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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas**

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-1621

J. P. Morgan Chase Bank NA, Plaintiff

V

**Thomas R. Irby, Roy C. Irby a.k.a. Roy C. Irby II,
Bank of America NA, and Charles H. Knight LLC Defendants**

**Of Whom Roy C. Irby a.k.a. Roy C. Irby II and
Bank of America NA are Respondents**

And Thomas R. Irby is the Appellant

Appellate Case No. 2013-001441

SUPPLEMENTAL RECORD ON APPEAL

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Pelzer, SC 29669
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Appellant pro se**

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James Lynn Werner
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Attorneys for Respondent
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Attorney for Respondent
Roy C. Irby II**

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2301621

SEP -3 PM 4:08

Chase Home Finance Llc vs. Thomas R Irby

CHECK ONE:

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

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order; ☐ Statement of Judgment by the Court:

Consent request to withdraw jury trial request as to the foreclosure portion of the lawsuit is granted. Defendant Bank of America's Motion to Dismiss Thomas Irby's Cross-claim is respectfully denied with out prejudice to a later motion after discovery. Cross-claims are severed from the foreclosure portion of the case. Gregg Jones' Motion to Quash Subpoena is withdrawn. Foreclosure portion of case is hereby referred to the Master-In-Equity.

Dated at Greenville, South Carolina, this 12/10

Court Reporter:


PRESIDING JUDGE - ROBIN B. STILWELL

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

Angelia J Grant Scott Law Firm, Pa P O Box 2065
Columbia, SC 29201

Thomas R Irby 160 Pearson Rd. Belton, SC 29627
Roy C Irby 8008 Highway 100 Nashville, TN 37221
Roy C Irby II 8008 Highway 100 Nashville, TN 37221
L Dwight Floyd, Lawrence M Hershon Parker Poe Adams
& Bernstein, LLP 1201 Main Street, Suite 1450 Columbia, SC
292021509
Phillip Temple

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2301621

Chase Home Finance Llc vs. Thomas R Irby

FILED - CLERK OF COURT
GREENVILLE COUNTY
PAUL B. WICKENSIMER
2010 SEP 23 AM 10:57

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 a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

The previous Order dated September 1, 2010, is hereby vacated and replaced by this Order.

parties were heard as to Plaintiff's Motion to Dismiss Counterclaims and have agreed to a consent dismissal of the counterclaims against the Plaintiff. Consent request to withdraw jury trial request as to the foreclosure portion of the lawsuit is granted. Defendant Bank of America's Motion to Dismiss Thomas Irby's Cross-claim is respectfully denied without prejudice to a later motion after discovery. Cross-claims are severed from the foreclosure portion of the case. Gregg Jones's Motion to quash Subpoena is withdrawn. Foreclosure portion of case is hereby referred to the Master-in-Equity

Dated at Greenville, South Carolina, this 23rd of September, 2010.

Court Reporter:


PRESIDING JUDGE - ROBIN B. STILWELL

This judgment was entered on the 23rd of Sept 2010, and a copy mailed first class this 23rd of Sept 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Angelia J Grant Scott Law Firm, Pa P O Box 2065
Columbia, SC 29201

Thomas R Irby 160 Pearson Rd. Belton, SC 29627
Roy C Irby 8008 Highway 100 Nashville, TN 37221
Roy C Irby II 8008 Highway 100 Nashville, TN 37221
L Dwight Floyd, Lawrence M Hershon Parker Poe Adams
& Bernstein, LLP 1201 Main Street, Suite 1450 Columbia, SC
292021509

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-23-1621

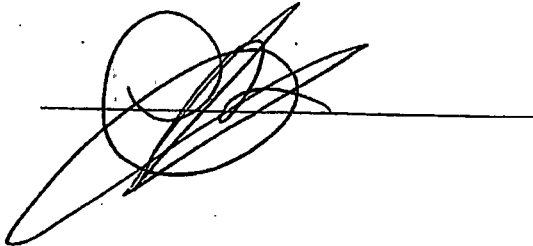
) 21

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
NOV 23 2010

ORDER

FOR GOOD CAUSE SHOWN, pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, this Court grants leave for Defendant Bank of America, N.A. to file an Amended Answer to Thomas R. Irby's Cross Complaint in the form attached to Bank of America, N.A.'s motion.

IT IS SO ORDERED.

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'B' shape with a horizontal line crossing through it, positioned over a horizontal line.

Columbia, South Carolina
11/22, 2010

PPAB 1746819v1

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NOV 23 2010

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2301621

2010 NOV 23 P 3:21

Chase Home Finance Llc vs. Thomas R Irby

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 23rd day of November, 2010, and a copy mailed first class this 23rd day of November, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Angella J Grant Scott Law Firm, Pa P O Box 2065
Columbai, SC 29201

Thomas R Irby 160 Pearson Rd. Belton, SC 29627
Roy C Irby 8008 Highway 100 Nashville, TN 37221
L Dwight Floyd Parker Poe Adams & Bernstein, Llp
1201 Main Street, Suite 1450 Columbia, SC
292021509
Phillip James Temple Temple Mann Briggs & Hill
819 East North Street Greenville, SC 296013101

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP2301621

2011 JUL -1 A 11: 11

Chase Home Finance LLC vs. Thomas R Irby

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 1 2011 WICKENSIMF

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

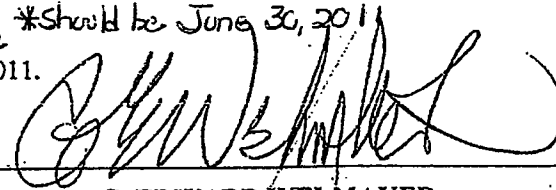
☐ See attached order;

☐ Statement of Judgment by the Court:

This matter comes before me on multiple motions from all Defendants arising out of their cross complaints. Defendant Thomas Irby brought a motion for a hearing and discovery conference arising from his cross complaint. This motion is resolved by the Court's order that discovery will be completed ninety days from today's date. Defendant Bank of America, N.A.'s motion to strike Defendant Thomas R. Irby's amendment to his previously filed cross complaint is hereby granted for failure to comply with the "leave of court requirement" as contained in SCRPC 15(a). It should be noted in conjunction with this ruling that Defendant Thomas Irby stated in open court that he would withdraw his cross complaint. Defendant Roy C. Irby's motion to amend his cross complaint is granted. Lastly, a previously signed order of reference pertaining to the underlying foreclosure action in this case was signed by the Honorable Robin B. Stilwell on September 22, 2010. The order of reference has not been acted upon and will be scheduled for expedited resolution of the matters set forth in the September 22, 2010 order. IT IS SO ORDERED.

Dated at Greenville, South Carolina, this the 30th day of July, 2011.

Court Reporter:


PRESIDING JUDGE - G. EDWARD WELMAKER

This judgment was entered on the 7/11/11 and a copy mailed first class this 7/11/11 to attorneys of record or to parties (when appearing pro se) as follows:

Angelia J Grant Scott Law Firm, Pa P O Box 2065
Columbi, SC 29201
Knox L. Haynsworth III Brown Massey Evans Mcleod &
Haynsworth P.O. Box 2464 Greenville, SC 29602

Thomas R Irby 160 Pearson Rd. Belton, SC 29627
Roy C Irby P.O. Box 196 Williamston, SC 29697
Roy C Irby II P.O. Box 196 Williamston, SC 29697
L Dwight Floyd Parker Poe Adams & Bernstein, LLP 1201
Main Street, Suite 1450 Columbia, SC 292021509

CPFORM4M
SCCA SCRPC Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

Plaintiff,

vs.

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

Defendants.

FILED-CLERK OF COURT
GREENVILLE
PAUL B. WICKENSIMR

IN THE COURT OF COMMON PLEAS

2011 AUG 26 P 2:47 Case No.: 2010-CP-23-1621

ORDER

ENTERED COMPUTER

This matter came before the undersigned for hearing on August 17, 2011, in Greenville, South Carolina, on multiple motions filed by Defendants Thomas R. Irby and Roy C. Irby. After careful consideration of the arguments of the parties and the record in this matter, the Court rules as follows.

1. Thomas R. Irby's Motion for Leave to Amend Cross-Claim

The motion is granted in part and denied in part. Thomas R. Irby failed to properly serve a proposed Amended Cross-Claim against any party. However, Thomas R. Irby presented a proposed Amended Cross-Claim to the Court and parties at the hearing, and each party waived proper service thereof. The additional claims asserted against Bank of America, N.A. ("Bank of America") in the proposed Amended Cross-Claim are (1) Negligence, (2) Breach of Contract with Fraudulent Act, (3) Breach of Trust with Fraudulent Act, and (4) Violation and Breach of Duty of Trust.

The request for leave to add the cause of action for Breach of Trust with Fraudulent Act is denied because this is a cause of action based on the criminal code and is therefore not appropriate in a civil action. Any claims by Thomas R. Irby based on the criminal code are barred. The request for leave to add the cause of action for Violation and Breach of Duty of Trust is also denied because this is not a cognizable claim under South Carolina law.

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Exhibit A

attempt to amend and add these two causes of action is futile and the request for leave as to these two causes of action is denied.

The request for leave to add the causes of action against Bank of America for Negligence and Breach of Contract with Fraudulent Act and against Roy Irby is granted, and Thomas R. Irby may file the Proposed Amended Complaint in the form presented to the Court with the causes of action for Breach of Trust with Fraudulent Act and Violation and Breach of Duty of Trust against Bank of America removed.

2. Thomas R. Irby's Motion to Compel Discovery from Roy Irby

The motion is granted. Thomas Irby is provided ten (10) days from the date of this Order to file and serve Roy Irby with revised written discovery requests. Following service, Roy C. Irby has thirty (30) days to comply and respond to the written discovery requests. If he fails to respond, all claims by Roy C. Irby has made against Thomas R. Irby shall be barred.

3. Thomas R. Irby's Motion to Bifurcate

The motion is denied. Thomas R. Irby has moved for the trial against Bank of America to be tried separately from his claims against Roy C. Irby. The motion is denied because the causes of action involving Bank of America, Thomas R. Irby, and Roy C. Irby arise out of the same operative facts and therefore the causes of action are not proper for bifurcation. Furthermore, bifurcation could allow for inconsistent results and would be a burden upon the judiciary.

4. Roy C. Irby's Motion

The motion is granted in part. (A) Chase Home Finance, LLC ("Chase") will provide a copy of its title policy to Roy C. Irby within twenty-one (21) days from the date of this Order. (B) Chase and Bank of America will each provide Reinstatement Letters to Roy C. Irby within twenty-one (21) days of the date of this Order. (C) Chase will produce any correspondence as to

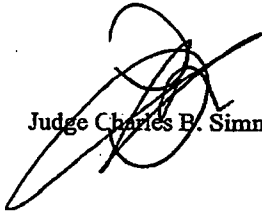
EXHIBIT A

the assignment of the mortgage to it within twenty-one (21) days of the date of this Order. Any remaining requests by Roy C. Irby are denied or withdrawn.

5. Other Motions and Matter Information

Any other pending motions, including Thomas R. Irby's Motion to Compel against Bank of America, are withdrawn or denied. The Court further orders that it will order mandatory mediation for all the parties to this action at an undetermined date no less than sixty (60) days from the date of this Order.

AND IT IS SO ORDERED.


Judge Charles B. Simmons, Jr.

Greenville, South Carolina

August 24, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2011 NOV 16 P 3:32 CASE NO. 2010-CP-23-1621

Chase Home Finance, LLC,

PLAINTIFF,

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
NOV 16 2011

ORDER

VS.

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

DEFENDANTS.

ENTERED COMPUTER

A hearing in this matter was held on November 10, 2011, before the undersigned, in Greenville County, South Carolina. Erica G. Lybrand appeared on behalf of the Plaintiff, Chase Home Finance, LLC; Lawrence M. Hershon appeared on behalf of Defendant Bank of America; David C. Alford appeared on behalf of Defendant Thomas R. Irby; Roy C. Irby II appeared on behalf of himself; Gregg Jones appeared on behalf of himself; and Diane Andrews appeared on behalf of herself.

After careful consideration of the arguments and record in this matter, the Court rules as follows:

1. Gregg Jones' Motion to Quash Subpoena of Roy C. Irby a/k/a Roy C. Irby II. ^{true and exact copies} ^{ces}
Granted in part. Gregg Jones shall produce to Roy C. Irby, the original title searches including, but not limited to, title policies, abstracts, commitments, and closing protection letters on all title searches performed by his office within 14 days of the date of this Order. In addition, Gregg Jones shall produce the original or true copy of the deed requested within 14 days of the date of this Order. All other requests are denied or withdrawn.

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(B)

2. Plaintiff's Motion to Strike "Amended Cross Complaint and Action" of Roy C. Irby II and Impose Sanctions.

Granted in part. Plaintiff's Motion to Strike Defendant Roy C. Irby a/k/a Roy C. Irby II's Amended Cross Complaint and Action is granted. Plaintiff's Motion to Impose Sanctions will be held in abeyance.

3. Plaintiff's Motion to Quash Subpoena of Roy C. Irby a/k/a Roy C. Irby II.

Granted in part. Plaintiff shall produce to Roy C. Irby any additional documents in its possession relating to any title search performed by Gregg Jones within 14 days of the date of this Order. All other requests are denied or withdrawn.

4. Plaintiff's Motion to Bifurcate.

During the hearing, counsel for Plaintiff moved to Bifurcate Plaintiff's foreclosure from any remaining claims between Bank of America, Roy C. Irby a/k/a Roy C. Irby II, and Thomas R. Irby. Counsel for Bank of America objected to this Motion. The Court holds this Motion in abeyance. Plaintiff shall provide David C. Alford, attorney for Defendant Thomas R. Irby, a copy of the Subordination of Mortgage within 14 days of the date of this Order. Additionally, Plaintiff shall re-serve Defendant Roy C. Irby a/k/a Roy C. Irby II with the Notice of Mortgagor's Right to Foreclosure Intervention at his new address. A ruling on this motion will be made once the Court receives a written statement from each party as to the procedural status of this case and possible resolution recommendations.

5. Written status reports and scheduling of status conference.

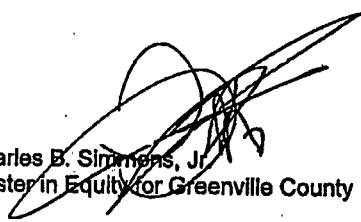
All parties shall submit a written statement to the Court regarding their impressions of the procedural status of this case and any recommendations for resolution. This shall be received by the Court within 30 days of the date of this Order.

A status conference will be scheduled after 30 days to discuss resolution of this matter.

6. Diane Andrews dismissed.

As Roy C. Irby II has stated that he has no claims or causes of action against Diane Andrews, Diane Andrews is dismissed as party to this action.

AND IT IS SO ORDERED.



Charles B. Simmons, Jr.
Master in Equity for Greenville County

November 15 2011

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2301621

2011 NOV 16 P 3:33
Chase Home Finance LLC vs. Thomas R Irby

CHECK ONE:

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- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order on multiple Motions in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to vritchie@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 16th day of November, 2011.

Court Reporter:

PRESIDING JUDGE -

Angelia J Grant Scott Law Firm, Pa P O Box 2065
Columbai, SC 29201
Knox L. Haynsworth III Brown Massey Evans
McLeod & Haynsworth P.O. Box 2464 Greenville, SC
29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

Thomas R Irby 160 Pearson Rd. Belton, SC 29627
Roy C Irby P.O. Box 196 Williamston, SC 29697
L Dwight Floyd Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450 Columbia, SC
292021509
Lawrence M Hershon Parker Poe Adams &
Bernstein LLP P O Box 1509 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

C/A NO: 2010-CP-23-1621

Chase Home Finance)

Plaintiff)

Order

as to various motions

v.)

Thomas R Irby, Bank of America
NA, et al

Defendants

FILED CLERK OF COURT
GREENVILLE CO. S.C.
2012 MAR -2 P 3:33
CIVIL DIVISION

On February 8, 2012, a hearing disposed of several motions. Present at the hearing was Erica Lybrand for Plaintiff Chase Home Finance, Lawrence Hershon for Bank of America NA, and David C. Alford for Thomas Irby.

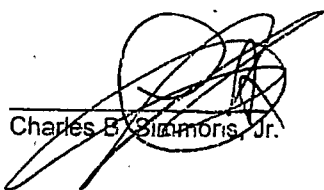
First, Bank of America NA (BoA) filed its Motion for Summary Judgment on its cross claims by and between it and Thomas Irby. In support of its Motion, BOA submitted its Memorandum with various Exhibits. Thomas Irby submitted his Affidavit. Following argument, and review of the exhibits, BoA's Motions are denied as to its claims against Thomas Irby, and denied as to Thomas Irby's claims against BoA for breach of contract and negligence. Thomas Irby's claim as to breach of contract by fraudulent act and any other claim of fraud against BoA is dismissed. There is a question of fact as to the written demand by Thomas Irby to close the BoA account, and BoA's subsequent conduct relating to the collection and credit reporting of the account.

Second, there was a pending Motion to Bifurcate the foreclosure action by Chase from the underlying cross claims between the various Defendants. This Motion is granted. Chase is to proceed with its foreclosure action, to include sale of the property. However, before a deficiency judgment can be entered following the foreclosure action, if any, the cross claims between the Defendants must be resolved and a hearing may be held subsequent to the resolution to determine whether such a judgment may be entered. To the extent that any Motion or challenge to the sale or potential deficiency is to be raised by any Defendant, Defendants shall raise such matters following a determination of the resulting deficiency damage, if any.

Third, as to the cross claims between the various Defendants, Defendant Thomas Irby is granted leave to file discovery requests related to the negotiation concerning the subordination agreement entered in to by BoA. The matter of cross claims between the Defendants will be reviewed in 45 days for possible requirement for mediation as between the parties, with subsequent scheduling for trial. Counsel for Defendant Thomas Irby noted on the record that Thomas Irby requested a jury trial as to his claims.

Date:

3/1/12


Charles B. Simmons, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

JPMorgan Chase Bank, National Association

PLAINTIFF,

VS.

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

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

MASTER IN EQUITY'S
ORDER AND JUDGMENT
OF FORECLOSURE AND SALE

DEFICIENCY DEMANDED AGAINST
THOMAS R. IRBY

Non-Eligible under the Home Affordable
Modification Program

NOTICE: The original of this document was filed in
the office of the Clerk of Court for Greenville County:

File Number 100268.00054

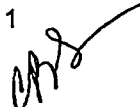
TO: Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
Elizabeth A. Blackwell, SC Bar #78756
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

Thomas R. Irby
c/o David C. Alford, Esq.
P.O. Box 6326
Spartanburg, SC 29304

Roy C. Irby a/k/a Roy C. Irby, II
PO Box 196
Williamston, SC 29697

Bank of America, N.A.
c/o Lawrence M. Hershon, Esq.
Parker Poe Adams & Bernstein LLP
P.O. Box 1509
Columbia, SC 29202

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINGER
2012 JUL -2 10 30 AM

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Pursuant to Circuit Court Rule 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held attended by the attorneys of record. A Record of Hearing was presented, which is herewith reported, and from the Record of Hearing and the documents and records received into evidence, I find, conclude and order as follows:

FINDINGS

This Court has jurisdiction over the subject matter of this action and the parties hereto and it is the proper forum for the litigation of this matter.

1. The Court has determined that the Plaintiff has complied with the Administrative Order of the Supreme Court dated May 2, 2011 (2011-05-02-01).

2. Based upon the facts and/or evidence presented, the Court has determined that this loan is not eligible under the Home Affordable Modification Program.

3. The Lis Pendens was filed on March 1, 2010; amended March 10, 2010.

4. The Summons and Complaint were filed on March 1, 2010; amended March 10, 2010.

5. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.

6. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing of this matter.

7. According to the affidavit filed herein, any Defendant in default is not in the Military Service of the United States of America, as contemplated under The Servicemembers' Civil Relief Act of 2003 and any amendments thereto.

8. For value received, Defendant(s), Thomas R. Irby, made, executed and delivered a Note dated August 17, 2007, promising thereby to pay to the order of M&T Bank the sum of 95000.00 with interest at the rate of 6.0% per annum. Other terms and conditions are stated in the Note, which is of record herein.

9. To better secure the payment of the Note described above, the said Defendant(s), Thomas R. Irby and Roy C. Irby, made, executed and delivered to Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank a Mortgage in writing, dated August 17, 2007, covering real property in Greenville County, which is the same as that described in the Complaint. The Mortgage was filed on August 28, 2007, and is of record in the Office of the Clerk of Court for Greenville County in Book 4840, at Page 234. The Mortgage evidences and secures the repayment of money advanced by the mortgagee to, or on behalf of, the mortgagor(s). The Court finds also that this mortgage constitutes a first lien on the mortgaged premises.

10. Subsequently, the Note and Mortgage were assigned to Chase Home Finance LLC by assignment instrument dated March 8, 2010 and recorded March 16, 2010 in Book 5073 at Page 1350. Thereafter, Chase Home Finance LLC merged with JPMorgan Chase Bank, National Association with JPMorgan Chase Bank, National Association being the surviving entity.

11. That the Court finds that the Plaintiff and/or its counsel has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defense or objections as to the servicing of any applicable banking or consumer laws by the Plaintiff and/or its counsel.

12. Payment due on the note has not been made as provided for in the note, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the note and mortgage in the hands of the attorney herein for collection.

13. With respect to attorney fees and in view of the potential financial liabilities and likely continuing professional obligations inherent in judicially prosecuting a real property mortgage credit matter, the attendant professional duties and responsibilities, and the size of the mortgage debt and consistent with similar case proceedings before this Honorable Court, we, based on such past judicial experiences, respectfully submit to this Court for its

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consideration and approval a reasonable attorney's fee for this matter in the amount of \$6,800.00, which is the customary fee charged in this locality for similar services. More particularly and consistent with the laws of this state in the awarding of attorney fees, this trial court must consider only six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Taylor v. Medenica, 331 S.C. 575, 503 S.E.2d 458 (1998); Baron Data Systems v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989). The attorney fee award by this Court is also consistent with and pursuant to opinions and orders of this jurisdiction wherein our state's appellate courts have repeatedly held that any contract for attorney fees that may exist or exists between the lawyer and the client (in addition to not being one of the six (6) fee review factors) is specifically not binding on the trial court in its determination of the reasonableness of the attorney fee. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750(1997); Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995); and Williamson v. Middleton, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007). Plaintiff's Counsel has likewise reported to this Court that it is billing the Plaintiff a minimum of \$6,800.00 for all uncontested and routine matters plus costs as well as additional fees/costs for any services outside of the contemplated routine and uncomplicated services (relating to contested, complex, or difficult matters) for a case of this type. Total representation of the Plaintiff's interests in this matter have been undertaken (including among many duties the researching of the referral file to serving as custodian of the salient loan file documents to the filing of all pleadings and legally required documents with the court) by the Scott Law Firm, P.A. As to the Scott Law Firm, P.A. and its professional standing, it is noted that counsel for the Plaintiff is regionally and nationally recognized for its professional expertise in mortgage default credit matters as evidenced by its listing in BEST LAWYERS IN AMERICA™ and Martindale-Hubbell Registry of Pre-Eminent Lawyers™. This Court has specifically reviewed and satisfied itself with all six (6) factors to be considered in awarding reasonable attorneys fees in this matter.

14. On receiving testimony and other evidence during this hearing, I find that the Scott Law Firm, P.A., was engaged by the Plaintiff to foreclose the mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the accrual of interest and related adverse economic conditions such as depreciation or

possible damage to the collateralized property. I find that Plaintiff's counsel has achieved a beneficial result with its prompt foreclosure of the subject mortgage.

Upon receipt of the case file, the title was examined and studied to identify all parties having or claiming an interest in the subject real estate as well as being researched for salient legal questions and issues. As to time and labor, I find that various attorneys as well as experienced paralegal staff have been responsible for (and expended extensive professional time of 10 hours as to the basic services) in the preparation of the following pleadings and other legally required services and documents:

1. Lis Pendens and any amendment thereto
2. Summons and Complaint and any amendment thereto
3. Affidavits and proposed Order of Publication
4. Affidavit of Default
5. Consent(s) to Order of Reference
6. Order of Reference
7. Notice of Hearing
8. Proposed Judgment of Foreclosure and Sale
9. Record of Hearing
10. Notice of Sale
11. Other documents as applicable pertaining to service and finalization of the action.

Counsel may also prepare for the Plaintiff the Statutory Foreclosure Deed and any other documents necessary in this particular action as ordered or authorized by this Court. I find and note the nature, extent and difficulty of the services provided.

Although I have heretofore given consideration to all six (6) factors in the awarding of attorney fees and costs herein, jurisdiction over the fee award shall be reserved as granted in the Order of Reference with the right to re-visit the question of attorney fees should the action proceed in an unexpected way and/or to facilitate the assessment and payment of any such current or additional professional compensation.

15. The amount due and owing on the Note, with interest at the rate provided in the Note, including attorney's fee and allowable costs and charges allowable under and secured by the Note and Mortgage, is as follows:

(a)	Principal due	\$92,700.96
(b)	Interest Due from August 1, 2009 to June 26, 2012	\$16,155.20
(c)	Pre-Acceleration Late Charges	\$113.92
(d)	Escrow Adjustments (Itemized in	\$2,350.70

	Plaintiff's Disbursement Record)	
(e)	Broker's Price Opinion/Appraisals	\$0.00
(f)	Property Preservation	\$610.00
(g)	Previous Bankruptcy Fees/Costs	\$0.00
(h)	Property Inspections	\$168.00
(i)	Suspense	(\$600.00)
(j)	Miscellaneous Charges/Credits (Itemized in Plaintiff's Disbursement Record)	\$0.00
(k)	Costs of collection prior to hearing	\$1,434.58
(l)	Attorney's fees and costs	
	(Foreclosure & applicable Bankruptcy)	<u>\$6,800.00</u>

**TOTAL DEBT secured by note
and mortgage including interest to date shown** **\$119,733.36**

Interest for the period from the date shown in (b) above through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt": to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 6.0% per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed. (Items (g), (k) and (l) are subject to revision by Plaintiff's counsel and/or modification by the Court.)

16. Based upon a search of the public records of the aforesaid county, all persons or entities having an interest or lien or possible claim in or upon the mortgaged premises subordinate to the lien of the Plaintiff as of the date and time of the filing of the Lis Pendens herein have been made defendants.

17. The Plaintiff is seeking the usual foreclosure of mortgage and has in the Complaint expressly demanded the right to a personal or deficiency judgment against Thomas R. Irby. If, however, Thomas R. Irby has previously received a discharge in bankruptcy during the life of the mortgage herein referenced, this demand for a deficiency judgment is not applicable.

18. The Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined

at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Bank of America, N.A. by virtue of a mortgage given by Thomas R. Irby and Roy C. Irby dated May 16, 2007 in the original amount of \$69,000.00 and recorded on May 17, 2007 in the Office of the Greenville County Register of Deeds in Book 4779 at Page 1103. This Mortgage has been subordinated to Plaintiff's Mortgage by virtue of that Subordination of Mortgage dated October 18, 2011 and recorded on November 2, 2011 in the Office of the Greenville County Clerk of Court in Book MO 5137 at Page 4514.

(b) The Defendant, Thomas R. Irby is also made a defendant by virtue of that Lis Pendens against Roy C. Irby et al dated January 13, 2010 and recorded on January 14, 2010 in the Office of the Greenville County Clerk of Court in Book BB4 at Page 004.

19. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

20. Any defenses to this action that may have been raised have been withdrawn or dismissed and, as such, any additional defenses are waived.

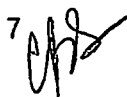
CONCLUSIONS OF LAW

I therefore, conclude as follows:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

3. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

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4. The Plaintiff should have a personal or deficiency judgment against Thomas R. Irby. If, however, Thomas R. Irby has previously received a discharge in bankruptcy during the life of the mortgage herein referenced, this demand for a deficiency judgment is not applicable.

5. The Defendant, Bank of America, N.A. has a mortgage interest in the herein described property which is in second lien position behind Plaintiff.

Now, on motion of Plaintiff's attorney,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2011-05-02-01) issued by Chief Justice Jean H. Toal, dated May 2, 2011.

2. The Plaintiff has met the requirements of the Administrative Order of the South Carolina Supreme Court (2009-05-22-01) issued by Chief Justice Jean H. Toal, dated May 22, 2009, and has shown that this loan is not eligible under the Home Affordable Modification Program.

3. This case is not subject to the stay provisions of the Order of the Supreme Court of South Carolina dated May 4, 2009, as amended and superceded by Order dated May 22, 2009.

4. That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of \$119,733.36, representing the total debt due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

5. The amount due in the preceding paragraph (the "total debt" as set forth in Paragraph hereinabove, and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 6.0% percent per annum.

6. That the Defendants liable for the aforesaid Mortgage debt shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

7. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the undersigned at public auction, after giving Notice of the time and place of such sale by advertisement according

to law. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. The sale shall be according to the following terms, that is to say:

a. FOR CASH: The undersigned Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), said 5% deposit being due and payable immediately upon the closing of the bidding, same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days same to be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 6.0% percent.

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

d. This mortgage constitutes a first lien covering the real estate and improvements therein described.

e. Purchaser to pay for deed stamps and cost of recording the deed with the Plaintiff to pay the Statutory allowed fee of \$25.00 to the preparer of said deed (be it this Court or Counsel for Plaintiff).

8. If Plaintiff be the successful bidder at said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of Plaintiff in full, the Plaintiff may pay to the undersigned Clerk of Court only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. Personal or deficiency judgment being demanded, the bidding will remain open for a period of thirty (30) days after the sale date. The Plaintiff may waive its right to a deficiency judgment prior to sale, in which case the bidding will not remain open after the date of sale, but compliance with the bid may be made immediately.

10. That the Master in Equity will by advertisement according to law, give notice of the time and place of such sale, and the terms thereof. Any sales date is tentative and may be rescheduled at any time prior to the sale without further order of this court or written notice to the parties of the notice of sale, provided notice of the new sales date is duly advertised as required by law. Master in Equity will execute to the purchaser, or purchasers, a deed to the

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premises sold. The Plaintiff, or any other party to this action may become a purchaser at such sale, and that if, upon such sale being made, the purchaser, or purchasers, should fail to comply with the terms thereof within 20 days after the date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured. In the event the Plaintiff is the successful bidder, at its/his option, or the option of its/his assignee, the deed may be taken subject to payment by grantee of any taxes or assessments constituting a lien against the property sold under this order and hereinafter more fully described. In the event the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder or any subsequent purchasers.

11. The sale will not be held unless the Plaintiff, its attorney, or its bidding agent is present at the sale and enters the bid of the Plaintiff or has advised the Master in Equity's office of its bidding instructions. In the event a sale is held without the Plaintiff entering a bid, the sale shall be void.

12. In the event of a third party bidder and that any third party bidder fails to deliver the required deposit in certified (immediately collectible) funds to the Office of the Master in Equity by close of bidding on the day of the sale, the Master in Equity will re-sell the subject property at the most convenient time thereafter (including the day of sale) upon notification to counsel for Plaintiff.

13. That the Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expense of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of the Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest or so much thereof as the first lien will pay on the same; and Plaintiff's attorney shall receive and disburse such funds only in total and absolute compliance with the debt, interest, escrow, and related calculations of this Court including the Court's award for attorney fees and taxable costs;

NEXT: To the extent any funds remain, payment to Defendant, Bank of America, N.A. upon a showing to the Court that such funds are due;

NEXT: Any additional surplus will be held pending further order of the Court as provided for in the South Carolina Rules of Civil Procedure and particularly Rule 71(c) of the South Carolina Rules of Civil Procedure.

14. It is further ORDERED, ADJUDGED AND DECREED, that if the successful bidder is other than the Defendant in possession herein, the Sheriff of Greenville County is ordered and directed to evict and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

15. And it is further ORDERED, ADJUDGED AND DECREED that Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

16. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee, and the Clerk of Court/Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

17. The Master in Equity will retain exclusive jurisdiction to do all necessary acts incident to this foreclosure, including, but not limited to, all matters post-sale which may effect the transfer of the title to the subject real property and all improvements thereon, as well, the issuance of a Contempt of a Writ of Assistance.

18. Upon issuance of a Master in Equity's Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

Mortgage from Thomas R. Irby and Roy C. Irby to Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank, dated August 17, 2007, covering real property in Greenville County, filed on August 28, 2007, and is of record in the Office of the Clerk of Court/Register of Deeds for Greenville County in Book 4840, at Page 234.

19. This sale is subject to all title matters of record and any interested party should consider performing an independent title examination of the subject property as no warranty is

given. If the judicial sale is set aside for any reason, the successful purchaser at the sale shall be entitled only to a return of the deposit paid, if any. The successful purchaser shall have no further recourse or claim of any kind beyond the return of the deposit paid, if any, against the mortgagors, the Plaintiff, or the Plaintiff's counsel.

20. The following is a description of the premises herein ordered to be sold:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat July 10, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Plat Book 1048 at Page 66, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, II by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437 and by corrective deed from Thomas R. Irby, Melvin C. Irby and Benjamin R. Irby dated August 16, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Deed Book 2286 at Page 921. Thereafter, conveyed to Roy C. Irby, II by deed of Thomas R. Irby dated March 16, 2007 and recorded on November 13, 2008 in Book 2346 at Page 1649.

TMS No. 0597.01-01-001.09

Property address: 156 Pearson Road
Belton, SC 29627

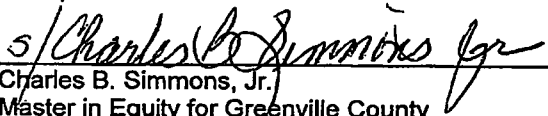
21. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day as ordered by this court.

22. No Defendant raised any issues related to Plaintiff's standing to prosecute this action. Therefore, any issues related to Plaintiff's standing or ability to prosecute this action are waived.

23. IT IS ORDERED that the Plaintiff is entitled to a personal or deficiency judgment against Thomas R. Irby. If, however, Thomas R. Irby has previously received a discharge in bankruptcy during the life of the mortgage herein referenced, this demand for a deficiency judgment is not applicable.



24. IT IS FURTHER ORDERED THAT, pursuant to an Order of this Court filed March 2, 2012, no deficiency judgment that Plaintiff may be entitled to shall be entered until the resolution of the pending claims between the Defendants.


Charles B. Simmons, Jr.
Master in Equity for Greenville County

Greenville, South Carolina
6/26, 2012

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Chase Home Finance, LLC,
PLAINTIFF,
VS.
Thomas R. Irby, Roy C. Irby a/k/a Roy C. Irby
II and Bank of America, N.A., Charles H.
Knight, LLC.
DEFENDANTS.

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

2013 JAN 25 P 2:00

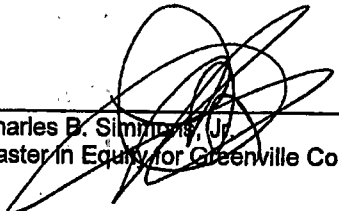
ORDER

On January 23, 2013, a hearing was held on Defendant Thomas Irby's Motion to transfer this case to the jury docket. Present at the hearing was David C. Alford for Thomas Irby. Bank of America was not present, but, through its attorney Lawrence M. Hershon, noticed the Court that it did not contest the Motion. Roy Irby was not present. The Court noticed all parties of the hearing date and place on January 17, 2012.

Thomas Irby's cross claims are legal claims. In his various pleadings, Thomas Irby has requested a jury trial. These claims are properly matters for a jury. And, in the absence of any objection or argument, this case is transferred to the common pleas jury docket.¹

AND IT IS SO ORDERED.

1/24/13
January, 2013


Charles B. Simmons, Jr.
Master in Equity for Greenville County

¹ By prior Order the foreclosure by Plaintiff Chase Home Finance LLC has been bifurcated, and is not affected by this Order.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO, S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE

2013 JAN 25 P 2 CASE NO:

JPMorgan Chase Bank National Association vs. Thomas R Irby

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;

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; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 25th day of January, 2013.

PRESIDING JUDGE -

This judgment was entered on the 25th day of January, 2013, and a copy mailed first class this 25th day of January, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Angella Jacqueline Grant PO Box 2065 Columbia, SC 29202
Knox L. Haynsworth III PO Box 2464 Greenville, SC 29602

Thomas R Irby 160 Pearson Rd. Belton, SC 29627
Roy C Irby P.O. Box 196 Williamston, SC 29697
Roy C Irby II P.O. Box 196 Williamston, SC 29697
L Dwight Floyd Parker Poe Adams & Bernstein, LLP
1201 Main Street, Suite 1450 Columbia, SC 292021509
Lawrence Michael Hershon Parker Poe Adams & Bernstein LLP P.O. Box 1509 Columbia, SC 292021509
Demetri K. Koutrakos Callison Tighe & Robinson, LLC P.O. Box 1390 Columbia, SC 292021390
David Charles Alford PO Box 6326 Spartanburg, SC 293046326
Charles Daniel Atkinson 127 Dunbar St., Ste. 200 Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2010-CP-23-1621

JPMorgan Chase Bank National Association	Thomas R Irby Roy C Irby II Charles H Knight LLC	Roy C Irby Bank Of America NA
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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:

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)
Thomas Irby	Roy Irby	\$ 31,700.00
Bank of America	Roy Irby	\$ 21,508.46
~~Thomas Irby~~	~~Bank of America~~	
Bank of America	Thomas Irby	1,510.61

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

G. Edward Welmaker

Judge Code

2138

Date

5/30/13

For Clerk of Court Office Use Only

This judgment was entered on ⁵⁻³¹⁻¹³ and a copy mailed first class or placed in the appropriate attorney's box on ⁵⁻³¹⁻¹³ to attorneys of record or to parties (when appearing pro se) as follows:

Angelia Jacqueline Grant PO Box 2065 Columbia, SC 29202

- Roy C Irby P.O. Box 196 Williamston, SC 29697
- Roy C Irby II P.O. Box 196 Williamston, SC 29697
- ✓ L Dwight Floyd Parker Poe Adams & Bernstein, LLP 1201 Main Street, Suite 1450 Columbia, SC 292021509
- ✓ Lawrence Michael Hershon Parker Poe Adams & Bernstein LLP P.O. Box 1509 Columbia, SC 292021509
- Demetri K. Koutrakos Callison Tighe & Robinson, LLC P.O. Box 1390 Columbia, SC 292021390
- ✓ David Charles Alford PO Box 6326 Spartanburg, SC 293046326
- ✓ Jerry Allen Gaines II PO Box 5504 Ste. 1 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance LLC,

PLAINTIFF,

VS.

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

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

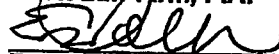
CASE NO. 2010-CP-23-1621

**MOTION FOR ORDER STRIKING
ANSWER OF DEFENDANT ROY C.
IRBY, DENYING JURY TRIAL AND
REFERRING FORECLOSURE TO
MASTER IN EQUITY FOR FINAL
JUDGMENT**

The Plaintiff, by and through its undersigned counsel, moves this Court for an Order Striking Defendant Roy C. Irby's answer and jury trial demand as untimely filed. Additionally, if Court does not strike said answer, Plaintiff moves for a finding that Roy C. Irby is not entitled to a jury trial as he does not plead any basis or seek any relief entitling him to a jury trial. Furthermore, the Plaintiff moves that this Court refer this matter to the Honorable Charles B. Simmons, Jr. to take testimony arising under the pleadings and to make his findings of fact and conclusions of law, with authority to enter final judgment in the cause and to hear any issues after sale or judgment, including but not limited to issues involving appraisal proceedings under Section 29-3-680 *et seq.*, and with the authority to sell the subject property at public auction on some convenient sales day hereafter, and any appeal therefrom shall be directed to the South Carolina Court of Appeals.

Respectfully Submitted,

Scott Law Firm, P.A.



Ronald C. Scott, SC BAR #4996
Elizabeth R. Polk, SC BAR #11673
Brett F. Kline, SC BAR # 15661
Angelia J. Grant, SC BAR # 78334
Sara J. Volk, SC BAR #74822
P.O. Box 2065
Columbia, South Carolina 29202
(803) 252-3340
Attorneys for Plaintiff

Columbia, South Carolina
July 5, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance LLC,

PLAINTIFF,

VS.

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

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

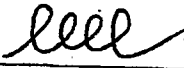
**Plaintiff's Notice of Motion
and Motion to Dismiss and/or for
Summary Judgment**

YOU WILL PLEASE TAKE NOTICE, that the Plaintiff Chase Home Finance LLC, by and through its undersigned counsel, will move before the Presiding Circuit Court Judge on the tenth (10th) day of service hereof, or as soon as counsel may be heard, for an Order of Dismissal and/or Summary Judgment as to any claims made by Defendant Thomas R. Irby against Plaintiff Chase Home Finance LLC. This Motion is being made pursuant to Rules 12(b)(6) and 56(b) of the South Carolina Rules of Civil Procedure.

The Defendant Thomas R. Irby filed a Cross Complaint on June 18, 2010. To the extent that the Cross Complaint attempts to allege any claims against Plaintiff Chase Home Finance LLC, the Plaintiff is informed and believed that the Defendant Thomas R. Irby fails to state facts sufficient to constitute a cause of action or a claim upon which relief can be granted. To the extent that any cause of action is asserted, the Plaintiff is informed and believed that these claims are entirely without merit. Therefore, the Plaintiff moves this Court for an Order of Dismissal and/or Summary Judgment as to any claims made by Defendant Thomas Irby against Plaintiff Chase Home Finance LLC.

