALLACE: Is that the 2950 Redmond Mill Road in --

15 SPECIAL REFEREE REEVES: That's in --

16 MS. WALLACE: I didn't get the rest of it.

17 SPECIAL REFEREE REEVES: Yeah. That's correct. 2950

18 Redmond Mill Road. And that's in the town of

19 North, South Carolina 29112. (To Mr. Shelton

20 Hoffman) Did I say I correctly?

21 MR. SHELTON HOFFMAN: Yes, sir.

22 SPECIAL REFEREE REEVES: Okay. Now, Mr. Shelton Hoffman

23 -- and, again, my understanding -- what -- what

24 people have told me is that you have some vision

25 problems. Am I correct there?

1 MR. SHELTON HOFFMAN: Yes, sir.

2 SPECIAL REFEREE REEVES: Okay. I'm also, even though
3 he's not an attorney -- I do not believe this would
4 be the unauthorized practice of law -- I would like
5 for you to -- anything that you e-mail to me, I
6 would also like for you to e-mail to Mr. Ronnie
7 Hoffman, okay --

8 MS. WALLACE: Okay.

9 SPECIAL REFEREE REEVES: --not for Mr. Ronnie Hoffman to
10 respond to individually but, frankly, as a -- as a
11 method of trying to get documents to him as -- as
12 quickly as possible, okay?

13 MS. WALLACE: Yes, sir.

14 SPECIAL REFEREE REEVES: All right.

15 MS. WALLACE: Could you give me that e-mail address one
16 more time? I didn't --

17 SPECIAL REFEREE REEVES: Sure. It is --

18 MS. WALLACE: I don't follow military speak.

19 SPECIAL REFEREE REEVES: That's all right. It is Good,
20 G-o-o-d, the Number 2, then g-o-r-h@aol.com. Mr.
21 Ronnie Hoffman, did I say that correctly?

22 MR. RONNIE HOFFMAN: Yes, sir. You did.

23 SPECIAL REFEREE REEVES: Okay. All right.

24 MS. WALLACE: Thank you, sir.

25 SPECIAL REFEREE REEVES: So if you can do that, that

1 will hopefully expedite things. Now, Mr. Shelton
2 Hoffman, the -- one of the things that the
3 plaintiff's attorney is going to be sending to me
4 is a proposed judgment -- a proposed order. And
5 this is very common in our legal system with
6 special judges like myself and also with -- with
7 judges who are on a full-time basis. What we will
8 do is: We will, frankly, put the burden on the
9 attorney to actually prepare an order for my
10 signature, okay? Now, just because she sends this
11 to me doesn't mean that I'm going to sign it just
12 because she sent it. She can send it to me. I can
13 then make adjustments to it and that type of thing.
14 Now, I'm asking her to also send that to you so
15 that as you read through there, if you have
16 comments, if you have objections, then -- then you
17 -- then you certainly can do that.

18 I'm also not limiting you, Mr. Hoffman, to one
19 filing. If you would like to file something
20 immediately or today, that's fine. And then once
21 she presents something, if you want to send
22 something to me as well, then -- then you can do
23 that. Okay. But I'd like to have that in, in the
24 next ten days, which would be next Friday, okay?

25 MS. WALLACE: Yes, sir.

1 SPECIAL REFEREE REEVES: You understand? Very good.

2 MS. WALLACE: Yes, sir.

3 SPECIAL REFEREE REEVES: All right. Ladies and
4 gentlemen, thank you very much. I appreciate your
5 -- appreciate your time.

6 (Whereupon, the proceeding in the
7 above-entitled matter was concluded
8 at 11:06 a.m.)

9 (*This transcript may contain quoted material.
10 Such material is reproduced as read or quoted
11 by the speaker.)

12 (**Certificate accompanies sealed original
13 only.)

MEMORANDUM OF FACTS
SURROUNDING CASE NUMBER: 12-CP-38-0030
ORANGEBURG COUNTY, SOUTH CAROLINA

This memorandum is issued in response to the request by Judge James Reeves, issued after a hearing on February 12, 2013. Defendant Shelton Hoffman responds as follows. Note; Defendant Hoffman has requested transcripts of the hearing held on February 12, 2013 and they will not be available until sometime after the 10-day deadline issued by the Judge for this memorandum. Defendant Hoffman is at a distinct disadvantage as many of the issues presented below depend on the hearing transcripts for corroboration. Judge Reeves has also indicated he will not consider a continuance, so the report of Defendant Hoffman is done to the best of his ability, based on his memory, and the memory of several witnesses, of the testimony given at the hearing.

A brief timeline of this case is:

On or about January 16, 2012: Defendant Hoffman was served with foreclosure complaint to foreclose on property referenced in a mortgage recorded in Orangeburg County on October 21, 2003 in Mortgage Book 1394 at Page 239. The original mortgage was in the name of South Carolina Bank and Trust, N.A., that later changed its name to SCBT, N.A.

February 10, 2012: An answer was filed with the court indicating that the mortgage had been retired by way of a bonded promissory note tendered earlier.

May 3, 2012: After receiving a hearing notice for May 8, 2012, a Motion to Cancel Hearing and Motion to Dismiss Foreclosure and All Related Actions was filed, indicating the failure of Plaintiff to prove their standing and that they had been damaged in any way, and to prove that the mortgage had not been paid off by the bonded promissory note. The hearing was scheduled as originally planned.

ATTEST: TRUE COPY
Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

May 3, 2012: A Motion to Add Representation by Attorney in Fact was filed, indicating medical issues preventing Defendant Hoffman from stressful situations.

On or about May 5, 2012: Defendant Hoffman, with assistance from his son, Ronnie Hoffman, learned that the bank was attempting to foreclose on property that was not included in the 2003 note described in the foreclosure complaint. This was a tract of 55 acres that was never a part of the original mortgage transaction, yet the bank was trying to claim this as a part of the property they sought to foreclose upon.

May 08, 2012: Teri Stomski, an attorney with Rogers, Townsend & Thomas (RT&T), counsel for the plaintiff, brought the October 21, 2003 mortgage including the Note in the sum of \$ 100,660.00, to the Orangeburg Courthouse for a foreclosure hearing. Ronnie Hoffman, P.O.A. for Shelton Hoffman, noticed that at least two pages of the document appeared to be photo copies. The Judge offered Mr. Hoffman time to seek legal counsel and to have a documents examiner, examine the documents. Defendant Hoffman was unable to attend due to medical issues.

May 29, 2012: Mr. Hoffman hired Meg Collins of Collins & Burkett to represent him in this matter. Ms. Collins was informed that at least one of the documents (the note) appeared to be a photo copy. Mr. Hoffman told her that he would need to have a documents expert examine the original "wet ink" documents and to depose the bank officers to determine if SCBT was, in fact, the holder in due course. Ms. Collins prepared a Power of Attorney for Defendant's son, Ronnie Hoffman, to assist his father in his case and at hearings since his father has medical issues.

May 31, 2012: Ms. Collins filed her Notice of Appearance in the case.

June 14, 2012: Notice of Depositions was filed. In phone calls on or around this date, Ms. Collins had discussions with Teri Stomski. In these discussions, in what appeared to be a

negotiation, Ms. Stomski asked Ms. Collins if Mr. Hoffman would give up the property in Orangeburg (not the 55 acres previously referenced) in order to retain the property where his homeplace was located (the afore-mentioned 55 acres). Due to his health, and to speed the case to closure, Mr. Hoffman agreed, thinking that Ms. Stomski was acting in good faith. After Mr. Hoffman agreed to the compromise, he was informed by Ms. Collins, that Ms. Stomski did not have the authority to make the offer she had made. This was clearly a stall tactic by RT&T, to continue to delay the proceedings before the June 26 court date and "churn the file" to drive up the legal fees. This stall tactic also served to prevent the necessary depositions in time to meet the next court date of June 26, 2012.

June 18, 2012: Defendant received response by Plaintiff to first set of requests to produce and first set of interrogatories.

June 20, 2012: Subpoena issued to Joana Martin, secretary to Mr. Ronnie Hutto, Attorney at Law. Mr. Hutto was the real estate attorney that signed the closing papers after the fact (he was not present in the room when the original documents were signed), and witnessed and notarized the documents as if he were present for the closing. Since it has been impossible to get testimony from the bank officers, Mr. Hoffman has prepared and signed an Affidavit attesting to the fact that the closing was performed at the bank, and there were only two people in the room – himself and Diane Dukes of SCBT, in 2003. (See Exhibit A.)

June 22, 2012: In light of the inconsistencies received in the interrogatories and requests for production, Ms. Collins filed a motion to strike Plaintiff's Answer, or in the Alternative, Motion to Require Amendment of Complaint and Motion to Add Indispensable Party and Motion for Continuance. On that same date, a subpoena was issued for Bruce Rheney to appear. Mr. Rheney is a Vice President with SCBT and was the acting loan officer at the time of a loan

transaction with Mr. Hoffman, but not THE loan transaction that was the subject of the foreclosure. Defendant Hoffman had instructed Ms. Collins to subpoena and depose Ms. Diane Dukes, who was the loan officer present for the 2003 mortgage transaction, as well as Bruce Rheney. According to our records, Ms. Dukes was never subpoenaed to be deposed until the day before the most recent hearing. Unless she chose to lie to the court, she would have corroborated Mr. Hoffman's testimony that she and Mr. Hoffman were the only people present at the loan transaction. There was no attorney or any other witness.

July 13, 2012: Order granted for Continuance with stipulations, including striking Defendants motion to dismiss.

