THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas Case No. 2007CP0403440
The Honorable J. Cordell Maddox, Jr.

APPELLATE CASE NO. 2013-001185

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR THE MLMI TRUST SERIES 2007-MLN1,

Respondent,

v.

RHONDA BOOMS,

Appellant.

FINAL BRIEF OF RESPONDENT DEUTSCHE BANK

Robert A. Muckenfuss (SC Bar #13903)
J. Curtis Griner (admitted *pro hac vice*)
MCGUIREWOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
rmuckenfuss@mcguirewoods.com
cgriner@mcguirewoods.com

ATTORNEYS FOR RESPONDENT DEUTSCHE BANK

TABLE OF CONTENTS

TABLE OF CASES

Cases **Page**

Statutes

STATEMENT OF THE CASE

This foreclosure action was instituted by Respondent Deutsche Bank National Trust Company as Trustee for the MLMI Trust Series 2007-MLN1 ("Deutsche Bank") on October 31, 2007. (Complaint; R. pp. 18-21.) On February 4, 2008, Appellant Rhonda Booms ("Booms") filed her Amended Answer and Counterclaim, which alleged counterclaims for violation of the South Carolina Unfair Trade Practices Act, breach of contract and/or breach of contract accompanied by a fraudulent act, violation of Section 37-23-70 of the South Carolina Consumer Protection Code (the "flipping" statute), breach of fiduciary duty, violation of Section 37-23-50 of the South Carolina Consumer Protection Code, and violation of Section 37-10-102 of the South Carolina Consumer Protection Code (the "attorney-preference" statute).

A jury trial was held before the Honorable J. Cordell Maddox, Jr. in the Court of Common Pleas for Anderson County, South Carolina (the "Trial Court") on November 14, 15, and 16, 2011. Based on the record and the evidence presented at trial, the Trial Court held that Deutsche Bank was entitled to a directed verdict as to the foreclosure action and that Booms was entitled to a directed verdict in the form of a set-off on her counterclaim for violation of the attorney-preference statute. (Judgment at 2; R. p. 6.) The Trial Court also found that Deutsche Bank was entitled to a directed verdict in its favor as to all other counterclaims asserted by Booms. (*Id.*) Deutsche Bank waived the right to seek a personal or deficiency judgment against Booms. (*Id.*, Finding of Fact No. 16; R. p. 8, No. 16)

The Trial Court entered a Judgment of Foreclosure and Sale and Order of Reference on June 4, 2012 (the "Judgment"). (Judgment; R. pp. 5-13.) Booms filed a

Motion to Reconsider on June 21, 2012. (Motion to Reconsider; R. pp. 48-49.) The Trial Court entered an Order denying Booms' Motion to Reconsider on May 9, 2013. (Order Denying Motion to Reconsider; R. p. 1.) Booms filed a Notice of Appeal from the Order Denying Motion to Reconsider on May 23, 2013.

STATEMENT OF FACTS

On or around March 1, 2006, Booms purchased a second home located at Westwind Way, Anderson, South Carolina 29626 (the "Property"). Boom's primary residence was in Port Orange, Florida, and she purchased the lake-front second home in South Carolina to avoid the frequent hurricanes that occur in Florida. (Trial Transcript 105:7-10; R. p. 205, lines 7-10.) After purchasing the Property, Booms decided to refinance her loan, so she retained a mortgage broker named James Haggerly to advise her about various loan options that were available to refinance her mortgage. (Trial Transcript 110; R. p. 210.) Booms had worked with Mr. Haggerly on various loans in the past, and she acknowledged that Mr. Haggerly worked for her and not for any specific lender. (*Id.*)

Mr. Haggerly arranged for Booms to refinance the Property with a loan from Mortgage Lenders Network USA, Inc. ("MLN"). On October 25, 2006, Booms executed an adjustable rate note (the "Note") in favor of MLN in the amount of $560,500.00. (Judgment, Finding of Fact No. 10; R. pp. 6-7, No. 10.) To secure payment of the Note, Booms executed a mortgage on the Property, which was recorded in the Register of Deeds Office for Anderson County in Book 7671 at page 139 (the "Mortgage"). (Judgment, Finding of Fact No. 11; R. p. 7, No. 11.) A lawyer supervised the loan closing by telephone, and Booms did not introduce any evidence to suggest that this

lawyer's supervision of the closing was somehow inadequate. (Trial Transcript 94:11-13; 102:19-20; R. p. 194, lines 11-13; p. 202, lines 19-20.) The Note and Mortgage were subsequently assigned to Deutsche Bank. (Judgment, Finding of Fact No. 12; R. p. 7, No. 12.)