Respectfully Submitted,

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC BAR #4996
Elizabeth R. Polk, SC BAR #11673
Angelia J. Grant, S.C. BAR #78334
Brett F. Kline, SC BAR # 15661
Sara J. Volk, SC BAR #74822
P.O. Box 2065
Columbia, South Carolina 29202
(803) 252-3340
ATTORNEYS FOR PLAINTIFF

July 16, 2010
Columbia, South Carolina

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-23-1621

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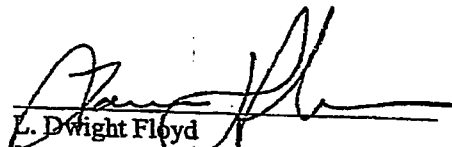
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L. Dwight Floyd
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Post Office Box 1509
Columbia, SC 29202
(803) 255-8000
dwightfloyd@parkerpoe.com
lawrencehershon@parkerpoe.com

Attorneys for Defendant Bank of America

July 23, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2010-CP-23-1621
	)	
Chase Home Finance, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT BANK OF AMERICA'S
	)	MOTION TO AMEND ANSWER TO
Thomas R. Irby, Roy C. Irby a/k/a Roy C.	)	THOMAS R. IRBY'S CROSS
Irby II and Bank of America, N.A.,	)	COMPLAINT
	)	
Defendants.	)	

Defendant Bank of America, N.A. ("Bank of America"), by and through its undersigned counsel, hereby moves the Court pursuant to Rule 15(a), SCRCP, for an Order granting it leave to amend its Answer to Defendant Thomas R. Irby's Cross Complaint. Bank of America's sole amendment is the addition of a Cross-Claim against Thomas R. Irby and Roy C. Irby a/k/a Roy C. Irby II, for the purpose of asserting an additional defense by way of cross-claim related to the real property at issue in the Amended Complaint. A copy of Bank of America's proposed Amended Answer to Defendant Thomas R. Irby's Cross Complaint and Cross-Claim Against Defendants Thomas R. Irby and Roy C. Irby a/k/a Roy C. Irby II is attached to this Motion as Exhibit A.

Under Rule 15(a), leave to amend an answer "shall be freely given where justice so requires and does not prejudice the other party." Rule 15(a), SCRCP. "This rule strongly favors amendments and the court is encouraged to freely grant leave to amend." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005). Here, Bank of America filed its answer on September 20, 2010.

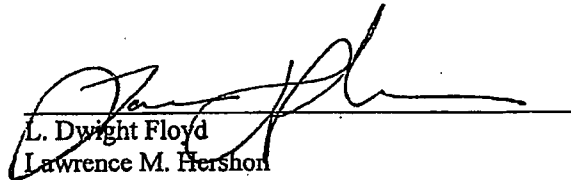
Neither co-defendant is prejudiced by Bank of America's proposed amendment. "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack

of opportunity to refute it.” *Pool v. Pool*, 329 S.C. 324, 328-29, 494 S.E.2d 820, 823 (1998). Moreover, the party opposing the motion has the burden of proving prejudice. *Foggie v. CSX Transp., Inc.*, 313 S.C. 98, 431 S.E.2d 587, 590 (1992). Here, neither co-defendant can claim prejudice because this litigation is in the earliest stages of exchanging written discovery. No depositions have yet been scheduled. It is well established that a party does not suffer prejudice when the pleadings are amended during active discovery. See *City of Charleston v. Hotels.com, LP*, 487 F. Supp. 2d 676, 681 (D.S.C. 2007). In addition, each co-defendant is well aware of the claims Bank of America has against each of them, as displayed by the pleadings in the underlying foreclosure action, the allegations asserted by Thomas R. Irby in his cross-claim, and in Bank of America’s answer to the cross-claim. Accordingly, Bank of America’s motion should be granted.

Chase Home Finance LLC has consented to the court granting this motion. Counsel for Bank of America contacted counsel for Roy C. Irby a/k/a Roy C. Irby II to seek consent, but no response has been received.

This motion is based on the pleadings, discovery, arguments of counsel, and any memorandum that Bank of America may submit to the Court before or at a hearing.

WHEREFORE, Defendant Bank of America respectfully requests that this Court grant its Motion to Amend Answer to Cross-Claim and grant it such other and further relief as the Court deems just and appropriate.



L. Dwight Floyd

Lawrence M. Hershon

Attorney for Plaintiff

Parker Poe Adams & Bernstein LLP

P. O. Box 1509

Columbia, SC 29202

Telephone: 803-255-8000

Facsimile: 803-255-9017

[dwightfloyd@parkerpoe.com](mailto:dwrightfloyd@parkerpoe.com)

lawrencehershon@parkerpoe.com

Attorneys for Bank of America, N.A.

November 18, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-23-1621

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**DEFENDANT BANK OF AMERICA'S
MOTION TO STRIKE DEFENDANT
THOMAS R. IRBY'S GENERAL
AMENDMENT TO HIS CROSS
COMPLAINT**

Pursuant to Rules 12(f) and 15(a) of the South Carolina Rules of Civil Procedure, Defendant Bank of America, N.A. ("Bank of America") moves to strike Defendant Thomas R. Irby's General Amendment To His Cross Complaint ("Amended Cross-Claim") filed on April 8, 2011. The basis for this motion is that the Amended Cross-Claim was filed in an untimely manner and contrary to the requirements of Rule 15.

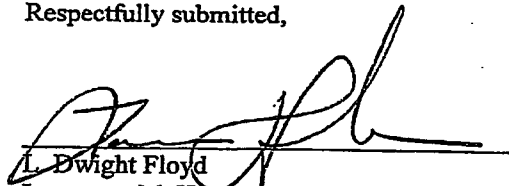
Pursuant to Rule 15(a), a party may amend his pleading as a matter of right if amended within thirty (30) days after it is served. Thomas Irby filed his original Cross-Claim on June 13, 2010. Therefore, he cannot amend as a matter of right. Otherwise, a party may amend by leave of the court or by written permission of the other parties. To Bank of America's knowledge, there has been no request for leave nor any granting of leave by the Court. Furthermore, Defendant Thomas Irby has not sought the consent of Bank of America for any amendment to his cross-claim.

Therefore, because Thomas Irby has failed to properly amend his Cross-Claim under Rule 15(a), Bank of America requests that the Court strike the Amended Cross-Claim from the record in its entirety. If the Court deems that the filing of the Amended Cross-Claim is proper, Bank of America reserves the right to responsively plead to the Amended Cross-Claim. In the

alternative, to the extent any responsive pleading is due at the time of filing of this Motion, Bank of America denies each and every allegation of the Amended Cross-Claim.

This motion is based upon and supported by the South Carolina Rules of Civil Procedure, all applicable statutory and common law, is made in good faith and may be supported by such other arguments submitted in connection herewith.

Respectfully submitted,



L. Dwight Floyd
Lawrence M. Hershon
Parker Poe Adams & Bernstein LLP
1201 Main Street, Suite 1450
Post Office Box 1509
Columbia, South Carolina 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017

Attorneys for Bank of America, N.A.

April 28, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Case No: 2010-CP-23-1621

Thomas R. Irby
Cross Complainant Pro Se

CROSS COMPLAINANT THOMAS IRBY'S
MOTION FOR HEARING FOR
FORMULATION OF ISSUES
AND
MOTION FOR DISCOVERY CONFERENCE

Vs

Bank of America, and
Roy C. Irby II
Defendants

(A) Defendants Bank of America and Roy C. Irby II have provided no valid defense for the Allegations of Thomas R. Irby's Cross Complaint against them and an active state of discovery exists thereof since September 9, 2010.

Thomas Irby hereby respectfully requests the court to schedule, at the earliest available date, the following actions:

PRE-TRIAL HEARING

Pursuant to Rule 16(a), Pre-Trial Procedure: Formulating Issues.

In any action after the issues are joined by the actual filing and service of all pleadings, the court may in its discretion or upon motion of any party direct the attorneys for the parties to appear before it for a hearing to consider:

- (1) The simplification of the issues.
- (2) The necessity or desirability of amendments to the pleadings relative to the validity of existing evidence.
- (3) The Possibility of obtaining admissions of fact and documents which will avoid unnecessary proof.
- (4) The limitation of the number of witnesses.
- (5) The limitation of remaining time allowed for discovery.
- (6) The advisability of reference of issues to a master for findings to be used as evidence for trial by Jury.
- (7) The disposition of pending motions.

- (8) All other matters as may aid in the adjudication of the action including consideration to bifurcate (separate) the cross claim of Roy C. Irby II as a separate action based on the lack of merit of his allegations

DISCOVERY CONFERENCE

Pursuant to Rule 26(f)

Discovery Conference. At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorneys for any party if the motion includes:

(1) **STATEMENT OF ISSUES AT PRESENT TIME:**

- (a) Thomas Irby has concrete proof of all allegations against Bank of America and Roy C. Irby II, by eyewitnesses and documentation. Thomas now has written verifications from Closing Attorney Gregg Jones and Diane Andrews/Chapman. Both Mr. Jones and Ms. Chapman were brought into position as defendants by Roy C. Irby and have provided answers to his cross claim. Each answer verifies the allegations of Thomas Irby's cross complaint. Depositions from these two defendants are not necessary.
- (b) Thomas Irby has requested a corporate level officer with Bank of America for deposition regarding the Equity Line of Credit violated by the Bank and Roy Irby. As yet no deponent has been designated by Bank of America and Thomas reserves the right to subpoena C.E.O. Brian Moynihan if a more appropriate witness for deposition is not provided.
- (c) Bank of America has scheduled no depositions known to Thomas Irby. The Bank continues to deny all allegations presented by the cross claim.
- (d) Roy C. Irby II has filed an untimely cross claim based on unfounded allegations without documented evidence. Thomas Irby believes Roy's cross claim has been answered by all parties except Bank Of America.

- (e) Roy C. Irby has scheduled no depositions known to Thomas Irby. Roy Irby continues to attempt a defense of manic and incomprehensive accusations with no proof provided.

(2) **PROPOSED PLAN AND SCHEDULE OF DISCOVERY:**

- (a) Thomas Irby proposes that the court schedule a discovery conference at the earliest available date.
- (b) Discovery should be terminated by the court not more than thirty days from the date the conference is held and after all special conditions arising from the conference are satisfied.
- (c) A trial date should be set not more than thirty days from termination of discovery and/or satisfaction of all special conditions.

(3) **PROPOSED LIMITATIONS ON DISCOVERY:**

- (a) All remaining discovery should be directly relative to the allegations of the Cross Complaint with all amendments of Thomas Irby as they apply to Bank of America and Roy C. Irby II.

(4) **OTHER PROPOSED ORDERS:**

- (a) Thomas Irby requests the court to consider orders to Compel Discovery of all allegations or defenses by either party for which no evidence or proof is provided.
- (b) Bank of America has responded to issues of discovery inferring privileged information between Bank of America and Bank's council. Thomas Irby submits that any information that may affect either the trial or any procedures thereof is not privileged and should be produced.

Thomas has asked specifically for production of any evidence that relieves Bank of America of the banks Duty of Trust or releases the Bank from the conditions of the ELOC agreement. Bank of America has failed or refused to produce by denying that any duties existed between the Bank and Thomas Irby. Bank of America has not modified their general denial since the first answer to Thomas Irby's cross claim. Any fact or evidence that would avoid continuing litigation should have been produced without request and should have been produced by discovery that has remained active since September 9, 2010.

- (c) Roy C. Irby II has failed to respond appropriately to requests for discovery in all areas. The nature of his Cross Claim is incoherent relative to facts or allegations. He has included more irrelevant and unfounded allegations than claims of any validity to the case at hand. His intent is obviously to delay this action with a mass of unrelated accusations.

The only merit found in Roy Irby's cross claim is evidence that: (a) He knew he was responsible for paying all payments and costs relative to financing his house. (b) He withdrew sums of more than \$70,000.00 from the account that he knew was supposed to be closed.

- (d) Thomas Irby hereby requests the courts permission to enter a motion to bifurcate and segregate Roy C. Irby's cross claim into a separate action or to dismiss the cross claim on lack of merit.

(5) STATEMENT OF REASONABLE EFFORT:

- (a) Thomas Irby has provided all reasonable responses to requests for production to Council for Bank of America, Scott Law Firm, and Roy C. Irby.
- (b) Thomas has provided copies of his cross complaint and amendments to all parties involved. Each defendant is aware of the compensable costs that continue to accrue from their actions.

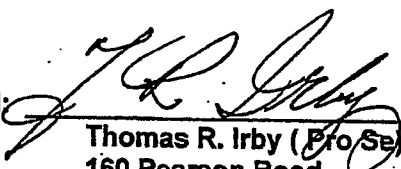
(c) Thomas Irby is the injured party in this action. Bank of America and Roy C. Irby have maintained a position of staunch denial since the Cross Claim was filed. Neither defendant has offered any attempt to reconcile the issues in an acceptable manner.

(d) Since December of 2009 Thomas Irby made several appeals to Bank of America to be released from the E.L.O.C. and mortgage in compliance with the conditions of the agreement. All attempts have been ignored. The issue of simple release is no longer an option for the Bank or Roy Irby.

(B) Thomas Irby thus requests the court to schedule the Hearing for Formulation of Issues and the Discovery Conference at the earliest time and date available. The order of the dates for the Hearing and Conference is the court's option.

(C) Thomas is aware that continuing delay is to the advantage of both Roy C. Irby and Bank of America. Should Thomas Irby become unable to continue with this litigation each defendant will avoid any compensatory duty to him. The Bank will then will be able to file claims against his estate instead of compensating for their negligence. Thomas Irby is Seventy Four Years old. He has sustained three heart surgeries. It is imperative that this matter be presented to a jury at the earliest possible date.

Respectfully submitted this date of May 4, 2011,

Signed: 

Thomas R. Irby (Pro Se)
160 Pearson Road
Belton, SC 29627
Phone: (864)243-4015

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY

Chase Home Finance, LLC
Plaintiff

Vs.

Thomas R. Irby, Roy C. Irby II
and Bank of America

IN THE COURT OF COMMON PLEAS
CASE NO: 2010-CP-23-1621

COMPLAINANT THOMAS R. IRBY'S
MOTION FOR LEAVE TO FILE A
GENERAL AMENDMENT TO HIS
CROSS COMPLAINT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2011 JUL 13 P 12:32

- (1) I, Thomas R. Irby, now apply to the court for leave to amend my Cross Complaint as originally filed in this matter. My new amendment will also include my "Amendment to Clarify" as it exists on record. My cross complaint with the amendment is referred herewith as if written in entirety.
- (2) The corrected Amendment will include but not be limited to additional evidence, information, costs, damages, etc., from ongoing discovery not previously known.
- (3) BOA has complained of the generic nature of the allegations made by my Cross Complaint. BOA has complained that the allegations do not rise to any legal violations. To add specific descriptions and references to clarify the allegations will not be prejudicial to the Bank. To refer to legal violations or negligence that should be understood from the generic allegations will not be prejudicial to the Bank.
- (4) To amend damages and costs that are determined by discovery and accrual will not be prejudicial to the Bank. To define the specific intent of my allegations will not be prejudicial to Roy C. Irby II or to Bank of America.
- (5) I refer the Court to Bank of America's motion(s) for permission to Amend their Answer and/or complaint as filed November 18, 2010. Counsel for the Bank justified the right to amend as follows:

Under Rule 15(a), Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

"leave to amend an answer shall be freely given where justice so Requires and does not prejudice the other party." Rule 15(a), SCRPC. "This rule strongly favors Amendments and the court is encouraged to freely grant leave to amend." Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 717 (Ct. App. 2005).

Neither co-defendant is prejudiced by my Proposed amendment. "The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Pool v. Pool, 329 S.C. 324, 328-29, 494 S.E.2d 820, 823 (1998). No trial date has been set. Moreover, the party opposing the motion has the burden of proving prejudice. Foggie v. CSX Transp., Inc., 313 S.C. 98, 431 S.E.2d 587, 590 (1992).

Here, neither co-defendant can claim prejudice because this litigation is still in active process of discovery. In fact this action is in the first two weeks of the ninety (90) day continuing discovery as provided by the Court by the hearing of June 29, 2011.

"It is well established that a party does not suffer prejudice when the pleadings are amended during active discovery. See City of Charleston v. Hotels. com, LP, 487 F. Supp. 2d 676, 681 (D.S.C. 2007)". This statement is included in BOA's motion yet I cannot find it in either the original filing or the high court's decision. It is at least indicative of how Counsel for the bank interprets the intent of Rule 15.

(6) I also refer the court to:

RULE 15 (b)— Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him.....etc.

(7) Bank of America and Roy C. Irby II are well aware of the claims Thomas Irby has against each of them.

(8) The foregoing qualifications for granting permission to amend my original complaint are directly modified from those quoted by Counsel for Bank of America. These

qualifications were included in BOA's request for amendment as filed on November 18, 2010.

(9) The Banks "Motion to Amend Answer" states that Chase Bank had "consented to the granting of their motion and Roy C. Irby did not respond to their request. I do not remember being asked for such permission . Rule 15(a) states clearly that a party may amend "by leave of the court - OR - by written permission of the other party". Thus only leave by the court is required to amend.

(10) I will notify each defendant or attorney by copy of this document when it is filed with the Clerk of Court. If either party objects to the court granting approval (leave) for my amendment, they can file such objections appropriately.

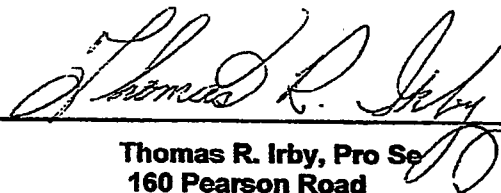
(11) I refer the court to the South Carolina Rules of procedure, Rule 15, in entirety.

Wherefore I request the Court to grant my motion for permission to file a corrected General Amendment to include additional costs, damages, references and evidence, etc., from ongoing discovery. If evidence from discovery is not allowed by amendment, then discovery is meaningless.

I also request the Court to protect my interest in all issues of this matter and to grant such other relief as the Court deems just and appropriate.

Respectfully submitted on this date of July 13, 2011.

Signed: _____



Thomas R. Irby, Pro Se
160 Pearson Road
Belton, SC 29627 (Greenville County)
Phone: (864) 243-4015

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ATTN: Honorable Judge Robin B. Gilmore)
Honorable Judge G. Edward Weimer)

Mr. Stephen Lopez , Coordinator)

PLANTIFF)

Roy C. Irby II/ Roy C. Irby)

PO Box 196)

Williamston, SC 29697)

Vs

BANK OF AMERICA)

L. Dwight Floyd)

Parker Poe Adams & Bernstein LLP)

PO BOX 1509)

COLUMBIA, SC 29202)

CHASE HOME FINANCE, LLC

Scott Law Firm

2712 Middleburg Drive Suite 200

Columbia, SC 29204

7-18-2011

Amended Motion
MASTER IN EQUITY
&

IN THE COURT OF

COMMON PLEAS &
MASTER IN EQUITY

Case No: 2010-CP-23-1621

Greg F. Jones, Attorney Personally &)

Pro se Title/Errors and Omissions Insurance (To Be Determined)

PO box158

1016 Anderson Drive)

Williamston, SC 29697)

Diane L. Andrews/ SC Notary)

PO box158)

Legal Assistant (Mr. Jones))

1016 Anderson Drive)

Williamston, SC 29697)

Thomas R. Irby)

PO BOX 827 PELZER SC 29669)

160 Pearson Road)

Belton, SC 29627)

ATTN: CHASE BANK /SCOTT LAW FIRM & Parker Poe/ Bank of America Law Firm

- 1) This is a final request under federal mandate for a formal written re-instatement letter or agreement required by both Bank of America and Chase Mortgage, with all terms and conditions for a loan re modification. As both banks and attorneys have been made aware previously, and have copies of the original Mortgages and Deed of March 16, 2007, I am the sole owner of 156 Pearson road, Belton, SC 29627. I have requested by phone, in person and by certified mail a type of Federal loan re modification and letter of reinstatement, but have received nothing in response.
- 2) Again The Federal Tarp Program is willing to work with me and the banks per my contacting the agency for their help in re modification, but I must receive interaction

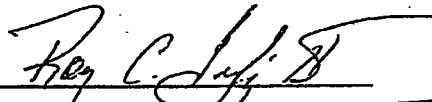
from both banks for which I have received none and both banks have only pursued foreclosure action without discussing any possible solutions with me (Roy C. Irby II).

ATTN: Thomas R. Irby, Greg Jones, Diane Andrews

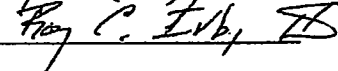
1). NOTICE: This is immediate notice to REMOVE THE Lis Pen dens Filed from Thomas R. Irby, attorney Greg F. Jones, Diane Andrews LIS in Pendens#2010LP23____RECORDED IN BOOK BB4 PAGE 004 dated January 10, 2010. Due to this filing while Thomas R. Irby was the builder by owner of 156 Pearson Road Belton SC (certificate of occupancy, permits to Thomas R Irby from 7/2004 to 9/11/2007). County of Greenville Building Codes, Safety Division 301 University Ridge Drive, Greenville SC, 29601 Certificate of occupancy issued to Thomas R. Irby application #04-0004081 001 001 ; parcel #0597.01-01-001.00) These documents prove that this attempt was an Intentional Fraudulent act by Mr. Thomas R. Irby, Mrs. Diane Andrews notary, (She knew it was Fraudulent) and Attorney Greg Jones, thus committing again intentional Fraud against Chase, Bank of America, Roy C. Irby II and Greenville County court Of Common Pleas, Master In Equity.

2) Therefore I must seek further legal action for this fraud against all involved while I was Hospitalized and unable to be present for said matters and actions taken; Foreclosure actions, lis in pen dens, and all matters pertaining to this injustice with Greenville/Anderson County Sheriff and 13th Circuit Solicitor W. Walter Wilkins for prosecution under the state/federal law to the full extent.

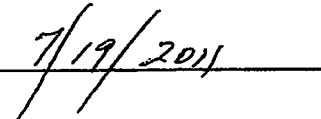
Signature



Print



Date



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

8-12-2011

Amended

Cross Complaint /SUMMONS/Motion

MASTER IN EQUITY
&

IN THE COURT OF

PLANTIFF

COMMON PLEAS &
MASTER IN EQUITY

Roy C. Irby II/ Roy C. Irby

PO Box 196

Williamston, SC 29697

Case No: 2010-CP-23-1621

Vs

BANK OF AMERICA

L. Dwight Floyd

Parker Poe Adams & Bernstein LLP

PO BOX 1509

COLUMBIA, SC 29202

CHASE HOME FINANCE, LLC

Scott Law Firm

2712 Middleburg Drive Suite 200

Columbia, SC 29204

FILED FOR COURT
GREENVILLE COUNTY
PAUL E. ANDERSON
2011 AUG 12 PM 3:32

Greg F. Jones, Attorney Personally &)

Pro se Title/Errors and Omissions Insurance (To Be Determined)

PO box158

1016 Anderson Drive)

Williamston, SC 29697)

Diane L. Andrews/ SC Notary)

PO box158)

Legal Assistant (Mr. Jones))

1016 Anderson Drive)

Williamston, SC 29697)

Thomas R. Irby)

PO BOX 827 PELZER SC 29669)

160 Pearson Road)

Belton, SC 29627)

ATTN: CHASE BANK /SCOTT LAW FIRM & Parker Poe/ Bank of America Law Firm

2nd Request for Loan Reinstatement and Loan Re Modification

- 1) This is a request under federal mandate for a formal written re-instatement letter or agreement required by both Bank of America and Chase Mortgage. This is also a formal request for a loan re modification with all terms and conditions based upon my disability income and ability to pay. As both banks and attorneys have been made aware previously, and have copies of the original Mortgages and Deed of March 16, 2007, I am

the sole owner of 156 Pearson road, Belton, SC 29627. I have requested by phone, in person and by certified mail a type of Federal loan re modification and letter of reinstatement, but have received nothing in response.

- 2) Summons for copy of any and all mortgage insurance procured by M&T Chase/ Chase Bank/ Bank Of America with origination date and declaration pages for said property at 156 Pearson road, Belton, SC 29627(2nd Request)
- 3) Summons for all transactions/correspondence concerning sale of M&T Chase mortgage To Chase Bank and all filings thereof.

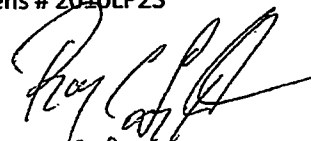
ATTN: Attorneys Mr. Greg Jones/SCOTT LAW FIRM/Parker Poe Law Firm

- 1) Summons for copy of each attorney's error and omission insurance policy with copy of declaration page and dates of effect. Also, please provide a certified copy of South Carolina License to practice law within the state of South Carolina (each and all attorneys representing or which have represented in this case).
- 2) Mr. Greg F. Jones to provide a certified copy of license to issue Title opinion in the State of South Carolina.

Att. Mr. Greg Jones / Diane Andrews/Thomas R. Irby

Summons to each and all with each attorney representation filed or pro se to appear in Master in Equity Court at 2:00 P.M on August 17, 2011.

1. Summons for copy of each(Mr. Jones/ Mrs. Andrews/ Mr. Thomas Irby) of all personal and business assets, including but not limited to real estate owned, sold or transferred since March 16, 2007, both business and personal; to include but not limited to Bank Account information, cash for both Business and personal.
2. Summons for a complete copy of my real estate file with all correspondence to whoso ever on 156 Pearson Road closings form Mr. Greg Jones, Attorney, And Mrs. Diane Andrews.
3. Summons for documentation for Lis Pendens with proof of indemnification by Roy. C. Irby II to only Thomas R. Irby which was Filed with Greenville Court of Common Pleas by MR. Jones / Mrs. Andrews on January 14,2010 Lis Pendens # 2010LP23


8/12/2011

STATE OF SOUTH CAROLINA

COUNTY OF Greenville

IN THE COURT OF COMMON PLEAS
Thirteenth JUDICIAL CIRCUIT

CASE NO.: ____-CP-23-____

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

By C.I. by B
Plaintiff,
vs.
E/A / Clerk T.R. et
Defendant.

Plaintiff's Attorney:

____, Bar No. ____

Address: ____

Phone: ____ Fax ____

E-mail: ____ Other: ____

Defendant's Attorney:

____, Bar No. ____

Address: ____

Phone: ____ Fax ____

E-mail: ____ Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: ____

Estimated Time Needed: ____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ ____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: ____

☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: ____

JUDGE CODE ____

Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____

☐ MOTION FEE COLLECTED: \$ ____

☐ CONTESTED - AMOUNT DUE: \$ ____

SCCA 233 (11/2003)

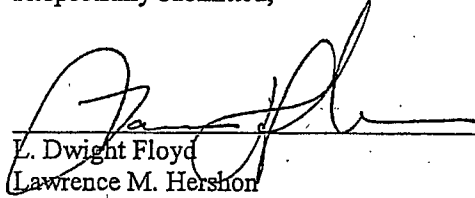
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	Case No.: 2010-CP-23-1621
Chase Home Finance, LLC,	)	
Plaintiff,	)	
vs.	)	DEFENDANT BANK OF AMERICA'S
Thomas R. Irby, Roy C. Irby a/k/a Roy C. Irby II and Bank of America, N.A.,	)	MOTION FOR SUMMARY JUDGMENT
Defendants.	)	

PLEASE TAKE NOTICE THAT the Defendant Bank of America, N.A. ("Bank of America"), by and through its undersigned counsel, hereby moves the Court, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Defendant Bank of America's Motion for Summary Judgment. More specifically, the Court should (1) grant Bank of America judgment on its cross-claims against Defendant Thomas R. Irby and Roy C. Irby a/k/a Roy C. Irby II and (2) dismiss Thomas R. Irby's cross-claims against Bank of America.

This motion is further supported by the pleadings, applicable law, and any memoranda of law or other material that Bank of America may submit to the Court before or at the hearing on this Motion.

WHEREFORE, for the reasons stated above, Defendant Bank of America respectfully requests that this Court enter an Order granting the instant Motion, granting judgment in favor of Bank of America against Thomas Irby and Roy Irby and dismissing all of Thomas Irby's cross-claims against Bank of America with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "L. Dwight Floyd", is written over a horizontal line.

L. Dwight Floyd
Lawrence M. Hershon
Attorney for Plaintiff
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017
dwightfloyd@parkerpoe.com
lawrencehershon@parkerpoe.com

December 14, 2011
Columbia, South Carolina

Attorneys for Bank of America, N.A.

CERTIFICATE OF SERVICE

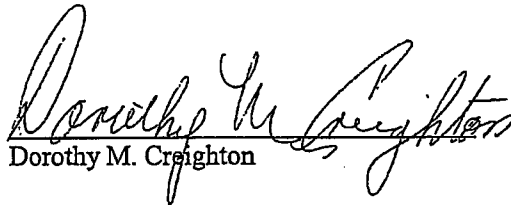
I hereby certify that a copy of *Defendant Bank of America's Motion for Summary Judgment* was served on December 14, 2011 by mailing a copy of the same by U.S. Mail, postage prepaid, addressed as follows:

Erica G. Lybrand, Esq.
Scott Law Firm, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

Mr. Roy Irby, II
P. O. Box 196
Williamston, SC 29697

David C. Alford, Esq.
David C. Alford, PC
P. O. Box 6326
Spartanburg, SC 29304-6326

Gregg F. Jones, Esq.
P. O. Box 158
Williamston, SC 29697


Dorothy M. Creighton

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-23-1621

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ST

purporting to be a payoff check, Bank of America applied the check to the account, but a balance remained on the account in the amount of \$10,700.73 on August 24, 2007. Therefore, the account could not be closed. Furthermore, neither Thomas Irby nor Roy Irby returned a required executed form instructing Bank of America to close and block the account. Therefore, the account could not be blocked. Thomas Irby claims that his attorney instructed Bank of America to close and block the Equity Line at that time, but such instruction from a third party, without the required executed form from the borrower, did not satisfy the requirements of the terms of the Equity Line.

Thereafter, Roy and/or Thomas Irby (which one is inconsequential because the terms of the Equity Line provide for joint and several liability) 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. 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. Therefore, Thomas Irby and Roy Irby have clearly breached the terms of the Bank of America Equity Line.

The borrowers 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.

The cross-claims by Thomas Irby for breach of contract, negligence, and breach of contract with fraudulent act have no merit. As is clear from the summary provided above and the detailed facts provided below, Thomas Irby (along with Roy Irby) breached the terms of the Equity Line, and not the other way around. Thomas Irby failed to close and block the Equity Line, and he failed to control his nephew, Roy Irby, in his use of the Equity Line. Any attempted defense from Thomas Irby that he did not know Roy Irby continued to withdraw funds is

unavailing; this may provide support for Thomas Irby's claim against his nephew, but it is inconsequential as between Thomas Irby and Bank of America. Plain and simple, Thomas Irby is jointly and severally liable for the remaining debts on the account. The claims for negligence and breach of contract with fraudulent act are completely unsupported by the facts.

The discovery period in this lawsuit has closed. There is no genuine issue as to any material fact, there is a complete absence of facts in support of the allegations contained in Thomas Irby's cross-claims, and there is a complete absence of facts in support of any defenses to Bank of America's cross-claims. Therefore, Defendant Bank of America is entitled to judgment as a matter of law.

II. SUMMARY OF FACTS AND PROCEDURAL HISTORY

The case comes before the Court with a convoluted procedural history. However, the indisputable facts are clear.

On May 16, 2007, Thomas Irby and Roy Irby 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 "Agreement") as a second mortgage on the subject property. [Cross-Claim ¶ 5, R. Irby Answer to Cross-Claim ¶ 6, T. Irby Answer to Cross-Claim at page 1; the Agreement is attached hereto as Exhibit A] To secure payment under the Agreement, 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 (the "Mortgage"). [Cross-Claim ¶ 6, R. Irby Answer to Cross-Claim ¶ 7, T. Irby Answer to Cross-Claim at page 1; the Mortgage is attached hereto as Exhibit B]

Shortly after the opening of the Equity Line, the Irbys then, based on the allegations of the Thomas Irby, sought to refinance their first and second mortgages in August 2007. Attorney Gregg Jones for the Irbys requested a payoff balance. Bank of America responded with

providing a payoff statement with a balance of \$9,998.92. [Affidavit of Donna Card, Exhibit C] 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 [Letter from Gregg Jones dated August 22, 2007 (Exhibit D)], Thomas and/or Roy Irby continued to withdraw funds on the Equity Line. Therefore, 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. [Account Transaction History (Exhibit E); Affidavit of Donna Card] Bank of America never closed the account because a balance remained due on the account. Furthermore, the Irbys never properly instructed Bank of America to close the account. A Bank of America form sent with the alleged payoff check to Bank of America by Mr. Jones required a signature from the borrower to close and block the account; neither Thomas Irby nor Roy Irby ever executed this document. [Exhibit F] In any case, the account never closed, and one or both Irbys withdrew funds on the Equity Line after August 22, 2007.

Under the terms of the Agreement, Thomas Irby and Roy Irby are jointly and severally liable for any default under the Agreement. [Agreement ¶ 2] From the date of issuance through September 21, 2009, the Irbys withdrew funds, and accounting for all payments received on behalf of the Irbys (which Irby received funds and which Irby paid funds is irrelevant since both are jointly and severally liable), a balance in excess of \$69,000.00 remained as of June 1, 2010 [Exhibit E; Affidavit of Donna Card]

Accounting for Bank of America's agreement to subordinate its Mortgage, exclusive of additional interest and attorneys' fees and costs, a total balance of 23,502.94 remains due on the Equity Line account as of November 1, 2011. [Affidavit of D. Card]

Plaintiff Chase Home Finance, LLC filed its Complaint seeking foreclosure on February 25, 2010. Thomas Irby and Roy Irby were named as Defendants due to their relationship to the

subject property. Bank of America was named as a Defendant due to its unsatisfied Mortgage. Thomas Irby subsequently filed a cross-claim against Bank of America on May 18, 2010. Bank of America subsequently filed a motion to dismiss the cross-claims asserted by Thomas Irby, but this motion was denied. Bank of America then answered Thomas Irby's Cross-Complaint on September 20, 2010, and, following leave of Court, filed an Amended Answer and Cross-Claim against Thomas Irby and Roy Irby on December 6, 2010, asserting claims of (1) breach of contract and (2) unjust enrichment.

The Court has issued various orders in this matter. Of relevance here, Judge Welmaker's June 30, 2011 Order ordered that discovery close ninety days from June 30th, meaning discovery closed on September 28, 2011. No party has ever requested any extension of the discovery deadline. Per Judge Simmons' Order dated August 24, 2011, Thomas Irby was permitted to amend his Complaint to add two additional claims to his breach of contract claim: negligence and breach of contract with fraudulent act. Thomas Irby filed his amended complaint on September 6, 2011 (again, without any request for an extension of time for the purposes of discovery or any other purpose), and Bank of America filed its answer to the amended cross-claims on September 23, 2011.

With discovery closed, this matter is ripe for summary judgment.

III. ARGUMENT AND CITATION OF AUTHORITY

Rule 56 of the South Carolina Rules of Civil Procedure requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving

party's case." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original); *Midland Mutual Life Ins. Co. v. Darrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts "as would be admissible in evidence" to show that a true jury issue exists. *See* Rule 56(e), SCRPC.

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

A. Bank of America Should Be Granted Summary Judgment in Its Favor for Its Claims Against Thomas Irby and Roy Irby

1. Thomas Irby and Roy Irby have breached the Agreement

The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

First, both Thomas and Roy have admitted to the existence of the contract in their respective answers to Bank of America's Cross-Claim.

Second, it is clear that a breach has occurred. Under the terms of the Agreement, the Irbys "promise[d] to pay to Lender the total of all Advances plus FINANCE CHARGES, together with all fees and charges under the terms of this Agreement." [Agreement ¶ 2] The billing cycle was monthly, with payments due each month. However, the Irbys have not made a

payment since May 18, 2010. [Affidavit of Donna Card] A balance on the Equity Line account existed at that time, and charges and interest have continued to accrue. By failing to make any payments since May 2010, both Thomas and Roy have breached the Agreement. Per the terms of the Agreement, the entire outstanding balance became due upon failure to make the required monthly payments.

As stated in the Agreement, this liability is joint and several. It is irrelevant as to whether Roy or Thomas withdrew the money from the Account; the determinative fact is that the money was withdrawn, and there is no evidence to suggest (nor any argument made by the Irbys) that the money was withdrawn by anyone other than either Thomas Irby or Roy Irby.

The damages suffered by Bank of America are clear and certain. The Equity Line was drawn past its maximum amount of \$69,000.00, and fees and late charges have increased the total due to \$73,502.94 as of November 1, 2011. [Affidavit of Donna Card] The Equity Line is secured by the Mortgage. By separate Agreement, Bank of America has agreed to subordinate its Mortgage to the mortgage of Chase in return for payment of \$50,000.00. [Id.] Subtracting this amount, summary judgment should be granted in the principal amount of \$23,502.94 plus costs of litigation, costs of collection, attorneys' fees, and additional interest. [Id.] To the extent Bank of America does recover any funds as a junior mortgage holder through the foreclosure and sale of the subject property, a portion of the judgment in the amount recovered may be marked as satisfied.

Thomas Irby and Roy Irby are also liable for all costs of collection, including attorneys' fees and costs. [Agreement ¶ 19] Bank of America requests that a judgment for attorneys' fees and costs be entered, with determination on the amount of attorneys fees' to be made at a later date.

2. Quantum Meruit

To the extent the Court does not permit recovery through its breach of contract claim, to permit Thomas Irby and Roy Irby to retain the benefit of the funds withdrawn on the Equity Line would allow for unjust enrichment. *Quantum meruit* is an equitable doctrine that allows recovery for unjust enrichment. The elements of *quantum meruit* are a benefit conferred upon another party by the party seeking recovery, realization of that benefit by the party receiving the benefit, and retention by that party of the benefit under circumstances that make retention of the benefit without payment for it unjust. *Columbia Wholesale Company, Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994).

Thomas Irby and Roy Irby clearly received the benefit of the funds withdrawn. There is no dispute as to whether or not the funds were withdrawn. They cannot be permitted to retain this benefit without repercussion, and to not allow recovery for Bank of America would allow for unjust enrichment.

B. Bank of America Is Entitled to Summary Judgment as to Each of Thomas Irby's Causes of Action

1. Breach of Contract

Mr. Thomas Irby has asserted a purported breach of contract claim.

As stated above, it is Thomas Irby, not Bank America, that has breached the Agreement and other related loan documents. Thomas Irby, in his Amended Cross-Complaint, points to the payoff letter sent by his attorney on August 22, 2007 [Exhibit E] as proof that Bank of America was provided instructions to close the Equity Line. However, following the closing of the Chase Loan, neither Thomas Irby nor his attorney checked to see whether the entire balance of the Bank of America Equity Line had been paid. More importantly, neither Roy Irby nor Thomas Irby executed the document necessary to block and close the Equity Line. [Exhibit F] Without the execution of this document, Bank of America could not close the Equity Line.

Thomas Irby further points to Paragraph 20 of the Agreement as the source of Bank of America's breach:

Each of you has the right, upon proper notice to us, to suspend the privilege of obtaining new Advances. A request to suspend the privilege of obtaining Advances, even if made by only one of you, will be effective against all of you.

(Emphasis added.)

First, the payoff letter only included a check in the amount of \$9,998.82 when a balance of \$20,699.65 remained on the Equity Line. The letter further states that if no balance is due, then the Bank is directed to close the account. However, this letter does not comply with the requirements of Exhibit F that the Borrower provide his signature to close the account. The language of this form is clear and in bold type. Thomas Irby and Roy Irby simply failed to pay off, close and block the account.

In addition, Thomas Irby has failed to point out the provisions contained in the remainder of Paragraph 20 of the Agreement:

If you cancel your right to Advances under this Agreement, you must notify us and return all Special Convenience Checks and any other access devices. Any use of Special Convenience Checks or other access devices following suspension or termination may be considered fraud. You will remain liable for any further use of the Special Convenience Checks or other Credit Line access devices not returned to us.

Neither Roy Irby nor Thomas Irby returned any access devices to the Account. While Thomas Irby blames the Bank for the continued advancement of funds on the Account, the clear terms of the Agreement place responsibility on Thomas and Roy to close the account and assure that no access devices remain in their hands.

Furthermore, Thomas Irby should be estopped from arguing that the account was closed. Thomas Irby allowed for Roy Irby to continue withdrawing from the Account. Thomas Irby had a duty to confirm that the Equity Line had been paid off in full, but he never did so. He never requested a final statement of account from Bank of America. He never confirmed that Roy Irby

had returned all instruments for access to the Equity Line. Because Thomas Irby allowed Roy the opportunity to continue to withdraw, he is estopped from claiming breach against Bank of America. Liability and actions under the Agreement are joint and several; Thomas allowed Roy to withdraw funds and cannot avoid liability for the actions of his co-signor on the Equity Line.

Again, whether Thomas or Roy withdrew these funds is of no significance here. The issue is whether either continued to withdraw, and it is clear that these withdrawals continued. Thomas Irby cannot merely stick his head in the sand, allow Roy to continue to withdraw on the Equity Line, and then point his finger at Bank of America for breach. Furthermore, Thomas Irby cannot produce any evidence that Bank of America breached any Agreement with him, and therefore Bank of America must be granted summary judgment as to his claim for breach.

2. Negligence

Mr. Thomas Irby has asserted a general claim of negligence against Bank of America.

To recover on a claim for negligence, a plaintiff "must show (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach." *Tanner v. Florence County Treasurer*, 336 S.C. 552, 561, 521 S.E.2d 153, 158 (1999).

Thomas Irby's claim of negligence fails for several reasons.

First, Thomas Irby can present no evidence to the Court showing any of the three elements or creating a question of fact as to whether any alleged negligence took place.

Second, Bank of America does not owe a duty to Thomas Irby 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). "The 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 advice being provided to Mr. Thomas Irby related to any banking product, let alone the Equity Line. There was never a duty created between Bank of America and Thomas Irby, and, therefore, there can be no liability in negligence.