On or about August 3, 2012: Ms. Collins began to pressure RT&T to depose the witnesses, and Ms. Stomski with RT&T, made a second offer to accept the property in Orangeburg in a deed in lieu arrangement. Mr. Hoffman, thinking this was another stall tactic to avoid the depositions and the inspection of the wet ink document, reluctantly accepted the offer with one stipulation. The stipulation was that SCBT would have to pay for any legal costs incurred if Mr. Dew sued Mr. Hoffman. Mr. Dew claims he has paid the note in full, through a Private registered bonded promissory note and there is a lien filed against Mr. Hoffman's property. SCBT refused to accept the stipulation and SCBT did not allow Mr. Hoffman to review the Original "wet ink" documents to determine if they, in fact, had sold the note or still have ownership. Mr. Hoffman believes that if the bank had not monetized the bond, they would have agreed to his stipulation to protect him from further action by Mr. Dew.

September 12, 2013: Ms. Collins filed a Motion to be Relieved as Counsel. This was apparently due to a payment dispute between Defendant Hoffman and Ms. Collins, but Ms. Collins cited

"Breach of trust" which is code for non-payment. There is in fact an "Agreement of Barter" for work performed on Ms. Collins's home in lieu of actual payment.

December 14, 2012: Notice of hearing scheduled for January 10, 2013.

December 24, 2012: Ms. Collins notified Mr. Hoffman that there was a court date set for January 10, 2013. At this point RT&T still had NOT made the bank officers, available for questioning, nor had they provided the wet ink documents to be examined. Mr. Hoffman insisted that Ms. Collins depose the bank officers and get the wet ink documents. Mr. Hoffman hired a documents examiner, Mr. Marvin Dawson, to examine the wet ink original. Ms. Wallace of RT&T notified Ms. Collins that the wet ink original documents would be available at the hearing for examination. Mr. Dawson explained he would need more time to examine the documents and that simply would not work. Ms. Wallace responded by saying she would make the documents available one day before the scheduled hearing, on January 9, 2013. At this point the bank officers still had not been deposed. Ms. Wallace and Ms. Stomski refuse to allow Ronnie Hoffman to be present to view the documents, claiming he did not have the P.O.A, even though it had been filed into the case on June 8, 2012. (This apparently was not as big an issue as Ms. Stomski had led us to believe, as she showed the same document to Ronnie Hoffman's and Ronnie's brother, Donnie, when it became available, although Donnie Hoffman did not possess a P.O.A. for his father.)

January 2, 2013: A Motion was filed reiterating that Plaintiff had never answered Defendant Hoffman's requests for information surrounding the disposition of the UCC 1 and Bond, and requesting closure on that subject. That Motion has not been heard to date.

January 9, 2013: Mr. Hoffman, who was en route to the Hospital, had to appear in person to satisfy Ms. Stomski and Ms. Wallace. Once he was in the building, they told him they really

didn't need him to come by and that Ms. Collins had just sent the P.O.A. documents over. Mr. Hoffman continued on to the hospital where he was admitted. Some representative of RT&T (we assume Ms. Wallace or her assistant) called the hospital and stated she was a family member and wanted to know the status of Mr. Hoffman. This is a felony under the HIPPA Laws which we will pursue at a later date. The ER nurse told her by mistake that he had been released when in fact he had been admitted and stayed there and was treated for three days. While Mr. Hoffman was being transported to the hospital, Mr. Dawson review the document submitted by RT&T as the original mortgage note. He confirmed the note that was presented by RT&T, was NOT the original "wet ink" document. (See Exhibit B for Mr. Dawson's report.)

January 10, 2013: Due to Mr. Hoffman's admittance to the hospital the hearing scheduled for this day had to be rescheduled.

February 5, 2013: Motion to Compel was filed, indicating the deficiencies in Plaintiff's response to previous requests for discovery.

February 11, 2013: Subpoenas for appearances by Mr. Rheney and Ms. Dukes were served on counsel for Plaintiff. The recipients had been subpoenaed many times previous, so it should not have come as a surprise to their attorney that they would be needed to testify at this new hearing. However, Plaintiff also responded to the Motion to Compel and filed a Motion to Quash the subpoenas of Mr. Rheney and Ms. Dukes.

February 12, 2013: The hearing was held by Judge James Reeves (special referee). Defendant's Motion to Compel had been filed to produce the original wet ink instrument. There were also subpoenas issued to require testimony from the bank officers involved in the mortgage transaction that is the subject of the foreclosure complaint. RT&T returned a Motion to Quash the subpoenas. When Ms. Wallace was arguing the Quash, she stated that the document they had

provided to the examiner was a photocopy and she knew it was a photocopy when she presented it to him. However in an email dated January 7, 2013, sent after-hours (5:39 pm), Ms. Wallace had indicated to Ms. Collins that the original note would be made available to the examiner. (See exhibit C.) It is important to note that the Motion to Quash, which was granted by the judge, pertained to the Defendant's request for testimony from a bank officer, which never has been heard in this entire case, indicating the case has been tried, and may potentially be decided, on hearsay alone.

Ms. Wallace of RT&T, also stated in the hearing that there was a Satisfaction of Mortgage on the 2003 note, however, upon questioning the ROD's office in Orangeburg County, there is no such document that has been entered into the public record.

Mr. Jim Boyd, the VP of SCBT stated as testimony in the hearing on Feb. 12, that SCBT lent money to Mr. Hoffman in 2009. However, in the bank's document provided to Ms. Collins during discovery, it clearly states that "No new money was advanced." (See Exhibit D.) Mr. Boyd also stated that more property was added to the same loan in 2008, but there is no evidence to corroborate that, as the documents submitted by the bank appear to include this "newly added" property all the way back to the original note from 2003, indicating forgery, perjury and collusion on the part of the bank and its representatives.

Finally, the Motion to Dismiss Defendant Hoffman's attorney was granted, leaving him unrepresented, yet the hearing proceeded. Mr. Hoffman had made diligent efforts to locate another attorney to accompany him to the hearing, but was told by all those he contacted that they could not be hired until his current attorney was dismissed. He was also advised that the hearing could not proceed if his attorney was dismissed, as he had to be provided ample time and opportunity to retain other adequate counsel. He, therefore, could not have possibly had another

attorney "waiting in the wings." In fact, after Mr. Hoffman's counsel was relieved, he asked multiple times at the hearing to be allowed time to locate and hire new counsel. Judge Reeves indicated that although he understood that it would be impossible for Mr. Hoffman to hire an attorney while still represented by Ms. Collins, he intended to proceed with the hearing anyway. So, the judge saw fit to proceed with the hearing, despite Mr. Hoffman having no legal representation. Mr. Hoffman's son Ronnie Hoffman, noticed his father starting to have mini TIA's during this time and wanted to assist his father, but he was told he could not speak and was told to sit down and be quiet or he would be charged with practicing law without a license. Therefore, Mr. Hoffman's right to a fair trial and his basic civil rights were violated by the judge's ruling to proceed with the hearing and will be brought under a Judicial Review.

SUMMARY AND CONCLUSION:

From the beginning of this case, the mortgage that was presented for foreclosure has been the 2003 note, specifically the mortgage recorded in Orangeburg County on October 21, 2003 in Mortgage Book 1394 at Page 239. The original mortgage was in the name of South Carolina Bank and Trust, N.A., that changed its name to SCBT, N.A. (See Exhibit E.) The fact of the matter is, SCBT now conveniently claims their foreclosure is in reference to a new note issued April 27, 2009. That note has not been provided to Defendant Hoffman for inspection. In fact the only reference to this transaction at all is in the notes provided to Defendant Hoffman during discovery that clearly states "No new monies advanced." Mr Hoffman was under the impression that the 2009 transaction was merely a payment restructuring, and did not represent a modification or re-casting of the original mortgage, meaning the mortgage in question is still, as stated in the original complaint, the 2003 mortgage. Defendant's document expert has determined that the note presented as the 2003 note is not the original note, so Defendant has no

way of knowing whether that note has been sold, transferred, securitized, or otherwise satisfied in full, either by way of the private registered bonded promissory note, or another means. SCBT also now claims that the 2003 note has been satisfied, but there is no Mortgage Satisfaction recorded at Orangeburg County. Yet the Complaint, upon which this entire case is based, is to foreclose on that same 2003 note. It appears the bank is playing a game with the court and the special referee in an effort to distract and bait and switch to an illegal end which is fraud at best. RT&T intentionally misled the Court and Defendant Hoffman on several occasions as well as misled the Documents Expert Marvin Dawson and the Special Referee, James E. Reeves, through their actions and their words.

Motions were filed by the Defendant for the Plaintiff to produce the original wet ink charging instrument under SC statute 36-3-308 subsection (a) which states: "A plaintiff that produces THE instrument is entitled to payment." The Motion also requested Plaintiff to show legal standing to bring an action under the same statute, as well as Federal Rule 17 which states that an action must be brought by the Real Party in Interest.

There are other critical problems with this case. As has been pointed out on several occasions, Plaintiff fails to name an indispensable party pursuant to Rule 19, SCRPC. Specifically, plaintiff has provided discovery responses on or about on June 19, 2012 that indicated plaintiff had actual knowledge of a secured party claim resulting from the UCC financing statement attached hereto and incorporated herein by reference as Exhibit F, and the bond as Exhibit G. Notwithstanding the purported validity of any lien resulting from these financial statements, Mr. Dew, the filer is an indispensable party. Failure to name this party could result in duplicate secured claims for Mr. Hoffman and SCBT for the same property or debt.

Further, if the validity of this bond is questioned, then where is an Affidavit of Fraud or other indication to the court that SCBT has disputed these documents? If they have not monetized the bond as payment in full for the properties in question, then where is it and what have they done with it? Why have they not brought adversarial proceedings against the originator of the bond or Defendant Hoffman?

Additionally, and should this case move to a foreclosure sale, it is important to note that any party participating in the transfer or sale of property under lien is subject to criminal penalties under SC statute, § 29-1-30, which provides that "any person who shall willfully and knowingly sell and convey any real or personal property on which any lien exists without first giving notice of such lien to the purchaser" is guilty of a misdemeanor. Additionally, Section 36-9-410, which provides in part that "any person who intentionally or willfully sells or disposes of personal property that is subject to a perfected security interest, with intent to defraud the secured party, without the written consent of the secured party" is guilty of a misdemeanor if the value of the property is \$1,000 or less and guilty of a felony if the value of the property is over \$1,000.

