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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Master In Equity

Marvin H. Dukes III, Master In Equity For Beaufort County

Appellate Case No. 2013-001412

HSBC Bank USA, National Association, As Trustee of MLCC 2007-2,
Respondent,

v.

S. Russell Fielden, Deborah M. Fielden, Coastal States Bank, Defendants
Coastal States Bank, Cross-Claim Plaintiff

v.

S. Russell Fielden and Deborah M. Fielden, Cross Claim Defendants,
Of whom S. Russell Fielden and Deborah M. Fielden are the Appellants...

APPELLANT'S REPLY TO RESPONDENT'S MOTION TO DISMISS APPEAL AND
MEMORANDUM OF LAW

Appellants

S. Russell Fielden Pro-Se
120 Sea Island Parkway
Beaufort, SC 29907
(843) 812-8862

Deborah M. Fielden Pro-Se
120 Sea Island Parkway
Beaufort, SC 29907
(843) 986-7443

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APR 07 2014

SC Court of Appeals

This case is not moot for any or all of the reasons stated below.

Even though the subject property has been sold to a third party, this case meets criteria needed for this Court to not dismiss the case as moot, to continue to review the case, and fashion relief.

This case is still an actual case and contains live controversies. All parties continue to have an interest in the outcome of this litigation and this court can provide meaningful relief. There are issues in this case that are of broad public interest and there are substantial material questions that remain for this court's determination.

Jurisdiction and summary judgment by the lower court was unsupported by the evidence.

Standing has to exist at the time the case is filed, and if it doesn't exist, the jurisdiction of the Equity court was not invoked. A court without jurisdiction cannot enter any judgment. Even though the property has been sold, the foreclosure decree should be vacated as the Respondent was not the legal holder of the note and mortgage at the time it filed its complaint. The Respondent did not have standing, there was no justiciable matter, the trial court never legally acquired jurisdiction over the property, and its foreclosure decree is should be void.

The subject property was sold to a buyer who was not a bona fide purchaser without notice.

The third party purchaser of the subject property was on notice of both the equitable and monetary claims of the Appellant. The Appellant filed lis pendens in Beaufort County giving constructive notice to the purchaser of pending litigation that may affect their title to the property. The purchaser willingly elected to purchase the property subject to the pending appeal and a judgment by this court, without any substantive rights or protection by this court. The buyer's closing attorney was fully aware of the pending appeal which is evident by his contact with the Appellant's attorney who represented the Appellant in the foreclosure case. An affidavit from William Sloan verifying their discussion is attached to this reply.

This court has the right to enjoin the purchaser, who has no substantive rights or protection by this court, to protect the rights of the Appellant. The purchaser willingly waived all rights and agreed to be bound to all proceedings evolving from this litigation.

The respondent has provided a warranty of title and protection to the third party purchaser.

The Respondent has provided the purchaser of the property with a Deed on the property that goes beyond the normal limitations usually found in a Special Warranty Deed and provides a full warranty to the buyer against any and all title claims. A copy of the deed is attached to this reply. The Respondent has accepted full responsibility for clear title in the sale of the subject property and has provided a clear remedy needed to satisfy any risk exposure for the purchaser. The Respondent has protected the purchaser in the event this court finds the Respondent did not hold legal title to the property when sold.

Even though funds have been dispersed the buyer basically received owner financing.

Bank Of America funded the loan for the purchase of the subject property. Bank Of America owns Merrill Lynch Credit Corp, Merrill Lynch Credit Corp owns PHH Mortgage. Both Merrill Lynch Credit Corp and PHH Mortgage control the Respondent Trust (if it actually exists) that sold the subject property.

The Respondent sold the property for much less than market value and less than half of the latest appraised value the Appellant had prepared.

A party may not profit on appeal from misleading the trial court. The Respondent continues to intentionally mislead this court as well.

Page 16 of the Respondents brief in paragraph two states "In this case, Respondent was in possession of the original note with two allonges attached thereto....." and ends the paragraph by saying "Because the Respondent had possession of the original note endorsed in blank, respondent was the holder of the note at the time of the foreclosure and had power to enforce the note under the South Carolina Commercial Code." Nothing could be farther than the truth. The Respondent should be held in contempt by this court for making such blatantly false statements in their initial brief. There were never any allonges included or attached to anything in their complaint or attached to anything during the entire trial. The Respondent's unattached allonges and endorsements only surfaced when the Respondent delivered them in discovery as they were created, and well after filing their foreclosure action. A copy of page 16 of the Respondent's Initial Brief is attached to this Reply.

It is reasonably probable that a different result would have been reached in the absence of false claims and fraudulent documents submitted by the Respondent, and of the errors made by the lower court with their abuse of discretion in allowing late, faulty, and fraudulent documents to be used by the Respondent.

This appeal includes a request of this court to consider monetary damages in favor of the Appellant.

It is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree, is tainted by fraud, or where there has been such a mistake, that to allow it to stand would be inequitable to the losing party.

The Respondent committed fraud in the procurement of the judgment.

The Respondent filed a Rob-Signed assignment of the Appellant's note and mortgage with the Beaufort County Register Of Deeds two months after filing their foreclosure complaint. The Respondent's attorney is on record stating that the document originated from their law firm. The assignment was signed in New Jersey by an employee of PHH Mortgage acting as a Vice President of MERS and notarized in Jacksonville Florida. The Respondent had the Appellant's note included in the assignment while fully aware that the Assignor (MERS) never had any interest in the Appellant's note. The Respondent's attorney handed this assignment to the Master during the first hearing in an attempt to fool the court that they had legal possession of the

Appellant's note. This action constitutes intrinsic fraud as both the preparation of the assignment to include the Appellant's note, and its delivery to the court to claim conveyance of the note was made by the Respondent in an attempt to bar the Appellant from relief. This fraudulent assignment is still on file in the Beaufort County Register Of Deeds.

The above mentioned assignment is also the assignment the Master refers to in his Order Denying the Appellant's Motion to dismiss. The fact that this fraudulent document was successfully used to continue the Respondent's case has caused damages to the Appellant, more than three years of their time, monetary costs, and exposure to the second mortgage on the subject property.

The Respondent also submitted an allonge in discovery in another attempt to prove standing and ownership of the Appellant's Note. This document is the original allonge belonging to Coastal States Bank which is a special endorsement they gave Merrill Lynch Credit Corporation conveying the Appellants note to them just after the Appellant's original purchase of the subject property. The Respondent fraudulently altered the allonge by placing a stamp at the original assignee's name with their name (HSBC Bank As Trustee For MLCC 2007-2). This is another act of intrinsic fraud committed by the Respondent which they made in an attempt to bar the Appellant relief in Equity Court.

There are serious issues in this case that are of substantial interest to the general public.

The Appellant is presenting some of the issues here to establish the fact that there are issues, circumstances, and questions before the court that are of continuing public interest and similar disputes are likely to arise in the future. There are serious flaws in the foreclosure process in the lower court, at least Beaufort County, and these issues need to be addressed and corrected by this court in the best interest of the public.

Issues in this case show the lower court is taking jurisdiction in foreclosure cases where the foreclosing party does not have standing to sue at the time they file their complaint. In this case the Respondent did not include any endorsements of the note and mortgage in their complaint (contrary to their statement in their initial brief to this court that they did), produced questionable assignments and endorsements well after filing their complaint, and the Master referred to those assignments and endorsements to deny to the Appellant's Motion To Dismiss and in his Summary Judgment in favor of the Respondent. The procedure of allowing assignments to be filed after the date of lis pendens in foreclosure cases continues in Beaufort County.

