

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
DOCKET NO.: 2010-CP-10-10122

US Bank National Association, as Trustee for  
the holders of Bear Stearns ARM Trust,  
Mortgage Pass-Through Certificates, Series  
2005-4,

Plaintiff,

vs.

Anne B. Glassburn; Donivon D. Glassburn; The  
Bank of New York Mellon f/k/a The Bank of  
New York Indenture Trustee on behalf of the  
Note Holders, CWHEQ Revolving Home  
Equity Loan Trust Series 2007-A Trust;  
Tidelands Bank; Atlantic Bank and Trust,

Defendant(s).

(511784.17316 CSG)

ORDER

RECEIVED

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COURT OF APPEALS

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2014 JUN 30 AM 11:41

FILED

This matter came before me at a hearing on June 2, 2014 on Plaintiff's Motion to Lift Stay in Case filed on September 30, 2013, Defendants Anne B. Glassburn and Donivon D. Glassburn's Motion to Amend their Answer filed on November 8, 2013 and Defendants Anne B. Glassburn and Donivon D. Glassburn's Motion to Compel and for Sanctions dated May 29, 2014. Charles S. Gwynne Jr., Esquire, appeared on behalf of the Plaintiff; and David K. Haller, Esquire and Amanda Reece, Esquire appeared on behalf of the Defendants Anne B. Glassburn and Donivon D. Glassburn ("Defendants").

Defendants allege that the Plaintiff has not complied with the South Carolina Supreme Court Administrative Order 2009-05-20-01 dated May 22, 2009 regarding the Home Affordable Modification Program ("HAMP") and the South Carolina Supreme Court Administrative Order 2011-05-02-01 dated May 2, 2011 regarding all loss mitigation options ("Orders"). Defendants argue the Plaintiff has failed to fully participate in discovery and failed to produce certain loss mitigation underwriting documents that would demonstrate a bad faith review of the borrower's

loan for a loan modification. Plaintiff argues that it has produced underwriting documents subject to a protective order that clearly demonstrate, based on the financial information provided by the Defendants, that the Defendants were fully reviewed, but denied, for a loan modification under HAMP and non-HAMP options.

The Court finds that the Orders require the parties to act in good faith in loss mitigation review of eligible mortgage loans. The Orders requires lenders to review loans through its normal loss mitigation processes and procedures. The Court is not free to substitute its own judgment when lenders have acted within its discretion to deny a borrower for a loan modification. This is akin to the business judgment rule. Additionally, the Court finds that the Orders do not create a private right of action for borrowers.

The court finds that the Plaintiff has demonstrated good faith and reasonable efforts in reviewing the Defendants for a loan modification under the Orders. It is important to note that the Defendants loan is an interest only loan and the court recognizes the difficulty in modifying this type of loan.

The Plaintiff's Motion to Lift Stay in Case is granted and the case may proceed to a final foreclosure hearing. The Defendants' two remaining motions are based on alleged failure of the Plaintiff to comply with the administrative Orders. Based on the Court's ruling the Defendants' Motion to Amend their Answer and Motion to Compel and for Sanctions are denied.

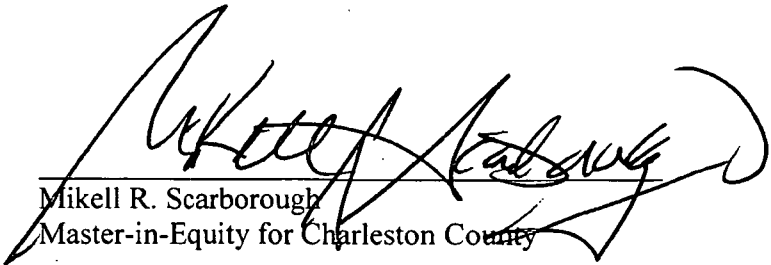
**IT IS THEREFORE ORDERED THAT:**

1. Plaintiff's Motion to Lift Stay in Case is granted;
2. Defendants Motion to Amend their Answer is denied;

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3. Defendants Motion to Compel and for Sanctions is denied.

**AND IT IS SO ORDERED.**



Mikell R. Scarborough  
Master-in-Equity for Charleston County

6/24

\_\_\_\_\_, 2014