

04882

THE STATE OF SOUTH CAROLINA

In the Courts of Appeals

APPEAL FROM THE CHARLESTON COUNTY

MASTER IN EQUITY COURT

Mikell R. Scarborough

Case No. 2006-CP-10-2859

RECEIVED

JUL 16 2012

SC Court of Appeals

In the Matter of:

Deutsche Bank National Trust Company, as Trustee of
Ameriquest Mortgages Securities, Inc. Asset Backed
Pass Through Certificates, Series 2005-R4CGM under
The pooling and Serving Agreement dated as May 01,
2005, without recourse,

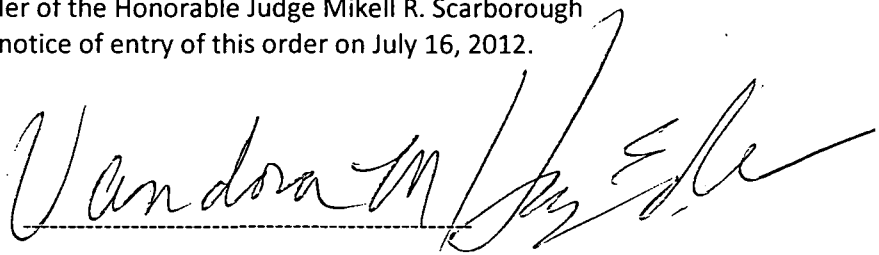
Deutsche Bank _____ Appellants,

Vandora M. Huggins-Edwards _____ Respondent.

NOTICE OF APPEAL

I Vandora M. Huggins- Edwards appeal the Order of the Honorable Judge Mikell R. Scarborough
Dated April 05, 2012. Appeal received written notice of entry of this order on July 16, 2012.

July 16, 2012



Rogers Townsend & Thomas, PC
200 Executive Center Drive
Columbia, S. C. 29210
Sean M. Foerster attorney Appellants

Vandora M. Huggins-Edwards
1218 Gunn Ave
Charleston, S. C. 29407
Pro SE for respondent

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

MASTER IN EQUITY COURT

Mikell R. Scarbrough

CASE NO. 2006-CP-10-2859

FILED
2012 MAY 18 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

In the Matter of:

Deutsche Bank National Trust Company, as Trustee of
Ameriquest Mortgage Securities, Inc. Asset Backed
Pass Through Certificates, Series 2005-R4CGM under
The pooling and Serving Agreement dated as of May 1,
2005, without recourse,
Charleston County Master In Equity Court

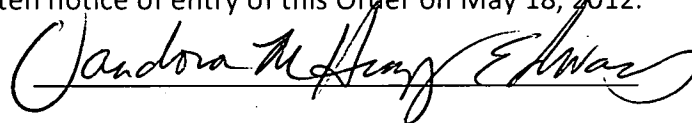
Deutsche BankAppellants,

Vandora M. Huggins-EdwardsRespondent.

NOTICE OF APPEAL

Vandora M. Huggins-Edwards appeal the Order of the Honorable Judge Mikell R. Scarborough dated April 05, 2012. Appellant received written notice of entry of this Order on May 18, 2012.

May 19, 2012



Other Counsel of Record

Vandora M. Huggins-Edwards

Rogers Townsend & Thomas, PC
200 Executive Center Drive
Columbia, South Carolina 29210
Sean M. Foerster attorney for Respondent

1218 Gunn Ave
Charleston, S.C. 29407
Vandora M. Huggins-Edwards PRO SE for
Appellant

Enclosed herewith and served upon you is the copy of Notice of Appeal in this matter:

Rogers Townsend & Thomas, PC
200 Executive Drive Center Drive
Columbia, South Carolina 29210
Sean M. Foester

John C. Biger
15 Leeann Lane
Mt. Pleasant, SC 29464

Glenn Huggins
109 Spring Ave
Watertown, NY 13601

Ira S. Huggins
C/o FCI Petersburg-LOW
Reg. No. 12531-171
P.O. Box 1000
Petersburg, VA 23804

Ronald W. Urban, Esquire
Office of General Counsel for Litigation
P. O. Box 12265
Columbia, S. C. 29211

Roy Biggs , Esquire
Korn Firm
P. O. Box 12369
Columbia S. C. 29211-2369

Leo A. Dryer, Jr.
Dryer Law Office
P.O. Box 11567
Columbia, S.C. 29211

Lee Berlinsky
Assistant U. S. Attorney
151 Meeting St Ste 200
Charleston, S. C. 29401

Eben H. Cockley,
56 Broad St
Charleston, S. C. 29407

RECEIVED
JUL 16 2012
SC Court of Appeals

Sharon H. Smack
1957 Boeing Avenue
Charleston, SC 29407

Dewayne Dixon
2405 Southern Blvd. - Apt. 7F
Bronx, NY 10458

Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Kimberly Nelms
c/o Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Timothy Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Timothy Nelms
c/o Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Michael A. Brown
1957 Boeing Avenue
Charleston, SC 29407

Michael A. Brown
c/o Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Demetrius Huggins Nelms – a minor
1957 Boeing Avenue
Charleston, SC 29407

Darius Simmons – a minor
1957 Boeing Avenue
Charleston, SC 29407

Dondre Simmons – a minor
1957 Boeing Avenue
Charleston, SC 29407

Reginald Huggins
1064 Springfield Church
Trenton, SC 29847

Joseph Huggins
1064 Springfield Church
Trenton, SC 29847

Heather Huggins
1064 Springfield Church
Trenton, SC 29847

Barbara Huggins
1064 Springfield Church
Trenton, SC 29847

Michael Twitty
2412 Caslreagh Road
Charleston, SC 29414

Deborah Twitty
2412 Caslreagh Road
Charleston, SC 29414

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pass Through Certificates, Series 2005-R4CGM under the Pooling and Servicing Agreement dated as of May 1, 2005, without recourse,

Plaintiff,


v.