This case involves a situation of exceptional character and is of paramount public interest.

This court may review the following evidence in this case to find the Respondent did not have standing to sue when they filed their complaint, the lower court did not have jurisdiction to hear the case, and the lower court used late and questionable endorsements to render summary judgment in favor of a foreclosing party. These issues are of broad interest to the public because based on the facts in this case, the foreclosure process in the lower court in Beaufort County is faulty.

Exhibits Included For Review That Show Issues Of Great Public Interest;

1. The Master's order denying the appellant's Motion To Dismiss based on lack of standing and Counter Claim (attached to this Reply) The Master referred to the Respondent in his Order as having an original note with endorsement. The endorsement (the only one that the Respondent had produced to date) the Master refers to was a MERS assignment filed in the Beaufort County Register Of Deeds by the Respondent two months after the date of their complaint. The assignment purports to assign both the note and the mortgage. MERS is never mentioned on the note and therefore had no authority to assign the note to the Respondent. The Master erred in referring to this assignment in establishing the Respondent's standing to sue. The assignment was both late and did not assign the note to anyone. The Appellant's note is made payable to an entity other than the Respondent and is not payable to bearer.
2. The Master's final Judgment and Order Of Foreclosure. The Master refers to the Respondent as having an original note and an "Endorsement In Blank". The "Endorsement In Blank" the Master refers to was a copy, undated, not verified, and was produced in discovery by the Respondent well after filing its complaint. Once again the Master uses a late and questionable endorsement to establish standing of the Respondent and jurisdiction to hear the case.
3. This Appellant spent just one hour this past week researching a just a few note or mortgage assignments that had been recorded in the Beaufort County Register of Deeds for property that also had lis pendens filed for foreclosure in Beaufort County. Attached for this court's review are copies of three assignments filed after lis pendens was filed for foreclosure on the same property with the Beaufort County Clerk Of Court.
4. The attached exhibits show the lower court has done nothing since this case to require assignments to be filed by Plaintiffs in Beaufort County prior to commencing a foreclosure action. The Appellant is not privy to all the court proceedings in other foreclosure cases, however, based on the fact that the lower court in Beaufort County used faulty and late assignments in this case to both establish jurisdiction and summary judgment, and continues to allow late assignments to be filed in Beaufort County after lis pendens, it is reasonably probable that late assignments are being used (and accepted by the court) even today to convince the court that they have standing to foreclose after the date of their complaint.

This case further calls for the review because the situation is capable of repetition, yet evading review

If the Beaufort County Master In Equity accepts jurisdiction on cases when the plaintiff does not have standing to sue at the time they file their complaint, allows a plaintiff to attempt to cure lack of standing during trial, ignores fraud on the court, and makes mistakes in its reference to evidence in its decisions, then this Appellant and others would be subject to repetition if they find themselves going before the Master in another similar real estate conflict as a defendant.

Conclusion

The rights of the third party purchaser of the subject property will not be affected by this court's determination that this case is not moot because the third party purchaser has no substantial rights or protection by this court. It will be the responsibility of the Respondent to deal with any rights the purchaser may have if the sale is vacated. There are also issues of public importance, claims of fraud, lack of jurisdiction, and monetary damages sought. There are material questions of fact that remain in dispute. This case remains a live controversy.

Respectfully submitted,

Appellants



S. Russell Fielden Pro-Se

Deborah M. Fielden Pro-Se

120 Sea Island Parkway

120 Sea Island Parkway

Beaufort, SC 29907

Beaufort, SC 29907

(843) 812-8862

(843) 986-7443

Date 4/4/2014

Attachments;

1. Affidavit of William Sloan Esq.
2. Deed issued by the Respondent to the purchaser of the subject property
3. Page 16 of Respondent's Initial Brief
4. Appellant's Motion To Dismiss And Summary Judgment
5. The Master's order denying the above Appellant's Motion To Dismiss
6. The Master's final Judgment and Order Of Foreclosure
7. 3 Assignments and lis pendens filed in Beaufort County

CERTIFICATE OF SERVICE

I, S. Russell Fielden and Deborah M. Fielden (Appellants), hereby certify that I placed a true copy of:

APPELLANT’S REPLY TO RESPONDENT’S MOTION TO DISMISS APPEAL AND MEMORANDUM OF LAW

in first class postage envelope addressed to:

Counsel Of Record:

Charles S. Gwynne Jr., Esquire (Attorneys for HSBC BANK USA, as Trustee for MLCC 2007-2 in Case No. 10-CP-07-2927)

Erica G. Lybrand, Esquire
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202 (803) 771-7900

Mark S. Simpson, Esquire (Attorneys for Coastal States Bank in Case No. 10-CP-07-2927)

Samuel L. Kirkland, Esquire
Jones, Simpson & Newton, P.A.
18 Pope Avenue
Hilton Head Island, SC 29928 (843) 842-6111

Within first class postage affixed thereto, and placed said envelope in US Post office mail on this 4th day of April, 2014.

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SC Court of Appeals

S. Russell Fielden & Deborah M. Fielden
120 Sea Island Parkway
Beaufort, SC 29907
(843) 812-8862

April 4, 2014, 2014

The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals Clerk of Court
1015 Sumter Street
Columbia, South Carolina 29201

RE: Appellate Case # 2013-001412

Dear Ms. Kitchings

Enclosed are the original and seven (7) copies of the Appellant's: APPELLANT'S MOTION TO STAY TIME TO REPLY TO RESPONDENT'S MOTION TO CORRECT RECORD ON APPEAL AND TO STAY TIME TO FILE A FINAL BRIEF

Also enclosed are the original and seven (7) copies of the Appellant's: APPELLANT'S REPLY TO RESPONDENT'S MOTION TO DISMISS APPEAL AND MEMORANDUM OF LAW

Please return a filed copy of the documents to me in the enclosed, self-addressed, postage pre-paid envelope provided for your convenience. Also included is our check for \$25 representing the filing fee for the motion.

By copy of this letter I am serving a copy of the above documents and proof of service on all parties to this appeal.

Thank you for your assistance.

With regards,

Sincerely,



S. Russell Fielden & Deborah M. Fielden

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APR 07 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin Dukes, III, Master-in-Equity for Beaufort County

S. Russell Fielden and Deborah M. Fielden,
Appellant,

v.

HSBC Bank, Respondent

AFFIDAVIT OF WILLIAM H. SLOAN, ESQ., FORMER ATTORNEY FOR THE
APPELLANTS

Attachment # 1

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

)
)

AFFIDAVIT OF WILLIAM H.
SLOAN

Comes now, William H. Sloan, who first being duly sworn, affirms as follows:

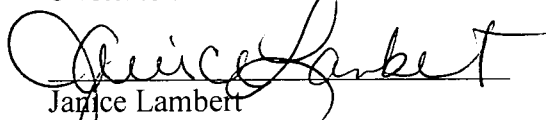
1. I was the attorney for the Fieldens in their foreclosure case that is being appealed before this Court at the trial level.
2. On March 3, 2014, I received a phone call from "Tom" Johnson, who advised me that he was the closing attorney for a real estate transaction which involved the sale of the property that is the subject of this case to a third party buyer.
3. Mr. Johnson asked me if I was representing the Fieldens in the appeal. I said no.
4. Mr. Johnson asked me what the Fieldens wanted out of the appeal. I told him that they wanted the property back and monetary damages.