Although denied by Judge Reeves, by granting the Motion to Quash by the Plaintiff, Defendant Hoffman needed the testimony of Mr. Rheney of SCBT to corroborate the fact that, by 2008, Mr. Hoffman eyesight was failing, and he could not have read all of any documents presented to him, as he was only able to read very large print. Without someone coaching him to sign and initial documents he had not been able to fully read, it is highly unlikely that he was able to initial each page in the proper place, as the Plaintiff claims. As an uninformed party, he has been placed in an untenable position. He has no recollection of dating any page, as the copied document shows, and therefore disputes his ever having executed those documents. At the time of this purported signing, the law in South Carolina specified that a property closing had to be performed by an

attorney, yet none was present. In light of the fact that Mr. Hoffman had very poor eye sight, it would appear to have been a further duty of the bank to ensure that his rights were protected by having legal counsel available to him to explain any paperwork presented. Up until this recent mortgage crisis, it was required to have an attorney present at all closings in South Carolina, and only recently has case law intervened to allow some leniency in that statute (apparently to protect the banks and attorneys, to the detriment of private citizens). Yet the judge ruled that there would be no testimony by Mr. Rheney. Mr. Hoffman has yet to have the right to face his accusers in this matter. His due process and his civil rights have been violated, and every avenue to seek justice has been thwarted.

Defendant Hoffman believes that counsel for the Plaintiff deliberately "churned the file," to drive up legal costs as indicated by their delays and refusals to comply with requests for documents, depositions, etc. The legal fees surrounding this case are astronomical, especially given the fact that none of the information requested by Defendant Hoffman has been produced. This is especially disconcerting, considering the potential collusory relationship between foreclosure Plaintiffs, their attorneys and the judges appointed to hear such cases in our state. According to the "Rules Governing the Practice of Law, 407 Rules of Professional Conduct, Rule 53: Masters and Special Referees, (d) Compensation of Special Referees. The compensation of the special referee shall be paid by the parties in such amount as shall be set by the special referee, subject to review by the circuit court upon objection by any party..." It follows that the primary source of funds collected in any foreclosure case would naturally come from the legal fees of the Plaintiff party, therefore the greater those legal fees and other penalties charged against the Defendant(s), the greater the chance for compensation to the Special Referee in the amount he has set. Surely this relationship would, at minimum, taint any decisions made in such a situation, and therefore

would warrant great care in rendering a decision when there are clearly so many irregularities, no authentication or testimony from direct parties.

Finally, Mr. Hoffman was clearly denied his right to a fair trial when the judge proceeded forward with the hearing on February 12, 2013 after dismissing his attorney, and not allowing him opportunity to retain other counsel. The right to a fair trial is a basic human right, and his human rights were violated.

SUPPORTING LAW

As Regards Standing: Nothing has been produced to show that SCBT has any ownership or security interest in this loan. "Nothing is owed when the proper chain of title does not exist as determined by the Massachusetts Supreme Court when presented with similar issues." *US Bank National Association, Trustee v. Antonia Ibanez, and a consolidated case for ABFC 2005-OPTI Trust, ABFC Asset Backed Certificates, Series 2005-OPTI; in re Kang Jin Hwang*, 396 B.R. 757, 768 (Bankr. C.D. Cal 2008).

A Movant must have both constitutional and prudential standing and be the real party in interest under Fed. R. Civ. P. 17, in order to be entitled to lift-stay relief [citing: *Kowalski v. Tesmer*, 543 U.S. 125, 128-29 (2004) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975))]. Beyond the Article III requirements of injury in fact, causation, and redress ability, movant must also have prudential standing, which is a judicially-created set of principles that places limits on the class of person who may invoke the courts' powers. See *Warth v. Seldin*, 422 U.S. 490, 499 (1975). As a prudential matter, a plaintiff must assert "his own legal interest as the real party in interest," *Dunmore v. United States*, 358 F.3rd 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "an action must be prosecuted in the name of the real party in interest." (also see exhibit H)

As Regards Standing and Damages Suffered: Constitutional standing under Article III requires, at a minimum, that a party must have suffered some actual or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by a favorable decision. *Valley Forge Christian Coll. V. Am. United for Separation of Church and State*, 454 U.S 464, 472 (1982).

As Regards Fraud: Civil Rule 60 (b) 3 indicates the facts of this case warrant a reversal of any action taken and/or a dismissal of any pending actions based on: (3) fraud, misrepresentation, or other misconduct of an adverse party. The naming of a party that is not a real party in interest to this lawsuit, can be considered nothing less than fraud. Plaintiffs have also misrepresented their standing, substantial facts of the case, and have perjured themselves.

As Regards the Court's Duty to Protect Justice: Historically, equitable courts developed to provide a forum of justice for litigants when law courts, which contained rigid principles and restrictive technicalities, were deficient. See Hedges v. Lysek, 84 So. 2d 28, 31 (Fla. 1955). As such, equity courts were created to do justice between the litigants. See e.g. Banks v. Shaw, 144 Fla. 550, 198 So. 341 (1940); Atlantic Nat. Bank of Jacksonville v. Simpson, 136 Fla. 809, 188 So. 636 (1938). Therefore, "a court of equity is a court of conscience; it should not be shackled by rigid rules of procedure and thereby preclude justice being administered according to good conscience." Demorizi v. Demorizi, 851 So.2d 243, 246 (Fla. 3d DCA 2003), *appeal dismissed* 851 So. 2d 168 (Fla. 3d DCA 2003) (quoting Wicker v. Board of Public Instruction of Dade County, 106 So.2d 550, 558 (Fla.1958)). Finally, with respect to foreclosures, "the general rule is that...[the] foreclosure must not be unconscionable or inequitable." Pezzimenti v. Cirou, 466 So.2d 274, 276 (Fla. 2d DCA 1985). By the Plaintiff's failure to prove which properties were a

part of the loan in question at which time, they have placed the court in a position to award an inequitable foreclosure.

Defendants have not waived their appraisal rights, under Section 29-3-680, as any purported waiver would be against public policy pursuant to SCN Mortgage Corp v. White, 312 SC 384, 440 S.E.2d 868 (1994). The Supreme Court of South Carolina held it was against public policy to require a waiver of this right in advance. Therefore, Defendants reserve the right to prove that the attempt to foreclose on all named properties for such a small debt claimed, and yet to be verified, is inequitable and unlawful. Plaintiff has attempted to place the court in a position of awarding an inequitable and unconscionable foreclosure. Further, individual properties must be foreclosed upon one parcel at a time because the amount secured by Plaintiffs exceeds any one parcel.

As Regards the Right to Fair Trial: The right to fair trial is an essential right in all countries respecting the rule of law. A trial in these countries that is deemed unfair will typically be restarted, or its verdict voided.

Various rights associated with a fair trial are explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, the Sixth Amendment to the United States Constitution, and Article 6 of the European Convention of Human Rights, as well as numerous other constitutions and declarations throughout the world.

The right to a fair trial has been defined in numerous regional and international human rights instruments. It is one of the most extensive human rights and all international human rights instruments enshrine it in more than one article. Doebller, Curtis (2006). *Introduction to International Human Rights Law*. CD Publishing. pp. 107–108. ISBN 978-0-9743570-2-7. The right to a fair trial is one of the most litigated human rights and substantial case law has been

established on the interpretation of this human right. Doebller, Curtis (2006). *Introduction to International Human Rights Law*. CD Publishing. p. 110. ISBN 978-0-9743570-2-7. Despite variations in wording and placement of the various fair trial rights, international human rights instruments define the right to a fair trial in broadly the same terms. Alfredsson, Gudmundur; Eide, Asbjorn (1999). *The Universal Declaration of Human Rights: a common standard of achievement*. Martinus Nijhoff Publishers. p. 225. ISBN 978-90-411-1168-5. The aim of the right is to ensure the proper administration of justice. As a minimum the right to fair trial includes the following fair trial rights in civil and criminal proceedings:

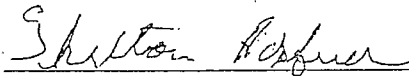
- the right to be heard by a competent, independent and impartial tribunal
- the right to a public hearing
- the right to be heard within a reasonable time
- the right to counsel
- the right to interpretation

States may limit the right to a fair trial or derogate from the fair trial rights only under circumstances specified in the human rights instruments. Doebller, Curtis (2006). *Introduction to International Human Rights Law*. CD Publishing. p. 108. ISBN 978-0-9743570-2-7.

RELIEF SOUGHT

Mr. Hoffman asks the court to consider the many ways his rights and his civil rights have been violated, and the fact that SCBT has never been required to prove anything required to bring or enforce a foreclosure action. They have failed to produce documents proving their standing to bring the action. They have failed to prove any damage has been done to them. They have not provided direct testimony of any of the facts surrounding this case. Admittedly, Defendant Hoffman's original defenses lacked sufficiency, as he was not represented by counsel at the time,

because the special referee would not allow Defendant Hoffman time to acquire competent legal counsel to represent him when he granted Ms. Collins motion to be released, however that should not usurp his rights and civil rights to a fair hearing and fair treatment under the law. It is the court's duty to ensure justice is done, and to not allow wealthy corporations and their legal counsel to trample over defendants on their way to claims that are not legally theirs. Defendant Hoffman asks that the foreclosure case be dismissed with prejudice for the fraudulent actions of the plaintiff and their counsel, or an extension of time be granted to seek competent legal counsel.