Vandora M. Huggins-Edwards a/k/a Vandora H. Edwards; Sylvia Anne Lawrence a/k/a Sylviette Anne Lawrence; Glenn M. Huggins; Michael Huggins; Donnell Huggins, Samuel Huggins; Ira Huggins a/k/a Ira S. Huggins; Derwin Huggins; Andean Huggins Cotton a/k/a Adrienne Huggins Cotton; Sharon H. Smack, Dewayne Dixon; Kimberly Nelms; Timothy Nelms; Jennifer Nelms; Michael A. Brown; Demetrius Huggins Nelms, a minor, Darius Simmons, a minor; Dondre Simmons, a minor; Reginald Huggins; Joseph Huggins; Heather Huggins; Barbara Huggins; any other Heirs-at-Law or Devises of Ricky Henry Huggins, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; any other Heirs-at-Law or Devises of Henry Buster Huggins, Jr , Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; any other Heirs-at-Law or Devises of Michelle Huggins, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; any other Heirs-at-Law or Devises of Buster Huggins, Sr., Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them; all unknown persons with any right, title or interest in the real estate described herein; also any persons who may be in the military service of the United States of America, being a class designated as John Doe; and any unknown minors or persons under a disability being a class designated as Richard Roe; South Carolina Department of Revenue; Safeway Finance; Ford Motor Credit Company; General Motors Acceptance Corporation; White Directory Holdings Carolina, Inc. d/b/a The Talking Phone Book; Monogram Credit Card Bank of Georgia; Michael Twitty; Deborah Twitty; the United States of America, by and through its agency, the Internal Revenue Service; and John C. Bigler,

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2006-CP-10-2859

FILED
2012 APR -5 AM 9:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

FINAL ORDER

This matter came before the Court at a trial on February 28, 2012. Sean M. Foerster, Esquire, appeared on behalf of Plaintiff Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pass Through Certificates, Series 2005-R4CGM under the Pooling and Servicing Agreement dated as of May 1, 2005, without recourse ("Plaintiff"). Arthur C. McFarland, Esquire, appeared on behalf of Defendant Vandora M. Huggins-Edwards a/k/a Vandora H. Edwards ("Vandora Huggins-Edwards"). Eben Cockley, Esquire, appeared in his capacity as Guardian ad Litem for Defendant Dondre Simmons, Defendant Darius Simmons, Defendant Demetrius Huggins Nelms, Defendant Ira Huggins a/k/a Ira S. Huggins, any persons who may be in the military service of the United States of America being a class designated as John Doe, and any unknown minors or persons under a disability being a class designated as Richard Roe. Defendant John C. Bigler ("Bigler"), *pro se*, appeared on behalf of himself.

Having considered the pleadings, testimony at trial, exhibits admitted into evidence, and arguments of the parties, the Court orders 1) title to TMS # 418-05-00-279 a/k/a Lots 322 and 323 ("Subject Property") quieted in the persons specified below in this Order; 2) title to TMS # 418-05-00-280 a/k/a Lot 324 ("Adjoining Property") quieted in Bigler; 3) the boundary line dividing the Subject Property from the Adjoining Property be redrawn as set forth below and be subject to the conditions imposed on Bigler by this Order; and 4) a judgment of foreclosure in the amount of \$306,066.94 be entered in favor of Plaintiff, the Subject Property be sold at the first available June 2012 foreclosure sale date, and a judgment for the deficiency, if any, being entered against Vandora Huggins-Edwards.

I. Background and Procedural History

1. This case originated as an action for the foreclosure of a Mortgage covering the Subject Property, which is described as:

ALL those two (2) lots of land, together with the buildings thereon, situate, lying and being on the public road or street known formerly as Seventh Avenue, but now known as Gunn Avenue, in the portion of Hillsboro called Maryville, in St. Andrews Parish, in the County of Charleston, State of South Carolina, and known and designated as Lot Nos. 322 and 323 on a plat of Hillsboro called Maryville, which plat is recorded in Plat Book "F", at Page 188 of Charleston County. Reference is hereby craved to said plat for a more complete and accurate metes and bounds description.

This being the identical property conveyed to Vandora H. Edwards a/k/a Vandora M. Huggins-Edwards by deed of Lucille Huggins, dated November 15, 2004 and recorded December 2, 2004, in Deed Book Y517 at Page 835.

Property Address: 1218 Gunn Avenue
Charleston, SC 29407

TMS# 418-05-00-279

2. After filing the action, Plaintiff discovered the following two issues affecting title to the Subject Property: 1) the mortgagor, Vandora Huggins-Edwards, owned less than a 100% interest in the Subject Property, with the Subject Property also being partly owned by the intestate heirs of her father, Buster Huggins Sr.; and 2) several improvements to the Adjoining Lot, including the portion of the house thereon, the back porch, patio, walkway, and driveway, encroached upon the Subject Property.

3. On December 9, 2010, Plaintiff filed a Second Amended Lis Pendens, Second Amended Summons and Notices, and Second Amended Complaint¹ ("Second Amended Complaint"), which included causes of action for 1) quiet title to the Subject Property; 2) encroachment; 3) equitable subrogation; 4) foreclosure of the Mortgage on the Subject Property; and 5) if necessary, partition.

4. The following seven (7) parties appeared and filed Answers:

- South Carolina Department of Revenue
- Vandora H. Huggins-Edwards
- White Directory Holdings Carolina, Inc. d/b/a The Talking Phone Book
- John C. Bigler
- Glenn Huggins
- Guardian Ad Litem
- Attorney Appointed for Defendants in Military Service

5. Defendant John C. Bigler asserted counterclaims and crossclaims seeking the reformation of the deeds in his chain of title to the Adjoining Property to give him an ownership interest in half of Lot 323 of the Subject Property. In the alternative, Bigler asserted a claim for an easement implied by prior use as to the portion of the improvements encroaching upon the Subject Property. Finally, Bigler asserted a cause of action to quiet title in his name to the Adjoining Property.

6. In its Order entered on February 15, 2012, the Court found that the following fifteen (15) defendants were properly served with the Second Amended Complaint, but failed to respond to that pleading:

- Michael Twitty
- Deborah Twitty
- Barbara Huggins
- Sylvia Anne Lawrence a/k/a Sylviette Anne Lawrence
- Heather Huggins
- Joseph Huggins
- Reginald Huggins
- Sharon H. Smack
- Samuel Huggins
- Donnell Huggins
- Michael A. Brown
- Timothy Nelms
- Jennifer Nelms
- Dewayne Dixon

¹ Plaintiff filed the original Complaint on July 24, 2006, and the First Amended Complaint on September 2, 2008.

