

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 10-CP-08-1707

Appellate Case No. 2013-001531

RECEIVED

MAR 13 2014

SC Court of Appeals

HSBC Mortgage Corporation, USA.....Appellant,

v.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and
First Federal Savings and Loan Association a/k/a First Federal Savings and Loan
Association of Charleston Defendants,

Of whom

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein,
are Respondents.

**RECORD ON APPEAL
VOLUME I OF I**

Robert H. Jordan
SC Bar No. 13612
Merritt G. Abney
SC Bar No. 71893
NELSON MULLINS RILEY & SCARBOROUGH
Post Office Box 1806
Charleston, SC 29402
(843) 853-5200

Mary Leigh Arnold, Esquire
MARY LEIGH ARNOLD, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
(843) 971-6053

Attorney for Respondents

*Attorneys for Appellant HSBC Mortgage
Corporation, US*

INDEX

Official Record Page Number at Bottom Center of Page

VOLUME I

ORDERS

1. Form 4 Order Denying Plaintiff's Motion to Dismiss the Case filed on February 27, 2012.....1
2. Form 4 Order Taking Under Advisement the Plaintiff's Motion for Summary Judgment on the Counterclaims or Referring the Case to the Master in Equity filed on November 16, 2012 3
3. Order Denying Plaintiff's Motion for Summary Judgment on the Counterclaims or Referring the Case to the Master in Equity filed on January 17, 2013 5
4. Order Denying Plaintiff's Motion to Alter or Amend filed February 25, 2013 6
5. Form 4 Order denying Plaintiff's Motion to Strike Jury Demand and Refer Case filed April 18, 2013.....8
6. Form 4 Order Denying Plaintiff's Motion to Alter or Amend filed July 9, 2013 10

PLEADINGS

7. Amended Complaint dated May 24, 2010 12
8. Answer and Counterclaim of Frederick Otterbein and Heather Otterbein dated June 23, 2010 18
9. Second Amended Complaint dated July 19, 2010 27
10. Plaintiff's Reply to the Answer and Counterclaims of Defendants Heather and Frederick Otterbein dated July 21, 2010 33
11. Amended Answer and Counterclaim of Frederick Otterbein and Heather Otterbein dated August 26, 2010 38
12. Reply of Plaintiff to Defendant Frederick Otterbein and Heather H. Otterbein's Answer and Counterclaim dated September 14, 2010.....47
13. Stipulation of Dismissal of Plaintiff's Foreclosure Claim Only without Prejudice dated July 5, 2013 52

MOTIONS

14.	Plaintiff's Motion to Dismiss the Case without Prejudice filed December 6, 2011	55
15.	Plaintiff's Motion for Summary Judgment on Counterclaims and to Strike Jury Demand dated September 6, 2012	57
16.	Plaintiff's Memorandum in Support of Motion for Summary Judgment dated November 26, 2012, with Exhibits	59
1.	Note dated December 21, 2007.....	66
2.	Mortgage dated December 21, 2007.....	71
3.	Home Affordable Modification Agreement dated July 2011	86
4.	Affidavit of Heather Otterbein dated November 12, 2012	97
5.	Forbearance Agreement dated July 27, 2009.....	100
6.	Letter from Plaintiff dated February 26, 2010 (Exhibit B to Otterbein Affidavit) and Letter from Plaintiff dated July 1, 2010 (Exhibit C to Otterbein Affidavit).....	104
17.	Defendants' Memorandum in Opposition to Plaintiff's Motion for Summary Judgment dated November 26, 2012, with Exhibits.....	108
1.	Affidavit of Heather Otterbein dated November 12, 2012, with Exhibits	119
A.	Loan transaction histories	122
B.	Letter from Plaintiff dated February 26, 2010	152
C.	Letter from Plaintiff dated July 1, 2010	154
E.	Consent Order in dated April 13, 2011	158
18.	Plaintiff's Motion to Alter or Amend the Order Denying Summary Judgment and Strike the Jury Demand filed February 15, 2013	191
19.	Plaintiff's Motion to Strike Jury Demand and Refer Case and Memorandum of Law in Support dated March 12, 2013, with Exhibits	196

A.	Excerpts of Transcript of Deposition of Heather Otterbein dated January 29, 2013.....	203
B.	Excerpts of Transcript of Deposition of Frederick Otterbein dated February 22, 2013.....	207
20.	Plaintiff's Notice of and Motion to Alter or Amend the Court's Order, entered April 18, 2013 (Pursuant to Rule 59(E), SCRCP) filed May 6, 2013.....	212

TRANSCRIPTS

21.	Transcript of Hearing of Plaintiff's Motion to Strike Jury Demand dated April 17, 2013.....	216
22.	Transcript of Hearing of Plaintiff's Motion to Alter or Amend dated July 8, 2013... ..	226

OTHER

23.	Notice of Appeal filed July 12, 2013	245
-----	--	-----

Certificate of Counsel

Certificate of Compliance

Proof of Service

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-01707

HSBC MORTGAGE CORP USA

FREDERICK J. OTTERBEIN, IV, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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: Plaintiff's motion to dismiss the case without prejudice is denied. Formal Order to follow.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC 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)
N/A	N/A	\$
		\$
		\$

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.

Circuit Court Judge

2163

Judge Code

2/16/12

Date

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of Feb, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of Feb, 2012 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)

Mary J. Brown
CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-01707

HSBC MORTGAGE CORPORATION USA

FREDERICK J OTTERBEIN IV, ET AL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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 : Plaintiff's Motion for Summary Judgment on Counterclaims and to Strike Jury is TAKEN UNDER ADVISEMENT. Attorney to submit memo in one week.

INFORMATION FOR THE PUBLIC 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)
N/A		\$
		\$
		\$

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.

Circuit Court Judge

2134

Judge Code

Date

SCRPC Form 4C (10/2011)

Page 1 of 2

ROA_0003

For Clerk of Court Office Use Only

This judgment was entered on the 16 day of Nov, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Nov, 2012 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)

Mary P. Bruner
CLERK OF COURT

Court Reporter: Amanda Haffenden

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
HSBC Mortgage Corporation, USA

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a
Frederick John Otterbein, IV, Heather
H. Otterbein, and First Federal Savings
And Loan Association of Charleston

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-08-1707

ORDER DENYING SUMMARY
JUDGMENT

FILED
2013 JAN 17 AM 9:47
MARY P. BRUM
CLERK OF COURT
BERKELEY COUNTY, SC

This matter is before this Court upon Defendant's Motion for Summary Judgment. A hearing was held on November 14, 2012. I have reviewed the arguments of counsel, memorandums of law, and other relevant documents. Viewing the evidence as a whole and in the light most favorable to the Plaintiff, as I am required to do at this stage, I find that a genuine issue of material fact exists to preclude granting of summary judgment. Therefore, the Plaintiff's motion is denied.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED!

1/14/13, 2013
Berkeley, South Carolina

Roger M. Young, Circuit Judge

1/28/13
Email
2:16
CBS
mda
SUC
CSG

B

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
HSBC Mortgage Corporation, USA

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a
Frederick John Otterbein, IV, Heather
H. Otterbein, and First Federal Savings
And Loan Association of Charleston

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-08-1707

ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND

FILED
2013 FEB 25 PM 4:14
HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

This matter came before this Court upon Plaintiff HSBC Mortgage Corporation, USA's Motion to Alter or Amend this Court's Order dated January 17, 2013 denying Plaintiff's Motion for Summary Judgment on Counterclaims and to Strike Jury Demand.

A hearing was held on November 14, 2012. The Court issued an Order from hearing on January 17, 2013. Plaintiff has now filed a Motion to Alter or Amend the Order Pursuant to SCRCP 59(e).

Standard of Review

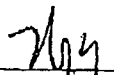
Power to open, modify or vacate a judgment is possessed solely by the court that rendered judgment. Coleman v. Dunlap, 413 S.E.2d 15 (S.C. 1992). A Rule 59(e) motion is not only the proper vehicle to request a court to alter or amend a judgment, but also to seek reconsideration of issues and arguments previously presented. Elam v. South Carolina Dept. of Transp., 361 S.E.2d 772 (S.C. 2004). It is well established that a Rule 59(e) motion can be successful in only three situations: (1) to accommodate an intervening change in controlling law;

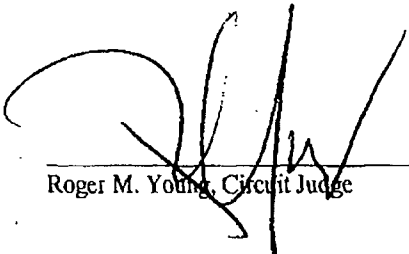
(2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. Zinkand v. Brown, 478 F.3d 634 (4th Cir. 2007).

Conclusion

I have considered the arguments, supporting and opposing documents, and based on same DENY Plaintiff's Motion to Alter or Amend the January 17, 2013 Order.

IT IS SO ORDERED!

 2013
Berkeley, South Carolina


Roger M. Young, Circuit Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-1707

HSBC Mortgage Corp, USA
PLAINTIFF(S)

Frederick J Otterbein IV, et al
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff	☐ Defendant
	or	
	☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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: Plaintiff's Motion to Strike Jury Demand and Refer case was denied. Plaintiff's Motion to Alter and/or Amend needs to be scheduled before the Honorable Roger Young.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk:

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.

*4/20/13
Email:
CBS
MSP
WBT
ESG*
R. M. Marley
Circuit Court Judge

SCRPC Form 4C (12/2011)

2060
Judge Code

4/17/13
Date

Page 1

ROA_0008

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)

Mary P. Durkin
CLERK OF COURT

Court Reporter:

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY
IN THE COURT OF COMMON PLEASJUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP0801707

Hsbc Mortgage Corp, Usa

Frederick J Otterbein IV Frederick John
Otterbein IV
Heather H Otterbein First Federal Savings &
Loan Asso
First Federal Savings &
Loan Asso of Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(e), SCRPC Vol. Nonsuit;
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ 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: Defendant Otterbein Motion to Compel is GRANTED and Plaintiff's Motion to Alter or Amend the Court's Order Entered on 4/18/13 was DENIED.

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.

FORM 4Cm
SCRPC Form 4C (Revised 3/2013)

ROA_0010

RT Mulliken 2060 7/9/2013
Circuit Court Judge Judge Code Date
For Clerk of Court Office Use Only

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

William S. Koehler PO Box 100200 Columbia, SC
292023200
Charles Stuart Gwynne Jr. PO Box 100200 Columbia, SC
292023200

ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher Blohme Staubes III 126 Seven Farms Dr., Ste.
200 Charleston, SC 29492
Mary Leigh Arnold 749 Johnnie Dodds Blvd, Ste B Mt.
Pleasant, SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Mary P. Brown
Mary P. Brown Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

PLAINTIFF,

VS.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and First Federal Savings and Loan Association a/k/a First Federal Savings and Loan Association of Charleston,

DEFENDANT(S).

(101049.00107)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-08-1707

AMENDED
COMPLAINT

Foreclosure - Non-Jury
(Deficiency demanded)

FILED
2010 MAY 24 AM 9:03
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Berkeley County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The subject note and mortgage is not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac; and, the current servicer is not currently participating in the Home Affordable Modification Program (HMP).
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of December 21, 2007, Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein made, executed and delivered to Bradford Mortgage Company a certain mortgage note ("Note") in writing wherein and whereby Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein promised to pay to Bradford Mortgage Company the principal sum of \$417,000.00.
7. In order to secure the payment of said note, the said Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein did on the same date, to-wit,

December 21, 2007, make execute and deliver to Mortgage Electronic Registration Systems, Inc., solely as nominee for Bradford Mortgage Company, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Berkeley County, on January 4, 2008, in Book 7087, at Page 57; subsequently, the Note and Mortgage were assigned to HSBC Mortgage Corporation, USA

The description of the premises as contained in said mortgage is as follows:

ALL that certain piece, parcel or lot of land shown and designated as Lot 30, together with the buildings and improvements thereon, situate, lying and being in Tax District Number 1, in the County of Berkeley and State of South Carolina, shown and designated on a plat entitled "PLAT OF LOTS 30 AND 31, CAINHOY VILLAGE SUBDIVISION" prepared by William H. Dennis, R.L.S., # 10035, on December 13, 1984, said lots having such size, shape, content, delineations, metes and bounds as will more fully appear on said plat, said plat being recorded in Cabinet E, Page 394, RMC Office for Berkeley County, reference to which is craved.

This being the same property conveyed to Frederick John Otterbein, IV and Heather H. Otterbein by deed of Michael T. McAlhany, Jr. and Holly Gasque McAlhany dated January 26, 2005 and recorded February 10, 2005 in the Register of Deeds Office for Berkeley County, South Carolina RMC in Book 4511 at Page 293.

TMS No. 2630002026

Property address: 116 Wando Creek Lane
Charleston, SC 29492

8. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action as well as the After Acquired Property Doctrine.

9. That the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiff.

10. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and

interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

11. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

12. The installments of principal and interest falling due from and after October 1, 2009 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$417,000.00, together with interest thereon at the rate of 5.25% percent per annum from September 1, 2009, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

13. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, First Federal Savings and Loan Association a/k/a First Federal Savings and Loan Association of Charleston, by virtue of a mortgage given to First Federal Savings and Loan Association of Charleston from Frederick J. Otterbein, IV and Heather H. Otterbein, in the original amount of \$135,000.00, dated December 21, 2007 and recorded January 4, 2008 in the Register of Deeds Office for Berkeley County, South Carolina in Book 7087 at Page 76.

14. The Plaintiff demands a personal or deficiency judgment against Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein and any right to the same is specifically demanded.

15. Plaintiff 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.

16. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

1. The amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said 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, the surplus, if any, be distributed according to law.

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 tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

5. Issue an order directing the Sheriff of Berkeley County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina

Department of Motor Vehicles to issue a Certificate of Title on any mobile home collateralized under the security documents of the Plaintiff.

6. Plaintiff have judgment against the Defendant(s) Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein for the full amount found to be due Plaintiff on the note and mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett E. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

Sara J. Volk, SC Bar #74822

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

May 19, 2010

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

1. The amount of the debt is as stated and defined in the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owed.
3. If the original creditor is different from the current creditor, the creditor's law firm will provide the debtor with the name and address of the original creditor if requested by the debtor within thirty (30) days of the receipt of this notice.
4. The debt described in the Complaint attached hereto and evidenced by the Note and Mortgage described therein will be assumed to be valid by the creditor's law firm unless the debtor, within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
5. If the debtor notifies the creditor's law firm (Scott Law Firm, P.A. at 803-252-3340 or by mail at Scott Law Firm, P.A., Post Office Box 2065, Columbia, SC 29202-2065) within thirty (30) days of the receipt of this notice that the debt or any portion thereon is disputed, the creditor's law firm will obtain a verification of the debt, and a copy of the verification will be mailed to the debtor by the creditor's law firm.
6. This notice shall not be construed or interpreted as a thirty (30) day grace period or an extension. The Creditor may pursue collection efforts immediately and not wait thirty (30) days.

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

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) CASE NO. 2010-CP-08-1707

HSBC MORTGAGE CORPORATOIN, USA)

Plaintiff(s),)

vs.)

ANSWER and COUNTERCLAIM OF
FREDERICK OTTERBEIN
HEATHER OTTERBEIN

FREDERICK J. OTTERBEIN, IV A/K/A
FREDERICK JOHN OTTERBEIN, IV,
HEATHER H. OTTERBEIN, AND FIRST
FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHARLESTON)

JURY TRIAL DEMANDED

Defendants.)

TO: BRETT F. KLINE, ESQUIRE ATTORNEY FOR PLAINTIFF:

The Defendants Frederick Otterbein and Heather Otterbein answering the Complaint of the Plaintiff herein, and state as follows that:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, explained or modified.
2. The allegations of Paragraph 1 constitute legal conclusions which these Defendants are required neither to admit nor deny.
3. Defendants lack knowledge and information sufficient to form an opinion or belief as to the allegations of Paragraph 2 that allege Plaintiff is corporation and therefore denies the same and demand strict. As to the remaining allegations Defendants deny the same and therefore demand strict proof thereof.
4. Defendants lack knowledge and information sufficient to form an opinion or belief as to the allegations of Paragraph 3 and therefore deny the same and demand strict proof

thereof.

5. The allegations of Paragraphs 4 and 5 constitute legal conclusions which these Defendants are required neither to admit nor deny.

6. Answering the allegations of Paragraph 6 and 7 Defendants crave reference to the documents identified therein and deny any allegation inconsistent with the specific terms of said documents.

7. The allegations of Paragraph 8 constitute legal conclusions which these Defendants are required neither to admit nor deny.

8. Answering the allegations of Paragraph 9 Defendants crave reference to the documents identified therein and deny any allegation inconsistent with the specific terms of said documents.

9. Defendants deny the allegations of Paragraphs 9 and therefore demand strict proof thereof.

10. Answering the allegations of Paragraphs 10 and 11 Defendants crave reference to the documents identified therein and deny any allegation inconsistent with the specific terms of said documents.

11. Defendants deny the allegations of Paragraph 12 and demand strict proof thereof.

12. The allegations of Paragraph 13, 14, 15 and 16 constitute legal conclusions which these Defendants are required neither to admit nor deny.

FOR AND AS A FIRST DEFENSE

(Failure to State Claim)

13. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint fails to set forth a sufficient cause of action.

FOR AND AS A SECOND DEFENSE
(Real Party in Interest)

14. Further answering said Complaint and for a further defense thereto Defendants

allege that Plaintiff is not the real party in interest and therefore is barred from bringing the within action.

FOR AND AS A THIRD DEFENSE
(Waiver)

15. Further answering said Complaint and for a further defense thereto Defendants

allege that Plaintiff's Complaint is barred by the doctrines of waiver and estoppels.

FOR AND AS A FOURTH DEFENSE
(Breach of Contract)

16. Further answering said Complaint and for a further defense thereto Defendants

allege that Plaintiff breached the terms of the subject contract and therefore is barred from bringing the within action.

FOR AND AS A FIFTH DEFENSE
(Affirmative Defenses)

17. Further answering said Complaint and for a further defense thereto Defendants

Specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, duress, fraud, illegality, laches, statute of limitations, misrepresentation, mistake, payment, release, waiver, lack of consideration or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this progresses.

FOR AND AS A SIXTH DEFENSE
(Unclean Hands)

18. Further answering the Complaint and as and for a further defense thereto, the Defendants allege, a mortgage foreclosure is an action in equity. The Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this equitable action.

FOR AND AS A SEVENTH DEFENSE

(Reservation and Non-Waiver)

19. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

**FOR AND AS A EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract and Good Faith and Fair Dealing)**

20. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

21. Defendants are residents of the Charleston County State of South Carolina.

22. Defendants entered into an agreement with Plaintiff as referenced in the subject Complaint.

23. Every contract has an implied duty of good faith and fair dealing.

24. Plaintiff breached its agreement and duty of good faith and fair dealing with Defendants by failing to properly administer the Home Modification Program if offers and promotes, losing documents submitted by Defendants, failing to timely respond to borrowers requests, filing foreclosure actions against Defendants while Defendants were in an active and ongoing loss mitigation program and negotiations with Plaintiff; and failing to adhere to the terms of the its lost mitigation program; and failing to offer, or timely offer affordable loss mitigation options to borrowers.

25. As a result of the breach of Plaintiff, Defendants have suffered damages including, but not limited to, lost properties, devaluation and lack of marketability of Defendants' home and excess charges.

26. Defendants are informed and believe they are entitled to actual, consequential, incidental, expectation, and special damages against Plaintiff in the appropriate amount, costs, and such other and further relief as the court deems just and proper.

**FOR AND AS A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Declaratory and Injunctive Relief)**

27. Defendants adopt the allegations of paragraphs 1 through 26 and incorporate the same herein by reference as if stated verbatim.

28. Defendants are persons interested under agreements and bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, et. seq. (Law Co-op. 1976), to determine the validity of and their legal rights and obligations, if any, under the terms of the loan transactions.

29. The consumer loan transactions between Defendants and Plaintiff should not be or is not enforceable. As such, Defendants seek an order declaring the terms of the loan transactions unenforceable, allowing the Defendants to rescind the loan transactions requiring the return of all payments made to Plaintiff, prohibiting and or enjoining Plaintiffs from declaring the terms of the loan transactions in default, prohibiting and enjoining Plaintiffs from initiating or prosecuting a foreclosure action and/or reforming the loan transactions.

30. Additionally, Defendants seek the disgorgement of Plaintiffs' illicit profits, restitution in the amount of excess interest levied by Plaintiff, and modification of the transactions and other relief as set forth in the prayer below.

31. As a result of Plaintiff's unfair improper, and unconscionable lending and servicing practices as described above, Defendants have suffered, and will continue to suffer, severe and irreparable harm and injury.

32. Accordingly, Defendants respectfully ask the Court to enter a preliminary and/ or permanent injunction ordering Plaintiff to cease and desist their unfair and unconscionable lending or servicing practices of attempting to enforce and enforcing loan terms that are unconscionable and / or unreasonable and/or should be modified and subjecting their homes to foreclosure.

**FOR AND AS TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unjust Enrichment)**

33. Defendants adopt the allegations of paragraphs 1 through 32 and incorporate the same herein by reference as if stated verbatim.

34. Plaintiff has been unjustly enriched at the expense of and to the detriment of Plaintiffs by failing to act in good faith and properly create, implement and administer a modification program.

35. Defendants are informed and believe they are entitled to recover from the Plaintiff all assets and monies improperly withheld and received, any benefits received from the Plaintiff for its breach and inappropriate application of a modification program.

**FOR AND AS AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)**

36. Defendants adopt the allegations of paragraphs 1 through 35 and incorporate the same herein by reference as if stated verbatim.

37. Plaintiff, as originators and successors and assigns, upon information and belief, made false representations and misleading representations to the Defendants regarding the actual

terms of the loan transactions, the application of a modification program, their compliance with a federally required modification program, and the availability of a modification.

38. In the course and conduct of offering and servicing the loan, Plaintiff

misrepresented, expressly or by implication, the availability of a modification and its terms.

39. Plaintiff had a pecuniary interest in making the statements and soliciting the consumers' business by making this loan.

40. Plaintiff owed a duty of care to see that it communicated truthful information to the consumers.

41. Plaintiff breached that duty by failing to exercise due care.

42. Defendants' and all other consumers justifiably relied upon these representations.

43. By virtue of the negligent misrepresentations, the Defendants have been actually damaged and because these representations were willful, intentional, with malice towards the Defendants and with a reckless disregard for the rights of the Defendants, they seek an award of actual and punitive damages in accordance with their prayer for relief.

**FOR AND AS A TWELVTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Accounting)**

44. Defendants adopt the allegations of paragraphs 1 through 43 and incorporate the same herein by reference as if stated verbatim.

45. Defendants are entitled to an accounting from Plaintiff detailing all payments made, when received, when applied, how applied, interest charged, fees assessed and all other matters relating to the amount claimed owed.

JURY TRIAL DEMANDED

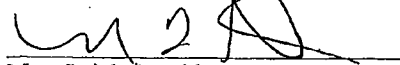
PRAYER FOR RELIEF

Wherefore, in light of the foregoing, Defendants respectfully request

that this Court:

1. Rescind the underlying mortgage transactions and terminate any security interests created under the transactions;
2. Enjoin the enforcement of the subject note and mortgage and declare the same unenforceable;
3. Enjoin the 1 pending foreclosure actions;
4. Award actual, compensatory and punitive damages in an amount to be determined at trial;
5. Award reasonable costs of this action;
6. Declare the subject mortgage void; and
7. Award all such other and further relief as this Court deems just and proper.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, South Carolina 29464
(843) 971-6053
(843) 671-6055
Sammie@maryarnoldlaw.com

Attorney for Defendants Otterbein

Mt. Pleasant, SC

Dated: 6/23/10

CERTIFICATE OF SERVICE

I certify that on this 23rd day of June 2010, a copy of the within Answer and

Counterclaim of Defendants Frederick and Heather Otterbein was placed in the United

States Mail postage pre-paid, addressed to Plaintiff's counsel as follows:

Brett F. Kline, Esquire
Scott Law Firm
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

A handwritten signature in black ink, appearing to read 'Belinda Carlin', is written over a horizontal line.

Belinda Carlin, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

PLAINTIFF,

VS.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and First Federal Savings and Loan Association a/k/a First Federal Savings and Loan Association of Charleston,

DEFENDANT(S).

(101049.00107)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-08-1707

SECOND AMENDED
COMPLAINT

Foreclosure - Non-Jury
(Deficiency demanded)

FILED
2010 JUL 19 PM 2:49
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Berkeley County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. Pursuant to the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal, the Plaintiff reports that the subject note and mortgage is owned, securitized, or guaranteed by Fannie Mae. Moreover, the Plaintiff and the Defendants Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein have been engaged and participated in loan modification communication discussions with each other since April of 2009 but, due to their significant loss of income they have been unable to qualify for an HMP modification as of this date. The Plaintiff was and remains prepared to review the said borrowers for non-HMP loan modification programs in the event their proposed "private sale" of the subject property is not successful.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).

6. Heretofore, under date of December 21, 2007, Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein made, executed and delivered to Bradford Mortgage Company a certain mortgage note ("Note") in writing wherein and whereby Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein promised to pay to Bradford Mortgage Company the principal sum of \$417,000.00.

7. In order to secure the payment of said note, the said Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein did on the same date, to-wit, December 21, 2007, make execute and deliver to Mortgage Electronic Registration Systems, Inc., solely as nominee for Bradford Mortgage Company, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Berkeley County, on January 4, 2008, in Book 7087, at Page 57; subsequently, the Note and Mortgage were assigned to HSBC Mortgage Corporation, USA by an assignment instrument dated May 25, 2010 and recorded in Book 8500 at Page 113.

The description of the premises as contained in said mortgage is as follows:

ALL that certain piece, parcel or lot of land shown and designated as Lot 30, together with the buildings and improvements thereon, situate, lying and being in Tax District Number 1, in the County of Berkeley and State of South Carolina, shown and designated on a plat entitled "PLAT OF LOTS 30 AND 31, CAINHOY VILLAGE SUBDIVISION" prepared by William H. Dennis, R.L.S., # 10035, on December 13, 1984, said lots having such size, shape, content, delineations, metes and bounds as will more fully appear on said plat, said plat being recorded in Cabinet E, Page 394, RMC Office for Berkeley County, reference to which is craved.

This being the same property conveyed to Frederick John Otterbein, IV and Heather H. Otterbein by deed of Michael T. McAlhany, Jr. and Holly Gasque McAlhany dated January 26, 2005 and recorded February 10, 2005 in the Register of Deeds Office for Berkeley County, South Carolina RMC in Book 4511 at Page 293.

TMS No. 2630002028

Property address: 116 Wando Creek Lane
Charleston, SC 29492

8. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon.

9. That the Plaintiff and/or its counsel have complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure

any default arising under the specific terms of the recited Note and Mortgage herein; and the review of this mortgage loan for participation with the Home Affordability Modification Program (HMP), as may be applicable.

10. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

11. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

12. The installments of principal and interest falling due from and after October 1, 2009 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$417,000.00, together with interest thereon at the rate of 5.25% percent per annum from September 1, 2009, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

13. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, First Federal Savings and Loan Association a/k/a First Federal Savings and Loan Association of Charleston, by virtue of a mortgage given to First Federal Savings and Loan Association of Charleston from Frederick J. Otterbein, IV and

Heather H. Otterbein, in the original amount of \$136,000.00, dated December 21, 2007 and recorded January 4, 2008 in the Register of Deeds Office for Berkeley County, South Carolina in Book 7087 at Page 76.

14. The Plaintiff demands a personal or deficiency judgment against Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein and any right to the same is specifically demanded; provided, however, the Plaintiff expressly reserves the right to waive its request for a personal or deficiency judgment against these Defendants at any time prior to a court auction or a private sale.

15. Plaintiff 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.

16. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

1. The amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. Plaintiff's mortgage be declared a first lien and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said 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, the surplus, if any, be distributed according to law.

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 tenants occupying or

exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

5. Issue an order directing the Sheriff of Berkeley County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary.

6. Plaintiff have judgment against the Defendant(s) Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein for the full amount found to be due Plaintiff on the note and mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises; provided, however, the Plaintiff expressly reserves the right to waive its request for a personal or deficiency judgment against these Defendants at any time prior to a court auction or a private sale.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

~~Brett E. Kline~~, SC Bar #15661

Angelia J. Grant, SC Bar #78334

Sara J. Volk, SC Bar #74822

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

July 16, 2010

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1692, *et seq.*

1. As reported by the records of the Plaintiff, the amount of the debt as of October 1, 2009, is the principal sum of \$417,000.00, with interest from September 1, 2009, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
2. The Creditor to whom the debt is owed is HSBC Mortgage Corporation, USA, who is authorized to receive payment on your loan.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Debtor, make a written request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you request proof of the debt or the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the complaint if we serve one on you. The summons is a command from the court, not from the Creditor's law firm, and you would have to follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the Judge's instructions.
8. **THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.** The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

) IN THE COURT OF COMMON PLEAS

)

CASE NO. 2010-CP-08-1707

HSBC Mortgage Corporation, USA,
PLAINTIFF,

)

)

)

VS.

)

PLAINTIFF'S REPLY

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

)

)

)

)

DEFENDANTS.

)

101049.00107

The Plaintiff, replying to the Answer and Counterclaims of the Defendants Heather and Frederick Otterbein ("Defendants"), replies as follows:

1. Any allegation of the Answer and Counterclaims that is not specifically admitted, qualified, or explained is denied, and strict proof thereof is demanded.

FOR A FIRST REPLY

2. The allegations of paragraph 20 are procedural in nature and should not require a response, to the extent the allegations are construed to require a response, they are denied.

3. The allegations of paragraph 21 are denied as the Plaintiff is informed and believes the Defendants are residents of Berkeley County.

4. The allegations of paragraph 22 and 23 are admitted.

5. The allegations of paragraphs 24, 25 and 26 are denied.

6. The allegations of paragraph 27 are procedural in nature and should not require a response, to the extent they are construed to require a response, they are denied.

7. Answering the allegations of paragraph 28, the Plaintiff admits that the Defendants may bring an action for declaratory relief, but deny the Defendants are

COPY

entitled to the relief they seek.

8. The allegations of paragraphs 29, 30, 31, and 32 are denied.

9. The allegations of paragraph 33 are procedural in nature and should not require a response, to the extent they are construed to require a response, they are denied.

10. The allegations of paragraphs 34 and 35 are denied.

11. The allegations of paragraph 36 are procedural in nature and should not require a response, to the extent they are construed to require a response, they are denied.

12. The allegations of paragraphs 37, 38, 39, 41, 42, and 43 are denied.

13. Answering the allegations of paragraph 40, the Plaintiff asserts that any duty owed to the Defendants, if at all, arises from the loan documents and applicable law. Further, the Plaintiff asserts it did communicate truthful information to the Defendants.

14. The allegations of paragraph 44 are procedural in nature and should not require a response, to the extent they are construed to require a response, they are denied.

15. The allegations of paragraph 45 are denied and reference is craved to the loan documents and applicable law. Further answering the allegations in this paragraph, the Plaintiff asserts the Defendants were provided with a payment history when requested.

16. The Plaintiff denies the Defendants have a right to a jury trial of this equitable foreclosure.

17. The Plaintiff denies the Defendants' prayer for relief.

FOR A SECOND REPLY

18. The counterclaim for negligence should be dismissed for failure to state a claim for which relief can be granted since the source of any alleged duty is in contract and not tort.

FOR A THIRD REPLY

19. The Plaintiff asserts that any alleged negligence of the Plaintiff, which is denied, is exceeded by the negligence of the Defendants and that the action should be barred or in the alternative reduced by the negligence of the Defendants.