Booms received more than $4,700 cash back from MLN as part of the refinance transaction. (Trial Transcript 99:10-14; R. p. 199, lines 10-14.) However, ***Booms then made only two monthly payments*** on the loan before she stopped paying her mortgage and soon defaulted. (Judgment, Finding of Fact No. 13; R. p. 7, No. 13.) In fact, ***Booms has now failed to make a single mortgage payment for nearly seven years.*** (Trial Transcript 113:3-11; R. p. 213, lines 3-11.)

ARGUMENT

I. The Trial Court's Judgment That The Maximum Recovery Booms Was Permitted Under The Attorney-Preference Statute Was A $7,500 Setoff Of The Foreclosure Judgment Should Be Affirmed.

The South Carolina attorney-preference statute provides that a creditor must ascertain prior to closing the preference of a borrower as to the legal counsel that is employed to represent the debtor in all matters relating to the closing of a mortgage loan. S.C. Code Ann. § 37-10-102. If a creditor violates this provision, the debtor has a cause of action to recover actual damages and also a right "to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars." *Id.* § 37-10-105.

At trial, as a defense to the foreclosure action, Booms claimed that she was not provided with the attorney-preference notice prior to closing by the original lender MLN.

(Judgment, Finding of Fact No. 17; R. p. 8, No. 17.) Because Deutsche Bank is only the assignee of the Note and Mortgage and did not participate in the refinance, it was unable to submit any evidence regarding whether or not the original lender MLN had in fact provided Booms with the attorney-preference notice prior to closing. However, as a matter of law, Deutsche Bank cannot be held liable for an alleged violation of the attorney-preference statute by the original lender MLN. Furthermore, Booms has made only two payments on the loan and did not present any evidence of actual damages resulting from MLN's alleged failure to provide her with the attorney-preference notice. (*Id.*) Therefore, the Trial Court's judgment that the maximum recovery Booms was permitted under the attorney-preference statute was a setoff of the foreclosure judgment in the amount of $7,500 should be affirmed.

A. The Trial Court's Judgment Should Be Affirmed Because Deutsche Bank Cannot Be Held Liable For An Alleged Violation Of The Attorney-Preference Statute By The Original Lender MLN.

As argued extensively at trial by Deutsche Bank, the assignee of a debt "takes only the benefits, not the burdens of the assigned obligation." *Rosemond v. Campbell*, 288 S.C. 516, 522-523, 343 S.E.2d 641, 645 (S.C. Ct. App. 1986). "Thus, as against the assignee, the obligor can only assert a claim defensively when the assignee seeks to enforce the obligation; he has no common law right to sue the assignee affirmatively on a claim against the assignor arising from the underlying obligation." *Id.* (emphasis added); *see also JPMorgan Chase Bank, N.A. v. Guertin*, CA 3:12-2363-MBS, 2012 WL 5550770 (D.S.C. Nov. 15, 2012) ("Defendants cite no authority, nor does the court find any, to support the proposition that a subsequent assignee is imputed with and can be held liable for the wrongful conduct of a promissory note's original obligee."). Accordingly,

the attorney-preference statute specifically provides that a debtor has a right to recover for an alleged violation of the statute only "from the person violating this chapter." S.C. Code Ann. § 37-10-105 (emphasis added). Thus, as a matter of law, an assignee of a loan cannot be held liable for an alleged violation of the attorney-preference statute by the original lender.

Here, Booms claimed that she was not provided with the attorney-preference notice prior to the closing by the original lender MLN. However, as a matter of law, Deutsche Bank cannot be held liable for this alleged violation of the attorney-preference statute by MLN. Therefore, Booms was not entitled to ***any*** recovery against Deutsche Bank on her counterclaim for violation of the attorney-preference statute by MLN.[1] Accordingly, the Trial Court's judgment that that Booms was only entitled to the maximum statutory penalty of $7,500 as a setoff of the foreclosure judgment should be affirmed.