Shelton Hoffman
2950 Redmond Mill Road
North, SC 29112
February 22, 2013

cc: The South Carolina Bar Association
cc: The Commission on Lawyer Conduct
cc: The Commission on Judicial Conduct
cc: South Carolina Attorney General



DIPLOMATE AMERICAN BOARD
OF FORENSIC DOCUMENT EXAMINERS

AMERICAN ACADEMY
OF
FORENSIC SCIENCES

MARVIN H. DAWSON, JR.
FORENSIC DOCUMENT EXAMINER

January 9, 2013

AMERICAN SOCIETY
OF
QUESTIONED DOCUMENTS EXAMINERS

SOUTHEASTERN ASSOCIATION
OF FORENSIC DOCUMENT EXAMINERS

VIA – EMAIL/HARD COPY VIA US POSTAL SERVICE

Mr. Ronnie Hoffman
225 Lightening Hill Road
North, South Carolina 29112

Re: Documents pertaining to banking activities of Shelton Hoffman (a/k/a Shelton L. Hoffman)
DDL File No.: 136065

Report of Examination

On January 9, 2013 this examination was conducted in a conference room in the offices of Rogers Townsend & Thomas (RTT) located in the Synergy Business Park, 220 Executive Center Drive, Columbia, SC. Present were Mr. Ronnie Hoffman, Attorney Harriett Wallace (RTT) and Attorney Teri K. Stomski (RTT).

Ms. Wallace provided the examiner with a Blue file folder containing a number of bank documents (questioned) purporting to be relative to a hearing to be held in Orangeburg on January 10, 2013 in Orangeburg, SC. The file contained approximately twelve (12) documents, some were multi page transactions with most bearing either the signature of Shelton or initials of Shelton Hoffman.

Mr. Ronnie Hoffman provided the examiner with approximately eleven (11) documents submitted as bearing undisputed signatures of Mr. Shelton Hoffman. These were collected documents consisting of Deeds and Contracts of Sales along with SC Drivers license and a Social Security card. The Mr. Shelton Hoffman appeared briefly at the examination during which he provided two (2) specimen signatures.

Examination Requested

Examine the bank documents (blue file) in an effort to determine if the documents appeared to have been executed in a normal course of business or if there were exceptions of such that a document examiner would question.

Results of the Examination

The examination, comparison and evaluation of the submitted exhibits were performed using reliable principles and methods of forensic document examination and in accordance with the standard practices and procedures of the field.

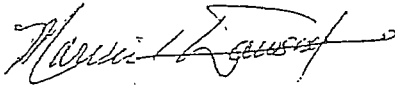
Page 1 of 2 DDL File: 136065

Findings

Based on documents submitted, it has been determined that:

1. The Shelton Hoffman signatures, appearing on the bank file documents, were naturally executed and determined to have been executed by the writer of specimen signatures submitted as known signatures of Shelton Hoffman. (see paragraph 4 below)
2. The documents were examined for any fiber disturbances which could indicate an attempt to alter or change entries or parts of a document. None were noted.
3. All Shelton Hoffman file signatures are original inked signatures (wet signatures) with the exception of one (1) document.
4. A document associated with Loan Number 11091766, South Carolina Bank and Trust Company, in the amount of One Hundred Thousand Six Hundred Sixty and No/100 (100,660.00) dated 10-21-03 is a machine copy both in form and the Shelton Hoffman signature (Page 1 of 2) and SH initials (Page 2 of 2). The authenticity of the "Shelton Hoffman" signature and the "SH" initials is being withheld pending the examination of the original inked (wet) signature.

Respectfully submitted,



Marvin H. Dawson, Jr.
Forensic Document Examiner
Dawson Document Laboratory, LLC



MARVIN H. DAWSON, JR.
FORENSIC DOCUMENT EXAMINER

DIPLOMATE AMERICAN BOARD
OF FORENSIC DOCUMENT EXAMINERS

AMERICAN ACADEMY
OF
FORENSIC SCIENCES

AMERICAN SOCIETY
OF
QUESTIONED DOCUMENTS EXAMINERS

SOUTHEASTERN ASSOCIATION
OF FORENSIC DOCUMENT EXAMINERS

CURRICULUM VITAE

PRESENT POSITION

Forensic Document Examiner – Forensic Photographer – Private Consultant

Dawson Document Laboratory, LLC
122 Hollyridge Road (29301)
Post Office Box 5066 (29304)
Spartanburg, South Carolina
(864) 439-1610 Facsimile (864) 439-2312

EDUCATION

Master of Criminal Justice
University of South Carolina
Columbia, South Carolina

Bachelor of Arts
University of South Carolina
Columbia, South Carolina

FBI National Academy
121st Session
FBI Academy
Quantico, Virginia

Professional Certificate
University of Virginia
FBI Academy Campus
Quantico, Virginia

EMPLOYMENT

South Carolina Law Enforcement Division (SLED)
1972-1988

OIC, designed, developed and staffed SLED's First Full-Service Forensic
Photography Laboratory
1972-1977

Department Head (Lieutenant) designed, developed and staffed SLED's
Forensic Questioned Document Laboratory
1974-1988

Midlands Technical College, Adjunct Faculty
1987-1995

Department of Social Services, Division of Investigation
Forensic Document Examiner
1988-1999

Retired from the State of South Carolina, June 1999 having served 27 ½ years in state law enforcement; 25 of which in the laboratory as a forensic document examiner.

AREA OF EXPERTISE

Forensic Document Examiner *Board Certified* by The American Board of Forensic Document Examiners (ABFDE) Certification No.: 251

Certified as a Law Enforcement Instructor by the South Carolina Criminal Justice Academy (SCCJA) October 1986 through October 1999.

COURT TESTIMONY

Qualified and testified as an expert in the area of Forensic Document Examination approximately three hundred (350 +) times in Federal, State and local courts as well as court martial, state boards and regulatory proceedings.

ORGANIZATIONAL AFFILIATIONS

American Board of Forensic Document Examiners (ABFDE) Diplomate

American Society of Questioned Document Examiners (ASQDE) Membership and Credentials Chair (2005-2006), Membership and Credential Committee, Member (2006 -2007)

American Academy of Forensic Sciences (AAFS) Document Section, Member (1981 – Present)

Southeastern Association of Forensic Document Examiners (SAFDE) Charter Member, Secretary (1994 – 1996)

FBI National Academy Associates (FBINA) State and National Associations. Member Secretary/Treasurer South Carolina (1981-1984)
President of South Carolina Chapter (1987)

International Association of Identification (IAI) Member
Regional Director (1980-1983)
President of South Carolina Chapter (1983)

American Society of Standards and Materials (ASTM) Member of E-30 Committee (2004-2007)

TRAINING (PARTIAL LIST)

Examiner of Questioned Document Internship, Georgia Bureau of Investigation (GBI) Atlanta, Georgia 1973 – 1974.

United States Secret Service Questioned Document Course, Washington, DC

Federal Bureau of Investigation, Quantico, Virginia

Questioned Document Course

Typewriter Seminar

Photography Course (Laboratory)

International Symposium (#1) on the Forensic Examination of Questioned Documents, Quantico, Virginia

International Symposium (#2) on the Forensic Examination of Questioned Documents, Albany, New York

Photocopy Workshops, Atlanta, Georgia, Washington, DC and Lansing, MI.

Advanced Study Course in the Examination of Medical Records, Miami, Florida

Typography Short Course, Atlanta, Georgia

Signature Workshop, Des Moines, Iowa

Daubert Workshop, Columbia, South Carolina

Constructing a Scientific Paradigm for Forensic Handwriting Identification Evidence, Atlanta, Georgia

Print Quality Workshop, Montreal, Quebec

Cedar-Fox Workshop, Montreal, Quebec

Signature - Disguise of Signature Forgery Workshop, Part I, II, III and IV, Portland, Oregon

Fine and Subtle Features of Handwriting Workshop, Part I and II, Atlanta, Georgia.

Handwriting Workshop, Atlanta, Georgia

ABFDE Business Records Workshop, Asheville, North Carolina

ASQDE Typography Workshop, Asheville, North Carolina

SAFDE Forensic Examination of Inkjet Printers Workshop

SAFDE Canon ImageRUNNER and ImagePRESS Products Workshop

SAFDE Summary of Digital Photography and the Differences from Conventional Photography Workshop

SAFDE Photography Adobe Photoshop: An Overview of Digital Imaging Enhancement Workshop

Numerous other forensic document examiners workshops held in conjunction with or sponsored by the American Academy of Forensic Sciences, The American Society of Questioned Document Examiners, The Southeastern Association of Questioned Document Examiners and the American Board of Forensic Document Examiners.

Professional papers have been presented before the annual meetings of the Academy, Society and the Southeastern Association of Forensic Document Examiners.

11/14/11

The Eye Center, P.A.

1655 Bernardin Avenue

Suite 100

Columbia, S.C. 29204

Phone (803) 256-0641

Fax (803) 779-3649

Fred Schwarz, M.D.
Ophthalmology
Ophthalmic Plastic &
Reconstructive Surgery

H.L., "Rick" Milne, M.D.
Ophthalmology
Cataract & Refractive Surgeon
Lasik & Multifocal Lenses

Brian Huff, M.D.
Ophthalmology
Cataract & Refractive Surgeon
Lasik & Multifocal Lenses

Matthew Clary, M.D.
Ophthalmology
Cataract & Refractive Surgeon
Lasik & Multifocal Lenses

June 25, 2012

RE: Shelton Hoffman
Chart# 1139
DOB: 08-20-1935

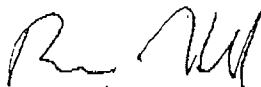
To Whom It May Concern:

The Eye Center has been following Shelton Hoffman since 2001 for macular degeneration, a condition which results in a permanent loss of vision in the center of the visual field because of damage to the retina. This loss of central vision profoundly affects visual functioning.

At Mr. Hoffman's his initial visit in April 2001, his best corrected vision was 20/30 in the right eye and 20/40 in the left eye. Due to progressive permanent vision loss as a result of macular degeneration, by 2009 his vision had been reduced to 20/70 in the right eye and 20/50 in the left eye. At his most recent visit in May of 2012, his vision had decreased to 20/200 in the right eye and 20/100 in the left eye.

Unfortunately, Mr. Hoffman's vision loss is due to age related macular disease for which there is no treatment. Please contact our office should you have further questions regarding his condition.