FOR A FOURTH REPLY

20. The allegations of the Defendants concern a private contract (note and mortgage) between the Plaintiff and the Defendants and any alleged breach of that contract, which is denied, is not subject to the South Carolina Unfair Trade Practices Act.

21. The dispute between the parties does not impact the public interest.

FOR A FIFTH REPLY

22. Any alleged damages due the Defendants, which are denied, are exceeded by the amount due the Plaintiff for the Defendants default under the note and mortgage.

FOR A SIXTH REPLY

23. The Plaintiff received the note and mortgage which is the subject of this action pursuant to an assignment as a good faith purchaser for value without any notice as to any of the alleged claims by the Defendant. The Plaintiff is entitled to protection as a holder in due course and a good faith purchaser for value.

FOR A SEVENTH REPLY

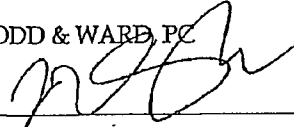
24. To the extent the Defendants are claiming a private cause of action for alleged violations of state and federal programs for which a private cause of action has not been authorized, the claims should be dismissed.

FOR AN EIGHTH REPLY

25. To the extent applicable, and to preserve these affirmative defenses, the Plaintiff asserts that affirmative defenses of estoppel, waiver, laches, unclean hands, statute of frauds and the statute of limitations.

WHEREFORE, having replied to the Defendants' answer and counterclaims, the
Plaintiff prays that the counterclaims be dismissed with prejudice and for judgment for
the relief demanded in the complaint.

TODD & WARD, PC



J. Derrick Jackson
Post Office Box 1549
Columbia, SC 29202
Attorneys for Plaintiff
(803) 779-4383

Dated: _____

7-21-10

OF COUNSEL TO:
Scott Law Firm, P.A.
Post Office Box 2065
Columbia, SC 29202
Attorneys for Plaintiff
(803) 252-3340

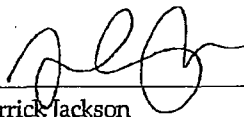
LOOK AT
ASAP!

CERTIFICATE OF SERVICE BY MAIL

I, J. Derrick Jackson, of the law firm of TODD & WARD, PC, attorney for the Plaintiff, do hereby certify that I served the foregoing Plaintiff's Reply on the Defendants by United States Mail, post prepaid, on July 21, 2010 addressed as follows:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

First Federal Savings and Loan
Nancy Meyer
Financial Center Manager
34 Broad Street
Charleston, SC 29401



J. Derrick Jackson

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) CASE NO. 2010-CP-08-1707

HSBC MORTGAGE CORPORATOIN, USA)

Plaintiff(s),)

vs.)

AMENDED
ANWER and COUNTERCLAIM OF
FREDERICK OTTERBEIN
HEATHER OTTERBEIN

FREDERICK J. OTTERBEIN, IV A/K/A)
FREDERICK JOHN OTTERBEIN, IV,)
HEATHER H. OTTERBEIN, AND FIRST)
FEDERAL SAVINGS AND LOAN)
ASSOCIATION OF CHARLESTON)

JURY TRIAL DEMANDED

Defendants.)

TO: BRETT F. KLINE, ESQUIRE ATTORNEY FOR PLAINTIFF:

The Defendants Frederick Otterbein and Heather Otterbein answering the Complaint of the Plaintiff herein, and state as follows that:

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically admitted, explained or modified.
2. The allegations of Paragraph 1 constitute legal conclusions which these Defendants are required neither to admit nor deny.
3. Defendants lack knowledge and information sufficient to form an opinion or belief as to the allegations of Paragraph 2 that allege Plaintiff is corporation and therefore denies the same and demand strict. As to the remaining allegations Defendants deny the same and therefore demand strict proof thereof.
4. Defendants admit so much of the allegations of Paragraph 3 that subject loan is subject to the Home Affordable Modification Program ("HMP") but deny all remaining

allegations of said Paragraph and demand strict proof thereof.

5. The allegations of Paragraphs 4 and 5 constitute legal conclusions which these Defendants are required neither to admit nor deny.

6. Answering the allegations of Paragraph 6 and 7 Defendants crave reference to the documents identified therein and deny any allegation inconsistent with the specific terms of said documents.

7. The allegations of Paragraph 8 constitute legal conclusions which these Defendants are required neither to admit nor deny.

8. Defendants deny the allegations of Paragraphs 9 and therefore demand strict proof thereof.

9. Answering the allegations of Paragraph 10 Defendants crave reference to the documents identified therein and deny any allegation inconsistent with the specific terms of said documents.

10. Answering the allegations of Paragraph 11 Defendants crave reference to the documents identified therein and deny any allegation inconsistent with the specific terms of said documents.

11. Defendants deny the allegations of Paragraph 12 and demand strict proof thereof.

12. The allegations of Paragraph 13, 14, 15 and 16 constitute legal conclusions which these Defendants are required neither to admit nor deny.

FOR AND AS A FIRST DEFENSE
(Failure to State Claim)

13. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint fails to set forth a sufficient cause of action.

FOR AND AS A SECOND DEFENSE

(Real Party in Interest)

14. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff is not the real party in interest and therefore is barred from bringing the within action.

**FOR AND AS A THIRD DEFENSE
(Waiver)**

15. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff's Complaint is barred by the doctrines of waiver and estoppels.

**FOR AND AS A FOURTH DEFENSE
(Breach of Contract)**

16. Further answering said Complaint and for a further defense thereto Defendants allege that Plaintiff breached the terms of the subject contract and therefore is barred from bringing the within action.

**FOR AND AS A FIFTH DEFENSE
(Affirmative Defenses)**

17. Further answering said Complaint and for a further defense thereto Defendants Specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, duress, fraud, illegality, laches, statute of limitations, misrepresentation, mistake, payment, release, waiver, lack of consideration or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this progresses.

**FOR AND AS A SIXTH DEFENSE
(Unclean Hands)**

18. Further answering the Complaint and as and for a further defense thereto, the Defendants allege, a mortgage foreclosure is an action in equity. The Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this equitable action.

**FOR AND AS A SEVENTH DEFENSE
(Reservation and Non-Waiver)**

19. Defendants reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

**FOR AND AS A EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract and Good Faith and Fair Dealing)**

20. All prior allegations not inconsistent with this cause of action are realleged and incorporated by reference herein.

21. Defendants are residents of the Charleston County State of South Carolina.

22. Defendants entered into an agreement with Plaintiff as referenced in the subject Complaint.

23. Every contract has an implied duty of good faith and fair dealing.

24. Plaintiff breached its agreement and duty of good faith and fair dealing with Defendants by failing to properly administer the Home Modification Program it offers and promotes, losing documents submitted by Defendants, failing to timely respond to borrowers requests, filing foreclosure actions against Defendants while Defendants were in an active and ongoing loss mitigation program and negotiations with Plaintiff, and failing to adhere to the terms of the its lost mitigation program; and failing to offer, or timely offer affordable loss mitigation options to borrowers, for failing to appropriately post payments, for failure to give proper credit for payments received and for improper fees charged.

25. As a result of the breach of Plaintiff, Defendants have suffered damages including, but not limited to, lost properties, devaluation and lack of marketability of Defendants' home and excess charges.

26. Defendants are informed and believe they are entitled to actual, consequential, incidental, expectation, and special damages against Plaintiff in the appropriate amount, costs, and such other and further relief as the court deems just and proper.

**FOR AND AS A NINTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Declaratory and Injunctive Relief)**

27. Defendants adopt the allegations of paragraphs 1 through 26 and incorporate the same herein by reference as if stated verbatim.

28. Defendants are persons interested under agreements and bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, et. seq. (Law Co-op. 1976), to determine the validity of and their legal rights and obligations, if any, under the terms of the loan transactions.

29. The consumer loan transactions between Defendants and Plaintiff should not be or is not enforceable. As such, Defendants seek an order declaring the terms of the loan transactions unenforceable, allowing the Defendants to rescind the loan transactions requiring the return of all payments made to Plaintiff, prohibiting and or enjoining Plaintiffs from declaring the terms of the loan transactions in default, prohibiting and enjoining Plaintiffs from initiating or prosecuting a foreclosure action and/or reforming the loan transactions.

30. Additionally, Defendants seek the disgorgement of Plaintiffs' illicit profits, restitution in the amount of excess interest levied by Plaintiff, and modification of the transactions and other relief as set forth in the prayer below.

31. As a result of Plaintiff's unfair, improper, and unconscionable lending and servicing practices as described above, Defendants have suffered, and will continue to suffer, severe and irreparable harm and injury.

32. Accordingly, Defendants respectfully ask the Court to enter a preliminary and/ or permanent injunction ordering Plaintiff to cease and desist their unfair and unconscionable lending or servicing practices of attempting to enforce and enforcing loan terms that are unconscionable and / or unreasonable and/or should be modified and subjecting their homes to foreclosure.

**FOR AND AS TENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Unjust Enrichment)**

33. Defendants adopt the allegations of paragraphs 1 through 32 and incorporate the same herein by reference as if stated verbatim.

34. Plaintiff has been unjustly enriched at the expense of and to the detriment of Plaintiffs by failing to act in good faith and properly create, implement and administer a modification program.

35. Defendants are informed and believe they are entitled to recover from the Plaintiff all assets and monies improperly withheld and received, any benefits received from the Plaintiff for its breach and inappropriate application of a modification program.

**FOR AND AS AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)**

36. Defendants adopt the allegations of paragraphs 1 through 35 and incorporate the same herein by reference as if stated verbatim.

37. Plaintiff, as originators and successors and assigns, upon information and belief, made false representations and misleading representations to the Defendants regarding the actual

terms of the loan transactions, the application of a modification program, their compliance with a federally required modification program, and the availability of a modification.

38. In the course and conduct of offering and servicing the loan, Plaintiff misrepresented, expressly or by implication, the availability of a modification and its terms.

39. Plaintiff had a pecuniary interest in making the statements and soliciting the consumers' business by making this loan.

40. Plaintiff owed a duty of care to see that it communicated truthful information to the consumers.

41. Plaintiff breached that duty by failing to exercise due care.

42. Defendants and all other consumers justifiably relied upon these representations.

43. By virtue of the negligent misrepresentations, the Defendants have been actually damaged and because these representations were willful, intentional, with malice towards the Defendants and with a reckless disregard for the rights of the Defendants, they seek an award of actual and punitive damages in accordance with their prayer for relief.

**FOR AND AS A TWELVETH DEFENSE AND BY WAY OF COUNTERCLAIM
(Accounting)**

44. Defendants adopt the allegations of paragraphs 1 through 43 and incorporate the same herein by reference as if stated verbatim.

45. Defendants are entitled to an accounting from Plaintiff detailing all payments made, when received, when applied, how applied, interest charged, fees assessed and all other matters relating to the amount claimed owed.

JURY TRIAL DEMANDED

PRAYER FOR RELIEF

Wherefore, in light of the foregoing, Defendants respectfully request

that this Court:

1. Rescind the underlying mortgage transactions and terminate any security interests created under the transactions;
2. Enjoin the enforcement of the subject note and mortgage and declare the same unenforceable;
3. Enjoin the pending foreclosure actions;
4. Award actual, compensatory and punitive damages in an amount to be determined at trial;
5. Award reasonable costs of this action;
6. Declare the subject mortgage void; and
7. Award all such other and further relief as this Court deems just and proper.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Ste. B
Mt. Pleasant, South Carolina 29464
(843) 971-6053
(843) 671-6055
Sammie@maryarnoldlaw.com

Attorney for Defendants Otterbein

Mt. Pleasant, SC

Dated: 8/26/10

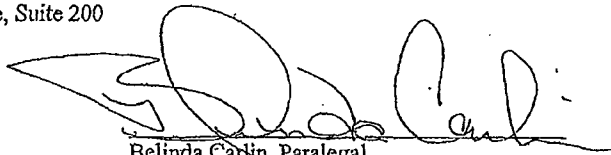
CERTIFICATE OF SERVICE

I certify that on this 26 day of August 2010, a copy of the within Answer and

Counterclaim of Defendants Frederick and Heather Otterbein was placed in the United

States Mail postage pre-paid, addressed to Plaintiff's counsel as follows:

Brett F. Kline, Esquire
Scott Law Firm
2712 Middleburg Drive, Suite 200
Columbia, SC 29204



Belinda Carlin, Paralegal

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

v.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein; Heather H. Otterbein; First Federal
Savings and Loan Association a/k/a First Federal
Savings and Loan Association of Charleston;

Defendant(s).

(011465-00188)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-1707

REPLY OF PLAINTIFF TO DEFENDANT
FREDERICK OTTERBEIN AND HEATHER H.
OTTERBEIN'S ANSWER AND
COUNTERCLAIM

(NON-JURY)

Deficiency Judgment Demanded

2010 SEP 14 AM 11:23
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FILED

The Plaintiff, HSBC Mortgage Corporation, USA, by way of Reply to the Answer and Counterclaim herein, would respectfully show unto the Court as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)

1. That each and every allegation contained in the Answer and Counterclaim which is not hereinafter specifically admitted or otherwise qualified is denied, and strict proof is demanded thereof.

2. That Paragraphs 1 – 12 are responses to the Complaint and, as such, do not require a response from the Plaintiff. To the extent that any of the allegations contained in Paragraphs 1 – 12 may be construed against Plaintiff, the same are hereby denied and strict proof is demanded.

AS TO THE FIRST DEFENSE
(Failure to State a Claim)

3. Plaintiff denies Paragraph 13.

AS TO THE SECOND DEFENSE
(Real Party in Interest)

4. Plaintiff denies Paragraph 14.

AS TO THE THIRD DEFENSE
(Waiver)

5. Plaintiff denies Paragraph 15.

AS TO THE FOURTH DEFENSE
(Breach of Contract)

6. Plaintiff denies Paragraph 16.

AS TO THE FIFTH DEFENSE
(Affirmative Defenses)

7. Plaintiff denies Paragraph 17.

AS TO THE SIXTH DEFENSE
(Unclean Hands)

8. Plaintiff denies Paragraph 18.

AS TO THE SEVENTH DEFENSE
(Reservation and Non-Waiver)

9. Paragraph 19 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

AS TO THE EIGHTH DEFENSE AND COUNTERCLAIM
(Breach of Contract and Good Faith and Fair Dealing)

10. Paragraph 20 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

11. As to Paragraph 21, Plaintiff does not have sufficient information to admit or deny that the Defendants are residents of Charleston County, South Carolina.

12. As to Paragraph 22, Plaintiff admits only that on December 21, 2007, Defendants executed and delivered to Bradford Mortgage Company a certain Note in the principal sum of \$417,000. In order to secure the payment of said Note, Defendants execute and deliver a mortgage covering the property referenced in the Complaint. Plaintiff does not have sufficient information to admit that the

"agreement" referenced in Defendants' Answer relates to the aforementioned Note and mortgage.

13. Paragraph 23 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

14. Plaintiff denies Paragraphs 24 – 26.

AS TO THE NINTH DEFENSE AND COUNTERCLAIM
(Declaratory and Injunctive Relief)

15. Paragraph 27 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

16. As to Paragraph 28, Plaintiff doesn't have sufficient information to know why Defendants have brought this action.

17. Plaintiff denies Paragraphs 29 – 31.

18. Paragraph 32 is a request to the Court and does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

AS TO THE TENTH DEFENSE AND COUNTERCLAIM
(Unjust Enrichment)

19. Paragraph 33 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

20. Plaintiff denies Paragraphs 34 – 35.

AS TO THE ELEVENTH DEFENSE AND COUNTERCLAIM
(Negligent Misrepresentation)

21. Paragraph 36 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

22. Plaintiff denies Paragraphs 37 – 38.

23. Plaintiff admits only so much of Paragraph 39 in that it has a pecuniary interest in making loans. Plaintiff denies the remainder of Paragraph 39.

24. Plaintiff admits Paragraph 40.

25. Plaintiff denies Paragraphs 41 - 43.

AS TO THE TWELFTH DEFENSE AND COUNTERCLAIM
(Accounting)

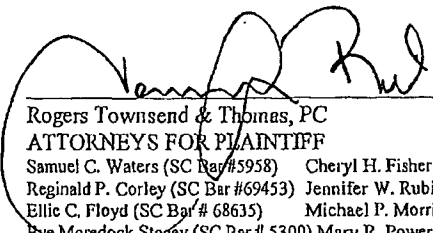
26. Paragraph 44 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

27. Paragraph 45 does not require a response from the Plaintiff, to the extent that a response is required, it is denied unless it contains an admission of fact alleged in the Complaint.

Notwithstanding, a payment history will be provided to Defendants.

WHEREFORE, having fully set forth its Reply to the Answer, the Plaintiff, prays that this Honorable Court inquire into the matters at issue:

1. Dismiss the Answer and Counterclaim of the Defendant Frederick Otterbein and Heather H. Otterbein with fees and costs; and
2. Award to the Plaintiff, such other and further relief as may be just and proper.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Feltner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
September __, 2010

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

v.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein; Heather H. Otterbein; First Federal
Savings and Loan Association a/k/a First Federal
Savings and Loan Association of Charleston;

Defendant(s).

(011465-00188)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-08-1707

CERTIFICATE OF SERVICE
Deficiency Judgment Demanded

FILED
2010 SEP 14 AM 11:23
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

I, Kathryn Howell, an employee of the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that on September 10, 2010, I served a copy of the Plaintiff's Reply to the Amended Answer and Counterclaim of Frederick Otterbein and Heather Otterbein, in connection with the above-referenced case by mailing a copy of the same by United States mail, postage prepaid, to:

Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mount Pleasant, SC 29464

Kathryn Howell
Kathryn Howell

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association a/k/a
First Federal Savings and Loan Association of
Charleston,

Defendant.

(511465.188 CSG)

IN THE COURT OF COMMON PLEAS

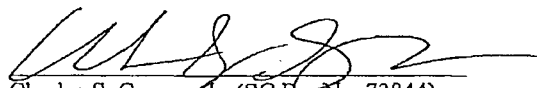
DOCKET NO.: 2010-CP-08-1707

**STIPULATION OF DISMISSAL OF
PLAINTIFF'S FORECLOSURE CLAIM
ONLY WITHOUT PREJUDICE**

FILED
2013 JUL -5 PM 1:37
CLERK OF COURT
BERKELEY COUNTY, SC

Plaintiff and Defendants hereby stipulate that the Plaintiff's foreclosure should be dismissed without prejudice pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure. This Stipulation does not affect any other claims pending in this case.

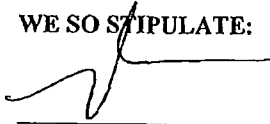
WE SO STIPULATE:


Charles S. Gwynne Jr. (SC Bar No. 73844)
Rogers Townsend & Thomas, PC
220 Executive Center Dr., Suite 109 (29210)
Post Office Box 100200
Columbia, SC 29202-320
(803) 771-7900 Telephone
(803) 343-7017 Fax
ATTORNEY FOR PLAINTIFF

6/19, 2013

Stipulation of Dismissal of Plaintiff's Foreclosure Claim Only Without Prejudice
2010-CP-08-1707

WE SO STIPULATE:

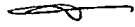


Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464
(843) 971-6053 Telephone
(843) 971-6055 Fax
ATTORNEY FOR DEFENDANTS
FREDERICK J. OTTERBEIN, IV
A/K/A FREDERICK JOHN OTTERBEIN, IV
AND HEATHER H. OTTERBEIN

Dec 13, 2013

Stipulation of Dismissal of Plaintiff's Foreclosure Claim Only Without Prejudice
2010-CP-08-1707

WE SO STIPULATE:



Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026 Telephone
(843) 722-2867 Fax

**ATTORNEY FOR DEFENDANTS
FIRST FEDERAL SAVINGS AND
LOAN ASSOCIATION A/K/A FIRST
FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHARLESTON**

_____, 2013

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(511465.00188 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

PLAINTIFF'S MOTION TO DISMISS
CASE WITHOUT PREJUDICE

FILED
2011 DEC -6 PM 2:28
CLERK OF COURT
BERKELEY COUNTY, SC

TO: MARY LEIGH ARNOLD, ESQUIRE, ATTORNEY FOR DEFENDANTS
FREDERICK J. OTTERBEIN, IV A/K/A FREDERICK JOHN OTTERBEIN, IV
AND HEATHER H. OTTERBEIN:

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the court,
HSBC Mortgage Corporation, USA ("Plaintiff") will move the court for an order to dismiss the
case without prejudice.

The Plaintiff and Defendant borrowers have entered into a loan modification agreement.

The undersigned attorney certifies that his firm communicated, in writing, with opposing
counsel and has attempted in good faith to resolve the matters contained in the motion but to no
avail.



Charles S. Gwynne Jr. (SC Bar # 73844)
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 PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated: December 2, 2011

5257592

ROA_0055

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 10-CP-08-1701

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record by U.S. Mail, postage prepaid, on December 2, 2011, at the following address(es):

Document(s) Served:

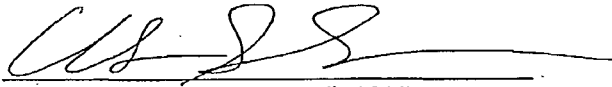
Plaintiff's Motion to Dismiss Case Without Prejudice

Counsel Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

FILED
2011 DEC -6 PM 2:28
MARY LEIGH ARNOLD
CLERK OF COURT
BERKELEY COUNTY, SC


Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(511465.00188 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT ON
COUNTERCLAIMS AND TO STRIKE
JURY DEMAND

FILED
-6
AUG 11 2012
CLERK OF COURT
BERKELEY COUNTY, SC

TO: MARY LEIGH ARNOLD, ESQUIRE, ATTORNEY FOR DEFENDANTS
FREDERICK J. OTTERBEIN, IV A/K/A FREDERICK JOHN OTTERBEIN, IV
AND HEATHER H. OTTERBEIN:

YOU WILL PLEASE TAKE NOTICE that at such time and place as is set by the court,
HSBC Mortgage Corporation, USA ("Plaintiff") will move the court for an order granting
Plaintiff's Motion for Summary Judgment on all counterclaims raised by Defendants Frederick J.
Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein on the ground that
Plaintiff is entitled to summary judgment in the action as a matter of law pursuant to Rule 56 of the
South Carolina Rules of Civil Procedure.



Charles S. Gwynne Jr. (SC Bar # 73844)
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 PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated: August 28, 2012

4443121

ROA_0057

CERTIFICATE OF SERVICE BY MAIL

Civil Action # 10-CP-08-1707

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record by U.S. Mail, postage prepaid, on August 28, 2012, at the following address(es):

Document(s) Served:

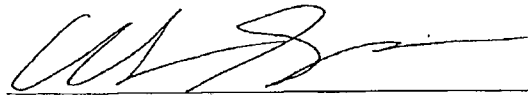
Plaintiff's Motion for Summary Judgment on Counterclaims and to Strike Jury Demand

Counsel Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

FILED
2012 SEP - 6 AM 11:40
CLERK OF COURT
BERNIE COUNTY, SC



Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(S03231.1612 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

FILED
2012 NOV 26 AM 11:42
MARCO B. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

FACTS AND PROCEDURAL HISTORY

This lawsuit arises out of the foreclosure of a residential real estate mortgage. On May 14, 2010 Plaintiff filed a foreclosure action. On or about August 26, 2010 Defendants Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein ("Defendants") filed an Amended Answer and Counterclaims.

Defendants asserted counterclaims against Plaintiff for 1) Breach of contract and good faith and fair dealing; 2) Declaratory and injunctive relief; 3) Unjust enrichment; 4) Negligent Misrepresentation; and 5) Accounting.

On or about July 6, 2011 Defendants entered into a Home Affordable Moderation Agreement which modified the terms of the subject Note and Mortgage ("Modification"). The Modification resolved the Plaintiff's foreclosure action but the Defendants refused to dismiss their pending counterclaims.

The allegations supporting Defendant's counterclaims are: 1) the Plaintiff breached the terms of the Note and Mortgage by failing to adequately review the Defendants for a modification under the Home Affordable Modifications Program ("HAMP") or other loan

modification programs; 2) Defendants should never have been placed in default; 3) Plaintiff failed to properly apply Defendants' payments to their account and also charged improper fees; and 4) Plaintiff made negligent misrepresentations to the Defendants about the loan modification process.

STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP, Rule 56(c). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party." Koester v. Carolina Rental Center, Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994)

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "In that way, '[a] motion for summary judgment is akin to a motion for a directed verdict' because '[i]n each instance, one party must lose as a matter of law.'" Id., quoting Main v. Corley, 281 S.C. 525, 526, 316 S.E.2d 406, 407 (1984).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. The moving party may discharge the burden of demonstrating the absence of a genuine issue of material fact by pointing out the absence of evidence to support the nonmoving party's case. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. The nonmoving party must come forward with specific facts showing there is a genuine issue for

trial.

Bennett v. Investors Title Ins. Co., 370 S.C. 578, 588-89, 635 S.E.2d 649, 654 (S.C.App. 2006) (internal citation omitted).

ARGUMENT

First, Defendants have failed to produce any evidence or factual support for the allegations contained in their counterclaims. Secondly, many of Defendants' allegations are contradicted by the documents produced in discovery. Third, many of Defendants' claims fail as a matter of law.

a. **Breach of Contract for failing to review Defendants for a loan modification.**

"The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003) "[T]he function of courts is to adjudge and enforce contracts as they are written and entered into by the parties." *Charles v. Canal Ins. Co.*, 238 S.C. 600, 608, 121 S.E.2d 200, 205 (1961)

"It is well-settled that borrowers do not have a private right of action under HAMP." *Acuna v. Chase Home Fin., LLC*, 2011 U.S. Dist. LEXIS 52971 (E.D. Va. May 16, 2011); see also *Steffens v. Am. Home Mortg. Servicing, Inc.*, 2011 U.S. Dist. LEXIS 26709, 6-7 (D.S.C. Mar. 15, 2011)("Nowhere in the HAMP Guidelines, nor in the [legislation authorizing creation of HAMP], does it expressly provide for a private right of action ... [r]ather, Congressional intent expressly indicates that compliance authority was delegated solely to Freddie Mac."); *Hart v. Countrywide Home Loans, Inc.*, 735 F. Supp. 2d 741, 748 (E.D. Mich. 2010)("There is no express or implied right to sue fund recipients . . . under TARP or HAMP."); *Zeller v. Aurora Loan Servs., LLC*, 2010 U.S. Dist. LEXIS 80449 (W.D. Va. Aug. 10, 2010)("Indeed, by

delegating compliance with the HAMP guidelines solely to Freddie Mac, Congress intended that a private cause of action [under HAMP] was not permitted."); Hoffman v. Bank of Am., N.A., 2010 U.S. Dist. LEXIS 70455 (N.D. Cal. June 30, 2010)("[L]enders are not required to make loan modifications for borrowers that qualify under HAMP nor does the servicer's agreement confer an enforceable right on the borrower."); Benito v. Indymac Mortg. Servs., 2010 U.S. Dist. LEXIS 51259 (D. Nev. May 21, 2010)("Although the overall HAMP program undoubtedly has a goal of assisting homeowners, the HAMP contract does not express any intent to grant borrowers a right to enforce the HAMP contract between the government and the loan servicer.").

Defendants have failed to identify any terms of the subject Note and Mortgage which state an obligation on the parties to engage in post default modification of the documents. (See Copy of Note and Mortgage attached hereto as Exhibit 1 and Exhibit 2). Absent such terms there can be no breach of contract on the part of the Plaintiff.

Additionally, numerous federal courts have ruled there is no private right action based on an alleged violation of the HAMP.

b. Defendants should never have been placed in default.

Defendants claim they should never have been placed in default. On July 6, 2011 the Defendants entered into a Home Affordable Modification Agreement ("Agreement"). (See copy of Agreement attached hereto as Exhibit 3). In the Agreement the Defendants acknowledged "I am experiencing a financial hardship, and as a result. (i) I am in default under the Loan Documents or my default is imminent, and (ii) I do not have sufficient income to access to sufficient liquid assets to make the monthly mortgage payments now or in the near future." (See Exhibit 3, page 2 of 9, paragraph 1A).

The Defendants' own notarized representations in the Agreement contradict their claim that the Plaintiff violated the Note and Mortgage and wrongfully placed them in foreclosure.

c. Misapplied payments and improper fees

Defendants claim the Plaintiff misapplied their mortgage payments under the terms of the Note and Mortgage and forbearance agreement and imposed improper fees on their account.

Defendants have failed to identify the specific charge or improper fees that support their allegations. Instead, Defendant Heather Otterbein has stated in her affidavit in opposition to Plaintiff's Motion for Summary Judgment that "[u]pon information and belief" the Plaintiff's payment history is evidence of "improper charges and fees..." (See copy of Defendant Heather Otterbein's Affidavit paragraph 10 attached hereto as Exhibit 4, excluding exhibits to affidavit).

Additionally, Defendants have failed to identify the terms of the forbearance agreement dated July 27, 2009 signed by the Defendants that has allegedly been breached by the Plaintiff. (See copy of forbearance agreement dated July 27, 2009 attached hereto as Exhibit 5).

d. Defendants produced no evidence to support their claim that Plaintiff made negligent misrepresentations to the Defendants regarding the loan modification process.

Defendants have failed to provide any facts which support their claim that Plaintiff made negligent misrepresentations to them regarding the review of their loan for a modification.

In the affidavit of Heather Otterbein submitted to the court in opposition to Plaintiff's Motion for Summary Judgment, Ms. Otterbein only makes allegations about Plaintiff stating to Defendants that their "application was incomplete, Plaintiff had not received [her]... documents,

or Plaintiff was still in the process of reviewing [her].. documents." (See Exhibit 4, paragraph 13).

These allegations by the Defendants do not support a factual basis for a claim of negligent misrepresentation. In support of her allegations Defendant attached two letters from the Plaintiff dated February 26, 2010 and July 1, 2010. (See copy of Exhibits B and C to Defendant's Affidavit attached hereto as Exhibit 6). Neither letter states any misrepresentations to the Defendant regarding her loan. In fact, the Defendants were provided with a loan modification in July 2011. The Defendant has failed to identify any representation made by the Plaintiff in which the Plaintiff misled the Defendants into believing they had been approved for a loan modification.

CONCLUSION

Plaintiff seeks an order granting its motion for summary judgment on the grounds stated above.

Respectfully submitted,



Charles S. Gwynne Jr. (SC Bar # 73844)
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
Rogers Townsend & Thomas, PC and its staff are debt collectors

November 16, 2012

CERTIFICATE OF SERVICE BY MAIL

Civil Action # 10-CP-08-1707

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U.S. Mail, postage prepaid, on November 16, 2012, at the following address(es):

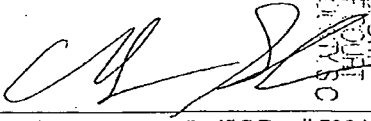
Document(s) Served:

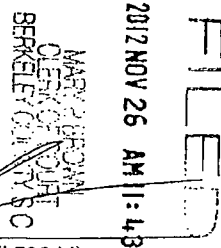
Plaintiff's Memorandum in Support of Motion for Summary Judgment

Counsel and Parties Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144


Charles S. Gwynne Jr. (SC Bar # 73844)



MIN: [REDACTED]

Loan Number: [REDACTED]

INTEREST-ONLY PERIOD ADJUSTABLE RATE NOTE
(One-Year LIBOR Index (As Published In
The Wall Street Journal) - Rate Caps)

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

DECEMBER 21, 2007
[Date]

WINSTON SALEM
[City]

NORTH CAROLINA
[State]

116 Wando Creek Lane, Charleston, South Carolina 29492
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 417,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is BRADFORD MORTGAGE COMPANY, A CORPORATION. I will make all payments under this Note in the form of cash, check or money order.

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

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.250 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

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

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment on the 1st day of every month, beginning on FEBRUARY 1, 2008. Before the First Principal and Interest Payment Due Date as described in Section 4 of this Note, my payment will consist only of the interest due on the unpaid principal balance of this Note. Thereafter, I will pay principal and interest by making a payment every month as provided below.

