THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward G. Wellmaker, Circuit Court Judge

Case No. 2010-CP-23-1621
Appellate Case No. 2013-001441

Chase Home Finance, LLC

v.

Thomas R. Irby, Roy C. Irby a/k/a Roy C. Irby II and Bank of America, N.A.

Thomas R. Irby ..... Appellant,

Roy C. Irby a/k/a Roy C. Irby II. ..... Respondent,

Bank of America, N.A. ..... Respondent.

RESPONDENT BANK OF AMERICA, N.A.'S FINAL BRIEF

James Lynn Werner
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
PO Box 1509
Columbia, SC 29201
(803) 255-8000
jimwerner@parkerpoe.com
lawrencehershon@parkerpoe.com

Attorneys for Respondent Bank of America, N.A.

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STATEMENT OF THE CASE

On May 16, 2007, Thomas Irby and Roy Irby (uncle and nephew, respectively) executed a Bank of America Equity Maximizer Line of Credit providing a revolving line of credit in the principal amount of $69,000.00 (the "Equity Line") as a second mortgage on certain property. (Cross-Claim ¶ 5, Supp. R. p. 105; R. Irby Answer to Cross-Claim ¶ 6, Supp. R. p. 110; T. Irby Answer to Cross-Claim at p. 1, Supp R. p. 115) To secure payment under the Equity Line, on May 16, 2007, Thomas Irby and Roy Irby each executed a mortgage for certain real property in Greenville County located at 156 Pearson Road, Belton, South Carolina 29627. (Cross-Claim ¶ 6, Supp. R. p. 105; R. Irby Answer to Cross-Claim ¶ 7, Supp. R. p. 110; T. Irby Answer to Cross-Claim at p. 1, Supp R. p. 115)

Shortly after the opening of the Equity Line, the Irbys sought to refinance their first and second mortgages in August 2007 with M&T Bank. The Irbys' attorney, Gregg Jones, requested a payoff balance from Bank of America. (Tr. p. 82, R. p. 116) Bank of America responded with providing a payoff statement with a balance of $9,998.92. (Plaintiff's Trial Exhibit #12, R. p. 415; Testimony of G. Allred, Tr. p. 237-38, R. p. 272-73) However, between the date of the payoff request and the delivery of a check from Gregg Jones to be applied to the Bank of America Equity Line following closing of the

new mortgage (Plaintiff's Trial Exhibit #4, R. p. 393), Roy Irby continued to withdraw funds on the Equity Line. The Bank of America Equity Line was not closed following the refinance because (1) between the date of the requested payoff statement from Bank of America and the M&T loan closing, funds continued to be withdrawn on the Equity Line (Plaintiff's Trial Exhibit #5, R. p. 394; Testimony of G. Allred, p. 246, R. p. 280) and (2) Bank of America never received an executed instruction from Thomas or Roy Irby to close and block the account. (Testimony of G. Allred, Tr. p. 240-42, R. p. 274-76) The M&T loan was later assigned to Chase Home Finance (the "Chase Mortgage").

When Bank of America applied the purported payoff check on August 24, 2007, the payment of $9,998.92 left an open balance on the Equity Line in the amount of $10,700.73. (Plaintiff's Trial Exhibit #5, R. p. 394; Testimony of G. Allred, Tr. p. 246, R. p. 280) Bank of America never closed the account because a balance remained due on the account. (Testimony of G. Allred, Tr. p. 243, R. p. 277)

Thereafter, Roy Irby continued to withdraw funds on the Equity Line for approximately two and a half years, eventually accruing a balance in excess of the maximum amount of the Equity Line, $69,000. (Bank of America's Trial Exhibit #1, R. p. 429; Testimony of G. Allred, Tr. p. 251, R. p. 285) The terms of the Equity Line require that monthly payments be made; otherwise, a default has occurred. Thomas and Roy Irby defaulted, at the latest, by failing to make any payments following May 2010, and, per the terms of the Equity Line, were jointly and severally responsible for the open balance.

Thomas and Roy Irby defaulted on the Chase Mortgage as well. Chase instituted this foreclosure action. Thomas Irby asserted cross-claims against Bank of America, and

then Bank of America asserted cross-claims against Thomas Irby and Roy Irby.[1] While the claims by Thomas Irby against Bank of America were initially unclear, the claims were clarified as breach of contract, negligence, and breach of contract with fraudulent act. (Order, March 1, 2012, Supp. R. p. 13) The claim of breach of contract with fraudulent act (as well as any other claim for fraud) was dismissed by Order dated March 1, 2012.