Third, and most importantly, even if Bank of America did owe a duty, which it denies, the claims asserted by Thomas Irby arise out of a contract (the Agreement) and not in tort. 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 plaintiff claims the defendant 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 this claim. In actions such as the one at bar, a negligence action will not lie when the parties are in privity of contract. *Id.*

3. Breach of Contract with Fraudulent Act

Mr. Thomas Irby has asserted a claim of breach of contract with fraudulent act against Bank of America.

To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach." *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002). "Fraudulent act" is broadly defined as "any act characterized by dishonesty in fact or unfair

dealing.” *Id.* at 466, 560 S.E.2d at 612. Mere speculation by a party is not sufficient to produce a question of fact. *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004).

First, as shown above, there is no breach of contract by Bank of America.

Second, there has been no fraudulent act by Bank of America. “To establish a cause of action for fraud, the following elements must be proven by clear, cogent, and convincing evidence: (1) a representation of fact; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; and (9) the hearer’s consequent and proximate injury.” *Schnellmann v. Roettger*, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007). “The failure to prove any element of fraud or misrepresentation is fatal to the claim.” *Id.*

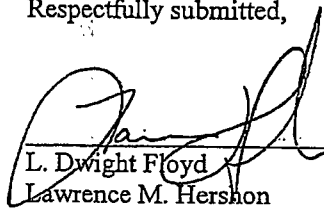
There are no facts that can support the allegation of a fraudulent act committed by Bank of America. Thomas Irby has no evidence to show any dishonesty or unfair dealing, let alone a fraudulent act. He merely has documents that evidence a contract, bank statements and invoices, and other account related documents. None of these documents support a claim for breach of contract with a fraudulent act. Thomas Irby cannot just sit back and state that his claims are ready for trial. When there is a summary judgment motion, he must specifically set forth such facts “as would be admissible in evidence” to show that a true jury issue exists. He does not have any facts to submit that can establish any question of fact as to whether or not a fraudulent action took place. Simply put, there has not been any fraudulent act, and Bank of America’s motion for summary judgment on this claim must be granted.

IV. CONCLUSION

For all of the foregoing reasons, Bank of America respectfully requests that this Court enter an Order granting the instant Motion for summary judgment as to Bank of America's causes of action for breach of contract and unjust enrichment against Thomas Irby and Roy Irby, jointly and severally, and award damages in the amount of \$23,502.94, plus additional interest, attorneys' fees, and costs.

In addition, Bank of America respectfully requests that this Court enter an Order granting the instant Motion for summary judgment and dismiss, in its entirety, Thomas Irby's Cross-Complaint and General Amendment to his Cross-Complaint against Bank of America, *with prejudice*.

Respectfully submitted,



L. Dwight Floyd
Lawrence M. Hershon
Attorney for Plaintiff
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017
dwightfloyd@parkerpoe.com
lawrencehershon@parkerpoe.com

Attorneys for Bank of America, N.A.

December 14, 2011
Columbia, South Carolina

FILED CLERK OF COURT
GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
PAUL B. WICKENS, CLERK

COUNTY OF GREENVILLE

2013 MAY 21 A) Case No.: 2010-CP-23-1621
9:00

Chase Home Finance, LLC,

Plaintiff,

vs.

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

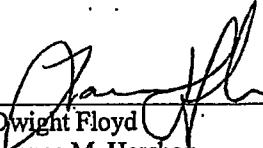
Defendants.

**DEFENDANT BANK OF AMERICA'S
MOTION FOR JUDGMENT ON THE
PLEADINGS AS TO THOMAS R. IRBY'S
CROSS-CLAIM FOR NEGLIGENCE**

Defendant Bank of America, N.A. ("Bank of America"), by and through its undersigned counsel, hereby moves the Court to issue an Order dismissing Thomas R. Irby's cross-claim for negligence against Bank of America by way of judgment on the pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. The grounds for this motion are that (1) no duty in tort exists between Bank of America and Thomas Irby, (2) all claims of negligence are related to performance of the contract at issue and therefore any claim by Thomas Irby can only lie in contract, and (3) the claim is barred by the economic loss rule.

This Motion for Judgment on the Pleadings is based upon the pleadings, the applicable law, arguments of counsel, and any memorandum of law or other material that Bank of America may submit to the Court at the hearing on this Motion.

Respectfully submitted,



L. Dwight Floyd
Lawrence M. Hershon
Attorney for Plaintiff
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
Telephone: 803-255-8000
Facsimile: 803-255-8017
dwightfloyd@parkerpoe.com
lawrencehershon@parkerpoe.com

Attorneys for Bank of America, N.A.

May 17, 2013
Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Chase Home Finance, LLC

☐ Plaintiff

FILED IN CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMON

CASE NO.

2010-CP-23-1621

v.

2013 MAY 21 A 9:00

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

Thomas R. Irby, et al.

☒ Defendant – Bank of America, N.A..

Plaintiff's Attorney: Sara J. Volk

Bar No.

Address: Scott Law Firm, P.A., 2712 Middleburg
Drive, Suite 200, Columbia, SC 29204

phone: 803-252-3340

fax: 803-252-3346

email: SaraV@scottlaw.com other:

Defendant's Attorney: Lawrence M. Hershon

Bar No.

Address: Parker Poe Adams & Bernstein LLP, P. O. Box
1509, Columbia, SC 29202

phone: 803-255-8000

fax: 803-255-8017

email:

lawrencehershon@parkerpoe.com other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Judgment on the Pleadings as to Thomas R. Irby's Cross-Claim for Negligence

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant Bank of America, N.A.

Date Submitted

SECTION III: Motion Fee

☒ **PAID – AMOUNT: \$25**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed:

☐ **MOTION FEE COLLECTED:** _____

☐ **CONTESTED – AMOUNT DUE:** _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

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

DEFENDANT(S).

(100268.00054)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

AMENDED
COMPLAINT
Foreclosure - Non-Jury
(Deficiency demanded)

FILED CLERK OF COURT
GREENVILLE CO. S.C.

MAR 10 P 3:51

The Plaintiff above named, complaining of the Defendant(s) herein, alleges that:

1. This is an action for foreclosure of a mortgage upon certain real estate in Greenville County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The servicer for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program (HMP), but the HMP process as specified by U.S. Treasury Department's Supplemental Directive 09-01 has been completed without resulting in a modification by virtue of the property not being owner occupied.
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. 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 Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of August 17, 2007, Thomas R. Irby made, executed and delivered to M&T Bank a certain mortgage note ("Note") in writing wherein and whereby Thomas R. Irby promised to pay to M&T Bank the principal sum of \$95,000.00.
7. In order to secure the payment of said note, the said Thomas R. Irby and Roy C. Irby did on the same date, to-wit, August 17, 2007, make execute and deliver to Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of

Deeds for Greenville County, on August 28, 2007, in Book 4840, at Page 234; subsequently, the Note and Mortgage were assigned to Chase Home Finance, LLC

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat July 10, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Plat Book 1048 at Page 66, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, II by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437 and by corrective deed from Thomas R. Irby, Melvin C. Irby and Benjamin R. Irby dated August 16, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Deed Book 2286 at Page 921. Thereafter, conveyed to Roy C. Irby, II by deed of Thomas R. Irby dated March 16, 2007 and recorded on November 13, 2008 in Book 2346 at Page 1649.

TMS No. 0597.01-01-001.09

Property address: 156 Pearson Road
Belton, SC 29627

8. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action as well as the After Acquired Property Doctrine.

9. That the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP), if applicable; and that moreover and prior to the filing of this judicial proceeding, the Defendant(s) had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiff.

10. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the

mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

11. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

12. The installments of principal and interest falling due from and after September 1, 2009 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$92,700.96, together with interest thereon at the rate of 6.0% percent per annum from August 1, 2009, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

13. Upon information and belief, the Defendant(s) below named claim(s) or may claim a lien or interest upon or interest in the subject property:

(a) The Defendant, Bank of America, N.A. by virtue of a mortgage given by Thomas R. Irby and Roy C. Irby dated May 16, 2007 in the original amount of \$69,000.00 and recorded on May 17, 2007 in the Office of the Greenville County Register of Deeds in Book 4779 at Page 1103. The Plaintiff is informed and believes that this mortgage has been paid in full and either should be satisfied of record or the lien of the mortgage released from the subject real estate; or in the alternative, this mortgage should be equitably subordinated or subrogated to the mortgage lien of the Plaintiff.

14. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Thomas R. Irby is also made a defendant by virtue of that Lis Pendens against Roy C. Irby et al dated January 13, 2010 and recorded on January 14, 2010 in the Office of the Greenville County Clerk of Court in Book BB4 at Page 004.

15. The Plaintiff demands a personal or deficiency judgment against Thomas R. Irby and any right to the same is specifically demanded.

16. 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.

17. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

1. The amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and said 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, the surplus, if any, be distributed according to law.

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 tenants occupying or exercising control over the mortgaged premises and hold said assets or the same subject to further Order of this Court.

5. Issue an order directing the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile home collateralized under the security documents of the Plaintiff.

6. Plaintiff have judgment against the Defendant(s) Thomas R. Irby for the full amount found to be due Plaintiff on the note and mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334
ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

March 8, 2010

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

PLAINTIFF,

VS.

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

DEFENDANT(S).

(100268.00054)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

AMENDED
SUMMONS

Foreclosure - Non-Jury

FILED-CLERK OF COURT
GREENVILLE, S.C.
2010 MAR 10 P 3:55

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer 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, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, 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.

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 the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the

date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

March 8, 2010

STATE OF SOUTH CAROLINA	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Chase Home Finance, LLC	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER
	)	
Thomas R. Irby, Roy C. Irby	)	CASE NUMBER: 2010-CP-23-1621
A/k/a Roy C. Irby, II and Bank	)	
Of America, N.A.	)	
	)	
Defendants.	)	

The Defendant, Thomas R. Irby, answering the Complaint of Plaintiff would show unto the Court and alleges as follows:

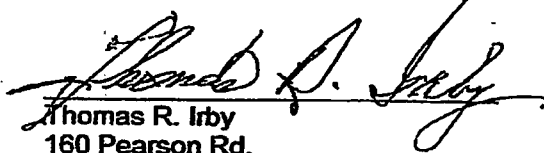
1. That the Defendant admits the allegations contained in Paragraph 6 of the Complaint.
2. That the Defendant is without sufficient information with which to form a belief with regard to the allegations contained in the remaining Paragraphs of the Complaint and therefore denies same and demands strict proof thereof.
2. That the Defendant requests unto the Court that his interest in the subject real property be protected and he be notified of any future hearings and notices in this matter.

WHEREFORE, Defendant prays as follows:

1. For the Defendant's interest in said real property be protected by the Court.
2. For the Defendant to be notified of any future hearings and notices in

this matter.

3. For such other and further relief as to the Court seems just and proper.


Thomas R. Irby
160 Pearson Rd.
Belton, SC 29627

Williamston, South Carolina
Dated: 4/8/2010

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Chase Home Finance, LLC)

Plaintiff,)

vs.)

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

Defendant.)

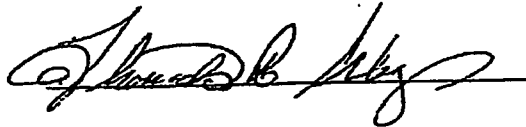
IN THE COURT OF COMMON PLEAS

**CERTIFICATE OF SERVICE
BY MAIL**

CASE NUMBER: 2010-CP-23-1621

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that (s)he served the Answer in this action on the Defendant's Attorney, Brett F. Kline, by depositing same in the United States mail with the correct postage affixed at the following address:

Brett F. Kline
2712 Middleburg Dr., Ste. 200
Columbia, SC 29204



SWORN to before me this 8th
day of April, 2010.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10-28-19

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
CHASE HOME FINANCE, LLC)
)
PLANTIFF,)

IN THE COURT OF COMMON PLEAS 11: 59

FILED-CLERK P. COLE
GREENVILLE CO. S.C.
PAUL B. WICKENS

Vs.)

ANSWER

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

Case Number 2010-CP-23-1621

The defendant Roy C. Irby II, answering the Complaint of Plaintiff would show unto the court and alleges as follows:

1. That the defendant admits the allegations contained in paragraph 7 of the Complaint.

2. That the defendant is without sufficient information to form a belief with regard to the allegations contained in the remaining paragraphs of the Complaint and there fore denies same and demands strict proof thereof .

2. That the Defendant request unto the court that his interest in the Subject real property be protected and he be notified of any future hearings and notices in this matter.

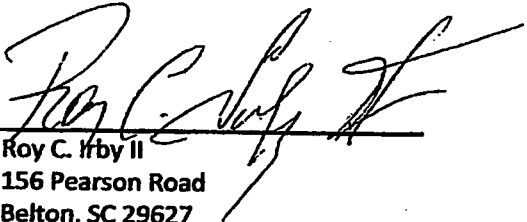
2. U. S. Constitution guarantees the right to trial by jury. I request a trial by jury.

2. Forward address contact for Roy C. Irby II is as follows;

8008 Highway 100, Nashville, 37221.

WHERTOFORE, Defendant prays as follows:

1. For the Defendant's interest in said real property be protected by the Court.
2. For the defendant to be notified of any future hearings and notices this matter.
3. For such other and further relief as to the court seems just and proper.
4. U. S. Constitution guarantees the right to trial by jury. I request a trial by jury.


Roy C. Irby II
156 Pearson Road
Belton, SC 29627
Forward mail to
8008 Highway 100
Nashville, TN 37221

Greenville, South Carolina

Dated: 6/4/2010

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-23-1621

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4. Bank of America denies the allegations contained in Paragraph 4 of the Cross-Claim.

5. In response to Paragraph 5 of the Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

6. Bank of America denies the allegations contained in Paragraph 6 of the Cross-Claim.

7. Bank of America denies the allegations contained in Paragraph 7 of the Cross-Claim.

8. Bank of America denies the allegations contained in Paragraph 8 of the Cross-Claim.

9. Bank of America denies the allegations contained in Paragraph 9 of the Cross-Claim.

10. In response to Paragraph 10 of the Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

11. In response to Paragraph 11 of the Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

12. Bank of America denies any allegations contained in the unnumbered NOW THEREFORE paragraph and each of its subparts.

FOR A SECOND DEFENSE
(Failure to State a Claim)

Defendant Thomas R. Irby fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE
(Acts of Omissions of Others)

Defendant Thomas R. Irby's injuries, if any, were caused in whole or in part by the acts or omissions of others for whose conduct Bank of America is not responsible and/or resulted from conditions unrelated to any conduct of Bank of America.

FOR A FOURTH DEFENSE
(Statute of Frauds)

To the extent Defendant Thomas R. Irby's claims rely on a theory that the contract at issue was orally modified, such a contract does not comport with the terms of the contract or the Statute of Frauds.

FOR A FIFTH DEFENSE
(Set-Off)

To the extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby's damages must be set-off by the amount of the damages Defendant Thomas R. Irby has caused Bank of America.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

To the extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby has a legal obligation to mitigate his damages, and to the extent he has failed to do so, his claims are barred in whole or in part.

FOR A SEVENTH DEFENSE
(Unclean Hands)

The cross-claims should be barred due to Defendant Thomas R. Irby's unclean hands.

FOR AN EIGHTH DEFENSE
(Compliance with the Law and Contract)

Defendant Bank of America acted in good faith and fully complied with all applicable laws and contracts in its dealings with Defendant Thomas R. Irby.

FOR A NINTH DEFENSE
(No Damage)

Defendant Thomas R. Irby has suffered no damage as a result of the alleged acts or omissions of Defendant Bank of America.

FOR A TENTH DEFENSE
(Punitive Damages)

With respect to Thomas R. Irby's demands for punitive damages, Defendant Bank of America asserts its conduct as alleged herein does not rise to the level required to sustain a claim for punitive damages. Further, the award or assessment of punitive damages as prayed for by Thomas R. Irby would violate Defendant Bank of America's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution and, therefore, may not be awarded to Thomas R. Irby in that:

The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

Any award of punitive damages serving a compensatory functions is inconsistent with due process guarantees;

Any award of punitive damages based upon the wealth of Defendant Bank of America violates due process guarantees;

The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards, is arbitrary, promotes grossly excessive awards and is inconsistent with due process guarantees;

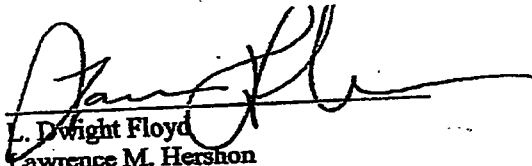
Assuming *arguendo* that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

Thomas R. Irby's claim for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Defendant Bank of America.

Defendant Bank of America specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of *State Farm Ins. Co. v. Campbell*, 538 U.S. 408, (2003); *BMW of North America v. Gore*, 517 U.S. 559 (1996) and *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), together with all such standards applicable under state law.

WHEREFORE, having fully answered Defendant Thomas R. Irby's Cross-Claim, Defendant Bank of America respectfully prays that the Court:

- A. Dismiss the Cross-Claim as to Defendant Bank of America with prejudice;
- B. Declare that Defendant Thomas R. Irby is entitled to no recovery from Defendant Bank of America; and
- D. Grant such other and further relief as the Court may deem just and proper.



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dwightfloyd@parkerpoe.com
lawrencehershon@parkerpoe.com

Attorneys for Defendant Bank of America

September 16, 2010
Columbia, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of *Bank of America's Answer to Thomas R. Irby's Cross-Claim* was served on September 16, 2010 by mailing a copy of the same by U.S. Mail, postage prepaid, addressed as follows:

Sara J. Volk, Esq.
Scott Law Firm, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

Philip J. Temple, Esq.
819 East North Street
Greenville, SC 29601

Mr. Thomas R. Irby
160 Pearson Road
Belton, SC 29627


Dorothy M. Creighton

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2010-CP-23-1621
	)	
Chase Home Finance, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT BANK OF AMERICA'S
	)	ANSWER TO AMENDED COMPLAINT
Thomas R. Irby, Roy C. Irby a/k/a Roy C.	)	
Irby II and Bank of America, N.A.,	)	
	)	
Defendants.	)	

Defendant Bank of America, N.A. ("Bank of America"), through its undersigned counsel, hereby responds to the Complaint filed by Plaintiff, Chase Home Finance, LLC, as follows:

GENERAL RESPONSE

Bank of America denies each and every allegation of Plaintiff's Complaint that is not hereinafter specifically admitted, modified, or explained.

FIRST DEFENSE

Bank of America responds to the individually numbered paragraphs of the Complaint as follows:

1. Paragraph 1 of the Complaint contains no allegations to which a response is required but to the extent required Bank of America denies any allegations contained in Paragraph 1.
2. Bank of America is without knowledge sufficient to admit or deny the allegations set forth in Paragraph 2 of the Complaint.
3. Bank of America is without knowledge sufficient to admit or deny the allegations set forth in Paragraph 3 of the Complaint.

4. In response to Paragraph 4 of the Complaint, it is admitted that Bank of America has an interest in the real estate that is the subject of this action and that Bank of America's interest is superior to all other claimed interests.

5. In response to Paragraph 5 of the Complaint, which purports to allege matters related to and involving other Defendants, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same.

6. Bank of America is without knowledge sufficient to admit or deny the allegations set forth in Paragraph 6 of the Complaint.

7. In response to Paragraph 7 of the Complaint, Bank of America craves reference to matters that are of public record, which are admitted based on information and belief, and denies any allegation inconsistent therewith. Further, to the extent that any of the allegations in Paragraph 7 contain legal conclusions, the same are denied. Any remaining allegations are denied.

8. Bank of America denies the allegations contained in Paragraph 8 of the Complaint.

9. Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged in Paragraph 9 of the Complaint and, therefore, denies same.

10. In response to Paragraph 10 of the Complaint, which purports to allege matters related to and involving other Defendants, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same.

11. In response to Paragraph 11 of the Complaint, which purports to allege matters related to and involving other Defendants, and not Bank of America, Bank of America lacks

sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same.

12. In response to Paragraph 12 of the Complaint, which purports to allege matters related to and involving other Defendants, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same.

13. In response to Paragraph 13 of the Complaint, Bank of America admits that it has an interest in and lien on the subject property by virtue of that certain Mortgage dated May 16, 2007, and recorded on May 17, 2007, in the Office of the Greenville County Register of Deeds in Book 4779 at Page 1103. Bank of America denies that the Mortgage has been paid in full. Bank of America further denies that the Mortgage has been satisfied or released. Bank of America denies that the Mortgage should be equitably subordinated or subrogated to the mortgage of Plaintiff and denies any remaining allegations in Paragraph 13 of the Complaint. In fact, Bank of America admits that it holds the most senior interest in the subject property. Plaintiff is not entitled to obtain any right or benefit related to the subject property of a priority superior to that of Bank of America. Bank of America respectfully requests the Court determine the relative priority of the liens on the subject property and, upon sale of the subject property, permit this mortgagee to share in the proceeds from sale in accordance with that determination.

14. In response to Paragraph 14 of the Complaint, which purports to allege matters related to and involving other Defendants, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same.

15. In response to Paragraph 15 of the Complaint, which purports to allege matters related to and involving other Defendants, and not Bank of America, Bank of America lacks

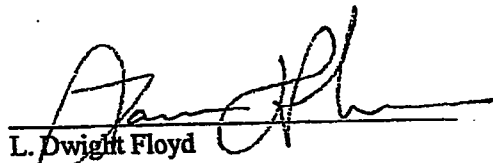
sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same.

16. Paragraph 16 of the Complaint contains legal conclusions, and the same are denied.

17. Paragraph 17 of the Complaint contains legal conclusions, and the same are denied.

WHEREFORE, Bank of America prays the Court:

- a) inquire into the matters alleged sitting as the trier of fact without a jury;
- b) grant a speedy hearing to the parties to determine their rights;
- c) preserve and protect the first priority lien of Bank of America on the property involved in this action;
- d) determine the relative priorities of the parties' interests, declaring that Bank of America's right, title and interest in and to the subject property is superior to all other parties;
- e) declare in favor of, and distribute first to, Bank of America all amounts due and owing under the mortgage, and according to the law of this State, the proceeds of any sale of the subject property; and
- f) award to Bank of America other damages, including attorneys' fees and costs; and for other such and further relief as this Court may deem just and proper.



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lawrencehershon@parkerpoe.com

Attorneys for Defendant Bank of America

September 22, 2010
Columbia, South Carolina

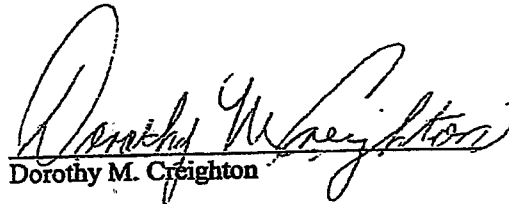
CERTIFICATE OF SERVICE

I hereby certify that a copy of *Bank of America's Answer to Amended Complaint* was served on September 22nd, 2010 by mailing a copy of the same by U.S. Mail, postage prepaid, addressed as follows:

Sara J. Volk, Esq.
Scott Law Firm, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

Philip J. Temple, Esq.
819 East North Street
Greenville, SC 29601

Mr. Thomas R. Irby
160 Pearson Road
Belton, SC 29627


Dorothy M. Creighton

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No.: 2010-CP-23-1621
	)	
Chase Home Finance, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs:	)	DEFENDANT BANK OF AMERICA'S
	)	AMENDED ANSWER TO THOMAS R.
Thomas R. Irby, Roy C. Irby a/k/a Roy C.	)	IRBY'S CROSS COMPLAINT AND
Irby II and Bank of America, N.A.,	)	CROSS-CLAIM AGAINST DEFENDANTS
	)	THOMAS R. IRBY AND ROY C. IRBY
Defendants.	)	A/K/A ROY C. IRBY II
	)	

Defendant Bank of America, N.A. ("Bank of America"), through its undersigned counsel, hereby responds to the Cross Complaint (the "Cross-Claim") filed by Defendant Thomas R. Irby, as follows:

GENERAL RESPONSE

Bank of America denies each and every allegation of the Cross-Claim that is not hereinafter specifically admitted, modified, or explained.

FIRST DEFENSE

Bank of America responds to the individually numbered paragraphs of the Cross-Claim as follows:

1. Bank of America denies the allegations contained in Paragraph 1 of the Cross-Claim.
2. Bank of America denies the allegations contained in Paragraph 2 of the Cross-Claim.
3. Bank of America denies the allegations contained in Paragraph 3 of the Cross-Claim.

4. Bank of America denies the allegations contained in Paragraph 4 of the Cross-Claim.

5. In response to Paragraph 5 of the Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

6. Bank of America denies the allegations contained in Paragraph 6 of the Cross-Claim.

7. Bank of America denies the allegations contained in Paragraph 7 of the Cross-Claim.

8. Bank of America denies the allegations contained in Paragraph 8 of the Cross-Claim.

9. Bank of America denies the allegations contained in Paragraph 9 of the Cross-Claim.

10. In response to Paragraph 10 of the Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

11. In response to Paragraph 11 of the Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

12. Bank of America denies any allegations contained in the unnumbered NOW THEREFORE paragraph and each of its subparts.

FOR A SECOND DEFENSE
(Failure to State a Claim)

Defendant Thomas R. Irby fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE
(Acts of Omissions of Others)

Defendant Thomas R. Irby's injuries, if any, were caused in whole or in part by the acts or omissions of others for whose conduct Bank of America is not responsible and/or resulted from conditions unrelated to any conduct of Bank of America.

FOR A FOURTH DEFENSE
(Statute of Frauds)

To the extent Defendant Thomas R. Irby's claims rely on a theory that the contract at issue was orally modified, such a contract does not comport with the terms of the contract or the Statute of Frauds.

FOR A FIFTH DEFENSE
(Set-Off)

To the extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby's damages must be set-off by the amount of the damages Defendant Thomas R. Irby has caused Bank of America.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

To the extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby has a legal obligation to mitigate his damages, and to the extent he has failed to do so, his claims are barred in whole or in part.

FOR A SEVENTH DEFENSE
(Unclean Hands)

The cross-claims should be barred due to Defendant Thomas R. Irby's unclean hands.

FOR AN EIGHTH DEFENSE
(Compliance with the Law and Contract)

Defendant Bank of America acted in good faith and fully complied with all applicable laws and contracts in its dealings with Defendant Thomas R. Irby.

FOR A NINTH DEFENSE
(No Damage)

Defendant Thomas R. Irby has suffered no damage as a result of the alleged acts or omissions of Defendant Bank of America.

FOR A TENTH DEFENSE
(Punitive Damages)

With respect to Thomas R. Irby's demands for punitive damages, Defendant Bank of America asserts its conduct as alleged herein does not rise to the level required to sustain a claim for punitive damages. Further, the award or assessment of punitive damages as prayed for by Thomas R. Irby would violate Defendant Bank of America's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution and, therefore, may not be awarded to Thomas R. Irby in that:

The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

Any award of punitive damages serving a compensatory functions is inconsistent with due process guarantees;

Any award of punitive damages based upon the wealth of Defendant Bank of America violates due process guarantees;

The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards, is arbitrary, promotes grossly excessive awards and is inconsistent with due process guarantees;

Assuming *arguendo* that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

Thomas R. Irby's claim for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Defendant Bank of America.

Defendant Bank of America specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of *State Farm Ins. Co. v. Campbell*, 538 U.S. 408, (2003); *BMW of North America v. Gore*, 517 U.S. 559 (1996) and *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), together with all such standards applicable under state law.

FOR AN ELEVENTH DEFENSE BY WAY OF CROSS-CLAIM

Defendant Bank of America, N.A. ("Bank of America"), complaining of the Cross-Claim Defendants Thomas R. Irby ("Thomas Irby") and Roy C. Irby a/k/a Roy C. Irby II ("Roy Irby"), would show unto the Court as follows:

1. Bank of America is a national association authorized to do business in South Carolina.
2. Upon information and belief, Thomas R. Irby is a citizen and resident of the County of Greenville, State of South Carolina.
3. Upon information and belief, Roy Irby was a citizen and resident of the County of Greenville, State of South Carolina at all relevant times and currently is a citizen and resident of the State of Tennessee.
4. This Court has jurisdiction over the parties and subject-matter of this action, and venue is proper in Greenville County.

5. On or about May 16, 2007, Thomas Irby and Roy Irby, for valuable consideration, executed a Bank of America Equity Maximizer Agreement and Disclosure Statement that provided a revolving line of credit for the principal amount of Sixty-Nine Thousand and No/100 Dollars (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

6. Under the Agreement, Thomas Irby and Roy Irby agreed to make minimum monthly payments on any draws made on this account in the amount of interest accrued each month. Thomas Irby and Roy Irby further agreed to a late charge of the greater of Ten and No/100 Dollars (\$10.00) or five percent (5%) of the unpaid portion of the minimum monthly payment for any payments that were more than ten (10) days late.

7. In order to secure payment to Bank of America under the Agreement, on or about May 16, 2007, Thomas Irby and Roy Irby executed a Mortgage (the "Mortgage") covering real property located in Greenville County, South Carolina. A true and accurate copy of the Mortgage is attached hereto as Exhibit B. The Mortgage was recorded in the Office of the Clerk of Court for Greenville County on May 17, 2007, in Book 4779, at Page 1103.

The description of the premises as contained in the Mortgage is as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat dated June 4, 2004 and recorded on March 6, 2007 in the RMC Office for Greenville County in Plat Book 1032 at page 61, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437.

8. Following the opening of the account, a withdrawal was made on the account in the amount of Sixty-Nine Thousand and No/100 Dollars (\$69,000.00).

9. Thomas Irby and Roy Irby are now, and for a period of time have been, in default under the terms of the Agreement for failure to make payments when and as due.

10. As a result of this default by Thomas Irby and Roy Irby, Bank of America has exercised its right to declare the entire balance immediately due and payable in full.

11. The outstanding balance as of October 8, 2010, exclusive of attorneys' fees and costs of collection incurred in this action and additional interest, is Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62). A copy of the Payoff Balance is attached hereto as Exhibit C.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

12. Bank of America incorporates by reference the allegations in the paragraphs above as if fully restated herein.

13. All conditions precedent to Bank of America's enforcement of the Agreement have been satisfied or performed.

14. Thomas Irby and Roy Irby breached the Agreement by failing to make payment under the terms of the Agreement.

15. As a result of Thomas Irby's and Roy Irby's breach, Bank of America has suffered damages.

16. The outstanding balance under the Agreement as of October 8, 2010, exclusive of attorneys' fees and costs of collection incurred in this action and additional interest, is Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62).

17. Bank of America is entitled to judgment against Thomas Irby and Roy Irby in the amount of Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62) plus additional interest, costs of collection, and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)**

18. Bank of America incorporates by reference the allegations in the paragraphs above as if fully restated herein.

19. Bank of America conferred a benefit upon Thomas Irby and Roy Irby at their request and under circumstances where Bank of America reasonably relied upon Thomas Irby and Roy Irby to pay for the benefit.

20. These benefits include, but are not limited to, the provision and use of a revolving line of credit.

21. Thomas Irby and Roy Irby understood or ought to have understood that Bank of America expected compensation for the benefit.

22. Thomas Irby and Roy Irby realized value from the benefit.

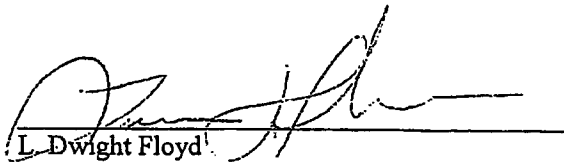
23. It would be inequitable for Thomas Irby and Roy Irby to retain the benefit without paying Bank of America for its value.

24. Bank of America is entitled to judgment in the amount of Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62) plus interest.

WHEREFORE, Bank of America respectfully prays that the Court:

1. Dismiss the Cross-Claim as to Defendant Bank of America with prejudice;
2. Declare that Defendant Thomas Irby is entitled to no recovery from Defendant Bank of America;

3. Enter a judgment in favor of Cross-Claimant Bank of America and against Cross-Claim Defendants Thomas Irby and Roy Irby, jointly and severally, in the amount of Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62) plus interest;
4. Award attorneys' fees and all costs of collection to Cross-Claimant Bank of America;
5. Tax the costs of this action against Cross-Claim Defendants Thomas Irby and Roy Irby; and
6. Award such other and further relief in favor of the Cross-Claimant Bank of America as the Court deems just and proper.



L. Dwight Floyd
Lawrence M. Hershon
Attorney for Plaintiff
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
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dwightfloyd@parkerpoe.com
lawrencehershon@parkerpoe.com

Attorneys for Bank of America, N.A.

December 2, 2010
Columbia, South Carolina

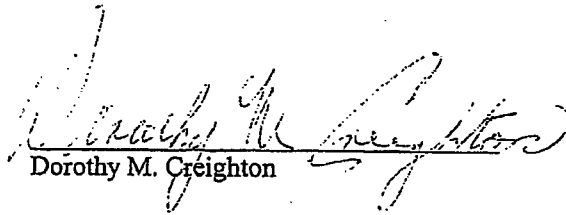
CERTIFICATE OF SERVICE

I hereby certify that a copy of *Defendant Bank of America's Amended Answer to Thomas R. Irby's Cross Complaint and Cross-Claim Against Defendants Thomas R. Irby and Roy C. Irby a/k/a Roy C. Irby* was served on December 2, 2010 by mailing a copy of the same by U.S. Mail, postage prepaid, addressed as follows:

Sara J. Volk, Esq.
Scott Law Firm, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204

Philip J. Temple, Esq.
819 East North Street
Greenville, SC 29601

Mr. Thomas R. Irby
160 Pearson Road
Belton, SC 29627


Dorothy M. Creighton

COPY

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-23-1621

Chase Home Finance LLC,

Plaintiff,

vs.

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

Defendants.

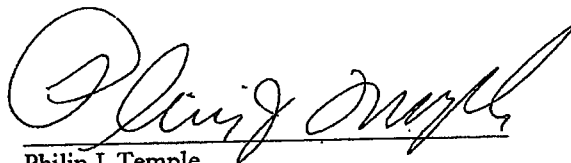
**DEFENDANT ROY C. IRBY A/K/A
ROY C. IRBY II'S REPLY TO BANK
OF AMERICA'S CROSS-CLAIM**

Defendant Roy C. Irby a/k/a Roy C. Irby II (hereinafter "Roy Irby"), through his undersigned counsel, replying to Bank of America's Cross-Claim, would respectfully show the Court as follows:

1. Each allegation of the Cross-claim not hereinafter admitted, modified or explained is hereby denied.
2. Paragraph 1 is admitted upon information and belief.
3. Paragraph 2 is admitted.
4. Paragraph 3 admits that he is citizen and resident of the County of Greenville, State of South Carolina.
5. Paragraph 4 is admitted.
6. Paragraph 5 is admitted.
7. Any allegation of Paragraph 6 inconsistent with the terms of the Agreement referred to therein is denied.
8. This Defendant admits that he executed a mortgage in favor of Bank of America. Any allegation of Paragraph 7 inconsistent with such mortgage is denied.

9. Paragraph 8 is admitted.
10. Paragraph 9 is denied as to this Defendant.
11. As to Paragraph 10, this Defendant admits that Bank of America has made demand for payment.
12. Paragraph 11 is denied.
13. Paragraph 12 appears to require no response, but inasmuch as a response is required, each of the responses in Paragraphs 1 through 12 of this Reply is incorporated herein by reference.
14. Paragraphs 13 through 17 are denied.
15. Paragraph 18 appears to require no response, but inasmuch as a response is required, each of the responses in Paragraphs 1 through 14 of this Reply is incorporated herein by reference.
16. Paragraphs 19 through 24 are denied.

WHEREFORE, having fully responded to the allegations of Bank of America's Cross-claim, this Defendant prays that the Cross-claim be dismissed with prejudice as to this Defendant with costs assessed against Bank of America.



Philip J. Temple
Attorney for Defendant Roy C. Irby
Bar No. 05504
819 East North Street
Greenville, SC 29601
Telephone: (864) 242-4995
Facsimile: (864) 242-5500
Email: ptemple@greenvillelaw.net

Date: Jan 13, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

CASE NO. 2010-CP-23-1621

Chase Home Finance LLC,)

Plaintiff,)

vs.)

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

Defendants.)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on January 13, 2011, a copy of Defendant Roy C. Irby a/k/a Roy C. Irby II's Reply to Bank of America's Cross-claim was served on the parties to the action by delivering same by U.S. Postal Service first class mail with sufficient postage affixed thereto to:

Thomas R. Irby
160 Pearson Road
Belton, SC 29627

Sara J. Volk, Esquire
Scott Law Firm, P.A.
P.O. Box 2065
Columbia, SC 29202

L. Dwight Floyd, Esquire
Lawrence M. Hershon, Esquire
Parker Poe Adams Bernstein, LLP
P.O. Box 1509
Columbia, SC 29202


Dianne Chalmers
Assistant to Attorney Philip J. Temple

Date: 1-13-2011

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) CASE NO. 2010-CP-23-1621

Chase Home Finance LLC,

Plaintiff,

vs.

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

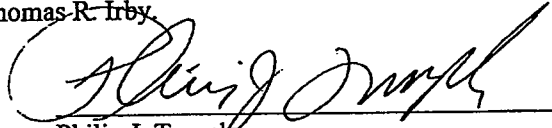
Defendants.

**DEFENDANT ROY C. IRBY A/K/A
ROY C. IRBY II'S REPLY TO
THOMAS R. IRBY'S CROSS
COMPLAINT AND CROSS-CLAIM**

Defendant Roy C. Irby a/k/a Roy C. Irby II (hereinafter "Roy Irby"), through his undersigned counsel, replying to Thomas R. Irby's Cross Complaint and Cross-Claim, would respectfully show the Court as follows:

1. Each allegation of the Cross-claim not hereinafter admitted, modified or explained is hereby denied.
2. Paragraph 1 is denied.
3. Paragraph 2 is denied.
4. Paragraphs 3 and 4 do not refer to this Defendant, but insomuch as a response is required, this Defendant denies the allegations.
5. Paragraph 5 is denied.
6. This Defendant has insufficient information to form an opinion or belief about the allegations of Paragraph 6 and therefore denies same.
7. Paragraph 7 is denied.
8. Paragraphs 8 through 11 do not appear to be directed to this Defendant, but insomuch as a response is required, this Defendant denies same.

WHEREFORE, having fully responded to the allegations of Thomas R. Irby's Cross Complaint and Cross-claim, this Defendant prays that the same be dismissed with prejudice as to this Defendant with costs assessed against Thomas R. Irby.



Philip J. Temple
Attorney for Defendant Roy C. Irby
Bar No. 05504
819 East North Street
Greenville, SC 29601
Telephone: (864) 242-4995
Facsimile: (864) 242-5500
Email: ptemple@greenvillelaw.net

Date: Jan 13, 2011

**STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE**

**Thomas R. Irby
Cross Complainant Pro Se**

Vs

**Bank of America, and
Roy C. Irby II
Defendants**

IN THE COURT OF COMMON PLEAS

Case No: 2010-CP-23-1621

2011 JAN 21 **THOMAS R. IRBY'S ANSWER TO
BANK OF AMERICA'S CROSS-CLAIM
AGAINST DEFENDANTS**

**FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JAN 21 2011**

Thomas R. Irby herewith references his original Cross-Complaint with all amendments as if rewritten here in entirety.

Claimant Thomas R. Irby now answers the Cross-Claim of Bank of America with each Bank Complaint referenced and numbered as read:

Articles of complaint numbered one (1) through number seven (7) are admitted only as they refer to matters of record, with no admission of wrong implied or accepted by Thomas R. Irby.

8. Complaint is denied in that it refers to a lump sum withdrawal of \$69,000.00 issued to Thomas Irby and Roy C. Irby jointly. Thomas Irby has never received funds from this account and Bank of America has confirmed that all funds were paid to Roy C. Irby or to his personal checking account as his overdraft protection. The account history also confirms that the balance on the account was paid to Roy C. Irby during the payoff procedure and in accrued withdrawals since the payoff.
9. Complaint is Denied. Thomas R. Irby cannot be in default for a mortgage or loan that he paid off in August of 2007. Thomas Irby holds copies of documents including the HUD statement indicating the account was paid off, the payoff statement provided by

Bank of America for the payoff procedure, and the canceled check for the payoff. Thomas Irby also holds a copy of the payoff notice letter from Attorney Gregg Jones wherein Bank of America was instructed to "close, Block, & Cancel" the note. The letter further instructed Bank of America that if there was any problem with the payoff procedure the bank was to notify Attorney Jones immediately. Bank of America failed to notify Attorney Jones or Thomas Irby of any problem. It is not Thomas Irby's fault that Bank of America refused to accept the payoff and failed to notify the closing Attorney (as directed) or Thomas Irby, that the account was not closed.

10. Complaint is denied for the same reasons written in number 9. Bank of America has by it's own wanton negligence generated a situation that they are attempting to hold Thomas Irby responsible for.
11. Complaint is denied in that it refers to a responsibility by Thomas Irby that has not existed since August 22, 2007. On that date Thomas Irby satisfied his obligation in this matter.

Obviously I, Thomas Irby, do not have the legal expertise to appropriately describe the negligent acts by Bank of America or the results of those acts, or the damages caused by those acts, in acceptable legal terms. I therefore ask the Court's indulgence in my deviation from what may be normal procedure. In order to make my Complaint more explicit I have included copies of supporting documents to be attached to this answer and considered as exhibits of evidence by the Court.

Exhibit A: Copy of the payoff statement submitted to Attorney Jones by Bank of America. Once this was submitted to the closing attorney, Bank of America knew that a payoff procedure had been initiated on the account.

Exhibit B: Copy of the payoff check issued to Bank of America by Attorney Jones. This check was received as a payoff by Bank of America but the Bank posted it to the account as a general payment.