I will make my monthly payments of principal and interest beginning on the First Principal and Interest Payment Due Date as described in Section 4 of this Note. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date, and if the payment includes both principal and interest, it will be applied to interest before Principal. If, on JANUARY 1, 2038, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 100 N. CHERRY STREET, SUITE 400,
WINSTON SALEM, NORTH CAROLINA 27101

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



(B) Amount of My Initial Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,824.38 before the First Principal and Interest Payment Due Date, and thereafter will be in an amount sufficient to repay the principal and interest at the rate determined as described in Section 4 of this Note in substantially equal installments by the Maturity Date. The Note Holder will notify me prior to the date of change in monthly payment.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 or 5 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the 1st day of JANUARY, 2011, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

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

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding TWO AND 250/1000 percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 7.250 % or less than 3.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than TWO AND 000/1000 percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.250 %.

(E) Effective Date of Changes

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

(F) Notice of Changes

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

(G) Date of First Principal and Interest Payment

The date of my first payment consisting of both principal and interest on this Note (the "First Principal and Interest Payment Due Date") shall be the first monthly payment date after the first Change Date.

5. BORROWER'S RIGHT TO PREPAY

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

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

6. LOAN CHARGES

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

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest, during the period when my payment is interest only, and of principal and interest thereafter. I will pay this late charge promptly but only once on each late payment.

(B) Default

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

(C) Notice of Default

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

(D) No Waiver By Note Holder

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

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

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

8. GIVING OF NOTICES

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

[Handwritten signature]
[Handwritten initials]

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

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

10. WAIVERS

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

11. UNIFORM SECURED NOTE

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

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

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

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

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of

Handwritten initials/signature

this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

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

Frederick J. Otterbein, IV (Seal)
Frederick J. Otterbein, -Borrower
IV

Heather H. Otterbein (Seal)
Heather H. Otterbein -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

PAY TO THE ORDER OF:
WITHOUT RECOURSE

BRADFORD MORTGAGE COMPANY, A CORPORATION

BY: Connie O. Piner
Connie O. Piner

ITS: Senior Vice President

Pay to the order of, without recourse

(Sign Original Only)

HSBC MORTGAGE CORPORATION (USA)

By: Milda Feliz
Milda Feliz, V.P. Secondary Marketing

MULTISTATE INTEREST-ONLY PERIOD ADJUSTABLE RATE NOTE
ONE-YEAR LIBOR INDEX - Single Family - Fannie Mae Modified Instrument
Form 3532 07/03 (rev. 09/06)

DocMagic ~~EXPENSE~~ 800-648-1362
www.docmagic.com

ROA_0070

Doc # 00000444

After Recording Return To:
BRADFORD MORTGAGE COMPANY
100 N. CHERRY STREET, SUITE 400
WINSTON SALEM, NORTH CAROLINA 27101
Loan Number: [REDACTED]

01/465-00188

00000444 Vol: 7087 Pg: 58

[Space Above This Line For Recording Data]

MORTGAGE

MIN: 100308600000097471

DEFINITIONS

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

(A) "Security Instrument" means this document, which is dated DECEMBER 21, 2007, together with all Riders to this document.

(B) "Borrower" is FREDERICK J. OTTERBEIN, IV AND HEATHER H. OTTERBEIN, HUSBAND AND WIFE

Borrower is the mortgagor under this Security Instrument.

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

(D) "Lender" is BRADFORD MORTGAGE COMPANY

Lender is a CORPORATION

organized

and existing under the laws of MARYLAND

Lender's address is 100 N. CHERRY STREET, SUITE 400, WINSTON SALEM, NORTH CAROLINA 27101

(E) "Note" means the promissory note signed by Borrower and dated DECEMBER 21, 2007

The Note states that Borrower owes Lender FOUR HUNDRED SEVENTEEN THOUSAND AND 00/100 Dollars (U.S. \$ 417,000.00) plus interest.

Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than JANUARY 1, 2038

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

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



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

- | | |
|---|---|
| ☒ Adjustable Rate Rider | ☐ Planned Unit Development Rider |
| ☐ Balloon Rider | ☐ Biweekly Payment Rider |
| ☐ 1-4 Family Rider | ☐ Second Home Rider |
| ☐ Condominium Rider | ☐ Other(s) [specify] |

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

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

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

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

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

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

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

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

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

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS the following described property located in the

COUNTY
[Type of Recording Jurisdiction]

of

BERKELEY
[Name of Recording Jurisdiction]

[Handwritten signature]
[Handwritten initials]

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "A".
A.P.N.: 2630002026

which currently has the address of

116 Wando Creek Lane

[Street]

Charleston
[City]

, South Carolina

29492

[Zip Code]

("Property Address"):

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

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

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

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

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

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

which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

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

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

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

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

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

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree

7/10/01
JHO

In writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

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

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

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

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

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

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

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

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any

form of Insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

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

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

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

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

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

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

ME
aho

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

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

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

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

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

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

[Handwritten signature]

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

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

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

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

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

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

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

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

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

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate

as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

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

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

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

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

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

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

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's

address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

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

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

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

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

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

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

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

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

state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

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

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

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

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

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

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified

In the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

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

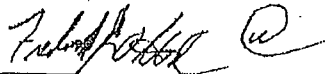
24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

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

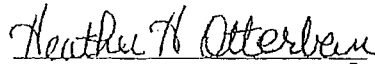
26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

Handwritten initials/signature

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



Frederick J. Otterbein, IV (Seal)
-Borrower



Heather H. Otterbein (Seal)
-Borrower

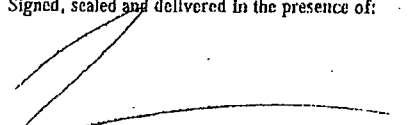
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

Signed, sealed and delivered in the presence of:



Witness



Witness

(Space Below This Line For Acknowledgment)

STATE OF SOUTH CAROLINA)
COUNTY OF CHAS.)

Personally appeared before me R.T. Brown

(first witness) and made oath that he/she saw the within named Frederick J. Otterbein, IV
AND Heather H. Otterbein

(grantor) sign, seal, and as his/her act and deed, deliver the within written mortgage, and that he/she, with
ALAN D. MEZA (second witness), witnessed the execution thereof.

[Signature]
Witness

SWORN to before me this 28th day of Dec., 2007.

[Signature] (LS)
Notary Public for South Carolina

(Seal)

My commission expires: _____

EXHIBIT A

ALL that certain piece, parcel or lot of land shown and designated as Lot 30, together with the buildings and improvements thereon, situate, lying and being in Tax District Number 1, in the County of Berkeley and State of South Carolina, shown and designated on a plat entitled "PLAT OF LOTS 30 AND 31, CAINHOY VILLAGE SUBDIVISION" prepared by William H. Dennis, R.L.S., # 10035, on December 13, 1984, said lots having such size, shape, content, delineations, metes and bounds as will more fully appear on said plat, said plat being recorded in Cabinet E, Page 394, RMC Office for Berkeley County, reference to which is craved.

BEING the same property conveyed to Frederick John Otterbein, IV and Heather H. Otterbein by Michael T. McAlhany, Jr. and Holly Gasque McAlhany by deed dated January 26, 2005 and recorded in the Berkeley County RMC on February 10, 2005 in Book 4511, Page 293.

Prepared By:
HSBC BANK USA NA
2929 Walden Ave
Depew NY 14043
(800) 452-9982

When Recorded Mail To:
HSBC BANK USA NA
2929 WALDEN AVE.
DEPEW, NEW YORK 14043

Source of Title: Book or Liber 7087, at page(s) 57

[Space Above This Line For Recording Data]
Original Recorded Date: JANUARY 4, 2008 MERS MIN Number: [REDACTED]
Original Principal Amount: \$ 417,000.00 Loan No.: [REDACTED]
Investor Loan No.: [REDACTED]

**HOME AFFORDABLE MODIFICATION AGREEMENT
(Step Two of Two-Step Documentation Process)**

Borrower ("I")¹: FREDERICK J OTTERBEIN, IV AND HEATHER H OTTERBEIN

Lender or Servicer ("Lender"): HSBC MORTGAGE CORPORATION (USA)

Date of first lien mortgage, deed of trust, or security deed ("Mortgage") and Note ("Note"):
DECEMBER 21, 2007
Loan Number: 4548697
Property Address: 116 WANDO CREEK LANE, CHARLESTON, SOUTH CAROLINA 29492
Legal Description:
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF;

Prior instrument reference: Book or Liber 7087, at page(s) 57, Instrument No. 2008-00000444,
of the Official Records of BERKELEY County, SOUTH CAROLINA.

("Property"):

¹ If more than one Borrower or Mortgagor is executing this document, each is referred to as "I." For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

MULTISTATE HOME AFFORDABLE MODIFICATION AGREEMENT - Single Family - Fannie Mae/Freddie Mac
UNIFORM INSTRUMENT Form 3157 3/08 (rev. 10/10)
CLDS# F3167 Rev. 01-21-10 (page 1 of 9)



ROA_0086

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

If my representations and covenants in Section 1 continue to be true in all material respects, then this Home Affordable Modification Agreement ("Agreement") will, as set forth in Section 3, amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement and not defined have the meaning given to them in Loan Documents.

I understand that after I sign and return two copies of this Agreement to the Lender, the Lender will send me a signed copy of this Agreement. This Agreement will not take effect unless the preconditions set forth in Section 2 have been satisfied.

1. **My Representations and Covenants.** I certify, represent to Lender, covenant and agree:
 - A. I am experiencing a financial hardship, and as a result, (i) I am in default under the Loan Documents or my default is imminent, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
 - B. One of the Borrowers signing this Agreement lives in the Property as a principal residence and the Property has not been condemned;
 - C. There has been no impermissible change in the ownership of the Property since I signed the Loan Documents. A permissible change would be any transfer that the lender is required by law to allow, such as a transfer to add or remove a family member, spouse or domestic partner of the undersigned in the event of a death, divorce or marriage;
 - D. I have provided documentation for all income that I receive (and I understand that I am not required to disclose child support or alimony unless I chose to rely on such income when requesting to qualify for the Home Affordable Modification Program ("Program"));
 - E. Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the Program, are true and correct;
 - F. If Lender requires me to obtain credit counseling in connection with the Program, I will do so; and
 - G. I have made or will make all payments required under a trial period plan.
2. **Acknowledgements and Preconditions to Modification.** I understand and acknowledge that:
 - A. If prior to the Modification Effective Date as set forth in Section 3 the Lender determines that any of my representations in Section 1 are no longer true and correct or any covenant in Section 1 has not been performed, the Loan Documents will not be modified and this Agreement will terminate. In that event, the Lender will have all of the rights and remedies provided by the Loan Documents; and
 - B. I understand that the Loan Documents will not be modified unless and until (i) the Lender accepts this Agreement by signing and returning a copy of it to me, and (ii) the Modification Effective Date (as defined in Section 3) has occurred. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Agreement.

3. **The Modification.** If my representations and covenants in Section 1 continue to be true in all material respects and all preconditions to the modification set forth in Section 2 have been met, the Loan Documents will automatically become modified on **AUGUST 1, 2011** (the "Modification Effective Date") and all unpaid late charges that remain unpaid will be waived. I understand that if I have failed to make any payments as a precondition to this modification under a trial period plan, this modification will not take effect. The first modified payment will be due on **AUGUST 1, 2011**.

A. The Maturity Date will be: **FEBRUARY 1, 2045**.

B. The modified principal balance of my Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges, collectively, "Unpaid Amounts") less any amounts paid to the Lender but not previously credited to my Loan. The new principal balance of my Note will be \$ **461,214.22** (the "New Principal Balance"). I understand that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in effect under this Agreement. I also understand that this means interest will now accrue on the unpaid interest that is added to the outstanding principal balance, which would not happen without this Agreement.

C. Interest at the rate of **2.000 %** will begin to accrue on the New Principal Balance as of **JULY 1, 2011** and the first new monthly payment on the New Principal Balance will be due on **AUGUST 1, 2011**. My payment schedule for the modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Monthly Principal and Interest Payment Amount	Estimated Monthly Escrow Payment Amount*	Total Monthly Payment*	Payment Begins On	Number of Monthly Payments
1-5	2.000%	07/01/2011	\$1,572.42	\$462.90 may adjust periodically	\$2,035.32 may adjust periodically	08/01/2011	60
6	3.000%	07/01/2016	\$1,783.96	May adjust periodically	May adjust periodically	08/01/2016	12
7	4.000%	07/01/2017	\$2,003.73	May adjust periodically	May adjust periodically	08/01/2017	12
8-34	4.625%	07/01/2018	\$2,143.83	May adjust periodically	May adjust periodically	08/01/2018	319

*The escrow payments may be adjusted periodically in accordance with applicable law and therefore my total monthly payment may change accordingly.

The above terms in this Section 3.C. shall supersede any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate.

I understand that, if I have a pay option adjustable rate mortgage loan, upon modification, the minimum monthly payment option, the interest-only or any other payment options will no longer be offered and that the monthly payments described in the above payment schedule for my modified Loan will be the minimum payment that will be due each month for the remaining term of the Loan. My modified Loan will not have a negative amortization feature that would allow me to pay less than the interest due resulting in any unpaid interest being added to the outstanding principal balance.

- D. I will be in default if I do not comply with the terms of the Loan Documents, as modified by this Agreement.
- E. If a default rate of interest is permitted under the Loan Documents, then in the event of default under the Loan Documents, as amended, the interest that will be due will be the rate set forth in Section 3.C.

4. Additional Agreements. I agree to the following:

- A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Agreement, unless (i) a borrower or co-borrower is deceased; (ii) the borrower and co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property need not sign this Agreement (although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents); or (iii) the Lender has waived this requirement in writing.
- B. That this Agreement shall supersede the terms of any modification, forbearance, trial period plan or other workout plan that I previously entered into with Lender.
- C. To comply, except to the extent that they are modified by this Agreement, with all covenants, agreements, and requirements of Loan Documents including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow items, impounds, and all other payments, the amount of which may change periodically over the term of my Loan.
- D. That this Agreement constitutes notice that the Lender's waiver as to payment of Escrow items, if any, has been revoked, and I have been advised of the amount needed to fully fund my escrow account.
- E. That the Loan Documents as modified by this Agreement are duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed.
- F. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, the Lender and I will be bound by, and will comply with, all of the terms and conditions of the Loan Documents.

- G. That, as of the Modification Effective Date, notwithstanding any other provision of the Loan Documents, if all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Mortgage. Lender shall not exercise this option if state or federal law, rules or regulations prohibit the exercise of such option as of the date of such sale or transfer. If Lender exercises this option, Lender shall give me notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which I must pay all sums secured by the Mortgage. If I fail to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Mortgage without further notice or demand on me.
- H. That, as of the Modification Effective Date, I understand that the Lender will only allow the transfer and assumption of the Loan, including this Agreement, to a transferee of my property as permitted under the Garn St. Germain Act, 12 U.S.C. Section 1701j-3. A buyer or transferee of the Property will not be permitted, under any other circumstance, to assume the Loan. Except as noted herein, this Agreement may not be assigned to, or assumed by, a buyer or transferee of the Property.
- I. That, as of the Modification Effective Date, if any provision in the Note or in any addendum or amendment to the Note allowed for the assessment of a penalty for full or partial prepayment of the Note, such provision is null and void.
- J. That, I will cooperate fully with Lender in obtaining any title endorsement(s), or similar title insurance product(s), and/or subordination agreement(s) that are necessary or required by the Lender's procedures to ensure that the modified mortgage loan is in first lien position and/or is fully enforceable upon modification and that if, under any circumstance and notwithstanding anything else to the contrary in this Agreement, the Lender does not receive such title endorsement(s), title insurance product(s) and/or subordination agreement(s), then the terms of this Agreement will not become effective on the Modification Effective Date and the Agreement will be null and void.
- K. That I will execute such other documents as may be reasonably necessary to either (i) consummate the terms and conditions of this Agreement; or (ii) correct the terms and conditions of this Agreement if an error is detected after execution of this Agreement. I understand that either a corrected Agreement or a letter agreement containing the correction will be provided to me for my signature. At Lender's option, this Agreement will be void and of no legal effect upon notice of such error. If I elect not to sign any such corrective documentation, the terms of the original Loan Documents shall continue in full force and effect, such terms will not be modified by this Agreement, and I will not be eligible for a modification under the Home Affordable Modification Program.
- L. Mortgage Electronic Registration Systems, Inc. ("MERS") is a separate corporation organized and existing under the laws of Delaware and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, (888) 679-MERS. In cases where the loan has been registered with MERS who has only legal title to the interests granted by the borrower in the mortgage and who is acting solely as nominee for Lender and Lender's successors and assigns, MERS has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling the mortgage loan.

- M. That Lender will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. In addition, I understand and consent to the disclosure of my personal information and the terms of the trial period plan and this Agreement by Lender to (i) the U.S. Department of the Treasury; (ii) Fannie Mae and Freddie Mac in connection with their responsibilities under the Home Affordability and Stability Plan; (iii) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (iv) companies that perform support services for the Home Affordable Modification Program and the Second Lien Modification Program; and (v) any HUD certified housing counselor.
- N. That if any document related to the Loan Documents and/or this Agreement is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the Loan as modified, or is otherwise missing, I will comply with the Lender's request to execute, acknowledge, initial and deliver to the Lender any documentation the Lender deems necessary. If the Note is replaced, the Lender hereby indemnifies me against any loss associated with a demand on the Note. All documents the Lender requests of me under this Section 4.N. shall be referred to as "Documents." I agree to deliver the Documents within ten (10) days after I receive the Lender's written request for such replacement.
- O. That the mortgage insurance premiums on my Loan, if applicable, may increase as a result of the capitalization which will result in a higher total monthly payment. Furthermore, the date on which I may request cancellation of mortgage insurance may change as a result of the New Principal Balance.
- P. If my Loan Documents govern a home equity loan or line of credit, then I agree that as of the Modification Effective Date, I am terminating my right to borrow new funds under my home equity loan or line of credit. This means that I cannot obtain additional advances, and must make payments according to this Agreement. (Lender may have previously terminated or suspended my right to obtain additional advances under my home equity loan or line of credit, and if so, I confirm and acknowledge that no additional advances may be obtained.)

In Witness Whereof, the Lender and I have executed this Agreement.
HSBC MORTGAGE CORPORATION (USA)


By: DAVID SCHNEITER, AVP #14034 -Lender

7/11/2011
Date

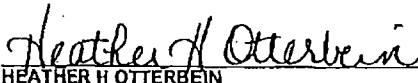
-Witness

-Witness - Printed Name

-Witness

-Witness - Printed Name


FREDERICK J OTTERBEIN, IV -Borrower
7/6/2011
Date


HEATHER H OTTERBEIN -Borrower
7/6/2011
Date

-Borrower

Date

-Borrower

Date

-Witness

-Witness - Printed Name

-Witness

-Witness - Printed Name

MULTISTATE HOME AFFORDABLE MODIFICATION AGREEMENT • Single Family • Fannie Mae/Freddie Mac
UNIFORM INSTRUMENT Form 3157 3/09 (rev. 10/10)
CLDS# F3157-7 Rev. 01-21-11 (page 7 of 9)

ROA_0092

[Space Below This Line For Acknowledgment]

BORROWER ACKNOWLEDGMENT

State of SOUTH CAROLINA

County of Berkeley

The foregoing instrument was acknowledged before me this 7/6/2011 (date) by
FREDERICK J OTTERBEIN, IV AND HEATHER H OTTERBEIN

(name of person acknowledged).

[Signature] 7-6-11
(Signature of Person Taking Acknowledgment)

Notary Expires 7-17-17
(Title or Rank)

(Serial Number, if any)

LENDER ACKNOWLEDGMENT

State of New York

County of Chie

The foregoing instrument was acknowledged before me this 7-11-11 (date) by David Schnert
of Asbc Mortgage Corp, USA

a _____ corporation, on behalf of the corporation.

[Signature]
(Signature of Person Taking Acknowledgment)

Notary
(Title or Rank)

CLERK OF THE COURT
COUNTY OF BERKELEY
LICENSE # 101022222

(Serial Number, if any)




Mortgage Electronic Registration Systems, Inc. -Mortgagee
DAVID SCHNEITER, AVP #14004
State of New York
County of Eric
The foregoing instrument was acknowledged before me this 7-11-11 (date) by
David Schneider
of HSBC mortgage Corp. USA
and Musa
a _____ corporation, on behalf of the corporation.
Lisa Tama
(Signature of Person Taking Acknowledgement)
Notary
(Title or Rank)
(Serial Number, if any)

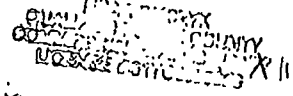


EXHIBIT A

BORROWER(S): FREDERICK J OTTERBEIN, IV AND HEATHER H OTTERBEIN

LOAN NUMBER: [REDACTED]

LEGAL DESCRIPTION:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND SHOWN AND DESIGNATED AS LOT 30, TOGETHER WITH THE BUILDINGS AND IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN TAX DISTRICT NUMBER 1, IN THE COUNTY OF BERKELEY AND STATE OF SOUTH CAROLINA, SHOWN AND DESIGNATED ON A PLAT ENTITLED PLAT OF LOTS 30 AND 31, CAINHOY VILLAGE SUBDIVISION PREPARED BY WILLIAM H. DENNIS, R.L.S. NO. 10035, ON DECEMBER 13, 1984, SAID LOTS HAVING SUCH SIZE, SHAPE, CONTENT, DELINEATIONS, METES AND BOUNDS AS WILL MORE FULLY APPEAR ON SAID PLAT, SAID PLAT BEING RECORDED IN CABINET E, PAGE 394, RMC OFFICE FOR BERKELEY COUNTY, REFERENCE TO WHICH IS CRAVED.

ALSO KNOWN AS: 116 WANDO CREEK LANE, CHARLESTON, SOUTH CAROLINA 29492

CLDS# EXHIBIT A Rev. 07-03-07

ROA_0096

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELBY)

HSBC MORTGAGE CORPORATOIN,)
USA)

Plaintiff(s),)

vs.)

FREDERICK J. OTTERBEIN, IV A/K/A)
FREDERICK JOHN OTTERBEIN, IV,)
HEATHER H. OTTERBEIN, AND FIRST)
FEDERAL SAVINGS AND LOAN)
ASSOCIATION OF CHARLESTON)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-08-1707

AFFIDAVIT IN OPPOSITION TO
SUMMARY JUDGMENT OF
HEATHER H. OTTERBEIN

TO: CHARLES STUART GWYNNE, ESQUIRE ATTORNEY FOR PLAINTIFF:

PERSONALLY APPEARED BEFORE ME, a Notary Public for South Carolina, Heather H. Otterbein, who on oath says:

1. I am 21 years of age or older, legally competent to testify as to the matters contained within this Affidavit, and have personal knowledge of the facts set forth within this Affidavit.
2. I am a named defendant in the above captioned action and am familiar with the facts and circumstances of the within matter.
3. I along with my Husband Fredrick J. Otterbein am the owner of the real property which is the subject of this action, located at 116 Wando Creek Lane Charleston, SC 29492, which is our permanent residence.
4. This transaction has been problematic for much of the loan history.
5. The Note and Mortgage originated with Bradford Mortgage Company.



6. At all times relevant to the subject action I have communicated with and made payments to HSBC Mortgage Corporation, USA (hereinafter "Plaintiff").

7. On or about December 21, 2007 Fredrick J. Otterbein and I executed a Note and Mortgage as alleged in Plaintiff's Amended Complaint in Paragraphs 6 and 7.

8. I understand that every contract has a duty of good faith and fair dealing.

9. In the beginning of 2009 I began pursuing from Plaintiff a modification of my mortgage. At that time Plaintiff declared me in default though I was making my payments.

10. In opposition to Plaintiff's Motion for Summary Judgment I submit copies of Loan Transaction Histories provided by Plaintiff. (See Exhibit "A" attached hereto). Upon information and belief these documents evidence improper charges and fees assessed to my account by Plaintiff. Upon information and belief these documents also evidence that I was making payments every month upon my mortgage first according to the terms of the note and then according to the terms of the forbearance agreement I entered into with Plaintiff, but Plaintiff was not appropriately applying my payments to the account.

11. In August of 2009 Plaintiff entered into a forbearance agreement with my husband and I. I made all payments under the forbearance agreement while Plaintiff told me they were reviewing my information for a possible modification. In February of 2010, I received a letter from Plaintiff dated February 26, 2010 (See Exhibit "B" attached hereto), which stated that my forbearance plan was now complete; that Plaintiff had my financial information on file and would be contacting me concerning the next step soon; and that I should continue making payments under the forbearance plan. I continued to make payments under the plan until Plaintiff refused to accept further payments from me.

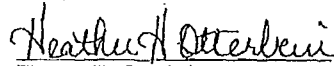
12. Plaintiff breached their contract with me, made negligent misrepresentations, and failed to act in good faith and fair dealing, by failing to properly review my application for a Home Affordable Modification Application (HAMP) and/or alternative modification programs.

13. I submitted documents and a completed application to Plaintiff several times, though each time I was told the application was incomplete, Plaintiff had not received my documents, or Plaintiff was still in the process of reviewing my documents.

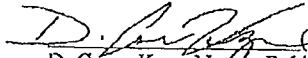
14. On July 1, 2010, after Plaintiff had already served me with a Summons and Complaint in this action, I finally received notice that my request for a modification had been declined because Plaintiff asserted my "current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan, plus property taxes, hazard insurance and homeowner's dues, in any, is less than or equal to 31% of your gross monthly income, your income before taxes and other deductions. . . Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification." (See Exhibit "C" attached hereto).

15. Attached hereto as Exhibit "E" is a Consent Order issued by the United States of America Department of the Treasury Comptroller of the Currency relating to HSBC Mortgage Corporation, USA. The Consent Order provides for a number of alleged failures on the part of HSBC, including but not limited to: filed or caused to be filed in state courts numerous affidavits executed by employees of the mortgage servicing company or employees of third-party providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were based on personal knowledge or based on review by the affiant of the relevant book and records, when, in many cases, they were not based on such knowledge or review; failed to respond in an sufficient and timely manner to increases in the level of Loss Mitigation Activities to ensure timely, effective and efficient communication with borrowers with respect to Loss Mitigation Activities; and failed to fully explore loss mitigation options or programs prior to completion of foreclosure activities.

FURTHER DEPONENT SAYETH NOT.


Heather H. Otterbein

SWORN TO before me this
12 day of November, 2012

 (SEAL)
D. Conor Keys, Notary Public for South Carolina

My Commission Expires: 7/26/2022

Investor Loan # [REDACTED]

HomeSaver PAYMENT FORBEARANCE AGREEMENT

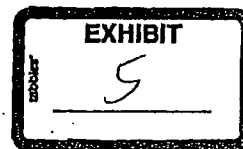
Forbearance Agreement Effective Date: July 27, 2009
Borrower ("I"): Frederick J Otterbein & Heather H Otterbein
Servicer ("Servicer"): HSBC Mortgage Corporation (USA)
Date of first lien Security Instrument ("Mortgage") and Note ("Note"): 12/21/2007
Loan Number ("Loan"): [REDACTED]
Property Address ("Property"): 118 Wando Creek Lane
Charleston, SC 29492

The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement and not defined herein have the meaning given to them in the Loan Documents.

I understand that after I sign and return two copies of this Agreement to the Servicer, the Servicer will send me a fully executed copy of this Agreement. This Agreement will not take effect unless and until both I and the Servicer sign it and Servicer provides me with a copy of this Agreement with the Servicer's signature.

1. **My Representations.** I certify, represent to Servicer and agree:

- A. I am unable to afford my Mortgage payments and as a result, (i) I am either in default or believe I will be in default under the Loan Documents in the near future, and (ii) I do not have access to sufficient liquid assets to make the scheduled monthly Mortgage payments under my Loan Documents now or in the near future;
- B. The occupancy status of the Property is as indicated below (circle most appropriate option):
 - a. I live in the Property as my principal residence.
 - b. I use the Property as a second home.
 - c. I use the Property as rental property.
 - d. I live in one unit of the Property and rent other units.
- C. I have not sold or otherwise transferred ownership of the Property since I signed the Loan Documents and the Property has not been condemned;
- D. I am providing or already have provided documentation for all income that I receive (except that I understand that I am not required to disclose any child support or alimony that I receive, unless I wish to have such income considered to qualify for this HomeSaver Forbearance).
- E. All documents and information I have provided to Servicer pursuant to this Agreement, including the documents and information regarding my eligibility for the HomeSaver Forbearance program, are true and correct; and
- F. All borrowers on the Note, except any deceased borrowers, have signed this Agreement.



8438498548 T-073 P.002/005 F-168

8438498548

FROM-CMC LANDSTAR

MAY-26-2010 15:58

ROA_0100

2. **The Payment Deferral Agreement.** On or before each of the following due dates, I will pay the Servicer the amount set forth below ("Deferral Period Payment").

Deferral Period Payment No.	Deferral Period Payment	Due Date On or Before
1	\$ 1500.00	09/01/09
2	\$ 1500.00	10/01/09
3	\$ 1500.00	11/01/09
4	\$ 1500.00	12/01/09
5	\$ 1500.00	01/01/10
6	\$ 1500.00	02/01/10

During the period (the "Deferral Period") commencing on the date of this Agreement and ending on the earlier of: (i) February 1, 2010 [6 months from execution date by Servicer]; (ii) execution of an agreement with Servicer for another resolution of my default under my Loan Documents, for example, a modification, pre-foreclosure sale or deed in lieu of foreclosure; or (iii) my default under the terms of this Agreement.

I understand and acknowledge that:

- A. **Foreclosure Activity.** The Servicer will suspend any scheduled foreclosure sale, provided I continue to meet the obligations under this Agreement. If this Agreement terminates, however, then any pending foreclosure action will not be dismissed and may be immediately resumed from the point at which it was suspended, and no new notice of default, notice of intent to accelerate, notice of acceleration, or similar notice will be necessary to continue the foreclosure action, all rights to such notices being hereby waived to the extent permitted by Applicable Law;
- B. **Application of Payments.** The Servicer will hold the payments received during the Deferral Period in a non-interest bearing account until they total an amount that is enough to pay my oldest delinquent monthly payment on my Loan in full. If there is any remaining money after such payment is applied, such remaining funds will be held by the Servicer and not posted to my account until they total an amount that is enough to pay the next oldest delinquent monthly payment in full. Upon termination of this Agreement, if I have not entered into another agreement with Servicer to cure or otherwise resolve my default under the Loan Document or reinstated my Loan in full, the Servicer will have all of the rights and remedies provided by the Loan Documents, and any payment I make under this Agreement and not yet applied to my Loan as described above shall be applied to amounts I owe under the Loan Documents and shall not be refunded to me.
- C. **Additional Assistance.** During the Deferral Period, Servicer will review my Loan to determine whether additional default resolution assistance can be offered to me. At the end of the Deferral Period either (1) I will be required to recommence my regularly scheduled payments and to make additional payment(s), on terms to be determined by Servicer, until all past due amounts owed under the Loan documents have been paid in full, (2) I will be required to reinstate my Loan in full, (3) Servicer will offer to modify my Loan; (4) Servicer will offer me some other form of payment assistance or alternative to foreclosure, on terms to be determined solely by Servicer with the approval of the investors or insurers on my Loan, or (5) if no feasible alternative can be identified, Servicer may commence or continue foreclosure proceedings or exercise other rights and remedies provided Servicer under the Loan Documents.