FURTHER AFFIANT SAYETH NOT!



William H. Sloan
1055-F North Main St.
Summerville, SC 29483
843-873-7531

Sworn to and subscribed before me this 2 day of April, 2014.



Janice Lambert
South Carolina Notary Public
Commission expires 3-24-2020

Attachment #1

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever, as Joint Tenants with the rights of survivorship, as defined in §27-7-40 SC Code of Laws (1976), and not as tenants in common.

And the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs and Assigns against itself and its successors and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, to all Grantor's right, title and interest thereto during its period of ownership of this property which was obtained as a result of that certain mortgage foreclosure action entitled "HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 vs. S. Russell Fielden and Deborah M. Fielden, et al."

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

File No: 020614 - 00002
7100213235

EXHIBIT "A"

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND WITH IMPROVEMENTS LOCATED IN THE CITY OF BEAUFORT, BEAUFORT COUNTY, SOUTH CAROLINA, BEING SHOWN AND DEPICTED AS LOT 112. PLOWMANS POINT, ON THAT PLAT ENTITLED, "SUBDIVISION PLAT MAIN ISLAND PHASE III ISLANDS OF BEAUFORT", PREPARED FOR BEAUFORT PROPERTIES, L.L.C., PREPARED BY GASQUE & ASSOCIATES, INC., BY DAVID E. GASQUE. R.L.S DATED JANUARY 24, 2002 AND RECORDED IN PLAT BOOK 87 AT PAGE 128 WITH THE REGISTER OF DEEDS OFFICE FOR BEAUFORT COUNTY. REFERENCE IS MADE TO SAID PLAT FOR A MORE COMPLETE AND ACCURATE DESCRIPTION THEREOF.

File No: 020614 - 00002
7100213235

STATE OF ~~SOUTH CAROLINA~~ NJ)
COUNTY OF ~~BEAUFORT~~ Burl)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Beaufort County, bearing tax map number R120-032-000-0372-0000 was transferred by HSBC Bank USA, National Association as Trustee for Merrill Lynch Mortgage Investors Trust, Series MLCC 2007-2 to Richard L. Bayer and Patricia A. Bayer by deed dated March 3, 2014.
3. Check one of the following: The deed is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) exempt from the deed recording fee because pursuant to exemption number _____ of the South Carolina Code Section 12-24-40.
(If exempt, please skip items 4-7, and go to item 8 of this affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$519,000.00.
 - (b) The fee is computed on the fair market value of the realty which is _____.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes or No to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$0.00
6. The deed recording fee is computed as follows:
 - (a) Place the amount listed in item 4 above here: \$519,000.00
 - (b) Place the amount listed in item 5 above here: \$0.00
 - (c) Subtract Line 6(b) from Line 6(a) and place result here: \$519,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$1,920.30

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

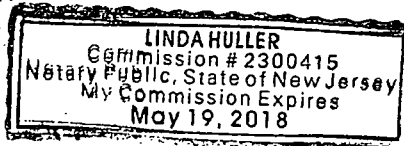
[Signature]
Responsible Person Connected with the Transaction

Angeh Husk
Print or Type Name Here

SWORN to before me this March 3, 2014

Notary Public for [Signature]

My Commission Expires: _____



A "holder" is a person or entity "who is in possession of a document or title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank." *S.C. Code Ann.* § 36-1-201(20). A note initially made payable "to order" can become a bearer instrument, if it is endorsed in blank. See *S.C. Code Ann.* 36-3-109(c) (providing that an instrument payable to an identified person may become payable to bearer if it is indorsed in blank); See also *S.C. Code Ann.* 36-3-205(b) (describing what qualifies as a blank endorsement). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone[.]" *S.C. Code Ann.* § 36-3-205(b). Further, possession of a bearer instrument [note] is *prima facie* evidence of ownership of the instrument. In re *Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008).

In this case, Respondent was in possession of the original Note with two allonges attached thereto. "An allonge is a 'paper annexed to a negotiable instrument, for endorsements too numerous or lengthy to be contained in the original.'" *Id.* at 375. The first allonge to the subject Note contained an endorsement to Merrill Lynch Credit Corporation by the original lender CoastalStates Bank. The second allonge contained a blank endorsement by Merrill Lynch Credit Corporation. Under South Carolina law, an allonge to a note containing a blank endorsement stating "pay to the order of without recourse," converts the promissory note to a bearer instrument. *Id.* at 375-77. Thus, the Note is payable to bearer and may be negotiated by transfer alone. *S.C. Code Ann.* § 36-203. Because the Respondent had possession of the original Note endorsed in blank, Respondent was the holder of the Note at the time of the foreclosure and had the power to enforce the Note under the *South Carolina Commercial Code.* § 36-3-301.

STATE OF SOUTH CAROLINA)
 BEAUFORT COUNTY)
)
 HSBC BANK, NA, AS Trustee)
 For MLCC 2007-2)
 Plaintiff,)
)
 VS.)
)
 S. RUSSELL FIELDEN, DEBORAH M.)
 FIELDEN AND COASTALSTATES BANK)
 Defendants.)
)
 COASTAL STATES BANK,)
 Cross-Plaintiff)
 Vs.)
 S. RUSSELL FIELDEN and DEBORAH)
 FIELDEN,)
 Cross-Defendants.)

COURT OF COMMON PLEAS
 CASE NO. 10-CP-07-2927
 MOTION TO DISMISS 12-b-6
 OR SUMMARY JUDGMENT
 OF
 S. RUSSELL FIELDEN
 AND DEBORAH FIELDEN

10 NOV 29 PM 12:50
 DEBORAH FIELDEN
 COURT

Comes now, Defendants, S. Russell Fielden and Deborah Fielden, through the undersigned, to move to Dismiss the Complaint against them, or move for Summary Judgment, based on the following:

ISSUES OF MATERIAL FACT THAT ARE NOT IN DISPUTE

1. This is an action for foreclosure.
2. Plaintiff claims to be the holder and owner of the Note and Mortgage in its Complaint based on an assignment of Mortgage from Mortgage Electronic Registration System, Inc. (MERS) to Plaintiff. The Plaintiff must be the holder and owner of the Note and Mortgage to foreclose in this matter.
3. However, this assignment is defective, or at the least of dubious validity for the following:
 - A. The assignment can only be for the Mortgage at most, not for the Note as MERS is not an assignee for the Note, but only for the Mortgage.
 - B. There is no Power of Attorney recorded for the Assignment of Mortgage from original creditor, Coastal States Bank, to MERS, to assign Mortgage to Plaintiff as required by as required by §62-5-501 ©, South Carolina Code of Laws. Therefore, the assignment is invalid and Plaintiff has no right to foreclose.

Attachment # 4

- C. MERS is a non-party with no Power to assign anything making any assignment from MERS defective certainly for the Note, but not for the Mortgage.

The Defendants Fielden, with this Motion, also submit to this Court a memorandum of law citing recent and old, mandatory and persuasive case law to show that the MERS assignment is completely invalid, certainly for the Note. The assignment must be valid for the Note and the Mortgage for Plaintiff to have standing to proceed with this action.