B. The Trial Court Correctly Held That Booms Failed To Present Any Evidence Of Actual Damages.

Booms argues that the Trial Court erred in finding that she did not present any evidence of actual damages resulting from MLN's alleged failure to provide her with the attorney-preference notice. However, Booms admits that she made only two payments on the loan before she stopped paying her mortgage and defaulted. (Judgment, Finding of Fact No. 13; R. p. 7. No. 13.) Furthermore, even though the total amount of

---

[1] Deutsche Bank has not cross-appealed the Trial Court's award of a $7,500 setoff to Booms because the amount of the debt exceeds the value of the Property by more than $7,500 and, therefore, there will not be any surplus funds available after the foreclosure sale. (*See* Judgment, Finding of Fact No. 18; R. p. 9, No. 18.) As such, the Trial Court's decision to award of a $7,500 setoff to Booms—rather than to grant a directed verdict on this claim in favor of Deutsche Bank—is not subject to this appeal and, in any event, only amounts to harmless error.

outstanding debt on the loan exceeds the value of the Property by nearly $500,000.00, ***Deutsche Bank has expressly waived the right to seek a personal or deficiency judgment against Booms***. (Judgment, Finding of Fact Nos. 14, 16, and 18; R. pp. 7-8, Nos. 14, 16, and 18.) Thus, the Trial Court correctly held that Booms failed to present any evidence of actual damages resulting from MLN's alleged failure to provide her with the attorney-preference notice. (Trial Transcript 164:22-164:25; R. p. 264, lines 22-25 ("I don't see where she's damaged at all, I mean, literally at all. Whether they were geniuses in waiving the deficiency or whether they just decided they're not gonna get anything, I think that ends her damages.").)

On appeal, Booms also now argues that she "has been damaged in the amount of the finance charges and the principal amount of the loan." (Appellant's Br. at 11.) As an initial matter, Booms has waived this argument by failing to properly raise it before the Trial Court. In any event, because an award of "actual damages" in the total amount of the finance charges and principal under the loan would have the net effect of entirely cancelling Booms' indebtedness under the Note and Mortgage, this argument is equivalent to a claim for rescission. *See, e.g.*, *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 95, 594 S.E.2d 485, 494 (S.C. Ct. App. 2004) ("Rescission is an abrogation or undoing of [a contract] from the beginning, which seeks to create a situation the same as if no contract ever had existed."). However, this Court has recently held that "a violation of the Attorney Preference statute would not affect the enforceability of the Note and Mortgage" and does not allow the loan to be rescinded. *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 498, 730 S.E.2d 328, 334 (S.C. Ct. App. 2012), *reh'g denied* (Aug. 8, 2012); *see also Toney v. LaSalle Bank Nat. Ass'n*, 896 F. Supp. 2d 455, 476 (D.S.C.

2012) *aff'd,* 512 F. App'x 363 (4th Cir. 2013) (holding that the attorney preference statute does "not permit rescission of the Note and Mortgage for its violation"). Because Booms failed to present any evidence of actual damages, the judgment of the Trial Court should be affirmed.

C. The Trial Court Properly Held That Booms' Actual Damages Did Not Include Potential Future Tax Liability As a Result of Debt Forgiveness.

Booms also argues that the Trial Court erred in not finding that her actual damages included potential imputed income and future tax liability as a result of the forgiveness of the loan debt by Deutsche Bank. However, potential future tax liability cannot be recovered as actual damages. *See Smith v. Wells*, 258 S.C. 316, 319, 188 S.E.2d 470, 471 (1972) ("We have also held that only such future or prospective damages may be recovered as the evidence renders it reasonably certain will of necessity result from the alleged injury."). Booms incorrect cites to *O'Neill v. Sears, Roebuck & Co.*, 108 F. Supp. 2d 443, 447 (E.D. Pa. 2000), for the proposition that "[n]egative tax consequences are compensable as damages." (Appellant's Br. at 12.) In *O'Neill*, the court held that the plaintiff in an age discrimination suit was entitled to damages resulting from the tax consequences of receiving his front and back pay in a lump sum, rather than over the number of years plaintiff would have worked but for his premature termination. However, the court expressly ***rejected*** the plaintiff's request for damages resulting from his potential future tax liability resulting from the award of compensatory and liquidated damages. 108 F. Supp. 2d at 448 ("The compensatory and liquidated damages, however, are *only* a product of this lawsuit. ... Hence, allowing the plaintiff to recover the increased tax he will have to pay on these sums does more than make him whole. ***It gives***