- D. No Modification. I understand that the Agreement is not a forgiveness of payments on my Loan or a modification of the Loan Documents. I further understand and agree that the Servicer is not obligated or bound to make any modification of the Loan Documents or provide any other alternative resolution of my default under the Loan Documents.
- E. Late Charges. Unless otherwise expressly prohibited by Applicable Law, late charges will be assessed against me until the Deferred Payments have been paid in full and my Loan is brought completely current under my Loan documents, even if I make timely payments in accordance with this Agreement.
- F. Bankruptcy. If, before all past due amounts are paid, I or any party with an interest in the real property which secures my Loan become subject to a proceeding in bankruptcy, or if my Loan otherwise is subject to protection under bankruptcy laws, I hereby acknowledge and agree that (1) any continued workout assistance will need to be addressed in the context of the Bankruptcy proceedings, (2) unless expressly prohibited by Applicable Law, Servicer, at its option, may terminate this Agreement immediately and automatically, and (3) to the extent allowed by Applicable Law, Servicer shall be entitled to immediate and automatic relief from the bankruptcy stay upon my breach of any term or condition of this Agreement, or upon Servicer's termination of this Agreement.
- G. Credit Reporting. The status of my Loan will be reported monthly to all respective credit reporting agencies for the duration of this Agreement and thereafter. Accordingly, for the duration of this Agreement and thereafter, Servicer will report my Loan as delinquent if my Loan is not completely current under my Loan Documents, even if I make timely payments to Servicer in accordance with this Agreement, if any. This Agreement does not constitute an agreement by Servicer to waive any reporting of the delinquency status of my Loan payments.
- H. Property Taxes and Insurance. If Servicer does not maintain an impound account with respect to my Loan, it is my responsibility to timely pay all property taxes and premiums for insurance due, as required in my Loan Documents. If Servicer does maintain an impound account with respect to my Loan, I agree during the Deferred Payment Period to forward to Servicer the amounts required to permit the impound account to contain a sufficient balance so that payments for property taxes and insurance may be timely. My failure to timely pay property taxes or insurance, if there is no impound account, or to forward to Servicer sufficient funds so that such payment may be timely made from my impound account, shall constitute an event of default, and, at Servicer's option, this Agreement shall terminate immediately and automatically without further notice to me.
- I. Waiver. Any forbearance by Servicer in exercising any right or remedy under this Agreement or as otherwise afforded by Applicable Law shall not be a waiver or preclude the exercise of that or any other right or remedy. For example, if Servicer decides to accept a partial or untimely payment from me instead of terminating this Agreement as provided herein, Servicer shall not be precluded from rejecting a subsequent partial or untimely payment, terminating this Agreement, and commencing or continuing, as the case may be, foreclosure proceedings or taking any other action permitted by law.
- J. Miscellaneous Provisions. The invalidity of any portion of this Agreement shall in no way affect the balance thereof. Each covenant set forth in this Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective heirs, successors, assigns, attorneys, agents, employees, representatives (past and present) and each of them. TIME IS OF THE ESSENCE under this Agreement.

3. Acknowledgement. I acknowledge that all terms and provisions of the Loan Documents remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents. The Servicer and I will be bound by, and will comply with, all of the terms and provisions of the Loan Documents.

The Servicer and I have executed this Agreement.

HSBC Mortgage Corp. (USA)
Servicer

Cindy Kuhn, Loss Mitigation Specialist

By: Cindy Kuhn

7/27/09
Date

Frederick J Otterbein
Frederick J Otterbein

8/11/2009
Date
Heather H Otterbein
Heather H Otterbein

8/11/2009
Date



February 26, 2010

Frederick J Otterbein IV
Heather H Otterbein
116 Wando Creek Lane
Charleston SC 29492

Dear Frederick J Otterbein IV and Heather H Otterbein :

Account Number ~~XXXXXXXXXX~~

Re: 116 Wando Creek Lane
Charleston SC 29492

Subject: ACCOUNT UPDATE

This letter is to inform you that the special forbearance plan you accepted is now complete. HSBC Mortgage Corporation(USA) wants to work with you to evaluate your current financial situation.

We already have your financial information on file and will be contacting you soon to discuss the next step in bringing your loan to a current status. Please continue to make your forbearance payment until further notice.

HSBC Mortgage Corporation (USA) values your relationship and wants to work with you to explore opportunities for you to stay in your home.

If you have questions, please contact us at 1-888-648-3124 during normal business hours.

Sincerely,

HSBC Mortgage Corporation(USA)

Please note that HSBC Mortgage Corporation(USA) is a debt collector. Unless you have been previously discharged from a Chapter 7 bankruptcy without reaffirming the debt, HSBC Mortgage Corporation(USA) is attempting to collect a debt and any information obtained will be used for that purpose.

Esta carta contiene informacion importante sobre su cuenta y podria requerir su atencion. Si tiene alguna pregunta y desea hablar en Espanol con un empleado, sirvase comunicarse con nosotros al 1-888-648-3124 durante nuestras horas de oficina normales.

HSBC Mortgage Corporation (USA)
2929 Walden Avenue, Depew, NY 14043



ROA_0104

JAN-14-1996 10:50

P.37/39

EXHIBIT C

ROA_0105



July 01, 2010

Frederick J Otterbein Iv
Heather H Otterbein
116 Wando Creek Lane
Charleston SC 29492

Dear Frederick J Otterbein Iv and Heather H Otterbein :

Account Number [REDACTED]

Re: 116 Wando Creek Lan
Charleston SC 29492

Subject: MODIFICATION REQUEST

You are advised that your recent request for a modification of your existing mortgage has been declined. The decision to deny your request for a modification is that your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan, plus property taxes, hazard insurance and homeowner's dues, if any, is less than or equal to 31% of your gross monthly income, your income before taxes and other deductions, which we verified as \$7514.91.

Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification.

HSBC Mortgage Corporation(USA) understands extenuating circumstances may, at times, prevent individuals from meeting financial obligations in full compliance with account terms. It is important to note that you may have other workout options available to you depending on the type of loan you have.

Retention options are workout plans that can help keep you in your property. They can include forbearance agreements, repayment plans, stipulation agreements, claim advances, and traditional modifications.

Liquidation options are workout plans that allow you to transfer ownership to the lender or to a third party for less than a full payoff. They can include a short sale or a deed-in-lieu of foreclosure.

If you believe this verified income is incorrect or if you have questions, please contact us at 1-866-600-2942 during normal business hours.

Sincerely,

HSBC Mortgage Corporation(USA)

HSBC Mortgage Corporation (USA)
2929 Walden Avenue, Depew, NY 14043



ROA_0106



Please note that HSBC Mortgage Corporation(USA) is a debt collector. Unless you have been previously discharged from a Chapter 7 bankruptcy without reaffirming the debt, HSBC Mortgage Corporation(USA) is attempting to collect a debt and any information obtained will be used for that purpose.

NOTICE: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

Comptroller of the Currency
Customer Assistance Group
1301 McKinney St.
Suite 3450
Houston, TX 77010-9050

Esta carta contiene informacion importante sobre su cuenta y podria requerir su atencion. Si tiene alguna pregunta y desea hablar en Espanol con un empleado, sirvase comunicarse con nosotros al 1-866-600-2942 durante nuestras horas de oficina normales.

LM025

HSBC Mortgage Corporation (USA)



TOTAL P.39

ROA_0107

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	CIVIL ACTION No: 2010-CP-08-1707
HSBC Mortgage Corporation, USA	)	
Plaintiff,	)	Memorandum in Opposition
	)	to Plaintiffs Motion for Summary
	)	Judgment
vs.	)	
	)	
Frederick J. Otterbein, IV a/k/a	)	
Frederick John Otterbein, IV, Heather	)	
H. Otterbein, and First Federal Savings	)	
And Loan Association of Charleston	)	
	)	
Defendants.	)	

The Defendants, Frederick J. Otterbein and Heather H. Otterbein (hereinafter "Otterbeins") by and through their undersigned counsel submit this memorandum in opposition to Plaintiff, HSBC Mortgage Corporation, USA's (hereinafter "HSBC") Motion for Summary Judgment.

Introduction

HSBC filed a blanket motion for summary judgment seeking summary judgment as to the Otterbeins counterclaims assert against it. HSBC however set forth nothing more than the bald allegation that no genuine issue of act exists. HSBC submitted nothing to support its position. At the hearing this Court requested HSBC submit a memorandum in support of the position it argued at the time of the hearing on November 14, 2012. This memorandum is in opposition to the new submission and the documents attached thereto. The materials submitted subsequent to the hearing are neither properly before this Court nor admissible evidence that should be considered by the Court. Indeed triable issues exist here. These issues must go to the jury. Nelson v.

Charleston County Parks & Recreation Comm., 362 S.C. 1, 605 S.E. 2d 744 (Ct. App. 2004). Summary judgment is not appropriate as to the Otterbeins' counterclaims and would be the very drastic remedy which is frowned upon.

SUMMARY OF PROCEDURAL HISTORY AND FACTS

This case originated as a mortgage foreclosure with HSBC filing its Complaint on May 14, 2010. The Complaint is an unverified Complaint with no attachments. On September 7, 2010 the Otterbeins filed an Amended Answer and Counterclaim. The Counterclaims include the following causes of action: (1) breach of contract and good faith and fair dealing; (2) declaratory and injunctive relief; (3) unjust enrichment; (4) negligent misrepresentation; and (5) accounting. HSBC timely filed a Reply.

On December 11, 2011, HSBC filed a Motion to Dismiss the case without prejudice. HSBC's motion was granted as to HSBC's foreclosure however denied as to the Otterbeins Counterclaims. On September 6, 2012, HSBC filed a Motion for Summary Judgment. The Motion for Summary Judgment is generic in nature setting forth no specific grounds. Moreover, the Motion for Summary Judgment was not and is not supported by any affidavit. On November 14, 2012, a hearing was held on HSBC's Motion for Summary Judgment. Prior to the hearing the Otterbeins, attempting to anticipate what may be argued by HSBC, filed the Affidavit of Heather Otterbein. At the time of the hearing the Court instructed and gave HSBC the opportunity to submit a memorandum in support of its position. The Memorandum now submitted by HSBC limits its argument to two causes of action; breach of contract and negligent

misrepresentation.¹ Indeed as with the original motion the memorandum submitted is not supported by any affidavit. Attached to the memorandum however are several documents none of which are admissible or should be considered by the Court as will be discussed below.

Standard for Summary Judgment

Summary judgment is proper when there exists no issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. In making this determination the evidence and all reasonable inferences there from must be viewed in the light most favorable to the non-moving party. Law v. S.C. Dep't of Corrs., 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). Summary judgment is a drastic remedy, "[t]he purpose of [which] is to expedite the disposition of cases which do not require the services of a fact finder." Singleton v. Sherer, 377 S.C. 185, 198, 659 S.E.2d 196, 203 (Ct. App. 2008) (internal quotations omitted). To overcome summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party need only present a scintilla of evidence creating a genuine issue of material fact. Zurich Am. Ins. Co. v. Tolbert, 387 S.C. 280, 283, 692 S.E.2d 523, 524 (2010); Hancock v. Mid-South Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Argument

I. HSBC's Motion for Summary Judgment fails for lack of support.

¹ HSBC has not set forth a basis or addressed the causes of action for unjust enrichment, declaratory relief or accounting. Thus HSBC has waived any argument as to the those causes and under the best case scenario for HSBC those issues must be tried.

A. The documents attached to HSBC's Memorandum in Support are inadmissible evidence and should not be considered by the Court.

HSBC attached to its Memorandum supporting the Motion four (4) items: (1) a copy of the alleged Note; (2) a copy of the alleged mortgage; (3) a copy of an alleged Modification Agreement; and (4) Heather Otterbein's Affidavit filed on November 14, 2012. The first three items are not admissible evidence and should not be considered by the Court.

Materials used in motion to support summary judgment must be those which would be admissible in evidence at trial. Moss v. Porter Bros., Inc., 292 S.C. 444, 448, 357 S.E. 2d 25, 28 (Ct. App. 1987). Exhibits 1, 2 and 3 are not admissible materials. First the Note and Mortgage were not attached to the unverified Complaint. None of the documents were attached to any pleading. See Rule 7(a), SCRPC. HSBC has offered the affidavit of no one. HSBC has made no attempt to lay a proper foundation for the admission of the documents into evidence. HSBC has made attempt to offer anyone that could aver upon personal knowledge as to the documents or their authenticity. Blindly attaching a document to a motion for summary judgment does not make them admissible. The documents are not properly before the Court and should not be considered

B. The inadmissible documents, if considered, establish triable issues of fact.

Assuming, arguendo, that the Court considers HSBC's Exhibits 1, 2, and 3, they demonstrate triable issues of fact. The Note, Exhibit 1, appears to be a copy. The Note attached is made in favor of Bradford Mortgage not HSBC. The copy of the Note attached does not show a proper chain of transfers to HSBC. In fact it raises questions

as to the transfers: when did they occur; did the transfer(s) occur after the initiation of the foreclosure proceedings; and did the people signing such have the proper authority. Additionally, the copy of the Note attached shows that HSBC has endorsed the note so as to transfer away its interest to another party. So HSBC, by its own attempted inclusion of documents raises questions as to whether HSBC properly brought the action.²

Likewise, as the attached Note demonstrates triable issues so does the Mortgage attached. Like the Note, the Mortgage was issued in favor of Bradford Mortgage. Nothing was submitted that establishes HSBC has any interest in the Mortgage. Genuine issues exist as to HSBC's right to have initiated the foreclosure.

Lastly, as with the Note and Mortgage the Home Affordable Modification Agreement attached as Exhibit 3 to Plaintiff's Memorandum, only raises issues rather than resolved them beyond doubt. Exhibit 3 identifies at the top of the second page MERS. It states MERS is the mortgagee. It identifies HSBC as Lender or Servicer not as mortgagee. Paragraph K states that MERS has the right to bring foreclosure. It is allegedly signed by a single person allegedly signing on behalf of both MERS and HSBC. This document supports the Otterbeins position the foreclosure was improper from its inception by HSBC. Again the documents proffered by HSBC only raise issues to be resolved by a trier of fact.

² Additionally, attached to the Affidavit of Heather Otterbein is Exhibit "A" which is the account history provided by HSBC through discovery. On the page identified as PLF 000079 it states full settlement to the Investor. If further shows the amounts of \$417,000 and \$18,243.80 allegedly paid to an investor. However, as shown by the Note HSBC attempts to attached an investor does not appear to be in the chain of transfers, unless it is the unidentified transfer by HSBC conveying out its interest. Thus, another triable issue under Otterbeins counterclaim if the foreclosure was proper.

II. HSBC is precluded from requiring waiver of rights and claims.

HSBC, in essence, argues the Otterbeins cannot pursue their claims because they have waived them by entering into the Home Affordable Modification Agreement subsequent to the litigation commencing. HSBC is precluded from taking such a position.

In an effort to mitigation damages and to eliminate HSBC's ability to take their primary residence, the Otterbeins entered into a Home Affordable Modification Agreement (hereinafter "Modification Agreement") after this action was commenced. The Modification Agreement is a standard form Fannie Mae document. It is identified as Fannie Mae/Freddie Mac Uniform Instrument. It is a document prepared by HSBC and presented to the Otterbeins on a take or leave it basis by HSBC.

The Treasury Department prohibits the use of waivers to eliminate or limit a consumers legal claims against lenders in order to save their homes See Regulation 419.11 h. (Waiver of legal claims and defenses. A Servicer shall not require a homeowner to waive legal claims and defenses as a condition of a loan modification, forbearance or repayment plan.). HSBC's present argument is tantamount to a waiver of legal rights and claims. The Otterbeins asserted a cause of action against HSBC alleging no default had occurred amongst other grounds. HSBC wants to use the Modification Agreement to undermine that position and preclude any assert of legal rights.

HSBC employed the use of the Fannie Mae/Freddie Mac form. Treasury will not allow the use of a waiver clause in the form. HSBC cannot bootstrap the preclusion of

claims by use of the standardized form. HSBC cannot bootstrap the preclusion of legal claims by including in its contracts of adhesion a required commitment on default.

Indeed HSBC's effort here to preclude the Otterbeins' counterclaims is against public policy and the very purpose of Treasury's rule precluding the same. Moreover, Mrs. Otterbein has averred that no default existed because payments were made on a monthly basis. That is a claim initially upon receipt of the original foreclosure complaint. Whether a default occurred is an issue of fact to be resolved by the trier of fact and not subject to summary judgment.

III. The Otterbeins' claim for breach of contract and good faith and fair dealing is a valid cause of action with triable issues of fact.

HSBC argues that HAMP does not create a private right of action; therefore the Otterbeins' cause of action for breach of contract and good faith and fair dealing should be disposed of on summary judgment. The Otterbeins do not dispute that a number of courts have held that HAMP does not create a private right of action. The Otterbeins are not attempting to assert such a claim. Their claim is for breach of contract and good faith and fair dealing. A cause of action long established in South Carolina jurisprudence.

Well established in South Carolina law is the concept that every contract has an implied covenant of good faith and fair dealing. See Parker v. Byrd, 309 S.C. 189, 420 S.E.2d 850 (1992); See also, Mincey v. World Savings Bank, FSB, 614 F. Supp. 2d 610 (D.S.C. 2008) (Under South Carolina law, where there is a loan agreement between the parties, there is an implied covenant of good faith and fair dealing.); and Restatement (Second) of Contracts § 205 (Every contract imposes upon each party a duty of good

faith and fair dealing in its performance and enforcement.)

In order to establish a claim for breach of contract one must assert and prove: (1) a binding contract entered into by the parties, (2) a breach or failure to perform the contract, and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 85, 124 S.E.2d 602, 610 (1962). Whether the parties have a meeting of the minds is ordinarily a question of fact for the jury to decide. Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690, 693 (1989); see also, Jones v. Ridgely Communications, Inc., 304 S.C. 452, 405 S.E.2d 402 (1991) (jury issue exists where evidence is susceptible of more than one reasonable inference as to the construction of a contract).

Here the Otterbeins, plead as part of their cause action for breach of contract that HSBC failed to appropriately post payments, failed to give proper credit for payments received and imposed improper fees. (Amended Answer and Counterclaim). Additionally, trying to anticipate the unsupported motion for summary judgment, Mrs. Otterbein submitted an affidavit. Mrs. Otterbein has averred to the actions and inactions of HSBC include but are not limited to improper application of payments, holding monies in a suspense account and imposing impermissible fees and charges. (Otterbein Affidavit). Attached to Mrs. Otterbein's Affidavit is the account history that has been supplied by HSBC. The account history shows that funds received were held in a suspense account rather than immediately applied against the loan balance. The account history shows that alleged "one time draft" charges were imposed against the account on numerous occasions. Additionally the account history shows HSBC charged for "duplicate payoff statements"; special handling fax; recording fee, "nsf" charges and

"other fees due". The Otterbeins contend that all these charges and fee are not permitted or specifically provided for by the terms of the subject documents and therefore it is a breach of the agreement and breach of good faith in administering the agreement to impose the fees. These are all issues to be determined by jury in addition to other issues raised. The evidence and all inferences which can be reasonably be drawn there from must be viewed in the light most favorable to the nonmoving party, the Otterbeins. The Otterbeins have established summary judgment is not appropriate.

IV. HSBC made negligent misrepresentations to the Otterbeins that must be resolved by a trier of fact.

To establish a claim for negligent misrepresentation, the plaintiff must establish that "(1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation. Redwend Ltd. P'ship v. Edwards, 354 S.C. 459, 473-74, 581 S.E.2d 496, 504 (Ct.App.2003). Whether or not there has been a misrepresentation is an ultimate issue of fact for the jury. See State Farm Auto. Ins. Co. v. Pennsylvania Nat'l Mut. Casualty Ins. Co., 263 S.C. 391, 210 S.E.2d 613 (1974).

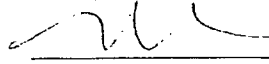
Here contrary to the position of HSBC, the Otterbeins have alleged and aver as to the negligent misrepresentations made by HSBC relating to the transaction. They have asserted HSBC negligent claim the account was default. They have asserted HSBC represented an amount was doing and owing when they were not in default. They have

alleged that HSBC misrepresented charges due and owing when they were not. They attached to the Affidavit of Mrs. Otterbein several letters that contain misrepresentations. Exhibit B attached Mrs. Otterbein's Affidavit asserts HSBC "wants to work with you to evaluate our current financial situation." Mrs. Otterbein avers that the process which HSBC subject her in no matter exhibit a willingness to work with her. Rather she avers that HSBC made her complete numerous different applications; that she was told her application was incomplete when it was not; that HSBC informed her documents were not received when they were sent; and, that HSBC was reviewing her applications when it was not. Further she was specifically instructed to make payments which by HSBC that were later rejected. She was told she did not meet the criteria for a modification because her monthly expenses were less than 31% of her gross monthly income, which she believes was inaccurate. Moreover attached to Mrs. Otterbein's Affidavit the Consent Order entered by and between the Department of Treasury and HSBC which finds HSBC has committed numerous unsafe or unsound practices in residential mortgage servicing and in the handling of foreclosure proceedings. An Order notably that HSBC complete ignores. The Otterbeins have clearly set forth under the facts asserted above, which must be view in light most in their favor; there are issues of fact to be resolved by a jury.

CONCLUSION

Indeed the Otterbeins have presented a scintilla of evidence creating a genuine issue of material fact. HSBC's motion for summary judgment as to only two of the five counterclaims should be denied.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold

749 Johnnie Dodds Blvd., Ste .B

Mount. Pleasant, South Carolina 29465

Telephone (843) 971-6053

Fax (843) 671-6055

Sammie@maryarnoldlaw.com

Attorney for Defendants Otterbein

Mt. Pleasant, SC

Dated: November 26, 2012

CERTIFICATE OF SERVICE

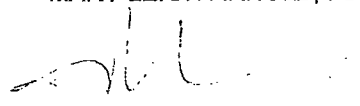
I certify that on this 26th day of November, 2012, a copy of the within Defendants Frederick and Heather Otterbeins Memorandum in Opposition was placed in the United States Mail postage pre-paid, addressed to Counsel of the Plaintiff as listed below:

Charles Gwynne Jr.

P.O. Box 100200

Columbia, SC 29202-3200

MARY LEIGH ARNOLD, P.A.



STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
HSBC MORTGAGE CORPORATOIN,)
USA)

Plaintiff(s),)

vs.)

FREDERICK J. OTTERBEIN, IV A/K/A)
FREDERICK JOHN OTTERBEIN, IV,)
HEATHER H. OTTERBEIN, AND FIRST)
FEDERAL SAVINGS AND LOAN)
ASSOCIATION OF CHARLESTON)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-08-1707

**AFFIDAVIT IN OPPOSITION TO
SUMMARY JUDGMENT OF
HEATHER H. OTTERBEIN**

TO: CHARLES STUART GWYNNE, ESQUIRE ATTORNEY FOR PLAINTIFF:

PERSONALLY APPEARED BEFORE ME, a Notary Public for South Carolina, Heather H. Otterbein, who on oath says:

1. I am 21 years of age or older, legally competent to testify as to the matters contained within this Affidavit, and have personal knowledge of the facts set forth within this Affidavit.
2. I am a named defendant in the above captioned action and am familiar with the facts and circumstances of the within matter.
3. I along with my Husband Fredrick J. Otterbein am the owner of the real property which is the subject of this action, located at 116 Wando Creek Lane Charleston, SC 29492, which is our permanent residence.
4. This transaction has been problematic for much of the loan history.
5. The Note and Mortgage originated with Bradford Mortgage Company.

6. At all times relevant to the subject action I have communicated with and made payments to HSBC Mortgage Corporation, USA (hereinafter "Plaintiff").

7. On or about December 21, 2007 Fredrick J. Otterbein and I executed a Note and Mortgage as alleged in Plaintiff's Amended Complaint in Paragraphs 6 and 7.

8. I understand that every contract has a duty of good faith and fair dealing.

9. In the beginning of 2009 I began pursuing from Plaintiff a modification of my mortgage. At that time Plaintiff declared me in default though I was making my payments.

10. In opposition to Plaintiff's Motion for Summary Judgment I submit copies of Loan Transaction Histories provided by Plaintiff. (See Exhibit "A" attached hereto). Upon information and belief these documents evidence improper charges and fees assessed to my account by Plaintiff. Upon information and belief these documents also evidence that I was making payments every month upon my mortgage first according to the terms of the note and then according to the terms of the forbearance agreement I entered into with Plaintiff, but Plaintiff was not appropriately applying my payments to the account.

11. In August of 2009 Plaintiff entered into a forbearance agreement with my husband and I. I made all payments under the forbearance agreement while Plaintiff told me they were reviewing my information for a possible modification. In February of 2010, I received a letter from Plaintiff dated February 26, 2010 (See Exhibit "B" attached hereto), which stated that my forbearance plan was now complete; that Plaintiff had my financial information on file and would be contacting me concerning the next step soon; and that I should continue making payments under the forbearance plan. I continued to make payments under the plan until Plaintiff refused to accept further payments from me.

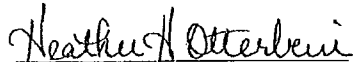
12. Plaintiff breached their contract with me, made negligent misrepresentations, and failed to act in good faith and fair dealing, by failing to properly review my application for a Home Affordable Modification Application (HAMP) and/or alternative modification programs.

13. I submitted documents and a completed application to Plaintiff several times, though each time I was told the application was incomplete, Plaintiff had not received my documents, or Plaintiff was still in the process of reviewing my documents.

14. On July 1, 2010, after Plaintiff had already served me with a Summons and Complaint in this action, I finally received notice that my request for a modification had been declined because Plaintiff asserted my "current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan, plus property taxes, hazard insurance and homeowner's dues, in any, is less than or equal to 31% of your gross monthly income, your income before taxes and other deductions. . . Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification." (See Exhibit "C" attached hereto).

15. Attached hereto as Exhibit "E" is a Consent Order issued by the United States of America Department of the Treasury Comptroller of the Currency relating to HSBC Mortgage Corporation, USA. The Consent Order provides for a number of alleged failures on the part of HSBC, including but not limited to: filed or caused to be filed in state courts numerous affidavits executed by employees of the mortgage servicing company or employees of third-party providers making various assertions, such as ownership of the mortgage note and mortgage, the amount of principal and interest due, and the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were based on personal knowledge or based on review by the affiant of the relevant book and records, when, in many cases, they were not based on such knowledge or review; failed to respond in an sufficient and timely manner to increases in the level of Loss Mitigation Activities to ensure timely, effective and efficient communication with borrowers with respect to Loss Mitigation Activities; and failed to fully explore loss mitigation options or programs prior to completion of foreclosure activities.

FURTHER DEPONENT SAYETH NOT.


Heather H. Otterbein

SWORN TO before me this
12 day of November, 2012

 (SEAL)
D. Conor Keys, Notary Public for South Carolina

My Commission Expires: 7/26/2022

EXHIBIT A

ROA 0123

15471-721 MSBC MORTGAGE CORPORATION (USA) LOAN HISTORY Y-T-D INV 768 CAT 210 INV# 1766100476 I19 12/31/09
 LOAN-NO (CONT'D) PAGE 7169

LINE	DATE	TR	NO	AMOUNT	PRINCIPAL	INTEREST	ESCHOW	ESCHOW	ADVANCE	STATUS	STATUS	UNRECORDED	OTHER	CFD
DATE	DATE	TR	NO	RECEIVED	PAID	PAID	PAID	BALANCE	BALANCE	AMOUNT	BALANCE	INT-BAL.	AMOUNTS	DCI
04-09	03-30	1	73	20.00	.00	417000.00	.00	.00	1768.27	.00	.00	.00	20.00	61
04-09	04-06	1	48	.00	.00	417000.00	.00	.00	1768.27	.00	.00	.00	20.00	61
03-09	04-06	1	48	.00	.00	417000.00	1824.38	506.42	1261.85	.00	.00	.00		1
03-09	04-06	1	72	3380.95	.00	417000.00	1824.38	556.47	1016.32	.00	.00	.00	211.11-AA	1
04-09	04-06	1	73	20.00	.00	417000.00	.00	.00	1016.32	.00	.00	.00	20.00	61
04-09	04-06	1	73	91.22	.00	417000.00	.00	.00	1016.32	.00	.00	.00	91.22	11
04-09	04-16	1	71	2380.80	.00	417000.00	1824.38	556.47	2374.79	.00	.00	.00		1
05-09	01-16	1	71	20.00	.00	417000.00	.00	.00	2374.79	.00	.00	.00	20.00	61
05-09	05-16	1	51	.00	.00	417000.00	.00	.00	2374.79	.00	.00	.00	20.00	61
05-09	05-26	1	73	2400.85	.00	417000.00	1824.38	556.47	2331.26	.00	.00	.00		1
06-09	06-16	1	51	.00	.00	417000.00	.00	.00	2331.26	.00	.00	.00	20.00	61
06-09	07-07	1	73	2400.85	.00	417000.00	1824.38	556.47	2407.73	.00	.00	.00		1
06-09	07-15	1	48	.00	.00	417000.00	1824.38	556.47	2531.26	.00	.00	.00	20.00	61
06-09	07-16	1	52	.00	.00	417000.00	.00	.00	2531.26	.00	.00	.00	20.00	61
06-09	08-17	1	52	.00	.00	417000.00	.00	.00	2531.26	.00	.00	.00	20.00	61
06-09	08-28	1	73	1800.00	.00	417000.00	.00	.00	2531.26	.00	.00	.00		1
06-09	09-16	1	52	.00	.00	417000.00	.00	.00	2531.26	.00	.00	.00	20.00	61
06-09	10-05	1	73	1600.00	.00	417000.00	.00	.00	2531.26	.00	.00	.00		1
06-09	10-08	1	73	.00	.00	417000.00	1824.38	556.47	3487.73	.00	.00	.00		1

PLF_000077

~~XXXXXXXXXX~~ CUSTOMER SERVICE INV 766/001 06/29/10
 FREDERICK J OTTERBEIN IV ~~XXXXXXXXXX~~ 1C TYPE CONV. RES. ARM MAN F

PROC-DT	DUE-DT	TRAN	TRAN-DESCRIPTION	SG NO	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCROW	AMOUNT/CD/DESCRIPTION	
06-23-10	10-09	186	FULL SETTLEMENT TO INVESTOR		
18,243.80	0.00	18,243.80	0.00	6	
06-23-10	10-09	186	FULL SETTLEMENT TO INVESTOR		
417,000.00	417,000.00	0.00	0.00	6	
	417,000.00				
06-16-10	10-09	152	LATE CHARGE ASSESSMENT		
0.00	0.00	0.00	0.00	91.22-1 LATE CHARGE	
05-17-10	10-09	152	LATE CHARGE ASSESSMENT		
0.00	0.00	0.00	0.00	91.22-1 LATE CHARGE	
04-16-10	10-09	152	LATE CHARGE ASSESSMENT		
0.00	0.00	0.00	0.00	91.22-1 LATE CHARGE	
03-29-10	09-09	168	REPAY OF ESCROW ADVANCE		
0.00	0.00	0.00	556.47-	556.47	
03-29-10	09-09	173	PAYMENT		
0.00	0.00	1,824.38	556.47	2,380.85-	SUSPENSE
			3,707.98-		
03-22-10	09-09	173	PAYMENT		
1,520.00	0.00	0.00	0.00	20.00 6 ONE TIME DRAFT	
				1,500.00	SUSPENSE
03-16-10	09-09	152	LATE CHARGE ASSESSMENT		
0.00	0.00	0.00	0.00	91.22-1 LATE CHARGE	
03-02-10	09-09	161	ESCROW ADVANCE		
556.47	0.00	0.00	556.47		
03-02-10	09-09	148	BAD CHECK REVERSAL		
0.00	0.00	1,824.38-	556.47-	AA INSUFFICIENT FUN	
			4,264.45-	45.67	SUSPENSE
03-01-10	10-09	161	ESCROW ADVANCE		
2,335.18	0.00	0.00	2,335.18		
03-01-10	02-11	351	HAZARD INSURANCE DISBURSEMENT		
2,335.18-	0.00	0.00	2,335.18-	PAYEE =	7SS64
			3,707.98-		
03-01-10	10-09	168	REPAY OF ESCROW ADVANCE		
0.00	0.00	0.00	2,335.18-	2,335.18	
03-01-10	10-09	163	HAZARD INSURANCE REFUND		
2,335.18	0.00	0.00	2,335.18	FR PAY =	6LI04
			1,372.80-	CK#402126	
02-25-10	09-09	168	REPAY OF ESCROW ADVANCE		
0.00	0.00	0.00	556.47-	556.47	
02-25-10	09-09	173	PAYMENT		
3,835.18	0.00	1,824.38	556.47	1,454.33	SUSPENSE
			3,707.98-		
02-23-10	09-09	161	ESCROW ADVANCE		
2,335.18	0.00	0.00	2,335.18		
02-23-10	02-11	351	HAZARD INSURANCE DISBURSEMENT		
2,335.18-	0.00	0.00	2,335.18-	PAYEE =	6LI04
			4,264.45-		
02-16-10	09-09	152	LATE CHARGE ASSESSMENT		