- Derwin Huggins

7. In its Order entered on February 15, 2012, the Court found that the following eight (8) defendants were properly served with the Second Amended Complaint by publication pursuant to S.C. Code Ann. § 15-9-710 *et seq.*, but failed to respond to that pleading:²

- Kimberly Nelms
- Michael Huggins
- Andrian Huggins Cotton a/k/a Adrienne Huggins Cotton
- Any other Heirs-at-Law or Devisees of Ricky Henry Huggins, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them
- Any other Heirs-at-Law or Devisees of Henry Buster Huggins, Jr., Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them
- Any other Heirs-at-Law or Devisees of Michelle Huggins, Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them
- All unknown persons with any right, title or interest in the real estate described herein
- Any other Heirs-at-Law or Devisees of Buster Huggins, Sr., Deceased, their heirs, Personal Representatives, Administrators, Successors and Assigns, and all other persons entitled to claim through them

8. In its Order entered on February 15, 2012, the Court found that the following two (2) junior lienholder defendants were properly served with the Second Amended Complaint, but failed to respond to that pleading:

- Ford Motor Credit Company
- Monogram Credit Card Bank of Georgia

9. Accordingly, in its Order entered on February 15, 2012, the Court found that the twenty-five (25) defendants identified above were in default for failure to respond to the Second Amended Complaint, had admitted the allegations set forth in the Second Amended Complaint, and were therefore subject to the amount and nature of the judgment described herein.

10. On January 5, 2012, Plaintiff filed a Motion for Partial Summary Judgment on its cause of action to be equitably subrogated to the rights of the NovaStar Mortgage that its predecessor paid off as part of the closing of the subject loan. The Court granted the motion by Order entered on February 15, 2012. In granting the motion, the Court held that the interests of the "Cotenants"³ in the Subject Property

² By Order entered on December 13, 2010, I permitted Plaintiff to serve these eight (8) defendants by publication. As shown by the Affidavit of Publication filed herein, service by publication on these eight (8) defendants was completed through The Post and Courier, and as of April 12, 2011, these defendants failed to plead or otherwise respond to the Second Amended Complaint.

³ "Cotenants" hereinafter refers to those persons who took an interest in the Subject Property by virtue of Buster Huggins Sr. passing away intestate: Vandora Huggins-Edwards; Samuel Huggins, Michael Huggins; Ira Huggins

were subordinate and subject to the NovaStar Mortgage, that Plaintiff was entitled to be equitably subrogated to the rights of NovaStar, and that Plaintiff's Mortgage constituted a first priority lien that encumbered the interests of all the Cotenants in the Subject Property to the extent of the \$92,490.22 NovaStar debt that was satisfied.

11. The Court held a trial in this matter on February 28, 2012. All Defendants and attorneys of record were notified of the time, date, and place of the hearing by Notice of Trial filed herein on December 22, 2011.

12. In light of the Order entered on February 15, 2012, only the following causes of action remained for trial: 1) quiet title as to the Subject Property; 2) quiet title as to the Adjoining Property; 3) encroachment, including Bigler's claims for reformation and easement implied by prior use; and 4) foreclosure of the Mortgage on the Subject Property.

II. Quiet Title to the Subject Property (Lots 322 and 323)

The Court quiets title to the Subject Property in the Cotenants for the reasons set forth below.

FINDINGS OF FACT

1. Henry Graves and Sarah Heyward conveyed the Subject Property to Buster Huggins, Sr. by deed dated November 4, 1954, and recorded on November 4, 1954, in the Office of Register Mesne Conveyance of Charleston County in Book A59 at Page 471.

2. Buster Huggins, Sr. conveyed an undivided one-half (1/2) interest in the Subject Property to his wife, Lucille Huggins, by deed dated November 17, 2003, and recorded on November 25, 2003, in the Office of Register Mesne Conveyance of Charleston County in Book U476 at Page 699.

3. On April 25, 2004, Buster Huggins, Sr. died intestate, leaving an undivided one-half (1/2) interest in the Subject Property to be distributed among his heirs pursuant to intestate succession scheme set forth in S.C. Code Ann. § 62-2-101 *et seq.*

4. Upon the death of Buster Huggins, Sr., his wife, Lucille Huggins, took an undivided one-fourth (1/4) interest in the Subject Property, which, combined with her previous undivided one-half (1/2) interest, gave her an undivided three-fourths (3/4) interest in the Subject Property.

5. The other undivided one-fourth (1/4) interest in the Subject Property passed to his seven living children and the issue of his two predeceased children.

6. The seven living children of Buster Huggins Sr.—Vandora Huggins-Edwards, Sylvia Lawrence, Glenn Huggins, Michael Huggins, Donnell Huggins, Ira Huggins and Samuel Huggins—each took an undivided one thirty-sixths (1/36) interest in the Subject Property.

a/k/a Ira S. Huggins; Donnell Huggins; Glenn M. Huggins; Sylvia Anne Lawrence a/k/a Sylviette Anne Lawrence; Andean Huggins Cotton a/k/a Adriane Huggins Cotton, Sharon H. Sniack; Dewayne Dixon; Derwin Huggins; Reginald Huggins; Joseph Huggins; Heather Huggins; Barbara Huggins; Kimberly Nelms; Timothy Nelms; Jennifer Nelms; Michael A. Brown, Demetrius Huggins Nelms; Darius Simmons, and Dondre Simmons

7. The two predeceased children of Buster Huggins, Sr., Ricky Henry Huggins a/k/a Henry Ricky Huggins and Henry Buster Huggins, Jr., both left issue surviving Buster Huggins, Sr.

8. The undivided one thirty-sixths (1/36) interest in the Subject Property of Ricky Henry Huggins a/k/a Henry Ricky Huggins passed to his four children: Reginald Huggins, Joseph Huggins, Heather Huggins, and Barbara Huggins. Each took an undivided one one-hundred and forty-fourths (1/144) interest in the Subject Property.

9. The undivided one thirty-sixths (1/36) interest in the Subject Property of Henry Buster Huggins, Jr., who was adjudicated as deceased as of December 1, 1981, passed to his four living children—Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton, Sharon H. Smack, Dewayne Dixon, and Derwin Huggins—and the issue of his daughter, Michelle Huggins, who predeceased Buster Huggins, Sr. The four living children of Henry Buster Huggins, Jr. each took an undivided one one-hundred and eightieths (1/180) interest in the Subject Property.