Sincerely,



Brian Huff, MD

ROGERS TOWNSEND & THOMAS, PC
ATTORNEYS AND COUNSELLORS AT LAW

tel 803-771-7900

fax 803-343-7017

web www.rtf-law.com

mail PO Box 100200 (29202)

220 Executive Center Drive, Suite 109

Columbia, South Carolina 29210

May 10, 2012

Shelton Hoffman
2950 Redmond Mill Road
North, SC 29112

Milton G. Kimpson, Esquire
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211

Matthew J. Modica, Esquire
Assistance US Attorney
District of South Carolina
151 Meeting Street, Suite 200
Charleston, SC 29401

Thomas M. Gore, Esquire
McCorkle & Johnson, LLP
319 Tattnall Street
Savannah, GA 31401
Attorney for Baird Transport, Inc.

Re: SCBT, NA vs. Shelton Hoffman a/k/a Shelton L. Hoffman
Case No. 12-CP-38-0030; Orangeburg County
Our File No. 016555-00055

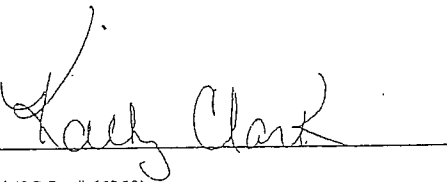
Dear Sir or Madam:

WING 816
CLIP OF COPY
OFFICIALS COPY

A foreclosure hearing has been set in the above-referenced matter for June 26, 2012 at 2:00 before the Honorable O. Davie Burgdorf, Master in Equity for Orangeburg County, at:
Orangeburg County Courthouse
151 Docket Street, Room 305
Orangeburg, SC 29115

Pursuant to S.C. Code Ann. § 14-11-110 (as amended), the Plaintiff's attorney will submit written testimony on behalf of the Plaintiff at the hearing listed above.

Sincerely,

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

Paralegal for:
Teri K. Stomski (SC Bar# 65250)
220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 771-7900

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

SCBT, NA,

Plaintiff,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman; South
Carolina Department of Revenue; The United
States of America acting by and through its agency
the Internal Revenue Service; Baird Transport,
Inc.;

Defendant(s).

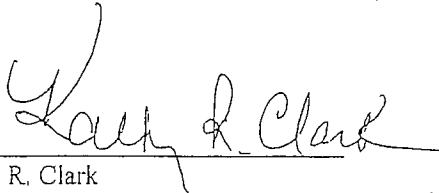
(016555-00055)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 12-CP-38-0030

CERTIFICATE OF MAILING
Deficiency Judgment Demanded

I am an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have mailed a copy of the Notice of Hearing, which is attached hereto and incorporated herein by reference, dated May 10, 2012 and in connection with the above-referenced case, by mailing a copy of the same by United States mail, postage prepaid, to each of the Addressees, listed on the Notice of Hearing and in separate envelopes, at each of their respective addresses shown thereon, this May 10, 2012.



Kathy R. Clark

2012 MAY 16 PM 10:50
CLERK OF COURT
ORANGEBURG COUNTY, SC

ATTEST: TRUE COPY
W. B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

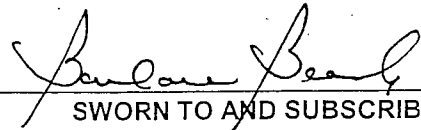
State of South Carolina
County of Orangeburg

Personally appeared before me,
Barbara Beach
Controller
of **The Times And Democrat**,
a division of Lee Publications, Inc.
A newspaper published at Orangeburg,
County of Orangeburg,
State of South Carolina.
Who declares that the attached
Notice was published in said newspaper
On the following dates:

April 11 2013

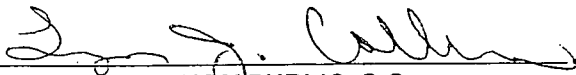
April 18 2013

April 25 2013



SWORN TO AND SUBSCRIBED
BEFORE ME

April 25 2013



NOTARY PUBLIC, S.C.

My commission Expires: February 14, 2015

NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: SC81, NA vs. Shelton Hoffman &/a Shelton L. Hoffman, South Carolina Department of Revenue, Baird Transport, Inc., C/A No. 12-CP-38-0030. The following property will be sold on May 6, 2013, at 2:00 PM at the Orangeburg County Courthouse to the highest bidder.

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section 4 prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980, and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

Also:

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section 4 prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980, and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest again by the right of way of Lightning Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Koins Hoffman.

CERTIFICATE OF SERVICE BY MAIL

Civil Action Number 2012-CP-38-0030

I, Missie Wessinger, an employee for the firm of Rogers Townsend & Thomas, PC hereby certify that on the May 7, 2013 I caused a copy of the following to be sent by U.S. Mail, postage prepaid to the parties shown below:

Documents Served:

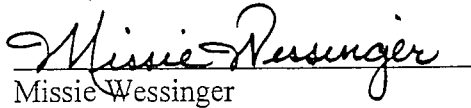
Affidavit of Publication

Counsel Served:

Milton G. Kimpson, Esquire
SC Department of Revenue
PO Box 12265
Columbia, SC 29211

Thomas M. Gore, Esquire
McCorkle & Johnson, LLP
319 Tattnall Street, LLP
Savannah, GA 31404

Mark W. Hardee, Esquire
The Hardee Law Firm
2301 Devine Street
Columbia, SC 29205


Missie Wessinger

PT. REG. JOURNAL
20 Bk 100200
Ch 11-2. 29202

D-BK: 01510 PG:0311

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

FORECLOSURE
MASTER IN EQUITY DEED

TO ALL WHOM THESE PRESENTS SHALL COME OR BE MADE KNOWN:

Or whom the same may in anywise concern, James E. Reeves, Special Referee for the County and State aforesaid SEND GREETING:

WHEREAS, SCBT, NA, on or about January 12, 2012, did exhibit its complaint in the Court of Common Pleas in the County and State aforesaid, Case No. 12-CP-38-0030, against Shelton Hoffman a/k/a Shelton L. Hoffman; South Carolina Department of Revenue; Baird Transport, Inc..

WHEREAS, SCBT, N.A. ("Bank") was a federally chartered national banking association and on June 29, 2012, Bank converted to a South Carolina state chartered bank and is henceforth known as SCBT;

And the Cause, being at issue before James E. Reeves, Special Referee, came to be heard on February 12, 2013, when the said James E. Reeves, after a full hearing thereof, and mature deliberation in the Premises, Did Order, Adjudge and Decree that the premises hereinafter mentioned and described should be sold at public auction on the terms and for the purposes mentioned in said Decretal Order, as by reference thereto, on file in the said Court will appear; and after having duly advertised the said premises for sale by Public outcry, on May 6, 2013, which sale, according to statute, was final. James B. Jackson, Jr., Master in Equity for Orangeburg County, did then, openly and publicly, and according to the custom of auction, sell and dispose of the said premises below described, unto SCBT for \$125,000.00 being, at that price, the highest bidder for the same.

NOW, KNOW ALL MEN, That I, the said Special Referee in consideration of the premises, and also in consideration of the sum of \$125,000.00 paid me by the below-named Grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents, do grant, bargain, sell and release unto the below named Grantee, its successors and assigns:

SCBT
700 Gervais Street, Suite 400
Columbia, SC 29201

All that certain piece, parcel or tract of land containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I, prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the northeast by U.S. Highway 178 and measuring thereon 195 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50 foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

0143-18-06-001
ENTERED IN THE OFFICE OF ASSESSOR
MAP 0389 SHEET 00 BLOCK 03 PARCEL 003
THIS 2 DAY OF June 2013
ORANGEBURG COUNTY JIM MCLEAN, COUNTY ASSESSOR

FILED May 31, 2013 04:42:17 pm
BOOK 01510
PAGE 0311 THRU 0315
INSTRUMENT # 2013004833

Bill Addison
Signature

FILED
ORANGEBURG
COUNTY
BILL ADDISON
REGISTER
OF DEEDS

Also:

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden et al by W.F. Stokes, RLS dated March 13, 1980 and recorded in the Office of the Register of Deeds for Orangeburg County in Plat Book 49 at page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on the Northeast by lands now or formerly of Bradshaw and measuring 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50 foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

Deed of Beulah S. Nash, et al dated October 3, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 963.

Deed of Ruth N. Hayden et al dated October 13, 1983 and recorded in the Office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at page 969.

TMS# 0143-19-06-001 0810348

Also:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T.K. Hoffman; on the Southwest again by property now or formerly as the home place of T.K. Hoffman; and on the Northwest, again by the right of way of Lightning Hill Road.

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Koina Hoffman which was duly admitted to probate and filed in the Office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

TMS# 0089-00-03-003 0164110

LESS AND EXCEPT:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 1.35 acres, more or less, situate, lying and being in School District 6, Elizabeth Township, county of Orangeburg, State of south Carolina, being more particularly shown and delineated on a plat prepared for Alan Hoffman by Douglas E. Platt, Sr., SCPLS, dated September 12, 1996 and recorded in the Office of the RMC for Orangeburg County in Plat Book 755 at Page 459, bounded and measuring as follows: On the Northeast by property now or formerly of Shelton Hoffman and measuring thereon 350.00 feet; on the Southeast by property now or formerly of Shelton Hoffman and measuring thereon 175.00 feet; on the Southwest by property nor or formerly of Shelton Hoffman and measuring thereon 350.00 feet; and on the Northwest by the 66 foot right-of-way of Lightning Hill Road (S-38-99) and measuring thereon 175.00 feet; be all measurements a little more or less.

For a more complete and accurate description references craved to the above described plat which is incorporated herein and made a part of this description by reference.

This being the same property conveyed to Alan Hoffman by Deed of Shelton Hoffman dated October 1, 1996 and recorded in the Office of the RMC for Orangeburg County on October 1, 1996 in Deed Book 634 at Page 1031.

