Exhibit A

Order Granting Defendants' Motion to Dismiss in Part and Denying Defendants' Motion to Dismiss in Part

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	Civil Action No. 2013-CP-15-1023
James C. Kincannon, James J. Kincannon, and Carolyn R. Kincannon, Plaintiffs v. U.S. Bank National Association, U.S. Bank National Association ND, Palmetto Property Conversation, and Mark Brown, Defendants.	)	**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS IN PART AND DENYING DEFENDANTS' MOTION TO DISMISS IN PART**

This matter came before the Court upon Defendants U.S. Bank National Association's ("U.S. Bank") Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. A hearing on this motion was held on December 5, 2013 in Colleton County. Present at that hearing was Jana Baker on behalf of the Defendants and J. Todd Kincannon on behalf of the Plaintiffs ("Kincannons"). After considering the arguments of counsel, the applicable law, and legal memoranda submitted by the parties, the Court hereby GRANTS DEFENDANTS' MOTION IN PART and DENIES DEFENDANTS' MOTION IN PART.

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FACTUAL FINDINGS

Kincannons' Complaint sets forth the following facts: Kincannons own a house (the "Property") on Edisto Island. Complaint, ¶ 12. On February 10, 2010, two of the Kincannons executed a promissory Note (the "Note") promising to repay $300,000.00, plus interest, over a period of thirty years. Complaint, ¶ 12. The Note is secured by a Mortgage on the Property dated February 2, 2010 (the "Mortgage"). Complaint, ¶ 12.

On November 9, 2012, U.S. Bank brought a foreclosure action against Kincannons, styled *U.S. Bank v. Kincannon*, 2012-CP-15-885. After the parties entered into a Loan Modification Agreement, U.S. Bank dismissed that action without prejudice on July 18, 2013. Complaint, ¶ 14 and ¶ 16.

On April 30, 2013, Kincannons unilaterally repudiated the Note and Mortgage and refused to make the payment due on May 1, 2013. Complaint, ¶ 25. Kincannons have made no payments since that time. Id. Kincannons' counsel confirmed at the hearing that no payments have been made since the repudiation.

After the foreclosure action was dismissed, on or about July 19, 2013, Kincannons brought an action against U.S. Bank, styled *Kincannon v. U.S. Bank*, 2013-CP-15-708 ("First Kincannon Lawsuit"). In this action, Kincannons sought money damages and a declaration that the Note and Mortgage were unenforceable. Complaint, ¶ 17. The parties dismissed this action with prejudice on October 22, 2013 by signing a Stipulation of Dismissal with Prejudice. Complaint, ¶ 20.

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On October 23, 2013, one day after the Stipulation of Dismissal with Prejudice was entered by the Court, Kincannons brought the instant action ("Second Kincannon Lawsuit"). The Second Kincannon Lawsuit includes four causes of action: (1) declaratory judgment; (2) statutory failure to release mortgage; (3) contractual failure to release mortgage; and (4) permanent injunction. The Second Kincannon Lawsuit bases all four of these causes of action on the premise that "the Note and Mortgage are therefore unenforceable because U.S. Bank can no longer maintain an action of any type against Plaintiffs for breach of the terms of the Note and Mortgage." Complaint, ¶ 31. "An action for the accelerated balance has been dismissed with prejudice and an action in foreclosure has likewise been dismissed with prejudice." Complaint, ¶ 31.

LEGAL STANDARD

In ruling on a motion to dismiss a cause of action under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a cause of action, the Court must look only to the allegations of the Plaintiff's Complaint. State Board of Medical Examiners v. Fenwick

Hall, Inc., 300 S.C. 274, 387 S.E.2d 458 (1990). The Court must view the facts and all reasonable inferences therefrom in the light most favorable to the Plaintiff. Woodell v. Marion School District One, 307 S.C. 297, 414 S.E.2d 794 (Ct. App. 1992). The Court must deny the motion if the facts and inferences, when viewed in the light most favorable to Plaintiff, show that Plaintiff could prevail under any theory. Murrow Crane Co. v. T.R. Tucker Constr. Co., 296 S.C. 427, 373 S.E.2d 701 (Ct. App. 1988). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). The motion must be granted if the facts and the inferences reasonably deducible from them show that the plaintiff could not prevail on any theory of the case. Gray v. State Farm Auto Ins. Co., 327 S.C. 646, 651, 491 S.E.2d 272, 275 (Ct. App. 1997).