PLF_000079

ROA_0126

~~ARM~~ CUSTOMER SERVICE INV 766/001 06/29/10
 FREDERICK J OTTERBEIN IV ~~ARM~~ IC TYPE CONV. RES. ARM MAN F

PROC-DT	DUE-DT	TRAN	TRAN-DESCRIPTION	SG NO	TRAN-EFFECTIVE-DATE
TRAN-AMT	PRINCIPAL	INTEREST	ESCROW	AMOUNT/CD/DESCRIPTION	
0.00	0.00	0.00	0.00	91.22-1	LATE CHARGE
01-29-10	08-09	168	REPAY OF ESCROW ADVANCE		
0.00	0.00	0.00	556.47-	556.47	
01-29-10	08-09	173	PAYMENT		
0.00	0.00	1,824.38	556.47	2,380.85-	SUSPENSE
			1,929.27-		
01-28-10	08-09	173	PAYMENT		
1,500.00	0.00	0.00	0.00	1,500.00	SUSPENSE
01-21-10	08-09	161	ESCROW ADVANCE		
2,485.74	0.00	0.00	2,485.74		
01-21-10	01-10	351	HAZARD INSURANCE DISBURSEMENT		
4,008.00-	0.00	0.00	4,008.00-		PAYEE = 6H011
			2,485.74-		
01-19-10	08-09	152	LATE CHARGE ASSESSMENT		
0.00	0.00	0.00	0.00	91.22-1	LATE CHARGE

PLF_000080

ROA_0127

MASI LOAN ~~00000000~~ MSP LOAN MASTER MAINT. & DISPLAY 05/06/10 05:13:27

NAME FJ OTTERBEI TYPE 13 1ST MTG, CONVEN W/D INS (ARM) GROUP

-- USR3 -- EXPANDED USER FIELDS ----- PF8: PAGE ONE -----

NYS REG DE RATE TRL NPV 3 POS MAX 4 POS 5 POS 4 POS

TRK # MINIMIS LOCK DUR DATE FLD 1C RATE FLD 3B FLD 8B FLD 5B

Y 062309

PI QUAL SIGN VAL NYS REG 3 POS 5 POS 4 POS BACK PROD

38% OPT DATE TYPE DATE FLD 2C FLD 7B FLD 4B END DTI TYPE

0

BORR FORB 6 POS SUB TRL 1 3 POS TRL 2 CO BORR ICENT PROD

CONT FLAG FLD 9B STAT RECD FLD 3C RECD FICO ACRD TYPE

Y

(MMDDYY) (MMDDYY)

OTH IMMNT HMP STA HMP TRL 3 3 POS TRL 4 3 POS INCENT SVC

CONT DFLT DATE STAT RECD FLD 4C RECD FLD 6C AMT FEE

(MMDDYY) (MMDDYY)

NPV FAIL NPV PRE NPV PST BACK DCR TRL TRL

RESULT RSN MOD MOD END PITIA P&I

F

(999.99) (999.99) (99999.99) (99999.99)

PRESS PF14 FOR MEMOS

ACTIVE LOSS MITIGATION

LOSS MIT IND = K TO BE REVIEWED

DIST-TYPE = 1 INTEREST-ONLY LOAN

LOAN IS IN FORECLOSURE, F/C STOP = 1

095 DAYS PAST PROJECTED LEGAL DATE

PLF_000081

ROA_0128

DLQI ~~05/06/10~~ Q9 D E L I N Q U E N C Y OWNR 9U8 05/06/10 05:13:13
 13-A CONV. RES. ARM PER/CLS/OFF F/04/20 AGE: 2Y 5M IR: 5.25000 INV: 758
 DUE(8) 19,057.28 DUE 10/01/09(4)(03/29) ASSUM: ACQ:01/11/08
 LATE CHRG 1,003.42 PAYMT @ 2,380.85 P: 116 WANDD CREEK LAN
 BAD CK FEES 120.00 L/C AMT 91.22 CHARLESTON SC 29492
 OTHER FEES 165.00 PAYMT + LC 2,472.07 M:
 TOT DUE 20,345.70 PRIN BAL 417,000.00
 SUSPENSE 956.60 P&I 1,824.38 116 WANDD CREEK LANE
 NET DUE 19,389.10 DLQ 11 TIME,PAY 30 DAY CHARLESTON SC 29492
 C/S 290 FREDERICK J OTTERBEIN W WORK 843-860-4868
 C/D 05/10 HEATHER H OTTERBEIN 843-849-6422

PHONE NO

---IMD:N----- * ADDITIONAL MESSAGES * -----

PRESS PF14 FOR MEMOS

DIST-TYPE = I INTEREST-ONLY LOAN

ACTIVE LOSS MITIGATION

LOSS MIT IND = K TO BE REVIEWED

---COM2-----* COMMENTS *-----

DATE	USR	BGDT	ENDT	CONTACT	RESPONSE	REASON	RECALL	F/B	REMINO
050610	MEL	TEL	HOME	ANS	MACHINE	DETECT	CLD 12 PM - 5 PM		
050810	2N8	<DELQ	STAT = 43	REASON	FOR	DELQ =			
050510	m2k	TEL	HOME	PERSON/BORR	HUNGUP	CLD AFTER 5 PM			
050510	***	<SCORE	290	050510	ACT	E90N DAYS	DEL 216 RISK D		
050510	2KK	TEL	HOME	PERSON/BORR	HUNGUP	CALLED			

PLF_000082

ROA_0129

PCH2 ~~WPAZ0509~~ HPMT 10/01/09 PAYMENT CHANGE MAINTENANCE 05/08/10 05:13:06
 FJ OTTERBEI 1ST PMT 02/01/08 INV 758/210 TYPE CONV. RES. ARM MAN F
 HH OTTERBEI CUR PMT 10/01/09 PB 417,000.00 IR 5.25000 GRP 1KV

-----* HISTORY OF PAYMENTS *-----

<u>PMI DI</u>	10/01/09	04/01/10	02/01/11	04/01/11
<u>IR</u>	5.25000	5.25000	UNAV----	5.25000
<u>P&I</u>	1,824.38	1,824.38	----UNAV----	1,824.38
<u>COUNTY</u>	193.87	<u>210.16</u>	210.16	210.16
<u>CITY</u>	0.00	<u>0.00</u>	0.00	0.00
<u>HAZARD</u>	334.00	<u>334.00</u>	334.00	334.00
<u>MI</u>	0.00	<u>0.00</u>	0.00	0.00
<u>LIEN</u>	0.00	<u>0.00</u>	0.00	0.00
<u>DS</u>	28.60	<u>17.55</u>	17.55	<u>0.00</u>
<u>MISC</u>	0.00	<u>0.00</u>	0.00	0.00
<u>BSC</u>	0.00	0.00	0.00	0.00
<u>ASH</u>	0.00	0.00	0.00	0.00
<u>LIFE</u>	0.00	0.00	0.00	0.00
<u>REPL</u>	0.00	0.00	0.00	0.00
<u>HUD</u>	0.00	0.00	0.00	0.00
<u>2 P&I</u>	0.00	0.00	0.00	0.00
<u>NET</u>	2,380.85	2,386.09		
<u>PAYMNT</u>				
<u>CHANGE</u>				
<u>REASON</u>				

PLF_000083

ROA_0130

PCH2: [REDACTED] IARM 10/01/09 PAYMENT CHANGE MAINTENANCE 05/06/10 05:13:00

FJ OTTERBEI 1ST PMT 02/01/08 INV.758/210 TYPE CONV. RES. ARM MAN F
HH OTTERBEI CUR PMT 10/01/09 PB 417,000.00 IR 5.25000 GRP -IKV

-----* SCHEDULED ARM IR & PI CHANGES *-----
PMT DATE 10/01/09 IN EFFECT 09/01/09 IN EFFECT
IR METH I PI METH I
IR 5.25000 P&I 1,824.38
CHG TYPE N CHG TYPE N
REASN CD REASN CD
INDEX 4.49100 PMT RATE
IR CARRY PRIN BAL
S/F RATE 0.60750 REM TERM
MARGIN 2.25000 OPT P&I
CONV IR CONV P&I
IDX CD-1 112L
IDX CD-2 COUP 0
DIST TYPE 1

IR REASON PI REASON
(OLD) (OLD)

-----* PRESS PF2 FOR ADDITIONAL MESSAGES *-----

PRESS PF14 FOR MEMOS ACTIVE LOSS MITIGATION
LOSS MIT IND = K TO BE REVIEWED DIST-TYPE = 1 INTEREST-ONLY LOAN
ACTIVE FORECLOSURE

PLF_000084

P194 COLLECTION INFORMATION 05/06/10

LN ~~000000~~

NAME FJ OTTERBEI INV-LN 758-210-1706106476 DUE 10-01-09 TYPE 13-A
 BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00
 ORIG-MTG 417000 LN DATE 12-21-07 TERM 360 MO P&I 1824.38 PAY PER 12

BILL FREDERICK J OTTERBEIN J TEL N ~~843-543-8888-843-543-8888~~
 NAME HEATHER H OTTERBEIN TAX NAME FREDERICK OTTERBEIN IV
 & 116 WANDO CREEK LANE PROPERTY 116 WANDO CREEK LAN
 ADDR CHARLESTON SC 29492 ADDRESS CHARLESTON SC 29492
AMOUNTS DUE ASM .00-00-00 MAT 01-38 XFER DEED - -

DUE DATE 10-01-09		<u>BALANCES</u>		<u>STOPS</u>	
REG PAYMENT	2380.85	SUSPENSE	956.60	PROCESS	5
MONTHS	8	RES ESC	.00	CASHIER	5 TIMES 11
TOT REG PAY	19057.28	HUD BAL	.00	DISB	0
ACCRUED LC	1003.42	ESC ADV	3707.98	BD CK	0
		REP RES	.00	PIF	0
NSF BAL	120.00	REG ESC	.00	FC	1 TRACK A
OTHER FEE	165.00			NOTICE	0
TOTAL DUE	20345.70			ANALYZE	0
LC FACTR .05000 MAX LC AMT 9999.99 MAX LC RATE .00000		L/C		0	
LC CODE A	MIN LC AMT .00 GRACE DAYS	PMT/BD CK TAB 555249799422			
REMINDER DAYS	FINAL NOTICE DAYS 40	DELQ TAB THRU 04-10 11111101111			
<u>SEE MEMO PAD</u> MEM14546697		<u>ASSUMABLE</u>			

PLF_000085

PAY4 ~~4545000~~ AS-OF 05/07/10 PAYOFF CALCULATION TOTALS 05/06/10 05:12:34
NAME FJ OTTERBEI CONTACT NAME FREDERICK J OTTERBEIN I

		----- RATE CHANGES -----		
		INT FROM	RATE	AMOUNT
PRINCIPAL BALANCE	417,000.00			
INTEREST 05/07/10	14,959.91			
PRD RATA MIP/PMI	.00	09/01/09	5.25000	14,959.91
ESCROW ADVANCE	3,707.98	05/07/10		
ESCROW BALANCE	.00			
SUSPENSE BALANCE	956.60-			
HUD BALANCE	.00			
REPLACEMENT RESERVE	.00			
RESTRICTED ESCROW	.00			
TOTAL-FEES	20.00 W 1			
ACCUM LATE CHARGES	1,003.42			
ACCUM NSF CHARGES	120.00			
OTHER FEES DUE	165.00			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00	TOTAL INTEREST		14,959.91
CR LIFE/ORIG FEE RBATE	.00	TOTAL TO PAYOFF		436,019.71
RECOVERABLE BALANCE	.00	NUMBER OF COPIES: 1	PRESS: PF1 TO PRINT	

PLF_000086

PAY3 ~~AS-OF~~ AS-OF 05/07/10 PAYOFF FEES AND PERDIEM 05/06/10 05:12:28

----- 1ST MORT PERDIEM INTEREST - ASSESS WAIVE -----				ADDITIONAL FEES -----	
FROM	RATE	AMOUNT	N	Y	
05/07/10	05.25000	60.81	N	N 2	20.00 DUPLICATE P/O STMT
01/01/11	00.00000	CALCULATED	N	N 3	15.00 SPECIAL HANDLING/FAX
			N	Y 4	5.00 RECORDING FEE
			N	N 5	.00 OVERNIGHT EXPRESS
			N	Y 6	.00 FHA FAX FEE
			N	N 7	.00 PAYOFF WIRE/MISC FEE
			N	N 8	.00 2ND INTERNET P/O STMT
			N		1,003.42 ACCUM LATE CHARGES
			N		120.00 ACCUM NSF CHARGES
			N		165.00 OTHER FEES DUE

----- MEMO ITEMS -----
PAYMENT L/C 91.22 TYP 13 ST 39 CNTY 015 INV 758 210

----- PF4: FEE COMMENTS -----

<u>PRESS PF14 FOR MEMOS</u>	<u>ACTIVE LOSS MITIGATION</u>
<u>LOSS MIT IND = K TO BE REVIEWED</u>	<u>DIST-TYPE = 1 INTEREST-ONLY LOAN</u>
<u>ACTIVE FORECLOSURE</u>	
<u>LOAN IS IN FORECLOSURE, F/C STOP = 1</u>	<u>PROC STOP = 5 FORECLOSURE</u>
<u>LOAN PAST DUE 8 MONTHS</u>	<u>025 DAYS PAST PROJECTED LEGAL DATE</u>

PLF_000087

SER1 CUSTOMER SERVICE INV 758/210 05/06/10 05:12:14
 FREDERICK J OTTERBEIN IV IC TYPE CONV. RES. ARM MAN F
 HEATHER H OTTERBEIN IR 5.25000 8R 20 843-849-6422
 116 WANDO CREEK LAN CHARLESTON SC 29492-0000 W 843-860-4668
 CPITV < CPI TELEVOICE ACCESS >: 04/23/10

-----* ARM TYPE *-----
 PLAN IR INDX INDEX NAME LEAD TIME ----- ORIGINAL -----
 L411 J 112L ONE YEAR LIBOR (LONDON 0 / 45 1824.38 : P&I
 3/1 ARM/1 YR LIBOR INTEREST ONLY 3 YR 02/01/11 : IR CHG DT
 NEXT PEND DATE PER(PMTS) ORIG IR: 5.25000 02/01/11 : P&I CHG DT
 IR: 02/01/11 012 INIT INDEX: 360 : TERM
 P&I: 02/01/11 012 INIT IR: 417,000.00 : PRIN BAL.
 LTR/TAP MARGIN: 2.25000 ---CURR PRIN BAL/DUE DATE---
 MAX PB: ROUND: .12500 N 417,000.00 : 10/01/09

-----* ARM LOAN CHANGE HISTORY *-----* PF8 ADDL INFO *-----
 CHANGE IR CALC PAYMENT P&I IR CARRY
 DATE METHOD INDEX INT RATE CALC RATE PAYMENT OVER BAL
 02/01/11 1 -UNAVAIL- -UNAVAIL-
 09/01/09 1 4.49100 5.25000 1824.38
 08/01/09 1 4.49100 5.25000 1824.38

---* PF2 FOR ADDL MESSAGES *-----* PF4 FOR ARM INDEX TABLE *---
 PRESS PF14 FOR MEMOS ACTIVE LOSS MITIGATION
 LOSS MIT IND = K TO BE REVIEWED DIST-TYPE = 1 INTEREST-ONLY LOAN
 ACTIVE FORECLOSURE

PLF_000088

FOR1 ~~XXXXXXXXXX~~ _____ FOR SETUP A FC6 758/210 05/06/10 05:12:09
FJ OTTERBEI ORIGINAL NOTE ORDERE 10/01/09 TYPE CONV. RES. ARM M:F F:1
116 WANDO CREEK LANE CHARLESTON SC 29492-0000 GRP

-----* STATUS *-----

STAT	TEMPLATE	PROCESSOR	PROCESS	CLAIM	DIL	F/C START	DISP	RMVL
A	C39	FC6	1	31	N	050610	3	

NAME MERS: FC _ REIN _

DEFLT DAMG WKST PRIN BAL F/C SALE DT & AMT VA NBID

06 _ 417,000.00 MMDDYY 0 N

BID AMT: 0

STATUS MSG _____

-----* ADDITIONAL MESSAGES *-----

CRIT DESC = COMPLETE INV/MI REPORTING PRESS PF14 FOR MEMOS

ACTIVE LOSS MITIGATION

LOSS MIT IND = K TO BE REVIEWED

DIST-TYPE = 1 INTEREST-ONLY LOAN

-----* FOR DESCRIPTIONS *-----

F/C STATUS: ACTIVE 05-06-10 REMOVAL:

PROCESS TYP: JUDICIAL RMVL DATE:

CLAIM TYPE: CONVENTIONAL CLAIM PROP DISP: TO INVESTOR

TEMPLATE: S. CAROLINA - CONVENTIONA DEFAULT: CURTAILMENT OF INCOME

ATTORNEY: PROP DAMG:

F/C SETUP: 05-06-10

PROP INSP: SAFEGUARD PROPERTIES INC PROCESSOR: ERIC TURNER 7203

PLF_000089

HAZ1 ~~XXXXXXXXXX~~ HAZARD & FLOOD INSURANCE 08/30/10 18:38:21
 351 NAME FJ OTTERBEI TYPE CONV. RES. ARM UNIT ID
 PROP 116 WANDO CREEK LAN CHARLESTON SC 29492 MAN F GROUP

-----MAIN-----
 TYP AGENT INSCD DUE EXPIRES PREMIUM TRM COVERAGE P C POLICY NUMBER 523 N
 351 6LI04 6LI04 02/11 02/02/11 2335.18 12 350000 3 H L02205650001
 ACT C DISB CD ADD. PREM MTG CL Y 03/04/10 VP Y DV ZGD

-----* PF2 FOR ADDITIONAL MESSAGES *-----

PRESS PF14 FOR MEMOS

FILEFOR: D-N SENT TO SCOTT LAW FIRM VIA FEDEX 7987-6949-0113

ACTIVE FORECLOSURE FULL SETTLEMENT 06/23/10
 DIST-TYPE = 1 INTEREST-ONLY LOAN LOSS MIT JND = 0 WORKOUT IN REVIEW

-----HDED TO UPDATE DEDUCTIBLE AMOUNT-----

BILL FREDERICK J OTTERBEIN I		----- DISBURSEMENT AND REFUND HISTORY -----				
HEATHER H OTTERBEIN		TYP	PAYEE	DUE	PAID	AMOUNT
116 WANDO CREEK LANE		351	75564	02-11	03-01-10	2,335.18-
CHARLESTON SC 29492		063		10-09	03-01-10	2,335.18
843-849-6422 843-860-4668		351	6LI04	02-11	02-23-10	2,335.18-
AGENT PHONE 000-000-0000		351	6HD11	01-10	01-21-10	4,006.00-
INSCD PHONE 000-000-0000						

PLF_000097

FEE1 ~~XXXXXX~~

FEE ACTIVITY LEDGER

08/30/10 18:38:11

SELECTED CODES _____

FROM MMDDYY

PAGE 1 OF 7

FREDERICK J OTTERBEIN IV

116 WANDO CREEK LANE

HEATHER H OTTERBEIN

CHARLESTON

SC 29492-0000

<u>FEE</u>		<u>DATE</u>		<u>DATE</u>		<u>DATE</u>	
<u>CODE</u>	<u>DESCRIPTION</u>	<u>ASSESSED</u>	<u>AMOUNT</u>	<u>PAID</u>	<u>AMOUNT</u>	<u>WAIVED</u>	<u>AMOUNT</u>
6	ONE TIME DRAFT	02-14-08	20.00				
6	ONE TIME DRAFT			02-14-08	20.00		
1	LATE CHARGE	03-04-08	91.22				
1	LATE CHARGE					03-06-08	91.22
6	ONE TIME DRAFT	04-14-08	20.00				
6	ONE TIME DRAFT			04-14-08	20.00		
6	ONE TIME DRAFT	05-14-08	20.00				
6	ONE TIME DRAFT			05-14-08	20.00		
1	LATE CHARGE	06-16-08	91.22				
6	ONE TIME DRAFT	06-18-08	20.00				
6	ONE TIME DRAFT			06-18-08	20.00		
1	LATE CHARGE			06-18-08	91.22		
1	LATE CHARGE	07-16-08	91.22				
<u>NET</u>	1703.30	<u>TOTALS</u>	2824.28		1029.76		91.22

PLF_000098

ROA_0138

P309 LN ~~45442222~~

MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE I INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

APP	10-08	10-05	09-16	08-26	08-17
SECH/DUE	06-09	06-09	06-09	06-09	06-09
TYPE/TRAN	1 73	1 73	1 52	1 73	1 52
AMOUNT	.00	1,500.00	.00	1,500.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	1,824.38	.00	.00	.00	.00
ESC-PD	556.47	.00	.00	.00	.00
ESC-BAL	3,487.73	2,931.26	2,931.26	2,931.26	2,931.26
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00	.00	1 91.22-	.00	1 91.22-
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	.00	.00	.00	.00	.00
SUSP	2,380.85-	1,500.00	.00	1,500.00	.00

SC/PAYEE *

*

*

PAGE 010 OF 010 **PRESS PF10 FOR 25 MONTHS** OLDEST TRAN 08-17-09 /P

PLF_000099

ROA_0139

P309 LN XXXXXXXXXXMORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108478 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

APP	12-09	11-16	11-16	10-23	10-16
SEGH/DUE	07-09	07-09	11-09	07-09	07-09
TYPE/TRAN	1 73	1 52	3 11	1 73	1 52
AMOUNT	1,500.00	.00	2,521.94-	1,500.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	.00	.00	.00	.00	.00
ESC-PD	.00	.00	2,521.94-	.00	.00
ESC-BAL	965.79	965.79	965.79	3,487.73	3,487.73
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00 1	91.22-	.00	.00 1	91.22-
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	.00	.00	.00	.00	.00
SUSP	1,500.00	.00	.00	1,500.00	.00
SC/PAYEE *		39015	*		

PAGE 009 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 /P

PLF_000100

ROA_0140

P309 LN ~~XXXXXXXXXX~~

MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

APP	12-24	12-21	12-15	12-15	12-11
SEGH/DUE	08-09	08-09	08-09	00-00	07-09
TYPE/TRAN	1 48	1 73	1 73	7 66	1 73
AMOUNT	.00	.00	2,020.00	200.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	1,824.38-	1,824.38	.00	.00	1,824.38
ESC-PD	556.47-	556.47	.00	.00	556.47
ESC-BAL	1,522.26	2,078.73	1,522.26	1,522.26	1,522.26
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00	.00 6	20.00	.00	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	.00	.00	.00	.00	.00
SUSP	360.85	2,380.85-	2,000.00	.00	2,380.85-
SC/PAYEE		*	*	*	

PAGE 008 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 /P

PLF_000101

ROA_0141

P309 LN

MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A.

BR 20 MAN F P-TYPE I INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

	01-29	01-28	01-21	01-21	01-19
APP					
SEGH/DUE	08-09	08-09	08-09	01-10	08-09
TYPE/TRAN	1 73	1 73	1 61	3 51	1 52
AMQUNT	.00	1,500.00	2,485.74	4,008.00-	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	1,824.38	.00	.00	.00	.00
ESC-PD	556.47	.00	2,485.74	4,008.00-	.00
ESC-BAL	556.47	.00	.00	2,485.74-	1,522.26
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00	.00	.00	.00 1	91.22-
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	2,485.74	2,485.74	2,485.74	.00	.00
SUSP	2,380.85-	1,500.00	.00	.00	.00
SC/PAYEE *		*		6HD11	

PAGE 007 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 ZP

PLF_000102

ROA_0142

P309 LN ~~XXXXXX~~MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00975000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

APP	02-25	02-23	02-23	02-16	01-29
SEGH/DUE	09-09	09-09	02-11	09-09	08-09
TYPE/TRAN	1 73	1 61	3 51	1 52	1 68
AMDUNT	3,835.18	2,335.18	2,335.18-	.00	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	1,824.38	.00	.00	.00	.00
ESC-PD	556.47	2,335.18	2,335.18-	.00	556.47-
ESC-BAL	556.47	.00	2,335.18-	.00	.00
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00	.00	.00 1	91.22-	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	4,264.45	4,264.45	1,929.27	1,929.27	1,929.27
SUSP	1,454.33	.00	.00	.00	.00

SC/PAYEE *

6LI04

*

PAGE 006 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 ZP

PLF_000103

ROA_0143

P309 LN XXXXXXXXXXMORTGAGE LOAN HISTORY08-30-10

NAME FJ OTTERBEI INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A
BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00
HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L
REP .00 RES .00 5 0 0 2 0 0 0 0
APP 03-01 03-01 03-01 03-01 02-25
SEGH/DUE 10-09 02-11 10-09 10-09 09-09
TYPE/TRAN 1 61 3 51 1 68 1 63 1 68
AMOUNT 2,335.18 2,335.18- .00 2,335.18 .00
PRIN-PD .00 .00 .00 .00 .00
PRIN-BAL 417,000.00 417,000.00 417,000.00 417,000.00 417,000.00
INT-PD .00 .00 .00 .00 .00
ESC-PD 2,335.18 2,335.18- 2,335.18- 2,335.18 556.47-
ESC-BAL .00 2,335.18- .00 2,335.18 .00
A&H-INS .00 .00 .00 .00 .00
LIFE-INS .00 .00 .00 .00 .00
LC/FEES .00 .00 .00 .00 .00
MISC-PD .00 .00 .00 .00 .00
ADV-BAL 3,707.98 1,372.80 1,372.80 3,707.98 3,707.98
SUSP .00 .00 .00 .00 .00
SC/PAYEE 75564 * *

PAGE 005 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 /P

PLF_000104

ROA_0144

P309 LN. ~~000000~~

MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

	03-29	03-22	03-16	03-02	03-02
APP					
SEGH/DUE	09-09	09-09	09-09	09-09	09-09
TYPE/TRAN	1 73	1 73	1 52	1 61	1 48
AMOUNT	.00	1,520.00	.00	556.47	.00
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	1,824.38	.00	.00	.00	1,824.38-
ESC-PD	556.47	.00	.00	556.47	556.47-
ESC-BAL	556.47	.00	.00	.00	556.47-
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00 6	20.00 1	91.22-	.00	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	4,264.45	4,264.45	4,264.45	4,264.45	3,707.98
SUSP	2,380.85-	1,500.00	.00	.00	45.67
SC/PAYEE	X	X			

PAGE 004 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 2P

PLF_000105

ROA_0145

P309 LN ~~422222~~ MORTGAGE LOAN HISTORY 08-30-10
 NAME FJ OTTERBEI INV-LN 766-001-1708108476 DUE 10-01-09 TYPE 13-A
 BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00
 HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L
 REP .00 RES .00 5 0 0 2 0 0 0 0
 APP 06-23 06-16 05-17 04-16 03-29
 SEGH/DUE 10-09 10-09 10-09 10-09 09-09
 TYPE/TRAN 1 86 1 52 1 52 1 52 1 68
 AMOUNT 417,000.00 .00 .00 .00 .00
 PRIN-PD .00 .00 .00 .00 .00
 PRIN-BAL 417,000.00 417,000.00 417,000.00 417,000.00 417,000.00
 INT-PD .00 .00 .00 .00 .00
 ESC-PD .00 .00 .00 .00 556.47-
 ESC-BAL .00 .00 .00 .00 .00
 A&H-INS .00 .00 .00 .00 .00
 LIFE-INS .00 .00 .00 .00 .00
 LC/FEES .00 1 91.22- 1 91.22- 1 91.22- .00
 MISC-PD .00 .00 .00 .00 .00
 ADV-BAL 3,707.98 3,707.98 3,707.98 3,707.98 3,707.98
 SUSP .00 .00 .00 .00 .00
 SC/PAYEE * *

PAGE 003 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 /P

PLF_000106

ROA_0146

P309 LN

MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI

INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE I INT .0525000 FIRST PB 417,000.00 2ND PB .00

HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L

REP .00 RES .00 5 0 0 2 0 0 0 0

	08-26	08-26	08-16	07-16	06-23
APP					
SEG#/DUE	00-00	00-00	10-09	10-09	10-09
TYPE/TRAN	6 32	6 30	1 52	1 52	1 86
AMOUNT	.00	.00	.00	.00	18,243.80
PRIN-PD	.00	.00	.00	.00	.00
PRIN-BAL	417,000.00	417,000.00	417,000.00	417,000.00	417,000.00
INT-PD	.00	.00	.00	.00	.00
ESC-PD	.00	.00	.00	.00	.00
ESC-BAL	.00	.00	.00	.00	.00
A&H-INS	.00	.00	.00	.00	.00
LIFE-INS	.00	.00	.00	.00	.00
LC/FEES	.00	.00	91.22- 1	91.22-	.00
MISC-PD	.00	.00	.00	.00	.00
ADV-BAL	3,707.98	3,707.98	3,707.98	3,707.98	3,707.98
SUSP	.00	.00	.00	.00	.00
SC/PAYEE	AT3905	AT3905			*

PAGE 002 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 /P

PLF_000107

ROA_0147

P309 LN ~~XXXXXXXXXX~~

MORTGAGE LOAN HISTORY

08-30-10

NAME FJ OTTERBEI INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A
BR 20 MAN F P-TYPE I INT .0525000 FIRST PB 417,000.00 2ND PB .00
HUD .00 NET 2380.85 SF .00375000 SUSP 956.60 STOP D B P F N A D L
REP .00 RES .00 5 0 0 2 0 0 0 0
APP 08-26 08-26 08-26 08-26 08-26
SEG#/DUE 00-00 00-00 00-00 00-00 00-00
TYPE/TRAN 6 32 6 32 6 32 6 32 6 32
AMOUNT .00 .00 .00 .00 .00
PRIN-PD .00 .00 .00 .00 .00
PRIN-BAL 417,000.00 417,000.00 417,000.00 417,000.00 417,000.00
INT-PD .00 .00 .00 .00 .00
ESC-PD .00 .00 .00 .00 .00
ESC-BAL .00 .00 .00 .00 .00
A&H-INS .00 .00 .00 .00 .00
LIFE-INS .00 .00 .00 .00 .00
LC/FEES .00 .00 .00 .00 .00
MISC-PD .00 .00 .00 .00 .00
ADV-BAL 3,707.98 3,707.98 3,707.98 3,707.98 3,707.98
SUSP .00 .00 .00 .00 .00
SC/PAYEE AT3905 AT3905 AT3905 AT3905 AT3905

PAGE 001 OF 010 TOTAL TRANS AVAILABLE 0050 OLDEST TRAN 08-17-09 /P

PLF_000108

ROA_0148

P190 LN ~~XXXXXXXX~~

L O A N S T A T U S 1

08/30/10

NAME FJ OTTERBEI INV-LN 766-001-1706108476 DUE 10-01-09 TYPE 13-A

BR 20 MAN F P-TYPE 1 INT .0525000 FIRST PB 417,000.00 2ND PB .00

PDYTD INT 3648.76 PRIN .00 TAX .00 HAZ 6343.18 TERM 360

RECON 253 GUAR 000 MIP .00 LIEN .00 MAT 01-38

BILL FREDERICK J OTTERBEIN I CONTRACT/POOL NO P01164908473

NAME HEATHER H OTTERBEIN TAX NAME FREDERICK OTTERBEIN IV

& 116 WANDD CREEK LANE PROPERTY 116 WANDD CREEK LAN

ADDR CHARLESTON SC 29492 ADDRESS CHARLESTON SC 29492

<u>BALANCES</u>		<u>PAYMENT</u>		<u>STOPS</u>	<u>OTHER</u>
ESCROW	.00	P&I	1824.38	PROCESS 5	LEVEL SF .00
ADVANCE	3707.98	2ND P&I	.00	BAD CK 0	SF RATE .00375000
SUSPENSE	956.60	ESCROW	556.47	PIF 0	
LC DUE	1368.30	REPL	.00	FC 2	LAST ANAL 02-10
REPL RES	.00	MISC	.00	NOTICE 0	LOAN DATE 12-21-07
RES ESC	.00	LIFE	.00	ANALYZE 0	INT/ESC
INT DUE	.00	A&H	.00	A&H 0	TEL 1 ~~XXXXXXXX~~
HUD	.00	BSC	.00	LIFE 0	TEL 2 ~~XXXXXXXX~~
DEFICIT	2335.18-	TOTAL	2380.85	DISB 0	TEL CD W
DISC BAL	.00	HUD-P	.00	CASHIER 5	TINES DELQ 11
ORIG DIS	.00	NET PMT	2380.85	ACCRUAL 3	BILL MODE 9
ORIG LOAN	417000	PMT FREQUENCY	12	L/C 0	FC TRACK A

SEE MEMO/TASK

MEM14548697

SEE SCREEN P192

PLF_000109

ROA_0149

HAZA ~~XXXXXXXXXX~~ HAZARD & FLOOD INSURANCE 08/30/10 18:37:12

NAME FJ OTTERBEI TYPE CONV. RES. ARM

PROP 116 WANDO CREEK LAN CHARLESTON SC 29492 MAN F

TYP AGENT INSCO DUE EXPIRES PREMIUM TRM COVERAGE P C POLICY NUMBER
DEDUCTIBLE AMOUNT PERCENT

351 6LI04 6LI04 02/11 02/02/11 2335.18 12 350000 3 H L02205650001
2,500

PLF_000110

TAX2 ~~XXXXXXXXXX~~ TAX AND LIEN INFORMATION 08/30/10 18:36:59
311 11 NAME FJ OTTERBEI TYPE CONV. RES. ARM ST 39 COU 015 CITY 0000
TAX NAME FREDERICK OTTERBEIN IV PENDING YR MAN F
PROP 116 WANDU CREEK LAN. CHARLESTON SC 29492 GROUP

-----MAIN-----
TYP SEQ PAYEE TRM DUE DISB AMOUNT BILL NEW UNEV SEP VP OVR
ACTION C 311 11 39015 12 11-10 2521.94 2 N Y
TAX COMPANY T MORTGAGEE ID
TAX ID 2630002026

-----* PF2 FOR ADDITIONAL MESSAGES *-----

PRESS PF14 FOR MEMOS

FILE FOR: 0-N SENT TO SCOTT LAW FIRM VIA FEDEX 7987-6949-0113

ACTIVE FORECLOSURE FULL SETTLEMENT 06/23/10

----- PF24: TO TAXC -----

----- TAX PAYEE ----- DISBURSEMENT AND REFUND HISTORY -----
BERKELEY COUNTY TYP PAYEE DUE PAID CHECK # AMOUNT
TREASURER 311 39015 11-09 11-16-09 319359 2521.94-
PO BOX 6122
MONCKS CORNER, SC
29461

PLF_000111

ROA_0151

EXHIBIT B



February 26, 2010

Frederick J Otterbein IV
Heather H Otterbein
116 Wando Creek Lane
Charleston SC 29492

Dear Frederick J Otterbein IV and Heather H Otterbein :

Account Number 454869-7

Re: 116 Wando Creek Lan
Charleston SC 29492

Subject: ACCOUNT UPDATE

This letter is to inform you that the special forbearance plan you accepted is now complete. HSBC Mortgage Corporation(USA) wants to work with you to evaluate your current financial situation.