Exhibit C: Copy of the letter of instruction from the closing Attorney to Bank of America. This letter instructed the bank to close and cancel the note. It also specifically instructed the bank to notify the Attorney if there was any problem. There was no response from Bank of America until Roy C. Irby II became delinquent in November of 2009 with the maintenance payments he had been submitting on withdrawals that totaled over \$69,000.00.

Exhibit D: Copy of the HUD Statement noting that Bank of America was Paid Off. This document also notes that Chase Home Finance became holder of the first mortgage.

These four documents are supported by more than forty other documents of evidence. It is now known from discovery that Bank of America has held these documents in their possession since they were originated or delivered to the bank. They should have been aware of the negligence since August 22, 2007.

Claimant Thomas Irby does not believe the Court wishes to see the case tried on paper. The four documents are included because they represent the core of the matter. All other infractions are the result of the wanton and gross negligence of Bank of America relative to these exhibits.

Consumer Real Estate - Payoff Services

PAYOFF STATEMENT
08/24/07

BANK OF AMERICA
4001 Peachtree Dunwoody Rd NW
Atlanta, GA 30328

PLEASE READ ENTIRE DOCUMENT FOR COMPLETE INSTRUCTIONS

Account Number:	58118000000000000000
Borrower Name:	THOMAS P JCB
Co-Borrower Name:	DOUGLAS JCB
Address:	156 WADSWORTH RD BELTON, SC 29677

This calculation is void after 08/24/07. A new payoff statement should be requested after this date.
Interest is \$2.30 per day.

*** TOTAL AMOUNT PAYABLE *** \$9998.92

CALCULATION OF AMOUNT REQUIRED TO SATISFY ACCOUNT BALANCE AND RELATED FEES:

PAYOFF FIGURES VOID AFTER 08/24/07

Account Number:	58118000000000000000			
Principal Balance:	\$9899.65			
Accrued Interest Due:	94.27			
Late Fees Due:				
Other Fees Due:				
Annual Fees Due:				
Early Closure Fee:				
Payoff Statement Fee:				
Reconciliation Fee:				
Uen Release Fee:	5.00			
Total Amount:	\$9998.92			

These figures are subject to final verification upon receipt of funds by Bank of America. Bank of America reserves the right to adjust these figures and refuse any funds which are insufficient to pay the account in full for any reason, including but not limited to error in calculation of payoff amount, previously dishonored check or money order, interest accruals, subsequent advances, intra-day advances, insurance, fees or additional disbursements made by Bank of America between the date of this payoff statement and the receipt of funds.

EXHIBIT - A
Page 4 of 10

Telephone (864) 847-5555
(864) 847-5899

Post Office Box 158

Gregg F. Jones
Attorney and Counselor at Law
1016 Anderson Drive
Williamston, SC 29697

August 22, 2007

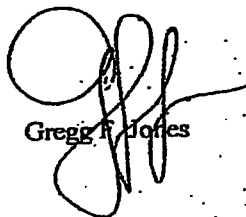
Bank of America
Attn: Home Equity Payoff Dept.
NC4-105-01-40
PO Box 21983
Greensboro, NC 27420

Re: Thomas R. Irby
Acct No.: 68118000674199

To whom it may concern:

Enclosed herewith, please find my trust check in the amount of \$9,998.92, to be applied to the above mortgage. If there is a balance due, please contact this office immediately. If no balance is due or, if this is an equity line, you are directed and authorized to close, block and satisfy said mortgage and forward to my office. If you have any questions, please feel free to call me.

Sincerely,



Gregg F. Jones

GFJ/dla
enc.

EXHIBIT- C
Page 6 of 10

A. SETTLEMENT STATEMENT

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

OMB NO. 2502-0245

1. TYPE OF LOAN 1. ☐ FHA 2. ☐ VA 3. ☐ FHLB 4. ☐ Other		5. FILE NUMBER 87-5983		7. LOAN NUMBER 12166898		8. MORTGAGE INS. PLAN NO.	
C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "[POC]" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.							
D. NAME AND ADDRESS OF BORROWER Thomas R. Irby 156 Pearson Rd. Belton, SC 29627		E. NAME AND ADDRESS OF SELLER		F. NAME AND ADDRESS OF LENDER W & T Bank 628 Green Valley Rd., Ste. 200 Greensboro, NC 27403			
G. PROPERTY LOCATION 156 Pearson Rd. Belton, SC 29627		H. SETTLEMENT AGENT GREGG P. JONES, ATTORNEY PLACE OF SETTLEMENT 1016 ANDERSON DRIVE WILMINGTON, SC 29697		I. SETTLEMENT DATE August 17, 1997 Disburse: 08-22-97			
J. SUMMARY OF BORROWER'S TRANSACTION				K. SUMMARY OF SELLER'S TRANSACTION			
100. GROSS AMOUNT DUE FROM BORROWER				400. GROSS AMOUNT DUE TO SELLER			
101. Contract Sales Price				401. Contract Sales Price			
102. Personal Property				402. Personal Property			
103. Settlement charges to borrower line 1400 7,251.28				403.			
104. Payoff 1st mortgage; Community First Bank 54,730.73				404.			
105. Payoff 2nd mortgage; Bank of America 5,998.92				405.			
Adjustments for items paid by seller in advance				Adjustments for items paid by seller in advance			
106. City/town taxes to				406. City/town taxes to			
107. County taxes to				407. County taxes to			
108. Assessments to				408. Assessments to			
109.				409.			
110.				410.			
111.				411.			
112.				412.			
120. GROSS AMOUNT DUE FROM BORROWER 71,980.93				420. GROSS AMOUNT DUE TO SELLER			
200. AMOUNTS PAID BY OR IN BENEFIT OF BORROWER				500. REDUCTIONS IN AMOUNT DUE SELLER			
201. Deposit or earnest money				501. Escrow deposit (see instructions)			
202. Principal amount of new loan(s) 95,000.00				502. Settlement charges to seller line 1400			
203. Existing loan(s) taken subject to				503. Existing loans taken subject to			
204.				504. Payoff of first mortgage loan			
205.				505. Payoff of second mortgage loan			
206.				506.			
207.				507.			
208.				508.			
209.				509.			
Adjustments for items unpaid by seller				Adjustments for items unpaid by seller			
210. City/town taxes to				510. City/town taxes to			
211. County taxes to				511. County taxes to			
212. Assessments to				512. Assessments to			
213.				513.			
214.				514.			
215.				515.			
216.				516.			
217.				517.			
218.				518.			
219.				519.			
220. TOTAL PAID BY/FOR BORROWER 95,000.00				520. TOTAL REDUCTION AMOUNT DUE SELLER			
300. CASH AT SETTLEMENT FROM/TO BORROWER				600. CASH AT SETTLEMENT TO/FROM SELLER			
301. Gross amt due from borrower (line 120) 71,980.93				601. Gross amount due to seller (line 420)			
302. Less amt paid by/for borrower (line 220) 95,000.00				602. Less reductions due seller (line 520)			
303. CASH [] FROM [X] TO BORROWER 23,019.07				603. CASH [] TO [] FROM SELLER			

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein

BORROWER Thomas R. Irby

BORROWER _____

EXHIBIT-D
Page 7 of 10

HUD-1 (3-86) RNSA, HB 4305.2

Even though Bank of America was informed of the negligence in January of 2010, the Bank persistently continues to seek favor with the Court by presenting a false history of innocence

RESPONSE TO BANK OF AMERICA'S FIRST CAUSE OF ACTION

Complainant Thomas Irby objects to any reference of "Breach of Contract" on his behalf. The Mortgage, Note, and other documents represent a mutual contract of trust between Thomas Irby and Bank of America. Thomas Irby had every right to believe that Bank of America would protect his best interests. Bank of America breached the trust between the Bank and Thomas Irby. This breach was committed covertly and secretly for over two years without Thomas Irby's knowledge and after the payoff process was complete.

12. The referenced allegations are incorrect and without merit except as agreed in numbers 1 through 7.
13. Bank of America has no standing to enforce any agreement that has been satisfied since August 22, 2007.
14. Thomas Irby never breached any agreement or failed to make any payments. Thomas Irby actually made two payments on a mortgage/loan that he had already satisfied.
15. All damages, if any, suffered by Bank of America would be a direct result of the acts of wanton and gross negligence committed by the Bank.
16. Thomas Irby does not owe any balance on any agreement with Bank of America.

17. Bank of America should not be entitled to any award or judgment for the results of the Bank's own acts of fraudulent and gross negligence.

RESPONSE TO BANK OF AMERICA'S SECOND CAUSE OF ACTION

Thomas Irby objects to any reference of "Unjust Enrichment" inferring that he has unjustly obtained financial gains from Bank of America. Bank of America is in reality attempting to gain "unjust enrichment" from Thomas Irby. Thomas Irby did honorably and justly satisfy his obligation to Bank of America. Bank of America is now attempting to extend Thomas Irby's obligation to them against his will.

18. None of the articles of Bank of America's Cross-Complaint have merit other than numbers 1 through 7 as previously accepted.
19. Thomas Irby satisfied and fulfilled any "benefit" he may have received from Bank of America. Bank of America has chosen to reject and insult the confidence Thomas Irby placed with the Bank.
20. Thomas Irby never used the "line of Credit" and was never informed that Bank of America had voluntarily linked the line to the personal checking account of Roy C. Irby II. Thomas Irby is now informed that because his signature is first on the mortgage and loan documents, he is considered to be the prime borrower. If that is true Bank of America should not have made any modifications to the account without Thomas Irby's written approval.
21. Thomas Irby understood that Bank of America was to be paid. That is evidenced by the payoff documents of August 22, 2007. If Thomas Irby did not understand that Bank of America was to be paid he would not have paid them.

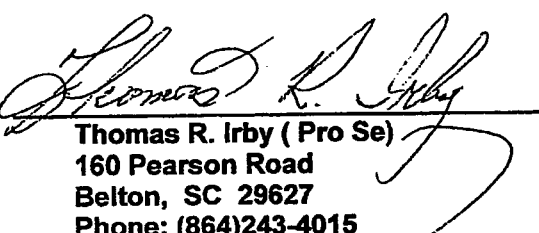
22. Thomas Irby realized no value from the benefit. All sums were paid to Roy C. Irby. Bank of America has confirmed this by letter to Thomas Irby
23. Thomas Irby cannot retain any benefit that he has never received.
24. Bank of America cannot be entitled to any Judgment against Thomas Irby for losses generated by the Bank's negligence.

Complainant Thomas R. Irby has herewith responded to Bank of America's Cross-Claim.

The Complainant thus asks that the Court:

1. Dismiss Bank of America's cross claim in entirety.
2. Declare that Thomas R. Irby is entitled to full recovery from all damages, real and punitive, suffered from the negligent acts of Bank of America.
3. That Thomas R. Irby is entitled to compensation for the damages to his good credit caused by the acts of Bank of America.
3. Schedule this matter for a trial before a Jury at the earliest convenience of the court to determine the matter based on evidence and testimony.

Respectfully submitted this date of January 21, 2011

Signed: 

Thomas R. Irby (Pro Se)
160 Pearson Road
Belton, SC 29627
Phone: (864)243-4015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Thomas R. Irby
Cross Complainant, Pro Se

Vs

Bank of America, and
Roy C. Irby
Defendants

IN THE COURT OF COMMON PLEAS

Case No: 2010-CP-23-1621

On
2010-08-24 P 2:04
**AMENDMENT TO
THOMAS R. IRBY'S ANSWER TO
BANK OF AMERICA'S CROSS-CLAIM
AGAINST DEFENDANTS**

Thomas R. Irby herewith references his original Cross-Complaint AND his "Answer to Bank of America's Cross-Claim" with all amendments as if rewritten here in entirety.

1. To clarify the position of Cross-Complainant Thomas R. Irby in this matter the complainant respectfully submits the following.

2. Thomas R. Irby did instruct and direct Bank of America to close, block, and satisfy the equity line on date of August 22, 2007.

3. The notice to close, block, and satisfy the equity line was submitted to Bank of America by letter from Attorney Gregg Jones, whom Thomas Irby assumes to be an Officer of The Court.

4. The notice to terminate the loan is in compliance with item #20 on page six (6) of "Bank of America's Equity Maximizer Agreement and Disclosure Statement". Item # 20 states the following:

"Suspension or Termination by You: Each of you has the right, upon proper written notice to us, to suspend the privilege of obtaining new Advances. A request to suspend the privilege of obtaining Advances, even if made only by one of you, will be effective against all of you. Advances will be reinstated upon our receipt and acceptance of a written reinstatement request signed by each of you, provided that no event(s) permitting suspension then exist. To do so, you must notify us in writing. If one of you requests termination of the Account, the Account will be terminated for all of you. At our option, we may release some of you from liability under this Agreement and/or under Applicable Law, without releasing all of you." End of Quotation.

In The Court of Common Pleas

Case No: 2010-CP- 23-1621

For the Court's reference a copy of Attorney Gregg Jones' letter to Bank of America and a copy of page #6, article #20, of the "Bank of America Equity Maximizer Agreement and Disclosure Statement" is attached hereto.

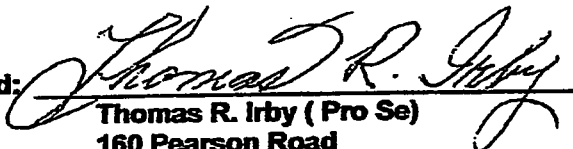
5. Thus Bank of America has wantonly violated it's own requirements, conditions, and/or specifications of the Equity Line Agreement to such degree as to commit numerous and persistent acts of Gross Negligence and Breach of Trust (Breach of Contract).

6. Bank of America continues to commit violations of the Contract Conditions as agreed to within the "Bank of America Equity Maximizer Agreement and Disclosure Statement".

7. Bank of America also persistently continues to justify and defend the Bank's numerous acts of gross negligence and fraudulent accusations against complainant Thomas R. Irby while presenting a shroud of innocence for itself.

Respectfully submitted this date of January 24, 2011.

Signed:



Thomas R. Irby (Pro Se)
160 Pearson Road
Belton, SC 29627
Phone: (864)243-4015

Telephone (864) 847-5555
(864) 847-5999

Post Office Box 158

Gregg F. Jones
Attorney and Counselor at Law
1016 Anderson Drive
Williamston, SC 29697

August 22, 2007

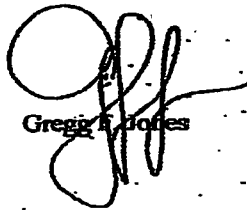
Bank of America
Attn: Home Equity Payoff Dept.
NC4-105-01-40
PO Box 21983
Greensboro, NC 27420

Re: Thomas R. Irby
Acct No.: 68118000674199

To whom it may concern:

Enclosed herewith, please find my trust check in the amount of \$9,998.92, to be applied to the above mortgage. If there is a balance due, please contact this office immediately. If no balance is due or, if this is an equity line, you are directed and authorized to close, block and satisfy said mortgage and forward to my office. If you have any questions, please feel free to call me.

Sincerely,



Gregg F. Jones

GFI/dla
enc.

[illegible]

STATE OF SOUTH CAROLINA

FILED-CLERK OF COURT
GREENVILLE, SC
PAUL B. WILKINSON

3-28-2011

COUNTY OF GREENVILLE

2011 MAR 30 P 12:57

PLANTIFFS

)

IN THE COURT OF

CHASE HOME FINANCE, LLC

)

COMMON PLEAS

Scott Law Firm

)

CROSS COMPLAINT ACTION

2712 Middleburg Drive Suite 200

)

LEGAL SUIT TO

Columbia, SC 29204

)

REVERSE SALE OF HOME

Roy C. Irby II/ Roy C. Irby

)

MORTGAGES

PO Box 196

)

(CLAIM FOR ATTORNEY'S ERRORS AND

Williamston, SC 29697

)

OMISSION/PERSONAL LIABILITY

INVESTMENTS AND DAMAGES)

MOTION TO SQUASH Thomas R.
Irby CROSS CLAIMS

BANK OF AMERICA

)

L. Dwight Floyd

)

Case No: 2010-CP-23-1621

Parker Poe Adams & Bernstein LLP

)

PO BOX 1509

)

COLUMBIA, SC 29202

)

Vs

Greg F. Jones, Attorney Personally &

)

Pro se Title/Errors and Omissions Insurance (To Be Determined)

PO box158

1016 Anderson Drive

)

Williamston, SC 29697

)

Diane L. Andrews/ SC Notary)
 PO box158)
 Legal Assistant (Mr. Jones))
 1016 Anderson Drive)
 Williamston, SC 29697)
 Thomas R. Irby)
 PO BOX 827 PELZER SC 29669)
 160 Pearson Road)
 Belton, SC 29627)

1. M&T Chase loan is known Fraud by Thomas R. Irby, Attorney Greg Jones, Notary Diane Andrews due to Attorney Greg Jones Preparing Full interest Warranty Deed And Thomas Irby Signing Full Interest to Roy C. Irby II on March 16, 2007. Greg Jones, Thomas R. Irby , Diane Andrews knew that Thomas R. Irby had already deeded his full interest on March 16, 2007 bookDE2346 Page #1649-1649 warranty deed with full Interest from Thomas R. Irby to Roy C, Irby II. This was intentional Bank Fraud by Thomas R. Irby, Gregory Jones, and Diane Andres for personnel gain and to close the bank of America home equity loan. Attorney Jones and Mrs. Andrews intentionally did not disclose FEDERAL HUD to me or Bank of America on closing Day of March 16, 2007. Again They Knew Full warranty deed transfer from Thomas R. Irby to Roy C. Irby II was on 2 previous deeds Prepared, Dated March 16, 2007, notarized by Diane Andrews, Prepared by Greg Jones Attorney . They knew it was fraud To M& T Chase, Bank of America and Roy C. Irby II. See deeds as # information Given filing by Greenville county Deeds, each is noted below.

2. Intentional Fraud By Thomas R. Irby, Attorney Greg Jones on Bank Of America Home Equity Loan, REFERENCE#2007048990 BOOK #MO 4779 PAE 1103-1115 FILED MAY 17, 2007 AND Notarized. Greg Jones, Thomas R. Irby , Diane Andrews knew that Thomas R. Irby had already deed his full interest on March 16, 2007 bookDE2346 Page #1649-1649 warranty deed with full Interest from Thomas R. Irby to Roy C, Irby II. This was intentional Bank Fraud by Thomas R. Irby, Gregory Jones, and Diane Andres for personnel gain and to close the bank of America home equity loan. Attorney Jones and Mrs. Andrews intentionally did not disclose previous full warranty interest deed from Thomas R. Irby to Roy C. Irby II

3. Where is original Title search, title insurance from Community First Closing that was paid for on FEDERAL HUD statement Dated March 16, 2007#OMB NO.2502-0265 Listing P& L Title as

abstract title search and Title insurance binder as George L. Sands. Mr. Greg Jones has refused to produce documents, And neither P&L Title Or George L Sands have record of said closing and search, but yet Mr. Jones Charged on The Federal HUD P&L \$185.00 and George L. Sands \$75.00 For title search and title Insurance Binder. (Title Insurance Fraud, Not a Title agent Opinion Not the same as Tile search Charged for, This is FRAUD/ Bank Fraud) If Not just produce the original title searches and certificates of insurance, or error and omissions, because there was definitively to be title search on each loan closings.

4. No Subordination agreement from Bank Of America to M&T Chase Obtained by Attorney Greg Jones for M& T/ Chase Loan for day of closing on in August 2007. Intentional Fraud again to Chase bank, Roy C. Irby II by Greg Jones attorney.

5. Title opinion Given To Bank of America from Attorney Greg Jones dated May 20, 2007 while he knew of, prepared and Diane Andrews Notarized Full Interest Warranty Deed From Thomas R. Irby To Roy C. Irby II on prior signed date of March 16, 2007 book DE2346 Page #1649-1649. This was **BANK FRAUD** from attorney Greg Jones to Bank of America, Chase and Roy C. Irby II due to earlier warrantable, notarized, prepared deed by Mr. Greg Jones, Diane Andrews notarizing on March 16, 2007 and Thomas R. Irby Signing.

6. Attorney Greg Jones Admitted to Thomas R. Irby, Diane Andrews at M&T Chase closing That they were committing Bank Fraud, Would not allow Roy C. Irby II to See M&T Chase, Chase HUD at closing date August 17, 2007 OMB 32502-0265 At his office closing at 1016 Anderson Drive Williamston, SC 29697

7. Attorney Jones was informed on day of M&T Chase, Chase closing that an additional \$10,800.00 From Bank Of America Credit Line Was withdrew and noted on withdrawals that it was to Pay Thomas R. Irby for the 1.43 acres land on 156 Pearson Road, Belton SC 29627. Notary Diane Andrews tried to get Mr. Jones and Mr. TR Irby to resubmit the loan to underwriting with correct payoff figures , Yet Attorney Jones and Thomas R. Irby Said Lets just send this to underwriting maybe they won't catch it. I was informed by Attorney Jones under His Fiduciary Responsibility that Roy C. Irby II; I was no part of this action or possible Bank Fraud, because this was a sole loan from M&T Chase to Thomas R. Irby. Notary Diane Andrews notarized mortgage Filed in deed book MO4840 PQAGE 234-249 DATED AUGUST 28, 2007 REFERENCE 3 2007086480. THIS AGAIN WAS **BANK FRAUD/INTENTIONL FRAUD** AS PER THOMAS IRBY HAD NO OWNERSHIP PER DEED on prior signed deed dated March 16, 2007 book DE2346 Page #1649-1649. Again Chase, Bank of America, Roy C. Irby II defrauded intentionally by MR. Greg Jones, Thomas R. Irby and notary Diane Andrews.

8. Thomas R. Irby Did Not Report on 2007 Federal or State Income tax This sale or profit gained from Receiving Total Proceeds from M&T Chase loan Dated August 17, 2007 settlement cash to

Thomas R. Irby \$23,019.07. This is income tax fraud nor did he list the \$53,062.50 from COMMUNITY FIRST closing on March 16, 2007, or did he list the \$14,300.00 Plus interest I paid him at the August 17, 2007 closing. **Thomas R. Irby Yearly Total of \$90381.57 Defrauded Tax evasion from loan proceeds for 156 Pearson Road, Belton, SC 29627.**

9. Thomas R. Irby fraudulently represented that he did not know but one address for me, that I was in Nashville Tn. He did this while knowing I was in the Vanderbilt Rehabilitation hospital for spinal cord injury patients. I was in a vehicle accident in 2008 in Thomas R. Irby's Vehicle. Thomas R. Irby Never even come to see me in the hospital in three years. The accident which left me with having to have Eleven surgeries, an enlarged heart, a blood clot, Partial paralysis, Heart attack from all surgery trauma and years of Rehabilitation. Mr. Thomas R. Irby mailed January 8, 2010 to me at the new address 8449 Indian Hills Drive, Nashville, TN, 37221 registered receipt letter #70081140000030621966 which he Fraudulently disclose to the court, he told them in march 2010 that My address was 103 Sweetbriar Lane, Burns, TN 37209; instead of actual address, in order For Attorney Jones, Scott law firm to obtain an ORDER OF PUBLICATION through the Greenville, SC News For foreclosure. Mr. Irby, Mr. Jones, Mrs. Andrews knew of my condition, Knew my Telephone number; Which has not changed in ten years /all having that information and even spoke to them via phone while order of publication was being issued without my knowledge or being informed, but they defrauded Greenville County Court Of Common Pleas To Issue order of publication Docket #10-CP-23-1621

10. This action did not give due diligence to Roy C. Irby II and was Intentional fraud to Greenville County Court of Common Pleas by Thomas R. Irby and Gregory Jones , Attorney.

MOTION TO SQUASH THOMAS R. IRBY CROSS CLAIM

1. Thomas R. Irby gave full warranty deed interest to Roy C. Irby II on March 16, 2007 Deed Book DE2346 Page #1649-1649 REFERENCE #2008099636. Thomas R. Irby Has no interest in 156 Pearson Road, Belton, SC 29627 and this deed gave way any rights or interest with a warrantable title property, yet he has continually filed cross claims after that date which have no merit and has stopped Roy C. Irby from settling Chase/ Bank of America mortgages through his Fraudulent filing of Lis in Pendants#2010LP23,____RECORDED IN BOOK BB4 PAGE 004 dated January 10, 2010. Thomas R. Irby, Gregory Jones, Diane Andrews Notary has stopped all rights of Roy C. Irby II To sale, forced foreclosure actions, work through the "Federal Tarp Program." Thomas R. Irby has defrauded Chase, Bank of America, Roy C. Irby, Greenville county-building codes-court of common pleas.

2. Thoams R. Irby was aware of the increase debt on the Bank of America home equity account and the Federal HUD STATEMET #OMB NO2502-0265. Even though Thomas R. Irby/ Greg F. Jones knew the Federal HUD Was wrong and FRAUD, there was no corrected payoff obtained

by Mr. Jones and Thomas R. Irby. Mr. Jones and Mr. Thomas R. Irby instructed me to obtain the money to pay him in full for the 1.43 acres at 156 Pearson Road, Belton SC and delivery at closing as I did. Notary Diane Andrews was a witness to improper HUD, and tried to get Mr. Jones and Mr. Thomas R. Irby to resubmit the loan package for approval with corrective payoff values yet Mr. Jones instructed Mrs. Andrews to notarize all documents M&T Chase closing Reference 32007086480 BOOK NO4840 PAGE 234-249 as per MR. Jones instructions. Thomas R. Irby and attorney Greg Jones instructed me to bring to M& T Chase Closing The \$10800.00 Paying him in front of Attorney Greg F. Jones. All present Mr. Jones, Thomas R. Irby, Diane Andrews knew this was Bank Fraud and continued without my consent. Mr. Jones informed me that I was not on the Federal HUD OR Note and that I was not a part of this transaction of FRAUD.

3. Thomas R. Irby and Attorney Greg Jones Knew the Payoff of Bank of America was more the day of the M&T Chase closing and Defrauded Chase, Bank of America and Roy C. Irby II. The Bank cashier checks state from Bank of America Reason or For—I wrote in for and reason, to pay in full Thomas R. Irby for 1.43 acres on 156 Pearson Road, Belton, SC.

4. Maximizer Agreement was never a Concern by Thomas R. Irby and Attorney Greg F. Jones until foreclosure proceedings: They Both Knew that Bank of America was not going to be paid off with the incorrect amount at the M& T Chase Closing on August 17, 2007 closing; mortgage recorded at reference #2007086480 BOOK MO4840 Page234-249. Attorney Greg Jones Refused to Change or request new payoff. Mrs. Andrews as Witness with knowledge of Incorrect payoff suggested to Mr. Jones and Mr. TR Irby to resubmit the loan package; But Mr. Jones and Thomas R. Irby refused and sent the HUD with the wrong payoff amount so that the M&T Chase loan would close that day reference #2007086480 BOOK MO4840 Page234-249 . Mr. Jones instructed Mrs. Andrews to notarize and she did so with past and present knowledge of full warranty interest deed from Thomas R. Irby to Roy C. Irby II reference # 2008099636 Signed by Thomas R. Irby, Greg Jones, attorney and Notarized by Mrs. Andrews March 16, 2007 bookDE2346 Page #1649-1649, Thus committing an Intentional BANK FRAUD and INTENTIONAL FRAUD act against Chase, Bank of America and Roy C. Irby II.

5. Therefore we pray upon this court to Squash all cross claims of Thomas R. Irby against Chase Bank, Bank of America, and Roy C. Irby II Due to his fraudulent actions and frivolous lawsuits.

FRAUDULANT MORTGAGE/FEDERAL HUD STATEMENT

**MOTION TO COLLECT ALL PAYMENTS TO THOMAS R. IRBY, GREGORY JONES CHASE BANK
AND BANK OF AMERICA, PROPERTY TAXS INSURANCE AND DAMAGES –**

ATTORNEY FEES PAID BY ROY C. IRBY II, CHASE, BANK OF AMERICA

FROM THOMAS R. IRBY

1. Squash Lis Pendens from Thomas R. Irby; Due to his filing for work he did while owning 156 Pearson Road Belton SC (certificate of occupancy, permits to Thomas R Irby from 7/2004 to 9/11/2007). County of Greenville Building Codes, Safety Division 301 University Ridge Drive, Greenville SC, 29601 Certificate of occupancy issued to Thomas R. Irby application #04-0004081 001 001 ; parcel #0597.01-01-001.00) These documents prove that this attempt was an Intentional Fraudulent act by Mr. Thomas R. Irby, Mrs. Diane Andrews notary,(She knew it was Fraudulent) and Attorney Greg Jones, thus committing again intentional Fraud against Chase, Bank of America, Roy C. Irby II and Greenville County court Of Common Pleas.
2. Lis Pendens dated 1/13/2010 Lis PenDens # 2010LP23_____ - A9:26 recorded /notarized by Diane L. Andrews in book BB4 page 004 Filed January 14, 2010 prepared by Gregory F. Jones using fraudulent recorded survey Book PLL 1032 Page 61-61 Dated March 6, 2007 issued solely to Thomas R. Irby. While the correct most current closing survey with Roy C. Irby II and Thomas R. Irby was filed by Greg F. Jones at Book; PLL1048 page 66-66 dated August 28, 2007 at 12:13:20 reference #2007086478. This again was a deliberate attempt by Thomas R. Irby thus Intentional Fraudulent and frivolous act of a bogus lean to block the sale to resolve mortgage balances issues and DEFRAUD Chase, Bank Of America, Roy C. Irby II and Greenville Court of Common Pleas
3. Thomas R. Irby Did not completely own land see corrective deed book DE2286 page 921-922 filed August 28, 2007 @12.13'21 reference #2007086479 Completely changing said property after Chase Closing REFERENCE #2007086480 Signed and notarized date of 8 /17/2007 BOOK NO4840 Page 234-249REFERENCE #2007048990 Book o4779 page1103-1115. Bank Of America Signed and notarized dated of May 16, 2007-Mortgages closings were done earlier dated, and A Title and insurance Opinion had been issued to Bank Of America On May 20, 2007 of clear and warrantable title from Thomas R. Irby to Roy C. Irby II Notarized by Mrs. Diane Andrews, prepared by Mr. Greg Jones-Closing Attorney was again INTENTIONAL FRAUD against Chase, Bank of America, Roy C. Irby II, Greenville County Deeds, Records and Greenville county Building & Safety Codes.
4. Thomas had already pledged any equity he may have in any property to a SC Reverse Mortgage, thus making any transaction involving a Mortgage INTENTIONAL FRAUD against any

bank he may acquire a mortgage and his attorney Mr. Greg Jones did not disclose while knowing of the reverse mortgage existence again **INTENT TO DEFRAUD And FRAUD** by Thomas R. Irby and attorney Greg Jones.

5. This reverse mortgage (to be determined) makes all deeds and land transactions with mortgages from 2004 to 2007 from Thomas R. Irby **illegal and Fraudulent with lack of clear title and lean from reverse mortgage to any property mortgaged by Thomas R. Irby** including but not limited to: 156 Pearson Road, Belton SC. **FRAUD** Roy C. Irby II, Chase, Bank of America, Greenville County deeds, building codes and the SC reverse mortgage by Thomas R. Irby.

6. Thomas R. Irby is in deliberate hiding of all said assets From Greenville County Court Of common Pleas, Chase Bank, Bank of America, and Roy C. Irby II. Thomas R. Irby has granted a deed to his son Steven Christopher Irby see Book DE 2367 Page 4872-4873 dated February 01, 2010 Reference # 2010006494 Whereas Thomas R. Irby has issued another Warrantable Title of Real estate to Steven Christopher Irby Three Parcels TMS # 0597010100104--1.75 Acres/TMS#0587010100105—2.00 Acres-TMS 30597010100100-1.00 ACRES. This deed is **illegal and fraudulent and intentional to mislead Greenville County Court Of Common Pleas, Chase bank, Bank of America, and Roy C. Irby II.**

7. Court Order a Reverse Sale due to Fraudulent Warranty Deeds.

8. Corrective deed dated August 28, 2007 book DE2286 page #921-922 Written By Mr. Greg Jones, Signed and Notarized By Mrs. Andrews changes Original Grantors, Thus making all deeds by Thomas R. Irby **Fraudulent** and lack of ownership to give warrantable interest to 156 Pearson road, therefore he is liable to Roy C. Irby II, Chase Bank, Bank Of America all investments, cost, court cost, attorney fees and any damage award this court may have the power to impose upon Thomas R. Irby For his intentional Fraudulent actions.

9. Thus Thomas R. Irby **INTENTIONALLY Fraudulently Warranty Deeded** on Two deeds REFERENCE #2007028188 book DE2258 Page 437-439 signed, dated and notarized on March 16, 2007 and REFERENCE#2008099636 book DE2346 page #1649-16499 **FULL PROPERTY INTREST FROMSOLE THOMAS R. IRBY**. Thomas R. Irby Knew that Benjamin Irby and Melvin Irby Owned part of said 1.46 acres all through loans, mortgages, deeds and **WAS NOT THE FULL LEGAL WARRANTABLE GRANTOR**, **THUS committing Intentional Fraud** and on Corrective deed reference #2007086479 Book DE 2286 page 921-922 prepared by Attorney Greg Jones **WITH NO TITLE EXAMINATION PREFORMED**, Thomas r. Irby, Attorney Greg Jones and Notary Diane Andrews did **INTENTIONALLY DEFRAUD** Roy C. Irby II, Chase Bank, Bank of America on said date. We pray upon this Common Pleas court and You Honor to Collect Personal liability form Thomas R. Irby, attorney Greg Jones Personally and Title: and or, errors and omissions insurance for all investments, costs, attorney fees, taxes, loan payments, and court cost to

Chase, Bank of America and Roy C. Irby II. Court to also order a Complete Reverse Sale and any other damages it may seem equitable against Thomas R. Irby, Mr. Greg Jones' error and omissions insurance for their intentional fraudulent acts in deed preparation, title search, title opinion, false deeds, and fraudulent Federal HUD STATEMENTS.

10. Place a Lien on Thomas R. Irby Reverse Mortgage 160 Pearson Road, Belton, SC 29627; SSI Income and Warranty Deed of property to Steven Christopher Irby for damages, fraudulent deeds, Intent to defraud, embezzlement of funds from Roy. C. Irby II, Chase Bank, Bank of America

11. Thomas R. Irby refused to resolve Mortgage issues with Chase/Bank of America via Phone with Mr. Greg Burgess(gburgess@greenvillecounty.org-phone #864-467-7095} with Greenville County Human relations Commission under the Federal "TARP" Mandate which would have paid of the mortgages completely in three years, erased the entire debt. This action again by Thomas R. Irby deliberately continues in his efforts to demise my ownership and pay mortgages totally off to Chase/ Bank of America. Mr. TR Irby will not Cooperate or release any Fraudulent Lis Pendens. He refuses to consider options, His only remark to me via phone two weeks ago was *"It's all about the money; I am going to sue Bank of America for the Maximizes agreement"*. Mr. TR Irby Knew about the home equity line and is established frivolous law suits against Bank of America and Roy C. Irby II. Thomas R. Irby was a co-signor on that loan. He knew at the August 16,2007 M& T Chase closing that Bank of America was not going to be paid off because he instructed me to bring him the \$10,800.00 balance he considered owed for the procurement of 1.43 Acres, commonly known as 156 Pearson Road Belton, SC 29627. Thomas R. Irby is still trying to Defraud Bank of America, Chase Bank, Roy C. Irby II and Greenville County Court of Common Pleas.

13. Collect any and all attorney fees paid to Gregory F. Jones and damages, all attorney fees for Chase, Bank of America and Roy C. Irby II investments, attorney costs or what this court may deem necessary to make me whole and equitable concerning all transactions for procurement of 156 Pearson Road, Belton SC 1.43 acres and all improvements ; to reverse the sale or file claims through Bank Of America, Chase and Roy C. Irby II through Mr. Greg Jones Attorney Personally, Title, errors and omissions insurance.

MOTION TO COLLECT FOR TITLE OPINION/INSURANCE ERRORS AND OMISSIONS

PAID TO GREG F. JONES for CHASE, BANK OF AMERICA MORTGAGES

FROM ATTORNEY GREG F. JONES

1. Collect Title insurance on original Community First Federal HUDS Closing Statement dated book MO 4746 page #1032-1040 DATED March 23, 2007 REFERENCE 32007028189 ; FEDERAL HUD Statement # OMB NO 2502-0265 File Number 07-5897 line 1104 Title Insurance Binder \$75.00 To George L. Sands, deed preparation (2) Greg Jones, Attorney \$200.00(This was paid to insure the 2 march 16, 2007 deeds were correct; which was fraudulent and needed a corrective deed filed in August 2007 , require two more Grantor's that Mr. Jones did not find in title search. Incorrect deeds, title search and **INTENTIONAL FRAUD TO ROY. C. IRBY II AND ALL MORTGAGORS FROM THAT DAY FORWARD, EVEN UNTIL TODAY ALL MORTGAGES, WARRANTY DEEDS ARE FRAUDULENT AND INCOMPLETE WITH OUT PROPER TITLE SEARCH, CORRECTIVE DEED AND WARRANTY DEEDS FRO ALL PARTIES IN VOLVED.** Had I Known This Roy C. Irby II would not of procured this piece of property nor would have any mortgagor loaned any money. MR JONES COMMITTED **INTENTIONAL FRAUD TO Community First, Chase, Bank Of America, And Roy C. Irby II, Grantee.**

2. Collect for Title Opinion Given on May 2007 by Mr. Jones To Bank of America and Roy C. Irby II, due to fraudulent deeds, Federal HUDS, and Corrective deeds.

3. Collect any and all attorney fees paid to Gregory F. Jones and damages, attorney fees. Collect damages due to Mr. Greg F. Jones fiduciary Responsibility to Roy C. Irby II, Has denied further contact, legal service and protection under paid closings. Mr. Jones has intentionally tried to destroy my equity/ownership through helping Mr. Thomas R. Irby file Claims in Greenville county court of common Pleas while I was a Client and legally represented through all closings with Mr. Greg Jones: **ERRORS AND OMISSIONS INSURANCE DAMAGES,**

4. Collect any and all attorney fees paid and paid to Gregory F. Jones and damages, attorney fees or what this court may deem necessary to make me whole and equitable.

5. Collect from Greg F. Jones Title Insurance paid for on Federal HUD and Title opinion dated May 20, 2007 to Bank of America

6 .Name address and policy # for title insurance and title opinion Attorney Greg Jones gave May 20, 2007, March 16, 2007, August 16, 2007 on all deeds. Collect for fraud from Greg F. Jones Personally and errors and omission insurance.

7. If No Title Insurance then collect under errors and omissions from Greg F. Jones NAME, ADDRESS, POLICY NUMBER for fraudulent mortgages/deeds to Roy c. Irby II, Chase bank , Bank of America

8. Attorney Greg F. Jones has refused to give Title insurance policy number or certificate, copy of original title search, copy of corrective deed title search.

9. Attorney Greg F. Jones has refused to supply his errors and omissions insurance certificate for corrective deeds, fraudulent deeds, fraudulent Federal HUD statements His title Opinion given May 20, 2007.

10. If Original title search with P&L Title was a warrantable deed , why was there a need for a corrective deed that I was not a Part of or Chase or Bank Of America , Why was I not Informed or Chase and Bank of America to corrective deed book DE2286 page 921-922 filed August 28, 2007 @12.13'21 reference #2007086479.

11. Therefore he is personally liable to Roy C. Irby II, Chase Bank, Bank of America all investments, cost, court cost, attorney fees and any damage award this court may have the power to impose upon Greg F. Jones For his intentional Fraudulent actions.

DAMAGES, NEGLIGENCE BY NOTARY

DIANE ANDREWS

1. Personal claim for damages awarded by this court for this notary's Fraudulent and negligent behavior in all said matters, and may the court may seem fair and equitable payable to Chase Bank, Bank of America and Roy C. Irby II.

SUMMARY REQUEST

Thus I Roy C. Irby II on my behalf as well as for Chase Bank, Bank Of America Mortgagors for 156 Pearson Road, Belton, SC 29627; do request a court date as soon as possible and this court enter orders for Monetary damages in the amounts cumulative of \$550,000.00, in judgments, liens, reverse sale, errors and omission, title insurance, monetary value from the personal liability of Greg Jones, Diane Andrews-Notary and Thomas R. Irby Gross negligence , Embezzlement and Fraud to Chase Bank, Bank Of America And Roy C. Irby II.

Roy C. Irby II
3/30/2011

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Thomas R. Irby
Cross Complainant, Pro Se

Vs

Bank of America, and
Roy C. Irby
Defendants

IN THE COURT OF COMMON PLEAS
Case No. 2010-CP-23-1621

COMPLAINANT THOMAS R. IRBY'S

GENERAL AMENDMENT

TO HIS CROSS COMPLAINT

2011 APR -8 PM 2:14
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL E. WICKENS

Thomas R. Irby, as Cross Complainant in the above referenced action, respectfully offers these amendments to his original complaint as follows:

(A) That each allegation in the Cross Complaint as originally filed is made based on the historical records, documents, and eyewitness testimony relative to this matter.

(B) The validity of each item in the Cross Complaint is referenced and emphasized herein exactly as originally written.

(D) The allegations against Chase Bank are dismissed by mutual agreement between Council for Chase Bank and Thomas R. Irby.

(E) Thomas Irby reaffirms his request for a Trial Before a Jury.

AMENDMENTS

AS TO ROY C. IRBY II:

(1) The court is respectfully referred to: [SC ST SEC 34-3-110] Crimes against a federally chartered or insured financial institution, which provides the following:

(A) *A person knowingly may not execute, or attempt to execute, a scheme or artifice to:*

(a) *Defraud a federally chartered or insured financial institution; or*

(b) *Obtain monies, funds, credits, assets, securities, or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises.*

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both.

(2) Each withdrawal or Advance by Roy C. Irby II after August 22, 2007 is also a violation of the South Carolina Code of Laws Section: 16-13- 230, Breach of Trust with Fraudulent intent. "A person who violates the provisions of this section is guilty of a Felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is five thousand dollars or more."