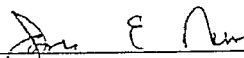
Said conveyance is subject to a dirt drive extending along the Southwestern boundary of the subject property and subject to a power line extending along the Southwestern boundary of the subject property, all as asset forth and shown on the above referenced plat.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances whatsoever, to the said premises belonging, or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, possession, property, benefit, claim and demand whatsoever, both at law and in equity, of the said Shelton Hoffman a/k/a Shelton L. Hoffman and of all the parties to the said suit and of all other persons rightfully claiming or to claim the same, of any part thereof, by, from or under them, or either of them.

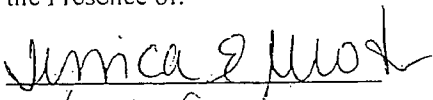
Subject to assessments, taxes, easements, conditions and restrictions of record and otherwise affecting the property.

TO HAVE AND TO HOLD, the said premises with its hereditaments, privileges and appurtenances unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, I, the said James E. Reeves under and by virtue of the said Decree, have hereunto set my Hand and Seal at Orangeburg, South Carolina this 15th day of May, 2013.


James E. Reeves
Special Referee

Sealed and Delivered in
the Presence of:




STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

S.C. Code §30-5-30

COUNTY OF ORANGEBURG

I, Jessica E. Woods a Notary Public for the State of South Carolina, do hereby certify that James E. Reeves, Special Referee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness our hands and seals on this 13th day of May, 2013.

Jessica E. Woods (SEAL)
Notary Public for South Carolina
My commission expires: 5/4/22

Index by: James E. Reeves, Special Referee

Titleholders at filing of Lis Pendens: Shelton Hoffman a/k/a Shelton L. Hoffinan

Prepared by:

Rogers Townsend & Thomas, PC (cdc/016555-00055)
P.O. Box 100200
Columbia, SC 29202-3200

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF ORANGEBURG

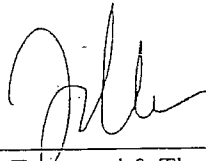
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Deed to property located at 3897 North Road, Orangeburg, SC 29115, TMS# 0143-19-06-001, 0089-00-03-003, was executed by James E. Reeves, Special Referee, to SCBT on May 13th, 2013.

2. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S. C. Code Ann. Section 12-24-10 et. seq. because the deed is:

#13. Transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings.

3. I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

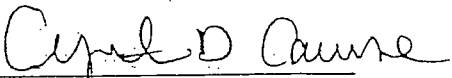


Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Teri K. Stomski (SC Bar # 65250)
220 Executive Center Drive
Columbia, SC 29210

Post Office Box 100200 (29202)
(803) 771-7900

Sworn to before me this 16 day of May, 2013.



Notary Public for South Carolina

My Commission Expires: 9/1/2015
(016555-00055)

SHELTON HOFFMAN
3897 NORTH ROAD
ORANGEBURG, SC 29118

SOUTH CAROLINA BANK AND TRUST, N.A.
JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29115

RESP CODE 0

Loan Number 12101

Date 08-12-2004

Maturity Date 03-10-2005

Loan Amount \$ 78,856.24

Renewal Of LOAN

BORROWER'S NAME AND ADDRESS
("I" includes each borrower (above, jointly and several).

LENDER'S NAME AND ADDRESS
("You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SEVENTY EIGHT THOUSAND SIX HUNDRED EIGHTY SIX AND 24/100 Dollars + 78,856.24

☒ Single Advance: I will receive all of this principal sum on 08-12-2004. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 08-31-2004 at the rate of 8.250% per year until 08-01-2004

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: THE BASE RATE ON CORPORATE LOANS POSTED BY AT LEAST 75% OF THE NATION'S 30 LARGEST BANKS KNOWN AS THE WALL STREET JOURNAL PRIME RATE

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 08-01-2004

A change in the interest rate will take effect ON THE FOLLOWING DAY

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCRAUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above: _____

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$81,284.48 ON 03-10-2005. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): A MORTGAGE DATED 10-21-2003

If this section is for your internal use: Failure to file a separate security document does not mean the payment will not secure this note.

Signature for Lender:

BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEWAL OF EXISTING DEBT ORIGINALLY USED TO SUPPORT OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.

SHELTON HOFFMAN
SHELTON HOFFMAN

SOUTH CAROLINA - UNIVERSAL NOTE

EXP-01054, 1091 Bankers Systems, Inc., St. Cloud, MN Form UN-SC 3/7/2003

Page 1 of 21

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SHELTON HOFFMAN
3667 NORTH ROAD
ORANGEBURG, SC 29116

SOUTH CAROLINA BANK AND TRUST, N.A.
850 JOHN C. CALHOUN DRIVE
PO BOX 8007
ORANGEBURG, SC 29116

RESP CODE 32
Loan Number
Date 12-02-2005
Maturity Date 08-02-2006
Loan Amount \$ 55,150.00
Renewal Of

BORROWER'S NAME AND ADDRESS
*Includes both borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
You means the lender, his successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY FIVE THOUSAND ONE HUNDRED FIFTY AND NO/100 Dollars \$ 55,150.00

☒ Single Advance: I will receive all of this principal sum on 12-02-2005. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$, and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 12-02-2005 at the rate of 8.000% per year until 12-03-2005

☒ Variable Rate: This rate may then change as stated below:

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 12-03-2005

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000%. The rate may not change more than % each

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCURAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$ 100.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$57,658.33 ON 08-02-2006. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

PURPOSE: The purpose of this loan is RENEW ORIGINAL LOAN FOR OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender

Shelton Hoffman
SHELTON HOFFMAN

BRUCE RHENEY

SOUTH CAROLINA - UNIVERSAL NOTE

©1994, 1997 Barbara Systems, Inc., St. Cloud, MN Form UN-SC 3/7/2002

(page 1 of 2)

ATTACHMENT FOR
SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year.

S.H.

SHELTON HOFFMAN
3657 NORTH ROAD
ORANGEBURG, SC 29118

S. CAROLINA BANK AND TRUST, N.A.
JOHN C. CALROUSEY DRIVE
ORANGEBURG, SC 29115

RESP CODE

Loan Number
Date 03-31-2005
Maturity Date 10-05-2005
Loan Amount \$ 55,000.00
Renewal Of

BORROWER'S NAME AND ADDRESS
* Includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
* "You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY FIVE THOUSAND AND NO/100

Dollars \$ 55,000.00

☒ Single Advance: I will receive all of this principal sum on 03-31-2005. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On

I will receive the amount of \$ and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 03-31-2005 at the rate of 7.750% per year until 04-01-2005.

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION.

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 04-01-2005.

A change in the interest rate will take effect ON THE SAME DAY.

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than % or less than %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:
☐ The amount of each scheduled payment will change. ☒ The amount of the final payment will change.

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MAX OF \$100.00.

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$57,225.87 ON 10-05-2005. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): MORTGAGE DATED 10-21-2003

(The signature is for your internal use. Failure to list a separate security document does not mean the agreement was not secured by this note.)

Signature for Lender

BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEW EXISTING LOAN FOR OPERATING EXPENSES.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.

Shelton Hoffman
SHELTON HOFFMAN

ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST
PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year. SA

SHELTON HOFFMAN
3627 NORTH ROAD
ORANGEBURG, SC 29115

SOUTH CAROLINA BANK AND TRUST, N.A.
250 JOHN C. CALHOUN DRIVE
PO BOX 6007
ORANGEBURG, SC 29115

RESP CODE 32
Loan Number
Date 08-14-2006
Maturity Date 01-02-2007
Loan Amount \$5,000.00
Renewal Date 08-14-2007

BORROWER'S NAME AND ADDRESS
"I" includes each borrower shown, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SEVENTY FIVE THOUSAND THREE HUNDRED TWENTY FIVE AND NO/100 Dollars \$ 75,325.00

☒ Single Advance: I will receive all of this principal sum on 08-14-2006. No additional advances are contemplated under this note.
☐ Multiple Advances: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 08-14-2006 at the rate of 10.000% per year until 08-15-2007

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 08-15-2006

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000 %. The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☐ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

1 PAYMENT OF \$68,428.35 ON 01-02-2007. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): A MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

BRUCE RHENNEY

PURPOSE: The purpose of this loan is RENEW ORIGINAL LOAN FOR OPERATING EXPENSES

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

SHELTON HOFFMAN

SOUTH CAROLINA - UNIVERSAL NOTE

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(page 1 of 2)

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ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST
PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year.

S.N.

SHELTON HOFFMAN 3857 NORTH ROAD ORANGEBURG, SC 29115 BORROWER'S NAME AND ADDRESS "I" includes each borrower above, jointly and severally.	SOUTH CAROLINA BANK AND TRUST, N.A. 950 JOHN C. CALHOUN DRIVE PO BOX 9007 ORANGEBURG, SC 29115 LENDER'S NAME AND ADDRESS "You" means the lender, its successors and assigns.	RESP CODE 3 Loan Number <u> </u> Date <u>01-18-2007</u> Maturity Date <u>08-01-2007</u> Loan Amount <u>\$ 56,000.00</u> Renewal <u> </u>

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of FIFTY SIX THOUSAND EIGHTY AND NO/100 Dollars \$ 56,080.00

☒ Single Advance: I will receive all of this principal sum on 01-18-2007. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$ and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 01-18-2007 at the rate of 10.250% per year until 01-20-2007

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST PRIME RATE DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 01-20-2007

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000%. The rate may not change more than % each

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

☐

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

PDST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

1. PAYMENT OF \$58,177.84 ON 08-01-2007. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): A MORTGAGE DATED 10-21-2003

[This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.]