We already have your financial information on file and will be contacting you soon to discuss the next step in bringing your loan to a current status. Please continue to make your forbearance payment until further notice.

HSBC Mortgage Corporation (USA) values your relationship and wants to work with you to explore opportunities for you to stay in your home.

If you have questions, please contact us at 1-888-648-3124 during normal business hours.

Sincerely,

HSBC Mortgage Corporation(USA)

Please note that HSBC Mortgage Corporation(USA) is a debt collector. Unless you have been previously discharged from a Chapter 7 bankruptcy without reaffirming the debt, HSBC Mortgage Corporation(USA) is attempting to collect a debt and any information obtained will be used for that purpose.

Esta carta contiene informacion importante sobre su cuenta y podria requerir su atencion. Si tiene alguna pregunta y desea hablar en Espanol con un empleado, sirvase comunicarse con nosotros al 1-888-648-3124 durante nuestras horas de oficina normales.

HSBC Mortgage Corporation (USA)
2929 Walden Avenue, Depew, NY 14043



ROA_0153

EXHIBIT C



July 01, 2010

Frederick J Otterbein Iv
Heather H Otterbein
116 Wando Creek Lane
Charleston SC 29492

Dear Frederick J Otterbein Iv and Heather H Otterbein :

Account Number 454869-7

Re: 116 Wando Creek Lan
Charleston SC 29492

Subject: MODIFICATION REQUEST

You are advised that your recent request for a modification of your existing mortgage has been declined. The decision to deny your request for a modification is that your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan, plus property taxes, hazard insurance and homeowner's dues, if any, is less than or equal to 31% of your gross monthly income, your income before taxes and other deductions, which we verified as \$7514.91.

Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification.

HSBC Mortgage Corporation(USA) understands extenuating circumstances may, at times, prevent individuals from meeting financial obligations in full compliance with account terms. It is important to note that you may have other workout options available to you depending on the type of loan you have.

Retention options are workout plans that can help keep you in your property. They can include forbearance agreements, repayment plans, stipulation agreements, claim advances, and traditional modifications.

Liquidation options are workout plans that allow you to transfer ownership to the lender or to a third party for less than a full payoff. They can include a short sale or a deed-in-lieu of foreclosure.

If you believe this verified income is incorrect or if you have questions, please contact us at 1-866-600-2942 during normal business hours.

Sincerely,

HSBC Mortgage Corporation(USA)

HSBC Mortgage Corporation (USA)
2929 Walden Avenue, Depew, NY 14043



ROA_0155



Please note that HSBC Mortgage Corporation(USA) is a debt collector. Unless you have been previously discharged from a Chapter 7 bankruptcy without reaffirming the debt, HSBC Mortgage Corporation(USA) is attempting to collect a debt and any information obtained will be used for that purpose.

NOTICE: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is:

Comptroller of the Currency
Customer Assistance Group
1301 McKinney St.
Suite 3450
Houston, TX 77010-9050

Esta carta contiene informacion importante sobre su cuenta y podria requerir su atencion. Si tiene alguna pregunta y desea hablar en Espanol con un empleado, sirvase comunicarse con nosotros al 1-866-600-2942 durante nuestras horas de oficina normales.

LM025

HSBC Mortgage Corporation (USA)



TOTAL P.39

ROA_0156

EXHIBIT E

**UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY**

In the Matter of:

HSBC Bank USA, N.A.
McLean, Virginia

AA-EC-11-14

CONSENT ORDER

The Comptroller of the Currency of the United States of America ("Comptroller"), through his national bank examiners and other staff of the Office of the Comptroller of the Currency ("OCC"), as part of an interagency horizontal review of major residential mortgage servicers, has conducted an examination of the residential real estate mortgage foreclosure processes of HSBC Bank USA, N.A., McLean, Virginia ("Bank"). The OCC has identified certain deficiencies and unsafe or unsound practices in residential mortgage servicing and in the Bank's initiation and handling of foreclosure proceedings. The OCC has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated April 13, 2011 ("Stipulation and Consent"), that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order ("Order") by the Comptroller. The Bank has committed to taking all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices identified by the OCC, and to enhance the Bank's residential mortgage servicing and

foreclosure processes. The Bank has begun implementing procedures to remediate the practices addressed in this Order.

ARTICLE I

COMPTROLLER'S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

(1) The Bank is among the largest servicers of residential mortgages in the United States, and services a portfolio of approximately 340,000 residential mortgage loans. During the recent housing crisis, a large number of residential mortgage loans serviced by the Bank became delinquent and resulted in foreclosure actions. The Bank's foreclosure inventory grew substantially from 2007 through 2010.

(2) In connection with certain foreclosures of loans in its residential mortgage servicing portfolio, the Bank:

(a) filed or caused to be filed in state court affidavits executed by its employees or employees of third-party service providers making various assertions, such as the note attached to the complaint is a true copy, the mortgage/deed was recorded, and the amount of principal due, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) filed or caused to be filed in state courts, or in local land records offices, numerous affidavits or other mortgage-related documents that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(c) litigated foreclosure proceedings and initiated non-judicial foreclosure proceedings without always ensuring that either the promissory note or the mortgage document were properly endorsed or assigned at the appropriate time;

(d) failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its foreclosure processes;

(e) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and

(f) failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

(3) By reason of the conduct set forth above, the Bank engaged in unsafe or unsound banking practices.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. §1818(b), the Comptroller hereby ORDERS that:

ARTICLE II

COMPLIANCE COMMITTEE

(1) The Board shall maintain a Compliance Committee of at least three (3) directors, of which at least two (2) may not be employees or officers of the Bank or any of its subsidiaries or affiliates. In the event of a change of the membership, the name of any new member shall be submitted to the Examiner-in-Charge for Large Bank Supervision at the Bank ("Examiner-in-Charge"). The Compliance Committee shall be responsible for monitoring and coordinating the

Bank's compliance with the provisions of this Order. The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

(2) Within ninety (90) days of this Order, and within thirty (30) days after the end of each quarter thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail actions taken to comply with each Article of this order, and the results and status of those actions.

(3) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge within ten (10) days of receiving such report.

ARTICLE III

COMPREHENSIVE ACTION PLAN

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through XII of this Order ("Action Plan"). In the event the Deputy Comptroller asks the Bank to revise the Action Plan, the Bank shall promptly make the requested revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

(2) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan.

The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains effective mortgage servicing, foreclosure, and loss mitigation activities (as used herein, the phrase "loss mitigation" shall include, but not be limited to, activities related to special forbearances, modifications, short refinances, short sales, cash-for-keys, and deeds-in-lieu of foreclosure and be referred to as either "Loss Mitigation" or "Loss Mitigation Activities"), as well as associated risk management, compliance, quality control, audit, training, staffing, and related functions. In order to comply with these requirements, the Board shall:

(a) require the timely reporting by Bank management of such actions directed by the Board to be taken under this Order;

(b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and

(c) require corrective action be taken in a timely manner for any non-compliance with such actions.

(3) The Action Plan shall address, at a minimum:

(a) financial resources to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(b) organizational structure, managerial resources, and staffing to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(c) metrics to measure and ensure the adequacy of staffing levels relative to existing and/or future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, including the single point of contact as hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers;

(d) governance and controls to ensure compliance with all applicable federal and state laws (including the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act ("SCRA")), rules, regulations, and court orders and requirements, as well as the Membership Rules of MERSCORP, servicing guides of the Government Sponsored Enterprises ("GSEs") or investors, including those with the Federal Housing Administration and those required by the Home Affordable Modification Program ("HAMP"), and loss share agreements with the Federal Deposit Insurance Corporation (collectively "Legal Requirements"), and the requirements of this Order.

(4) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through XII of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

ARTICLE IV

COMPLIANCE PROGRAM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable compliance program to ensure that the mortgage servicing and foreclosure operations, including Loss Mitigation and loan modification, comply with all applicable Legal Requirements, OCC supervisory guidance, and the

requirements of this Order and are conducted in a safe and sound manner ("Compliance Program"). The Compliance Program shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe in the Compliance Program that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The Compliance Program shall include, at a minimum:

(a) appropriate written policies and procedures to conduct, oversee, and monitor mortgage servicing, Loss Mitigation, and foreclosure operations;

(b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Bank are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Bank's books and records when the affidavit or declaration so states;

(c) processes to ensure that affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements;

(d) processes to review and approve standardized affidavits and declarations for each jurisdiction in which the Bank files foreclosure actions to ensure compliance with applicable laws, rules and court procedures;

(e) processes to ensure that the Bank has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security,

and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;

(f) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower and/or claimable by the investor;

(g) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmations are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;

(h) processes to ensure that all fees, expenses, and other charges imposed on the borrower are assessed in accordance with the terms of the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges, and expenses, and in compliance with all applicable Legal Requirements and OCC supervisory guidance;

(i) processes to ensure that the Bank has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and Loss Mitigation, or loan modification functions;

(j) ongoing testing for compliance with applicable Legal Requirements and OCC supervisory guidance that is completed by qualified persons with requisite knowledge and ability (which may include internal audit) who are independent of the Bank's business lines;

(k) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate any changes in applicable Legal Requirements and OCC supervisory guidance;

(l) processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation and loan modification, are appropriate and a determination of whether any staffing changes or additions are needed;

(m) processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, are adequate to meet current and expected workload demands;

(n) processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation, and loan modification personnel, including single point of contact personnel as hereinafter defined, are reviewed and managed. Such processes, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of Article IX of this Order, and necessary adjustments to workloads shall promptly follow the completion of the reviews. An initial review shall be completed within ninety (90) days of this Order, and subsequent reviews shall be conducted semi-annually;

(o) processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Bank's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;

(p) appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory guidance; and

(q) appropriate procedures for customers in bankruptcy, including a prohibition on collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order.

ARTICLE V

THIRD PARTY MANAGEMENT

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge acceptable policies and procedures for outsourcing foreclosure or related functions, including Loss Mitigation and loan modification, and property management functions for residential real estate acquired through or in lieu of foreclosure, to any agent, independent contractor, consulting firm, law firm (including local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of the owners of mortgages), property management firm, or other third-party (including any affiliate of the Bank) ("Third-Party Providers"). Third-party management policies and procedures shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The policies and procedures shall include, at a minimum:

(a) appropriate oversight to ensure that Third-Party Providers comply with all applicable Legal Requirements, OCC supervisory guidance (including applicable portions of OCC Bulletin 2001-47), and the Bank's policies and procedures;

(b) measures to ensure that all original records transferred from the Bank to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the

appropriate court or the loan is otherwise transferred to another party), and are returned to the Bank or designated custodians at the conclusion of the performed service, along with all other documents necessary for the Bank's files, and that the Bank retains imaged copies of significant documents sent to Third-Party Providers;

(c) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of the Bank or the owners of mortgages in any judicial or non-judicial foreclosure proceeding, related bankruptcy proceeding, or in other foreclosure-related litigation, including, but not limited to, documentation sufficient to establish ownership of the promissory note and/or right to foreclose at the time the foreclosure action is commenced;

(d) processes to perform appropriate due diligence on potential and current Third-Party Provider qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability, and to ensure adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

(e) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to Bank foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party Provider performance failures;

(f) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements and supervisory guidance, and to ensure that foreclosures are conducted in a safe and sound manner;

(g) processes to review customer complaints about Third-Party Provider services;

(h) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical third-party services and business continuity of the Bank, consistent with federal banking agency guidance, both to address short-term and long-term service disruptions and to ensure an orderly transition to new service providers should that become necessary;

(i) a review of fee structures for Third-Party Providers to ensure that the method of compensation considers the accuracy, completeness, and legal compliance of foreclosure filings and is not based solely on increased foreclosure volume and/or meeting processing timelines; and

(j) a certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for the Bank, on a periodic basis, as qualified to serve as Third-Party Providers to the Bank including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

ARTICLE VI

MORTGAGE ELECTRONIC REGISTRATION SYSTEM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan to ensure appropriate controls and oversight of the Bank's activities with respect to the Mortgage Electronic Registration System ("MERS") and compliance with MERSCORP's membership rules, terms, and conditions ("MERS Requirements") ("MERS Plan"). The MERS Plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one

hundred twenty (120) days must be approved by the Examiner-in-Charge. The MERS Plan shall include, at a minimum:

(a) processes to ensure that all mortgage assignments and endorsements with respect to mortgage loans serviced or owned by the Bank out of MERS' name are executed only by a certifying officer authorized by MERS and approved by the Bank;

(b) processes to ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by the Bank) are executed by a certifying officer authorized by MERS and approved by the Bank;

(c) processes to ensure that the Bank maintains up-to-date corporate resolutions from MERS for all Bank employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers;

(d) processes to ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System ("CRMS");

(e) processes to ensure the accuracy and reliability of data reported to MERSCORP, including monthly system-to-system reconciliations for all MERS mandatory reporting fields, and daily capture of all rejects/warnings reports associated with registrations, transfers, and status updates on open-item aging reports. Unresolved items must be maintained on open-item aging reports and tracked until resolution. The Bank shall determine and report whether the foreclosures for loans serviced by the Bank that are currently pending in MERS' name are accurate and how many are listed in error, and describe how and by when the data on the MERSCORP system will be corrected; and

(f) an appropriate MERS quality assurance workplan, which clearly describes all tests, test frequency, sampling methods, responsible parties, and the expected process for open-

item follow-up, and includes an annual independent test of the control structure of the system-to-system reconciliation process, the reject/warning error correction process, and adherence to the Bank's MERS Plan.

(2) The Bank shall include MERS and MERSCORP in its third-party vendor management process, which shall include a detailed analysis of potential vulnerabilities, including information security, business continuity, and vendor viability assessments.

ARTICLE VII

FORECLOSURE REVIEW

(1) Within forty-five (45) days of this Order, the Bank shall retain an independent consultant acceptable to the Deputy Comptroller and the Examiner-in-Charge to conduct an independent review of certain residential foreclosure actions regarding individual borrowers with respect to the Bank's mortgage servicing portfolio. The review shall include residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by the Bank, whether brought in the name of the Bank, the investor, the mortgage note holder, or any agent for the mortgage note holder (including MERS), that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period ("Foreclosure Review").

(2) Within fifteen (15) days of the engagement of the independent consultant described in this Article, but prior to the commencement of the Foreclosure Review, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge for approval an engagement letter that sets forth:

(u) the methodology for conducting the Foreclosure Review, including: (i) a description of the information systems and documents to be reviewed, including the selection of criteria for cases to be reviewed; (ii) the criteria for evaluating the reasonableness of fees and penalties; (iii) other procedures necessary to make the required determinations (such as through interviews of employees and third parties and a process for submission and review of borrower claims and complaints); and (iv) any proposed sampling techniques. In setting the scope and review methodology under clause (i) of this sub-paragraph, the independent consultant may consider any work already done by the Bank or other third-parties on behalf of the Bank. The engagement letter shall contain a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on results of the initial sampling;

(b) expertise and resources to be dedicated to the Foreclosure Review;

(c) completion of the Foreclosure Review within one hundred twenty (120) days from approval of the engagement letter; and

(d) a written commitment that any workpapers associated with the Foreclosure Review shall be made available to the OCC immediately upon request.

(3) The purpose of the Foreclosure Review shall be to determine, at a minimum:

(a) whether at the time the foreclosure action was initiated or the pleading or affidavit filed (including in bankruptcy proceedings and in defending suits brought by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or similar status;

(b) whether the foreclosure was in accordance with applicable state and federal law, including but not limited to the SCRA and the U.S. Bankruptcy Code;

(c) whether a foreclosure sale occurred when an application for a loan modification or other Loss Mitigation was under consideration; when the loan was performing in accordance with a trial or permanent loan modification; or when the loan had not been in default for a sufficient period of time to authorize foreclosure pursuant to the terms of the mortgage loan documents and related agreements;

(d) whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmations were in accordance with the terms of the mortgage loan and state law requirements;

(e) whether a delinquent borrower's account was only charged fees and/or penalties that were permissible under the terms of the borrower's loan documents, applicable state and federal law, and were reasonable and customary;

(f) whether the frequency that fees were assessed to any delinquent borrower's account (including broker price opinions) was excessive under the terms of the borrower's loan documents, and applicable state and federal law;

(g) whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of the HAMP, and consistent with the policies and procedures applicable to the Bank's proprietary loan modifications or other loss mitigation programs, such that each borrower had an adequate opportunity to apply for a Loss Mitigation option or program, any such application was handled properly, a final decision was made on a reasonable basis, and was communicated to the borrower before the foreclosure sale; and

(h) whether any errors, misrepresentations, or other deficiencies identified in the Foreclosure Review resulted in financial injury to the borrower or the mortgagee.

(4) The independent consultant shall prepare a written report detailing the findings of the Foreclosure Review ("Foreclosure Report"), which shall be completed within thirty (30) days of completion of the Foreclosure Review. Immediately upon completion, the Foreclosure Report shall be submitted to the Deputy Comptroller, Examiner-in-Charge, and the Board.

(5) Within forty-five (45) days of submission of the Foreclosure Report to the Deputy Comptroller, Examiner-in-Charge, and the Board, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge a plan, acceptable to the OCC, to remediate all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies identified in the Foreclosure Report, by:

(a) reimbursing or otherwise appropriately remediating borrowers for impermissible or excessive penalties, fees, or expenses, or for other financial injury identified in accordance with this Article; and

(b) taking appropriate steps to remediate any foreclosure sale where the foreclosure was not authorized as described in this Article.

(6) Within sixty (60) days after the OCC provides supervisory non-objection to the plan set forth in paragraph (5) above, the Bank shall make all reimbursement and remediation payments and provide all credits required by such plan, and provide the OCC with a report detailing such payments and credits.

ARTICLE VIII

MANAGEMENT INFORMATION SYSTEMS

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan for operation of its management information systems ("MIS") for foreclosure and Loss Mitigation or loan modification activities to ensure the timely delivery of complete and accurate information to permit effective decision-making. The MIS plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The plan shall include, at a minimum:

- (a) a description of the various components of MIS used by the Bank for foreclosure and Loss Mitigation or loan modification activities;
- (b) a description of and timetable for any needed changes or upgrades to:
 - (i) monitor compliance with all applicable Legal Requirements and supervisory guidance, and the requirements of this Order;
 - (ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower; and
 - (iii) measures to ensure that Loss Mitigation, loan foreclosure, and modification staffs have sufficient and timely access to information provided by the borrower regarding loan foreclosure and modification activities;

(c) testing the integrity and accuracy of the new or enhanced MIS to ensure that reports generated by the system provide necessary information for adequate monitoring and quality controls.

ARTICLE IX

MORTGAGE SERVICING

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan, along with a timeline for ensuring effective coordination of communications with borrowers, both oral and written, related to Loss Mitigation or loan modification and foreclosure activities: (i) to ensure that communications are timely and effective and are designed to avoid confusion to borrowers; (ii) to ensure continuity in the handling of borrowers' loan files during the Loss Mitigation, loan modification, and foreclosure process by personnel knowledgeable about a specific borrower's situation; (iii) to ensure reasonable and good faith efforts, consistent with applicable Legal Requirements, are engaged in Loss Mitigation and foreclosure prevention for delinquent loans, where appropriate; and (iv) to ensure that decisions concerning Loss Mitigation or loan modifications continue to be made and communicated in a timely fashion. Prior to submitting the plan, the Bank shall conduct a review to determine whether processes involving past due mortgage loans or foreclosures overlap in such a way that they may impair or impede a borrower's efforts to effectively pursue a loan modification, and whether Bank employee compensation practices discourage Loss Mitigation or loan modifications. The plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of

one hundred twenty (120) days must be approved by the Examiner-in-Charge. The plan shall include, at a minimum:

- (a) measures to ensure that staff handling Loss Mitigation and loan modification requests routinely communicate and coordinate with staff processing the foreclosure on the borrower's property;
- (b) appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decision-making on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in the HAMP program;
- (c) establishment of an easily accessible and reliable single point of contact for each borrower so that the borrower has access to an employee of the Bank to obtain information throughout the Loss Mitigation, loan modification, and foreclosure processes;
- (d) a requirement that written communications with the borrower identify such single point of contact along with one or more direct means of communication with the contact;
- (e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation, loan modification, and foreclosure activities;
- (f) measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation, and loan modifications;
- (g) procedures and controls to ensure that a final decision regarding a borrower's loan modification request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the trial or

permanent modification (including the net present value calculations utilized by the Bank, if applicable) by the single point of contact within a reasonable period of time before any foreclosure sale occurs;

(h) procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis that: (i) no foreclosure or further legal action predicate to foreclosure occurs, unless the borrower is deemed in default on the terms of the trial or permanent modification; and (ii) the single point of contact remains available to the borrower and continues to be referenced on all written communications with the borrower;

(i) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation or modification process, denial of modification requests, the foreclosure process, or foreclosure activities which prevent a borrower from pursuing Loss Mitigation or modification options, and a process for making borrowers aware of the complaint procedures;

(j) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;

(k) policies and procedures to ensure that payments are credited in a prompt and timely manner; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and/or escrow before fees, and that any misapplication of borrower funds is corrected in a prompt and timely manner;

(l) policies and procedures to ensure that timely information about Loss Mitigation options is sent to the borrower in the event of a delinquency or default, including plain language notices about loan modification and the pendency of foreclosure proceedings;

(m) policies and procedures to ensure that foreclosure, Loss Mitigation, and loan modification documents provided to borrowers and third parties are appropriately maintained and tracked, and that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information; and

(n) policies and procedures to consider loan modifications or other Loss Mitigation Activities with respect to junior lien loans owned by the Bank, and to factor the risks associated with such junior lien loans into loan loss reserving practices, where the Bank services the associated first lien mortgage and becomes aware that such first lien mortgage is delinquent or has been modified. Such policies and procedures shall require the ongoing maintenance of appropriate loss reserves for junior lien mortgages owned by the Bank and the charge-off of such junior lien loans in accordance with FFIEC retail credit classification guidelines.

ARTICLE X

RISK ASSESSMENT AND RISK MANAGEMENT PLAN

(1) Within ninety (90) days of this Order, the Bank shall conduct a written, comprehensive assessment of the Bank's risks in mortgage servicing operations, particularly in the areas of Loss Mitigation, foreclosure, and the administration and disposition of other real estate owned, including, but not limited to, operational, compliance, transaction, legal, and reputational risks.

(2) The Bank shall develop an acceptable plan to effectively manage or mitigate identified risks on an ongoing basis, with oversight by the Bank's senior risk managers, senior

management, and the Board. The assessment and plan shall be provided to the Deputy Comptroller and the Examiner-in-Charge within one hundred twenty (120) days of this Order.

ARTICLE XI

APPROVAL IMPLEMENTATION AND REPORTS

(1) The Bank shall submit the written plans, programs, policies, and procedures required by this Order for review and determination of no supervisory objection to the Deputy Comptroller and the Examiner-in-Charge within the applicable time periods set forth in Articles II through X. The Bank shall adopt the plans, programs, policies, and procedures required by this Order upon submission to the OCC, and shall immediately make any revisions requested by the Deputy Comptroller or the Examiner-in-Charge. Upon adoption, the Bank shall immediately implement the plans, programs, policies, and procedures required by this Order and thereafter fully comply with them.

(2) During the term of this Order, the required plans, programs, policies, and procedures shall not be amended or rescinded in any material respect without the prior written approval of the Deputy Comptroller or the Examiner-in-Charge (except as otherwise provided in this Order).

(3) During the term of this Order, the Bank shall revise the required plans, programs, policies, and procedures as necessary to incorporate new or changes to applicable Legal Requirements and supervisory guidelines.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plans, programs, policies, and procedures required by this Order.

(5) Within thirty (30) days after the end of each calendar quarter following the date of this Order, the Bank shall submit to the OCC a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The progress report shall include information sufficient to validate compliance with this Order, based on a testing program acceptable to the OCC that includes, if required by the OCC, validation by third-party independent consultants acceptable to the OCC. The OCC may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

(6) All communication regarding this Order shall be sent to:

(a) Sally G. Belshaw
Deputy Comptroller
Large Bank Supervision
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

(b) Kris A. McIntire
Examiner-in-Charge
National Bank Examiners
10 East 40th Street, 14th Floor
New York, NY 10016

ARTICLE XII

COMPLIANCE AND EXTENSIONS OF TIME

(1) If the Bank contends that compliance with any provision of this Order would not be feasible or legally permissible for the Bank, or requires an extension of any timeframe within this Order, the Board shall submit a written request to the Deputy Comptroller asking for relief. Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with a provision, that require

the Deputy Comptroller to exempt the Bank from a provision, or that require an extension of a timeframe within this Order.

(2) All such requests shall be accompanied by relevant supporting documentation, and to the extent requested by the Deputy Comptroller, a sworn affidavit or affidavits setting forth any other facts upon which the Bank relies. The Deputy Comptroller's decision concerning a request is final and not subject to further review

ARTICLE XIII

OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of no supervisory objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

(a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;

(b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;

(c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and

(d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, stop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the unsafe or unsound practices described in the Comptroller's Findings set forth in Article I of this Order. Provided, however, that nothing in this Order shall prevent the Comptroller from instituting other enforcement actions against the Bank or any of its institution-affiliated parties, including, without limitation, assessment of civil money penalties, based on the findings set forth in this Order, or any other findings.

(5) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller.

(6) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

(7) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate any foreclosure or mortgage servicing activities done by a subsidiary into its plans, policies, programs, and processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(8) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency, to the extent permitted under applicable law.

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) Nothing in the Stipulation and Consent or this Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under the Stipulation and Consent or this Order.

(11) The Bank consents to the issuance of this Order before the filing of any notices, or taking of any testimony or adjudication, and solely for the purpose of settling this matter without a formal proceeding being filed.

IT IS SO ORDERED, this 13th day of April, 2011.

/s/
Sally G. Belshaw
Deputy Comptroller
Large Bank Supervision

UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY

In the Matter of:
HSBC Bank USA, N.A.
McLean, Virginia

AA-EC-11-14

STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER

The Comptroller of the Currency of the United States of America ("Comptroller") intends to impose a cease and desist order on HSBC Bank USA, N.A., McLean, Virginia ("Bank") pursuant to 12 U.S.C. § 1818(b), for unsafe or unsound banking practices relating to mortgage servicing and the initiation and handling of foreclosure proceedings.

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order ("Stipulation") and consents to the issuance of a Consent Order, dated April 13, 2011 ("Consent Order");

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

ARTICLE I
JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is "the appropriate Federal banking agency" regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an "insured depository institution" within the meaning of 12 U.S.C. § 1818(b)(1).

(4) For the purposes of, and within the meaning of 12 C.F.R. §§ 5.3(g)(4), 5.51(c)(6), and 24.2(e)(4), this Consent Order shall not be construed to be a "cease and desist order" or "consent order", unless the OCC informs the Bank otherwise.

ARTICLE II AGREEMENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Consent Order by the Comptroller.

(2) The Bank consents and agrees that the Consent Order shall (a) be deemed an "order issued with the consent of the depository institution" pursuant to 12 U.S.C. § 1818(h)(2), (b) become effective upon its execution by the Comptroller through his authorized representative, and (c) be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(l), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute the Consent Order.

(5) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(6) The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the banking practices described in the Comptroller's Findings set forth in Article I of the Consent Order, to the extent known to the OCC as of the effective date of the Consent Order. However, the banking practices alleged in Article I of the Consent Order may be utilized by the OCC in other future enforcement actions against the Bank or its Institution-affiliated parties, including, without limitation, to assess civil money penalties or to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OCC to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

(7) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any

benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

ARTICLE III
WAIVERS

(1) The Bank, by consenting to this Stipulation, waives:

(a) the issuance of a Notice of Charges pursuant to 12 U.S.C.