the plaintiff a windfall.") (emphasis added). Similarly, to allow Booms to receive forgiveness of the debt under the loan and receive additional "damages" for her potential imputed income as a result of the debt forgiveness would do more than make her whole and would provide a windfall.

In any event, even if actual damages could include potential future income tax liability as a result of debt forgiveness, Booms failed to introduce any competent evidence regarding the amount of the potential tax liability or the likelihood that it would be assessed. Specifically, although Deutsche Bank waived the right to seek a deficiency judgment against Booms in the Complaint, Booms failed to introduce any evidence that Deutsche Bank also intended to forgive this debt for tax purposes. Furthermore, Booms failed to introduce any evidence regarding the calculation of her potential tax liability. *See O'Neill*, 108 F. Supp. 2d at 447 (stating that a plaintiff must present "testimony by a tax expert calculating the negative tax consequences" because the court was "not inclined to engage in the speculative task of determining the [p]laintiff's future tax liability").[2] Therefore, the Trial Court properly held that Booms' actual damages did not include potential future tax liability as a result of debt forgiveness, and the judgment of the Trial Court should be affirmed.

---

[2] In fact, at the time of trial, as a result of the Mortgage Forgiveness Debt Relief Act, Booms most likely would not have been liable for taxes due to the discharge of qualified principal residence indebtedness. *See* 26 U.S.C.A. § 108(a)(1)(E) (West) ("Gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of indebtedness of the taxpayer if ... the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2014.").

II. The Trial Court Properly Held That The Unclean Hands Doctrine Did Not Apply Because The Subject Loan Was Closed Prior To The Supreme Court's Decision In *Matrix v. Frazer.*

Next, Booms argues that the Trial Court erred in failing to find that Deutsche Bank was barred from recovery pursuant to the doctrine of unclean hands because the closing of the Loan purportedly was not done under the supervision of a licensed South Carolina attorney. (Appellant's Br. at 18-19, 20-22 (citing *Wachovia v. Coffey*, 389 S.C. 68, 76, 698 S.E.2d 244, 248 (S.C. Ct. App. 2010).) As an initial matter, there are several reasons why *Wachovia* is factually distinguishable from this case. In *Wachovia*, the Court of Appeals held that the lender had unclean hands and was barred from being able to foreclose because it committed the unauthorized practice of law in closing a loan without the supervision of an attorney. *Wachovia*, 389 S.C. at 76, 698 S.E.2d at 248. Here, however, a lawyer did in fact supervise the loan closing by telephone, and Booms did not introduce any evidence to suggest that this lawyer's supervision of the closing was somehow inadequate. (Trial Transcript 94:11-13; 102:19-20; R. p. 194, lines 11-13; p. 202, lines 19-20.)

In any event, however, the South Carolina Supreme Court has recently held that the *Wachovia* decision ***only applies to mortgages that were filed after August 8, 2011.*** *See Matrix Financial Services v. Frazer*, 394 S.C. 134, 714 S.E.2d 532 (S.C. 2011); *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547, (2012), *reh'g denied* (Sept. 6, 2012). In *Matrix v. Frazer*, the Supreme Court approved of the rule announced by the Court of Appeals in *Wachovia* that the closing of a loan without attorney supervision constitutes the unauthorized practice of law and would preclude a lender from obtaining equitable relief. 394 S.C. at 140, 714 S.E.2d at 535. However, the

Supreme Court explained that it would only "apply this ruling to all filing dates after the issuance of this opinion," which was August 8, 2011. *Id.* To the extent some confusion apparently existed as to what filing date *Matrix v. Frazer* referred to, the Supreme Court later clarified in *BAC Home Loan Servicing, L.P. v. Kinder* that the "filing date" refers to the date that the mortgage was filed. 398 S.C. at 624, 731 S.E.2d at 549-50. Therefore, if a mortgage was filed ***before*** August 8, 2011, the rule of *Wachovia* and *Matrix* does not apply, and a lender is not barred from foreclosure pursuant to the doctrine of unclean hands regardless of whether an attorney participated in the loan closing.