10. The undivided one-one hundred and eightieths (1/180) interest in the Subject Property of Michelle Huggins passed to her seven children: Kimberly Nelms, Timothy Nelms, Jennifer Nelms, Michael A. Brown, Demetrus Huggins Nelms, Darius Simmons, and Dondre Simmons. Each of the seven children of Michelle Huggins took an undivided one one-thousand two-hundred and sixtieths (1/1260) interest in the Subject Property.

11. Lucille Huggins later conveyed her three-fourths (3/4) interest in the Subject Property to Vandora Huggins-Edwards by deed dated November 15, 2004, and recorded December 2, 2004, in Deed Book Y517 at Page 835. This conveyance combined with her intestate share gave Vandora Huggins-Edwards a twenty eight-thirty sixths (28/36), or seven-ninths (7/9), interest in the Subject Property.

CONCLUSIONS ON LAW

“In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties.” Rule 71(e), SCRPC. “In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired.” *Id.*

Having considered the testimony of Sharon H. Smack, the granddaughter of Buster Huggins Sr., and the deeds and probate records admitted into evidence without objection, the Court orders title to the Subject Property quieted in the following persons and in the following fractional interests:

- Vandora Huggins-Edwards (28/36th or 7/9th undivided interest)
- Samuel Huggins (1/36th undivided interest)
- Michael Huggins (1/36th undivided interest)
- Ira Huggins a/k/a Ira S. Huggins (1/36th undivided interest)

- Donnell Huggins (1/36th undivided interest)
- Glenn M. Huggins (1/36th undivided interest)
- Sylvia Anne Lawrence a/k/a Sylviette Anne Lawrence (1/36th undivided interest)
- Andean Huggins Cotton a/k/a Adrienne Huggins Cotton (1/180th undivided interest)
- Sharon H. Smack (1/180th undivided interest)
- Dewayne Dixon (1/180th undivided interest)
- Derwin Huggins (1/180th undivided interest)
- Reginald Huggins (1/144th undivided interest)
- Joseph Huggins (1/144th undivided interest)
- Heather Huggins (1/144th undivided interest)
- Barbara Huggins (1/144th undivided interest)
- Kimberly Nelms (1/1260th undivided interest)
- Timothy Nelms (1/1260th undivided interest)
- Jennifer Nelms (1/1260th undivided interest)
- Michael Brown (1/1260th undivided interest)
- Demetrius Huggins Nelms (1/1260th undivided interest)
- Darius Simmons (1/1260th undivided interest)
- Dondre Simmons (1/1260th undivided interest)

Pursuant to this Court's Order filed February 15, 2012, equitably subrogating Plaintiff to the rights of NovaStar Mortgage Inc., the Mortgage that Plaintiff seeks to foreclose in this action constitutes a first priority lien that encumbers the interests of all of the above listed persons. However, as to its lien on the fractional interests of the Cotenants other than Vandora Huggins-Edwards, Plaintiff is secured only to the extent of the amount of the loan proceeds used to satisfy the NovaStar debt, which was \$92,490.22.

III. Quiet Title to the Adjoining Property (Lot 324)

The Court quiets title in Bigler to the Adjoining Property, which is described as:

ALL that certain lot, piece or parcel of land, with the building and improvements thereon, situate, lying and being in the Town of Maryville, St. Andrew's Parish, in Charleston County, State aforesaid, and known as Lot 324; it being a portion of Lots #54 and #55 on a plat of Hillsboro made by Guerard in November, 1885, said lot being approximately fifty (50) feet by one hundred (100) feet.

BUTTING AND ABOUNDING to the North on the property now or formerly of J.S. and Eva Washington, to the East on property of Buster Huggins, to the South on Gunn Avenue and to the West on Diana Street. Reference should be had to a deed to Henry B. Huggins dated July 3, 1974, and recorded in Book U-104 at Page 134, RMC Office for Charleston County.

TMS# 418-05-00-280

FINDINGS OF FACT

1. Dorothy Dublin conveyed the Adjoining Property to Henry Buster Huggins, Sr. by deed dated July 3, 1974, and recorded on July 3, 1974, in the Office of the Register Mesne Conveyance for Charleston County in Book U104 at Page 134.

2. Buster Huggins Sr. conveyed the Adjoining Property to John Kachmarsky (40% undivided interest), Minnie Huggins (30% undivided interest), Sharon H. Smack (6% undivided interest), Michelle Huggins (6% undivided interest), Derwin Huggins (6% undivided interest), Dewayne Dixon (6% undivided interest), and Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton (6% undivided interest) by Deed of Distribution dated March 1, 2001, and recorded on March 20, 2002, in the Office of the Register Mesne Conveyance for Charleston County in Book M400 at Page 505. This deed is hereinafter referred to as the "Deed of Distribution."

3. John Kachmarsky, Minnie Huggins, Sharon H. Smack, Michelle Huggins, Derwin Huggins, Dewayne Dixon, and Adrienne Huggins Cotton conveyed a life estate in the Adjoining Property to Buster Huggins Sr. and Lucille Huggins, with the remainder interest to John Kachmarsky (40% undivided interest), Minnie Huggins (30% undivided interest), Sharon H. Smack (6% undivided interest), Michelle Huggins (6% undivided interest), Derwin Huggins (6% undivided interest), Dewayne Dixon (6% undivided interest), and Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton (6% undivided interest) by Quit Claim Deed recorded on November 20, 2001, in the Office of the Register Mesne Conveyance for Charleston County in Book K388 at Page 300. This deed is hereinafter referred to as the "Quit Claim Deed."

4. Buster Huggins Sr. passed away on April 25, 2004, and Lucille Huggins passed away on November 20, 2006.

5. Upon the deaths of Buster Huggins Sr. and Lucille Huggins, fee simple title to their respective interests in the Adjoining Property passed back to John Kachmarsky (40% undivided interest), Minnie Huggins (30% undivided interest), Sharon H. Smack (6% undivided interest), Michelle Huggins (6% undivided interest), Derwin Huggins (6% undivided interest), Dewayne Dixon (6% undivided interest), and Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton (6% undivided interest).

6. The Charleston County Treasurer issued an execution commanding the Charleston County Delinquent Tax Collector ("Tax Collector") to levy by distress and then sell the Adjoining Property for unpaid real estate taxes for the tax year of 2006.

7. On October 1, 2007, the Tax Collector sold the Adjoining Property at a tax sale to Bigler for the sum of thirty thousand (\$30,000) dollars, which Bigler wired to the Charleston County Delinquent Tax Department.