On May 17, 2013, Bank of America filed a Motion for Judgment on the Pleadings as to Thomas Irby's claim for negligence. This motion was granted prior to the commencement of trial on May 29, 2013. (Tr. p. 59, R. p. 93) At the conclusion of the trial on May 30, 2013, as to the claim of breach of contract between Bank of America and Appellant, the jury awarded a verdict in favor of Bank of America, finding that Appellant breached the contract between the parties, and awarded Bank of America damages in the amount of $1,510.61. (R. p. 5) The jury also found that Roy Irby had breached his contract with Bank of America and awarded Bank of America a judgment against Roy Irby, in the amount of $21,508.46. (R. p. 6) The jury also made an award for Appellant against Roy Irby in the amount of $31,700.00. (R. p. 7)

ARGUMENT

I. STANDARD OF REVIEW

A. Judgment on the Pleadings

Judgment on the pleadings pursuant to Rule 12(c), SCRCP is appropriate where there is no issue of fact raised by the cross-claim that would entitle the claimant to judgment in the claimant's favor. Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d

[1] While Thomas Irby initially asserted counterclaims against Chase, he eventually agreed to dismiss those claims. The foreclosure was eventually bifurcated from the claims at issue herein, and the foreclosure was completed in 2012.

47, 49 (2009). In ruling on a party's Rule 12(c) motion, the Court must treat as true and admitted "'all properly pleaded factual allegations.'" The Housing Authority of the City of Columbia v. Cornerstone Housing, LLC, 356 S.C. 328, 334, 588 S.E.2d 617, 620 (Ct. App. 2003) (quoting FOC Lawshe, Ltd. P'Ship v. Int'l Paper Co., 352 S.C. 408, 413, 574 S.E.2d 228, 230 (Ct. App. 2002)). The Court is empowered to grant judgment on the pleadings where there is no issue of fact raised by the complaint that would entitle a plaintiff to judgment if resolved in his favor. Sapp v. Ford Motor Co., at 146, 687 S.E.2d at 49 (2009) (citing Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)).

When reviewing a motion for judgment on the pleadings, the court may not consider matters outside the pleadings. Lydia v. Horton, 343 S.C. 376, 380, 540 S.E.2d 102, 105 (Ct. App. 2001), rev'd on other grounds, 355 S.C. 36, 583 S.E.2d 705 (2003) (citing Firemen's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990)). However, the Court should construe the pleadings liberally so as to do substantial justice to the parties. Id. (citing Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991)).

An order granting a motion for judgment on the pleadings pursuant to Rule 12(c) is reviewed *de novo*. An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6) or Rule 12(c), SCRCP. See Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007) (discussing the standard of review of a motion to dismiss under Rule 12(b)(6), SCRCP); Hambrick v. GMAC Mortg. Corp., 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006) (discussing the standard of review of a motion for judgment on the pleadings). When considering a motion for judgment on the pleadings under Rule 12(c), SCRCP, the court must regard all

properly pleaded factual allegations as admitted. Falk v. Sadler, 341 S.C. 281, 286-87, 533 S.E.2d 350, 353 (Ct. App. 2000).

B. Jury Verdict

"In an action at law, on appeal of a case tried by a jury, the jurisdiction of [the appellate court] extends merely to the correction of errors of law, and a factual finding of the jury will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the jury's findings." Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 85, 221 S.E.2d 773, 775 (1976) (citing Odom v. Weathersbee, 225 S.C. 253, 81 S.E.2d 788 (1954)). An appellate court may reverse a trial court only where there is no evidence to support the ruling, as it is the duty of the courts to sustain verdicts when a logical reason for reconciling them can be found. Sapp v. Wheeler, 402 S.C. 502, 507, 741 S.E.2d 565, 568 (Ct. App. 2013); Daves v. Cleary, 355 S.C. 216, 234, 584 S.E.2d 423, 432 (Ct. App. 2003) ("A jury's verdict should be affirmed if it is possible to do so and carry into effect the jury's clear intention."). Jury verdicts should be upheld when it is possible to do so and carry out the clear intention of the jury. Johnson v. Parker, 279 S.C. 132, 135, 303 S.E.2d 95, 97 (1983); Daves v. Cleary, 355 S.C. 216, 234, 584 S.E.2d 423, 432 (Ct. App. 2003).

