

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

AUG 06 2014

**SC Court of Appeals**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Appellate Case No. 2014-001552

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

v.

Anne B. Glassburn, Donivon B. Glassburn, The Bank of New York Mello 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, Tideland Bank, Atlantic Bank and  
Trust,.....Defendants,

Of whom Anne B. Glassburn and Donivon B. Glassburn are the ..... Appellants.

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**RESPONDENT’S MEMORANDUM OF LAW**

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Respondent US Bank National Association, as Trustee for the holders of Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-4 (“Respondent”) respectfully submits this memorandum to address the specific question raised in the correspondence from the Court on July 24, 2014. For the reasons set forth below, the appeal must be dismissed as improperly filed.

**FACTS**

This is an appeal from the Order of the Honorable Mikell R. Scarborough which lifted the stay in this residential foreclosure matter and denied Appellants’ Motion to

Amend their Answer and have a jury trial, dated June 24, 2014. (See Exhibit A attached hereto).

On December 10, 2010 Respondent filed its Lis Pendens, Summons, and Complaint seeking foreclosure of a certain mortgage of real estate given by Appellants. (See Exhibit B attached hereto). On or about January 12, 2011 Appellants filed their Answer to the Complaint which did not include a demand for a jury trial. (See Exhibit C attached hereto).

In or around April 2013, Wells Fargo, the Respondent's loan servicer, reviewed the subject loan for a loan modification under both HAMP and non-HAMP options. This review was based on a review of a complete financial packet submitted by the Appellants. In a letter dated April 22, 2013, Wells Fargo informed the Appellants that their loan had been denied for a loan modification. On May 2, 2013, Respondent's counsel filed an Attorney Certification which certified compliance with the South Carolina Supreme Court Administrative Order 2011-5-02-01 based on the fact that the Appellants did "not qualify for any foreclosure intervention options as contemplated by the Order." (See Exhibit D attached hereto). On July 3, 2013, the Court signed an Order staying the case pending resolution of the Appellants' appeal of the Respondent's denial of foreclosure intervention. (See Exhibit E attached hereto). The Appellants appealed the denial and in a letter dated July 5, 2013 the Appellants were notified that their appeal had also been denied based on the fact that the Appellants "still [did] not meet the requirements of a loan modification." (See Exhibit F attached hereto). On September 30, 2013, Respondent filed a Motion to Lift Stay in Case. (See Exhibit F attached hereto)

On or about November 5, 2013, over two years after filing their Answer, the Appellants filed a Motion to Amend their Answer and have a jury trial. Their basis for seeking a jury trial in their proposed Amended Answer was based on attempts to assert counterclaims for Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act.

At a hearing on June 2, 2014, Judge Scarborough heard the Respondent's Motion to Lift Stay and Appellants' Motion to Amend their Answer. By Order dated June 30, 2014, the court granted Respondent's Motion to Lift Stay in Case and denied the Appellants' Motion to Amend their Answer. The foreclosure action has yet to be heard or decided.

Appellants mailed a Notice of Appeal of the Order lifting the stay of the residential foreclosure matter and denying their Motion to Amend their Answer and have a jury trial on July 16, 2014, and on July 24, 2014, this Court requested that each party serve and file a memorandum addressing the issue of appealability.

### **QUESTION PRESENTED**

- (1) Whether the Order denying Appellant's Motion to Amend their Answer is directly appealable?**

An Order denying a Motion to Amend is interlocutory and not immediately appealable. South Carolina courts have repeatedly held that as a general rule, appeal may only be taken after a final judgment has been rendered. Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing Culbertson v. Clemens, 332 S.C. 20, 23, 471 S.E.2d 163, 164 (1996)). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Id.

(citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)).

‘Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330.’ Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004) (citing Woodard v. Westvaco Corp., 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995), overruled on other grounds; Sabb v. South Carolina State University, 350 S.C. 416, 567 S.E.2d 231 (2002)). Under Section 14-3-330(2), an appellate court may review on appeal:

[a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann § 14-3-330.