Here, the subject loan was closed on October 25, 2006 and the Mortgage was filed in the Register of Deeds Office for Anderson County on October 31, 2006. (Judgment, Finding of Fact Nos. 10-11; R. pp. 6-7, No. 10-11.) Therefore, because the Mortgage was filed before August 8, 2011, the unclean hands doctrine as articulated by *Wachovia* and *Matrix* cannot apply to prevent Deutsche Bank from being able to foreclose in this case. Accordingly, the Trial Court properly refused to find that Deutsche Bank was not barred from recovery under the doctrine of unclean hands, and the judgment of the Trial Court should be affirmed.

III. The Trial Court Did Not Abuse Its Discretion In Granting Deutsche Bank's Motion In Limine As To Statements Made To Booms By The Mortgage Servicers.

It is well-established that the admission of evidence "is within the discretion of the trial court and will not be reversed absent an abuse of discretion." *State v. Pagan,* 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). Therefore, a trial court's order granting a motion in limine is reviewed for an abuse of discretion. *See State v. Ford*, 301 S.C. 485, 490, 392 S.E.2d 781, 784 (1990) ("[A] motion in limine ... remains within the discretion

of the trial judge."); *see also State v. Rainey*, 198 N.C. App. 427, 431, 680 S.E.2d 760, 765 (2009) ("The trial court has wide discretion in ruling on motions *in limine* and will not be reversed absent an abuse of discretion."). Evidence may properly be excluded if it is not relevant or if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. *See* Rules 402 and 403, South Carolina Rules of Evidence.

Booms argues that the Court erred in granting Deutsche Bank's motion *in limine* as to any statements made to Booms by the mortgage servicers Wilshire Credit Corporation ("Wilshire") and Bank of America in servicing her mortgage on behalf of Deutsche Bank, including communications between Booms and Wilshire concerning a possible loan modification. However, the entirety of Booms' factual allegations against Deutsche Bank related to events that took place during the origination and closing of the loan, and Booms did not assert any counterclaims or defenses relating to the servicing of the loan by Wilshire or her attempts to apply for a loan modification. (*See* Answer and Counterclaims; R. pp. 26-41.) Furthermore, Wilshire and Bank of America are not parties to this lawsuit. Therefore, such evidence was legally irrelevant to the scope of the counterclaims and defenses brought by Booms in this litigation, and its prejudicial effect far outweighed any probative value. Therefore, the Trial Court did not abuse its discretion in granting Deutsche Bank's motion *in limine* to exclude this evidence.

IV. The Trial Court Correctly Held That The Note And Mortgage Were Not Unconscionable Under The South Carolina Consumer Protection Code Because S.C. Code § 37-5-108 Is Inapplicable To A First Mortgage Lien.

Booms argues that the Trial Court erred in not finding that the terms of the Note and Mortgage were unconscionable under S.C. Code Ann. § 37-10-105(C). (Appellant's Br. at 17-20.) In its entirety, this section of the statute provides as follows:

> If the court finds as a matter of law that the agreement or transaction is unconscionable ***pursuant to Section 37-5-108*** at the time it was made, or was induced by unconscionable conduct, the court may, in an action other than a class action:
>
> (1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made;
>
> (2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result;
>
> (3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or
>
> (4) award:
>
> (a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge;
>
> (b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and
>
> (c) attorney's fees and costs.