The allegations of the Complaint, combined with the underlying documents, fail to establish facts where this Court can grant the relief demanded by Plaintiff in its Complaint. There is no genuine issue of material fact. The Defendant should be granted judgment in this case as a matter of law.

WHEREFORE, Defendants move before this Court that:

- A. This case be dismissed prejudice according to Rules 12 (b) (6), SCRPC
- B. Or Summary Judgment for Defendants Fielden against Plaintiff and
- C. Any other relief that this Court deem prudent, just and proper.



William H. Sloan
Sloan Law Firm, PA
1055-F North Main St.
Summerville, SC 29483
(843) 873-7531
Attorney for Defendants S. Russell Fielden and Deborah M. Fielden
November 17, 2010

511784-14955

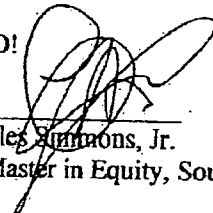
STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 COUNTY OF GREENVILLE) IN THE COURT OF EQUITY
 DEC 7 11 PM 2:29
 WELLS FARGO BANK, NA) CASE NO. 2010-CP-23-4119
 Plaintiff,) ORDER TO DISMISS
 GREENVILLE CO. CASE
 RUSSELL BERNS; RUSSELL)
 BERNS OR HIS SUCCESSOR IN)
 TRUST, TRUSTEE OF THE 9)
 COLLINS MILL COURT)
 REVOCABLE TRUST, AUGUST)
 14, 2008)

This case came before me on November 23, 2010 on Defendant's pre-Answer Motion to Dismiss this case pursuant to Rule 12-b-7, SCRCP. Defendant was represented by William H. Sloan of Summerville, and Plaintiff was represented by John Hearn of Rogers Townsend & Thomas Law Firm. Mr. Sloan argued that the case should be dismissed because the assignment of Mortgage and note in this case came from Mortgage Electronic Registration Systems, Inc. (MERS) and not the original creditor, First National Bank. Mr. Sloan argued that his client could suffer double liability as he argued the assignment was dubious making First National Bank a necessary party to this action.

The assignment of Mortgage from MERS to Plaintiff was executed by Rogers Townsend & Thomas, PC as Attorney-in-Fact for MERS. Mr. Hearn argued that the assignment was valid in every way. Mr. Hearn presented the Court with a copy of the Note and also advised the Court that he was in possession of the original note in this case though he did not offer it into evidence on this day. The assignment represents to assign the Mortgage and the Note in this case. Mr. Hearn presented a copy of the assignment which is the subject of this action to the Court as well.

The Court examined the copy of the Note and the Assignment of Mortgage. The assignment represents to assign the Mortgage and Note from MERS to Plaintiff. However, upon the Court's inspection of the copy of Note, MERS is never listed on the Note. I find that MERS did not assign the Note as it is not listed on the Note. For this reason, I ORDER that this case is dismissed without prejudice. Each party shall pay their own fees and costs.

IT IS SO ORDERED!


 The Honorable Charles Simmons, Jr.
 Greenville County Master in Equity, South Carolina
 November 29, 2010

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STATE OF SOUTH CAROLINA)
 BEAUFORT COUNTY)
)
 HSBC BANK, NA, AS Trustee)
 For MLCC 2007-2)
 Plaintiff,)
)
 VS.)
)
 S. RUSSELL FIELDEN, DEBORAH M.)
 FIELDEN AND COASTALSTATES BANK)
 Defendants.)
)
 COASTAL STATES BANK,)
 Cross-Plaintiff)
 Vs.)
 S. RUSSELL FIELDEN and DEBORAH)
 FIELDEN,)
 Cross-Defendants.)

COURT OF COMMON PLEAS
 CASE NO. 10-CP-07-2927

ORDER DENYING DEFENDANT
 FIELDEN'S MOTION FOR
 SUMMARY JUDGMENT
 AND ORDER DENYING
 SUMMARY JUDGMENT
 FOR CROSS-PLAINTIFF)
 AGAINST
 CROSS-DEFENDANT

This matter came before me on December 15, 2010, at 11:00 AM for a hearing on the Defendants Fieldens' "Motion to Dismiss 12-b-6 or Summary Judgment". Present were William H. Sloan, attorney for the Fieldens; Samuel L. Kirkland, attorney for CoastalStates Bank; and Robert P. Davis, attorney for the Plaintiff. All parties were given notice of the date and place of this hearing.

Mr. Sloan offered a copy of the Note and a copy of the recorded Assignment of Mortgage. The Note was given to CoastalStates Bank. Mr. Sloan argued that because the recorded Assignment of Mortgage was executed by Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Coastalstates Bank (MIN #1004553-0080600849-8) (hereafter "MERS") and because it purports to assign both the Note and Mortgage, that it must fail as an endorsement of the Note. Mr. Sloan argued that there is no allegation or evidence in the record of a document giving MERS a power of attorney or any authority to endorse the Note on behalf of CoastalStates Bank. He asked that the court dismiss the Plaintiff's action or grant the Fieldens summary judgment as a matter of law. The court, Mr. Sloan and Mr. Fielden then engaged in a brief colloquy during which Mr. Fielden is unsure of whom the actual creditor might be and if someone, including the Plaintiff holds a valid Note and Mortgage on his property. Mr. Fielden is certainly concerned about multiple liability for the same debt. In a very similar case, *Wells Fargo vs. Berns, 2010-CP-23-4119*, Judge Simmons dismissed Plaintiff's Complaint because of a faulty MERS assignment which purported to assign the Note and Mortgage when MERS was never listed on the Note. Therefore, Judge Simmons found that the chain of custody for the Note was broken in spite of Plaintiff's counsel bringing the original Note to the hearing.

attachment #5

Mr. Davis pointed out that Plaintiff has alleged in its Complaint, which is a part of the court's record, that Plaintiff "is the owner and holder of the Note and Mortgage" which are the subject of this action. He argued that the Fieldens' motion attacks only the Plaintiff's standing to bring this action, and that the holder of the Note necessarily has standing to collect the debt evidenced thereby, and to foreclose the Mortgage which secures it. He argued that this action is a simple claim for foreclosure on the grounds of the Fieldens' alleged failure to make the payments required by the Note. He asserted that the allegations of the Complaint are sufficient to meet the standard articulated in *Doe v. Marion*, *infra*, and that they state a cause of action on which relief may be granted. As to the Fieldens' summary judgment arguments, Mr. Davis produced the original Note, which does include endorsements, for the court's inspection. However, Mr. Davis did not show the Original Note to the Defendant or his counsel and did not submit the Original Note into evidence. He argued that the language "together with the Note" referenced in the Assignment of Mortgage is a surplusage and should be disregarded as extraneous. The essential effect of a mortgage assignment, he continued, is to assign the mortgage. Since the mortgagee of this mortgage was MERS, it was correct for MERS to execute the mortgage assignment. Finally, he argued that the Fieldens' motion and the evidence offered in support thereof do not conclusively prove anything, and that at best they raise another question, *viz.*, if this debt is not owed to the Plaintiff, then to whom is it owed? He asked that the motion be denied as utterly without merit.

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007), citing *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Id.*, citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995).