"On appeal from an action at law tried with or without a jury, the appellate court's standard of review extends only to the correction of errors of law." Frampton v. S.C. Dep't of Transp., 406 S.C. 377, 385, 752 S.E.2d 269, 273–74 (Ct. App. 2013) (citing Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 85–86, 221 S.E.2d 773, 775 (1976)).

II. DID THE CIRCUIT COURT APPROPRIATELY RULE IN DISMISSING APPELLANT'S CAUSE OF ACTION FOR NEGLIGENCE?

The Circuit Court did not cite to a specific reason for granting Bank of America's Motion for Judgment on the Pleadings and dismissing the cause of action for negligence. The Circuit Court considered, and could have granted the motion on each of the arguments below.

A. Appellant's Negligence Claim Failed as a Matter of Law

1. Determination of Duty Was a Question of Law for the Circuit Court

In order to establish a claim for negligence, a party must prove the following elements: (1) a duty of care owed by one party to the other; (2) a breach of that duty by negligent act or omission, and (3) damage proximately caused by the breach. Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001). An essential element in a cause of action for negligence is the existence of a legal duty of care owed by one party to the other. Id. In a negligence cause of action, the court must determine, as a matter of law, whether one party owed a duty of care to the other. Houck v. State Farm and Casualty Ins. Co., 366 S.C. 7, 11-12, 620 S.E. 326, 329 (2005) ("[t]he existence of a duty owed is a question of law for the courts") (citing Doe v. Batson, 345 S.C. 316, 548 S.E.2d 854 (2001) and Washington v. Lexington County Jail, 337 S.C. 400, 523 S.E.2d 204 (Ct. App. 1999)); Faile v. South Carolina Dept. of Juvenile Justice, 350 S.C. 315, 566 S.E.2d 536 (2002). If there is no duty, the defending party is entitled to judgment as a matter of law. Simmons v. Tuomey Regional Med. Ctr., 341 S.C. 32, 533 S.E.2d 312 (2000).

2. There Was No Duty in Tort from Bank of America to Appellant

To be clear, there are duties between the parties arising under contract. However, Bank of America does not owe a duty to Appellant separate and apart from any

contractual duties. As South Carolina case law makes clear, there is no general duty of care between a bank and its customer. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). In addition, "[t]he law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document." Citizens & S. Nat'l Bank of South Carolina v. Lanford, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994). For an extra-contractual duty to arise between Bank of America and Thomas Irby, it would have been necessary for Bank of America to have provided advice that Thomas Irby then relied upon to his detriment. There are no allegations of any provision of advice to Appellant related to any banking product, let alone the Equity Line.

With no allegation of any advice flowing from Bank of America to Appellant, and no allegation of any relationship between the parties other than the standard relationship between a mortgagee and mortgagor, no tort duty can exist under South Carolina law. If a party fails to show the defending party owed it a legal duty of care, it fails to prove actionable negligence. Doe v. Greenville County Sch. Dist., 375 S.C. 63, 72, 651 S.E.2d 305, 309 (2007).

Murray v. Bank of America, 354 S.C. 337, 580 S.E.2d 194 (Ct. App. 2003) , cited by Appellant, is not relevant to the case at bar. Murray involved a meeting between the plaintiff and bank which created an affirmative duty for the bank to act on plaintiff's behalf to prevent future fraud related to her bank account. Evidence was also presented in Murray that the bank violated its own procedures. In the case at bar, Appellant presented no evidence in opposition to the Motion for Judgment on the Pleadings of any affirmative act or representation by Bank of America whatsoever during the time period of Roy Irby's withdrawals on the account, let alone an affirmative act that could even

arguably give rise to a duty. Also, Appellant never provided any evidence to show that Bank of America violated any of its procedures.

At most, Appellant possessed a claim for breach of contractual duties by Bank of America, and the jury decided that no such breach occurred. There was never a duty created between Bank of America and Appellant outside of the contractual duties included in the underlying agreement. The rule of Schmauch applies, and, therefore, there can be no liability in negligence.