The present case is clearly similar to the Supreme Court's ruling in Baldwin Constr. Co., Inc., 357 S.C. 227, 593 S.E.2d 146 (2004). In that case, the appellants sought to amend their answer over a year after filing their summons and complaint, in an effort to assert counterclaims which would have entitled them to a jury trial. Id. However, after the Court of Appeals heard the case, the Supreme Court of South Carolina granted certiorari and vacated the decision of the Court of Appeals. Id. The court explicitly held that the denial of a motion to amend an answer was an interlocutory order that was not immediately appealable when the party “[has] not ‘arrived at the end of the road’ and will be able to appeal the decision after the trial is finished. Id. at 230, 593 S.E.2d at 147-48

(citing Mid-State Distributors, Inc. v Century Importers, Inc , 310 S.C. 330, 426 S.E.2d 777 (1993). The South Carolina Supreme Court determined that the Court of Appeal's ruling on the case put "the cart before the horse" and sent the case back for a trial on the merits. Id. at 230, 593 S.E.2d at 147.

When analyzing whether the appeal could fall under one the categories enumerated in Section 14-3-330, the court indicated:

The only subsection that might conceivably be implicated by the order denying petitioners' request to be allowed to file an amended answer is subsection (c). In Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 368 S.E.2d 456 (1988), this Court held that an order denying a party's motion to file a late answer was a [sic] not directly appealable. The Court reached this conclusion because the trial judge did not rule on the substantive contents of the answer, nor did the order strike a pleading, but refused to allow its filing. This case is similar, as the judge did not strike a pleading but refused to allow its filing.

Baldwin Constr. Co., Inc. at 230, 593 S.E.2d at 147-48.

Similarly to Baldwin Const. Co., Inc., the only subsection of S.C. Code Ann. § 14-3-330(2) that could conceivably be implicated by the Order denying Appellants' Motion to Amend their Answer is subsection (c). However, like Baldwin Const. Co., Inc., the trial court did not strike a filed Answer demanding a jury trial; the Court refused to allow its filing. There has not yet been a final judgment on the merits in the action, and Appellants will still be able to appeal the decision once the trial is finished, should they believe necessary.

In addition, the South Carolina Supreme Court Administrative Order 2011-5-02-01 allows the trial court to hear and determine any dispute concerning compliance with the Order. Nothing in the Administrative Order entitles a borrower to directly appeal the ruling by the trial court lifting the stay in the case.

**CONCLUSION**

For the reasons set forth above, Appellans' appeal is an impermissible interlocutory appeal. As such, Respondent respectfully requests this Court dismiss the appeal and order that the Notice of Appeal filed by Appellants be canceled.

Respectfully submitted,

August 4, 2014



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Charles S. Gwynne Jr. (SC Bar # 73844)  
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220 Executive Center Drive – Suite 109  
(29210)  
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Columbia, South Carolina 29202-3200  
(803)771-7900  
Attorney for the Respondent  
Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record and Parties:

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Charleston, SC 29492

Amanda Reece, Esquire  
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Scott B. Umstead, Esquire  
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4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29577

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

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Appellate Case No. 2014-001552

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

v.

Anne B. Glassburn, Donivon B. Glassburn, The Bank of New York Mello 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, Tideland Bank, Atlantic Bank and  
Trust,.....Defendants,

Of whom Anne B. Glassburn and Donivon B. Glassburn are the ..... Appellants.

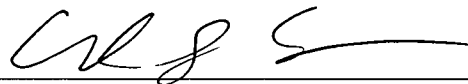
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**PROOF OF SERVICE**

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I HEREBY CERTIFY that I have served the **RESPONDENT'S MEMORANDUM OF LAW** on Appellants Anne B. Glassburn and Donivon B. Glassburn and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on August 4, 2014, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

August 4, 2014



---

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Attorney for the Respondent  
Rogers Townsend & Thomas, PC and its staff are debt collectors

Other Counsel of Record and Parties:

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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)

IN THE COURT OF COMMON PLEAS

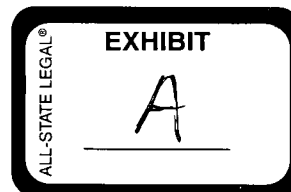
DOCKET NO.: 2010-CP-10-10122

**ORDER**

FILED  
2014 JUN 30 AM 11:41  
JULIE J ARMSTRONG  
CLERK OF COURT  
BY [Signature]