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 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. In considering a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr. Inc.* 313 S.C. 490, 493, 443 S.E.2d 392, 294 (1994); *Baughman v. Carolina Rental Ctr., Inc.* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545. Once the moving party meets the initial burden of showing an absence of evidentiary support for the opponent's case, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. *SSI Med. Servs., Inc. v. Cox* 301 S.C. 493, 392 S.E.2d 789 (1990).

Viewing the facts alleged in the pleadings in the light most favorable to the Plaintiff, I

certainly find that those allegations would entitle the Plaintiff to the relief of foreclosure. The Fieldens' Rule 12(b)(6) motion therefore cannot logically be granted. With regard to the Fieldens' summary judgment motion, I do not agree with their argument in spite of the *Berns* case. I find that they have failed to demonstrate an absence of a genuine issue of material fact as to Plaintiff's standing to prosecute this action. Indeed, Mr. Davis' possession (as Plaintiff's agent) of the Note may be evidence that Plaintiff has standing to bring this action within the meaning of Rule 19, SCRPC. However, this Order denying Fieldens' Motion does not necessarily mean that Plaintiff will necessarily prepare on the trial in this case on the merits.

I have considered the motion, the law, the pleadings, the documents and oral statements offered during the motion hearing. For the foregoing reasons, I find that the Fieldens' motion to dismiss or for summary judgment must be DENIED.

This case also came before me for the Cross-Plaintiff's Motion for Summary Judgment against Cross-Defendants on the same day and time.

Marvin H. Dukes, III
Master in Equity for Beaufort County

Beaufort, South Carolina
January ____, 2011

NOTICE! CLERK of court only had
an unsigned order. I will
obtain the signed order
from the MASTER'S office
if requested by this Court.
Russ Fielden
Appellant

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

HSBC Bank USA, National Association, as Trustee
for MLCC 2007-2,

Plaintiff,

vs.

S. Russell Fielden; Deborah M. Fielden;
Coastal States Bank,

Defendants,

Coastal States Bank,

Cross-Claim Plaintiff,

vs.

S. Russell Fielden and Deborah M. Fielden,

Cross-Claim Defendants.

(511227.00448 CSG)

Charles S. Gwynne Jr., Esquire
Attorney for the Plaintiff

William H. Sloan, Esquire
James P. Scheider, Jr., Esquire
Attorney for Defendants S. Russell Fielden and Deborah M. Fielden

Mark S. Simpson, Esquire
Samuel L. Kirkland, Esquire
Attorneys for Defendant Coastal States Bank

A hearing was held February 18, 2013 at 9:30 a.m. Evidence was presented,
which is reported herewith, and from the evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on June 14, 2010.
2. The Summons and Complaint were filed on June 14, 2010.
3. Service was made upon all Defendant(s) as shown by the proof(s) of service filed herein.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-07-2927

JUDGMENT OF FORECLOSURE AND
SALE

Deficiency Judgment Demanded against
S. Russell Fielden and Deborah M. Fielden

MAR 18 PM 2:31
CLERK OF COURT
COUNTY OF BEAUFORT
SOUTH CAROLINA

Attachment # 6

4. The Defendant(s) S. Russell Fielden and Deborah M. Fielden are not in the Military Service of the United States of America, as contemplated under The Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. seq. as shown by affidavit, certificate or order filed herein.

5. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01 dated May 22, 2009, the Plaintiff set forth its belief in its Complaint or by Affidavit, which is already of record in this case, that the mortgage loan which is the subject of this foreclosure action is not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HMP). Pursuant to the South Carolina Supreme Court Administrative Order dated May 22, 2009, Plaintiff's attorney has not received a counter affidavit from any Defendant(s).

6. Attorney for the Plaintiff has fully complied with the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011.

7. On or about November 24, 2010 Defendants S. Russell Fielden and Deborah M. Fielden filed an Answer through their attorney, William H. Sloan, Esquire.

8. On or about July 29, 2012 Defendant Coastalstates Bank filed an Answer and Cross-Claim through their attorney, Mark S. Simpson, Esquire.

9. All Pro Se Defendant(s) and all attorneys of record were notified of the time, date, and place of the hearing by Notice of Hearing and certificate of mailing of record herein.

10. At the hearing on February 18, 2013, Defendant S. Russell Fielden and Deborah M. Fielden argued that Plaintiff is not the real party in interest entitled to enforce the note and mortgage due to its failure to follow the transfer requirements of the Pooling and Servicing Agreement under Article 9 of the New York Uniform Commercial Code. Specifically, including the endorsement requirements on the note and its failure to demonstrate the complete chain of transfers. The court finds that the Plaintiff is in possession of the original Note endorsed in blank and therefore has standing to bring this action.

11. S. Russell Fielden and Deborah M. Fielden for value received, made, executed and delivered a Fixed/Adjustable Rate Rider Note ("Note") dated May 17, 2006, promising to pay to Plaintiff or its predecessor the sum of \$468,000.00 with interest at 7.250% per annum. Other terms and conditions are stated in the Note, of record herein.

12. To better secure the payment of the Note described above, S. Russell Fielden and Deborah M. Fielden made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. acting solely as nominee for Coastalstates Bank (MIN #1004553-0080600849-8) a certain real estate Mortgage in writing, dated May 17, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. This Mortgage was filed on May 19, 2006, and is of record in the Office of RMC/ROD for Beaufort County in Book 02376 at Page 1741. This mortgage was subsequently assigned to the Plaintiff by Assignment of Mortgage dated August 13, 2010, and recorded on August 23, 2010, in the Office of RMC/ROD for Beaufort County in Book 2984 at Page 857.

13. This Mortgage constitutes a first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

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

15. The sum of \$21,361.68 is a reasonable fee and cost to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action, under the terms of the Note and Mortgage. This fee is likewise reasonable based on the time necessarily devoted to representation of Plaintiff during the several month course of these proceedings. The services of counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and their experience in handling foreclosure matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

16. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and

expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

Principal	\$468,000.00
Interest from 12/01/09 to 2/18/13 at 7.250%	\$109,025.30
Late Charges 09/16/09 \$173.53 10/16/09 \$173.53 11/16/09 \$173.53 01/19/10 \$173.53 02/16/10 \$173.53 03/16/10 \$173.53 04/16/10 \$173.53 05/17/10 \$173.53	\$1,041.18
Credit 11/17/09 \$(347.06)	
Escrow Advances	
Tax Advances 11/26/11 \$4,060.49 11/30/11 \$3,972.61 12/01/10 \$3,925.08 Total: \$11,958.18	
Flood Insurance 03/30/12 \$365.00 04/01/11 \$365.00 Total: \$730.00	\$26,250.76
Hazard Insurance 3/29/12 \$5,736.00 04/01/11 \$5,144.00 05/03/10 \$2,682.58 Total: \$13,562.58	
Property Inspections	\$374.75
03/24/10 \$13.25 07/06/10 \$11.25 07/27/10 \$11.25 08/24/10 \$11.25	

09/24/10	\$11.25	
10/26/10	\$11.25	
11/30/10	\$11.25	
12/28/10	\$11.25	
01/25/11	\$11.25	
02/24/11	\$11.25	
03/30/11	\$12.75	
04/29/11	\$11.25	
06/08/11	\$11.25	
06/28/11	\$11.25	
08/05/11	\$11.25	
08/31/11	\$11.25	
09/27/11	\$11.25	
10/28/11	\$11.25	
12/05/11	\$11.25	
12/29/11	\$11.25	
01/24/12	\$11.25	
02/27/12	\$11.25	
03/28/12	\$11.25	
04/23/12	\$11.25	
06/04/12	\$11.25	
06/25/12	\$11.25	
07/30/12	\$11.25	
08/27/12	\$11.25	
09/25/12	\$11.25	
10/23/12	\$11.25	
11/28/12	\$11.25	
12/27/12	\$11.25	
02/01/13	\$11.25	
Attorney's Fees incurred (paid, billed but unpaid or unbilled)		\$17,772.50
Anticipated attorney fees awarded herein		\$2,250.00
Expenses <i>(Case filing fee; Service of process; Reference fee; Motions Fee; Recording Costs, Transcript of Hearing, Auto Mileage Reimbursement)</i>		\$939.18
Title Search		\$400.00
TOTAL PRINCIPAL, INTEREST AND EXPENSES:		\$626,053.67

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 7.250% per annum (pursuant to the terms of the Note and first Mortgage). Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the

first Mortgage through the date to which such interest is computed.