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DISCUSSION

Kincannons' first three causes of action – (1) declaratory judgment; (2) statutory failure to release mortgage; and contractual failure to release mortgage – are premised on the flawed belief that because U.S. Bank agreed to dismiss the First Kincannon Lawsuit with prejudice, U.S. Bank is forever barred from bringing a foreclosure action for a future breach of the Note and Mortgage. Consequently, Kincannons argue, the Note and Mortgage are therefore "released, satisfied, discharged, or extinguished."

Kincannons' position is succinctly summarized in paragraph 31 of the Complaint: The Note and Mortgage are therefore unenforceable because U.S. Bank can no longer maintain an action of any type against Plaintiffs for breach of the terms of the Note and Mortgage. An action for the accelerated balance has been dismissed with prejudice and an action in foreclosure has likewise been dismissed with prejudice. U.S. Bank's Note and Mortgage are now worthless because they are unenforceable due to U.S. Bank's Stipulation of Dismissal with Prejudice. Complaint, ¶ 31.

The Court finds that Kincannons' position is incorrect. A dismissal with prejudice of a foreclosure action does not have the legal effect of a discharge, satisfaction, or renunciation of a mortgage. The Florida Supreme Court has held that the doctrine of res judicata does not necessarily bar

successive foreclosure suits, regardless of whether the mortgagee sought to accelerate payments on the note in a previous suit. Singleton v. Greymar Assocs., 882 So. 2d 1004, 1008 (Fla. 2004). A subsequent and separate alleged default creates a new and independent right in the mortgagee to accelerate payment on the note in a subsequent foreclosure action. Id. (*see also* Afolabi v. Atl. Mortgage & Inv. Corp., 849 N.E.2d 1170 (Ind. Ct. App. 2006)(holding that the subsequent and separate alleged defaults under the note created a new and independent right in the mortgagee to accelerate payment on the note in a subsequent foreclosure action)). The Florida Supreme Court in Singleton correctly reasoned that, "If res judicata prevented a mortgagee from acting on a subsequent default ... the mortgagor would have no incentive to make future timely payments on the note." Id. at 1007.

Applying this logic to the instant case, the Court finds that U.S. Bank's Note and Mortgage are not worthless. The Court finds that the Note and Mortgage remain enforceable. Even if all facts pled in Kincannons' Complaint are presumed true, Kincannons still fail to state a claim upon which relief may be granted. Therefore, Kincannons' claims for (1) declaratory judgment, (2) statutory failure to release mortgage, and (3) contractual failure to release mortgage fail as a matter of law.

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Kincannons' fourth and final cause of action for permanent injunction seeks to enjoin U.S. Bank from performing "invasive" inspections on the Property outside the presence of one of the Kincannons or their agent. Complaint, ¶ 59. This cause of action does not appear to be legally deficient at this time, and is therefore not dismissed.

CONCLUSION

The Court finds that Kincannons' position that U.S. Bank's Note and Mortgage are worthless as a result of the dismissal with prejudice is incorrect. Because the facts and inferences reasonably deducible therefrom show that Kincannons could not prevail on their first three causes of action, the Court finds that U.S. Bank's motion must be granted as to Kincannons' causes of action for (1) declaratory judgment; (2) statutory failure to release mortgage; and (3) contractual failure to release mortgage.

The Court further finds that Kincannons' fourth cause of action for permanent injunction is not dismissed because the facts and inferences reasonably deducible therefrom show that Kincannons could prevail on this cause of action.

IT IS THEREFORE ORDERED that U.S. Bank's Motion to Dismiss is hereby GRANTED IN PART and DENIED IN PART.

AND IT IS SO ORDERED.

Perry M. Ruckner
Presiding Judge, Fourteenth Judicial Circuit

Walterboro, South Carolina
Dec. 18, 2013