B. All Claims in the Pleadings Arise Out of the Contract

All of Thomas Irby's allegations relate to alleged performance and non-performance under a contract: the Equity Maximizer Agreement. Allegations concern such items as whether Bank of America should have closed the Equity Line upon request of Thomas Irby's attorney and whether Bank of America should have continued to disburse funds to Roy Irby. All of these allegations relate to whether Bank of America complied with the terms of a contract.

There is no recognized claim for "negligent breach" under South Carolina law absent a showing of a duty outside of the contract: a party either breaches a contract or does not do so. See Meddin v. Southern Ry.-Carolina Division, 218 S.C. 155, 165, 62 S.E.2d 109, 112 (1950) ("[I]f the cause of action is predicated on the alleged breach, or even negligent breach, of a contract between parties, an action in tort will not lie."). The allegations of Appellant's cross-claim all relate to the contract between the parties, the Equity Maximizer Agreement. In addition, mere breach of contract is not actionable as a tort in South Carolina, no matter what the alleged intent of the breaching party was. Troutman v. Facetglas, Inc., 281 S.C. 598, 601, 316 S.E.2d 424, 426 (Ct. App. 1984). Because there is no allegation of an independent tort unrelated to the contract at issue

(absent the conclusory claim of "negligence" by Appellant), all the claims arise out of the contract, and there is no duty outside of contractual duties, a claim for negligence cannot lie and the cause of action for negligence was properly dismissed.

C. The Economic Loss Rule Bars a Claim in Negligence

Even if Bank of America did owe a duty, which it denies, the claims asserted by Thomas Irby arise out of a contract (the Equity Line) and not in tort. Damages arising from a contract can only be of an economic nature. Any claim of negligence for purely economic loss is barred by the economic loss rule. "[T]he question of whether [a party] may maintain an action in tort for purely economic loss turns on the determination of the source of the duty [a party] claims the [other party] owed. A breach of a duty which arises under the provisions of a contract between the parties must be redressed under contract, and a tort action will not lie." Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 320 S.C. 49, 54-55, 463 S.E.2d 85, 88 (1995). The economic loss doctrine bars the negligence claim.

"In most instances, a negligence action will not lie when the parties are in privity of contract." Id. at 54, 463 S.E.2d 85, 88. The exception to this rule is when a "special relationship" between the parties not arising in contract exists, creating a duty of care outside of the contract. Id.

No such exception exists for the matter at bar. Aside from the fact that there is no general duty between a bank and its customer (See Regions Bank v. Schmauch, 354 S.C. 648, 668-670, 582 S.E.2d 432, 443-45 (Ct. App. 2003)), Thomas Irby made no allegations in the pleadings that show any acts or circumstances that establish a "special relationship" between the parties. Indeed, no fiduciary, or special, relationship normally

exists between a bank and its customer. See Burwell v. South Carolina National Bank, 288 S.C. 34, 41, 340 S.E.2d 786, 790 (1986).

Therefore, pursuant to the economic loss rule, the cause of action for negligence was properly dismissed.

D. Conclusion

For each of the reasons stated above, the Circuit Court properly dismissed the cause of action for negligence prior to trial. The Circuit Court's decision is supported by the law and record, and Appellant presents no issue that calls for the Court of Appeals to overturn the Circuit Court's decision.

III. DID THE JURY ERR IN ITS VERDICTS AS THEY RELATE TO APPELLANT AND RESPONDENT BANK OF AMERICA?

Appellant provides no adequate reason for the Court of Appeals to disturb the jury's award. Appellant attempts to raise a multitude of arguments concerning his interpretation of the facts, which either (1) were presented to the jury, for it to make a factual determination of whether a breach of the underlying document had occurred, or (2) presents arguments and interpretations of evidence that were never raised at trial.

At trial, Appellant and Bank of America each presented evidence that the other had breached the underlying contract. After listening to the presentation of facts and then listening to the Circuit Court's jury charges for the jury to apply those facts to the law, the jury made the determination that the Appellant had breached his contract with Bank of America. The record provides ample evidence that Appellant breached the contract at issue: Appellant signed the agreement; the agreement clearly labels the events considered to be a default (and therefore a breach); Bank of America presented evidence that the signatories to the agreement failed to make payments; Bank of America presented evidence that Appellant, as co-signer of the agreement, was contractually responsible for

such payments; and Bank of America presented evidence of how it had been damaged by Appellant's breach.