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

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

A. CoastalStates Bank, by virtue of a mortgage given by S. Russell Fielden and Deborah M. Fielden in the amount of \$380,000.00, dated November 19, 2007, and recorded November 30, 2007 in Book 2656 at Page 1126.

IT IS THEREFORE ORDERED:

19. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009, and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

20. The Plaintiff has standing to bring this action.

21. Third-Party Plaintiff CoastalStates Bank's cross-claim against S. Russell Fielden and Deborah M. Fielden is denied.

22. There is due on the Note and first Mortgage set forth in the Complaint the sum of \$626,053.67, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

23. Plaintiff shall have judgment demanded against S. Russell Fielden and Deborah M. Fielden. The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

24. The amount due in the preceding paragraph (the "Final Total Debt" as

set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

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

26. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 7.250% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

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

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 7.250%.

c. The sale shall be subject to taxes and assessments, existing easements

and restrictions, and any other senior encumbrances.

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

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

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

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

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

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

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

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

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

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

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

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

34. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Beaufort County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009.

35. In the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

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

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

38. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of

Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

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

40. The following is a description of the property herein ordered to be sold:

ALL that certain piece, parcel or lot of land with improvements located in the City of Beaufort, Beaufort County, South Carolina, being shown and depicted as Lot 112. Plowmans Point, on that plat entitled, "Subdivision Plat Main Island Phase III Islands Of Beaufort", prepared for Beaufort Properties, L.L.C., prepared by Gasque & Associates, Inc., by David E. Gasque. R.L.S dated January 14, 2002 and recorded in Plat Book 87 at Page 128 with the Register of Deeds Office for Beaufort County.

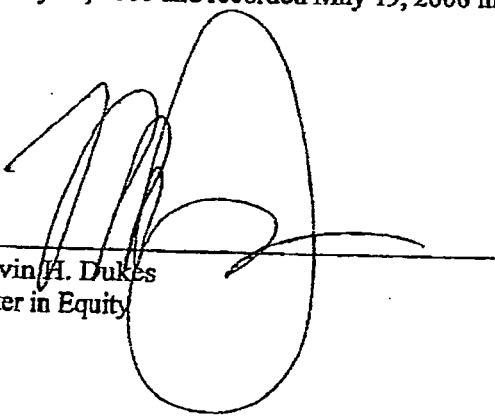
Said property is subject to all Rights, Easements., Restrictions, Affirmative Obligations, Conditions, described in the Declaration of Master Covenants, Conditions And Restrictions for the Islands Of Beaufort Subdivision recorded in Book 1060 at Page 954, and Supplemental Declaration of Covenants And Restrictions Running with Phase III Of The Islands of Beaufort Subdivision recorded in Book 1255 at Page 859 with the Register of Deeds Office for Beaufort County.

This being the identical property conveyed to S. Russell Fielden and Deborah M. Fielden by deed of Michael L. Mapes and Jackie G. Clarkson dated May 11, 2006 and recorded May 19, 2006 in Deed Book 2376 at Page 1738.

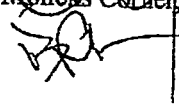
Property Address: 241 De La Gaye Point
Beaufort, SC 29902

TMS# R120-032-000-0372-0000

Marvin H. Duker
Master in Equity



7/11, 2013
Moncks Corner, South Carolina



NOTICE OF SALE

BY VIRTUE of a decree heretofore granted in the case of: HSBC Bank USA, National Association, as Trustee for MLCC 2007-2 vs. S. Russell Fielden, Deborah M. Fielden, and Coastal States Bank, C/A No. 10-CP-07-2927, The following property will be sold on May 6, 2013, at 11:00 AM at the Beaufort County Courthouse to the highest bidder:

ALL that certain piece, parcel or lot of land with improvements located in the City of Beaufort, Beaufort County, South Carolina, being shown and depicted as Lot 112, Plowmans Point, on that plat entitled, "Subdivision Plat Main Island Phase III Islands Of Beaufort", prepared for Beaufort Properties, L.L.C. prepared by Gasque & Associates, Inc., by David E. Gasque. R.L.S dated January 14, 2002 and recorded in Plat Book 87 at Page 128 with the Register of Deeds Office for Beaufort County.

Said property is subject to all Rights, Easements, Restrictions, Affirmative Obligations, Conditions described in the Declaration of Master Covenants, Conditions And Restrictions for the Islands Of Beaufort Subdivision recorded in Book 1060 at Page 954, and Supplemental Declaration of Covenants And Restrictions Running with Phase III Of The Islands of Beaufort Subdivision recorded in Book 1255 at Page 859 with the Register of Deeds Office for Beaufort County.

Derivation: Deed Book 2376 at Page 1738.

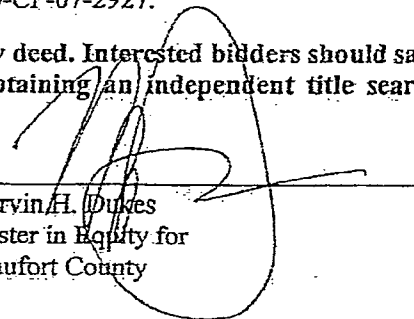
Property Address: 241 De La Gaye Point, Beaufort, SC 29902
TMS# R120-032-000-0372-0000

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

TERMS OF SALE: A 5% deposit in certified funds is required. The deposit will be applied towards the purchase price unless the bidder defaults, in which case the deposit will be forfeited. If the successful bidder fails, or refuses, to make the required deposit on the day of sale or fails or refuses to comply with the bid within 30 days, then the property will be resold at the bidder's risk. Personal or deficiency judgment having been demanded or reserved, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. §15-39-720 (1976). The Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale. The successful bidder will be required to pay interest on the amount of the bid from date of sale to date of compliance with the bid at the rate of 7.250% per annum. For complete terms of sale, see Judgment of Foreclosure and Sale filed with the Beaufort County Clerk of Court at C/A #10-CP-07-2927.