(3) There can be no question that an agreement of trust (duty) existed between Thomas R. Irby and Roy C. Irby II. In Murray v. Bank of America the South Carolina Court of Appeals clarifies "Duty" as:

Duty is generally defined as "the obligation to conform to a particular standard of conduct toward another." Shipes v. Piggly Wiggly St. Andrews 269 S.C. 479, 483, 238 S.E.2d 167, 168 (1977). An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance.

Roy C. Irby violated his pledge of "Duty" to Thomas Irby that he would faithfully service, maintain, and pay all debts, costs, payments due, etc., for the E.L.O.C. until the account was paid off, closed, and terminated or until Thomas Irby was released of all responsibility for the account. He also pledged that he would protect Thomas Irby's best interests at all times.

(4) In addition to the Breach of Trust by Roy C. Irby II against Thomas R. Irby, it is obvious that Roy C. Irby deliberately and without reservation continued to withdraw sums from the Equity Line of Credit account with Bank of America.

(5) Roy C. Irby continued to withdraw sums until the Sixty Nine Thousand Dollar limit on the account was Maximized.

(6) Roy C. Irby Continued to withdraw funds while knowing that the account was closed on August 22, 2007. His knowledge that the account was closed is in evidence by his signature on the Closing documents of the M&T/Chase consolidation mortgage.

(7) Roy C. Irby knew that closing Attorney Gregg Jones and complainant Thomas R. Irby considered the account to be closed on August 22, 2007.

(8) All funds obtained from the account by Roy C. Irby, during and after the closing and/or payoff procedure, were fraudulently obtained. The South Carolina Court of Appeals in *Weston v. Weston medical Center*, No. 2008-UP-240, states: "A Fraudulent act" is broadly defined as any act characterized by dishonesty in fact or unfair dealing.

(8) Each withdrawal from the account by Roy C. Irby, during and after the payoff procedure, was a deliberate and individual violation of the above referenced [SC ST SEC 34-3-110]. Therefore each violation (withdrawal or advance) should be punishable as a Separate (individual) felony at the Court's discretion.

AS TO BANK OF AMERICA:

(1) Thomas Irby believes that when Bank of America submitted a payoff statement with the payoff balance noted, the bank knew or should have known the Equity Line of Credit was in a Payoff Procedure.

(2) Bank of America knew or should have known that no additional withdrawals were to be made during and after the payoff process.

(3) Bank of America knew or should have known that the letter from Attorney Jones directing the bank to "close, block, and satisfy" the equity line mortgage was in compliance with condition #20 on page #6 of the "Equity Line of Credit Maximizer Agreement". That condition states:

"Suspension or Termination by You. Each of you has the right, upon proper written notice to us, to suspend the privilege of obtaining new advances. If a request to suspend the privilege of obtaining advances, even if made by only one of you, will be effective against all of you.....If one of you requests termination of the account, the account will be terminated for all all of you".....

(4) Bank of America knew or should have known that by ignoring the above condition of the agreement the bank Breached it's written contract with Thomas Irby. The Breach is therefore deliberately gross, malicious, and wanton.

(5) Bank of America knew or should have known the risk for the potential damages that occurred from their breach of contract. B.O.A. accepted that risk through it's own negligence.

(6) Bank of America violated the good faith trust and duty of care with Thomas Irby when the Bank failed to notify Attorney Jones or Thomas Irby that the account was not closed.

(7) Bank of America continues the breach of contract, breach of trust, violation of good faith, and Duty of Care at least from August 22, 2007 until now.

(8) Bank of America records verify that B.O.A. was notified of the breach by phone on 12/29/09. That notification was within Three weeks from the time Thomas Irby discovered the breach of contract. The Bank has ignored all attempts since that date to correct the matter.

(9) The continuing negligence of B.O.A. is the primary contributing factor that enabled and encouraged the fraudulent acts of Roy C. Irby II. The Bank has directly contributed to the violations for which the Bank claims it is innocent. The Bank has become a participant and accessory in the Fraudulent Acts of Roy C. Irby and is therefore in violation of the South Carolina Code of Laws: Section 16-30-230, Breach of Trust with Fraudulent intent and [SC ST SEC 34-3-110].

(10) There can be no doubt that the Bank ignored any obligation of "Duty of Care" to Thomas Irby. In Murray v. Bank of America, the existence of a "Duty of Care" was established even though the Plaintiff never had a written contract or an account with the Bank. The Court found for the plaintiff and awarded \$300,000.00 in damages on a negligence claim that included minimal compensatory costs. The Appeals Court of South Carolina affirming the Trial Court's Decision provided the following:

In order to establish a claim for negligence the plaintiff must prove the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by the defendant's negligent act or omission; (3) the plaintiff was damaged; and (4) the damages proximately resulted from the breach of the duty. Thomasko v. Poole, 349 S.C. 7, 11, 561 S.E.2d 597, 599 (2002). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 76, 81 (1998)

Duty is generally defined as "the obligation to conform to a particular standard of conduct toward another." Shipes v. Piggly Wiggly St. Andrews 269 S.C. 479, 483, 238 S.E.2d 167, 168 (1977). An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance.

(11) All the provisions required to establish a claim for Negligence resulting in violations of a "Duty of Care", Breach of Contract, and Breach of trust by B.O.A. are confirmed by the allegations of actions and documentation in this Complaint. Thomas Irby was damaged and the damages resulted directly from the violations.

(12) Bank of America has prejudicially attempted to defraud Thomas Irby regarding the balance due on the E.L.O.C. B.O.A. claims that the payoff check of \$9,998.92 left an unpaid balance of \$10,700.73 on August 24, 2007. On September 12, 2007, seventeen days later, a payment of \$13,000.00 was credited to the account. When that payment was applied back to the existing unpaid balance a credit balance of \$2,299.29 remained to be credited forward from August 24, 2007. Thomas Irby notified B.O.A. to terminate advance privileges on August 22, 2007. Any Balance that the Bank could have fraudulently claimed Thomas (had) owed was paid off by the September deposit.

PUNITIVE DAMAGES

1 Complainant Thomas R. Irby hereby reaffirms his request for Punitive Damages to be determined by the Jury.

2. Council for Bank of America references three cases by which he claims that punitive damages levied against Bank of America Violates the Fourteenth Amendment (and other Amendments) of the United States Constitution.

3. To support Bank of America's claim for exemption from Punitive Damages Council for the bank offers in reference the following three cases:

- (I).....*BMW of North America v. Gore*, 517 U.S. 424 (1996)
- (II)..... *Cooper Industries, Inc. v. Leatherman Tool Group Inc.*, 532 U.S. 424 (2001)
- (III).....*State Farm Insurance Co. v. Campbell*, 538 U.S. 408 (2003)

4. Thomas R. Irby hereby refers the court to the following additional Specific Cases:

- (IV).....*Pacific mutual life insurance co. V. Haslip, et al.* U.S. supreme court 89-1270, march 4, 1991.
- (V)..... *TXO Productions Corp. v. Alliance Resources Corp.* U.S. Supreme Court No. 92-479 - June 25, 1993
- (VI)..... *Mathias v. Accor Economy Lodging Inc. and Motel 6*, U.S. Court of Appeals No. 03-1010 and No. 03-1078, Sept. 3, 2003 and Oct. 21, 2003.
- (VII)..... *Webb v. CSX Transportation, Inc., S.C. Dept of Transportation, and Anderson County:* S. C. Supreme Court No. 26004, June 20, 2004.
- (VIII)..... *Atkinson v. Orkin Exterminating Co. Inc.* South Carolina Supreme Court No. 25883, October 25, 2005
- (IX)..... *Jerome Mitchell, Jr. V. Fortis insurance co. Inc.* Opinion no. 26718, South Carolina state supreme court, Jan. 22, 2009 – Sept. 14, 2009
- (X).....*Bank of America v. Sanjiv Narula, et. al.* State of Kansas, Johnson County Civil Court Department, Case No. 04-CV-06279, Div. 17., Chapter 60. June 11, 2009. This Case is the same in principal as The Cross Complaint filed by Thomas R. Irby against Bank of America.

5. None of the ten cases referenced make any claim that Punitive Damages are a violation of the Fourteenth Amendment or any other Amendment. In fact punitive penalties are supported in each case. Only the disparity between actual (compensatory), and punitive damages relative to historic factors may infringe on the intent of the Fourteenth Amendment or other Amendments.

6. The relative ratio of Punitive Damages to Compensatory damages of the referenced cases range from nine to one (9/1) up to Five Hundred Twenty Six to one (526/1).

7. None of the above referenced cases support a claim that an appropriate levy of Punitive Damages violates any other Amendment to the Constitution of The United States.

8. The primary purpose for Punitive Levies in all cases where referenced is to Deter and Punish in order to prevent the wrong doer from repeating his error.

9. Bank of America has reprehensibly and egregiously denied any wrongful act and has willfully done so at least since December 29, 2009. On that date B.O.A. was notified by Thomas Irby that he was not responsible for the account.

10. Bank of America failed (refused) to act in good faith to reconcile the problem and has acted only to profit from the Bank's negligence.

11. In Paul Weston, MD v. Margaret J. Weston Medical Center, South Carolina court of Appeals, Opinion 2008-UP- 240, February 12, 2008 – Filed April 18, 2008 Conditions for a charge of Breach of contract Accompanied by a Fraudulent Act are defined as:

To recover punitive damages for breach of contract accompanied by a fraudulent act, the plaintiff must prove three elements: (A) a breach of contract; (B) a fraudulent intent in breaching the contract; and (C) a fraudulent act accompanying the breach. Id. at 53-54, 336 S.E.2d at 503-04.

(12).....(A) B.O.A. breached the contract and the duty of care to Thomas Irby. (B) The Bank fraudulently tried to retain First Mortgage status to the \$220,000.00 property and profiteer on the \$69,000.00 E.L.O.C. (C) B.O.A. Fraudulently provided funds to Roy C. Irby II after the account was to be closed. The Bank also fraudulently failed to notify Gregg Jones or Thomas Irby that the account was not closed. The fraud was undetected for more than two years.

- (13) B.O.A. has continued a fraudulent attempt to hold First Mortgage Status even though they received and accepted the Payoff Check and the letter from Jones instructing them to block and close the mortgage and E.L.O.C.
- (14) Each act of fraud by B.O.A. should be punishable by a Fine equal to the amount designated for felony violations of Sect. 16-13-230 and Sect. 34-3-110.
- (15) Bank of America is a Recidivist (repeat) Violator. In BMW v. Gore Jr. the U.S. Supreme Court states: "Our holdings that a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance. See *Gryger v. Burke*, 334 U.S. 728, 732 (1948)."
- (16) In Murray v. Bank of America, a negligence/breach of trust case, the South Carolina Court of Appeals noted that, "The Bank Failed to follow it's own procedures, (and) did not timely close the account."
- (17) In Bank of America v. Narula, Johnson County Kansas District Court , case no. 04-CV-06279. Div. 17, Chapter 60, a breach of trust case: The court confirmed a punitive award to the Defendant of \$750,000.00. In confirmation the Court commented that:

"The Court is convinced that the plaintiff intentionally defrauded the defendants and intentionally failed to act with due regard for the defendants' interests as their fiduciary or trusted financial advisor. The court does not believe that the plaintiff will now or ever recognize or accept the wrongfulness of its actions....."

COMPENSTORY DAMAGES

- (1) The U.S. Supreme Court, in State Farm v. Campbell States: "Compensatory damages "are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct." Ibid. (citing Restatement (Second) of Torts §903, pp. 453—454 (1979)
- (2) The defendants (Campbell) were awarded One Million dollars for Eighteen months of emotional distress. ($\$1,000,000.00/2 = \$500,000.00$ Assuming case continues 18 mo's)
- (3) Compensatory Damages also include: (a) Potential costs and expenses plus (b) potential damages that could have incurred through continued time lost, distress, anxiety, outrage, and humiliation

(4) In United States v. Burke, the Supreme Court described the traditional harms associated with personal injury as "pain and suffering, emotional distress, harm to reputation, or other consequential damages (e.g., a ruined credit rating)."

(5) Thomas Irby is financially vulnerable. Bank of America has an unfair advantage. In Mathias v. Accor, The United States Court of Appeals very accurately described the situation now at hand:

(a) *"Where wealth in the sense of resources enters is in enabling the defendant to mount an extremely aggressive defense against suits such as this and by doing so to make litigating against it very costly, which in turn may make it difficult for the plaintiffs to find a lawyer willing to handle their case, involving as it does only modest stakes, for the usual 33-40 percent contingent fee."*

(b) *"In other words, the defendant is investing in developing a reputation intended to deter plaintiffs." It is difficult otherwise to explain the great stubbornness with which it has defended this case, making a host of frivolous evidentiary arguments despite the very modest stakes even when the punitive damages awarded by the jury are included."*

Thomas Irby has reviewed this case in detail with at least eight attorneys and is still trying to find council. No attorney will accept the case on contingency and there are no funds otherwise to finance the case.

CALCULATED DAMAGES

- (1) Accumulated costs & expenses as of 4/07/2011—————\$ 28,107.00
- (2) Emotional Distress (18 months, see State Farm v. Campbell)—\$500,000.00
- (3) Loss of Credit (Chase Foreclosure-6 years to repair)—————\$ 75,000.00
- (4) Loss of Reputation & good name (irreparable)—————\$ 75,000.00
- (5) Potential Damage (B.O.A. \$69,0000.00 plus fees & costs)————\$ 85,000.00
- (6) Outrage, Humiliation and foreshortened life—————\$150,000.00

Total Through 4/7/11————\$913,107.00

These damages are based on awards from similar cases and on actual costs and expenses including time spent. Costs are also relative to the earning ability of Thomas R. Irby. Thomas is under the care of Dr. Jackson Bruce, Piedmont, SC. for treatment of sleep deprivation and stress symptoms resulting from the Banks negligence. Thomas Irby applies these damages in entirety against Bank of America and all applicable equal but separate amounts against Roy C. Irby II.

CAUSE OF ACTION AGAINST BANK OF AMERICA

(Negligence, breach of contract with fraudulent act)

(Breach of trust with fraudulent act, violation and breach of duty of trust)

1. Bank of America has egregiously, reprehensibly, and obstinately refused to admit to any error for the Fifteen Months since Thomas Irby notified the Bank on December 29, 2009. They should have known the breach existed in August of 2007. For more than four years Bank of America has allowed the violations to exist without applying corrective measures. The Bank holds the same documented proof of their negligence as Thomas Irby. The documents and records are irrefutable.
2. Thomas R. Irby appeals to the court to levy a penalty against Bank of America in at least the amount of funds the Bank continues to fraudulently try to collect from him.
3. Thomas Irby prays that he be allowed to present his case to a Jury at the earliest date the docket will allow.
4. Thomas Irby Prays that the court dismiss all claims and counterclaims by Bank of America based on the lack of evidence to support any valid claim by the Bank.
5. Thomas Irby prays also that the jury be charged to find the Bank responsible to pay all court costs, attorney fees, and any other costs and expenses incurred and/or relative to bank's negligence.

CAUSE OF ACTION AGAINST ROY C. IRBY II

(Breach of contract with fraudulent act, breach of trust, breach of duty of trust)

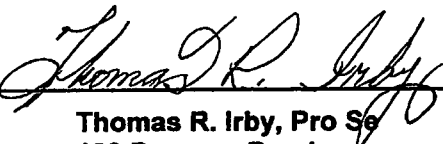
1. Roy C. Irby II has violated the agreement and duty of trust with Thomas R. Irby since August 22, 2007. He has also Slandered the good name of Thomas Irby before the court and to others. Roy Irby's actions may have criminal implications.
2. Thomas Irby prays that the court review the actions of Roy C. Irby relative to criminal charges both Federal and State, and that the court bring charges against Roy Irby on any criminal violations so determined.

3. Thomas Irby further prays that he be allowed to present his case against Roy C. Irby and Bank of America before a jury at the courts earliest convenience.

4. Thomas Irby requests that if Roy Irby is to face criminal charges, actions on such charges should not be delayed because of this action.

5. Thomas Irby prays also that the court protect his best interest in all actions, matters, procedures, and decisions relative to this action.

Respectfully Submitted this Seventh day of April, 2011.

Signed: 
Thomas R. Irby, Pro Se
160 Pearson Road
Belton, SC 29627

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Thomas R. Irby
Cross Complainant, Pro Se

Vs

Bank of America, and
Roy C. Irby
Defendants

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-23-1621

COMPLAINANT THOMAS R. IRBY'S

ANSWER TO DEFENDANT

ROY C. IRBY II'S "CROSS COMPLAINT
ACTION", "LEGAL SUIT", "MOTION TO
QUASH" etc., etc.

Thomas R. Irby, as Cross Complainant in the above referenced action, hereby attempts to answer and respond to Defendant Roy C. Irby's "Cross Complaint Action" with all inclusions, as described above:

GENERAL RESPONSE

- (I) Defendant Roy C. Irby II provides no valid defense for his fraudulent actions. His irrelevant, invalid, and redundant allegations are attempts to confuse, and distract from allegations proven by facts of evidence against himself.
- (II) Roy Irby establishes himself as a willing accessory for more than two years before his wrongful deeds were discovered by Thomas Irby. All Accusations by Roy C. Irby II against Thomas Irby are false and were not an issue with Roy Irby until the misdeeds (by Roy Irby and Bank of America) were discovered.
- (III) Thomas Irby denies each and every allegation of Roy Irby's Ten pages that accuse Thomas of any wrongful or illegal act and positive proof thereof is demanded. Thomas Irby cannot assume the authority to comment or answer for other persons whom Roy C. Irby Accuses.
- (IV) Thomas Irby is not aware of any acts of Fraud, negligence, or wrong doing by anyone other than Bank of America and Roy C. Irby II.

The following responses are relative to Roy Irby's first ten allegations numbered numerically from 1 through 10 on pages 2, 3, & 4 of his "Cross Claim".

RESPONSES TO SPECIFIC PARAGRAPHS

1. Paragraph 1: Three Deeds

The First Deed: The deed of record to Roy C. Irby is the deed verified by the title search and recorded in the ROD office of Greenville County, South Carolina on March 23, 2007. The deed was drawn, signed, and notarized on March 16, 2007. By this deed Thomas Irby held an undivided half interest in the 1.43 acre property as security for his obligation on the mortgage(s).

The Second Deed: Roy Irby requested a second deed be drawn as protection if Thomas Irby died or was released from obligation. Thomas approved the second deed as a favor to Roy Irby. The second deed clearly noted that no Title Search was made because it would only be filed upon the Death of Thomas Irby or when Thomas was released from obligation. This deed would relinquish Thomas Irby, or his estate, of claim to the property and simplify probate. This deed was also drawn, signed, and notarized on March 16, 2007. Roy C. Irby Agreed that the second deed would not be filed until Thomas Irby died or was released from any responsibility for the mortgages.

The Third Deed: Thomas discovered an error on the property plat that when corrected added 0.08 acres (3,485 s.f.) along the east side of the 1.43 acres of the First Deed. A Third Deed was made on August 16, 2007 to add the 0.08 acres to the property. This third deed, filed August 28, 2007, enriched the M. & T. / Chase mortgage collateral value and increased equity value in the property.

Violation of Trust: Thomas Irby Discovered in December of 2009 that on November 13, 2008 Roy Irby filed the Second Deed, without title verification or notifying Thomas Irby. Roy C. Irby filed the second deed to relinquish Thomas of his half interest in the property.

All other accusations of paragraph number 1 are denied and proof thereof is demanded.

2. Paragraph 2: Thomas Irby denies all allegations in paragraph 2 that accuse him of any wrongful act and proof thereof is demanded.
3. Paragraph 3: Thomas Irby Denies all allegations in paragraph 3 that accuse him of any wrongful act and proof thereof is demanded.
4. Paragraph 4: Denied as irrelevant to Thomas Irby.
5. Paragraph 5: Denied with proof thereof demanded. Also see paragraph No. 1.
6. Paragraph 6: Denied with proof thereof demanded.
7. Paragraph 7: The M&T-Chase mortgage was a consolidation mortgage specifically to pay off the mortgages of Bank of America and Community Bank. Roy C. Irby hereby admits that he withdrew sums from the ELOC during the payoff process knowing the purpose of the Consolidation loan was to Pay Off the B.O.A. account.

Thomas Irby knows nothing of withdrawing funds from the ELOC to pay a debt that was to be paid from the M&T mortgage. Thomas Irby demands absolute proof of this allegation.

All remaining accusations of Number seven are denied and proof thereof is demanded.

8. Paragraphs 8, 9, & 10 are irrelevant or Denied and proof thereof is demanded.

Response to Roy C. Irby's

"MOTION TO QUASH"

- (A) None of the "Conditions" numbered one through five of Roy Irby's "Motion to Quash" provide any grounds to dismiss the Cross Complaint and amendments as filed by Thomas Irby.
- (B) The Cross Complaint of Thomas Irby is supported by irrefutable evidence of documentation and witnesses including but not limited to:
 - (a) The ELOC account history.
 - (b) Letters of verification from Bank of America,
 - (c) The ELOC Maximizer Agreement,
 - (d) The M&T-Chase mortgage documents,

- (e) The payoff process documents to Bank of America, (f) The account phone and correspondence records from Bank of America, (g) The property deeds, (h) The original Contract for Deed, and other evidence by witnesses and documents.
- (C) The ELOC Maximizer account was not a concern to Thomas because he believed the account was closed and satisfied. Thomas Irby cannot respond for Gregg Jones, Diane Andrews, or others.
- (D) Roy C. Irby has provided no justification to quash, reject, or censor Thomas Irby's Cross Complaint.
- (E) Roy C. Irby has provided no viable defense or evidence that eliminates his Fraud, Breach of Trust with fraudulent act, breach of contract, Violations of [SC ST SEC 34-3-110] and Sect. 16-13- 230 of the South Carolina Code of laws as alleged in the Cross Complaint of Thomas Irby.
- (F) Roy C. Irby's "Motion to Quash" is without merit or relevancy and should be dismissed in Entirety.

RESPONSE TO ROY IRBY'S

"FRAUDULENT MORTGAGE/FEDERAL HUD STATEMENT"

"MOTION TO COLLECT ALL PAYMENTS TO THOMAS R. IRBY, GREGORY JONES, CHASE BANK, AND BANK OF AMERICA, PROPERTY TAXES, INSURANCE, AND DAMAGES – ATTORNEY FEES PAID BY ROY C. IRBY II, CHASE, BANK OF AMERICA"

(A) General response: Any and all allegations of wrong doing against Thomas R. Irby in paragraphs 1 through 13 is denied and proof thereof is demanded.

1. Paragraph 1: A Lis Pendens was filed as a direct result of the violations and fraudulent acts of Roy C. Irby and Bank of America . The legal reasons for the Lis Pendens should be answered by the filing attorney. All other allegations in this paragraph are denied and proof thereof is demanded.

In the Court of Common Pleas

- 2 & 3. Paragraphs 2 & 3: All allegations against Thomas Irby are denied and proof thereof is demanded.
4. & 5. Paragraphs 4 & 5: Denied and proof thereof is demanded.
6. Paragraph 6: Any alleged act of wrong doing by this paragraph is Denied and proof thereof is demanded.
7. Paragraph 7: Irrelevant and without merit or verification of cause.
- 8 & 9. Paragraphs 8 & 9: Denied and proof thereof is demanded. (The Court is referred to paragraph 1 on page 2 of this document)
10. Paragraph 10: Denied and proof of validity is demanded. (No valid cause for such a request has been stated or proven.)
11. Paragraph 11: Denied and proof thereof is demanded.
12. No paragraph is provided.
13. Paragraph 13: No valid claims for compensable damages have been stated. Any inference intended to implicate Thomas Irby is denied and proof thereof is demanded.

RESPONSE TO

"MOTION TO COLLECT FOR TITLE OPINION-INSURANCE ERRORS AND OMISSIONS PAID TO GREGG JONES FOR CHASE, BANK OF AMERICA MORTGAGES FROM GREGG F. JONES"

- (A) General response to paragraphs 1 through 11: All accusations of wrong doing by Thomas Irby is denied and proof thereof is demanded.

RESPONSE TO

"DAMAGES, NEGLIGENCE BY NOTARY DIANE ANDREWS"

(A) As a general response this allegation is irrelevant to Thomas Irby. Any way in which Thomas may be implicated is denied and proof thereof is demanded.

RESPONSE TO

"SUMMARY REQUEST"

(A) Roy C. Irby has failed to present any valid claim for damages that are not the direct result of his wrongful acts as specified by the Cross Claim of Thomas R. Irby.

(B) Roy C. Irby is not entitled to any claim for damages resulting from his own acts of fraud, Breach of trust with fraudulent acts, breach of contract, and violations of [SC ST SEC 34-3-110] and Sect. 16-13- 230 of the South Carolina Code of laws.

WHEREAS Roy C. Irby continues his fraudulent and slanderous claims against Thomas Irby, Thomas prays upon the court as follows:

(A) That Roy Irby's document as referenced herewith be dismissed in entirety as a flagrant, frivolous and irrelevant attempt to distract, confuse, and shroud the true issues of the case at hand.

(B) That the court apply all available recourse to sanction further unfounded, flagrant, fraudulent, and libelous accusations by Roy C. Irby against Thomas Irby and others.

(C) That the court will protect the best interests of Thomas R. Irby in all matters relevant to this case.

(D) That the court schedule a hearing at the earliest possible date to determine the validity of any claims by Roy C. Irby that may be presented to the Jury.

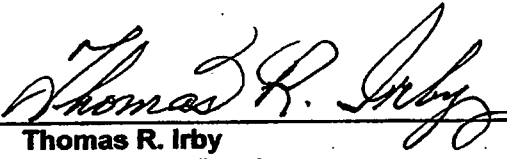
(E) That Roy C. Irby be compelled by the court to respond appropriately to discovery requests for interrogatories, production, and admissions.

AS AN ALTERNATE
(If Roy Irby's Cross Complaint is not dismissed)

Thomas Irby requests the Courts permission to File a motion to Bifurcate (separate) Roy Irby's Cross Claim, with all inclusions, into a separate action. A separate (and subsequent) action will:

- (a) Simplify and help expedite Thomas Irby's Cross Complaint.
- (b) The Jury decision of Thomas Irby's Cross Complaint will eliminate the need for any actions relative to Roy C. Irby's claims.

Respectfully submitted this date of April 18, 2011.

Signed: 

Thomas R. Irby
160 Pearson Road
Belton, SC 29627
Phone: (864) 243-4015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-23-1621

Thomas R. Irby
Cross Complainant, Pro Se

COMPLAINANT THOMAS R. IRBY'S

Vs

Bank of America, and
Roy C. Irby
Defendants

OBJECTION TO
BANK OF AMERICA'S MOTION TO
STRIKE THOMAS IRBY'S GENERAL
AMENDMENT TO HIS CROSS COMPLAINT

(I) Thomas R. Irby, as Cross Complainant in the above referenced Case Objects to any motion to strike or dismiss the General Amendment to his Cross complaint. Bank of America filed such a motion on Date of April 28, 2011.

(II) The Court is respectfully referred to Council for the Bank's "Motion to Amend" filed on date of November 18, 2010 in which he justifies his amendments by Rule 15(a).

(a) "Leave to amend an answer shall be freely given where justice requires and does not prejudice the other party. This rule strongly favors amendments and the court is encouraged to freely grant leave to amend"

(b) "It is well established that a party does not suffer prejudice when the pleadings are amended during active discovery".

(III) This matter is still in an active stage of discovery. Therefore the only grounds on which Council seems to object is that Thomas Irby failed to ask permission of the Court to file his amendment. Thomas Irby was not aware that during Discovery he was required to ask permission for clarification of his cross claim. For that error he herewith tenders his apologies to the court.

(1) The General Amendment is in compliance with Rule 15, (b) of the South Carolina Rules of Procedure to wit:

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the

action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall upon motion grant a continuance reasonably necessary to enable the objecting party to meet such evidence. Upon allowing any such amendment or evidence the Court shall state in the record the reason or reasons for allowing the amendment or evidence. In the event the Court should try issues not raised by the pleadings, it shall state in the record all such issues tried and the reason therefor.

- (2) Accordingly, even during trial procedures, Amendments for Conformity are not only acceptable but recommended. Amendments for Conformity are not restricted to thirty days or to discovery process.**
- (3) The intent of Thomas Irby's General Amendment to his Cross Complaint is to establish conformity and clarification of allegations relative to historical Law, Procedure, case records, information, and things obtained during discovery. The amendment is also to clarify the generic allegations against Bank of America and Roy C. Irby II.**
- (4) The issues of the General Amendment are not intended to change, by addition or omission, any allegation (generic or other), or statement of fact, reference, inference, or other text of the original Cross Complaint.**
- (5) The General Amendment as filed is an Amendment to Conform to the Evidence relative to information obtained through ongoing discovery. The intent of the General Amendment is to avoid or clarify issues that may arise through attempts to delay procedures in court and/or to confuse the Jury.**
- (6) The General Amendment is linked by reference to the original Cross Complaint and the Amendment to Clarify. Both the General Amendment and Amendment to Clarify are also related back to the original Cross Complaint as specified in Rule 15, (c). Thus A dismissal of the General amendment will also effectively dismiss the Cross Complaint.**
- (7) The Cross Complaint has continued in Discovery Status since September 9th, 2010 and no notice for termination or closure of discovery has been issued by the court or requested by either party.**
- (8) As of this date Bank of America has offered no viable defense for the Bank's acts of negligence which directly resulted in the fraudulent acts committed by the Bank and Roy C. Irby.**

REQUESTS FOR ALTERNATE PROCEDURE

Whereas the contents of the General Amendment are pertinent to the adjudication of the case at hand and Bank of America moves to strike on a procedural error, Thomas Irby respectfully offers the following alternates:

(A) **As a first Alternate:** Thomas Irby requests the Court to forgive his error and allow him to retract the Amendment until he is granted permission to submit it through acceptable procedure. This will eliminate any cause for a motion to strike on procedure.

(B) **As a second Alternate:** Thomas Irby requests that the court denies Bank of America's "Motion to Strike" the General Amendment to his Cross Complaint. The General Amendment does not change, replace, or omit any allegation of the Cross Complaint.

(C) **As a third Alternate:** Thomas Irby requests that if the Court strikes the General Amendment (on procedure), the Court will accept a submittal for "Amendments to Conform to the Evidence", in compliance with Rule 15 (b). Procedurally the alternate submittal may be filed during the trial or prior to the trial.

(D) **As a fourth Alternate:** The discovery process continues and the intent of the General Amendment is vital. Thomas Irby intends that Bank of America knows and understands the issues of record to be presented at trial. Those issues, presented by the Cross Complaint, are now refined and clarified from discovery. Thomas Irby will present those issues to Bank of America, as matters of record, by way of supplementing the continuing discovery.

(E) **As a fifth Alternate:** Thomas Irby requests the court to waive the Thirty Day limit in order to allow a General Amendment to his Cross Complaint relative to the current discovery findings. The General Amendment would clarify the Generic Allegations of the Cross Complaint and provide references to case and law.

HARMLESS ERROR

The Court is respectfully referred to Rule 61, Harmless Error, by direct copy hereof:

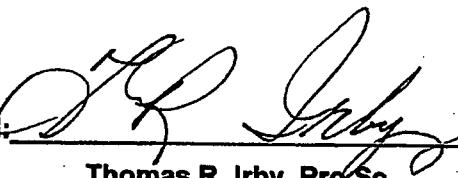
"No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

Thus the overall intent of the rules of procedure are to maintain a process consistent with Substantial Justice. All information contained in Thomas Irby's General Amendment to his Cross Claim would be information presentable to the Court or a Jury by a reasonably zealous and capable attorney.

(10) Thomas Irby is not aware of any date for termination or any deadline designated for the discovery process to end. Denial of the right to amend according to discovery defies the intent of discovery. It is not possible to amend prior to knowledge. The content of the General Amendment could not have been known by this pro se litigant within thirty days from the date of the Cross Complaint or within Thirty days from the date of the September 9, 2010 hearing.

Respectfully submitted this date of May 4, 2011.

Signed: _____



Thomas R. Irby, Pro Se
160 Pearson Road
Belton, SC 29627
Phone (864) 243-4015

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
PAUL B. WICKENTH

CHASE HOME FINANCE, LLC
Plaintiff

Vs.

THOMAS R. IRBY, ROY C. IRBY II
and BANK OF AMERICA
Defendants

IN THE COURT OF COMMON PLEAS
(Master in Equity)

CASE NO: 2010-CP-23-1621

THOMAS IRBY'S
OBJECTION AND ANSWER

To amendment by Roy C. Irby II
as filed July 19, 2011

(I) I object to any manipulation of the mortgages by which Bank of America may be rewarded (as holding first mortgage) for their failure to close the mortgage and HELOC agreement. Bank of America was paid off and instructed to block and close the account on August 22, 2007. All actions in this matter are the direct results of negligence and breach of contract with fraudulent intent and other violations by Bank of America.

(II) I herewith Deny and Object to all allegations and slander to which I am named or referred by Roy C. Irby II in his cross complaint and his amendment to his "Cross Complaint". Said amendment was filed by defendant Roy Irby on July 19, 2011.

(III) All actions in this matter are subsequent to and linked to the Lis Pendens I filed in January of 2010. I object to any procedure or actions by which any of my complaints and any of my continuing actions against defendants Roy C. Irby and Bank of America may be jeopardized.

(IV) I am the primary Co-Signer on the Bank of America HELOC and Mortgage and I am the Co-Signer on the Chase Home Finance Mortgage. I object to any manipulations of these mortgages for which I may remain liable in any way.

THE TARP PROGRAM

(V) Roy C. Irby II refers again to his application for assistance from the TARP program. He has previously accused me of interfering with his application for assistance from TARP and the Greenville County Human Relations office. The court is referred to

the attached copy of a letter from GCHR signed by Mr. Gregg Burgess. The letter explains that Roy Irby's requests were denied solely because of the active legal issues.

(VI) Spartanburg County public records show that Roy C. Irby has been a Defendant in least six (6) foreclosure actions prior to the now active two foreclosures in Greenville County. It should be doubtful to the court that anyone with eight (8) foreclosures could qualify for any mortgage or assistance thereof.

THE "REMOVE THE LIS PENDENS" NOTICE

(VII) (a) I object to the "Notice" By Roy C. Irby to Remove my Lis Pendens. I filed the document as notification of pending legal procedures to protect myself from continuing violations by defendants Roy Irby and Bank of America. Both the Bank and Roy Irby continue their violations and those issues remain in active discovery pending a jury trial.

(b) I object to the remainder of said notice as to the malicious slander and libelous accusations of Fraud against myself and others who trusted Roy C. Irby and helped him get the home he said he desperately wanted.

(c) I have filed for a motion to compel Defendant Roy Irby to produce any and all evidence he holds confirming any act of conspiracy or fraud by me against him. Unfounded accusations are not evidence. Attempts to transfer guilt are not evidence.

(d) The court is referred to SECTION 16-7-150, Slander and Libel. If the court cannot control ongoing slander and libel by Roy Irby I hereby reserve my right to bring a separate action on the issue or to join such action with my current cross complaint. I will seek sanctions and penalties as provided by the referenced law at the time prescribed relative to trial procedures.

THE "LEGAL ACTION THREAT"

(VIII) (a) Defendant Roy C. Irby II has gained much confidence since the hearing of June 29, 2011. That confidence obviously is from the fact that the Court has shown no interest in acting on any potential criminal charges against him. The court seems to

have no interest in his probable violations of SECTION 16-13-230. Breach of trust with fraudulent intent, or of SECTION 34-3-110. Crimes against a federally chartered or insured financial institution [SC ST SEC 34-3-110].

(b) I object to Roy C. Irby's threats of "further legal action" and threats of involving the "Greenville/Anderson County Sheriff and Solicitor Wilkins. The Court and Defendant Roy Irby are referred to SECTION 15-36-10. Frivolous lawsuits; article (4) in entirety. (I have never owned anything or resided in Anderson County)

THE DEEDS

(IX) (a) The "Deed of Record is the first deed as filed with the ROD when the BOA mortgage was made in March of 2007. By that deed I held an undivided half interest in the property as security for co-signing the mortgage. That deed was to remain on record as long as my name remained on the mortgage to Bank of America (or Chase Home Finance). The deed Roy Irby claims is a "fraudulent deed" was written as his protection if I died, became incapacitated, or if the active mortgage(s) was satisfied. The first deed remained after BOA was paid off because I co-signed the Chase mortgage.

(b) The second deed was written on the same date as the deed of record. This disputed deed plainly states, "NO TITLE EXAMINATION PERFORMED." To expect a title warranty on this deed is absurd. Without my approval Roy Irby recorded the second deed in November of 2008. This was done discreetly and over fourteen months after the first deed was recorded and without satisfying the chase mortgage. By this action Roy Irby "claims" sole ownership to the property leaving me no security for my signature.

REMEDIES IGNORED

(X) (a) There are procedural remedies to correct the validity of a deed. Roy Irby has not sought any such remedies. His reaction, when his violations were discovered after his defaults, is to inundate all legitimate litigants and the Court with frivolous accusations, cross claims, and threats, of any nature he can imagine.

(b) Roy C. Irby is an expert in property deeds, transfers, titles, title insurance, and mortgages. Spartanburg County records show that he was previously involved in at least Thirty Two (32) deed processes, and Forty Six (46) mortgages. He is also listed as defendant in Six (6) foreclosure actions (previously referenced).

(c) Roy Irby is thus well aware that errors on a deed can be reconciled if the intent of the deed is genuine. He also has the expertise to know how to manipulate deeds, titles, and mortgages. Roy Irby has not attempted to have any discrepancy corrected. He attempts instead to transfer his guilt to others including myself.

(d) To allege that I obtained a building permit in order to build a house for myself and then fraudulently force him to live in it and pay for it is as ludicrous as the rest of his complaints.

(XI) Roy C. Irby II claims to have been aware of the violations he falsely accuses others of committing. He claims he thought he and the Banks were being defrauded, yet he failed to notify the banks immediately and knowingly chose to capitalize on Bank of America's real negligence for over two years. Only after his violations were discovered did he attempt a defense of falsely alleging fraud by those who tried to help him.

(XII) Roy Irby attempts to prey on sympathy from the court with his "hospitalizations". The court is reminded that he spent the funds from both the BOA mortgage and the Chase mortgage and then defaulted on both mortgages during his "hospitalizations".

Submitted this date of: 7/27/2011

Signed: Thomas R. Irby

Thomas R. Irby, pro se
160 Pearson Road
Belton, SC 29627
Phone: (864) 24304015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CHASE HOME FINANCE, LLC

Plaintiff

Vs.

THOMAS R. IRBY, ROY C. IRBY II
and BANK OF AMERICA
Defendants

IN THE COURT OF COMMON PLEAS

CASE NO: 2010-CP-23-1621

Thomas Irby's

ANSWER AND OBJECTION TO

Roy C. Irby's

AMENDED CROSS COMPLAINT,

SUMMONS, AND MOTION

NOTICE OF INTENT

The Court is hereby respectfully notified that I will enter a motion to BIFURCATE and completely separate all irrelevant and frivolous allegations, filings, claims, and all other unsubstantiated statements by Roy C. Irby II, into a Separate Case. This is now necessary to protect my rights to a trial by jury without interference by manic claims intended to distract, mesmerize, and confound the court, the jury, and all other parties.

(A) Roy C. Irby II filed his "Cross Complaint Action" in this matter on March 30, 2011. He then filed his "Motion to Amend" on June 20, 2011. Permission for his amendment was granted by Judge Welmaker at the hearing on June 29, 2011. Roy C. Irby II submitted his "Amended Motion" on July 18, 2011. Now 44 days later comes his "Amended Cross Complaint, Summons, and Motion. Please Clarify to this Litigant and for all parties whether Roy C. Irby was granted permission to continue amending at will without moving for Leave to do so. Rule 15 of the Rules of Procedure seems to require any amendment after a set time limit to be granted only by motion for leave of the court to do so.

(B) I will respond by objection or comment to the specific matters in the referenced "Amended Cross Complaint, Summons, and Motion" as they relate or refer to me. I will not assume any right to answer for other parties or to allegations against anyone other than myself.

ANSWERS AND OBJECTIONS

(1a) (Item 1 on page 2) Roy C. Irby states that by deed of March 17, 2007 he is sole owner of the subject property. The validity of that deed is questionable. The deed of record is also dated, notarized, executed, and signed on March 17, 2007. That deed was duly filed (as a three page document) in the ROD office on March 23, 2007. By that deed I retained a half ownership in the property as security for my signature on the mortgage. A copy of that deed is provided herewith.

(1b) The deed of record with my half ownership is also the collateral deed for the M&T Bank mortgage as subsequently purchased by Chase Home finance.

(1c) Roy Irby requested that a second deed be written as a convenience to him. The second deed was also written on March 17, 2007. That deed was only to be filed if I died or when my name was removed from all mortgages. The second deed plainly states in the heading; "NO TITLE EXAMINATION PERFORMED". Roy Irby filed the second (single page) deed, in violation of intent and agreement, on November 13, 2008. A copy of the second deed is also provided. The second deed is the deed on which Roy Irby claims he has title problems. Roy Irby filed this deed without notification to anyone.

(1d) Attorney Gregg Jones was the closing attorney for both the Bank of America HELOC and the M&T Bank mortgage. Mr. Jones has verified the intent of the second deed by his previous answer to Roy Irby's "Cross Claim".

(2a) (Second item 1, page 3) Roy Irby has summoned *"all personal and business assets, including but not limited to real estate owned, sold or transferred since March 16, 2007, both business and personal, to include but not limited to bank account information, cash for both business and personal"*. This information has no relevance to the issues of my cross complaint and I object in entirety. I have responded for the courts benefit only.