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



[Handwritten signature]

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 administrate 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:**

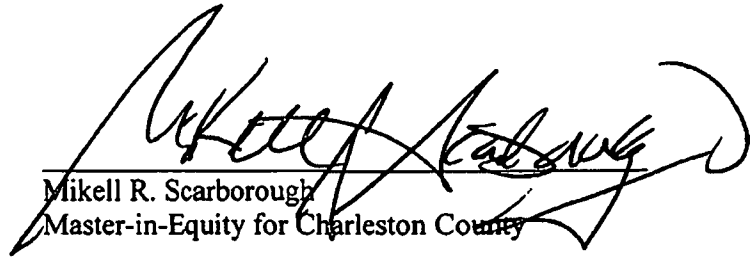
1. Plaintiff's Motion to Lift Stay in Case is granted;
2. Defendants Motion to Amend their Answer is denied;

A handwritten signature in black ink, appearing to be 'JMS', is located in the bottom right corner of the page.

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

**AND IT IS SO ORDERED.**

6/24, 2014

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

v.

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)

(011784-17316)

IN THE COURT OF COMMON PLEAS

DOCKET NO 10-cl-10-10122

LIS PENDENS  
Deficiency Judgment Waived

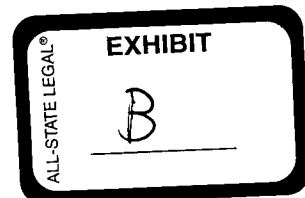
2010 DEC 10 AM 11:18  
JULIE J. ANDRIST, CLERK OF COURT  
BY \_\_\_\_\_

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Anne B Glassburn and Donivon D Glassburn to Wells Fargo Bank, N A. dated March 4, 2005, and recorded in the Office of the RMC/ROD for Charleston County on April 26, 2005, in Mortgage Book H534 at Page 391

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows

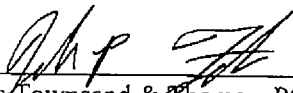
All that certain piece, parcel or lot of land, with the buildings and improvements thereon, or to be built thereon, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as Lot 5-107, Phase 5, I'On, on a plat thereof entitled, "Final Subdivision Plat of Phase 5, Subphases D, E, & F owned by: The I'On Company," dated February 3, 2003, prepared by Thomas & Hutton Engineering Co., and duly recorded on March 10, 2003, in the Office of the RMC for Charleston County, South Carolina in Plat Book EG at Pages 210-213 Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear Subject to any and all restrictions, covenants, conditions, easements, rights of way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina, including but not limited to those contained in that certain deed recorded in Book X444 at Page 7.

This being the same property conveyed to Donivon D Glassburn and Anne B Glassburn by deed of Tanis Development Company, LLC, dated May 17, 2004 and recorded May 26, 2004 in Book Z495 at Page 424



Property Address      46 Hopetown Road  
Mount Pleasant, SC 29464

TMS# 535-06-00-627

  
\_\_\_\_\_  
Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF  
Samuel C. Waters (SC Bar #5958)      Cheryl H. Fisher (SC Bar #15213)  
Reginald P. Corley (SC Bar #69453)      Jennifer W. Rubin (SC Bar #16727)  
Elle C. Floyd (SC Bar #68635)      Michael P. Morris (SC Bar #73560)  
Eve Moredock Stacey (SC Bar #5300)      Mary R. Powers (SC Bar #16534)  
Robert P. Davis (SC Bar #74030)      William S. Koehler (SC Bar #74935)  
Shawn R. Willis (SC Bar #71155)      Kevin T. Hardy (SC Bar #76015)  
Benjamin J. Powell (SC Bar #77205)      John P. Fetner (SC Bar #77460) ✓  
Kelsey K. Brockbank (SC Bar #77519)      Vance L. Brabham, III (SC Bar #71250)  
220 Executive Center Drive      Post Office Box 100200 (29202)  
Columbia, SC 29210      (803) 744-4444

Columbia, South Carolina  
December 9, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

v.