§ 1818(b);

(b) any and all procedural rights available in connection with the issuance of the Consent Order;

(c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (h), 12 C.F.R. Part 19;

(d) all rights to seek any type of administrative or judicial review of the Consent Order;

(e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

(f) any and all rights to challenge or contest the validity of the Consent Order.

ARTICLE IV
OTHER PROVISIONS

(1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

(2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of this Consent Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.

(3) The terms of the Stipulation and the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set her hand on behalf of the Comptroller.

/s/

Sally G. Belshaw
Deputy Comptroller
Large Bank Supervision

April 13, 2011

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting
Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/
Niall S.K. Booker

4/1/2011
Date

/s/
William R.P. Dalton

4/1/2011
Date

/s/
Anthea Disney

4/1/2011
Date

/s/
Irene M. Dorner

4/1/2011
Date

/s/
Robert K. Herdman

4/1/2011
Date

/s/
Louis Hernandez, Jr.

4/1/2011
Date

/s/
Richard A. Jalkut

4/1/2011
Date

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(503231.1612 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

**PLAINTIFF'S NOTICE OF AND
MOTION TO ALTER OR AMEND THE
COURT'S**

**ORDER ENTERED JANUARY 17, 2013
(PURSUANT TO RULE 59(E), SCRCP)**

TO: ALL PARTIES:

YOU WILL PLEASE TAKE NOTICE that as soon as it may be heard, HSBC Mortgage Corporation, USA, Plaintiff, by its undersigned counsel, shall respectfully request, pursuant to Rule 59(e), SCRCP, that this Court alter and/or amend its Order denying Plaintiff's Motion for Summary Judgment on Counterclaims and to Strike Jury Demand ("Order"), written notice of which was received by Plaintiff's counsel on January 28, 2013, to correct errors of law and fact and to make a ruling on the arguments raised at the November 14, 2012 hearing but not ruled upon in the Order.

ISSUES FOR REVIEW

Plaintiff respectfully submits that the requested relief is proper and appropriate for the following reasons and requests a ruling on the issues and arguments raised at the November 14, 2012 hearing but not ruled upon in the Order and to correct errors of law and fact.

1. As a matter of law, the Defendants Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein ("Defendants") failed to identify the "contract" Plaintiff has allegedly breached.

2. As a matter of law, the Defendants failed to identify the specific terms of the "contract" Plaintiff has allegedly breached.

3. As a matter of law, the terms of the subject Note and Mortgage do not require the Plaintiff to review the Defendants for a loan modification.

4. As a matter of law, "The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous." *Hardee v. Hardee*, 355 S.C. 382, 387, 585 S.E.2d 501, 503 (2003)

5. As a matter of law, "[T]he function of courts is to adjudge and enforce contracts as they are written and entered into by the parties." *Charles v. Canal Ins. Co.*, 238 S.C. 600, 608, 121 S.E.2d 200, 205 (1961)

6. As a matter of law, the Defendants have failed to identify the statutory or case law that allegedly entitles them to a loan modification offer by the Plaintiff.

7. As a matter of law, "It is well-settled that borrowers do not have a private right of action under HAMP." *Acuna v. Chase Home Fin., LLC*, 2011 U.S. Dist. LEXIS 52971 (E.D. Va. May 16, 2011).

8. As a matter of law, the Defendants failed to make the required payments under the terms of the subject Note and Mortgage and are therefore in default under the terms of the Note and Mortgage.

9. As a matter of law, the Defendants contention that they are not in default is false.

10. As a matter of law, the Defendants failed to identify a single specific entry on the loan's payment history which shows a misapplied payment or an improperly charged fee.

11. As a matter of law, Defendant Heather Otterbein's statements in her affidavit in opposition to Plaintiff's Motion for Summary Judgment that "[u]pon information and belief" the Plaintiff's payment history is evidence of "improper charges and fees..." is not sufficient facts or evidence to survive a summary judgment motion by the Plaintiff.

12. As a matter of law, Plaintiff did not breach the forbearance agreement dated July 27, 2009 as alleged by the Defendants.

13. As a matter of law, Defendants have failed to identify the terms of the forbearance agreement dated July 27, 2009 and signed by the Defendants that has allegedly been breached by the Plaintiff.

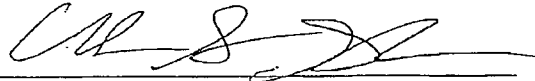
14. As a matter of law, Defendants have failed to provide any facts or evidence which support their claim that Plaintiff made negligent misrepresentations to them regarding the review of their loan for a modification.

15. As a matter of law, Defendant Heather Otterbein's statements in her affidavit in opposition to Plaintiff's Motion for Summary Judgment that Defendants were informed by Plaintiff's representatives that Defendants' "application was incomplete, Plaintiff had not received [her]... documents, or Plaintiff was still in the process of reviewing [her].. documents." is not sufficient facts or evidence to survive a summary judgment motion by the Plaintiff.

16. As a matter of law, the Defendants have failed to identify any representations made by the Plaintiff in which the Plaintiff misled the Defendants into believing they had been approved for a loan modification.

This motion is based on all pleadings and discovery filed in this action, SCRCP 59(e),
and such other and further matters as the Plaintiff may properly present to the court.

Respectfully Submitted,



Charles S. Gwynne Jr. (SC Bar # 73844)
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 PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated: February 4, 2013

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 10-CP-08-1707

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC., do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U.S. Mail, postage prepaid, on February 4, 2013, at the following address(es):

Document(s) Served:

Plaintiff's Notice of and Motion to Alter or Amend the Court's Order Entered January 17, 2013
(Pursuant To Rule 59(e), SCRCF)

Counsel and Parties Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

FILED
2013 FEB 5 PM 2:58
CLERK OF COURT
BERKELEY COUNTY, SC



Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(503231.1612 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

**PLAINTIFF'S MOTION TO STRIKE
JURY DEMAND AND REFER CASE
AND MEMORANDUM OF LAW IN
SUPPORT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff HSBC Mortgage Corporation, USA ("Plaintiff"), by and through its undersigned attorney, will move on the 10th day of service hereof or as soon thereafter as counsel may be heard for an order granting Plaintiff's Motion to Strike Jury Demand and Refer Case to the Master in Equity for Berkeley County on the grounds that Defendants Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein's counterclaims are not both compulsory and legal and therefore Defendants are not entitled to a jury trial on their counterclaims pursuant to South Carolina law.

FACTS AND PROCEDURAL HISTORY

This lawsuit arises out of the foreclosure of a residential real estate mortgage. On May 14, 2010 Plaintiff filed a foreclosure action. On or about August 26, 2010 Defendants Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein ("Defendants") filed an Amended Answer and Counterclaims.

Defendants asserted counterclaims against Plaintiff for 1) Breach of Contract and Good Faith and Fair Dealing; 2) Declaratory and Injunctive Relief; 3) Unjust Enrichment; 4) Negligent Misrepresentation; and 5) Accounting.

On or about July 6, 2011 Defendants entered into a Home Affordable Modification Agreement which modified the terms of the subject Note and Mortgage ("Modification"). The Modification resolved the Plaintiff's foreclosure action but the Defendants refused to dismiss their pending counterclaims.

The allegations supporting Defendant's counterclaims are: 1) the Plaintiff failed to adequately review the Defendants for a modification under the Home Affordable Modification Program ("HAMP") or other loan modification programs; 2) Defendants should never have been placed in default because of promises made by the Plaintiff that their loan would be modified; 3) Plaintiff failed to properly apply Defendants' payments to their account and also charged improper fees; and 4) Plaintiff made negligent misrepresentations to the Defendants about the loan modification process including being told they would be offered a modification or misleading the Defendants into believing they would be approved for a modification.

LAW

a. Right to a Jury Trial

"Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct.App.2009). "If a complaint is equitable and the counterclaim legal and compulsory, the

defendant has the right to a jury trial on the counterclaim.” Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 494, 730 S.E.2d 328, 332 (Ct.App.2012). In order to be entitled to a jury trial, the Defendants’ counterclaims must be both legal and compulsory. *Id.*

b. Legal v. Equitable

Whether an “action ...[is] equitable or legal depends on the appellant's ‘main purpose’ in bringing the action.” *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted). “The main purpose of the action should generally be ascertained from the body of the complaint.” *Id.* (citation omitted). “However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action.” *Id.* (citation omitted). “The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable.” *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 496, 730 S.E.2d 328, 332 (Ct.App.2012).

c. Compulsory v. Permissive

“By definition, a counterclaim is compulsory only if it arises out of the same transaction or occurrence as the opposing party's claim.” *First-Citizens Bank & Trust Co. of S.C. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991); see also Rule 13(a), SCRCP. “The test for determining if a counterclaim is compulsory is whether there is a “logical relationship” between the claim and the counterclaim.” *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 495, 730 S.E.2d 328, 333 (Ct.App.2012). “In *N.C. Fed. Sav. & Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989), ...[the South Carolina] supreme court adopted the “logical relationship” test and held DAV's counterclaim was compulsory because ‘there [was] a logical relationship between the enforceability of the note which [was] the subject of the foreclosure

action and the validity of the purported oral agreement which, if performed, would have avoided default on the note by the joint venture.” Id. at 333. “In essence, the “logical relationship” determination is made by asking whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage.” Id.

d. Promissory Estoppel

Promissory Estoppel is an extension of equitable estoppel. See *Duke Power Co. v. South Carolina Public Service Com.*, 284 S.C. 81, 100-101, 326 S.E.2d 395, 406 (1985). “A contract and promissory estoppel are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other.” Id. at 100. The elements to prove promissory estoppel are: “(1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.” *Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 306, 322 S.E.2d 30, 33 (Ct.App.1984).

ARGUMENT

None of Defendants counterclaims are both legal and compulsory; therefore the Defendants are not entitled to a jury trial on any of their counterclaims.

a. Breach of Contract and Good Faith and Fair Dealings

Defendants’ counterclaim for Breach of Contract and Good Faith and Fair Dealings alleges that Plaintiff breach “its agreement” to properly review the Defendants for a loan modification under the Home Affordable Modification Program, lost the borrowers’ documents that were submitted to be reviewed for a modification, did not respond to borrowers requests,

filed a foreclosure action when the borrowers were being reviewed for a modification, and failed to offer the borrowers a modification. (See Defendants' Amended Answer and Counterclaims dated August 26, 2010, paragraph 24).

Defendants do not claim that the Plaintiff breached a specific written term of the Note and Mortgage that is the subject of this action. Instead, Defendants claim that the Plaintiff's verbal communication with them created a verbal contract that was breached.

At her deposition, Defendant Heather H. Otterbein testified:

- Q. All right. Can you tell me what that counterclaim [breach of contract and fair dealing] is about? What you're claiming my client did wrong?
- A. Your client should've just dealt with me in good faith. I had to call every day, I never received correspondence for anybody, was not allowed to speak with a supervisor, I was never -- not one time after calling every day, got a return call to speak with anybody about it...
- (Page 87, lines 11 - 19) See Exhibit A attached hereto.
- Q. All right. When you say breach of contract, what contract are you alleging they breached?
- A. The contract that I had -- well, I guess the contract verbally with them, every day I talked to them. Everything will be fine, don't worry; don't worry,...
- (Page 88, lines 8-14) See Exhibit A attached hereto.

At his deposition, Defendant Frederick J. Otterbein, IV testified:

- Q. Okay. Did anybody on the phone ever promise you a modification or *anything* like that?
- A. They said that, "You're looking good."
- Q. Okay. "You're looking good."
- A. I remember hearing that plenty of times.
- Q. Okay. Any -- but they never offered you a specific term saying: "Here -- here's your loan" --
- A. No. They were always pretty vague.
- (Page 58, lines 5-12) See Exhibit B attached hereto.
- Q. Then what are you saying? What contract are you saying my client breached?
- A. Good-faith contract.
- Q. Okay. Is it written or verbal?
- A. Verbal.
- (Page 60, lines 12-16) See Exhibit B attached hereto.

Although captioned as a "Breach of Contract" counterclaim the Defendants are, in fact, seeking the equitable remedy of Promissory Estoppel. The Defendants have failed to identify a written or verbal contract allegedly breached by the Plaintiff. Instead, the Defendants are alleging that they were verbally misled about being approved for a loan modification and their reliance on those statements caused the default. The relief the Defendants are seeking is a modification of their loan.

Under the well-established 'main purpose' rule discussed above this counterclaims is equitable in nature.

b. Declaratory and Injunctive Relief

"The power of the court to grant an injunction is in equity." *Strategic Resources Co. v. BCS Life Ins. Co.* 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006)

c. Accounting and Unjust Enrichment

"An accounting is essentially an equitable remedy." *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989). "As an equitable remedy, an accounting is designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty." *Id.* "Equitable jurisdiction for an accounting may also be invoked (1) in actions involving long and complicated accounts where it would not be practicable for a jury to comprehend the issues and correctly make adjustment..." *Id.*

d. Negligent Misrepresentation

Defendants' counterclaim for Negligent Misrepresentation alleges that the Plaintiff made false misrepresentations and misled the Defendants regarding the review of the Defendants' loan for a modification.

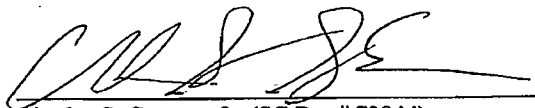
Although captioned as a "Negligent Misrepresentation" counterclaim the Defendants are, in fact, seeking the equitable remedy of Promissory Estoppel. The Defendants are alleging that they were verbally misled about being approved for a loan modification and their reliance on those statements caused the default. The relief the Defendants are seeking is a modification of their loan.

Under the well-established 'main purpose' rule discussed above this counterclaims is equitable in nature.

CONCLUSION

Defendants' counterclaims are not compulsory and legal, therefore it is proper for the court to strike the borrowers jury demand and refer this case to the Master in Equity.

Respectfully submitted,



Charles S. Gwynne Jr. (SC Bar # 73844)
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
Rogers Townsend & Thomas, PC and its staff are debt collectors

March 7, 2013

1 State of South Carolina
2 County of Berkeley In Common Pleas Court
3
4 HSBC Mortgage Corporation, USA,
5 Plaintiff,
6 V. 10-CP-08-1707
7 Frederick J. Otterbein, IV a/k/a
8 Frederick John Otterbein, IV, Heather
H. Otterbein, and First Federal Savings
and Loan Association of Charleston,
9 Defendants.
10

11 Deposition of: Heather H. Otterbein
12 Location: 775 St. Andrews Boulevard
13 Charleston, South Carolina
14 Date: Tuesday, January 29, 2013
15 Time: 10:03 a.m. - 11:52 a.m.
16 Court Reporter: Kathleen M. Owens-Hays

17 The deposition is taken pursuant to notice and/or
18 agreement, in the above-entitled cause pending in
19 the above-named court and pursuant to the
20 South Carolina Rules of Civil Procedure.
21
22
23
24
25



1 A P P E A R A N C E S

2 For the Plaintiff:
3 Rogers, Townsend & Thomas, P.C.
4 220 Executive Center Drive, Suite 109 (29210)
5 PO Box 100200
6 Columbia, SC 29202-3200
7 by: Charles S. Gwynne, Jr., Esq.

8 For the Defendants Frederick J. Otterbein and
9 Heather H. Otterbein:
10 Mary Leigh Arnold, P.A.
11 749 Johnnie Dodds Boulevard, Suite B
12 Mt. Pleasant, SC 29464
13 by: Mary L. Arnold, Esq.

14 For the Defendant First Federal Savings and Loan
15 Association of Charleston:
16 Clawson & Staubes, LLC
17 126 Seven Farms Drive, Suite 200
18 Charleston, SC 29492-8144
19 by: Chris B. Staubes, Esq.

12

13

14 I N D E X

15

16 Examination by Mr. Gwynne

4

17

18

19

20 E X H I B I T S

21 Plaintiff's:

22 Pg/Ln	23 Ex.	24 Description
25 1		Affidavit of Service
1	2	Notice
2	3	Note
3	4	Mortgage
4	5	Settlement Statement
5	6	HAMP modification document
6	7	Forbearance Agreement
7	8	July 27, 2009 letter
8	9	February 26, 2010 letter
9	10	May 27, 2010 letter from Ms. Otterbein
10	11	July 1, 2010 letter

1 were looking at when they came up with that 7500
2 dollar figure?

3 A I asked, I called, I asked, I called.
4 No, I don't know. I still don't know.

5 Q All right. Are you aware of the
6 counterclaims in this case, what they are?

7 A Yes.

8 Q Okay. One is for breach of contract of
9 good faith and fair dealing?

10 A Right.

11 Q All right. Can you tell me what that
12 counterclaim is about? What you're claiming my
13 client did wrong?

14 A Your client should've just dealt with
15 me in good faith. I had to call every day, I
16 never received correspondence for anybody, was not
17 allowed to speak with a supervisor, I was never --
18 not one time after calling every day, got a return
19 call to speak with anybody about it. I -- I feel
20 like that -- the fact that my loan is now 450,000
21 when it was 417,000, I shouldn't have that extra
22 money, shouldn't have had to pay the interest on
23 that extra money since it was approved. I feel
24 like they caused my complete life turmoil. I did
25 not expect to be foreclosed on. Never would I

1 have started the process -- I mean, have had this
2 process started. I was in complete shock, I was
3 depressed. My husband and I went through marriage
4 counseling. I started smoking a pack of
5 cigarettes a day. This was the worst thing that's
6 ever happened to me in my life. They just had
7 to -- they should've dealt with me in good faith.

8 Q All right. When you say breach of
9 contract, what contract are you alleging they
10 breached?

11 A The contract that I had -- well, I
12 guess the contract verbally with them, every day I
13 talked to them. Everything will be fine, don't
14 worry; don't worry, you don't need an attorney;
15 there's no reason to get an attorney. You know, I
16 had 30 days to answer a foreclosure complaint and
17 they expected me to do it without an attorney.

18 Q You're saying somebody told you at HSBC
19 not to get an attorney?

20 A Yeah, and -- but -- but listen, the
21 people that I was talking to at HSBC I don't
22 believe held any kind of educational degrees at
23 all. I was talking to part-time people, probably
24 that were just hired to work at -- to, you know,
25 handle these phone calls because they were coming

State of South Carolina	)	
	)	
County of Berkley	)	
	)	
HSBC Mortgage Corporation, USA,	)	In the Court of Common Pleas
	)	
Plaintiff,	)	10-CP-08-1707
	)	
vs.	)	
	)	
Frederick J. Otterbein,	)	Deposition
IV a/k/a Frederick John	)	
Otterbein, IV, Heather	)	of
H. Otterbein, and First	)	
Federal Savings and Loan	)	Frederick J. Otterbein, IV
Association of	)	a/k/a Frederick John
Charleston,	)	Otterbein
	)	
Defendants.	)	

Deposition of Frederick J. Otterbein, IV a/k/a
 Frederick John Otterbein, taken before Olivia Michelle
 Crocker, a notary public in and for the State of South
 Carolina, commencing at the hour of 1:59 p.m., Friday,
 February 22, 2013, at the office of Rogers Townsend &
 Thomas, PC, 775 Saint Andrews Boulevard, Charleston,
 South Carolina.

Reported by
 Olivia Michelle Crocker



APPEARANCES

For the Plaintiff: Charles S. Gwynne, Esq.
Rogers Townsend & Thomas, PC
220 Executive Center Drive
Columbia, South Carolina 29210

For the Defendant:
For Frederick J. Otterbein: Mary L. Arnold, Esq.
Mary Leigh Arnold, PA
749 Johnnie Dodds Boulevard, Suite B
Mount Pleasant, South Carolina 29464

For First Federal Savings and Loan Associations of
Charleston Chris B. Staubes, III, Esq.
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492

INDEX

Stipulations:	3
Examination by Mr. Gwynne:	3
Examination by Mr. Staubes:	69

EXHIBITS

Defendants' Exhibit Number 1, "Equity Access Primeline," dated 12/21/07.	71
Defendants' Exhibit Number 2, Mortgage, dated 12/19/07.	71

1 A Not really. Just -- you know, just felt like it
2 was just a never-ending battle --
3 Q Okay.
4 A -- trying to get some answers from anybody.
5 Q Okay. Did anybody on the phone ever promise you a
6 modification or anything like that?
7 A They said that, "You're looking good."
8 Q Okay. "You're looking good."
9 A I remember hearing that plenty of times.
10 Q Okay. Any -- but they never offered you a specific
11 term saying: "Here -- here's your loan" --
12 A No. They were always pretty vague.
13 Q Okay. Again, I'm not trying to pry into your
14 personal life, but your wife mentioned that this
15 has caused some depression for her and marital
16 issues.
17 A We went to marriage counseling for --
18 Q Okay. When did --
19 A -- stress.
20 Q For stress? When did you go to -- to marriage
21 counseling?
22 A Two -- last two years.
23 Q Last two years. Who did you see?
24 A I can't remember what her name is. She's in Mount
25 Pleasant.

1 Exhibit 3 and 4, which is the note and mortgage in
2 this case?

3 MS. ARNOLD: (To the deponent) Yeah. You've
4 got them. These two. That one and that one.

5 A I don't know.

6 Q Do you want to read through it, or -- or is your
7 testimony that you're just claiming that they --
8 they misled you and they somehow made a contract
9 with you over the phone; is that right?

10 MS. ARNOLD: Objection to form.

11 A No.

12 Q Then what are you saying? What contract are you
13 saying my client breached?

14 A Good-faith contract.

15 Q Okay. Is it written or verbal?

16 A Verbal.

17 Q Okay. And did I hear you right that you said you
18 could've made all your payments all along; is that
19 right?

20 A Yeah.

21 Q But you entered into the forbearance agreement to
22 lower your payments, and you were hoping that you'd
23 get a mod at the end. Or if you weren't given the
24 mod, you'd be able to continue with your payments?

25 A Right.

CERTIFICATE OF SERVICE BY MAIL
Civil Action # 10-CP-08-1707

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U.S. Mail, postage prepaid, on March 7, 2013, at the following address(es):

Document(s) Served:

Plaintiff's Motion to Strike Jury Demand and Refer Case and Memorandum of Law in Support

Counsel and Parties Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144



Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(503231.1612 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

PLAINTIFF'S NOTICE OF AND
MOTION TO ALTER OR AMEND THE
COURT'S

ORDER ENTERED APRIL 18, 2013
(PURSUANT TO RULE 59(E), SCRPC)

FILED
2013 MAY -6 PM 3:11
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO: ALL PARTIES:

YOU WILL PLEASE TAKE NOTICE that as soon as it may be heard, HSBC Mortgage Corporation, USA, Plaintiff, by its undersigned counsel, shall respectfully request, pursuant to Rule 59(e), SCRPC, that this Court alter and/or amend its Order denying Plaintiff's Motion to Strike Jury Demand and Refer Case ("Order"), written notice of which was received by Plaintiff's counsel on April 23, 2013, to correct errors of law and fact and to make a ruling on the arguments raised at the April 17, 2013 hearing but not ruled upon in the Order.

ISSUES FOR REVIEW

Plaintiff respectfully submits that the requested relief is proper and appropriate for the following reasons and requests a ruling on the issues and arguments raised at the April 17, 2013 hearing but not ruled upon in the Order and to correct errors of law and fact.

1. As a matter of law, "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

2. As a matter of law, in order to be entitled to a jury trial, the Defendants' counterclaims must be both legal and compulsory. *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 494, 730 S.E.2d 328, 332 (Ct.App.2012).

3. As a matter of law, the Appeals Court's reasoning in the case of *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 494, 730 S.E.2d 328, 332 (Ct.App.2012) is not limited to the specific counterclaims pending in that action.

4. As a matter of law, whether an "action ...[is] equitable or legal depends on the appellant's 'main purpose' in bringing the action." *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted). "The main purpose of the action should generally be ascertained from the body of the complaint." *Id.* (citation omitted). "The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable." *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 496, 730 S.E.2d 328, 332 (Ct.App.2012).

5. As a matter of law, a claim for promissory estoppel is equitable in nature.

6. As a matter of law, all of Defendants' counterclaims are equitable in nature.

7. As a matter of law, the Defendants' are not entitled to a jury trial on any of their counterclaims.

8. As a matter of law, Defendants' counterclaim for Breach of Contract and Good Faith and Fair Dealings is in fact seeking the equitable remedy of promissory estoppel. Defendants' testimony and other evidence states that Defendants are claiming Plaintiff violated a verbal promise to modify their loan. Under the well-established 'main purpose' rule this counterclaim is equitable in nature.

9. As a matter of law, Defendants' counterclaim for Declaratory and Injunctive Relief is an equitable claim.

10. As a matter of law, Defendants' counterclaims for Accounting and Unjust Enrichment are equitable claims.

11. As a matter of law, Defendants' counterclaim for Negligent Misrepresentation is in fact seeking the equitable remedy of promissory estoppel. Defendants' testimony and other evidence states that Defendants are claiming Plaintiff violated a verbal promise to modify their loan. Under the well-established 'main purpose' rule this counterclaim is equitable in nature.

This motion is based on all pleadings and discovery filed in this action, SCRCF 59(e), and such other and further matters as the Plaintiff may properly present to the court.

Respectfully Submitted,



Charles S. Gwynne Jr. (SC Bar # 73844)
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 PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated: May 2, 2013

CERTIFICATE OF SERVICE BY MAIL

Civil Action # 10-CP-08-1707

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U.S. Mail, postage prepaid, on May 2, 2013, at the following address(es):

Document(s) Served:

Plaintiff's Notice of and Motion to Alter or Amend the Court's Order Entered April 18, 2013
(Pursuant To Rule 59(e), SCRCF)

Counsel and Parties Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

FILED
2013 MAY -6 PM 3:15
CLERK OF COURT
BERKELEY COUNTY, SC



Charles S. Gwynne Jr. (SC Bar # 73844)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
HSBC Mortgage Corporation, USA	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-CP-08-1707
	)	
Frederick J. Otterbein, et al	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was heard on April 17, 2013, in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel, as follows:

APPEARANCES:

Charles Gwynn, Esq.
 ROGERS TOWNSEND THOMAS
 P O Box 100200
 Columbia, SC 29202-3200
 Appearing for Plaintiff

Mary Leigh Arnold, Esq.
 749 Johnnie Dodds Boulevard
 Mount Pleasant, SC 29464
 Appearing for Defendant

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: HSBC Mortgage versus
2 Otterbein. Good afternoon.

3 CHARLES GWYNNE: Good afternoon, Your
4 Honor. My name is Charlie Gwynne, here on
5 behalf of the plaintiff.

6 I believe that there are two Motions
7 scheduled, but ---

8 THE COURT: Yes.

9 CHARLES GWYNNE: One is a 59(e)
10 Motion regarding an Order signed by Judge Young.
11 So I don't know if ---

12 THE COURT: Can't hear that one.

13 MARY LEIGH ARNOLD: And I believe
14 it's been resolved by prior Order denying it,
15 but I do agree, Your Honor, that it -- it's ---

16 THE COURT: I couldn't hear that one
17 anyway. Is there anything left to do?

18 CHARLES GWYNNE: Yes, Your Honor.

19 THE COURT: Okay.

20 CHARLES GWYNNE: I filed a second
21 Motion.

22 THE COURT: Okay.

23 CHARLES GWYNNE: The second Motion,
24 I have a copy here if the court needs it.

25 THE COURT: No, I have the file.

1 CHARLES GWYNNE: The Motion has my
2 argument in it.

3 THE COURT: Okay. That's fine. Of
4 course all memoranda or any -- all statements
5 and attachments to any Motion are incorporated
6 fully for purposes of review. Okay?

7 CHARLES GWYNNE: Yes, Your Honor.

8 THE COURT: Okay.

9 CHARLES GWYNNE: The Motion is a
10 Motion to strike the jury demand on the
11 counterclaims. So I am not asking the court
12 to deal with the merits of the claims, I am
13 just asking to strike the jury demand on the
14 counterclaims.

15 This is a residential mortgage
16 foreclosure case. The borrowers -- I represent
17 the Bank, Your Honor. The borrowers have
18 asserted -- have asserted several counterclaims
19 and demanded a jury trial.

20 THE COURT: This isn't the first
21 rodeo on this one. I've been this route before.
22 The Rule deals with this, folks. I mean, it
23 just simply says that. It's a foreclosure;
24 correct?

25 CHARLES GWYNNE: Yes, Your Honor.

1 THE COURT: There is a counterclaim,
2 which raises a jury issue. I am not going to
3 strike the jury issue.

4 The rule says that it goes to the
5 Master. The Master make a determination. He
6 will have to make the determination as to any
7 prejudice going forward with the foreclosure
8 before the jury issues are resolved.

9 MARY LEIGH ARNOLD: The foreclosure
10 is gone in this case, Your Honor.

11 THE COURT: The foreclosure is gone?

12 MARY LEIGH ARNOLD: It's gone. It's
13 just the counterclaims that are left.

14 THE COURT: So what is the issue?
15 Why are you striking the counterclaim?

16 CHARLES GWYNNE: Well, Your Honor,
17 the appeals court dealt with this issue in the
18 Wells Fargo v. Smith case, which I cite.

19 Now, similar fact patterns where legal
20 counterclaims were raised and the appeals court
21 struck the jury claims in those because the
22 counterclaim needs to have two factors. One has
23 to be compulsory and legal. If it is not
24 compulsory and legal, the borrowers are not
25 entitled to a jury trial on those issues. What

1 I raise in my memoranda and Motion is that the
2 counterclaims raised by the borrowers, there's
3 five, -- three of them are equitable in nature
4 by case law, and the other two, although they
5 are breach of contract and negligent
6 misrepresentation, which would appear to be
7 legal claims, if you look at the -- at what the
8 court says ---

9 THE COURT: You mean that I am going
10 to strike this -- what appears to be a legal
11 claim without hearing anything? Based on your
12 Motion?

13 CHARLES GWYNNE: No, Your Honor. The
14 Smith case talks about ---

15 THE COURT: I'll be happy to hear the
16 Smith case, because I'd be delighted to know
17 that the Court of Appeals says that I can do
18 something. I guess the court did, struck it
19 with never hearing anything?

20 CHARLES GWYNNE: No, ---

21 THE COURT: Because that's what
22 you're saying, that I don't have to hear
23 anything. I can just -- because she has filed
24 these counterclaims in a foreclosure action, I
25 automatically can say that on its face it

1 appears to be proper and I get to strike it,
2 because it's a foreclosure action? That's what
3 that case says? I want to read that.

4 CHARLES GWYNNE: Absolutely, Your
5 Honor.

6 THE COURT: Okay.

7 CHARLES GWYNNE: The Smith case says
8 that you look at the ---

9 THE COURT: I am just asking you, the
10 Smith case, the Court -- there was no hearing,
11 nothing, nothing happened? Right?

12 CHARLES GWYNNE: (No verbal
13 response).

14 THE COURT: The Court just struck it
15 on its own?

16 CHARLES GWYNNE: The Smith case says
17 that the ---

18 THE COURT: No, I am asking you what
19 the Court did. Did the court just strike it on
20 its own, based on the Motion?

21 CHARLES GWYNNE: They struck the jury
22 demand, yes, sir.

23 THE COURT: Just -- just on a Motion?

24 CHARLES GWYNNE: Yes. Well, the
25 court -- the trial court looks at what is known

1 as the main purpose of the claim.

2 THE COURT: I understand that. But I
3 am just saying to you, I am looking at the main
4 purpose of the claim based on the pleadings, is
5 what you're telling me.

6 Let me look at the Smith case. I don't
7 have it -- can you (law clerk) pull it up?

8 MARY LEIGH ARNOLD: I have got a
9 copy here, Your Honor.

10 THE COURT: That's fine. Just let me
11 look at it real quickly, Mr. Gwynne.

12 MARY LEIGH ARNOLD: (Tenders).

13 THE COURT: Thank you. I am not
14 trying to argue with you. I am just asking a
15 simple question, I think -- but maybe I am not
16 communicating very well.