8. The Tax Collector conveyed the Adjoining Property to Bigler by Tax Deed dated July 10, 2009, and recorded on July 13, 2009, in the Office of the Register Mesne Conveyance for Charleston County in Book 0067 at Page 755. This deed is hereinafter referred to as the "Tax Deed."

9. No party to this action asserted a claim challenging the tax sale of the Adjoining Property within two years of the date of the tax sale.

CONCLUSIONS ON LAW

"In all cases of tax sale the deed of conveyance, whether executed to a private person, a corporation, or a forfeited land commission, is prima facie evidence of a good title in the holder, that all proceedings have been regular and that all legal requirements have been complied with." S.C. Code Ann. § 12-51-160.

"If the defaulting taxpayer, grantee from the owner, or mortgage or judgment creditor fails to redeem the item of real estate sold at the delinquent tax sale within the twelve months provided in subsection (A) and after the passing of an additional twelve months, the tax deed issued is incontestable on procedural or other grounds." S.C. Code Ann. § 12-51-90(C). "An action for the recovery of land sold pursuant to this chapter or for the recovery of the possession must not be maintained unless brought within two years from the date of sale as provided in Section 12-51-90(C)." S.C. Code Ann. § 12-51-160.

According to the testimony of Mary M. Scarborough, Delinquent Tax Collector for Charleston County, which the Court finds credible and convincing, her office conducted the tax sale of the Adjoining Property in strict compliance with the requirements of the South Carolina tax sale statutes, S.C. Code Ann. § 12-51-40 *et seq.* No party to this action asserted a claim challenging Bigler's tax title to the Adjoining Property within two years of the date of the tax sale, and the Court is unaware of any other challenge to the tax sale or tax title outside of this lawsuit.

The Court therefore orders title to the Adjoining Property quieted in Bigler.

IV. Encroachment

To resolve the encroachment of the Adjoining Property's improvements onto the Subject Property, the Court orders the boundary line dividing the Adjoining Property and the Subject Property moved ten (10) feet toward the east to give the Adjoining Property an additional ten (10) foot by one-hundred (100) foot strip of land. The Court further grants Bigler the option of purchasing an additional fifteen (15) feet toward the east, for a total of twenty-five (25) extra feet (or one half of Lot 323).

FINDINGS OF FACT

1. The Subject Property contains two lots—Lots 322 and 323. Each lot is approximately fifty (50) feet by one hundred (100) feet, with an area of approximately five thousand (5000) square feet each. The Subject Property altogether is approximately one hundred (100) feet by one hundred (100) feet, with an area of approximately ten thousand (10,000) square feet. The Subject Property is bounded on the

south by Gunn Avenue, on the west by the Adjoining Property (Lot 324), on the north by Lots 308 and 309, and on the east by Lot 321.

2. According to the deeds in its chain of title, including the Deed of Distribution, the Quit Claim Deed, and the Tax Deed, the Adjoining Property contains a single lot—Lot 324—that is approximately fifty (50) feet by one hundred (100) feet, with an area of approximately five thousand (5000) square feet. The Adjoining Property is bounded on the south by Gunn Avenue, on the west by Diana Street, on the north by Lot 307, and on the east by Lot 323 of the Subject Property.

3. The Adjoining Property contains a one-story, rectangular brick house that is approximately twenty-six (26) feet wide on the northern and southern sides of the house and sixty-two (62) feet long on the eastern and western sides of the house. The front of the house faces west toward Diana Street and the back of the house faces east toward Lot 323. A small concrete back porch extends from the back door of the house. The steps from the back porch lead to a concrete landing that covers a portion of the backyard and branches into two concrete walkways—one extending east and one extending south. The concrete walkway extending south from the landing leads to a gravel area used as a driveway for the Adjoining Property.

4. A portion of the back of the brick house, the back porch and stairs, the concrete landing, the concrete walkways, and the gravel driveway all encroach across the boundary line dividing the Adjoining Property from Lot 323 of the Subject Property.

5. In its Complaint, Plaintiff sought an injunction requiring the removal of the improvements from the Subject Property. At the trial, however, Plaintiff acknowledged that an adequate remedy at law existed only if Bigler were required to purchase additional land from the Subject Property sufficient to remove the encroachments.

6. After explaining the local zoning regulations applicable to the Adjoining Property and Subject Property, Plaintiff's expert land surveyor, Charles F. Dawley, Jr., R.L.S. ("Dawley"), testified as to one potential option for redrawing the boundary line between the Adjoining Property and the Subject Property that would both resolve the encroachment issue and comply with the applicable zoning regulations. Under the Dawley proposal, the boundary line would be redrawn to give the Adjoining Property an additional sixteen and four-tenths (16.4) feet eastward into Lot 323, or approximately an additional 1,690 square feet. The proposal eliminated all encroachments caused by the improvements to the Adjoining Property except for a few feet at the end of the walkway extending eastward into Lot 323, which the Dawley proposal showed as having to be abandoned.

7. Plaintiff's expert residential real estate appraiser, Jennifer C. Perry of Sass, Herrin & Associates, then testified that, under the Dawley proposal, the diminution in value to the Subject Property would be five thousand (\$5,000) dollars, or approximately three (\$3.00) dollars per square foot.

8. On the other hand, Bigler sought to pay nothing for the additional land necessary to remove the encroachments on the ground that it was allegedly the intent of Buster Huggins Sr., who built the brick house on the Adjoining Property in 1978 and who owned Lot 323 at that time, to divide Lot 323 evenly between Lot 322 and Lot 324 so as to remove the encroaching improvements. Based on this allegation, Bigler asserted counterclaims seeking to reform the legal descriptions in the deeds in the chain of title to the Adjoining Property to include one-half of Lot 323, or approximately an extra twenty-five (25) foot by one-hundred (100) foot strip of land.

9. To support this allegation, Bigler and Vandora Huggins-Edwards offered into evidence, and the Court admitted over Plaintiff's objection, a "Plat of Resubdivision of Lots 322-323 and 324" ("Resubdivision Plat") prepared for "Buster Huggins" by W.L. Gaillard from a survey conducted on April 30, 1976, and recorded in the Office of the Register Mesne Conveyance for Charleston County on January 24, 1978, in Plat Book X at Page 132.