Signature for Lender

BRUCE RHENEY

PURPOSE: The purpose of this loan is RENEWAL

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Shelton Hoffman
SHELTON HOFFMAN

ATTACHMENT FOR SOUTH CAROLINA BANK AND TRUST
PRIME RATE DEFINITION

"PRIME RATE" shall mean and refer to the interest rate announced or published by the Bank as its prime rate, as such rate may be changed from time to time. Any change in such rate shall be effective as of the opening of business on the day on which such change becomes effective. The Prime Rate will not necessarily be the lowest interest rate charged by the Bank. If at any time the Bank does not announce a prime rate, the "Prime Rate" shall mean and refer to that interest rate established by the Bank as the annual rate of interest applicable to this transaction. The rate of interest as thus determined shall be computed on the actual number of days elapsed divided by a 360-day year.

S.H.



RECEIVED AUG 29 2007

COMMERCIAL LOAN MODIFICATION AGREEMENT

CUSTOMER NAME: Shelton Hoffman

COMMERCIAL LOAN # [REDACTED]

DATE 8/28/07

We have hereby agreed to the following change(s) on the above loan.

☐ INTEREST RATE ADJUSTMENT:

The current interest rate on this loan is . Effective the interest rate will become

☐ REPAYMENT ADJUSTMENT:

Effective the following repayment schedule will begin.

☐ Installment: Principal and interest are payable in installments of:

☐ \$, which includes interest, beginning . Remaining installments will be due on the same day each succeeding period until all outstanding indebtedness has been repaid. The final installment of principal and interest will be due

☐ \$, principal, plus interest, beginning . Remaining installments will be due on the same day each succeeding period until all outstanding indebtedness has been repaid. The final installment of principal and interest will be due

☒ Other: Extend maturity to 2/1/08.

ACCEPTED BY: (Customer)

Shelton Hoffman
Shelton Hoffman

BANK APPROVAL:

Bruce C. Rheney
Bruce C. Rheney
Senior Vice President

THIS SECTION FOR BANK USE ONLY

OFFICER COMMENTS (reason for modification):

APPROVAL (requirements based on lending authority level):

APPROVED BY: _____ DATE: _____

APPROVED BY: _____ DATE: _____
(immediate supervisor)

APPROVED BY: _____ DATE: _____
(immediate supervisor)

APPROVED BY: _____ DATE: _____
(immediate supervisor)

John J. [Signature]

SHELTON L. HOFFMAN
2850 REDMOND ROAD
NORTH, SC 29118

SOUTH CAROLINA BANK AND TRUST, N.A.
850 JOHN C. CALHOUN DRIVE
PO BOX 9007
GRANDEBURG, SC 29116-8007

RESP CODE 328
Loan Number
Date 02-20-2008
Maturity Date 02-20-2009
Loan Amount \$ 58,399.00
Renewal Of

BORROWER'S NAME AND ADDRESS
"I" includes each borrower above, jointly and severally.

LENDER'S NAME AND ADDRESS
"You" means the lender, its successors and assigns.

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of SEVENTY SIX THOUSAND THREE HUNDRED NINETY NINE AND NO/100 Dollars \$ 58,399.00

☒ Single Advance: I will receive all of this principal sum on 02-20-2008. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On I will receive the amount of \$ and future principal advances are contemplated.

Conditions: The conditions for future advances are

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 02-20-2008 at the rate of 8.000% per year until 02-21-2008

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 2.000 PERCENT ABOVE the following index rate: SEE ATTACHMENT FOR SCBT PRIME RATE

DEFINITION

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as EVERY DAY BEGINNING 02-21-2008

A change in the interest rate will take effect ON THE SAME DAY

☒ Limitation: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 5.000%. The rate may not change more than % each

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☒ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

PAST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above:

PAYMENTS: I agree to pay this note as follows:

* PAYMENT OF \$60,986.12 ON 02-20-2008. THIS IS A VARIABLE RATE LOAN AND THE FINAL PAYMENT AMOUNT MAY CHANGE.

ADDITIONAL TERMS:

☒ SECURITY: This note is separately secured by (describe separate document by type and date): REAL ESTATE MORTGAGE DATED 10-21-2003

(This section is for your internal use. Failure to file a separate security document does not mean the agreement will not secure this note.)

Signature for Lender

PURPOSE: The purpose of this loan is RENEWAL OF WORKING CAPITAL LOAN

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

S. L. Hoffman
SHELTON L. HOFFMAN

BRUCE RHENEY

SOUTH CAROLINA - UNIVERSAL NOTE

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SHELTON L. HOFFMAN
7950 REDMOND ROAD
NORTH, SC 29112

SCBT, N.A.
950 JOHN C. CALHOUN DRIVE
PO BOX 8007
ORANGEBURG, SC 29116-9007

RESP CODE 328
Loan Number 88888888
Date 04-27-2009
Maturity Date 05-05-2014
Loan Amount \$ 82,588.00
Renewal 05-05-2014

BORROWER'S NAME AND ADDRESS
("Indicates each borrower above, jointly and severally.")

LENDER'S NAME AND ADDRESS
("You" means the lender, its successors and assigns.")

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of NINETY TWO THOUSAND FIVE HUNDRED SIXTY EIGHT AND NO/100 Dollars \$ 92,588.00

☒ Single Advance: I will receive all of this principal sum on 04-27-2009. No additional advances are contemplated under this note.

☐ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On _____ I will receive the amount of \$ _____ and future principal advances are contemplated.

Conditions: The conditions for future advances are _____

☐ Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on _____

☐ Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from 04-27-2009 at the rate of 7.000% per year until 05-05-2014

☐ Variable Rate: This rate may then change as stated below.

☐ Index Rate: The future rate will be _____ the following index rate: _____

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☐ Frequency and Timing: The rate on this note may change as often as _____

A change in the interest rate will take effect _____

☐ Limitations: During the term of this loan, the applicable annual interest rate will not be more than _____ % or less than _____ % The rate may not change more than _____ % each _____

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☐ The amount of each scheduled payment will change.

☐ The amount of the final payment will change.

☐

ACCUAL METHOD: Interest will be calculated on a ACTUAL/360 basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note using after maturity, and until paid in full, as stated below:

☒ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☐ at a rate equal to _____

☒ LATE CHARGE: If a payment is not made within 10 days after it is due, I agree to pay a late charge of 5.000% OF THE LATE AMOUNT WITH A MIN OF \$25.00

☐ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☐ are ☐ are not included in the principal amount above.

PAYMENTS: I agree to pay this note as follows:

59 MONTHLY PAYMENTS OF \$1,081.48 BEGINNING 06-05-2009 AND 1 BALLOON PAYMENT OF \$55,558.10 ON 05-05-2014.

ADDITIONAL TERMS: PREPAYMENT PROVISION: IF ANY AMOUNT OF PRINCIPAL IS PREPAID, BORROWER AGREES TO PAY TO LENDER, AT THE TIME OF PREPAYMENT, 3% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE FIRST ANNIVERSARY DATE OF THE NOTE, 2% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE SECOND ANNIVERSARY DATE OF THE NOTE AND 1% OF THE AMOUNT OF PRINCIPAL PREPAID PRIOR TO THE THIRD ANNIVERSARY DATE OF THE NOTE

☒ SECURITY: This note is separately secured by identifiable separate document in type and date: REAL ESTATE MORTGAGE DATED 10-21-2003
1110 SHELTON HOFFMAN AKA SHELTON L. HOFFMAN & SECURITY AGREEMENT
DATED 11-13-2008

(This section is for your internal use. It states that a separate security document does not mean the obligor will not secure this note.)

PURPOSE: The purpose of this loan is CONSOLIDATION OF LOANS
#112831108 & 11458204

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE INCLUDING THOSE ON PAGE 21. I have received a copy on today's date.

Shelton Hoffman
SHELTON L. HOFFMAN

Signature for Lender

ORUCE RHENET

SOUTH CAROLINA - UNIVERSAL NOTE

EXPENSE 01/09/04, 1001 Bankers Systems, Inc. St. Cloud, FL Form UN-SC 7-2007

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AL ESTATE OR RESIDENCE SECURITY: If this note is secured by real estate or a residence that is personal property, the existence of a default

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION: If this loan is for a business purpose, I agree to waive the right to five days' notice and a preforeclosure hearing prior to seizure of any personal property which may secure this loan.

(page 2 of 2)

DEBTOR NAME AND ADDRESS SHELTON HOFFMAN 2950 REDMON MILL RD NORTH, SC 29112	SECURED PARTY NAME AND ADDRESS SCBT, N.A. 950 JOHN C. CALHOUN DRIVE BOX 8007 ORANGEBURG, SC 29116-8007 57-0219408

Type: ☒ individual ☐ partnership ☐ corporation ☐ _____
 State of organization/registration (if applicable) SC
☐ If checked, refer to addendum for additional Debtors and signatures.

COMMERCIAL SECURITY AGREEMENT

The date of this Commercial Security Agreement (Agreement) is 11-13-2008

SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one) ☒ Debtor ☐ _____ (Borrower) owes to Secured Party:

☐ Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

☒ All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated in or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

SECURITY INTEREST. To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything required upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

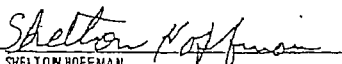
PROPERTY DESCRIPTION. The Property is described as follows:

- ☐ Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- ☐ Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- ☐ Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- ☐ Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- ☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- ☐ Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- ☐ Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- ☐ Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- ☐ Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- ☐ Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- ☒ Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

LINK BELT EXCAVATOR - SERIAL NO. 88H8443; 1979 INTL TRUCK VIN# AF195JCA19321; DUMP WAGON #5563; AND 1994 LANDOLL 30 TON LOWBOY #1UH323LH5R1007153

USE OF PROPERTY. The Property will be used for ☐ personal ☐ business ☐ agricultural ☐ _____ purposes.

SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement.

DEBTOR  SHELTON HOFFMAN	SECURED PARTY SCBT, N.A. BRUCE RHENEY

GENERAL PROVISIONS. Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

APPLICABLE LAW. This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

NAME AND LOCATION. Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence; if Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

WARRANTIES AND REPRESENTATIONS. Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debt. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

DUTIES TOWARD PROPERTY. Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, in which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments. If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or the returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will not use any loan proceeds for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as explained by federal law.