(2b) I retained half ownership by deed of 1.43 acres to Roy C. Irby on March 17, 2007. I deeded a total of 4.75 acres of land to my son on February 1, 2010.

(2c) Business assets include an 8 year old computer, a 32 year old desk and a 38 year old drawing board. Also included as business use is partial assignment of my 13 year old expedition. All are included in my tax returns which Roy Irby has copies.

(2d) Other Personal property of which my wife would not be considered joint owner are a 1990 farm tractor, various farm implements, a 1988 pickup truck, a 35 year old storage trailer, and a 31 year old boat and outboard motor, various items of fishing equipment and several firearms. Also included are a number of miscellaneous hand tools and power tools accumulated during previous construction activity.

(2e) Personal real estate owned jointly by myself and my wife include 5.33 acres with my home at 160 Person Road, Belton, South Carolina, 29627.

(2f) My bank balance as of this time is less than \$100.00. Cash on hand at any time may average \$200.00.

(2g) I will not surrender my Bank Account number, or any other document with that number, to anyone without the Court's directive to do so. Upon such directive I expect the Court to assume all responsibility for any misuse thereof. Upon the courts directive I will provide copies of my account status with all account numbers and reference numbers (not relative to the balance), removed.

(3a) (second item 3 on page 3) Roy Irby has summoned "*documentation for Lis Pendens with proof of indemnification by Roy C. Irby, etc.*" I do not understand what this refers to or any relevance thereof. The Lis Pendens was filed to put all parties on notice that legal actions were pending when the default on the M&T / Chase account and the negligence and breach of trust by Roy C. Irby and Bank of America were discovered. I object to any actions concerning the Lis Pendens that may jeopardize my Cross Complaint in any way.

FRIVOLOUS PROCEEDINGS

(A) My Cross Complaint is for the fraudulent actions including (among other charges) the breach of trust with fraudulent intent and breach of duty of trust with fraudulent intent committed by Roy C. Irby and the Negligence, Breach of Trust and Breach of Duty of Trust (among other charges) committed by Bank of America.

(B) Roy C. Irby Continues to deluge the court and parties with frivolous, diversionary, irrelevant, libelous and slanderous allegations, pleadings, and statements.

(C) Roy C. Irby cannot offer any viable defense for his violations. His approach to a defense for his actions is to continuously accuse other parties of imaginary implications.

(D) THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT Section 15-36-10 is referred herewith in entirety and specifically to the following applicable frivolous actions for sanctions:

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(G) Sanctions may include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court; or

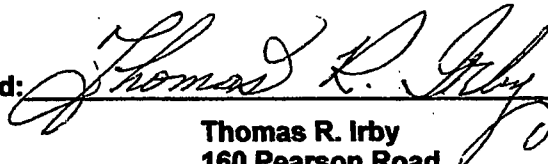
(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(E) I request the court to review the nature and content of all filings, answers, motions, and statements from Defendant Roy C. Irby II to determine any violations to Section 15-36-10. I request also that appropriate sanctions and penalties be levied for all violations committed relative to this statute.

(F) I request the Court to protect my best interest in all matters at all times.

Respectfully submitted this date of 8/15/2011

Signed: _____



**Thomas R. Irby
160 Pearson Road
Belton, SC 29627 Ph: (864) 243-4015**

STATEMENT OF SERVICE

**Copies of my Answer and Objections to Roy C. Irby's amended Cross Complaint
were served on the following parties by U. S. Mail as indicated on**

this date of: 8/15/2011

Served by Certified Mail – Return receipt requested

**Roy C. Irby II
P.O. Box 196
Williamston SC, 29697**

Served by First Class Mail – Postage Prepaid

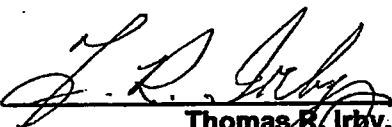
**Lawrence M. Hershon, Atty
Parker Poe
P.O. box 1509
Columbia, SC 29202-1509**

**Gregg F. Jones, Atty
P.O. Box 158
Williamston, SC 29697**

**Diane L. Chapman
P.O. box 158
Williamston, SC 29697**

**Doug Thomas, Atty
Scott Law Firm
P.O. Box 2065
Columbia, SC 29202**

**Knox L. Haynsworth III, Atty
P.O. Box 1464
Greenville, SC 29602**

Signed: 
**Thomas R. Irby, Pro Se
P.O. Box 827
Pelzer, SC 29669
(864) 243-4015**

RECORDED
March 23, 2007 12:11:58
Doc: 2258 Page: 427-428
Cost: \$5.00
Only Tax: 0.0000 State Tax: 0.0000

STATE OF SOUTH CAROLINA

FILED IN GREENVILLE COUNTY, SC
TITLE TO REAL ESTATE

COUNTY OF GREENVILLE

KNOW ALL MEN BY THESE PRESENTS THAT I, THOMAS R. IRBY hereinafter, whether one or more, called Grantor, in the State aforesaid, in consideration of the sum of FIVE (\$5.00) DOLLARS, LOVE AND AFFECTION to Grantor in hand paid at and before the sealing of these presents by BOY C. IRBY, II hereinafter, whether one or more, called Grantee (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee and Grantee's heirs, or successors, and assigns forever. An undivided one-half interest in and to the below described real estate to-wit:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat dated June 4, 2004 and recorded on March 6, 2007 in the RMC Office for Greenville County in Plat Book 1032 at page 61, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions, restrictions and zoning ordinances pertaining to said premises, and in addition is subject to any of the foregoing which may appear from an inspection of said premises.

ROLL-BACK TAKES: Purchaser shall be responsible for the amount of any roll-back ad valorem property taxes for the year of closing and any prior years which result from a reclassification, if any, of the property. In the event purchaser desires to attempt to have the property retain any qualified agricultural classification, purchaser must apply promptly after closing for such classification.
TMS# 05977010100104

Grantee's Address:

PO BOX 773
Piedmont, SC 29673

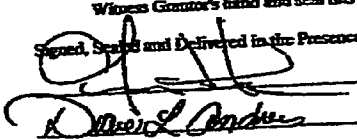
TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

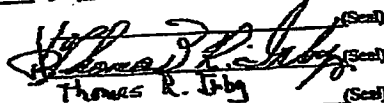
TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the said Grantee and Grantee's Heirs, or Successors, and assigns forever.

And Grantor does hereby bind Grantor and Grantor's Heirs, Successors, Executors and Administrators to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs, Successors and assigns against Grantor and Grantor's Heirs, Successors, Executors, Administrators and Assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness Grantor's hand and seal this 16th day of March A.D. 2007.

Signed, Sealed and Delivered in the Presence of:


Diane L. Anderson


Thomas R. Irby

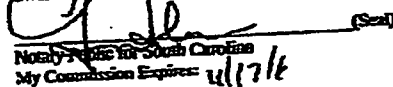
STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF ANDERSON

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor sign, seal and as Grantor's act and deed deliver the within deed, and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 16th day of March A.D. 2007.


Notary Public for South Carolina
My Commission Expires: 11/17/16


Diane L. Anderson

STATE OF SOUTH CAROLINA)
) AFFIDAVIT FOR TAXABLE OR
 COUNTY OF GREENVILLE) EXEMPT TRANSFERS

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 156 Pearson Rd., Belton, SC
 bearing Greenville County Tax Map Number 0597610100104
 was transferred by Thomas R. Irby to Roy C. Irby, II on March 16, 2017

3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
 (c) ☒ exempt from the deed recording fee because (See Info-Affidavit) 19
3 (If exempt, skip 4 - 7 and go to item 8)

If exempt under exemption #14 as described in the information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked:

- (a) _____ the fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 (b) _____ the fee is computed on the fair market value of the realty which is _____
 (c) _____ the fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien is _____

6. The deed recording fee is computed as follows:

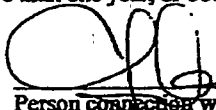
- (a) Place the amount listed in item 4 above here: _____
 (b) Place the amount listed in item 5 above here: _____
 (If no amount is listed, place zero here.)
 (c) Subject line 6(b) from Line 6(a) and place result here _____

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed

recording fee due is: 10⁰⁰

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

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



Person connected with the Transaction

Gregg F. Jones
Print name here

SWORN to before me this 16th
day of March, 2007

Diane L. Anderson
NOTARY PUBLIC FOR SC
My Commission Exp: 10-25-2011

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
20070228188 Book: DE 2258 Page: 437-439
March 23, 2007 12:11:58

Timothy J. Hanney



2000099536 DEED
1 PG
Book:DE 2346 Page:1649-1649
November 13, 2006 01:03:00 PM Cons:\$3.00
Rec:\$10.00 City Tax:EXEMPT State Tax:EXEMPT

NO TITLE EXAMINATION PERFORMED
STATE OF SOUTH CAROLINA

FILED IN GREENVILLE COUNTY, SC

TITLE TO REAL ESTATE

COUNTY OF GREENVILLE

KNOW ALL MEN BY THESE PRESENTS THAT I, THOMAS R. IRBY hereinafter, whether one or more, called Grantor, in the State aforesaid, in consideration of the sum of FIVE (\$5.00) DOLLARS, LOVE AND AFFECTION to Grantor in hand paid at and before the sealing of these presents by ROY C. IRBY, II hereinafter, whether one or more, called Grantee (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee and Grantee's heirs, or successors, and assigns forever: Any remaining interest in and to the below described real estate to-wit:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat dated June 4, 2004 and recorded on March 6, 2007 in the RMC Office for Greenville County in Plat Book 1032 at page 61, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149.

This conveyance is specifically made subject to any and all recorded rights-of-way, easements, conditions, restrictions and zoning ordinances pertaining to said premises, and in addition is subject to any of the foregoing which may appear from an inspection of said premises.

ROLL-BACK TAXES: Purchaser shall be responsible for the amount of any roll-back ad valorem property taxes for the year of closing and any prior years which result from a reclassification, if any, of the property. In the event purchaser desires to attempt to have the property retain any qualified agricultural classification, purchaser must apply promptly after closing for such classification.

TMS# 05970101 00104

Grantee's Address:

P.O. Box 273
Piedmont, SC 29673 R.I.

TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

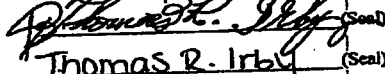
TO HAVE AND TO HOLD all and singular the said Premises before mentioned unto the said Grantee and Grantee's, Heirs, or Successors, and assigns forever.

And Grantor does hereby bind Grantor and Grantor's Heirs, Successors, Executors and Administrators to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs, Successors and assigns against Grantor and Grantor's, Heirs, Successors, Executors, Administrators and Assigns and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness Grantor's hand and seal this 16th day of March, 2007

Signed, Sealed and Delivered in the Presence of:


Diane Anderson


Thomas R. Irby (Seal)

(Seal)

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF ANDERSON

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Grantor sign, seal and as Grantor's act and deed deliver the within deed, and that (s)he with the other witness whose name is subscribed above witnessed the execution thereof.

Sworn to before me this 16th day of March A.D. 2007.


(Seal)

Notary Public for South Carolina

My Commission Expires: 4/17/16

FILED FOR RECORD IN GREENVILLE COUNTY, SC R00
2000099536 Book:DE 2346 Page:1649-1649

November 13, 2006 01:03:00 PM

STATE OF SOUTH CAROLINA	)	9-08-2011
COUNTY OF GREENVILLE	)	IN THE COURT OF
Plaintiffs		COMMON PLEAS
Roy C. Irby II	)	
P O Box 196	)	Case No: 2010-CP-23-1621
Williamston, SC 29697	)	Amended Cross Complaint and
	)	Action
Vs.	)	
Defendant		
Fidelity National Title	)	
Insurance Company of New York	)	
George L. Sands, Jr	)	
515 North McDuffie Street	)	
Anderson, SC 29621	)	
Representend By	)	
Knox L. Haynesworth III	)	
Brown Massey, Evans, Mcleod & Haynsworth, LLC	)	
PO Box 2464	)	
Greenville, SC 29602	)	

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2011 SEP 9 PM 3:34

2011 SEP -9 PM 3:34

This action is brought as per the Honorable Judge Simmons order and court instruction from August 17, 2011 to me, Roy C. Irby II; too isolate each Defendant and bring action against each litigant involved in Case No: 2010-CP-23-1621.

- 1) This action complaint is brought against Fidelity National Title Insurance Company Policy #SC2196-10-GJO7-237-2008.2710740-75081514 Issued by George L. Sands File# GJO7237

Policy #2710740-7508514 which specifically was bound that day of August 28, 2007 At 12:13:22 PM for the Amount of insurance of \$95,000.00, paid for through Federal HUD Closing of August 17, 2007 to M&T Chase Bank For The Following(a copy of said Title Insurance is attached)
Title policy states the following:

Schedule A

Item #3 Title to the estate or interest in the land Vested in:

THOMAS R. IRBY AND ROY C. IRBY, II

Item #4 Mortgage from THOMAS R. IRBY AND ROY C. IRBY II TO MERS, INC., its successors and or assigns as their interests may appear in the original Principal amount of \$95,000.00 dated August 17, 2007 and recorded at 12:13:22 pm in the Office of Register Of Deeds For GREEVILLE County, in Book 4840 at page234(Attached Copy Exhibit A)

This action arises under Contract law for Undue Richness; this set of circumstances leads Plaintiff to the good faith belief that Defendant misrepresented some or all of the facts concerning the sale.

This resulting in Undue richness for Bank of America when all insurance should be paid to Chase Home Finance whom had no Undue notice of the misrepresentation From Attorney Greg F. Jones

- 1) The above said policy was purchased to solely protect M&T Chase and their sole assigns'
- 2) The above said Mortgage was sold and an Assignment of Real Estate Mortgage Dated March 8, 2010 Through MERS, INC. Filed at Greenville County Office of Register of Deeds—Book no5073 page 1350-1351, solely To Chase Home Finance in Full.
- 3) Bank of America which had an open second mortgage is trying to force its position as a subrogation.
 - a. Bank of America had no Title Insurance on said property and choose not to procure, instead accepting a Opinion to mortgage, From Greg F. Jones WHICH Mr. Jones had prepared ad signed a full interest Warrantable deed to Roy C. Irby II on March 16,2007 as stated in Assignment of real estate mortgage(Attached copy Exhibit C). Mr. Greg Jones, PA PO Box 158 Williamston, SC, 29697 Title opinion dated 6-20-2007 which clearly states Bank Of America is a 2nd lien upon said property. (Attached Copy Exhibit B)
 - b. Bank of America, Parker & Poe Attorney have been Aware of the Fraudulent acts of Attorney Greg F. Jones in, deed preparation, closings and reporting of recorded Sole owner Roy C. Irby II.
 - c. If Bank Of America is allowed to collect under this policy , they will be doing so breaking the Law of Undue Richness for Contractual obligation in Real Estate Contract

Damages

1) Home Cost.....	\$300,000.00
2) Current Court Cost and Attorney/filing fees.....	\$5000.00
3) Wreck less neglect and malice personal damages.....	\$500,000.00
TOTAL DAMAGES.....	\$805,000.00

I pray upon this court for consideration and full damages warranted. I also pray for any other consideration the court may seem fair and equitable and to protect my full interest in said matter.

CC:

Parker & Poe/PA

Bank of America

PO Box 1509

Columbia, SC 29202

Scott Law Firm/PA

Chase Home Finance

2712 Middleburg Drive Suite 200

Columbia, SC 29204

Greg F. Jones/PA

PO Box 158

Williamston, SC 29697

Diane L. Andrews/Notary

PO Box 158

Williamston, SC 29627

Thomas R. Irby

PO Box 827

Pelzer, SC 29669

Knox L. Haynsworth, III/PA

George L. Sands/ Fidelity National Title Insurance of New York

PO Box 2464

Greenville, SC 29602



Roy C. Irby II Date 9/8/2011

EXH. 1, b1 + 11

**FIDELITY NATIONAL TITLE
INSURANCE COMPANY OF NEW YORK**

Policy Number: 2710740-75081514
File No. GJ07237

SCHEDULE A

Date of Policy August 28, 2007 at 12:13:22 pm

Amount of Insurance: \$95,000.00
Premium: \$250.25 (re-issue GJ07156)

1. Name of Insured:

MERS, INC., its successors and/or assigns as their interests may appear

2. The estate or interest in the land which is encumbered by the insured mortgage is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

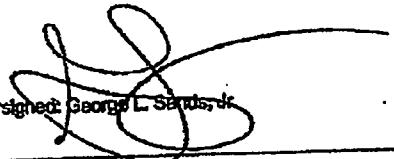
THOMAS R. IRBY AND ROY C. IRBY, II

4. The insured mortgage and assignments thereof, if any, are described as follows:

Mortgage from THOMAS R. IRBY AND ROY C. IRBY, II to MERS, INC., its successors and/or assigns as their interests may appear in the original principal amount of \$95,000.00 dated August 17, 2007 and recorded August 28, 2007 at 12:13:22 pm in the Office of the Register of Deeds for GREENVILLE County, in Book 4840 at page 234.

5. The land referred to in this policy is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Countersigned: George L. Sands, Jr.
By: 
Authorized Signatory

6 8118000674199

GREGG F. JONES
PO BOX 158
1016 ANDERSON DRIVE
WILLIAMSTON, SC 29697
864-847-5555 FAX 864-847-5999

* EXHIBIT "B" *

OPINION TO MORTGAGEE: Bank of America, NA DATE 06-20-07

PROPERTY VEST IN OWNER/MORTGAGOR Thomas R. Irby and Roy C. Irby, II
Of record in Deed Book 2258 At page 437

This exhibit being a part of and incorporated into Title Opinion given unto the above Mortgagee,
dated May 8, 2007, as follows:

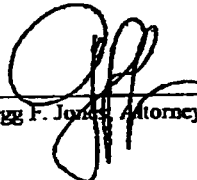
This is to certify that as of May 17, 2007, at 12:53:07 p.m. a marketable and
indefeasible fee simple title to the above described property is vest in the above named
Owner/Mortgagor SUBJECT TO THE FOLLOWING EXCEPTIONS:

1. Existing rights-of-ways, easements, restrictions and covenants of record in the Office
of the Clerk of Court for the subject county in South Carolina, or which may not be of record, or
which may be revealed by an on-site inspection of said property.

2. Such statement of facts as would be revealed by a more accurate and recent survey of
the premises.

3. Accruing real estate taxes for 20 07.

4. I certify that the above mortgage given by the above Owner/Mortgagor unto the above
Mortgagee, dated May 16, 2007, of record in the Mortgage Book 4779, at
Page 1103, is a valid and subsisting 2nd lien upon the property above described.


Gregg F. Jones, Attorney

GFJ/dla

Exhibit C

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)



March 18, 2010 12:19:55

Rec:\$7.00

City Tax:\$0.00

State Tax:\$0.00

2010017121 ASMT
2 PGS
Book:10 5673 Page:1350-1351

FILED IN GREENVILLE COUNTY, SC

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank, hereby sells, assigns, transfers and sets over unto Chase Home Finance, LLC, that certain Mortgage dated August 17, 2007, executed by Thomas R. Irby and Roy C. Irby, which said mortgage is in the original principal amount of \$95,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Greenville County, State of South Carolina, recorded on August 28, 2007 in Book 4840 at Page 234, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon

LEGAL DESCRIPTION:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat July 10, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Plat Book 1048 at Page 66, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, II by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437 and by corrective deed from Thomas R. Irby, Melvin C. Irby and Benjamin R. Irby dated August 16, 2007 and recorded on August 28, 2007 in the RMC Office for Greenville County in Deed Book 2286 at Page 921. Thereafter, conveyed to Roy C. Irby, II by deed of Thomas R. Irby dated March 16, 2007 and recorded on November 13, 2008 in Book 2346 at Page 1649.

TMS No. 0597 01-01-001 09

Property address: 156 Pearson Road, Belton, SC 29627

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank, caused these presents to be executed this 8th day of March, 2010.

Mortgage Electronic Registration
Systems, Inc., solely as nominee for
M&T Bank

BY Maria S. Watts

TITLE Assistant Secretary

Witness #1

Notary/Witness #2

ASSIGNEE ADDRESS: 3415 Vision Drive, Columbus, OH 43219-6000

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

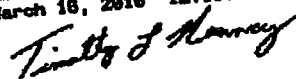
ACKNOWLEDGMENT

I, Tawanda Johnson, a Notary Public for the State of South Carolina, do hereby certify that Maria S. Watts as Assistant Secretary of Mortgage Electronic Registration Systems, Inc., solely as nominee for M&T Bank personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal
this 8th day of March, 2010


Notary Public for South Carolina
My Commission Expires: 3/31/2014

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2010017121 Book: NO 5873 Page: 1350-1351
March 10, 2010 12:19:55



STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

CHASE HOME FINANCE, LLC
Plaintiff

Vs.

THOMAS R. IRBY, ROY C. IRBY II
and BANK OF AMERICA
Defendants

2011 SEP 19 P 1:32

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-23-1621

THOMAS R. IRBY'S ANSWER TO

DEFENDANT ROY C. IRBY II'S
"AMENDED CROSS COMPLAINT AND ACTION."

(RECEIVED 09/12/2011)

I, Thomas R. Irby, as Cross Complainant in the above referenced action, hereby answer and respond to Defendant Roy C. Irby's "Amended Cross Complaint Action".

GENERAL RESPONSE

(I) I hereby reference all previous answers responding to any and all actions, cross complaints, allegations, and accusations by Roy C. Irby, as if written herein in entirety as originally provided.

(II) Defendant Roy C. Irby II continues to provide no valid defense for his fraudulent actions. His irrelevant, invalid, and redundant allegations are attempts to confuse, and distract from allegations proven by facts of evidence against himself.

(III) Roy Irby establishes himself as a willing accessory for more than two years before his wrongful deeds were discovered by Thomas Irby. All Accusations by Roy C. Irby II of wrongful acts by Thomas Irby are false. Those allegations were generated by Roy Irby after the violations committed by himself and Bank of America were discovered.

(IV) Thomas Irby denies each and every allegation by Roy Irby that accuse Thomas of any wrongful or illegal act and positive proof thereof is demanded.

(V) Thomas Irby cannot assume the authority to comment or answer for other persons whom Roy C. Irby Accuses.

The following responses are relative to Roy Irby's eight (8) specific allegations in his "Amended Cross Complaint and Action".

RESPONSES TO SPECIFIC ALLEGATIONS

(Each allegation is a direct copy lifted from the Amendment of Roy Irby)

1) TR Irby has breached each mortgage contract from Chase bank and Bank of America in which he indemnified himself as to contract balances in full, and to Roy C. Irby II. These actions were done with intent and Malice to harm Roy C. Irby II and his personal home 156 Pearson Road, Belton, 5C 29627.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

2) On March 16, 2007 TR Irby signed and delivered total ownership with two warrantable deeds prepared and notarized in attorney Greg Jones office in Willi maston, 5C; to Roy C. Irby II, for property which he did not fully own :with title issue through closing proceedings. These actions were done with intent, Malice and full knowledge of improper closing proceedings.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

3) Totally breached indemnification to Roy C. Irby II for full Warrantable title ownership for 156 Pearson Road, Belton, SC 29627. These actions were done with intent and Malice to harm my full ownership/ warrantable deeds to me Roy C. Irby II on March 16,2007.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

4) Falsely Filed a Lis Pendens 2010LP23___recorded in book BB4 Page004— which caused a foreclosure action and legal actions to be brought against Myself Roy C. Irby II, for which no money is owed to him for 156 Pearson Road, Belton 5C,29627, Thus causing

all legal proceedings and questionable title/ ownership/ and marketability. TR. Irby intentionally used a prior Survey to help falsify his filing dated March 6, 2007, which was not the original closing survey used in March 16, 2007 closing showing ownership by Roy.C. Irby II. These actions were done with intent, falsely and with Malice.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

5) Made repeatable slanderous remarks to all/litigants involved, concerning my reputation and history of foreclosures, which I have only filed Bankruptcy including a Townhome which was surrendered under Bankruptcy, I have had no foreclosures. These actions were done with intent and Malice toward me, Roy C. Irby II.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

6) TR Irby has continually transferred ownership of assets to hide them from the Banks, Courts, Attorneys, and each Honorable Judge he has been before concerning said matter; and Myself Roy C. Irby II. This action was done with intent and Malice to harm.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

7) TR Irby has refused any type of loan modification offer, thus crippling my efforts to retain my personal Home and major asset. This action was done with intent and Malice to harm Roy C. Irby II.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

8) TR Irby conspired with Mr. Greg Jones Attorney at law, to misrepresent total ownership to Roy C. Irby II, to M& T Chase Bank, Bank of America, George L Sands, Title Insurance for Fidelity National Title Insurance Company of New York. These actions were done with intent and Malice for their own personal monetary gain and to obtain loans under misrepresentation.

ANSWER: This allegation is denied and absolute proof thereof is demanded.

(VI) Roy C. Irby II has sustained no damages, costs, expenses (or other) that are not the direct result of his conspiracy to capitalize and breach the good faith contract and agreement of trust with me. This case is still about the fraudulent breach of trust and breach of contract by Roy C. Irby and the Negligence resulting in Breach of duty of care, Breach of trust and Breach of Contract by Bank of America which allowed the violations by Roy Irby to occur. Without the violations of these two defendants this matter would not exist.

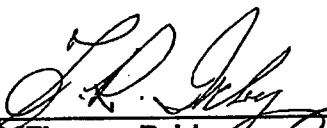
(VII) I request that this matter be heard as soon as possible before any court that will have an interest in documented and valid evidence rather than unfounded allegations. I request also that such Court determine the validity and merits of my case and that the matter be presented to a Jury without further unnecessary and deliberate delay.

(VIII) I ask the Court to review this case on the merits of all evidentiary matter and to dismiss in entirety all frivolous, unfounded, irrelevant, and invalid allegations by the Defendant Roy C. Irby II. I ask that the Court also levy all sanctions, fines, and penalties applicable for the frivolous and slanderous claims by Roy C. Irby against me and others.

(IX) I request that the Court protect my best interest in all matters relative to this case.

Respectfully submitted this date of September 19, 2011.

Signed: _____


Thomas R. Irby, pro se
160 Pearson Road
Belton, SC 29627
Phone: (864) 243-4015

STATEMENT OF SERVICE

Copies of my Answer to Roy Irby's amended Cross Complaint
were served on the following parties by U. S. Mail as indicated on

this date of : 9/19/2011

Served by Certified Mail – Return receipt requested

Roy C. Irby II
P.O. Box 196
Williamston SC, 29697

Served by First Class Mail – Postage Prepaid

Lawrence M. Hershon, Atty
Parker Poe
1201 Main Street, Suite 1450
Columbia, SC 29201

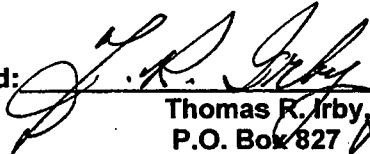
Doug Thomas, Atty
Scott Law Firm
P.O. Box 2065
Columbia, SC 29202

Knox L. Haynsworth III, Atty
Brown, Massey, Evans, McLeod
& Haynsworth, LLC
P.O. Box 1464
Greenville, SC 29602

Gregg F. Jones, Atty
& Diane Chapman
P.O. Box 158
Williamston, SC 29697

Charles H. Knight, Inc.
Real Estate
404 East Main Street
Williamston, SC 29697

Signed: _____



Thomas R. Irby, pro se
P.O. Box 827
Pelzer, SC 29669
(864-243-4015)

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Chase Home Finance, LLC,

Plaintiff,

vs.

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

Defendants.

) IN THE COURT OF COMMON PLEAS

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) Case No.: 2010-CP-23-1621

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**DEFENDANT BANK OF AMERICA'S
ANSWER TO DEFENDANT THOMAS R.
IRBY'S GENERAL AMENDMENT TO HIS
CROSS COMPLAINT**

Defendant Bank of America, N.A. ("Bank of America"), through its undersigned counsel, hereby responds to Defendant Thomas R. Irby's General Amendment to his Cross Complaint (the "Amended Cross-Claim"), as follows:

GENERAL RESPONSE

Bank of America denies each and every allegation of the Amended Cross-Claim that is not hereinafter specifically admitted, modified, or explained.

FIRST DEFENSE

Bank of America responds to the individually numbered paragraphs of the Cross-Claim as follows:

1. In response to Paragraph A of the Amended Cross-Claim, Bank of America asserts all of the denials and defenses asserted in its Amended Answer to Thomas R. Irby's Cross Complaint and Cross-Claim Against Defendants Thomas R. Irby and Roy C. Irby a/k/a Roy C. Irby II, filed on December 6, 2010.

2. In response to Paragraph B of the Amended Cross-Claim, which purports to allege matters related to and involving another Defendant, and not Bank of America, Bank of

America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

3. Paragraph C of the Amended Cross Claim contains no allegations to which a response is required.

4. In response to Paragraphs 1 through 10 of the Amended Cross-Claim under the heading "As to Roy C. Irby II", including all subparts, which purport to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

5. Bank of America denies the allegations contained in Paragraph 1 of the Amended Cross-Claim under the heading "As to Bank of America."

6. Bank of America denies the allegations contained in Paragraph 2 of the Amended Cross-Claim under the heading "As to Bank of America."

7. Bank of America denies the allegations contained in Paragraph 3 of the Amended Cross-Claim under the heading "As to Bank of America."

8. Bank of America denies the allegations contained in Paragraph 4 of the Amended Cross-Claim under the heading "As to Bank of America."

9. Bank of America denies the allegations contained in Paragraph 5 of the Amended Cross-Claim under the heading "As to Bank of America."

10. Bank of America denies the allegations contained in Paragraph 6 of the Amended Cross-Claim under the heading "As to Bank of America."

11. Bank of America denies the allegations contained in Paragraph 7 of the Amended Cross-Claim under the heading "As to Bank of America." Bank of America specifically states that any claim for "breach of trust" was dismissed by the Court's Order dated August 24, 2011.

12. In response to Paragraph 8 of the Amended Cross-Claim under the heading "As to Bank of America," Bank of America admits that a telephone conversation took place between Bank of America and Thomas R. Irby on December 29, 2011. Bank of America specifically denies the allegations concerning the substance of that telephone conversation and denies all remaining allegations contained in Paragraph 8 of the Amended Cross-Claim under the heading "As to Bank of America."

13. Bank of America denies the allegations contained in Paragraph 9 of the Amended Cross-Claim under the heading "As to Bank of America."

14. Bank of America denies the allegations contained in Paragraph 10 of the Amended Cross-Claim under the heading "As to Bank of America."

15. Bank of America denies the allegations contained in Paragraph 11 of the Amended Cross-Claim under the heading "As to Bank of America." Bank of America specifically states that any claim for "breach of trust" was dismissed by the Court's Order dated August 24, 2011.

16. In response to Paragraph 12 of the Amended Cross-Claim under the heading "As to Bank of America," Bank of America admits that it has asserted a cross-claim against Thomas R. Irby for amounts due and owing under the Bank of America Equity Maximizer Agreement and Disclosure Statement dated May 16, 2007. Bank of America further admits that a payment in the amount of \$9,998.82 was applied to Account Number 68118000674199 (the "Account") on August 24, 2007, leaving an unpaid balance of \$10,700.73. Bank of America further admits that a payment in the amount of \$13,000.00 was applied to the Account on September 12, 2007, leaving an unpaid balance of \$7,472.47. Bank of America further admits that withdrawals continued to be made on the Account following September 12, 2007, leaving an outstanding balance as of October 8, 2010, exclusive of attorneys' fees and costs of collection incurred in this

action and additional interest, of \$70,978.62. All remaining allegations contained in Paragraph 12 of the Amended Cross-Claim under the heading "As to Bank of America" are denied.

17. Paragraphs 1 through 8 of the Amended Cross-Claim under the heading "Punitive Damages" merely provide statements of law and interpretations of Bank of America's previously posited defenses, and therefore no response is necessary. To the extent a response is necessary, all allegations contained in Paragraphs 1 through 8 of the Amended Cross-Claim under the heading "Punitive Damages" are denied.

18. In response to Paragraph 9 of the Amended Cross-Claim under the heading "Punitive Damages," Bank of America admits that it generally denies the allegations asserted by Thomas R. Irby and denies any wrongdoing in this matter. Bank of America denies any allegations in Paragraph 9 of the Amended Cross-Claim under the heading "Punitive Damages" inconsistent with this limited admission and denies all remaining allegations contained therein.

19. Bank of America denies the allegations contained in Paragraph 10 of the Amended Cross-Claim under the heading "Punitive Damages."

20. Paragraph 11 of the Amended Cross-Claim under the heading "Punitive Damages" merely provides a statement of law, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph 11 of the Amended Cross-Claim under the heading "Punitive Damages" are denied.

21. In response to Paragraph 12 of the Amended Cross-Claim under the heading "Punitive Damages," Bank of America, Bank of America admits that it has asserted a claim of priority in the underlying foreclosure. Bank of America specifically denies that it had any duty to provide notice to Attorney Gregg Jones or Thomas R. Irby that the Account was active and denies all remaining allegations contained in Paragraph 12 of the Amended Cross-Claim under the heading "Punitive Damages."

22. In response to Paragraph 13 of the Amended Cross-Claim under the heading "Punitive Damages," Bank of America admits that it has asserted a claim of priority in the underlying foreclosure. Bank of America denies all remaining allegations contained in Paragraph 13 of the Amended Cross-Claim under the heading "Punitive Damages."

23. Bank of America denies the allegations contained in Paragraph 14 of the Amended Cross-Claim under the heading "Punitive Damages."

24. Paragraph 15 of the Amended Cross-Claim under the heading "Punitive Damages" merely provides a statement of law, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph 15 of the Amended Cross-Claim under the heading "Punitive Damages" are denied.

25. Paragraph 16 of the Amended Cross-Claim under the heading "Punitive Damages" merely provides a statement of law, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph 15 of the Amended Cross-Claim under the heading "Punitive Damages" are denied.

26. Paragraph 1 of the Amended Cross-Claim under the heading "Compensatory Damages" merely provides a statement of law, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph 1 of the Amended Cross-Claim under the heading "Compensatory Damages" are denied.

27. Bank of America denies the allegations contained in Paragraph 2 of the Amended Cross-Claim under the heading "Compensatory Damages."

28. Paragraph 3 of the Amended Cross-Claim under the heading "Compensatory Damages" merely provides a statement of law, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph 3 of the Amended Cross-Claim under the heading "Compensatory Damages" are denied.

29. Bank of America denies the allegations contained in Paragraph 4 of the Amended Cross-Claim under the heading "Compensatory Damages."

30. Paragraph 5 of the Amended Cross-Claim under the heading "Compensatory Damages" provides a statement without an allegation, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph 5 of the Amended Cross-Claim under the heading "Compensatory Damages" are denied.

31. Bank of America denies the allegations contained in Paragraph A of the Amended Cross-Claim under the heading "Damages by Bank of America."

32. Bank of America denies the allegations contained in Paragraph B of the Amended Cross-Claim under the heading "Damages by Bank of America" and each of its subparts.

33. In response to Paragraphs C through F of the Amended Cross-Claim under the heading "Damages by Roy C. Irby II," which purport to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

34. Paragraph A of the Amended Cross-Claim under the heading "Causes of Action" provides a statement without an allegation, and therefore no response is necessary. To the extent a response is necessary, any allegations contained in Paragraph A of the Amended Cross-Claim under the heading "Causes of Action" are denied.

35. Bank of America denies the allegations contained in Paragraph 1 of the Amended Cross-Claim under the heading "Causes of Action Against Bank of America." Bank of America specifically states that any claim for "breach of trust" and "violation of duty of trust" were dismissed by the Court's Order dated August 24, 2011, and should be stricken from the Amended Cross-Claim.

36. Bank of America denies the allegations contained in Paragraph 2 of the Amended Cross-Claim under the heading "Causes of Action Against Bank of America."

37. In response to Paragraphs 1 through 3 of the Amended Cross-Claim under the heading "Causes of Action Against Roy C. Irby II," which purport to allege matters related to and involving another Defendant, and not Bank of America, Bank of America lacks sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, denies same and demands strict proof thereof.

38. Bank of America denies the allegations contained in Paragraph F, G, H, J, and K of the Amended Cross-Claim following the completion of the section "Causes of Action Against Roy C. Irby II."

FOR A SECOND DEFENSE
(Failure to State a Claim)

Defendant Thomas R. Irby fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE
(Acts of Omissions of Others)

Defendant Thomas R. Irby's injuries, if any, were caused in whole or in part by the acts or omissions of others for whose conduct Bank of America is not responsible and/or resulted from conditions unrelated to any conduct of Bank of America.

FOR A FOURTH DEFENSE
(Statute of Frauds)

To the extent Defendant Thomas R. Irby's claims rely on a theory that the contract at issue was orally modified, such a contract does not comport with the terms of the contract or the Statute of Frauds.

FOR A FIFTH DEFENSE
(Set-Off)

To the extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby's damages must be set-off by the amount of the damages Defendant Thomas R. Irby has caused Bank of America.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

To the extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby has a legal obligation to mitigate his damages, and to the extent he has failed to do so, his claims are barred in whole or in part.

FOR A SEVENTH DEFENSE
(Unclean Hands)

The cross-claims should be barred due to Defendant Thomas R. Irby's unclean hands.

FOR AN EIGHTH DEFENSE
(Compliance with the Law and Contract)

Defendant Bank of America acted in good faith and fully complied with all applicable laws and contracts in its dealings with Defendant Thomas R. Irby.

FOR A NINTH DEFENSE
(No Damage)

Defendant Thomas R. Irby has suffered no damage as a result of the alleged acts or omissions of Defendant Bank of America.

FOR A TENTH DEFENSE
(Punitive Damages)

With respect to Thomas R. Irby's demands for punitive damages, Defendant Bank of America asserts its conduct as alleged herein does not rise to the level required to sustain a claim for punitive damages. Further, the award or assessment of punitive damages as prayed for by Thomas R. Irby would violate Defendant Bank of America's constitutional rights under the Fifth,

Sixth, and Fourteenth Amendments of the United States Constitution and Article I, Section 3 of the South Carolina Constitution and, therefore, may not be awarded to Thomas R. Irby in that:

The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice, or caprice is inconsistent with due process guarantees;

Any award of punitive damages serving a compensatory functions is inconsistent with due process guarantees;

Any award of punitive damages based upon the wealth of Defendant Bank of America violates due process guarantees;

The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards, is arbitrary, promotes grossly excessive awards and is inconsistent with due process guarantees;

Assuming *arguendo* that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and

Thomas R. Irby's claim for punitive damages violates the equal protection clause of the 14th Amendment of the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of Defendant Bank of America.

Defendant Bank of America specifically incorporates by reference all standards of limitations regarding the determination and enforceability of punitive damage awards which arose in the decisions of *State Farm Ins. Co. v. Campbell*, 538 U.S. 408, (2003); *BMW of North America v. Gore*, 517 U.S. 559 (1996) and *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), together with all such standards applicable under state law.

FOR AN ELEVENTH DEFENSE BY WAY OF CROSS-CLAIM

Defendant Bank of America, N.A. ("Bank of America"), complaining of the Cross-Claim Defendants Thomas R. Irby ("Thomas Irby") and Roy C. Irby a/k/a Roy C. Irby II ("Roy Irby"), would show unto the Court as follows:

1. Bank of America is a national association authorized to do business in South Carolina.

2. Upon information and belief, Thomas R. Irby is a citizen and resident of the County of Greenville, State of South Carolina.

3. Upon information and belief, Roy Irby is a citizen and resident of the County of Greenville, State of South Carolina.

4. This Court has jurisdiction over the parties and subject-matter of this action, and venue is proper in Greenville County.

5. On or about May 16, 2007, Thomas Irby and Roy Irby, for valuable consideration, executed a Bank of America Equity Maximizer Agreement and Disclosure Statement that provided a revolving line of credit for the principal amount of Sixty-Nine Thousand and No/100 Dollars (the "Agreement"). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

6. Under the Agreement, Thomas Irby and Roy Irby agreed to make minimum monthly payments on any draws made on this account in the amount of interest accrued each month. Thomas Irby and Roy Irby further agreed to a late charge of the greater of Ten and No/100 Dollars (\$10.00) or five percent (5%) of the unpaid portion of the minimum monthly payment for any payments that were more than ten (10) days late.

7. In order to secure payment to Bank of America under the Agreement, on or about May 16, 2007, Thomas Irby and Roy Irby executed a Mortgage (the "Mortgage") covering real

property located in Greenville County, South Carolina. A true and accurate copy of the Mortgage is attached hereto as Exhibit B. The Mortgage was recorded in the Office of the Clerk of Court for Greenville County on May 17, 2007, in Book 4779, at Page 1103.

The description of the premises as contained in the Mortgage is as follows:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat dated June 4, 2004 and recorded on March 6, 2007 in the RMC Office for Greenville County in Plat Book 1032 at page 61, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437.

8. Following the opening of the account, a withdrawal was made on the account in the amount of Sixty-Nine Thousand and No/100 Dollars (\$69,000.00).

9. Thomas Irby and Roy Irby are now, and for a period of time have been, in default under the terms of the Agreement for failure to make payments when and as due.

10. As a result of this default by Thomas Irby and Roy Irby, Bank of America has exercised its right to declare the entire balance immediately due and payable in full.

11. The outstanding balance as of October 8, 2010, exclusive of attorneys' fees and costs of collection incurred in this action and additional interest, is Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62). A copy of the Payoff Balance is attached hereto as Exhibit C.

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract)**

12. Bank of America incorporates by reference the allegations in the paragraphs above as if fully restated herein.

13. All conditions precedent to Bank of America's enforcement of the Agreement have been satisfied or performed.

14. Thomas Irby and Roy Irby breached the Agreement by failing to make payment under the terms of the Agreement.

15. As a result of Thomas Irby's and Roy Irby's breach, Bank of America has suffered damages.

16. The outstanding balance under the Agreement as of October 8, 2010, exclusive of attorneys' fees and costs of collection incurred in this action and additional interest, is Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62).