10. The Resubdivision Plat, however, only showed the boundary line between the Adjoining Property and Subject Property being moved ten (10) feet toward the east, not twenty-five (25) feet as Bigler argued was the intention.

11. In the alternative, Bigler asserted a counterclaim seeking an easement implied by prior use as to the portion of the improvements to the Adjoining Property that encroach upon Lot 323.

CONCLUSIONS ON LAW

This Court has jurisdiction to redraw the boundary line to resolve the encroachment issue in this case. *Knox v. Bogan*, 322 S.C. 64, 67, 472 S.E.2d 43, 45 (Ct. App. 1996) ("[D]isputed boundary lines may either be directly or indirectly judicially settled in actions to quiet title..."). While the Court finds that Bigler is not entitled to an easement implied by prior use as to the Subject Property, the Court finds that it was the intention of Buster Huggins Sr. to redraw the boundary line to conform to the 1976 Resubdivision Plat and therefore reforms the legal descriptions in the deeds in the chain of title to the Adjoining Property after that date to reflect the additional ten (10) feet of land.

a. Easement Implied by Prior Use

Bigler is not entitled to an easement implied by prior use because he has failed to meet the burden of proof required for such an easement. A party asserting the right to an easement implied by prior use must establish the following seven elements:

- (1) unity of title;
- (2) severance of title;
- (3) the prior use was in existence at the time of unity of title;
- (4) the prior use was not merely temporary or casual;
- (5) the prior use was apparent or known to the parties;

- (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and
- (7) the common grantor indicated an intent to continue the prior use after severance of title.

Pendarvis v. Cook, 391 S.C. 528, 532-33, 706 S.E.2d 520, 522-23 (Ct. App. 2011) (citing *Boyd v. BellSouth Telephone Telegraph Co.*, 369 S.C. 410, 633 S.E.2d 136 (2006)).

More importantly, there is no evidence that unity of title ever existed between the Adjoining Property and the Subject Property. "For the necessary unity of ownership for an implied easement to exist, the adjoining lots must be owned as a unit, not under separate deeds treated as separate properties." 25 Am. Jur. 2d *Easements and Licenses* § 2. Buster Huggins Sr. purchased the Subject Property from Henry Graves and Sarah Heyward on November 4, 1954. Buster Huggins Sr. purchased the Adjoining Property from Dorothy Dublin twenty years later on July 3, 1974. There is no evidence that the Adjoining Property and the Subject Property were ever part of a single tract of land at the time they were owned by Buster Huggins Sr. Having failed to establish unity of title, Bigler failed to satisfy elements one, two, three, or seven necessary to prove his right to an easement implied by prior use.

As to elements four and five, the Court finds that while the use of the back of the brick house, the back porch and stairs, the concrete landing, the concrete walkways, and the gravel driveway would have been apparent or known to the tenants of the Subject Property, Bigler put forth no evidence that the use was anything more than temporary and casual.

As to element six, the Court finds that the prior use was not necessary in that there could be no other reasonable mode of enjoying the dominant tenement without it because the Adjoining Property is a corner lot with easy access on its western and southern sides.

The Court therefore finds that Bigler is not entitled to an easement over the Subject Property implied by prior use.

b. Reformation of Deed

The Court finds that Bigler is entitled to reformation of the legal descriptions in the Deed of Distribution, the Quit Claim Deed, and the Tax Deed to reflect the dimensions of the Adjoining Property as shown on the Resubdivision Plat.

Normally, "[t]he intention of the grantor must be found within the four corners of the deed." *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (1987). "The terms of an unambiguous deed may not be varied or contradicted by evidence drawn from sources other than the deed itself." *Id.*

The legal descriptions in the deeds in the chain of title to the Adjoining Property after 1978—the Deed of Distribution, the Quit Claim Deed, and the Tax Deed—unambiguously describe it as being approximately fifty (50) feet by one hundred (100) feet.

However, “[w]hen intention is not expressed accurately in the deed evidence *aliunde* may be admitted to supply or explain it.” *Mozingo*, 293 S.C. at 25, 358 S.E.2d at 392. “Parol evidence is admissible to show mistake.” *Southern Realty and Const. Co., Inc. v. Bryan*, 290 S.C. 302, 309, 350 S.E.2d 194, 198 (Ct. App. 1986).

The Court finds that the commissioning and recording of the Resubdivision Plat right around the time that Buster Huggins Sr. constructed the brick house evidences the intent of Buster Huggins Sr., who owned Lot 323 at the time, to grant the Adjoining Property the additional ten (10) feet of land as shown on that plat.

“Where a written contract does not conform to the intentions of the parties, a court may reform the contract.” *Crewe v. Blackmon*, 289 S.C. 229, 234, 345 S.E.2d 754, 757 (Ct. App. 1986). “Reformation is the remedy by which writings are rectified to conform to the actual agreement of the parties.... [it] is available on the ground of mistake or misunderstanding as well as duress and related misconduct.” *Id.*

The Court finds that the legal description in the Deed of Distribution was the result of mistake by Buster Huggins Sr., who intended to add additional land to the Adjoining Property from the Subject Property as shown on the Resubdivision Plat. As such, the Court reforms the legal descriptions in the Deed of Distribution, the Quit Claim Deed, and the Tax Deed to reflect the dimensions of the Adjoining Property as shown on the Resubdivision Plat. Specifically, the deeds should have described the Adjoining Property as being approximately sixty (60) feet by one hundred (100) feet, with an area of approximately six thousand (6000) square feet each.

The Court acknowledges that the addition of ten (10) feet to the Adjoining Property will be insufficient to remove all of the encroachments. Therefore, Bigler shall have the option to purchase an additional fifteen (15) feet, for a total of twenty-five (25) additional feet, for five thousand (\$5,000) dollars, a price which the Court finds is equitable in light of the expert testimony of Jennifer C. Perry at trial. Such funds shall be paid into the Court to be held pending conclusion of the foreclosure sale of the Subject Property and shall be distributed as set forth below in this Order.

V. Foreclosure of the Subject Property

Plaintiff is entitled to a judgment of foreclosure in the amount of \$306,066.94, to have the Subject Property sold at a foreclosure sale, and to a deficiency judgment against Vandora Huggins-Edwards in the event that the foreclosure sale proceeds are insufficient to satisfy the Total Debt owed to it.