A. The Damages Award Was Consistent

Bank of America presented evidence that it had been damaged by Thomas Irby and Roy Irby in the amount of approximately $23,881.01. (Tr. p. 252-53, R. p. 286-87) The jury determined that Thomas Irby and Roy Irby had breached the contract, and that as to Thomas Irby, he had damaged Bank of America in the amount of $1,510.61. An appellate court should normally not invade the calculation of damages, which is within the province of the jury. Todd v. Joyner, 385 S.C. 509, 517-18, 68 S.E.2d 613, 618 (Ct. App. 2008); Steele v. Dillard, 327 S.C. 340, 345, 486 S.E.2d 278, 281 (Ct. App. 1997) ("the jury's verdict was neither so grossly inadequate that it shows the jury disregarded the facts or the trial court's instructions nor was the verdict so shockingly disproportionate compared to the injuries [plaintiff] sustained as to show that some influence outside the evidence swayed the jury's decision.").

If the jury had determined that Thomas Irby had breached the agreement, but that Roy Irby had not, there would be an inconsistent verdict. That the jury found that both Thomas Irby and Roy Irby breached the contract with Bank of America is a consistent verdict. If the fact that the award against Thomas Irby is less than the award against Roy Irby is erroneous at all (which Bank of America has not appealed), it is erroneous in Thomas Irby's favor. As both Roy Irby and Thomas Irby were found to have breached the contract, such a determination by the jury is consistent, and, therefore, the jury's verdict should not be disturbed.

B. Whether the Account Should Have Closed Was a Question of Fact

As argued by Appellant, the jury heard evidence from both Appellant and Bank of America as to whether the instructions provided by Appellant's attorney to close the account at issue in August 2007 were sufficient. The Circuit Court considered this an issue of fact, and the issue of whether the instructions provided on behalf of Appellant were sufficient to formulate which, if any, party had breached the contract was submitted to the jury. This matter was a clear issue of fact, and should not be reconsidered on appeal. Appellant points to no legal error for submission of this issue to the jury, and the jury's finding on the breach of contract claims has a clear basis of support in the evidence presented at trial.

C. Objections to Testimony Were Not Preserved

Throughout his brief, Appellant raises arguments that certain testimony by Bank of America is inaccurate, unsupported, or otherwise objectionable. If such testimony was inaccurate or unsupported, this was an issue for the jury to weigh and compare against Appellant's testimony. If Appellant is attempting to object to the submission of certain testimony to the jury, Appellant did not preserve such issues for appeal, as no objection was made at the time of entry of the testimony. See Holy Loch Distrib., Inc. v. Hitchcock, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000) (to preserve issues for appellate review, issues must have been raised to and ruled upon by trial court).

D. Conclusion

The awards by the jury as they relate to Appellant and Bank of America are reconcilable and consistent. There are ample reasons in the record that the jury could have looked at to conclude that the Appellant breached his contract with Bank of

America. The important consistency is that both Thomas Irby and Roy Irby were found to have breached the contract with Bank of America.[2]

A jury verdict should be upheld unless the verdict is so confused that the jury's intent is unclear. Johnson v. Parker, 279 S.C. 132, 135, 303 S.E.2d 95, 97 (1983). The jury verdict in the case at bar is reconcilable, and the Court of Appeals must give deference to the jury's decision. Appellant can point to no error of law that could justify a decision to overturn the jury's final determination.

IV. APPELLANT'S REMAINING ARGUMENTS ARE EITHER NOT PRESERVED FOR APPEAL OR NOT RELEVANT, AND SHOULD NOT BE CONSIDERED

Appellant raises myriad factual and legal arguments that were not in the pleadings or were never presented prior to, at, or following trial. Appellant had a full and fair opportunity to present his evidence at trial, and this appeal must not be treated as a second bite at the apple for Appellant. For example, Appellant raises the issue of damages his wife has faced, but she is not a party to this litigation. Appellant also argues that he has suffered damage to his credit, but presented no evidence at trial as to what the damage to his credit was or how the damage could be quantified. Issues such as these are not properly before the Court.