S.C. Code Ann. § 37-10-105(c) (emphasis added). Thus, in order for a trial court to exercise the remedial measures provided by Section 37-10-105(C), the trial court first must find that an agreement was unconscionable at the time it was made or was induced by unconscionable conduct ***"pursuant to Section 37-5-108."*** *See id.*

Section 37-5-108 provides certain remedies to consumers who have engaged in a "consumer credit transaction" that was unconscionable at the time it was made or was

induced by unconscionable conduct. S.C. Code Ann. § 37-5-108. However, Section 37-5-108 only "applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, consumer loans, and consumer rental-purchase agreements." *See id.* § 37-5-102. Further, a "consumer loan" specifically "does not include a loan secured by a first lien or equivalent security interest in real estate." *Id.* § 37-3-105. ***Therefore, as a matter of law, an agreement cannot be considered "unconscionable" or "induced by unconscionable conduct" pursuant to S.C. Code § 37-5-108 if it is a first mortgage real estate loan.***

Here, the Note was secured by the Mortgage, which constitutes a first lien on the Property. (Judgment, Finding of Fact Nos. 10-11; R. pp. 6-7, Nos. 10-11.) Therefore, as a matter of law, the loan cannot be considered "unconscionable" or "induced by unconscionable conduct" pursuant to S.C. Code § 37-5-108. *See* S.C. Code Ann. §§ 37-5-102 and 37-3-105. Accordingly, the Trial Court properly held that the terms of the Note and Mortgage were not unconscionable under S.C. Code Ann. §§ 37-10-105(C) and 37-5-108.

V. The Trial Court Did Not Find That Deutsche Bank Was A Holder In Due Course.

Under Chapter 3 of the Uniform Commercial Code, the right to enforce the obligation of a party to pay an instrument is subject to "a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought." S.C. Code Ann. § 36-3-305(a)(3). However, the right of a

"holder in due course" to enforce the obligation of a party to pay the instrument is ***not*** subject to a claim in recoupment stated in Subsection (a)(3). *Id.* § 36-3-305(b).

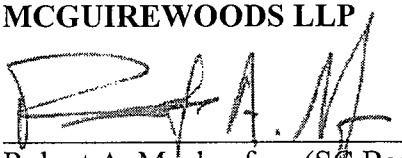
Here, Booms argues that the Trial Court erred in failing to find that Deutsche Bank was not a holder in due course because the Loan was in default when it was assigned to Deutsche Bank. (Appellant's Br. at 20.) In fact, however, the Trial Court ***did not hold*** that Deutsche Bank was a holder in due course. (*See* Judgment; R. pp. 5-13.) Although the Trial Court did not expressly find that Deutsche Bank was ***not*** a holder in due course, such a finding is implicit in the Trial Court's Judgment that granted a directed verdict in favor of Appellant on her claim under the attorney-preference statute and awarded a setoff of the foreclosure judgment in the maximum amount of $7,500 to reduce the amount owing on the Note. (Judgment ¶¶ 17, 25; R. p. 8, ¶ 17, and p. 9, ¶ 25.) If the Trial Court had, in fact, held that Deutsche Bank was a holder in due course, Deutsche Bank's right to enforce the obligation of Booms to pay the Note ***could not have been subject to this claim in recoupment*** to reduce the amount owing on the Note. *See* S.C. Code Ann. § 36-3-305(b). Because a finding that Deutsche Bank was ***not*** a holder in due course was implicit in the Trial Court's Judgment, Booms' argument that the Trial Court erred on this issue is without merit.

CONCLUSION

For the foregoing reasons, the judgment of the Trial Court should be affirmed in its entirety.

Respectfully submitted,

MCGUIREWOODS LLP



Robert A. Muckenfuss (SC Bar #13903)
J. Curtis Griner (admitted *pro hac vice*)
MCGUIREWOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
rmuckenfuss@mcguirewoods.com
cgriner@mcguirewoods.com

ATTORNEYS FOR RESPONDENT DEUTSCHE BANK

May 2, 2014.

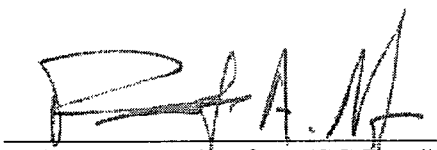
CERTIFICATE OF SERVICE

I hereby certify pursuant to Rule 211(b) that the foregoing ***FINAL BRIEF OF RESPONDENT DEUTSCHE BANK*** has been served upon the parties in this action by mailing a copy thereof, postage prepaid, to the following:

Charles R. Griffin, Jr.
The Griffin Firm, LLC
136 North Main Street
Anderson, South Carolina 29621

Attorney for Appellant Rhonda Booms

This the 2nd day of May, 2014.



Robert A. Muckenfuss (SC Bar #13903)