FINDINGS OF FACT

1. On April 6, 2005, Vandora Huggins-Edwards and Lucille Huggins executed and gave an Adjustable Rate Note (“Note”) to Ameriquest Mortgage Company, Plaintiff’s predecessor-in-interest, in the principal sum of \$120,800.00, payable in monthly installments commencing on June 1, 2005.

2. In order to secure the payment of the Note according to the terms and conditions thereof, Vandora Huggins-Edwards gave to Ameriquest Mortgage Company a certain real estate mortgage ("Mortgage") covering the Subject Property and its improvements. The Mortgage was signed, witnessed, and probated; thereafter, the Mortgage was recorded in the Office of the Register Mesne Conveyance for Charleston County on April 27, 2005, in Mortgage Book R534 at Page 330.

3. The Mortgage was subsequently assigned to Plaintiff by Assignment of Mortgage dated July 26, 2006, and recorded on August 21, 2006, in Book C598 at Page 671.

4. At the trial, Plaintiff produced the original Note, Mortgage, and Assignment of Mortgage, and the Court admitted these originals into evidence. Based on Plaintiff's possession of these original documents and the testimony put forth from David Merrill, an employee of Plaintiff's servicing agent, American Home Mortgage Servicing Inc., the Court finds that Plaintiff is the holder and owner of the original Note and Mortgage.

5. Pursuant to this Court's Order filed February 15, 2012, Plaintiff's Mortgage constitutes a first priority lien that encumbers the seven-ninths (7/9ths) undivided interest of Vandora Huggins-Edwards to the full extent of the Total Debt set forth below, and a first priority lien that encumbers the combined two-ninths (2/9ths) undivided interest of the remaining Cotenants in the Subject Property to the extent of the \$92,490.22 NovaStar debt that Plaintiff's predecessor-in-interest satisfied. Plaintiff's first priority lien is subject only to ad valorem taxes or other liens given priority by statute.

6. Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder of the Note, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of its attorney to commence this foreclosure action.

7. At the trial, Plaintiff produced letters evidencing that the notice required by the terms of the Mortgage⁴ was given to Vandora Huggins-Edwards prior to the commencement of this action.

8. Plaintiff seeks to recover a reasonable attorney's fee of \$83,043 pursuant to its rights under the Note and Mortgage for amounts it has paid its counsel for services performed and anticipated to be performed until final adjudication of this action.

9. According to Plaintiff's accounting, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in

⁴ Mortgage ¶ 22: "Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument ... [t]he notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure."

the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney's fee, all secured by the Note and Mortgage, is as follows:

(a)	Principal	\$120,307.72
(b)	Interest through February 28, 2012, at 8.8% per annum	\$70,891.50
(c)	Escrow Advances (Taxes and Insurance)	\$14,280.43
(d)	Property Inspection Fees	\$532.00
(e)	Broker Price Opinions	\$1,095.00
(f)	Credit Report Fee	\$14.00
(g)	NSF Fees	\$25.00
(h)	Late Charge	\$30.00
(i)	Suspense Balance	(\$425.09)
(j)	Costs of collection and this action	\$16,273.38
(k)	Attorney fee	\$83,043.00
TOTAL DEBT secured by Note and Mortgage, including interest to date shown		\$306,066.94

10. The per diem rate of interest is \$29.01.

11. Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01, Plaintiff filed an Affidavit of Non-Eligibility on June 23, 2009, stating that the mortgage loan which is the subject of this foreclosure action was not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HAMP). Plaintiff's attorney received no counter affidavits from any Defendants.

12. Pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01, Plaintiff served a Notice of Foreclosure Intervention on Vandora Huggins-Edwards on May 17, 2011, but she elected not to participate in any foreclosure intervention process.⁵

13. Plaintiff seeks the usual foreclosure of the Mortgage and has demanded the right to a personal or deficiency judgment against Vandora Huggins-Edwards only pursuant to S.C. Code Ann. § 29-3-660.

⁵ At a status conference held before me on December 19, 2011, Vandora Huggins-Edwards' attorney indicated that she was not interested in foreclosure intervention.

14. The following Defendants may claim a subordinate lien upon or subordinate legal interest in the Subject Property and in the event there is a surplus from the sale of the Subject Property, these Defendants may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRPC. The Defendants and such liens or legal interests are as follows:

- a. The Cotenants of the Subject Property whose interest is foreclosed out by this Order: Samuel Huggins; Vandora M. Huggins-Edwards a/k/a Vandora H. Edwards; Michael Huggins; Ira Huggins a/k/a Ira S. Huggins; Donnell Huggins; Glenn M. Huggins; Sylvia Anne Lawrence a/k/a Sylviatte Anne Lawrence; Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton; Sharon H. Smack; Dewayne Dixon; Derwin Huggins; Reginald Huggins; Joseph Huggins; Heather Huggins; Barbara Huggins; Kimberly Nelms; Timothy Nelms; Jennifer Nelms; Michael A. Brown; Demetrius Huggins Nelms; Darius Simmons; and Dondre Simmons.
- b. South Carolina Department of Revenue by virtue of the following tax liens:
 - i. Tax lien number 3-50531421-0 filed on November 24, 2003, against Sylviatte A. Lawrence;
 - ii. Tax lien number 3-50690369-9 filed on February 15, 2006, against Michael Brown;
 - iii. Tax lien number 3-50725140-7 filed on August 2, 2006, against Michael Brown;
 - iv. Tax lien number 3-50780184-0 filed on February 13, 2007, against Michael Brown; and
 - v. Tax lien number 3-50691442-2 filed on February 15, 2006, against Michael Brown.
- c. Safeway Finance by virtue of a judgment 2000-JG-10-121 in the amount of \$1,644.61 filed against Sharon R. Smack;
- d. Ford Motor Credit Company by virtue of a judgment in the amount of \$10,470.75 filed in civil action number 2000-CP-10-4695 against Michael A. Brown and Demetricia K. Brown.
- e. White Directory Holdings Carolina, Inc. d/b/a The Talking Phone Book by virtue of a judgment filed in civil action number 2005-CP-10-2035 on September 21, 2005, against Ira Huggins dba X-treme Detailing;
- f. Monogram Credit Card Bank of Georgia by virtue of a judgment in the amount of \$2,412.16 filed in civil action number 2002-CP-10-3506 on March 19, 2003, against Ira S. Huggins;

- g. Michael Twitty and Deborah Twitty by virtue of a judgment number 2003-JG-10-629 in the amount of \$3,173.50 filed on March 18, 2003, against Ira Huggins' d/b/a X-treme Detailing;
- h. The United States of America, by and through its agency, the Internal Revenue Service by virtue of federal tax lien #3-50572690-5 filed on September 10, 2004, against Ira S. Huggins;
- i. All unknown persons with any right, title or interest in the real estate described herein;
- j. Any persons who may be in the military service of the United States of America, being a class designated as John Doe;
- k. Any unknown minors or persons under a disability being a class designated as Richard Roe.