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).

(011784-17316)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-cl-10-1022

SUMMONS AND NOTICES  
(NON-JURY)  
FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Waived

2010 DEC 10 AM 11:18  
JULIE J. AGNOSTRO  
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED:

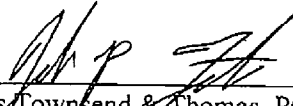
YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service, and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDES, AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you

fail to do so, application for such appointment will be made by US Bank National Association, as Trustee for the holders of Bear Stearns ARM Trust, Mortgage Pass-Through Certificates, Series 2005-4



---

Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030)	William S. Koehler (SC Bar #74935)
Shawn R. Willis (SC Bar #71155)	Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205)	John P. Feltner (SC Bar #77460)
Kelsey K. Brockbank (SC Bar #77519)	Vance L. Brabham, III (SC Bar #71250)
220 Executive Center Drive	Post Office Box 100200 (29202)
Columbia, SC 29210	(803) 744-4444

Columbia, South Carolina  
December 9, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

v

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).

(011784-17316)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-cl-10-10122

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE  
MORTGAGE  
Deficiency Judgment Waived

FILED  
2010 DEC 10 AM 11:18  
JULIE J. ARNIST, CLERK  
CLERK OF COURT

Plaintiff alleges:

1 This is an action for the foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina

2 Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina

3 Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.

4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the borrower did not provide all necessary documents after those documents had been requested

5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein

6 The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840

7 Heretofore, on or about March 4, 2005, Anne B Glassburn made, executed and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$665,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, Anne B. Glassburn and Donivon D. Glassburn made, executed and delivered unto Wells Fargo Bank, N A a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, with the buildings and improvements thereon, or to be built thereon, situate, lying and being in the Town of Mt Pleasant, Charleston County, South Carolina, shown and designated as Lot 5-107, Phase 5, I'On, on a plat thereof entitled, "Final Subdivision Plat of Phase 5, Subphases D, E, & F owned by: The I'On Company," dated February 3, 2003, prepared by Thomas & Hutton Engineering Co., and duly recorded on March 10, 2003, in the Office of the RMC for Charleston County, South Carolina in Plat Book EG at Pages 210-213 Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear Subject to any and all restrictions, covenants, conditions, easements, rights of way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina, including but not limited to those contained in that certain deed recorded in Book X444 at Page 7

This being the same property conveyed to Donivon D Glassburn and Anne B Glassburn by deed of Tams Development Company, LLC, dated May 17, 2004 and recorded May 26, 2004 in Book Z495 at Page 424

Property Address        46 Hopetown Road  
                                  Mount Pleasant, SC 29464

TMS# 535-06-00-627

9 The Mortgage was signed, witnessed and probated March 4, 2005; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Charleston County on April 26, 2005, in Mortgage Book H534 at Page 391

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a First lien on the mortgaged premises.

11 Any notice required by the terms of the Note and Mortgage or by state or federal laws has been given to the applicable Defendant(s).

12. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for December 1, 2009, and the conditions of the Note and Mortgage have been

broken Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of December 1, 2009, the principal sum of \$665,000 00, with interest from November 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees

13 Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived

14 Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

15. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

16. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record

17. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows.

A The 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, by virtue of a mortgage given by Anne B. Glassburn and Donivon D. Glassburn to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Countrywide Home Loans, Inc, its successors and assigns (MIN#100015700076415260) in the amount of \$500,000 00, dated December 19, 2006, and recorded December 29, 2006 in Book L610 at Page 303. Subsequently, this mortgage was assigned to 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 by assignment dated June 8, 2009 and recorded June 12, 2009 in Book 0061 at Page 008. Also by virtue of that Amended Lis Pendens, Summons and Complaint filed as 2009-CP-10-3147, Charleston County Records

B. Tidelands Bank, by virtue of a mortgage given by Donivon D Glassburn and Anne B. Glassburn in the amount of \$2,375,000.00, dated February 20, 2007, and recorded February 26, 2007 in Book M616 at Page 794.