17. Bank of America is entitled to judgment against Thomas Irby and Roy Irby in the amount of Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62) plus additional interest, costs of collection, and attorneys' fees.

**FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment)**

18. Bank of America incorporates by reference the allegations in the paragraphs above as if fully restated herein.

19. Bank of America conferred a benefit upon Thomas Irby and Roy Irby at their request and under circumstances where Bank of America reasonably relied upon Thomas Irby and Roy Irby to pay for the benefit.

20. These benefits include, but are not limited to, the provision and use of a revolving line of credit.

21. Thomas Irby and Roy Irby understood or ought to have understood that Bank of America expected compensation for the benefit.

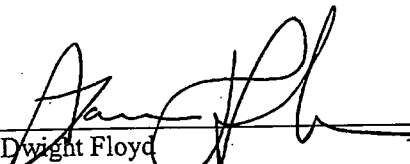
22. Thomas Irby and Roy Irby realized value from the benefit.

23. It would be inequitable for Thomas Irby and Roy Irby to retain the benefit without paying Bank of America for its value.

24. Bank of America is entitled to judgment in the amount of Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62) plus interest.

WHEREFORE, Bank of America respectfully prays that the Court:

1. Dismiss the Amended Cross-Claim as to Defendant Bank of America with prejudice;
2. Declare that Defendant Thomas Irby is entitled to no recovery from Defendant Bank of America;
3. Enter a judgment in favor of Cross-Claimant Bank of America and against Cross-Claim Defendants Thomas Irby and Roy Irby, jointly and severally, in the amount of Seventy Thousand Nine Hundred Seventy-Eight and 62/100 Dollars (\$70,978.62) plus interest;
4. Award attorneys' fees and all costs of collection to Cross-Claimant Bank of America;
5. Tax the costs of this action against Cross-Claim Defendants Thomas Irby and Roy Irby; and
6. Award such other and further relief in favor of the Cross-Claimant Bank of America as the Court deems just and proper.



L. Dwight Floyd
Lawrence M. Hershon
Attorney for Plaintiff
Parker Poe Adams & Bernstein LLP
P. O. Box 1509
Columbia, SC 29202
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Attorneys for Bank of America, N.A.

September 20, 2011
Columbia, South Carolina

CERTIFICATE OF SERVICE

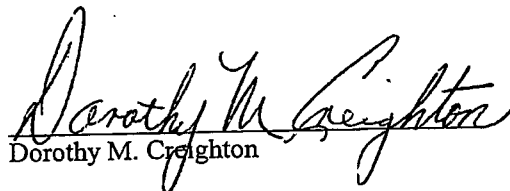
I hereby certify that a copy of *Defendant Bank of America's Answer to Defendant Thomas R. Irby's General Amendment to his Cross Complaint* was served on September 20 2011 by mailing a copy of the same by U.S. Mail, postage prepaid, addressed as follows:

Douglas Thomas, Esq.
Scott Law Firm, P.A.
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Brown, Massey, Evans, McLeod
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P. O. Box 2464
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Mr. Roy Irby, II
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Williamston, SC 29697

Mr. Thomas R. Irby
160 Pearson Road
Belton, SC 29627


Dorothy M. Creighton

BANK OF AMERICA EQUITY MAXIMIZER AGREEMENT AND DISCLOSURE STATEMENT

Property Serving as Security (the "Property"): 156 PEARSON RD, BELTON, GREENVILLE, SOUTH CAROLINA 29627-9236
Borrower's Name and Address: THOMAS R IRBY, ROY C IRBY II, 160 PEARSON RD, BELTON, SOUTH CAROLINA 29627-9236

Lender's Name and Address: Bank of America, NA, National Banking Association, 100 North Tryon Street, Charlotte, North Carolina 28255

Date: MAY 16, 2007	Annual Percentage Rate: 8.4900	Draw Period: 120 Mos.
Loan Number: 68118000674199	Margin: .2400	Repayment Period: 180 Mos.
~~Maturity Date: MAY 16, 2032~~	~~Max. Interest Rate: 24.0000~~	~~Billing Cycle: MONTHLY~~
Credit Limit: \$ 69,000.00		

1. **Introduction.** This Bank of America Equity Maximizer Agreement and Disclosure Statement ("Agreement") governs your Home Equity Line of Credit Account (your "Credit Line" or "Account") with the lender named above ("Lender"). Your Account is a revolving credit arrangement in which we make loans to you by advancing funds ("Advances") at your direction, allowing you to repay those Advances and take additional Advances, subject to the terms of this Agreement. This Agreement will remain in full force and effect notwithstanding that the Account Balance under the Agreement may occasionally be reduced to an amount equal to or less than zero.

In this Agreement, the terms "we," "us," "our" and "Bank" refer to the Lender or to any subsequent assignee or transferee. Except as noted below, the terms "you," "your," "yours" and "Borrower" refer to each person that signs this Agreement or has authority to use the Credit Line. Read this Agreement carefully so that you know how your Account works and keep a copy of this Agreement for your records.

2. **Borrower's Promise to Pay.** You promise to pay to Lender the total of all Advances plus FINANCE CHARGES, together with all fees and charges under the terms of this Agreement. You will pay your Account according to the terms set forth below. If there is more than one Borrower, each is jointly and severally liable on this Agreement. This means we can require any Borrower to pay all amounts due under this Agreement, including credit advances made to any Borrower. Each Borrower authorizes any other Borrower, on his or her signature alone, to cancel the Credit Line, to request and receive credit advances, and to do all other things necessary to carry out the terms of this Agreement. We can release any Borrower from responsibility under this Agreement, and the others will remain responsible.

3. **Term.** The term of your Account will begin as of the date of this Agreement ("Opening Date") and will continue until all indebtedness under this Agreement, if not already paid pursuant to the payment provision below, will be due and payable upon maturity. The Draw Period of your Account will begin on the date after the Opening Date, when this Agreement is accepted by us in the State of North Carolina, following the perfection of the Security Instrument and the meeting of all of our other conditions and will continue for one hundred and twenty (120) months. You may obtain credit advances during the Draw Period. After the Draw Period ends, the Repayment Period will begin, and you will no longer be able to obtain credit advances. The length of the Repayment Period is one hundred and eighty (180) months depending on the repayment schedule set forth below. You agree that we may renew or extend the period during which you may obtain credit advances or make payments.

4. **Credit Limit.** This Agreement covers a revolving line of credit for the principal amount of SIXTY-NINE THOUSAND AND 00/100 DOLLARS (\$69,000.00) which will be your Credit Limit under this Agreement. You may not request an Advance from your Account that would cause your outstanding balance of Advances to exceed your Credit Limit nor are we obligated to pay any Advance request that would cause your outstanding balance of Advances to exceed your Credit Limit. If we do make an Advance that causes your outstanding balance of Advances to exceed your Credit Limit, this will not constitute an increase in your Credit Limit. You agree to immediately repay the amount by which your outstanding balance of Advances exceeds your Credit Limit.

5. **Security.** All amounts due under the Account are secured by a mortgage, deed of trust, or security deed ("Security Instrument") on the Property identified on page one of this Agreement. Borrower agrees to pay all amounts due, and perform all covenants and obligations required of Borrower under the Security Instrument. If it becomes necessary for us to advance funds to you above the Credit Limit to protect our security interest, those amounts in excess of the Credit Limit will be owed by you and will be secured by the Security Instrument unless Applicable Law prohibits the same. The Security Instrument and this Agreement are related documents and a default under either document will be treated as a default under both documents. To the extent permitted by Applicable Law, the lien of the Security Instrument will continue and will have the same priority if, with your consent, we renew, extend, amend, modify or substitute this Agreement. In such event, you agree to execute any additional documents necessary to achieve the action being taken.

6. **Terms And Definitions.** The following terms are defined as set forth in this Section. Other terms are defined elsewhere in this Agreement.

- A. "Billing Cycle" is an interval of time that occurs regularly during the term of this Agreement and is used to determine the FINANCE CHARGES and other fees, charges, and credit insurance premiums that we due on your Account. The number of days in each Billing Cycle may vary from time to time. A Billing Cycle occurs regardless of whether there is a balance or any activity on your Account. Your Billing Cycle is stated on page 1 of this Agreement.
- B. "Billing Statement" is a statement that we will furnish to you periodically that provides important information regarding your Account activity.
- C. "Credit Limit" is the maximum aggregate amount of principal that we will extend to you under this Agreement. Your Credit Limit may change under certain circumstances. Your Credit Limit is stated on page 1.
- D. "Draw Period" is the period of time during which you may request Advances from your Account. The Draw Period is stated on page 1.
- E. "Maturity Date" is the date on which the entire Account Balance under this Agreement is due. The Maturity Date of your Account is stated on page 1.
- F. "Minimum Payment" is the minimum amount you must pay on your Credit Account, as reflected on each periodic Billing Statement for each Billing Cycle. Your Minimum Payment during the Draw Period and during the Repayment Period will be calculated as described below under the heading "Payments."

THOMAS R IRBY/995071041456120
BANK OF AMERICA EQUITY MAXIMIZER AGREEMENT AND DISCLOSURE STATEMENT
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EXHIBIT **A**

- G. "Outstanding Balance" is the new balance of the Account, which includes, if applicable, principal, accrued interest on the outstanding principal, fees and charges, Property Expenses and any voluntary insurance, Borrowers' ProtectionSM Plan, or Line ProtectionSM Plan.
- H. "Property Expenses" are expenses we incur because you do not fulfill all obligations of the Security Instrument for the Property that secures this Account.
- I. "Repayment Period" is the period of time that begins at the end of the Draw Period. During the Repayment Period, you may no longer request Advances from your Account.
- J. "Variable Rate Balance" is the balance during the Draw Period that equals the Outstanding Balance that is not part of a Fixed Rate Loan Option.
- K. "Variable Rate Principal Balance" is the principal balance that is not payable under a Fixed Rate Loan Option.

7. **Payments.**
 A. During the Draw Period. During the Draw Period, the Total Minimum Payment Due is equal to the sum of: (1) the Variable Rate Balance Minimum Payment (described below); (2) the payment due, if any, for any outstanding Fixed Rate Loan Option; and any past due amounts from prior Billing Cycles. Some Fixed Rate Loan Options may have a different due date and are not figured into the Total Minimum Payment Due. At any time you may pay more than the Total Minimum Payment Due, make additional payments or pay in full or in part the Outstanding Balance. You will be required to pay the Minimum Payment Due each month there is an Outstanding Balance on your Account.

You may choose any of the following monthly payment options. Your billing statement will reflect the option you have chosen. You may change your Draw Period payment option at a later time.

B. **Variable Rate Balance Minimum Payment.** Your "Variable Rate Balance" is all of your Outstanding Balance that is not part of a Fixed Rate Loan Option. Depending on which payment option you choose for the Draw Period, the Variable Rate Balance Minimum Payment may vary. The Variable Rate Balance Minimum Payment will not be less than the amount of accrued interest and any voluntary insurance, plus any unpaid fees.

1. **Payment Options:**

- a. **Interest Only (Plus Insurance) Option** - The Minimum Payment if you elect the Interest Only (Plus Insurance) Option will be the amount of accrued interest plus any voluntary insurance, and unpaid fees.
- b. **1.5% of Variable Rate Outstanding Balance Option** - The Minimum Payment if you elect the 1.5% of Variable Rate Outstanding Balance Option will be one and one half percent (1.5%) of the Variable Rate Outstanding Balance plus unpaid fees, or fifty dollars (\$50), whichever is greater, or the outstanding Variable Rate Balance if less than the Minimum Payment (under this option).
- c. **Fixed Payment Option.** The Minimum Payment if you elect the Fixed Payment Option will be at least one and one half percent (1.5%) of the Credit Limit plus any voluntary insurance, Line ProtectionSM Plan and unpaid fees, or fifty dollars (\$50), whichever is greater, or the outstanding Variable Rate Balance if less than the Minimum Payment (under this option).

C. **During the Repayment Period.** During the Repayment Period you will be required to make a payment each month. The length of Repayment Period will vary depending on the Outstanding Balance at the beginning of the Repayment Period, if any Property Expenses are incurred during the Repayment Period, and if you have any Fixed Rate Loan Options. The amount of the Total Minimum Payment due may vary due to increases or decreases in the index or if there are any Fixed Rate Loan Options that remain unpaid at the beginning of the Repayment Period. The Total Minimum Payment Due will be an amount equal to the greater of 1/180th of the Variable Rate Principal Balance remaining on the last date of the Draw Period, plus accrued interest, unpaid fees, unpaid Property Expenses, or fifty dollars (\$50). If there are any Fixed Rate Loan Options that remain unpaid at the start of the Repayment Period, the Fixed Rate Loan Options payment previously established will continue to be billed.

For purposes of this Repayment Options section, the Variable Rate Principal Balance equals the amount of your Credit Limit on which you have not elected to convert to a Fixed Rate Loan as of the start of your Repayment Period.

D. **Fixed Rate Loan Option Payment Information.** A Fixed Rate Loan Option has a fixed interest rate and fixed term and is payable monthly. You may convert part or all of the Variable Rate Principal Balance, along with accrued interest, fees, and any voluntary insurance charge to a Fixed Rate Loan Option at any time during the Draw Period or the Repayment Period unless you are in default or if your Advance privileges are suspended or terminated. We will help you establish the amount of principal and interest sufficient to amortize the Fixed Rate Loan Option over the term you select. The maximum term of any Fixed Rate Loan Option may not exceed the repayment period maturity date of this Credit Line. The minimum amount for a Fixed Rate Loan Option is \$5,000. You may have up to three (3) Fixed Rate Loan Options open at any one time, but may not have more than four (4) Fixed Rate Loan Options open during any one statement period. The Fixed Rate Loan Option ANNUAL PERCENTAGE RATE is the Prime Rate plus the Fixed Rate Loan Option margin of 8.00%. However, we may make lower Fixed Rate Loan Option rates available from time to time. Please contact your Banking Center or Customer Service for the Fixed Rate Loan Option rate currently offered. Your payment will be a fixed dollar amount to be determined at the opening of the Fixed Rate Loan Option. You may arrange a different payment date for each Fixed Rate Loan Option. Fixed Rate Loan Option payments will be billed separately from your Regular Payment in accordance with the schedule you have arranged. For Fixed Rate Loan Options, you will receive a separate bill. However, the Variable Rate Balance statement will show all activity, including payments.

R. **Receipt of Payments and Payment Application.** All payments made by check, automatic account debit, electronic funds transfer, money order, or other instrument must be received by us at the remittance address on your periodic Billing Statement. Payments received at that address prior to 2:00 PM on any business day will be specified, or a payment made at one of our banking centers in the state or our address indicated as the remittance address by 2:00 PM on any business day will be credited as of the date received. Business days are Monday through Friday, exclusive of legal holidays. If this due date falls on a Saturday, Sunday, or legal holiday, the due date will not be extended. Unless otherwise agreed or required by applicable law, payments and other credits will be applied to FINANCE CHARGES, other charges and fees, and principal in any order we choose without notice.

S. **Advances.** During the Draw Period, you may request Advances from your Account, and any amounts you repay will subsequently be available for Advances, subject to the limitations of this Agreement. If there is more than one of you, each of you may obtain Advances in accordance with the terms of this Agreement. Each of you is individually responsible for payment of the entire Account Balance regardless of who actually requested the Advance. If there is more than one person authorized to use this Credit Line, you agree not to give us conflicting instructions, such as one Borrower telling us not to give advances to the other.

The words "Authorized Signer" on Special Convenience Checks and Bank of America ATM cards or Bank of America Check Card or Account Access cards as used in this Agreement means and includes each person who (a) signs the application for the Credit Line, (b) signs this Agreement, or (c) has executed a separate signature authorization card for this Credit Line.

You may obtain Advances under your Credit Line Account as follows:

- A. **Credit Line Checks.** Writing a preprinted "Special Convenience Check" that we will supply to you.

B. **Telephone Request.** Requesting a credit advance from your Account to be applied to your designated account by telephone upon proper identification and in accordance with procedures established by us. Except for transactions covered by the Federal Electronic Fund Transfers Act and unless otherwise agreed in your Deposit Account Agreement, you acknowledge and you agree that we do not accept responsibility for the authenticity of telephone instructions and that we will not be liable for any loss, expense, or cost arising out of any telephone request, including any fraudulent or unauthorized telephone request when acting upon such instructions believed to be genuine.

C. **Request in Person.** Requesting a credit advance in person at any of our authorized locations.

D. **Automated Teller Machine ("ATM") Access.** (Not available in CT, ID, NY, WA or TX) Using your "Bank of America ATM card or Bank of America Check Card or Account Access Card" at any of our designated ATM locations to withdraw or transfer funds in excess of the available collected balance in the account.

E. **Bank of America Equity Maximizer VISA® Account Access Card** (the "Account Access Card"). (Not available in CT, ID, NY, WA, or TX) Using the Account Access Card as described in this Agreement. Visa is a registered trademark of Visa International Service Association.

F. **Online Banking.** Transferring funds to a deposit account.

G. **Limitations on the Use of Checks.** We reserve the right not to honor Special Convenience Checks in the following circumstances:

1. **Credit Limit Violation.** Your Credit Limit has been or would be exceeded by paying the Special Convenience Check.
2. **Post-dated Checks.** Your Special Convenience Check is post-dated. If a post-dated Special Convenience Check is paid and as a result any other check is returned or not paid, we are not responsible.
3. **Stolen Checks.** Your Special Convenience Checks have been reported lost or stolen.
4. **Unauthorized Signatures.** Your Special Convenience Check is not signed by an "Authorized Signer" as defined below.
5. **Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we paid the Special Convenience Check.

6. **Other Special Convenience Check Limitations.** You may not make a payment on the Account with a Special Convenience Check. You notify us that you wish to stop payment of a Special Convenience Check; however, you will not hold us liable if we try to stop payment of Special Convenience Check and we are unable to do so. You may try to stop payment on a Special Convenience Check by notifying Customer Service at the number listed on your statement. Your stop payment order will remain in effect for six (6) months unless renewed.

If we pay any Special Convenience Check under these conditions, you must repay us, subject to applicable laws, for the amount of the Special Convenience Check. The Special Convenience Check itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of a check is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. We may choose not to return Special Convenience Checks along with your periodic Billing Statements; however, your use of each Special Convenience Check will be reflected on your periodic statement as a credit advance. We do not "certify" Special Convenience Checks drawn on your Credit Line.

H. **Limitations on the Use of ATM Cards.** We reserve the right not to honor the Bank of America ATM card or Bank of America Check Card or Account Access Card in the following circumstances:

1. **Credit Limit Violation.** Your Credit Limit has been or would be exceeded by honoring the Bank of America ATM card or Bank of America Check Card or Account Access Card charge.
2. **Stolen ATM Cards.** Your Bank of America ATM card or Bank of America Check Card or Account Access Card has been reported lost or stolen.
3. **Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in this Agreement or could be if we honored the Credit Line charge.
4. **Other ATM Card Limitations.** If we pay any Advance requested by use of the Bank of America ATM card or Bank of America Check Card or Account Access Card under these conditions, you must repay us, subject to applicable laws, for the amount of the Advance. The Advance itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of an Advance is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. Your use of the Bank of America ATM card or Bank of America Check Card or Account Access Card will be reflected on your periodic statement as a credit advance.

I. **Transaction Requirements for Account Access Card.** The following transaction limitations will apply to the use of your Credit Line:

1. **Account Access Card Limitations:** The following transaction limitations will apply to your Credit Line and accessing by other methods.
2. **Limitations on the Use of Account Access Card.** We reserve the right not to honor the Account Access Card linked to this Credit Line in the following circumstances:
 - a. **Credit Limit Violation.** Your Credit Limit has been or would be exceeded by paying the Account Access Card transaction.
 - b. **Stolen Account Access Card.** Your Account Access Card has been reported lost or stolen.
 - c. **Unauthorized Signatures.** Your Account Access Card is not used by a Borrower who has been issued one.
 - d. **Termination or Suspension.** Your Credit Line has been terminated or suspended as provided in the Agreement or could be if we paid the Account Access Card transaction.

3. **Other Account Access Card Limitations.** If we pay any Advance requested by use of the Account Access Card under these conditions, you must repay us, subject to applicable laws, for the amount of the Advance. The Advance itself will be evidence of your debt to us together with this Agreement. Our liability, if any, for wrongful dishonor of an Advance is limited to your actual damages. Dishonor for any reason as provided in this Agreement is not wrongful dishonor. Your use of the Account Access Card will be reflected on your periodic statement as a credit advance.

4. **Liability for Unauthorized Account Access Card Transactions.** You are not liable for unauthorized use of your Account Access Card. Notify us promptly if you believe your Account Access Card has been lost or stolen or if you discover any unauthorized transactions. We may require you to provide a written statement regarding claims of unauthorized Account Access Card transactions.

5. **Limitations on Lender's Liability.** Lender's liability, if any, for wrongful dishonor of any Advance request is limited to Borrower's actual damages. Lender shall not be liable if any merchant, financial institution or ATM refuses to honor the Account Access Card.

J. **Lost Special Convenience Checks and Bank of America ATM card or Bank of America Check Card or Account Access Card.** If you lose your Special Convenience Checks or Bank of America ATM card or Bank of America Check Card or Account Access Card(s) or if someone is using them without your permission you agree to let us know immediately. You can notify us at our address shown at the beginning of this Agreement.

K. **Future Credit Line Services.** Where permitted by applicable law, your application for this Credit Line also serves as a request to receive any new services (such as access devices), which may be available at some future time as one of our services in connection with this Credit Line. You understand that this request is voluntary and that you may refuse any of these new services at the time they are offered. You further understand that the terms and conditions of this Agreement will govern any transactions made pursuant to any of these new services.

THOMAS R. IRBY #995071041456120

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L. Credit Line Special Convenience Check, Telephone Request, In Person Request and ATM Access Limitations. There are no transaction limitations for the writing of Special Convenience Checks, requesting an Advance by telephone, requesting an Advance in person, or using the ATM.

10. Billing Statements. If you have a balance owing on your Account or have any Account activity, we will send to you a Billing Statement. Billing Statements will show, as applicable, credit advances, FINANCE CHARGES, other charges, payments made, other credits, your previous balance, and/or your new balance. Payments will be due as shown on the Billing Statements.

11. Automatic Payment. If you choose to have payments made from a designated account and have arranged with us to do so, we will automatically draft the payment. Drafts will be made on the payment due date or immediately after the payment due date (if the payment due date is on a Saturday, Sunday or legal holiday). If your account does not contain the payment amount due, you understand that it is your obligation without notice from us to make the full payment. Even if you make a manual payment, an automatic payment will be drafted from your designated account, unless you make such manual payment for the full payment due at least three (3) business days prior to the due date; however, if you make less than a full manual payment at least three (3) business days prior to the due date, only the remaining amount currently due will be drafted. To stop an automatic draft, you must contact us at least three (3) business days prior to the scheduled payment draft date. We may accept late payments, partial payments or checks and money orders marked "payment in full" (or similar notations) or payments accompanied by a letter stating that our acceptance of the payment indicates our agreement to the terms set forth in the letter without giving up, waiving or losing any of our rights under law or under this Agreement.

If you have authorized automatic payment above, then the following shall apply:

You hereby authorize the Bank to draft the described account for your loan payments. You agree to the Recurring Automatic Payment Authorization Terms and Conditions that will be enclosed with your Automatic Payment confirmation notice, unless you otherwise notify Lender. If you choose to establish automatic payment to draft your designated Bank of America account, this authorization will remain in full force and effect until the Bank receives written notice of your termination in such time and in such manner as to afford the Bank a reasonable opportunity to act on it. If at any time you select to terminate your automatic payment, your margin will increase by 1/4%.

12. ANNUAL PERCENTAGE RATE AND FINANCE CHARGE.

A. When FINANCE CHARGES Begin to Accrue. Periodic FINANCE CHARGES for Advances under your Credit Line will begin to accrue on the date Advances are posted to your Credit Line. There is no "free ride" period which will allow you to avoid FINANCE CHARGES on your Credit Line Advances.

B. How the Balance on which the FINANCE CHARGE is Calculated is Determined. The cost of the credit through the Credit Line is disclosed as a Finance Charge. Except for some closing costs (indicated in this Agreement), interest will not accrue until a credit advance is made. You will pay interest on each credit advance until it is fully paid off. We will determine the FINANCE CHARGE for each monthly billing period by using the following simple interest rate calculation. A FINANCE CHARGE is calculated daily on the Variable Rate Principal Balance, as defined above in the "Definitions" section of this Agreement, by multiplying the daily periodic rate (as indicated in "How The Rate Used To Calculate The Finance Charge Is Determined") by the daily Variable Rate Principal Balance.

To get the daily Variable Rate Principal Balance we (i) take the beginning Variable Rate Principal Balance for that day (ii) add to that amount all credit advances and sums advanced by us to fulfill any obligations under a Security Instrument (such as a mortgage, deed of trust, or security agreement), if any, for that day, then (iii) subtract all principal balance payments and credits for the Variable Rate Principal Balance for that day. All of the daily Variable Rate Principal Balance FINANCE CHARGES for the monthly billing cycle are added together to get the total Variable Rate Principal Balance FINANCE CHARGE for the monthly billing cycle. Transaction charges are added to the Variable Rate Principal Balance FINANCE CHARGE to get the total FINANCE CHARGE for the monthly billing cycle. For Fixed Rate Loan Option balances, the estimated FINANCE CHARGE is calculated at the establishment of the Fixed Rate and is included in the fixed payment amount.

C. How the Rate Used to Calculate the FINANCE CHARGE is Determined. The initial Variable Rate Principal Balance daily periodic rate used to compute the Variable Rate Principal Balance FINANCE CHARGE is 1/365th of the initial Variable Rate Principal Balance ANNUAL PERCENTAGE RATE (as indicated under "Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE"). The Variable Rate Principal Balance ANNUAL PERCENTAGE RATE is a variable rate involving both an index and a margin, both described under "Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE" below. FINANCE CHARGES will accrue on an actual 365-day year basis (366 day year basis for leap year). If, however, you participate in a relationship account with a Bank of America Corporation affiliate (as offered from time to time), the Variable Rate Principal Balance Daily Periodic Rate and the Variable Rate Principal ANNUAL PERCENTAGE RATE may be reduced below the rates stated in this Agreement. The addition of a fee may cause the actual Variable Rate Principal Balance ANNUAL PERCENTAGE RATE for the monthly billing cycle to exceed the Variable Rate Principal Balance ANNUAL PERCENTAGE RATE stated in this Agreement.

If the Index is unavailable for any monthly billing cycle, we will use the Index for the most recently preceding monthly billing cycle in which the Index was available. If the Index ceases to be published during the term of this Agreement, we will select a substitute index and margin. The substitute index will be a historical movement substantially similar to the Index, and the substitute index and margin will result in an ANNUAL PERCENTAGE RATE at the time it is substituted that is substantially similar to the rate in effect at the time the Index became unavailable.

There is no limitation on the size of any interest rate adjustment or the number of interest rate adjustments that may be made on the Credit Line so long as the maximum ANNUAL PERCENTAGE RATE is not exceeded. Any increase or decrease in the Index that occurs would cause a corresponding increase or decrease in the Daily Periodic Rate, ANNUAL PERCENTAGE RATE, FINANCE CHARGES and possibly the Total Minimum Payment Due. You understand that adjustments based on an Index change will be applied automatically to the Credit Line and you will not receive advance notice of that adjustment.

The Finance Charge on a Fixed Rate Loan Option is determined on a simple interest basis. If you make a Fixed Rate Loan Option payment(s) before or after any date, either the amount of your originally scheduled final payment may be lower or higher than the amount initially established or additional payment(s) may be required.

Under some circumstances, your payment will not cover the FINANCE CHARGES that accrue and negative amortization will occur. Negative amortization will increase the total amount you may pay us and reduce the equity in the Property.

13. Periodic Rate and Corresponding ANNUAL PERCENTAGE RATE. We will determine the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE as follows. We start with an independent Index, which is the Prime Rate as published daily in the "Money Rates" table of *The Wall Street Journal* (the "Index"). When a range of rates has been published, the higher of the rates will be used. We will use the most recent Index value available to us as of the date of the ANNUAL PERCENTAGE RATE adjustment. The Index is not necessarily the lowest rate charged by us on our loans. If the Index becomes unavailable during the term of the Credit Line Account, we may designate a substitute Index (and, if necessary, a new margin) after notice to you.

A. Rate Computation. The ANNUAL PERCENTAGE RATE during the Draw Period is determined using the Index published as of the last business day prior to the first day of the next monthly Billing Statement plus a margin, as shown below, and will be effective on the first day of the next monthly billing cycle.

To determine the Periodic Rate that will apply during your Draw Period we add the margin shown below to the value of the Index and divide the value by the number of days in a year (daily). This result is the ANNUAL PERCENTAGE RATE for your Draw Period. To determine the Periodic Rate that will apply to your Repayment Period, we add the margin shown below to the value of the Index, then divide the value by the number of days in a year (daily). To obtain the ANNUAL

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PERCENTAGE RATE we multiply the Periodic Rate by the number of days in a year (daily). This will result in the ANNUAL PERCENTAGE RATE for your Repayment Period. The ANNUAL PERCENTAGE RATE includes only interest and no other costs.

The current Index is 8.250 % per annum. The margin is .240 %. The initial Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE on your Credit Line Account are as stated below:

Current Rates for the Draw Period

Range of Balances or Conditions	Margin Added to Index	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
ALL	.240%	8.490%	0.02326%

Current Rates for the Repayment Period

Range of Balances or Conditions	Margin Added to Index	ANNUAL PERCENTAGE RATE	Daily Periodic Rate
ALL	.240%	8.490%	0.02326%

B. Limits. The Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE on your Credit Line Account will increase or decrease as the Index increases or decreases from time to time. There is no limit to the amount by which the ANNUAL PERCENTAGE RATE can increase or decrease over a 1-year period. Any increase in the Periodic Rate will take the form of higher payment amounts. Adjustments to the Periodic Rate and the corresponding ANNUAL PERCENTAGE RATE resulting from changes in the Index will take effect monthly. In no event will the corresponding ANNUAL PERCENTAGE RATE be more than the lesser of 24.000% or the maximum rate allowed by applicable law.

Notwithstanding any other provision of this Agreement, we will not charge interest on any undischarged loan proceeds, except as may be permitted during any Right of Rescission period.

C. Forgo Rate Increases. If we forgo an ANNUAL PERCENTAGE RATE increase, at the time of a later adjustment we may return to the full Index value plus margin.

14. Closing Costs. In addition to the FINANCE CHARGES which will be added to your Credit Line each billing cycle, you will pay the following fees, including real estate closing and security filing fees:

15. Other Charges: You agree to pay the fees and charges listed below if the circumstances triggering their assessment apply. These fees and charges will be added to the Account balance and are payable as set forth in this Agreement.

A. Late Charge: If we do not receive the amount of your minimum monthly payment in full within ten (10) days after your payment due date, you will pay us a late charge equal to the greater of \$10.00 or five percent (5%) of the unpaid portion of your minimum monthly payment.

B. Returned Payment Charge: If a check or any other instrument or payment method with which you have made a payment on the Credit Line Account is returned to us unpaid for any reason, you will be charged a return payment charge of \$20.

C. Returned Special Convenience Check: \$20.

D. Annual Fee: \$0.

E. Fixed Rate Conversion Fee: \$0.

F. Security Instrument Discharge Fee: As permitted by Applicable Law, Lender may request that at the time you payoff your Credit Line, you pay the Lender's cost to record a discharge of the Security Instrument.

16. Refund of Fees, Charges, and Costs. The terms of this Agreement shall be construed to be consistent with Applicable Law. However, if a court of competent jurisdiction or other qualified authority determines that the loan charges and fees described in this Agreement exceed the limits that Applicable Law allows, the following shall occur. First, any such purportedly excessive charges or fees shall be reduced to the permitted amount. Second, any amounts collected that exceed the permitted amount will be returned to you, either by direct payment or by reducing the principal you owe on your Account. Your receipt of a refund made by direct payment to you or credited to your Account will constitute a waiver of any right of action you may have arising out of overcharges or allegedly excessive loan charges or fees.

17. Property Insurance; Other Charges. You agree to obtain property insurance against loss or damage to the Property, in the amount, for the time period and against the risks that the Security Instrument and/or we require. You may obtain insurance from an insurance carrier of your choice so long as the insurance carrier is acceptable to us. If you fail to purchase and maintain acceptable property insurance, we may purchase insurance for you or on your behalf and at your expense us

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described in the Security Instrument. We have no obligation to obtain such insurance. Should we take this action, the equity in the Property and contents thereof may not be protected as you desire. Further, the cost of the insurance may significantly exceed the cost of such insurance that you could have obtained; this cost will be treated as an Advance.

18. Additional Rights and Remedies. In addition to the rights described elsewhere in this Agreement and in the Security Instrument, we also have the following rights:

A. Termination and Acceleration. We can terminate your Account and require you to pay us the entire outstanding Account Balance under this Agreement in one payment, and charge you certain fees, if any of the following occurs: 1) You engage in fraud or make a material misrepresentation at any time in connection with your Account; 2) We do not receive the full amount of any Minimum Payment due or you fail to meet any of the other repayment terms of this Agreement; 3) Your action or inaction adversely affects the Property or our rights in it (for this purpose, the words "you," "your," and "yours" also refer to the owner of the Property, if different than you). Examples of these actions or inactions include, but are not limited to: a) Your death, if you are the sole Borrower on the Account; or the death of all but one Borrower which adversely affects our security; b) Illegal use of the Property, if such use subjects the Property to seizure; c) You transfer all or part of your interest in the Property without our written consent; d) All or part of the Property is taken by condemnation or eminent domain; e) Foreclosure of any senior lien on the Property; f) Failure to maintain required insurance on the Property; g) Waste or destructive use of the Property which adversely affects our security; h) Failure to pay taxes or assessments on the Property; i) Permitting the creation of a senior lien on the Property; j) Filing of a judgment against you, if the amount of the judgment and collateral subject to the judgment is such that our security is adversely affected.

We may, at our option, take lesser action than those described in this Section. Such lesser action may include, without limitation, suspending your Account and not allowing you to obtain any further Advances, reducing your Credit Limit, and/or changing the payment terms on your Account. If we take any such action, this shall not constitute a foreclosure or a waiver of our right to exercise any rights or remedies under the remainder of this Section, the remaining provisions of this Agreement, the Security Instrument, or at law or in equity. We may take action under this Section only after complying with any notice or cure provisions required under Applicable Law. In the event we elect not to terminate the Account or take any lesser action as provided in this Section, we do not forfeit or waive our right to do so at a later time if any of the circumstances described above exists at that time.

B. Suspension or Reduction. We can refuse to make additional Advances or reduce your Credit Limit during any period of time in which any of the following are in effect: 1) The value of the Property declines significantly below the value as determined by us at the time you applied for your Account. This includes, for example, a decline such that the initial difference between the Credit Limit and the available equity in the Property is reduced by fifty percent (50%) or more, and may include a smaller decline depending on individual circumstances; 2) We reasonably believe you will not be able to meet the repayment requirements set forth in this Agreement due to a material change in your financial circumstances; 3) You are in default of a material obligation in this Agreement, including, without limitation, your failing to make a Minimum Payment on a date that it is due; 4) Government action prevents us from imposing the ANNUAL PERCENTAGE RATE provided for in this Agreement; 5) Government action impairs our security interest such that the value of our interest is less than 120 percent of your Credit Limit then in effect; 6) A regulatory agency which supervises us has notified us that continued Advances would constitute an unsafe and unsound practice; 7) The maximum ANNUAL PERCENTAGE RATE allowed under this Agreement is reached. If we refuse to make additional Advances or reduce your Credit Limit under this Section, we will send you a written notice stating the reason for such action. If, for any reason, you believe your ability to obtain Advances or your Credit Limit should be reinstated, you must send us a written request for reinstatement and include in the request the reasons why you believe your ability to obtain Advances or your Credit Limit should be reinstated.

19. Collection Costs. If you are in default and we require you to pay us immediately in full, we may also require that you pay our collection costs and expenses to the extent not prohibited by law. If we bring a lawsuit to collect, you will pay our attorneys' fees and court costs allowed by Applicable Law and set by the court.

20. Suspension or Termination by You. Each of you has the right, upon proper written notice to us, to suspend the privilege of obtaining new Advances. A request to suspend the privilege of obtaining Advances, even if made only by one of you, will be effective against all of you. Advances will be reinstated upon our receipt and acceptance of a written reinstatement request signed by each of you, provided that no event(s) permitting a suspension then exist.

To do so, you must notify us in writing. If one of you requests termination of the Account, the Account will be terminated for all of you. At our option, we may release some of you from liability under this Agreement and/or under Applicable Law without releasing all of you.

If you exercise your right to Advances under this Agreement, you must notify us and return all Special Convenience Checks and any other access devices. Any use of Special Convenience Checks or other access devices following suspension or termination may be considered fraud. You will also remain liable for any further use of the Special Convenience Checks or other Credit Line access devices not returned to us.

21. Effect of Suspension of Your Account. If your Account is suspended or terminated for any reason, you will nonetheless remain obligated to pay the Account Balance in accordance with the terms of this Agreement. Upon termination of your Account by either you or us, you must return to us all Checks, Credit Cards, or other Account access devices given to you. If either you or we terminate your Account, you will not be entitled to a refund of any FINANCE CHARGES, fees, charges, or credit insurance premiums paid or payable under the Account.

22. Change in Terms. After you open your Account, we may modify or amend the terms of this Agreement and/or the other loan documents pertaining to the Account if any of the following conditions exist: 1) You consent in writing to our proposed modification or amendment at that time; 2) The modification or amendment unequivocally benefits you throughout the remainder of the term of this Agreement; 3) The modification or amendment results only in an insignificant change to the terms of this Agreement and/or the other loan documents; 4) The modification or amendment involves the substitution of a new Index and Margin, as provided in Section 9 above. Any Account balance on the effective date of any modification or amendment is subject to the modification or amendment.

23. Prepayment. You may prepay all or any amounts owing under this Credit Line at any time without penalty. However, we will be entitled to receive all accrued FINANCE CHARGES and any other accrued fees or charges.

24. Tax Consequences. You acknowledge that we (including our employees and representatives) have given you no assurances, representations or warranties that the FINANCE CHARGES and other fees and charges paid on your Account are tax deductible. You should consult your own tax advisor concerning the deductibility of the FINANCE CHARGES and other fees and charges for the Account.

25. Review of Your Account. Upon our request, you will provide us with current financial and credit information and will sign any additional or corrective documents in connection with this Agreement or the Account. You authorize us to release information about you to our affiliates or third parties as described in our privacy policy and our Fair Credit Reporting Act notice, provided you do not opt out of the applicable policy or as permitted by applicable law. You also authorize us to obtain credit reports on you at any time, at our sole option, and expense, for any reason, including but not limited to determining whether there has been an adverse change in your financial condition. We also may from time to time obtain a new valuation of the Property that secures the Credit Line at any time, including internal inspection, at our sole option and expense.

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16. Use of the Credit Line. You may use the Credit Line Account subject to the following limitations:

A. **Legal Transactions.** Borrower agrees that Borrower will only use the Credit Line for transactions that are legal where Borrower resides. For example, Internet gambling transactions may be illegal in Borrower's state. Display by an on-line merchant of either Lender's logo or a Card Company's logo does not mean that an Internet transaction is legal where Borrower resides. Lender will not be liable if Borrower engages in an illegal transaction.

B. **Authorizations.** Some transactions require lender's prior authorization. For security purposes, lender may from time to time place or change limits on the number or amounts of transactions Borrower makes in a day at ATMs or point-of-sale terminals. Such limitations may not be the same at every ATM or point-of-sale terminal. The limitations placed on a "Bank of America ATM Card" or "Bank of America Check Card" when using an ATM or point-of-sale terminal may not be the same as the limitations placed on an Account Access Card used at the same ATM or point-of-sale terminal. No such limits are placed on the number or amounts of transactions Borrower makes at lender's banking centers, by writing a Special Convenience Check, by conducting an Overdraft Protection transaction (subject to the ATM limits, above), or by telephone. In addition, lender may deny authorization to any method of accessing the Credit Line if the Credit Line has been suspended or terminated or if Lender suspects fraudulent activity; lender shall not be liable for any failure to authorize a transaction for any of these reasons. However, Borrower is liable for any transaction Lender authorizes even if Lender should not have authorized it because Borrower is or would be in default as a result of the transaction.

C. **No Security Interest on Purchases.** This Agreement does not grant Lender a security interest in purchases Borrower charges to the Credit Line.