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

Samuel C. Waters, Esq.
Attorney for Plaintiff
P.O. Box 100200
Columbia, SC 29202-3200
(803) 744-4444
513225-01149 FN


Marvin H. Dukes
Master in Equity for
Beaufort County

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

NOTICE TO PRINTER: Please insert:

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 10-CP-07-2927

HSBC Bank USA, National Association, as Trustee for
MLCC 2007-2
PLAINTIFF(S)

S. Russell Fielden; Deborah M. Fielden;
CoastalStates Bank;
DEFENDANT(S)

Submitted by: Charles S. Gwynne Jr. (SC Bar#73844) Attorneys for the Plaintiff Rogers Townsend & Thomas, PC 220 Executive Center Drive, Suite 109 Post Office Box 100200 Columbia, SC 29202 (803) 744-4444 (803) 343-7013 - Fax info@rtt-law.com	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
--	---

13 MAR 18 PM 2:31
 DEPARTMENT OF COURT
 BEAUFORT COUNTY, S.C.

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 :

As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case. Also, if a deficiency judgment remains demanded, a separate Order for Deficiency Judgment will be entered at the completion of the foreclosure sale.

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)
		\$

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

ALL that certain piece, parcel or lot of land with improvements located in the City of Beaufort, Beaufort County, South Carolina, being shown and depicted as Lot 112. Plowmans Point, on that plat entitled, "Subdivision Plat Main Island Phase III Islands Of Beaufort", prepared for Beaufort Properties, L.L.C., prepared by Gasque & Associates, Inc., by David E. Gasque. R.L.S dated January 14, 2002 and recorded in Plat Book 87 at Page 128 with the Register of Deeds Office for Beaufort County.

Said property is subject to all Rights, Easements, Restrictions, Affirmative Obligations, Conditions, described in the Declaration of Master Covenants, Conditions And Restrictions for the Islands Of Beaufort Subdivision recorded in Book 1060 at Page 954, and Supplemental Declaration of Covenants And Restrictions Running with Phase III Of The Islands of Beaufort Subdivision recorded in Book 1255 at Page 859 with the Register of Deeds Office for Beaufort County.

This being the identical property conveyed to S. Russell Fielden and Deborah M. Fielden by deed of Michael L. Mapes and Jackie G. Clarkson dated May 11, 2006 and recorded May 19, 2006 in Deed Book 2376 at Page 1738.

Property Address: 241 De La Gaye Point
Beaufort, SC 29902

TMS# R120-032-000-0372-0000

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/Master in Equity/Special Referee

Judge Code

Date

3/11/13

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:

Samuel C. Waters, Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

William H. Sloan, Esquire
Sloan Law Firm
PO Box 85
Summerville, SC 29484

John P. Scheider, Jr., Esquire
Vaux & Marscher, P.A.
PO Box 769
Bluffton, SC 29910

Mark S. Simpson, Esquire
Samuel L. Kirkland, Esquire
Jones, Simpson & Newton, P.A.
18 Popc Avenue
Hilton Head Island, SC 29928

Court Reporter:



Beaufort County Fourteenth Judicial Circuit Public Index



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Switch View

Wells Fargo Bank Na VS Eric Mezmar

Case Number:	2013LP0700922	Court Agency:	Beaufort County Common Pleas	Filed Date:	08/28/2013
Case Type:	Lis Pendens	Case Sub Type:	Foreclosure	File Type:	Non-Jury
Status:	Pending	Assigned Judge:			
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties **Judgments** Tax Map Information Associated Cases Actions Financials

Click the icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Berkeley Hall Club Inc					Defendant		08/28/2013
Internal Revenue Service					Defendant		08/28/2013
Merrill Lynch Mortgage Investor Trust Series Mlcc 2003-B					Plaintiff		08/28/2013
Mezmar, Eric					Defendant		08/28/2013
<input checked="" type="checkbox"/> Montgomery, Andrew William	PO Box 100200 Columbia SC 292023200				Plaintiff Attorney		08/28/2013
United State Of America	Acting By And Through Its Agency				Defendant		08/28/2013
<input checked="" type="checkbox"/> Wells Fargo Bank Na	Successor By Merger To				Plaintiff		08/28/2013
Wells Fargp Bank Minnesota Na	As Trustee For				Plaintiff		08/28/2013

CMSWeb 6.1

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Attachment # 7

Rec'd
1/14/13

011222-01268
BEAUFORT COUNTY SC ROB
BK 03274 PG 2399
FILE NUM 2013055604
09/23/2013 03:48:57 PM
REC'D-BY S SMITH RCPT# 723736
RECORDING FEES 6.00

Recording Requested By:
PHH Mortgage Corporation (PHHM)

When Recorded Return To:

ROGERS, TOWNSEND & THOMAS PC
220 EXECUTIVE CENTER DRIVE
SUITE 109
COLUMBIA, SC 29201

CORPORATE ASSIGNMENT OF MORTGAGE

Beaufort, South Carolina
SELLER'S SERVICING : "MEZMAR"
SELLER'S LENDER ID#: LOGAST

Date of Assignment: September 9th, 2013
Assignor: BANK OF AMERICA, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION, AS SUCCESSOR IN INTEREST BY MERGER TO MERRILL LYNCH CREDIT CORPORATION at 200 S. COLLEGE STREET, 12TH FLOOR, CHARLOTTE, NC 28255
Assignee: WELLS FARGO BANK, N.A. SUCCESSOR BY MERGER TO WELLS FARGO BANK MINNESOTA, N.A. AS TRUSTEE FOR MERRILL LYNCH MORTGAGE INVESTORS TRUST SERIES MLCC 2003-B at 9062 OLD ANNAPOLIS RD., COLUMBIA, MD 21045

Executed By: ERIC MEZMAR To: MORTGAGE NETWORK INC.
Date of Mortgage: 12/12/2002 Recorded: 12/18/2002 in Book/Reel/Liber: 01682 Page/Folio: 0607 as Instrument No.: 2002083766 In the County of Beaufort, State of South Carolina.

Property Address: 115 GOOD HOPE ROAD, BLUFFTON, SC 29910

KNOW ALL MEN BY THESE PRESENTS, that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Assignor hereby assigns unto the above-named Assignee, the said Mortgage having an original principal sum of \$554,767.00 with interest, secured thereby, with all moneys now owing or that may hereafter become due or owing in respect thereof, and the full benefit of all the powers and of all the covenants and provisos therein contained, and the said Assignor hereby grants and conveys unto the said Assignee, the Assignor's beneficial interest under the Mortgage.

TO HAVE AND TO HOLD the said Mortgage, and the said property unto the said Assignee forever, subject to the terms contained in said Mortgage.

BY PHH MORTGAGE CORPORATION AS ATTORNEY IN FACT BY LIMITED POWER OF ATTORNEY FOR

BANK OF AMERICA, NATIONAL ASSOCIATION, A NATIONAL BANKING ASSOCIATION, AS SUCCESSOR IN INTEREST BY MERGER TO MERRILL LYNCH CREDIT CORPORATION
On 9-11-13

*

By: [Signature]
CANDACE GALLARDO, Assistant
Vice-President

WITNESS

[Signature]
CELIA TESTA

WITNESS

[Signature]
SHERRI KLISH

STATE OF NJ
COUNTY OF Burlington

On 9/11/13, before me, Elizabeth Ann Lashley, a Notary Public in and for Burlington County in the State of New Jersey, personally appeared CANDACE GALLARDO, Assistant Vice-President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal,

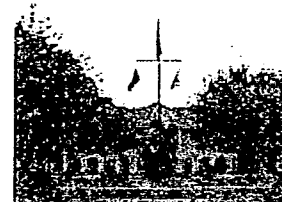
[Signature]
Elizabeth Ann Lashley
Notary Expires: 9/21/2016