C. Tidelands Bank, by virtue of a judgment against Donivon D. Glassburn, Anne B Glassburn, Atlantic Bank and Trust, and The I'On Assembly, Inc in the amount of \$350,000.00, dated June 8, 2010 and recorded on June 10, 2010 in Judgment Roll No. 2009-CP-10-6612 .

D Atlantic Bank and Trust, by virtue of a judgment against Donivon D. Glassburn in the amount of \$405,367.26, dated May 17, 2010 and recorded on June 11, 2010 in Judgment Roll No 2010-CP-10-4747 .

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action

(2) Declare Plaintiff's Mortgage a First lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

(3) Order the reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows

First, to the costs and expenses of the within action and sale;

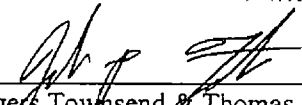
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid, and

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

(7)

Order such other and further relief as may be just and proper

  
\_\_\_\_\_  
Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958)	Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453)	Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar #68635)	Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar #5300)	Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar #74030)	William S. Koehler (SC Bar #74935)
Shawn R. Willis (SC Bar #71155)	Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205)	John P. Fetner (SC Bar #77460) ✓
Kelsey K. Brockbank (SC Bar #77519)	Vance L. Brabham, III (SC Bar #71250)
220 Executive Center Drive	Post Office Box 100200 (29202)
Columbia, SC 29210	(803) 744-4444

Columbia, South Carolina  
December 9, 2010

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
CASE 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 and )  
Atlantic Bank and Trust, )

Defendants. )

ANSWER  
OF DEFENDANTS  
ANNE B. GLASSBURN AND  
DONIVON D. GLASSBURN

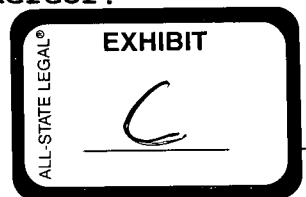
The Defendants, Anne B. Glassburn and Donivon D. Glassburn,  
respond to the Complaint as follows:

FOR A FIRST DEFENSE  
(General Denial)

FIRST: They admit Paragraph 1.

SECOND: They demand strict proof of Paragraphs 2 and 3.

THIRD: Responding to Paragraph 4, they are informed and believe the Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"). They specifically deny, however, the subject loan is not eligible for modification and/or that they, as the borrowers, did not provide any necessary documents after those documents had been requested, and demand strict proof thereof.



FOURTH: They demand strict proof of Paragraph 5.

FIFTH: They are not required to respond to Paragraph 6.

SIXTH: They crave reference to the documents identified in Paragraphs 7, 8, 9 and 10 for the terms and provisions thereof.

SEVENTH: They deny and demand strict proof of Paragraphs 11 and 12.

EIGHTH: They are not required to respond to Paragraphs 13, 14, 15 or 16 or, to the extent they are so required, they demand strict proof thereof.

NINTH: They admit Paragraph 17A.

TENTH: They demand strict proof of Paragraphs 17B, C and D.

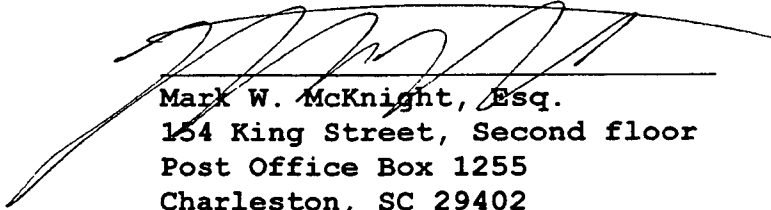
ELEVENTH: They deny each and every allegation of the Complaint not hereinabove specifically and expressly admitted.

FOR A SECOND DEFENSE  
(Rule 12(b)(6))

TWELFTH: The cause or causes of action alleged by the Plaintiff fail to state facts sufficient to constitute a cause or causes of action against these Defendants and the same should be dismissed pursuant to Rule 12(b)(6), S.C.R.C.P.