If Debtor pledges the Property to Secured Party (delivers the Property to the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

PERFECTION OF SECURITY INTEREST. Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

INSURANCE. Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amount Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debt. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights in any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debt. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

AUTHORITY TO PERFORM. Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement.

If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property. Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

PURCHASE MONEY SECURITY INTEREST. If the Property includes items purchased with the Secured Debt, the Property purchased with the Secured Debt will remain subject to Secured Party's security interest until the Secured Debt is paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

DEFAULT. Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment to full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debt;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debt or significantly impairs the value of the Property.

WAIVER OF HEARING PRIOR TO IMMEDIATE POSSESSION. Secured Party may immediately seize the Property upon Debtor's default. Debtor agrees to waive the right to five days' notice and a pre-seizure hearing prior to seizure of the Property.

REMEDIES. After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

- (1) make all or any part of the Secured Debt immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debt.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debt. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By thinking any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

WAIVER. Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

NOTICE AND ADDITIONAL DOCUMENTS. Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.

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6239

Please Refer, Recorded Document To:
HARBOROUGH, HUNTO & JACKSON
ATTORNEYS AT LAW
POST OFFICE BOX 2268
ORANGEBURG, SC 29118-2268

03-3317

This document was prepared by (name, address, phone): SOUTH CAROLINA BANK AND TRUST, 81
650 JOHN C. CALHOUN DRIVE ORANGEBURG, SC 29115

(803) 534-2175

GAIL LANEY
REGISTER OF DEEDS
ORANGEBURG CO., S.C.

State of South Carolina

Space Above This Line For Recording Title

REAL ESTATE MORTGAGE (With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage is 10-21-2003 and the parties and their addresses are as follows:

MORTGAGOR: SHELTON HOFFMAN - A/K/A SHELTON L. HOFFMAN
3897 NORTH RD.
ORANGEBURG, SC 29115

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages.

LENDER: SOUTH CAROLINA BANK AND TRUST, N.A.
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
650 JOHN C. CALHOUN DRIVE
ORANGEBURG, SC 29115

2. **MORTGAGE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property: SEE ATTACHMENT FOR FULL LEGAL DESCRIPTION

The property is located in ORANGEBURG at 3897 NORTH RD.
(County) (City) South Carolina 29115
(Address) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/AGRICULTURAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FIRM, FIRM, FIRM OR VA USE, AND NOT FOR CO-SIGNER PURPOSES)

Exempt ©1994, 2001 Burdick Systems, Inc., St. Cloud, MN Form AGCO-RES13C 5/24/2001

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3. **MAXIMUM COLLATERAL LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 100,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagor shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.

4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:

- A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt): A NOTE DATED 10-21-2003 IN THE AMOUNT OF \$100,000.00 IN THE NAME OF RHETON HOFFMAN

(e.g., borrower's name, note amount, interest rate, maturity date)

- B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
- C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
- D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
- E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.

If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.

6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.

7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.

8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:

- A. To make all payments when due and to perform or comply with all covenants.
- B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
- C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of these on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 681), as applicable. For the purposes of this section, the term "Property" also includes any interest in all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property of at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

15. **DEFAULT.** Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guaranteeing, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or

G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit A.

16. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgagor is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

17. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

18. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
- E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
- F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
- G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
- H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
- I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
- J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
- K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims,

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demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagee will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.

- L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

19. **CONDEMNATION.** Mortgagee will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagee further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagee authorizes Lender to intervene in Mortgagee's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagee assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

20. **INSURANCE.** Mortgagee agrees to maintain insurance as follows:

- A. Mortgagee shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Mortgagee subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagee fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagee shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagee shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagee shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagee.

Unless Lender and Mortgagee otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagee. If Mortgagee abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagee otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagee's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagee agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagee agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits. (If agreed to separately in writing), under a form of policy acceptable to Lender.

21. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagee will not be required to pay to Lender funds for taxes and insurance in escrow.

22. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagee will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagee warrants that all financial statements and information Mortgagee provides to Lender are, or will be, accurate, correct, and complete. Mortgagee agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagee's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagee fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagee's name and Mortgagee hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

23. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagee signs this Mortgage but does not sign the Evidence of Debt, Mortgagee does so only to mortgage Mortgagee's interest in the Property to secure payment of the Secured Debt and Mortgagee does not agree to be personally liable on the Secured Debt. Mortgagee agrees that Lender and any party to this Mortgage may extend,

modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

24. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

25. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

26. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

27. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- ☐ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☐ **Crops; Timber; Minerals; Rents, Issues, and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").
- ☐ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

28. **OTHER TERMS.** If checked, the following are applicable to this Mortgage:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☐ **Additional Terms.** _____

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(page 6 of 7)

S.H.

STATEMENT: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☐ Actual authority was granted to the parties signing below by resolution signed and dated _____

Entity Name: _____

Shelton Hoffman (Signature) SHELTON HOFFMAN (Date) _____ (Seal)

A. - R. A. Shelton L. Hoffman (Signature) A/K/A SHELTON L. HOFFMAN (Date) _____ (Seal)

Signed, Sealed and delivered in the presence of:

Jimm Martin (Witness)

Ronald E. White (Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgages, signatures and acknowledgments.

PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF ORANGEBURG) ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

Sworn to and subscribed before me this 21ST day

of OCTOBER 2003
Ronald E. White (Seal)
Notary Public for South Carolina

Jimm Martin

My commission expires: 2/9/2008

"EXHIBIT A" - ATTACHMENT TO MORTGAGE FROM SHELTON HOFFMAN A/K/A
SHELTON L. HOFFMAN TO SOUTH CAROLINA BANK AND TRUST, N.A.

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 22 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden, et al. by W. F. Stokes, RLS dated March 13, 1980 and recorded in the office of the Register of Deeds for Orangeburg County in Plat Book 49 at Page 99 and being bounded and measuring as follows: On the Northeast by U.S. Highway 178 and measuring thereon 195 feet; on Southeast by lands now or formerly of Bradshaw and measuring thereon 410.4 feet; on the South by Lot 23 on said plat and measuring thereon 171.1 feet; and on the Northwest by the right of way of a 50-foot road and measuring thereon along a broken line 542.4 feet; be all measurements a little more or less.

ALSO:

All that certain piece, parcel or tract of land, containing 2.00 acres, more or less, situate, lying and being in Limestone Township, County of Orangeburg, State of South Carolina, and being set forth and shown as Lot No. 23 on a plat of Eldorado Subdivision, Section I prepared for Ruth Hayden, et al. by W. F. Stokes, RLS dated March 13, 1980 and recorded in the office of the Register of Deeds for Orangeburg County in Plat Book 49 at Page 99 and being bounded and measuring as follows: On the North by Lot 22 on said plat and measuring thereon 171.1 feet; on Northeast by lands now or formerly of Bradshaw and measuring thereon 233.4 feet; on the Southeast by lands now or formerly of Bradshaw and measuring thereon 100 feet; on the South by Lot 24 on said plat and measuring thereon 333.6 feet; and West by the right of way of a 50-foot road and measuring thereon 174.1 feet; be all measurements a little more or less.

This being the same property conveyed to Shelton L. Hoffman by the following deeds:

1. Deed of Beulah S. Nash, et al. dated October 3, 1983 and recorded in the office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at Page 963.
2. Deed of Ruth N. Hayden, et al. dated October 13, 1983 and recorded in the office of the Register of Deeds for Orangeburg County on October 13, 1983 in Deed Book 489 at Page 969.

ALSO:

All that certain piece, parcel or tract of land, with any and all improvements thereon, containing 55.50 acres, more or less, situate, lying and being in Elizabeth Township, County of Orangeburg, State of South Carolina, and being bounded as follows: On the Northeast by property now or formerly of Inabinet; on the East by property now or formerly of Inabinet; on the Southeast by property now or formerly of Grady Hoffman; on the Southwest by property now or formerly of Marlene Lloyd; on the Northwest by property now or formerly known as the home place of T. K. Hoffman; on the Southwest, again, by property now or formerly known as the home place of T. K. Hoffman; and on the Northwest, again, by the right of way of Lightning Hill Road.

8/4. 10-21-03

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1394
B247

This being the same property devised to Shelton Hoffman by the Last Will and Testament of Theodore Koins Hoffman which was duly admitted to probate and filed in the office of the Probate Court for Orangeburg County in Apartment 583 at Package 3.

S.H. 10-21-03

EX 1394 PC 247

Recorded this 21 day of Oct
1007 20103 in MT
Book 1394 at Page 239
John Smith
REGISTER OF DEEDS
ORANGEBURG CO., S.C.

BK 1394 PG 248

STATE OF SOUTH CAROLINA)

IN THE COURT OF APPEALS

COUNTY OF ORANGEBURG)

Case No. 2013-000965

Shelton Hoffman)

a/k/a Shelton L. Hoffman)

Appellant,)

vs.)

SCBT, NC)

Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of February, 2014, I served, via first class mail, at the address below, a copy of the Appellant's Record on Appeal pertaining to the above-referenced action.

Harriet Pollitt Wallace, Esq.
James K. Cluverius, Jr.
Roger Townsend & Thomas, PC
401 N. Main St Suite 100
Greenville, SC 29601
Attorney for the Respondent



Vicky McCarter
Legal Assistant

RECEIVED

Columbia, South Carolina

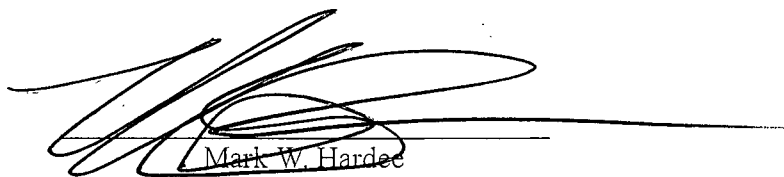
FEB 18 2014

Date: 2-18-14

SC Court of Appeals

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Mark W. Hardee
The Hardee Law Firm
2301 Devine St
Columbia, SC 29205
(803)799-0905
Attorney for Appellant