Other issues are simply not relevant to this appeal. Again, as an example, Appellant believes that he has been damaged for the costs of his time and the stress he faced in pursuing the litigation with Bank of America. Such matters are not compensable in a breach of contract action; alternatively, attorneys' fees and costs are normally subject

[2] If anything, it is Bank of America that could argue that the judgments it received in its favor are inconsistent, and that the judgment amount against Thomas Irby should be increased to the same amount as the judgment Bank of America obtained against Roy Irby. Bank of America did not raise such an argument after the trial, and has not appealed on any issue.

to being raised on post-trial motion, which they were not. Appellant also wants consideration for punitive damages; such damages were not sought at trial, and are not relevant to a contract claim. Appellant also makes statement after statement of supposed fact for items that were not testified to at trial, and for which no trial evidence was presented. Such supposed "facts" that were not testified to at trial and only exist in Appellant's brief (outside of the trial record) must be ignored by the Court.

In addition, Appellant does not cite to or appeal the Order of March 2, 2012, in its Notice of Appeal, which disposed of all claims related to fraud against Bank of America. Therefore, any arguments to resurrect any fraud-related causes of action are not before the Court of Appeals, and should be disregarded.

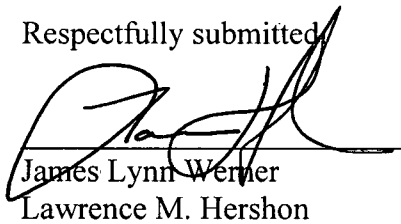
"To preserve an issue for appellate review, the issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court." Doe v. Doe, 370 S.C. 206, 212, 634 S.E.2d 51, 54 (Ct. App. 2006) (citing Floyd v. Floyd, 365 S.C. 56, 73 615 S.E.2d 465, 474 (Ct. App. 2005)). "Error preservation requirements are intended to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Id. (quoting Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000)). "Without an initial ruling by the trial court, a reviewing court simply is not able to evaluate whether the trial court committed error." Id. (citing Staubes, 339 S.C. at 412, 529 S.E.2d at 546). Therefore, when an appellant neither raises an issue at trial nor through a Rule 59(e), SCRCP, motion, the issue is not preserved for appellate review." Id. at 212, 634 S.E.2d at 54–55 (citing Washington v. Washington, 308 S.C. 549, 551, 419 S.E.2d 779, 781 (1992)). Therefore, any argument that the Order granting partial summary judgment was in error has not been preserved for appeal.

Any arguments by Appellant that do not fall into Issues on Appeal 1 or 2 stated herein should not be considered or ruled upon by the Court. Pursuant to the precedent cited above, these issues were not preserved for appeal, and can rightfully be disregarded.

CONCLUSION

In addition to the arguments stated herein, Bank of America further requests that the Court affirm the judgment entered in this case on any other ground appearing in the record, pursuant to Rule 220(c), SCACR. For the reasons stated above, there is no reversible error by the Circuit Court, and the judgments below should be affirmed.

Respectfully submitted,



James Lynn Werner
Lawrence M. Hershon
PARKER POE ADAMS & BERNSTEIN LLP
1201 Main Street, Suite 1450
Columbia, South Carolina 29201
(803) 255-8000
jimwerner@parkerpoe.com
lawrencehershon@parkerpoe.com

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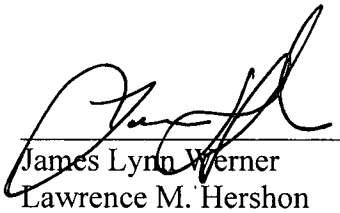
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Brief of Respondent Bank of America, N.A. complies with Rule 211(b) SCACR.



James Lynn Werner
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017
jimwerner@parkerpoe.com
lawrencehershon@parkerpoe.com

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PROOF OF SERVICE

The undersigned hereby certifies that on August 20, 2014, he served the foregoing **RESPONDENT BANK OF AMERICA, N.A.'S FINAL BRIEF** and **CERTIFICATE OF COUNSEL** on all *pro se* parties and counsel of record by placing a copy of it in the United States Mail, first class postage prepaid, addressed as follows:

Mr. Thomas R. Irby
Post Office Box 827
Pelzer, SC 29669

Jerry A. Gaines, Esq.
The Odom Law Firm
Post Office Box 5504
Spartanburg, SC 29304

James Lynn Werner
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017
jimwerner@parkerpoe.com
lawrencehershon@parkkerpoe.com

Attorneys for Respondent Bank of America, N.A.

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