WHEREFORE, having fully answered the Complaint these Defendants pray that the same be dismissed as to them, that judgment be entered for them thereon, for their costs and attorney's fees in defending this action, and for such other and further relief as the Court deems just and proper.

**CERTIFICATE OF SERVICE**  
THE UNDERSIGNED HEREBY CERTIFIES  
THAT HE SERVED A COPY OF THE  
PLEADING OR FOREGOING PAPERS ON  
ALL COUNSEL OF RECORD THIS 12th  
DAY OF January, 2011



Mark W. McKnight, Esq.  
154 King Street, Second floor  
Post Office Box 1255  
Charleston, SC 29402  
(843) 577-2837  
(843) 722-4094/Fax  
ATTORNEY FOR THE DEFENDANTS  
ANNE B. GLASSBURN AND  
DONIVON D. GLASSBURN

Charleston, South Carolina  
January 12, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

v

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).

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-10-10122

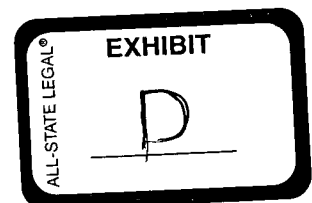
ATTORNEY CERTIFICATION  
Deficiency Judgment Waived  
(Mortgagor Denied)

FILED  
2013 MAY -2 AM 10:45  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

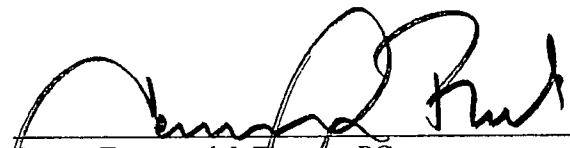
(011784-17316)

Pursuant to Supreme Court Administrative Order 2011-05-02-01 ("the Order"), and upon information and belief, the undersigned attorney hereby certifies the following:

- 1) That the Mortgagor, as defined by the Order, has been served with notice of right to foreclosure intervention;
- 2) That Plaintiff or its designated agents have received and examined all records and documents (if any) submitted by the Mortgagor to evaluate the loan for foreclosure intervention;
- 3) That the Mortgagor has been given a full and fair opportunity to submit any additional information pertaining to the subject loan to Plaintiff or its agents for consideration;
- 4) That after a complete review of all available information, Plaintiff has determined, as of April 22, 2013 that the Mortgagor does not qualify for any foreclosure intervention options as contemplated by the Order;



- 5) That on <sup>May</sup> ~~April~~ 1, 2013, a Notice of Foreclosure Intervention Denial was served on the Mortgagor(s) as required by the Order and Plaintiff has not entered into any other settlement agreements with the Mortgagor(s) as of the date stated in Plaintiff's Notice of Foreclosure Intervention Denial.



---

Rogers Townsend & Thomas, PC  
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #59138)  
Reginald P. Corley (SC Bar #69453)  
Ellie C. Floyd (SC Bar #68635)  
Eve Moredock Stacey (SC Bar #5300)  
William S. Kocher (SC Bar #74935)  
Jaclynn B. Goings (SC Bar #77501)  
Andrew A. Powell (SC Bar #100210)  
Mary Powers (SC Bar #16534)  
J. Pamela Price (SC Bar # 014336)

Cheryl H. Fisher (SC Bar #15213)  
Jennifer W. Rubin (SC Bar #16727)  
Michael P. Morris (SC Bar #73560)  
Robert P. Davis (SC Bar #74030)  
Vance L. Brabham, III (SC Bar #71250)  
Andrew W. Montgomery (SC Bar #79893)  
John F. McLeod, IV (SC Bar # 100693)  
Martin H. Kiser (SC Bar # 3552)

220 Executive Center Drive  
Columbia, SC 29210

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

Columbia, South Carolina

**FILED**

CASE NO 2010 CP-10-10122

*US Bank*

2013 JUL 16 AM 9:57

*ANNE B. GLASBURN*

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	BY <i>[Signature]</i> CLERK OF COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------	---	--

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON)**  Rule 12(b), SCRPC,  Rule 41(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

*This matter stayed pending resolution of Appeal of denial of Foreclosure Intervention Process.*

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

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

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

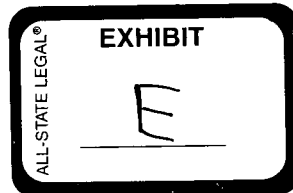
Circuit Court Judge

*[Signature]*

3062

Judge Code

*7/3/13*  
Date



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff,

v.