D. **Transactions With Merchants** (a) If a merchant discloses a policy such as "no returns", "no refund", "no return or credit without receipt", "as is", "store credit only", or "all sales final", or similar language, Borrower will be bound by that policy when Borrower uses the Credit Line to buy goods or services from that merchant. (b) When using the Credit Line to make travel or lodging reservations, Borrower must obtain the merchant's cancellation policy and follow it if Borrower cancels. If Borrower cancels, Borrower must obtain the cancellation number that the merchant is required to give Borrower. The merchant may charge Borrower for a cancelled transaction unless Borrower can provide Lender with a correct cancellation number. If Borrower makes reservations or purchases of any kind, such as lodging reservation for several nights stay or a mail order purchase, the Credit Line may be immediately charged for the full amount of the reservation or purchase, regardless whether Borrower has received the goods or services requested at the time the Credit Line is charged. (c) If Borrower authorizes a merchant to charge the Credit Line for repeat transactions without the Account Access Card, then Borrower must notify the merchant when Borrower wants to discontinue the repeat transactions or if the Credit Line is closed or if a new Credit Line or Account Access Card number is issued by Lender. Otherwise, Borrower will be responsible to Lender for the amount of all such repeat transactions. (d) If Borrower disagrees with a transaction on Borrower's statement or has a dispute with a merchant as a result of a transaction, Borrower will provide Lender with information or assistance Lender reasonably requests. Otherwise, Borrower will pay Lender for any resulting loss Lender has, unless Lender is prohibited by applicable law from holding Borrower liable for Lender's loss. (e) If Borrower makes a transaction in a currency other than U.S. dollars, Visa will convert the charge or credit into a U.S. dollar amount. The conversion rate will be determined using Visa currency conversion procedures that are disclosed to institutions issuing Visa cards. The conversion rate on the processing date may differ from the rate on the date of Borrower's transaction. Currently, Visa uses a currency conversion rate of either: (1) a rate selected by VISA from a range of rates available in the wholesale currency markets for the applicable central processing date, which rate may vary from the rate VISA itself receives or (2) the government mandated rate in effect for the central processing date. In each case, Visa uses the rate in effect one day before the conversion date. In the event Visa chooses to change the currency conversion rate on the day on which the currency conversion rate is determined, then transactions on the Credit Line made in a foreign currency and processed after the change will reflect the change.

E. **Special Rule for Account Access Card Purchases.** If Borrower has a problem with the quality of goods or services that Borrower purchased with an Account Access Card, and Borrower has tried in good faith to correct the problem with the merchant, Borrower may not have to pay the remaining amount due on the goods or services. Borrower has this protection only when the purchase price was more than \$50 and the purchase was made in Borrower's home state or within 100 miles of Borrower's mailing address. (If Lender owns or operates the merchant, or if Lender mailed Borrower the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

F. **Overdraft Protection and Linked Accounts.** If the Credit Line Account is not blocked, suspended or terminated, you may request that the Credit Line Account be set up to provide overdraft protection for an associated checking or Money Market Savings account. If the total amount of checks, debit card or ATM transactions or other debits for a business day exceeds the available associated account balance, then an Advance will be made from the Credit Line Account ("Overdraft Protection"). If the Credit Line Account is used for Overdraft Protection, the minimum transfer amount is one hundred dollars (\$100) and incremental transfer amounts will be in multiples of one hundred dollars (\$100). However, if there is not \$100 available, but the available Credit Line amount can cover the overdraft transaction, then the amount of the available Credit Line will be advanced to cover the overdraft. For Idaho and Washington, the incremental advance is \$25. If the available credit on your Credit Line will not allow a \$25 increment to be advanced, no transfer will be made. If the associated account is closed or blocked, Overdraft Protection will stop. If you request that the Credit Line Account be connected to or "linked" to another Bank of America product, you understand and agree that a user on the "linked" account can make a transaction that exceeds the available balance on the "linked" account and cause an Advance to be made. Also, if an ATM access card is given to a user on the "linked" account, that user when using the ATM access card may access the Credit Line Account and obtain an Advance without making a transaction directly on the "linked" account. That user may or may not be a party obligated for this Agreement.

G. **Skip Payment Feature.** At our discretion, from time to time we may offer a feature that will allow you to skip one or more payments. **FINANCE CHARGES** will continue to accrue on the principal balance at the applicable interest rate. At the end of the skip payment period, the payment terms of this Agreement will be reinstated automatically without further notice.

27. **Borrowers Protection® Plan and Line Protection™ Plan** (Borrowers' Protection® Plan and Line Protection™ Plan are registered trademarks of Bank of America Corporation). Fixed Rate Loan Options may be protected by the Borrowers' Protection® Plan, and Variable Rate Balances that are not subject to a Fixed Rate Loan Option may be protected by the Line Protection™ Plan. Protection options for both plans include Disability, Involuntary Unemployment, and Accidental Death; or Disability and Accidental Death; or Involuntary Unemployment and Accidental Death. Borrowers' Protection® Plan and Line Protection™ Plan are optional and are not required to obtain a Credit Line. For each new Credit Line, you must specifically request Borrowers' Protection® Plan or Line Protection™ Plan. In addition, you must sign a separate Addendum to your Credit Line Agreement, even if you obtained Borrowers' Protection® Plan or Line Protection™ Plan for a prior Credit Line Agreement with Bank of America. Two Borrowers may purchase Protection for each Fixed Rate Loan Option, but they must select the same protection option, and there may be restrictions on which Borrowers may apply.

Fees for the Borrowers' Protection® Plan and Line Protection™ Plan are based on and payable with the regularly scheduled monthly payment of the Credit Line Agreement. Credit Line Agreements repaid in quarterly payments are not eligible for the Borrowers' Protection® Plan. Interest is not charged on the fees for Borrowers' Protection® Plan or Line Protection™ Plan.

The maximum term of the Borrowers' Protection® Plan is the shorter of this Credit Line Agreement term or 120 months.

We may allow you to exceed the Credit Limit temporarily and from time to time, to accommodate the premiums for any voluntary insurance or the fees for Borrowers' Protection® Plan or Line Protection™ Plan.

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There are eligibility requirements, conditions and exclusions that can prevent you from receiving benefits under the Borrowers' Protection® Plan or Line Protection™ Plan as set forth in the Addendum describing the plan.

28. Miscellaneous. If this Agreement represents a renewal, modification, extension, substitution or consolidation of an obligation owed to us, then you acknowledge and agree that there are no claims, setoffs, avoidances, counterclaims or defenses or rights to claims, setoffs, avoidances, counterclaims or defenses to payment or enforcement of the prior obligation. If this Agreement is a renewal of a prior note or agreement with you, then it is the intent of the parties that the note or Agreement evidencing the original extension of credit not be extinguished by the renewal unless required by applicable state law. Our records shall be evidence that this Agreement is a renewal.

You agree that if this Agreement is in default, including the failure to make a Minimum Payment by the due date, you will accept calls regarding the collection of this Agreement at any residence or place of employment. The calls can be automatically dialed and a recorded message may be played. You agree such calls will not be "unsolicited calls" for purposes of any federal, state or local law. To improve customer service and security our calls with you may be recorded. You agree that monitoring or recording may be done and that no additional notice to you or additional approval from you is needed. You authorize us, our parent company, Bank of America Corporation (or any successor company) and Bank of America Corporation's affiliates and subsidiaries ("Affiliates") to: (a) obtain other information deemed necessary concerning your credit experience and other information from credit reporting agencies, creditors, and any department of motor vehicles or similar state agency, your employer (past, present and future) and other persons (and all entities may release and/or verify such information to us at any time without notification to you or without your consent), and (b) share information with our Affiliates, except to the extent that you have opted out of such sharing as provided in our Privacy Policy for consumers.

29. Entire Understanding. This Agreement together with the Security Instrument constitutes the entire understanding and agreement between the parties as to the matters set forth in this Agreement and the Security Instrument and supersedes all prior understandings and correspondences, written or oral, with respect to the subject hereof.

30. Delay in Enforcement. We reserve the right to defer or delay the date certain changes are to occur without notice and without being liable for such delay or default. A court decree for divorce or separation or a court approved mutual agreement does not affect, eliminate or reduce any person's liability for the Agreement or the Account balance if we are not a party to the decree or agreement.

31. Governing Law. In addition to applicable federal law, this Agreement will be governed by and interpreted in accordance with federal law and the laws of the State of SOUTH CAROLINA, except for matters related to the exportation of interest (as defined by federal law) which will be governed by and interpreted in accordance with the laws of the State of North Carolina. However, if there ever is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find this provision to be valid and enforceable. The loan transaction, which is evidenced by the Credit Agreement and this Agreement has been approved, under, and funded, and all necessary loan documents have been accepted by us in the State of North Carolina.

32. Severability. If any portion of this Agreement conflicts with, contradicts or otherwise contravenes applicable federal, state, tribal, or local law, then to the extent possible such portion shall be construed as being consistent with such Applicable Law, and further will be deemed changed to the extent necessary to accomplish this end. If any such conflicting or contradicting portion of this Agreement cannot be so construed or changed, it will be deemed severed from this Agreement and will not affect other provisions of this Agreement, which shall be given full effect without regard to the conflicting or contradicting portions.

33. Irregular Payments. We may accept late payments, partial payments, and items marked "payment in full" even if they are not full payments, without losing any of our rights under this Agreement, and you will remain obligated to pay amounts owed under this Agreement. All written communications concerning disputed amounts including any checks or other instruments that indicate a payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations as full satisfaction of a disputed amount must be mailed or delivered to us at the address shown on your periodic statement.

34. Waiver of Notice. Subject to Applicable Law, you waive presentment for payment, demand, protest, and notice of dishonor, notice of acceleration, notice of intent to accelerate, and notice of nonpayment.

35. Sending of Notices. Except as otherwise provided in this Agreement, all notices must be in writing. Notice to any of you shall be deemed notice to all of you. Any Billing Statement or notice to you under this Agreement will be sufficiently given if sent to your address on file in connection with the Account or to a new address of which you have notified us in writing at least 20 calendar days before the sending of the Billing Statement or notice. Any notice that you give to us must be provided to us at the address listed on page 1, or a different address if you are notified of the same.

36. Transfer and Assignment. We may transfer or assign this Credit Line Agreement, the Security Instrument and any other loan document relating to the Account to any person or entity without notice to you. You may not transfer, assign or delegate your duties under this Agreement. Subject to applicable law this Agreement is binding on you, your successors, heirs and personal and legal representatives.

37. Assumption. This Account is not assumable. This means that someone buying the Property may not take over this Account as his/her own obligation on the terms of this Agreement or on any other terms.

38. Caption Headings. Caption headings are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Acknowledgement. You understand and agree to the terms and conditions of this Agreement. By signing this Agreement, you acknowledge that you have read this Agreement. You also acknowledge receipt of a completed copy of this Agreement, including the Fair Credit Billing Notice and the early home equity line of credit application disclosure, in addition to the handbook entitled *When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit* provided to you at application.

WITNESS: ACCEPTED AND AGREED TO:

Borrower THOMAS R IRBY

Date

Borrower ROY C IRBY II

Date

Borrower

Date

Borrower

Date

Borrower

Date

Borrower

Date

THOMAS R IRBY/995071041456120
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BILLING ERROR RIGHTS YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

NOTIFY US IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR BILL

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than sixty (60) days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter give us the following information:

Your name and account number;

The dollar amount of the suspected error;

Describe the error and explain, if you can, why you believe there was an error. If you need more information, describe the item you think is wrong.

YOUR RIGHTS AND RESPONSIBILITIES AFTER WE RECEIVE YOUR WRITTEN NOTICE

We must acknowledge your letter within thirty (30) days, unless we have corrected the error by then. Within ninety (90) days, we must either correct the error or explain why we believe the bill is correct.

After we receive your letter, we cannot try and collect any amount you question, or report you as delinquent. We can continue to bill you for the amount in question, including FINANCE CHARGES, and we can apply any unpaid amount against your Credit Line. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find we made a mistake on your bill, you will not have to pay FINANCE CHARGES related to any questioned amount. If we didn't make a mistake, you may have to pay FINANCE CHARGES, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date on which it is due.

If you fail to pay us the amount that we think you owe, we may report you as delinquent. However, if your explanation does not satisfy us and you write to us within ten (10) days telling us that you still refuse to pay, we will tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone that we report you to that the matter has been settled between us when it finally is.

If we do not follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill is correct.

After Recording Return To:

Bank of America, NA
Consumer Post Closing Review 819-700-04-21
9000 Southside Blvd, Bld 700
Jacksonville, Florida 32256
Loan Number: 68118000674199



May 17, 2007 12:53:07
Rec:\$19.00 Cnty Tax:\$0.00 State Tax:\$0.00

2007048990 MTG
13 PGS
Book MO 4779 Page:1103-1115

FILED IN GREENVILLE COUNTY, SC

[Space Above This Line For Recording Data]

MORTGAGE

DEFINITIONS

(A) "Security Instrument" means this document, which is dated MAY 16, 2007, together with all Riders to this document.

(B) "Borrower" is THOMAS R IRBY, ROY C IRBY II

the party or parties who have signed this Security Instrument.
Borrower is the Mortgagor under this Security Instrument.

(C) "Lender" is Bank of America, NA

Lender is a National Banking Association organized
and existing under the laws of THE UNITED STATES OF AMERICA
Lender's address is 100 North Tryon Street, Charlotte, North Carolina
28255

Lender is the Mortgagee under this Security Instrument.

(D) "Agreement" means the Home Equity Line of Credit Agreement signed by the Borrowers.

(E) "Account" means the Home Equity Line of Credit Account pursuant to which the Lender makes Advances to the Borrower at the Borrower's direction, allowing the Borrower to repay those Advances and take additional Advances, subject to the terms of the Agreement.

(F) "Credit Limit" means the maximum aggregate amount of principal that may be secured by this Security Instrument at any one time. The Credit Limit is \$69,000.00. Except to the extent prohibited by Applicable Law, the Credit Limit does not apply to interest, Finance Charges, and other fees and charges validly incurred by Borrower under the Agreement and this Security Instrument. The Credit Limit also does not apply to other advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

(G) "Account Balance" is the total unpaid principal of the Account, plus earned but unpaid Finance Charges, outstanding fees, charges, and costs.

(H) "Maturity Date" is the date on which the entire Account Balance under the Agreement is due. The entire Account Balance on your Account, as defined in the Agreement and this Security Instrument, is due on MAY 16, 2032

(I) "Property" means the Property that is described below under the heading "Transfer of Rights in the Property"

THOMAS R IRBY/995071041456120

SOUTH CAROLINA HOME EQUITY LINE OF CREDIT MORTGAGE
SCHESI HLC 10/12/06

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EXHIBIT B

SCHEDULE "A"

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, located on Pearson Road, being shown and designated as containing 1.43 acres, more or less, as is shown on a plat entitled "Property of Thomas R. Irby", on a plat dated June 4, 2004 and recorded on March 6, 2007 in the RMC Office for Greenville County in Plat Book 1032 at page 61, and having the metes and bounds, courses and distances as upon said plat appear.

This is a portion of that same property conveyed unto Thomas R. Irby by deed of distribution of the Estate of Elsie Chapman dated January 27, 1999 and recorded on January 27, 1999 in the RMC Office for Greenville County in Deed Book 1815 at page 149. The said Thomas R. Irby did thereafter convey a one-half interest to Roy C. Irby, II by deed dated March 16, 2007 and recorded on March 23, 2007 in the RMC Office for Greenville County in Deed Book 2258 at page 437.

(J) "Secured Debt" means

- (1) All amounts due under your Account, including principal, interest, Finance Charges, and other fees, charges, and costs incurred under the terms of this Security Instrument and all extensions, modifications, substitutions or renewals thereof.
- (2) Any advances made and expenses incurred by Lender under the terms of this Security Instrument

(K) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|--------------------------------------|---|---|
| ☐ 1-4 Family | ☐ Condominium Rider | ☐ Escrow Rider |
| ☐ Second Home | ☐ Planned Unit Development Rider | ☐ Mortgage Insurance Rider |
| ☐ Other(s) | | |

(L) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.**(M) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization****(N) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.****(O) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.****(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Agreement and/or this Security Instrument.****(Q) "Approved Prior Loan" means a lien which is and which lender acknowledges and agrees will continue to have priority over the lien created by this Security Instrument.****TRANSFER OF RIGHTS IN THE PROPERTY**

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the

COUNTY of GREENVILLE

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

SCHEDULE A ATTACHED HERETO AND MADE A PART OF.

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SOUTH CAROLINA HOME EQUITY LINE OF CREDIT MORTGAGE
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which currently has the address of 156 PEARSON RD

BELTON
[City]

SOUTH CAROLINA
[State]

[Street] 296279236 ("Property Address"):
[Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property"

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

ADVANCES. During the Draw Period described in the Agreement, the Borrower may repeatedly take and repay any advances that Lender makes to Borrower under the terms of the Agreement and this Security Instrument, subject to the terms that the Agreement and this Security Instrument impose. The Agreement and this Security Instrument will remain in full force and effect notwithstanding that the Account Balance under the Agreement may occasionally be reduced to an amount of equal to or less than zero.

Any amounts that Lender advances to Borrower in excess of the Credit Limit will be secured by the terms of this Security Instrument unless applicable law prohibits the same. Lender shall not be obligated to increase the Credit Limit formally or to make additional Advances in excess of the Credit Limit stated in the Agreement even though the Credit Limit has been exceeded one or more times. The Draw Period may or may not be followed by a Repayment Period, as described in the Agreement, during which additional Advances are not available. During both the Draw Period and the Repayment Period the Lender may, at its option, make Advances from the Account to pay fees, charges, or credit insurance premiums due under the Agreement or this Security Instrument, or make other Advances as allowed by this Security Instrument.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Secured Debt.** Borrower shall pay when due all Secured Debt in accordance with the Agreement and this Security Instrument. All payments shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Agreement or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Agreement or Security Instrument be by a method of Lender's choosing. These methods include, but are not limited to: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Billing Statement or at such other location as may be designated by Lender in accordance with the notice provisions provided in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Account current. Lender may accept any payment or partial payment insufficient to bring the Account current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Agreement and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** All payments accepted by Lender shall be applied to the Secured Debt under this Security Instrument as provided in the Agreement unless Applicable Law provides otherwise. Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Agreement shall not extend or postpone the due date, or change the amount, of the Minimum Payment.

3. **Funds for Escrow Items.** Borrower shall not be required to pay into escrow amounts due for taxes, assessments, leasehold payments, or other insurance premiums unless otherwise agreed in a separate writing.

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4. Charges; Liens; Prior Security Interests. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in a manner provided in Section 3.

Borrower shall promptly discharge any lien, other than the Approved Prior Loan, which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, other than the Approved Prior Loan, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth in this Section.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with the Agreement. Borrower shall pay when due, or shall cause to be paid when due, all sums required under the loan documents evidencing the Approved Prior Loan and shall perform or cause to be performed all of the covenants and agreements of Borrower or the obligor set forth in such loan documents. All of Lender's rights under this Covenant shall be subject to the rights of the Holder of the Approved Prior Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Agreement. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section shall become additional Secured Debt of Borrower and secured by this Security Instrument. These amounts shall be subject to the terms of the Agreement and the Security Instrument.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgagee clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgagee clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Agreement up to the amount of the outstanding Agreement Account Balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened.

During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Agreement or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Agreement or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of the Agreement and Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower resides on the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Home Equity Line of Credit Application Process; Default.** Borrower shall be in default if, during the Account application process, or at any time during the term of the Agreement, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Account. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

Borrower is also in default if: 1) Borrower engages in fraud or makes a material misrepresentation at any time in connection with Borrower's Account; 2) Lender does not receive the full amount of any Minimum Payment due or Borrower fails to meet any of the other repayment terms of the Agreement; 3) Borrower's action or inaction adversely affects the Property or Lender's rights in it. Examples of these actions or inactions include, but are not limited to: a) Borrower's death, if Borrower is the sole person on the Account; or the death of all but one borrower which adversely affects Lender's security; b) Illegal use of the Property, if such use subjects the Property to seizure; c) Transfer of all or part of the Borrower's interest in the Property without Lender's written consent; d) All or part

of the Property is taken by condemnation or eminent domain; e) Foreclosure of any senior lien on the Property; f) Failure to maintain required insurance on the Property; g) Waste or destructive use of the Property which adversely affects Lender's security; h) Failure to pay taxes or assessments on the Property; i) Permitting the creation of a senior lien on the Property other than an Approved Prior Loan; j) Filing of a judgment against Borrower, if the amount of the judgment and collateral subject to the judgment is such that Lender's security is adversely affected.

Lender may, at its option, take lesser actions than those described at the beginning of this Section. Such lesser actions may include, without limitation, suspending Borrower's Account and not allowing Borrower to obtain any further Advances, reducing Borrower's Credit Limit, and/or changing the payment terms on Borrower's Account. If Lender takes any such actions, this shall not constitute an election of remedies or a waiver of Lender's right to exercise any rights or remedies under the remainder of this Section, the remaining provisions of the Agreement, the Security Instrument, or at law or in equity. Lender may take action under this Section only after complying with any notice or cure provisions required under Applicable Law. In the event Lender elects not to terminate the Account or take any lesser action as provided in this Section, Lender does not forfeit or waive its right to do so at a later time if any of the circumstances described above exists at that time.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Lender may without notice, perform or cause to be performed any covenant of Borrower in this Security Instrument, and Borrower appoints Lender as attorney in fact to sign Borrower's name. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take this action, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section.

Any amounts disbursed by Lender under this Section shall become additional Secured Debt of Borrower secured by this Security Instrument, payable according to the terms of the Agreement and this Security Instrument. These amounts shall bear interest at the Agreement rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. Borrower shall not surrender the leasehold estate and interests herein conveyed or terminate or cancel the ground lease. Borrower shall not, without the express written consent of Lender, alter or amend the ground lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. Borrower is not required to obtain Mortgage Insurance unless otherwise agreed in writing.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or

Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in the Agreement and this Security Instrument.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the Secured Debt immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the Secured Debt immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, and Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, restate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be otherwise applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the this Security Instrument granted by Lender to Borrower or any Successors in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Agreement (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Agreement without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability

under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender.

14. Agreement/Account Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Account is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other Account charges collected or to be collected in connection with the Account exceed the permitted limits, then: (a) any such Account charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Agreement). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Agreement conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Agreement which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Agreement and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower

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must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender or causes Lender to be paid all sums which then would be due under this Security Instrument and the Agreement as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Change of Servicer; Notice of Grievance. The Agreement or a partial interest in the Agreement (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Servicer") that collects the amounts due under the Agreement and this Security Instrument and performs other mortgage loan servicing obligations under the Agreement, this Security Instrument, and Applicable Law. There also might be one or more changes of the Servicer unrelated to a sale of the Agreement. If the Agreement is sold and thereafter the Agreement is serviced by a Servicer other than the purchaser of the Agreement, the servicing obligations to Borrower will remain with the Servicer or be transferred to a successor Servicer and are not assumed by the Agreement purchaser unless otherwise provided.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party and allowed the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and reasonable time to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized

to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice as required by Applicable Law prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument or the Agreement (but not prior to acceleration under Section 18 of the Security Instrument unless Applicable Law provides otherwise). Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee shall cause this notice to be recorded in each county in which any part of the Property is located. Lender or Trustee shall mail copies of the notice as prescribed by Applicable Law. After the time required by Applicable Law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

23. Release. Upon Borrower's request, and upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Agreement and any future advances, whether optional or obligatory, made under this Security Instrument up to 150% of the Credit Limit plus interest thereon, attorneys' fees and court costs.

THOMAS R IRBY/995071041456120

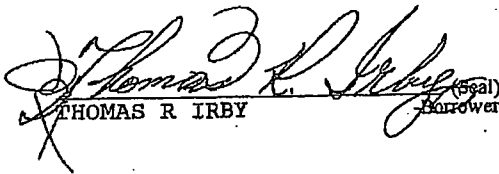
SOUTH CAROLINA HOME EQUITY LINE OF CREDIT MORTGAGE
SCHESI HLC 10/12/03

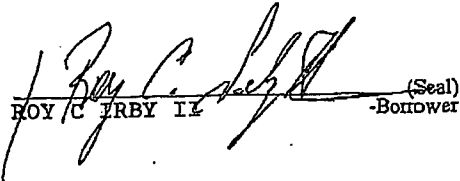
Page 10 of 12

DocMagic 2Forms 800-848-1382
www.docmagic.com

**MORTGAGEE REQUESTS NOTICE OF ANY ADVERSE ACTION
THAT A PRIORITY LIEN HOLDER TAKES WITH REGARD TO
THE PROPERTY, INCLUDING DEFAULT AND FORECLOSURE**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

 (Seal)
THOMAS R IRBY -Borrower

 (Seal)
ROY C IRBY II -Borrower

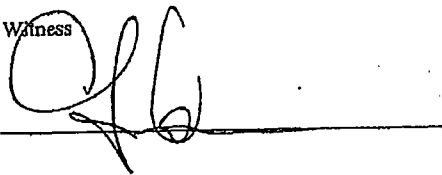
____ (Seal)
-Borrower

____ (Seal)
-Borrower

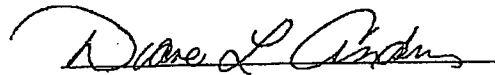
____ (Seal)
-Borrower

____ (Seal)
-Borrower

Witness



Witness:



THOMAS R IRBY/995071041456120
SOUTH CAROLINA HOME EQUITY LINE OF CREDIT MORTGAGE
SCHESI HLC 10/12/06

Page 11 of 12

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www.docuform.com

[Space Below This Line For Acknowledgment]

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Personally appeared before me the undersigned
(first witness) and made oath that he/she saw the within named THOMAS R IRBY, ROY C IRBY II

(grantor) sign, seal, and as his/her act and deed, deliver the within written mortgage, and that he/she, with
other witnesses (second witness), witnessed the execution thereof.

Diane L. Archer
Witness

SWORN to before me this 16 day of May 2007.

[Signature] (LS)
Notary Public for South Carolina

(Seal)

My commission expires: 10/17/16

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007048990 Book: MO 4779 Page: 1103-1115
May 17, 2007 12:53:07

Timothy J. Harvey

THOMAS R IRBY/995071041456120
SOUTH CAROLINA HOME EQUITY LINE OF CREDIT MORTGAGE
SCHESI HLC 10/12/06 Page 12 of 12

DocMagic 2/20/06 800-549-1357
www.docmagic.com

Consumer Real Estate - Payoff ServicesPAYOFF STATEMENT
10/8/2010BANK OF AMERICA
4161 Piedmont Parkway
Greensboro, NC 27410**PLEASE READ ENTIRE DOCUMENT FOR COMPLETE INSTRUCTIONS**

Account Number:	68118000674199
Borrower Name:	THOMAS R IRBY
Co-Borrower Name:	ROY C IRBY II
Address:	8008 HWY 100 NASHVILLE, TN 37221

This calculation is void after 10/18/2010. A new payoff statement should be requested after this date.
Interest is \$6.61 per day.

** TOTAL AMOUNT PAYABLE ** \$70,978.82

CALCULATION OF AMOUNT REQUIRED TO SATISFY ACCOUNT BALANCE AND RELATED FEES:
PAYOFF FIGURES VOID AFTER 10/18/2010

Account Number:	68118000674199			
Principal Balance:	\$69,093.09	\$	\$	\$
Accrued Interest Due:	1,744.09			
Late Fees Due:	121.44			
Other Fees Due:	0.00			
Annual Fees Due:	0.00			
Early Closure Fee:	0.00			
Payoff Statement Fee:				
Lien Release Fee:	5.00			
Trustee/ Reconveyance Fee:	15.00			
Total Amount:	\$70,978.82	\$	\$	\$

These figures are subject to final verification upon receipt of funds by Bank of America. Bank of America reserves the right to adjust these figures and refuse any funds which are insufficient to pay the account in full for any reason, including but not limited to error in calculation of payoff amount, previously dishonored check or money order, interest accruals, subsequent advances, intra-day advances, insurance, fees or additional disbursements made by Bank of America between the date of this payoff statement and the receipt of funds.

EXHIBIT 

Delivery of Wired Payoff Funds: To receive same day credit and avoid additional interest, please remit payoff funds in U.S. Dollars by wire transfer. Wired funds received on weekends, holidays, or after 6 p.m. Eastern will be applied on the next business day.

Home Equity Line of Credit Wire Information:
Routing/ABA 053000196 Account 000695625968

ADDITIONAL INSTRUCTIONS BOX - All wire requests should follow this format

68118000674199	(14 digit Account Number - Do not use any spaces, hyphens, commas, periods)
THOMAS R IRBY	(Borrower First and Last Name)
	(Co-borrower First and Last Name)
156 PEARSON RD	(Loan Property Address)
BELTON, SC 29627	(City, State and Zip Code)
	Indicate Payoff Type (Payoff, Pay down, Subordinate)
	Title Company Name
	Title Company Phone Number

Delivery of Mailed Payoff Funds: Mailed funds need to be a cashier's check or certified check, made payable to Bank of America. To receive same day credit and avoid additional interest, mailed funds need to be received by 4 p.m. Eastern. Mailed payoffs received on weekends, holidays, or after 4 p.m. Eastern Time will be applied on the next business day.

Please include the borrower's full name, address, and loan number on every check.

Mailing Information (for Remittance of Funds only):

Via Overnight Mail:

Bank of America
Attn: Home Equity Payoff Dept
NC4-105-01-40
4161 Piedmont Parkway
Greensboro, NC 27410

Or

Via U.S. Post Office Mail:
Bank of America
Attn: Home Equity Payoff Dept
NC4-105-01-40
P.O. Box 21983
Greensboro, NC 27420

Customers with Automatic Withdrawals: If a borrower's payment is automatically deducted from a deposit account, we will continue to draft the payment unless we receive written cancellation instructions from the borrower three (3) business days prior to the draft date. If the cancellation request is not received within this time frame and the payment draft occurs within proximity to the payoff date, a payoff overpayment can occur. In this event a refund will be sent to the borrower's mailing address within 15 business days. Please contact our Customer Service Department at for further assistance with automatic payment deductions.

Short Payoffs: If a payoff is received for less than the amount due, Bank of America will attempt to contact the remitter to request the remaining balance. Interest will continue to accrue until the balance is paid in full. If the full amount is not received within 24 hours, the check or wire will be returned to the remitter.

Home Equity LINE of CREDIT (Please mark selection below)

I authorize Bank of America: _____ to block the account to further advances and close the account or _____ to leave the account open.

Signature _____

Date _____

Borrower's signature is required to block and close a line of credit account. Please sign and date the authorization above.

Forwarding address: It is important that the borrower's accurate address is provided with the payoff check. If applicable, please furnish the borrower's new mailing address in the space provided. Failure to do so can delay additional correspondence.

Address Line 1 _____
Address Line 2 _____
City/State/Zip _____

***** Please Return This Page with Payoff Check *****

If applicable, Bank of America will forward the discharge/satisfaction document directly to the county/trustee to be recorded and thereby release the lien on the property. Bank of America does not honor the requests to send copies of the lien release satisfaction upon release of the lien, except where required by law, such as in Massachusetts and Maryland.

STATE OF SOUTH CAROLINA) 10-17-2011
COUNTY OF GREENVILLE)
PLANTIFFS 2011 OCT 17 PM 12:06 IN THE COURT OF
CHASE HOME FINANCE, LLC) COMMON PLEAS
Plaintiff,)
Vs.) Defendant Roy C. Irby II
Thomas R. Irby, Roy C, Irby a/ka Roy C.) Answer to Defendant Thomas R. Irby's
Irby II and Bank of America, N.A.,) General Amendment To His
Defendants.) Cross Complaint

General Response

I Roy C. Irby II Refer all said Amendments As to Roy C. Irby II to the Honorable Judge Simmons Order/statement signed August 24 recorded on August 26, 2011 to item #1 & #5 quote:

Item #1 paragraph two quote; "Any Claims by Thomas R. Irby based on the criminal code are barred. The request for leave to add the cause of action for Violation and Breach of Duty Trust is also denied because this is not cognizable claim under South Carolina law, attempt to amend these two causes of action is futile and the request for leave as to these two causes of action is denied."

Item # 5 paragraph one Quote; "Any other pending motion's including Thomas R. Irby's Motion to Compel against Bank of America, are denied or withdrawn." As per Honorable Judge Charles B. Simmons August 26, 2011 order, copy attached. EXHIBIT A

FIRST DEFENSE

Roy C. Irby II responds to the individually numbered paragraphs of the Cross claim with said above Court ordered General Response Dated August 26, 2011, By Honorable Judge Charles B. Simmons as follows:

1. I Roy C. Irby, II denies the allegations contained in paragraph 1 A-c. I also refer to said above Court ordered GENERAL RESPONSE DATED AUGUST 26, 2011, By Honorable Judge Charles B. Simmons August 26, 2011 order, copy attached.

2. The said Bank Of America Account is open today. I Roy C. Irby, II denies the allegations contained in paragraph 2. I also refer to said above Court ordered GENERAL RESPONSE DATED AUGUST 26, 2011, By Honorable Judge Charles B. Simmons August 26, 2011 order stating, "Any Claims by Thomas R. Irby based on the criminal code are barred.,"
3. I Roy C. Irby, II denies the allegations contained in paragraph 3 a-c. The said Bank of America Account is open today.
4. I Roy C. Irby, II denies the "DELIBERATE" and all allegations contained in paragraph 4. The said Bank Of America Account is open today.
5. I Roy C. Irby, II denies the allegations contained in paragraph 5 of Knowledge of account closing. The said Bank of America Account is open today.
6. I Roy C. Irby, II denies the allegations contained in paragraph 6 of Knowledge of account closing. The said Bank of America Account is open today.
7. I Roy C. Irby, II denies the allegations contained in paragraph 7. I also refer to said above Court ordered General Response above dated August 26, 2011, By Honorable Judge Charles B. Simmons order stating, "Any Claims by Thomas R. Irby based on the criminal code are barred.,"
8. I Roy C. Irby, II denies the allegations contained in paragraph 8. Thomas R. Irby Has had privy and knowledge to The Bank of America Account and any transactions at all times.
9. I Roy C. Irby, II denies the allegations contained in paragraph 9. I also refer to said above Court ordered General Response dated August 26, 2011, By Honorable Judge Charles B. Simmons August 26, 2011 order stating, "Any Claims by Thomas R. Irby based on the criminal code are barred."
10. I Roy C. Irby, II denies the allegations contained in paragraph 10 a & b.

FOR A SECOND DEFENSE

(Failure to State a Claim)

Thomas R. Irby fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

(Unclean Hands)

The cross claims should be barred due to Defendant Thomas R. Irby's unclean hands.

FOR A FOURTH DEFENSE

(Statute of Frauds)

To the extent Defendant Thomas R. Irby's Claim rely on a theory the contract at issue was orally modified, such a contract does not comport with the terms of the Bank of America, M&T Chase contract and Roy C. Irby II or the Statute of Frauds.

FOR A FIFTH DEFENSE

(Indemnify)

I Roy C. Irby II did not indemnify myself to Thomas R. Irby in any said matter.

FOR A SIXTH DEFENSE

(Failure to Mitigate)

To The extent Defendant Thomas R. Irby is entitled to any damages, which is expressly denied, Defendant Thomas R. Irby has a legal obligation to mitigate his damages, and to the extent has failed to do so, his claims are barred in whole or in part.

FOR A SEVENTH DEFENSE

(Breach of contract Warrantable Deeds)

Contractual Warrantable Title's to said Real estate to Roy C. Irby II signed on March 16, 2007 by Thomas R. Irby are illegal contracts and non binding as per:

A Copy Of Greenville County Building Codes Disclosure Statement signed by Thomas R. Irby on June 30, 2004 as owner, builder and occupant and Certificate of Occupancy issued on September 11, 2007 (which CLOUDS ANY TITLE OWNERSHIP EVER to Roy C. Irby II and ANY ISSUED TITLE POLICY, thus a Breach of Contract and Warrantable deeds issued By Thomas R. Irby to Roy C. Irby II. A copy attached Exhibit B.

FOR A SEVENTH DEFENSE

(Damages Item C,D,E,F 1-6 and Cause of Action Against Roy C. Irby II page 12, aqusations1-3)

I Roy C. Irby, II denies the allegations contained in paragraph C 1-6 for any and all damages. I refer to his total accusation and wording of "WANTONLY FRADULENT" to collect damages C 1-6 to the Honorable Judge Simmons Order/statement signed August 24 recorded on August 26, 2011 to item #1 & #5 quote:

Item #1 paragraph two quote; "Any Claims by Thomas R. Irby based on the criminal code are barred. The request for leave to add the cause of action for Violation and Breach of Duty Trust is also denied because this is not cognizable claim under South Carolina law, attempt to amend these two causes of action is futile and the request for leave as to these two causes of action is denied."

Item # 5 paragraph one Quote; "Any other pending motion's including Thomas R. Irby's Motion to Compel against Bank of America, are denied or withdrawn." As per Honorable Judge Charles B. Simmons August 26, 2011.

FOR A EIGHT DEFENSE

(Cause of Action page 11-A)

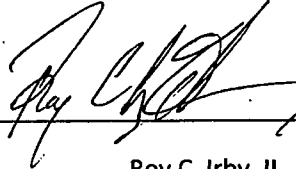
Thomas R. Irby admits he has no claim for Negligence, Breach of Trust, Breach Of Contract, and Breach of Duty of Care by Law OR Statue against anyone involved in said case #2010—CP-23-1621.

FOR AN NINTH DEFENSE BY WAY OF CROSS CLAIM

(Honorable Judge G Edward Welmaker July 1, 2011 granting order)

WHEREFORE Roy C. Irby II preys upon this Court to issue a Reverse Sale as per Honorable Judge G Edward Welmaker July 1, 2011 granting order (Attached Copy of Judge order and Amended Cross Complaint Exhibit C).

1. This order grants Roy C. Irby, II Motion to Amend his Cross Complaint to include a REVERSE SALE and TOTAL RELEASE for Roy C. Irby II for all Mortgages, liens, etc. for violation of Attorney Preference Statute 37-10-10@et seq
2. I Roy C. Irby II further prey upon this court to issue a Master in Equity/Sheriff Sale of The Living Estate of Thomas R. Irby and all said assets, proceeds to be paid equally and severely to M&T Chase Bank, Scott Law Firm, PA, Bank of America, Parker and Poe, PA, Fidelity Title of New York, Knox Haynsworth, PA and Roy C. Irby II for a cumulative amount of \$550,000.00 in Master in Equity/Sheriff living Estate Sale and or Judgment to cumulate \$550,000.00 as per Honorable Judge G Edward Welmaker July 1, 2011 granting order.
3. I further prey upon this court to protect my interest in all said matter.



Roy C. Irby, II Date 10/12/2011

Cc:

Scott Law Firm/PA

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

Case No. 2010-CP-23-1621

J. P. Morgan Chase Bank NA,

Plaintiff

V

Thomas R. Irby, Roy C. Irby a.k.a. Roy C. Irby II,
Bank of America NA, and Charles H. Knight LLC

Defendants

Of Whom Roy C. Irby a.k.a. Roy C. Irby II and
Bank of America NA are Respondents

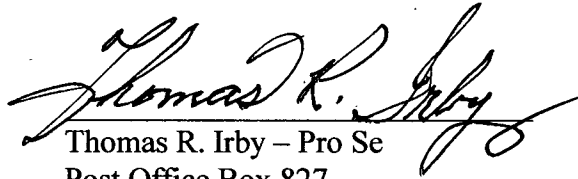
And Thomas R. Irby is the Appellant

Appellate Case No. 2013-001441

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the supplemental Record on Appeal contains
all material proposed to be included by any of the parties and not any other
material.

July 31, 2014



Thomas R. Irby – Pro Se
Post Office Box 827
Pelzer, South Carolina 29669
(864) 243-4015
Appellant Pro Se

PROOF OF SERVICE OF SUPPLEMENTAL RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Appellate Case No. 2013-001441

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward G. Wellmaker, Judge

Case No. 2010-CP-23-1621

RECEIVED

AUG 06 2014

SC Court of Appeals

JP Morgan Chase Bank NA

Plaintiff

v.

Thomas R. Irby, Roy C. Irby,
aka Roy C. Irby II, Bank of
America NA, and Charles H.
Knight LLC

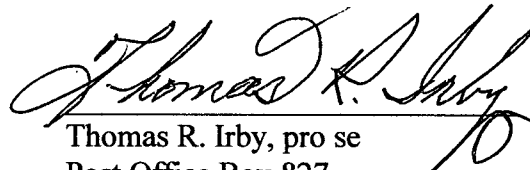
Defendants

Of whom Roy C. Irby aka Roy C. Irby II and Bank of America NA
Are Respondents
and Thomas R. Irby is the Appellant

PROOF OF SERVICE

I certify that I served one (1) unbound original, Nine (9) bound copies, and two (2) CD's of the Supplemental Record on Appeal to the Clerk of Court for the South Carolina Court of Appeals by USPS priority mail. I also certify that One bound Copy was served by Certified Mail, on this date of 8/4/2014 to Lawrence M. Hershon and James Lynn Werner, Attorneys for Bank of America NA, at P.O. Box 1509, Columbia, SC 29202-1509, and to Jerry A. Gaines, Attorney for Roy C. Irby, at P.O. Box 5504, Spartanburg, SC 29304-5504.

August 4, 2014



Thomas R. Irby, pro se
Post Office Box 827
Pelzer, SC 29669
(864) 243-4015

cc: Lawrence M. Hershon
James Lynn Werner
Jerry A. Gaines

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

G. Edward Welmaker, Circuit Court Judge

RECEIVED

AUG 06 2014

SC Court of Appeals

Case No. 2010-CP-23-1621

J. P. Morgan Chase Bank NA,

Plaintiff

V

Thomas R. Irby, Roy C. Irby a.k.a. Roy C. Irby II,
Bank of America NA, and Charles H. Knight LLC

Defendants

Of Whom Roy C. Irby a.k.a. Roy C. Irby II and
Bank of America NA are Respondents

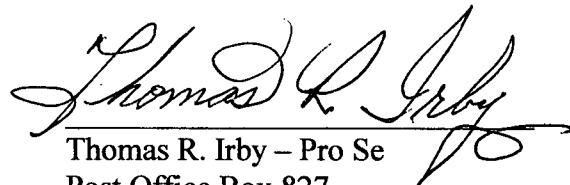
And Thomas R. Irby is the Appellant

Appellate Case No. 2013-001441

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the supplemental Record on Appeal contains
all material proposed to be included by any of the parties and not any other
material.

July 31, 2014



Thomas R. Irby – Pro Se
Post Office Box 827
Pelzer, South Carolina 29669
(864) 243-4015
Appellant Pro Se