ELIZABETH ANN LASHLEY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 9/26/2016

(This area for notarial seal)



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
[Switch View](#)

HSBC Bank NA vs. Kelly J Davis

Case Number:	2009LP0702040	Court Agency:	Beaufort County Common Pleas	Filed Date:	09/04/2009
Case Type:	Lis Pendens	Case Sub Type:	Foreclosure	File Type:	Non-Jury
Status:	Pending	Assigned Judge:			
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

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[Judgments](#)
[Tax Map Information](#)
[Associated Cases](#)
[Actions](#)
[Financials](#)

Click the  icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Davis, Kelly J					Defendant		09/04/2009
 HSBC Bank NA					Plaintiff		09/04/2009
 Kelchner, John B	PO Box 11264 Columbia SC 292111264				Plaintiff Attorney		01/02/2013
Palmetto Bay Marina Village Association					Defendant		10/01/2010

CMSWeb 6.1

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L
6 PB
Korn
8/18

BEAUFORT COUNTY SC - ROD
BK 03110 PG 0993
FILE NUM 2012000535
* 01/05/2012 03:41:11 PM
REC'D BY V GARVIN RCPT# 665093
RECORDING FEES 6.00

[WHEN RECORDED RETURN TO:]
KORN LAW FIRM
1300 PICKENS STREET
P.O. BOX 11264
[COLUMBIA, SC 29211-1264]

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ASSIGNMENT OF MORTGAGE
BOOK 2487 PAGE 2207

F29-05038

FOR VALUE RECEIVED, the undersigned, HSBC Bank, N.A., As Trustee for Holders of Deutsche ALT-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2006-OA1, does hereby transfer, assign, set over and convey to Bank of America, N.A. successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP 7105 Corporate Drive, PTX-C2-35, Plano, TX 75024, all beneficial interest under that certain mortgage executed by Kelly J. Davis, to Mortgage Electronic Registration Systems, Inc. solely as nominee for Countrywide Bank, N.A. which mortgage is recorded on December 8, 2006, in the Office of the RMC for Beaufort County, South Carolina, in Mortgage Book 2487 page 2207, together with all the notes and indebtedness secured by said mortgage, the money due and to become due thereon with interest, and all rights accrued or to accrue; and the undersigned does hereby remise, release, quit claim and convey to Bank of America, N.A. successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP in and to the property described in and conveyed by said mortgage.

PROPERTY ADDRESS: 70 Paddleboat Lane, #307, Hilton Head Island, SC 29928

*

IN WITNESS WHEREOF, the undersigned HSBC Bank, N.A., As Trustee for Holders of Deutsche ALT-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2006-OA1, on December 19, 2011 has hereunto set its hand and seal.

HSBC Bank, N.A., As Trustee for Holders of Deutsche ALT-A Securities Mortgage Loan Trust, Mortgage Pass-Through Certificates Series 2006-OA1 by Countrywide Home Loans Inc. (CWI) as attorney in fact

BY: Barbara Sawyer
Barbara Sawyer

ITS: Assistant Vice President, (AVP)

Yaragiza Daniels
Witness #1 Yaragiza Daniels

Angela R. Iterson
Witness #2 Angela R. Iterson

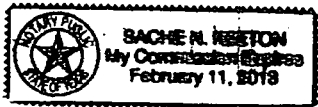
CORPORATE ACKNOWLEDGEMENT

State of Texas
County of Dallas

On Dec 19, 2011, Barbara Sawyer, personally came before me and, being duly sworn, did state that he/she is the ^{agent of the corporation} ~~agent~~ of the corporation described in the above document; that he/she acknowledged the execution of the above document in my presence on behalf of this corporation; and that he/she had full authority to do so.

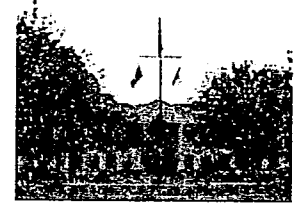
Sache N. Keeton Sache N. Keeton
Notary Public for the County of Dallas

State of Texas
My Commission expires: 2/11/13





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Phh Mortgage Corporation vs. Patrick J Horan Jr					
Case Number:	2011LP0701482	Court Agency:	Beaufort County Common Pleas	Filed Date:	07/14/2011
Case Type:	Lis Pendens	Case Sub Type:	Foreclosure	File Type:	Non-Jury
Status:	Pending	Assigned Judge:			
Disposition:		Disposition Date:		Disposition Judge:	
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials							
Click the icon to show associated parties.							
Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
Boots, Janet F	Nka				Defendant		10/01/2010
Horan, Patrick J Jr					Defendant		07/14/2011
Lipscomb, Kelsey K	1634 Main Street Suite 200 Columbia SC 29201				Plaintiff Attorney		05/16/2012
Lukes, Gregory L					Defendant		10/01/2010
Lukes, Janet F					Defendant		10/01/2010
Phh Mortgage Corporation					Plaintiff		07/14/2011
Waters, Samuel Calvin	PO Box 100200 Columbia SC 292023200				Plaintiff Attorney		10/15/2013

1/25
Rogers, Townsend
732

BEAUFORT COUNTY SC- ROD
BK 03102 PG 2017
DATE: 12/05/2011 02:00:59 PM
INST # 2011061408 RCPT# 662691

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ASSIGNMENT OF MORTGAGE
Mortgage Book 2018 at Page 1276

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto PHH Mortgage Corporation, c/o Mortgage Service Center, 2001 Bishops Gate Blvd., Mail Stop SV-01, Mount Laurel, NJ 08054, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by Patrick J. Horan, Jr. to Mortgage Electronic Registration Systems, Inc. as nominee for MCAS Beaufort FCU its successors and assigns (MIN# 100069600036690405) dated September 3, 2004, and duly recorded in the public records of Beaufort County, State of South Carolina, on September 14, 2004, in Mortgage Book 2018 at Page 1276.

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. as nominee for MCAS Beaufort FCU its successors and assigns (MIN# 100069600036690405) has caused this instrument to be executed in its corporate name and behalf by

TRACY JOHNSON, as its ASST. VICE PRESIDENT, duly authorized, on this 21st day of November, 2011.
Mortgage Electronic Registration Systems, Inc. (MIN# 100069600036690405)

[Signature]
Witness No. 1 Edward Duffy

By: [Signature]
TRACY JOHNSON
its: ASST. VICE PRESIDENT

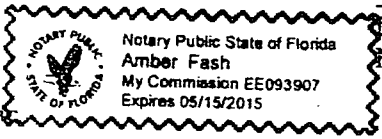
[Signature]
Witness No. 2 LINDA SCOTT

STATE OF FLORIDA
COUNTY OF DUVAL

ACKNOWLEDGMENT
S.C. Code § 30-5-30

I, the undersigned, Notary Public for the State of FLORIDA, do hereby certify that Mortgage Electronic Registration Systems, Inc. as nominee for MCAS Beaufort FCU its successors and assigns (MIN# 100069600036690405) by TRACY JOHNSON, its ASST. VICE PRESIDENT, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 21 day of November, 2011.



NOTARY PUBLIC FOR FL
My Commission Expires: 5/15/15

RETURN TO:
Rogers, Townsend & Thomas, P.A.
Post Office Box 100200
Columbia, South Carolina 29202
(011227-00590)

Horan Jr
50 Walnut Hill St
Beaufort, SC 29907

0033728072