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)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-10-10122

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO LIFT STAY IN CASE**

FILED  
2013 SEP 30 PM 1:50  
JULIE J. WRIGHT  
CLERK OF COURT  
BY \_\_\_\_\_

Please take notice that the Plaintiff in the above captioned action will move for an Order lifting the stay issued by the Court in its Order signed July 3, 2013 and filed on July 16, 2013. The Court issued the stay pending resolution of the Defendants Anne B. Glassburn and Donivon D. Glassburn's ("Defendants") appeal of the Plaintiff's denial of foreclosure intervention.

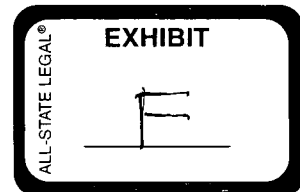
In support of its motion, Plaintiff represents as follows:

- (1) The Defendants appeal was reviewed and denied as evidenced by the attached denial letter dated July 5, 2013, attached hereto has Exhibit A.



Charles S. Gwynne Jr. (SC Bar # 73844)  
ROGERS TOWNSEND & THOMAS, PC  
220 Executive Center Drive – Suite 109 (29210)  
Post Office Box 100200  
Columbia, South Carolina 29202-3200  
(803)771-7900  
ATTORNEYS FOR PLAINTIFF  
Rogers Townsend & Thomas, PC and its staff are debt collectors

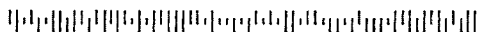
September 27, 2013



WELLS FARGO HOME MORTGAGE  
RETURN MAIL OPERATIONS  
PO BOX 10368  
DES MOINES IA 50306-0368



07/05/13



1MB 10624/003661/029055 0011 2 ACQFZD:HP609 708

ANNE B GLASSBURN  
46 HOPETOWN ROAD  
MOUNT PLEASANT, SC 29464-6661

Account Information	
Online	wellsfargo.com
Fax	(866) 278 1179
Telephone	(800) 416-1472
Correspondence	PO Box 10335 Des Moines, IA 50306
Hours of Operation:	Mon - Fri, 8 AM - 11 PM Sat, 9 AM - 3 PM CT
Loan Number	[REDACTED]
Property Address	46 Hopetown Road Mt Pleasant SC 29464

Subject: Decision on your request for an appeal

Dear Anne B Glassburn

We have completed reviewing the documents you sent to appeal our decision about a loan modification.

**Here's what we found**

After carefully reviewing your documentation supporting your appeal request, we have determined that you still do not meet the requirements of a loan modification.

**Your important next steps for mortgage assistance**

There may be other mortgage assistance options available to help you avoid a foreclosure sale. Please contact us to learn about the options listed below:

- If the present value of your home is higher than your mortgage balance, you can try to sell your home before the foreclosure sale takes place.
- If your mortgage balance is higher than the present value of your home, you may want to consider what is known as a "short sale." This allows you to sell your home privately for an agreed-upon amount that is less than what you owe on your mortgage. To start the short sale process, it's important for you to work with us in advance to set the selling price.
- The remaining option is a deed in lieu of foreclosure. You can voluntarily deed your property to Wells Fargo, transferring ownership of your home to us.

Please note: Short Sale or Deed in Lieu options vary based on your investor. Please call us to discuss your options.

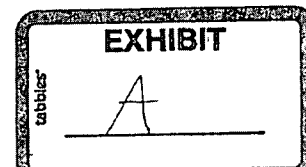
**What you need to know about foreclosure**

We will continue to work with you to help you avoid foreclosure sale. However, please understand that if your mortgage has been referred to foreclosure, that process moves forward at the same time. Also, as part of the foreclosure process, you may receive notices from a third-party attorney delivered by mail. Please note that within 15 days of the date of this letter, your home will not be sold in a foreclosure sale.