17 (Upon review), question. Why didn't
18 the Master at the foreclosure strike the claims?

19 CHARLES GWYNNE: This case had not
20 been referred to the Master, Your Honor.

21 THE COURT: Okay. Well, there was a
22 hearing.

23 CHARLES GWYNNE: The ---

24 THE COURT: That's what I am saying
25 to you. The bottom -- this is the key to this.

1 There was a hearing before the Master and the
2 Master made a ruling. At that time he struck
3 certain things. He struck the claims as being
4 -- or struck the jury issue after hearing the
5 case.

6 CHARLES GWYNNE: No, Your Honor,
7 that's not the case.

8 THE COURT: Oh, it's not? He didn't
9 hear the case?

10 CHARLES GWYNNE: He did not hear the
11 case, Your Honor.

12 THE COURT: So he issued an Order
13 without a hearing?

14 CHARLES GWYNNE: He issued an Order
15 that ---

16 THE COURT: I am asking you a
17 question. He issued an Order without a hearing?

18 CHARLES GWYNNE: It was a Motion's
19 hearing, Your Honor.

20 THE COURT: All right. What were the
21 nature of the claims that he struck?

22 CHARLES GWYNNE: Well, the
23 counterclaims were different than in this case.

24 THE COURT: Yeah, well, don't you
25 think that's important?

1 CHARLES GWYNNE: Yes, sir. I mean, I
2 am arguing the reasoning of the court in the
3 Smith case. But in the Smith case there was a
4 claim for unconscionability and, I believe, a
5 counterclaim for violation of the attorney
6 preference statute. I believe that those were
7 the two counterclaims.

8 THE COURT: Okay.

9 CHARLES GWYNNE: And in the Smith
10 case, regarding the unconscionability claim, ---

11 THE COURT: I -- neither one of those
12 are present here?

13 CHARLES GWYNNE: No, Your Honor, but
14 I ---

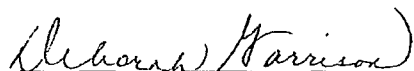
15 THE COURT: Thank you, sir. Your
16 Motion is denied. You can appeal that. That
17 will be great. I'm very comfortable with it.
18 But I'll be happy to be wrong and you will be
19 right. Thank you. Have a good day. I think it
20 is significant for the purposes of the record
21 that we're talking about two entirely different
22 causes of action, which you can't just gloss
23 over like you are asking me to do. Thank you,
24 sir.

25 (HEARING CONCLUDED)

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on April 17, 2013;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

May 21, 2013

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
HSBC Mortgage Corporation, USA	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 10-CP-08-1707
	)	
Frederick J. Otterbein, IV et al	)	
	)	
Defendants.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was heard on July 8, 2013, in Courtroom E of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel, as follows:

APPEARANCES:

Charles S. Gwynne, Jr., Esq.
 ROGERS TOWNSEND
 220 Executive Center Drive
 Columbia, SC 29210
 Appearing for Plaintiff

Mary Leigh Arnold, Esq.
 749 Johnnie Dodds Boulevard
 Mount Pleasant, SC 29464
 Appearing for Defendants

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: That brings us to a
2 motion to compel in HSBC Mortgage versus
3 Frederick Otterbein. Everyone identify
4 themselves, please, and the parties that you
5 are representing.

6 MR. GWYNNE: Your Honor, Charlie
7 Gwynne here on behalf of the plaintiff, HSBC.

8 THE COURT: Yes, sir.

9 MS. ARNOLD: Mary Leigh Arnold on
10 behalf of the Defendant Otterbiens.

11 THE COURT: Okay. Motion to compel.

12 MS. ARNOLD: Your Honor, that is my
13 motion.

14 THE COURT: All right, what is it
15 that you want?

16 MS. ARNOLD: Your Honor, what it is
17 that I want is that we sent discovery a while
18 back and we'd asked for all employees of HSBC
19 that dealt with a particular loan. We asked for
20 more specific information on origination, which
21 Mr. Gwynne tells me that he can't provide
22 because they weren't the originator; which I'm
23 fine with.

24 We asked for some very specific
25 information about modifications that have been

1 denied and that sort of stuff, and limited it to
2 an eighteen to twenty-four month period; which
3 we have had objections to.

4 We also, of course, asked for over the
5 course of this the entire loan file or anything
6 that HSBC has with regard to this; which I do
7 not believe I have received.

8 What I've got -- and Mr. Gwynne did
9 supplement his responses to me this past week.
10 I haven't gotten them in the mail but I did get
11 them by e-mail on Wednesday of last week.

12 THE COURT: Okay.

13 MS. ARNOLD: And I looked at those,
14 Your Honor, and I've spoken with Mr. Gwynne
15 about some of those responses.

16 The first question that I have in the
17 interrogatories is, 'okay, delineate for me
18 everybody at HSBC that dealt with this
19 transaction.' What I got was reference to a
20 number of documents. One of the references that
21 I got was a printout that typical banks will
22 provide. It's a printout, it's a log that says
23 my client called in on such and such a date, and
24 this is what happened.

25 THE COURT: Let me address that.

1 What is his response as to why that is not
2 sufficient?

3 MS. ARNOLD: For me?

4 THE COURT: Yeah. I mean, why does
5 he tell you that's sufficient?

6 MS. ARNOLD: He just says -- I don't
7 know. I asked him that. I told him that I
8 wanted the names.

9 THE COURT: Why is that sufficient,
10 Mr. Gwynne?

11 MR. GWYNNE: Your Honor -- for that
12 specific issue, Your Honor, it is a call log.

13 THE COURT: I don't care what it is.
14 It is -- the request -- I mean, I practiced law
15 and people used to say -- I'd send an
16 interrogatory, 'specify your damage.' "See
17 Complaint." I mean, that's not an answer. I
18 mean, that's just directing me to it. I think
19 that you have a duty to do more than that. If
20 you can read it, just answer the question.

21 MR. GWYNNE: Well, these are computer
22 records that ---

23 THE COURT: You can use that to
24 support it but I want you to answer the
25 question, not say 'see this form.' Answer the

1 question. The question says -- what is the
2 question?

3 MS. ARNOLD: Your Honor, it is "Tell
4 me the names of all employees at HSBC that have
5 had involvement with ..." ---

6 THE COURT: "The following persons
7 had involvement" with this, list them, "see
8 attached." But you're going to list the people.
9 Okay?

10 MR. GWYNNE: I don't know what -- can
11 we look at the actual interrogatory?

12 THE COURT: Sir, can you look at it?
13 You don't need to ask me if you haven't looked
14 at it. Mind what you just said to me. You
15 didn't hear my talk. I said if you can't
16 respond -- and you're telling me, 'Can I see
17 it?' You mean to tell me that you haven't
18 talked with her about that, specifically?

19 MR. GWYNNE: Your Honor, ---

20 THE COURT: I'm gonna -- we are going
21 to take -- I am going to ask you, before we go
22 any further, because I just gave you and now
23 you're arguing with my response to you right
24 now. It's really -- I don't understand that.
25 I've told you that I want you to answer it by

1 naming the people. Then you say, 'I don't know
2 what you mean.'

3 MR. GWYNNE: I did not say that, Your
4 Honor.

5 THE COURT: Well, what it is -- why
6 can't you do that?

7 MR. GWYNNE: Your Honor, this loan
8 originated in ---

9 THE COURT: I don't care. Why can't
10 -- you didn't answer my question, and then you
11 can tell me about when it originated. Why can't
12 you name the people?

13 MR. GWYNNE: Your Honor, the format
14 that the record is in is a computer format which
15 has codes of people.

16 THE COURT: That's fine. That's your
17 people. Your people, your codes. You answer
18 it. Do you understand?

19 MR. GWYNNE: (No verbal response).

20 THE COURT: Do you understand?

21 MR. GWYNNE: Yes, sir.

22 THE COURT: I don't care who you have
23 to contact, you answer it. You expect her to be
24 able to decipher the codes?

25 MR. GWYNNE: No, Your Honor, but I'd

1 like for Ms. Arnold to identify the time period.
2 She wants me to track employees of my company
3 who may have ---

4 THE COURT: When did the loan
5 originate?

6 MR. GWYNNE: 2007.

7 THE COURT: Then you've got the time
8 period. She said, 'Who in your company has
9 dealt with this?' You've got a time period.
10 When did it start, and who dealt with it. When
11 did it close? You've got the time period.

12 I mean, it's not hard. I can figure
13 that one out. What's difficult about that?

14 MR. GWYNNE: Well, Your Honor, my
15 client has got to spend time tracking down
16 employees that may ---

17 THE COURT: Your client has the
18 information, Mr. Gwynne. That's what they are
19 supposed to do. Okay? Apparently you didn't
20 get the message. Or they didn't get the
21 message. You need to tell them that the judge
22 said to answer it. If they can do it quicker --
23 and they probably can, they can probably put it
24 in the computer and the computer will generate
25 it for us.

1 That's a game that you're playing. I
2 see it all the time.

3 MR. GWYNNE: I also would like to
4 point out that Ms. Arnold's eighteen to twenty-
5 four month time period is not correct here.
6 Discovery is not limited to eighteen to twenty-
7 four months. In this case, this discovery is
8 from 2010. The only communication that I have
9 with Ms. Arnold is a November 2010 letter where
10 she said that she didn't like my answers. The
11 next knowledge about this issue is her motion to
12 compel.

13 THE COURT: Excuse me. Let me ask
14 you a question. Do you have her telephone
15 number?

16 MR. GWYNNE: Yes, Your Honor.

17 THE COURT: Did you call her?

18 MR. GWYNNE: No, I did not.

19 THE COURT: Why not?

20 MR. GWYNNE: (No verbal response).

21 THE COURT: Why not?

22 MR. GWYNNE: (No verbal response).

23 THE COURT: I would. I did as a
24 lawyer. I am not telling you to do anything
25 that I didn't do. I think that's your

1 obligation as a lawyer. That's why I said that
2 you may want to talk, because I think you're
3 violating the civility oath. You don't want me
4 to report you for that, do you?

5 MR. GWYNNE: (No verbal response).

6 THE COURT: Do you?

7 MR. GWYNNE: No, Your Honor.

8 THE COURT: Okay. So that we're on
9 the same page, it doesn't just go one way, Mr.
10 Gwynne. Okay?

11 MR. GWYNNE: (No verbal response).

12 THE COURT: Do you un--, -- do you
13 disagree with that?

14 MR. GWYNNE: No, Your Honor.

15 THE COURT: Okay, that's fine.

16 MR. GWYNNE: It should go the other
17 way too, Your Honor.

18 THE COURT: I understand that but you
19 have a duty to call her when you say that you --
20 you get a motion to compel, you should have
21 picked up the phone and called her, 'What do you
22 need?'

23 MR. GWYNNE: I sent her two letters,
24 Your Honor.

25 THE COURT: No, sir, I didn't ask you

1 about the letters. Why didn't you pick up the
2 phone and call and say, 'What is it that you
3 need?'

4 MR. GWYNNE: Did Ms. Arnold have a
5 duty to contact ---

6 THE COURT: Mr. Gwynne, you and I are
7 about to get in trouble, sir. You are arguing
8 with the Court. You are violating the Rules.
9 You may disagree with me but I am going to
10 enforce the rules. You want sanctions, you keep
11 it up. You've been warned.

12 MR. GWYNNE: Yes, Your Honor.

13 THE COURT: All right. Thank you.
14 Do you understand that warning?

15 MR. GWYNNE: Yes, Your Honor.

16 THE COURT: Thank you, sir. What is
17 the next one?

18 MS. ARNOLD: Your Honor, I don't
19 disagree with Mr. Gwynne on origination. But
20 specifically 29, 30, 31, 28, 32 and 33 are all
21 about denials of modifications, which in this
22 case deals with, and I specifically limited
23 those to the time period within twenty-four
24 months to eighteen months of when these were
25 originally done. That's what I am looking for.

1 It should be something that HSBC ---

2 THE COURT: And what does he say is
3 the answer to that?

4 MS. ARNOLD: I heard objections, Your
5 Honor, objections that the requested information
6 is overly broad.

7 THE COURT: Well, then, what did you
8 follow up with him with?

9 MS. ARNOLD: A letter saying that I
10 don't believe that it is ---

11 THE COURT: Then y'all go talk. I
12 want y'all to sit back and talk, and then we'll
13 see where we are. Thank you. We will recess
14 this for a minute.

15 MS. ARNOLD: Thank you, Your Honor.

16 (BRIEF RECESS)

17 THE COURT: Okay, we're back on HSBC
18 and Otterbien. I think that there is another
19 motion to reconsider, as well?

20 MS. ARNOLD: We do, Your Honor.

21 THE COURT: Okay, that's good. Let's
22 get this one resolved and then we will hear the
23 motion to reconsider.

24 MR. GWYNNE: Yes, sir, Your Honor.

25 Ms. Arnold and I agreed on the language of a

1 proposed Order and documents that I will request
2 from my client, and I will prepare that Order
3 and send it to Ms. Arnold before ---

4 THE COURT: That will be great, I'll
5 be happy to receive it. Thank you, Mr. Gwynne.
6 I appreciate y'all discussing that and resolving
7 that. You've confirm again why I say what I
8 say. When parties sit down and -- good lawyers
9 like I have right now talk to each other, they
10 generally can resolve it, at least streamline
11 it. And I thank y'all for your patience with
12 me, as well, in doing that. Thank you.

13 Now we have a motion -- I think your
14 motion to reconsider, Mr. Gwynne.

15 MR. GWYNNE: Yes, Your Honor.

16 THE COURT: And you both have
17 submitted supplemental pleadings, I think.
18 Those are incorporated and I will be delighted
19 to hear from you now, sir.

20 MR. GWYNNE: Yes, Your Honor. The
21 59(e) Motion is an Order of yours denying my
22 motion to strike the jury demand. Essentially
23 it is the same argument, I would just like a
24 ruling for appellate purposes.

25 THE COURT: Sure.

1 MR. GWYNNE: Essentially in order --
2 in my review of the case law, Your Honor,
3 essentially in order to be allowed a jury trial
4 on a counterclaim in a foreclosure case, the
5 claim must be both legal and compulsory. Five
6 of the counterclaims -- or three out of five of
7 the counterclaims are clearly equitable in
8 nature. The other two, if you simply looked at
9 the cause of action, I could certainly see how
10 you could argue that they are legal, however
11 what was pled in the pleadings -- though I think
12 the case law supports it, you have to look at
13 the main purpose of what they're asking for.
14 They're asking for equitable relief. Based on
15 the case law that I cited in my memo,
16 memorandum, that is an equitable claim. I mean,
17 my client is being sued for breach of contract
18 yet what they -- and I've cited the borrowers'
19 deposition where they say, 'No, we never had a
20 contract. They just promised us the loan mod.'
21 That's not a contract. So that's my -- that's
22 my legal theory.

23 Additionally, Your Honor, I would argue
24 that the counterclaims are permissive in nature
25 and not compulsory because it does not go to the

1 enforceability of the note and mortgage and the
2 case law supports that.

3 THE COURT: Well, let me ask you --
4 let me interrupt you and ask you a question.
5 Because when I received that, I've reflected --
6 because it is not the first time that I've had
7 these issues come up with the foreclosure action
8 and then request for a jury trial, which has
9 caused me to review on numerous occasions the
10 reference to the Master. It's -- it seems to
11 me, because we all know that by the Rule
12 foreclosure actions are referred, typically, to
13 the Master for handling. You're talking about
14 selling property, you are foreclosing property
15 in this case?

16 MR. GWYNNE: We were, Your Honor.

17 THE COURT: You were. Okay. And
18 has that foreclosure been accomplished?

19 MR. GWYNNE: No, Your Honor. The
20 borrowers are getting a loan modification of the
21 loan.

22 THE COURT: That's correct. Therein
23 lies the rub. There's a loan modification.
24 There are all sorts of things, because what
25 generally happens -- and in this particular case

1 the loan modification stopped the foreclosure,
2 my words. Basically. Is that correct?

3 MR. GWYNNE: It ends the foreclosure,
4 (affirmative nod).

5 THE COURT: It ends the foreclosure.
6 Which is precisely what would have happened if
7 the rule, if you read the rule, because the rule
8 says you can refer -- and I've done it, I've
9 referred foreclosures with counterclaims asking
10 for jury trials, to the Master. Because the
11 Master then first makes the determination can
12 the foreclosure go forward without jeopardizing
13 the claimant; as you say, some may be not
14 compulsory counterclaims. There may be a number
15 of reasons why that could be the case.

16 Typically when he is finished, he sends
17 it back and the case is ended. That part that
18 has to be resolved, in this court, is resolved.

19 This case, we have a modification, a
20 loan modification which basically took it out of
21 that. For that reason, I don't think anybody
22 ever loses. I hear you and I understand you,
23 your argument about equitable, and some of them
24 I would agree with you are. That's a matter,
25 though, -- and I've tried one of those and I

1 found out -- and Judge Murphy will probably
2 catch this a lot quicker than I did, but I tried
3 a case where there were multiple causes of
4 action. As we know, in a case with a jury, a
5 plaintiff is entitled to go to the jury on all
6 causes of action and then make the election
7 after the verdict -- except in one situation.
8 In this one there was an equitable
9 indemnification pled in addition to the breach
10 of contract. In preparing my charge, I didn't
11 catch it until then. I was not looking at the
12 Complaint until that time, and it was right
13 before closing argument. I read a case, I think
14 then-Judge Bell wrote the decision, said it's
15 the only time that the plaintiff has to elect.
16 It doesn't mean that he is not entitled to a
17 jury trial. It just means that the plaintiff
18 has to say 'I am going forward on my jury cause
19 of action' or 'I am going forward on the
20 equitable cause.' If they are going forward on
21 the equitable, then the court tries it. But it
22 doesn't deny them the right to a jury trial. It
23 just simply means that at some point in time you
24 may have a right to say which one you're
25 seeking. It may be done. It may be right

1 before. And that one, the odd thing was that
2 they said 'we've agreed we'd like to let the
3 jury decide and then we will tell you which one
4 we want.' They told me, they elected not to go
5 with that, so I ended up having to review the
6 whole file and make a decision from the bench on
7 the equitable indemnification.

8 But you're right, I don't quarrel with
9 your law. I just don't think that it deprives
10 the person of those that are clearly jury trial
11 issues. That was the basis for my ruling. I
12 don't quarrel with your legal position. I think
13 it's sound. I just don't think that it causes
14 me to strike that. I didn't convert it to an
15 election. I don't think that you have waived
16 that right to make her make a choice at some
17 point in time. But I don't think that she loses
18 her right to seek a jury trial.

19 So based on that, and I do for purposes
20 of review, should you choose to, all of your
21 subsequent submissions are fully incorporated as
22 well. You certainly are entitled to rely on
23 them, Mr. Gwynne.

24 MR. GWYNNE: Thank you, Your Honor.

25 THE COURT: Thank you so much, sir.

1 Thank you all. I appreciate it very much. If
2 it is all right with you, I'll just do 'motion
3 to reconsider was heard' and I denied it. Is
4 that sufficient?

5 MR. GWYNNE: It depends on the
6 appellate court, Your Honor.

7 THE COURT: Well, I understand. If
8 you think it needs more detail to incorporate --
9 but I've already incorporated for purposes of
10 the record, I think by my statement, I -- as I
11 understand it, it protects you, that you can
12 rely on your submissions and the positions
13 stated, so I think a form Order would be
14 sufficient. Do you agree ---

15 MS. ARNOLD: I agree, Your Honor.
16 Absolutely.

17 THE COURT: Thank y'all very much.
18 Thanks again for your patience with me as well.

19 MS. ARNOLD: Thanks, Judge.

20 (HEARING CONCLUDED)

21

22

23

24

25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the hearing
held before The Honorable R. Markley Dennis,
Jr., on July 8, 2013;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

July 11, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 10-CP-08-1707

RECEIVED
JUL 12 2013
SC Court of Appeals

HSBC Mortgage Corporation, USA.....Appellant,

v.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and
First Federal Savings and Loan Association a/k/a First Federal Savings and Loan
Association of Charleston Defendants,

Of whom

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein,
are Respondents.

NOTICE OF APPEAL

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, HSBC Mortgage Corporation, USA hereby timely appeals from the following Orders of the Honorable R. Markley Dennis, Jr.: Order filed April 18, 2013 (the "April Order") and Order Denying Plaintiffs Motion to Alter or Amend filed on July 9, 2013 (the "July Order" and, jointly with the April Order, the "Orders"). The Orders are attached hereto as Exhibits A-B.

Appellant received written notice of the April Order on April 23, 2013 and timely served a Motion to Alter or Amend pursuant to 59(e) on May 2, 2013 (attached as Exhibit

C). Appellant received written notice of the July Order on July 10, 2013. Thus, this appeal is timely served and filed pursuant to Rule 203(b)(1) of the South Carolina Appellate Court Rules.

July 12, 2003



Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive - Suite 109
(29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900

Attorney for the Appellant
Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
Attorney for Respondents

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026
Attorney for Defendant First Federal Savings and Loan Association a/k/a First Federal Savings and Loan Association of Charleston

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 10-CP-08-1707

HSBC Mortgage Corporation, USA.....Appellant,

v.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and
First Federal Savings and Loan Association a/k/a First Federal Savings and Loan
Association of Charleston Defendants,

Of whom

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein,
are Respondents.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the NOTICE OF APPEAL on Respondents
Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein
and other Defendants by depositing copies of it in the United States Mail, postage
prepaid, on July 12, 2013, addressed to its attorneys of record shown on the attachment
listing Other Counsel of Record.

July 12, 2013

RECEIVED
JUL 12 2013
SC Court of Appeals


Charles S. Gwynne Jr. (SC Bar # 73844)
ROGERS TOWNSEND & THOMAS, PC
220 Executive Center Drive - Suite 109
(29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803)771-7900
Attorney for the Appellant
Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
Attorney for Respondents

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026
Attorney for Defendant First Federal Savings and Loan Association a/k/a First Federal
Savings and Loan Association of Charleston

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-08-1707

HSBC Mortgage Corp, USA
PLAINTIFF(S)

Frederick J Otterbein IV, et al
DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ 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: Plaintiff's Motion to Strike Jury Demand and Refer case was denied. Plaintiff's Motion to Alter and/or Amend needs to be scheduled before the Honorable Roger Young.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

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.

Circuit Court Judge

SCRPC Form 4C (12/2011)

EXHIBIT

A

2060

Judge Code

4/17/13

Date

Page 1

ROA_0249

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)
Mary J. Burk
CLERK OF COURT

Court Reporter:

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010CP0801707

Hsbc Mortgage Corp, Usa	Frederick J Otterbein IV Heather H Otterbein First Federal Savings & Loan Asso of Charleston	Frederick John Otterbein IV First Federal Savings & Loan Asso
-------------------------	---	---

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	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. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(b), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ 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.

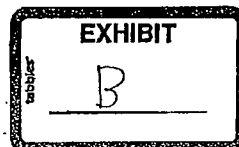
Additional Information for the Clerk: Defendant Otterbein Motion to Compel is GRANTED and Plaintiff's Motion to Alter or Amend the Court's Order Entered on 4/18/13 was DENIED.

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.

FORM 4Cm
SCRCP Form 4C (Revised 3/2013)



ROA_0251

R. M. [Signature] 2060 7/9/2013
Circuit Court Judge Judge Code Date
~~For Clerk of Court Office Use Only~~

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

William S. Koehler PO Box 100200 Columbia, SC
292023200
Charles Stuart Gwynne Jr. PO Box 100200 Columbia, SC
292023200

ATTORNEY(S) FOR THE PLAINTIFF(S)

Christopher Blohme Staubes III 126 Seven Farms Dr., Ste.
200 Charleston, SC 29492
Mary Leigh Arnold 749 Johnnie Dodds Blvd, Ste B Mt.
Pleasant, SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Mary P. Brown
Mary P. Brown Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

HSBC Mortgage Corporation, USA,

Plaintiff,

vs.

Frederick J. Otterbein, IV a/k/a Frederick John
Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association of
Charleston,

Defendant(s).

(503231.1612 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-08-1707

PLAINTIFF'S NOTICE OF AND
MOTION TO ALTER OR AMEND THE
COURT'S

ORDER ENTERED APRIL 18, 2013
(PURSUANT TO RULE 59(E), SCRPC)

FILED
2013 MAY -6 PM 3:11
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

TO: ALL PARTIES:

YOU WILL PLEASE TAKE NOTICE that as soon as it may be heard, HSBC Mortgage Corporation, USA, Plaintiff, by its undersigned counsel, shall respectfully request, pursuant to Rule 59(e), SCRPC, that this Court alter and/or amend its Order denying Plaintiff's Motion to Strike Jury Demand and Refer Case ("Order"), written notice of which was received by Plaintiff's counsel on April 23, 2013, to correct errors of law and fact and to make a ruling on the arguments raised at the April 17, 2013 hearing but not ruled upon in the Order.

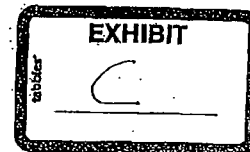
ISSUES FOR REVIEW

Plaintiff respectfully submits that the requested relief is proper and appropriate for the following reasons and requests a ruling on the issues and arguments raised at the April 17, 2013 hearing but not ruled upon in the Order and to correct errors of law and fact.

1. As a matter of law, "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

8898783

1



ROA_0253

2. As a matter of law, in order to be entitled to a jury trial, the Defendants' counterclaims must be both legal and compulsory. Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 494, 730 S.E.2d 328, 332 (Ct.App.2012).

3. As a matter of law, the Appeals Court's reasoning in the case of Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 494, 730 S.E.2d 328, 332 (Ct.App.2012) is not limited to the specific counterclaims pending in that action.

4. As a matter of law, whether an "action ...[is] equitable or legal depends on the appellant's 'main purpose' in bringing the action." Ins. Fin. Servs., Inc. v. S.C. Ins. Co., 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted). "The main purpose of the action should generally be ascertained from the body of the complaint." Id. (citation omitted). "The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable." Wells Fargo Bank, NA v. Smith, 398 S.C. 487, 496, 730 S.E.2d 328, 332 (Ct.App.2012).

5. As a matter of law, a claim for promissory estoppel is equitable in nature.

6. As a matter of law, all of Defendants' counterclaims are equitable in nature.

7. As a matter of law, the Defendants' are not entitled to a jury trial on any of their counterclaims.

8. As a matter of law, Defendants' counterclaim for Breach of Contract and Good Faith and Fair Dealings is in fact seeking the equitable remedy of promissory estoppel. Defendants' testimony and other evidence states that Defendants are claiming Plaintiff violated a verbal promise to modify their loan. Under the well-established 'main purpose' rule this counterclaim is equitable in nature.

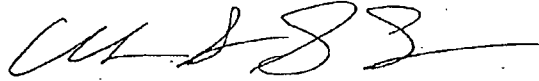
9. As a matter of law, Defendants' counterclaim for Declaratory and Injunctive Relief is an equitable claim.

10. As a matter of law, Defendants' counterclaims for Accounting and Unjust Enrichment are equitable claims.

11. As a matter of law, Defendants' counterclaim for Negligent Misrepresentation is in fact seeking the equitable remedy of promissory estoppel. Defendants' testimony and other evidence states that Defendants are claiming Plaintiff violated a verbal promise to modify their loan. Under the well-established 'main purpose' rule this counterclaim is equitable in nature.

This motion is based on all pleadings and discovery filed in this action, SCRCP 59(e), and such other and further matters as the Plaintiff may properly present to the court.

Respectfully Submitted,



Charles S. Gwynne Jr. (SC Bar # 73844)
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 PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated: May 2, 2013

CERTIFICATE OF SERVICE BY MAIL

Civil Action # 10-CP-08-1707

I, the undersigned attorney, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have caused to be served a copy of the foregoing documents upon counsel of record and below parties by U.S. Mail, postage prepaid, on May 2, 2013, at the following address(es):

Document(s) Served:

Plaintiff's Notice of and Motion to Alter or Amend the Court's Order Entered April 18, 2013
(Pursuant To Rule 59(e), SCRCP)

Counsel and Parties Served:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, SC 29464

Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

FILED
2013 MAY -6 PM 3:15
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC



Charles S. Gwynne Jr. (SC Bar # 73844)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.,
Berkeley County
Trial Court Case No. 10-CP-08-1707

Appellate Case No. 2013-001531

HSBC Mortgage Corporation, USA.....Appellant,

v.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and
First Federal Savings and Loan Association a/k/a First Federal Savings and Loan
Association of Charleston Defendants,

Of whom

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein,
are Respondents.

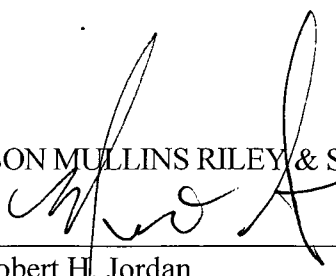
CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Record on Appeal complies with
the Supreme Court Order dated August 13, 2007 regarding personal identifiers and
sensitive information.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

RECEIVED
MAR 13 2014
SC Court of Appeals

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Robert H. Jordan
SC Bar No. 13612
E-Mail: robert.jordan@nelsonmullins.com
Merritt G. Abney
SC Bar No. 71893
E-Mail: merritt.abney@nelsonmullins.com
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

*Attorneys for Appellant HSBC Mortgage Corporation,
USA*

March 11, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr.,
Berkeley County
Trial Court Case No. 10-CP-08-1707

Appellate Case No. 2013-001531

RECEIVED

MAR 13 2014

SC Court of Appeals

HSBC Mortgage Corporation, USA.....Appellant,

v.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and
First Federal Savings and Loan Association a/k/a First Federal Savings and Loan
Association of Charleston Defendants,

Of whom

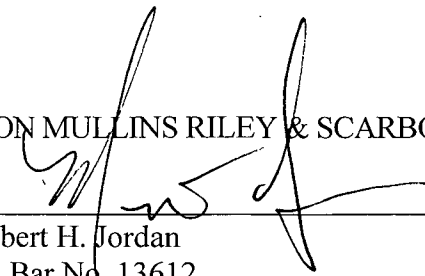
Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein,
are Respondents.

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.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Robert H. Jordan

SC Bar No. 13612

E-Mail: robert.jordan@nelsonmullins.com

Merritt G. Abney

SC Bar No. 71893

E-Mail: merritt.abney@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

*Attorneys for Appellant HSBC Mortgage Corporation,
USA*

March 11, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 10-CP-08-1707

Appellate Case No. 2013-001531

HSBC Mortgage Corporation, USA.....Appellant,

v.

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV, Heather H. Otterbein, and First
Federal Savings and Loan Association a/k/a First Federal Savings and Loan Association of
Charleston Defendants,

Of whom

Frederick J. Otterbein, IV a/k/a Frederick John Otterbein, IV and Heather H. Otterbein, are
.....Respondents.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **RECORD ON APPEAL** on Respondents and
Defendants by depositing copies of it in the United States Mail, postage prepaid, addressed to the
below Counsel of Record:

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
Attorney for Respondents

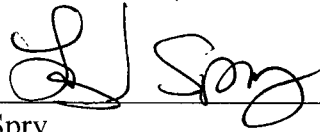
Chris B. Staubes, III, Esquire
Clawson & Staubes, LLC

RECEIVED
FEB 21 2014
SC Court of Appeals

126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
(843) 577-2026

*Attorney for Defendants First Federal Savings and Loan Association a/k/a First Federal Savings
and Loan Association of Charleston*

By:

A handwritten signature in black ink, appearing to read 'Lydia Spry', written over a horizontal line.

Lydia Spry
Administrative Assistant to Merritt G. Abney
Nelson Mullins Riley & Scarborough, LLP

February 19, 2014