HP609 708  
003661/029055 ACQFZD S...ET-M1-C002

7080050486246HP609



Account Information	
Loan Number	[REDACTED]
Property Address	46 Hopelown Road Mt Pleasant SC 29464

— I'm here to help you  
— If you would like more information about our decision on your appeal request, or to discuss other mortgage assistance options, please call me right away. I can be reached at the number listed below.

Sincerely,

*Svetlana Kostenko*  
Svetlana Kostenko  
Home Preservation Specialist  
Wells Fargo Home Mortgage  
Ph 1-877-893-1958 ext 84154  
Fax 1-866-590-8910

**Struggling with other expenses? Help is available.**

Sometimes customers have trouble keeping up with their monthly expenses, other than their mortgage payments. If this is happening to you, help is available at no cost from a HUD-approved, non-profit credit counseling agency. Simply call a counselor who will work closely with you to lower your other monthly payments, take your financial circumstances into consideration, and create a budget plan to work for you. To find an agency in your neighborhood, call 1-800-569-4287 or call the HOPE Hotline at 1-888-995-HOPE.

Be sure you avoid anyone who asks for a fee for counseling or a loan modification, or asks you to sign over the deed to your home, or to make your mortgage payments to anyone other than Wells Fargo Home Mortgage.

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you have received a discharge of this debt in bankruptcy or are currently in a bankruptcy case, this notice is not intended as an attempt to collect a debt, and we have a security interest in the property and will only exercise our rights as against the property.

Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A. © 2013 Wells Fargo Bank, N.A. All rights reserved. Equal Housing Lender. NMLSR ID 399801



ROGERS TOWNSEND & THOMAS, PC  
POST OFFICE BOX 100200 (29202)  
220 EXECUTIVE CENTER DRIVE  
COLUMBIA, SOUTH CAROLINA 29210  
P 803 771 7900 F 803 343 7017  
W RTT-LAW.COM

CHARLES S GWYNNE JR  
SHAREHOLDER  
CHARLIE.GWYNNE@RTT-LAW.COM  
P 803 744 1933  
F 803 343 7017

LICENSED IN SOUTH CAROLINA



August 4, 2014

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

**RECEIVED**  
AUG 06 2014

**SC Court of Appeals**

RE: US Bank National Association, as Trustee for Bear Stearns ARM Trust,  
Mortgage Pass-Through Certificates, Series 2005-4. 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; Tideland Bank; Atlantic Bank  
and Trust  
Appellate Case # 2014-001552  
Case No. 10-CP-10-10122  
Our File No. 511784.17316

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Respondent's Memorandum of Law, along with a Proof of Service. Please return a filed copy of the document to me in the enclosed self-addressed, postage pre-paid envelope provided for your convenience.

By copy of this letter, I am serving a copy of the Respondent's Memorandum of Law and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "Charles S. Gwynne Jr.", written over a horizontal line.

Charles S. Gwynne Jr.

/dm  
Enclosures as stated

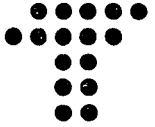
cc:

David K. Haller, Esquire  
Haller Law Firm, P.C.  
115 River Landing Drive, Suite 102  
Charleston, SC 29492

Amanda Reece, Esquire  
Reece Law Firm, LLC  
871 Low Country Blvd., Suite 200  
Mount Pleasant, SC 29464

Samuel H. Altman, Esquire  
Derfner, Altman & Wilborn, LLC  
575 King Street, Suite B  
Charleston, South Carolina 29403

Scott B. Umstead, Esquire  
Scott B. Umstead, P.A.  
4226 Mayfair Street, Suite 100  
Myrtle Beach, SC 29577



**ROGERS TOWNSEND**  
ATTORNEYS AT LAW

**ROGERS TOWNSEND & THOMAS, PC**  
POST OFFICE BOX 100200  
COLUMBIA, SOUTH CAROLINA 29202  
RTT-LAW.COM

neopost  
06/04/2014  
SC  
Z  
131

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

**RECEIVED**  
AUG 06 2014  
SC Court of Appeals