CONCLUSIONS ON LAW

"Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009) (citing *Franklin Credit Mgmt. Corp. v. Nicholas*, 812 A.2d 51, 57-58 (2002) ("In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note."); *Campaign v. Barba*, 23 A.D.3d 327 (N.Y. App. Div. 2005) ("To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment."); *In re Foreclosure of Real Prop. for \$143,600.00*, 577 S.E.2d 398, 406 (N.C. Ct. App. 2003) ("In a foreclosure proceeding, the lender bears the burden of proving that there was a valid debt, default, right to foreclose under power of sale, and notice."); 55 Am. Jur. 2d *Mortgages* § 604 ("[T]he burden of proof of any particular issue rests upon the party asserting the affirmative of that issue under the pleadings.")).

Plaintiff had the right to enforce the Note and foreclose the Mortgage. A mortgagee is entitled to enforce a promissory note if it is "the holder of the instrument." S.C. Code Ann. § 36-3-301(1). A party becomes the "holder" of an instrument through "negotiation." § 36-3-201(a). "[N]egotiation requires transfer of possession of the instrument and its indorsement by the holder." § 36-3-201(b).

In this case, Plaintiff had possession of the original Note. The Note contained an endorsement in blank from Ameriquest Mortgage Company, which allowed for the Note to be negotiated to Plaintiff by delivery alone. S.C. Code Ann. § 36-3-205(b) ("When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone..."); see also *In re Woodberry*, 383 B.R.

373, 378 (Bankr. D.S.C. 2008) ("The transfer of the note ... by endorsement in blank, 'vests in the transferee such rights as the transferor [possessed].").

Even though the Mortgage automatically followed the Note⁶, Plaintiff submitted into evidence an Assignment of Mortgage confirming its right to enforce the Mortgage. No party objected to the authenticity or admissibility of the Note, Mortgage, and Assignment, or otherwise objected to Plaintiff's standing to prosecute this foreclosure action.

Based on the testimony from Plaintiff's servicing agent and the original loan documents submitted into evidence at trial, the Court finds that a valid debt obligation existed between Plaintiff and Vandora Huggins-Edwards, that the Mortgage on the Subject Property was given to secure the repayment of that debt obligation, and that Plaintiff, as the holder and owner of the original Note and Mortgage with the right to enforce those instruments, is the real party in interest to prosecute this foreclosure action.

The Court further finds that Vandora Huggins-Edwards breached the terms of the Note and Mortgage as of January 1, 2006, by defaulting on the repayment of the debt owed to Plaintiff, and that her default entitled Plaintiff to accelerate the debt. The notices sent to Vandora Huggins-Edwards prior to acceleration complied with the requirements under the Mortgage.

Plaintiff fully complied with its obligations under South Carolina Supreme Court Administrative Orders 2009-05-20-01 and 2011-05-02-01.

"Once the debt and default have been established, the mortgagor has the burden of establishing a defense to foreclosure such as lack of consideration, payment, or accord and satisfaction." *Bell*, 385 S.C. at 375, 684 S.E.2d at 205. At trial, Vandora Huggins-Edwards offered no defenses to Plaintiff's cause of action for foreclosure and did not dispute the amount of the Total Debt.

Plaintiff is therefore entitled to a judgment of foreclosure in the amount of \$306,066.94, to have the Subject Property sold at a foreclosure sale, and to a deficiency judgment against Vandora Huggins-Edwards in the event that the foreclosure sale proceeds are insufficient to satisfy the Total Debt. Interest shall accrue to the Total Debt after the date of judgment at the rate of 8.8% per annum (pursuant to the terms of the Note and Mortgage). Accrued interest shall be added to the Total Debt and shall comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

The Court finds that the attorney's fee portion of the Total Debt, which is \$83,043, is a reasonable fee under the terms of the Note and Mortgage to allow Plaintiff's counsel for services performed and anticipated to be performed until final adjudication of this action. This fee is likewise reasonable based on

⁶ *Union Nat'l Bank v. Cook*, 110 S.C. 99, 96 S.E. 484 (1918) ("The note is the principal and the mortgage is the incident and follows the note in its delivery from one person to another.").

the time necessarily devoted to representation of Plaintiff during the almost six year course of these proceedings. The services that counsel performed for Plaintiff, which include the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the fee awarded. The fee is also reasonable given the professional standing of Plaintiff's counsel and that law firm's experience in handling foreclosure and title insurance matters. The fee awarded herein is also reasonable in light of the fees customarily awarded by this court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a foreclosure of a Mortgage plagued by severe title issues. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

IT IS THEREFORE ORDERED that

1. Title to the Adjoining Property is quieted in Defendant John C. Bigler.
2. Title to the Subject Property is quieted in the following Cotenants and in the following fractional interests:

- Vandora Huggins-Edwards (28/36th or 7/9th undivided interest)
- Samuel Huggins (1/36th undivided interest)
- Michael Huggins (1/36th undivided interest)
- Ira Huggins a/k/a Ira S. Huggins (1/36th undivided interest)
- Donnell Huggins (1/36th undivided interest)
- Glenn M. Huggins (1/36th undivided interest)
- Sylvia Anne Lawrence a/k/a Sylviatte Anne Lawrence (1/36th undivided interest)
- Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton (1/180th undivided interest)
- Sharon H. Smack (1/180th undivided interest)
- Dewayne Dixon (1/180th undivided interest)
- Derwin Huggins (1/180th undivided interest)
- Reginald Huggins (1/144th undivided interest)
- Joseph Huggins (1/144th undivided interest)
- Heather Huggins (1/144th undivided interest)
- Barbara Huggins (1/144th undivided interest)
- Kimberly Nelms (1/1260th undivided interest)
- Timothy Nelms (1/1260th undivided interest)
- Jennifer Nelms (1/1260th undivided interest)
- Michael Brown (1/1260th undivided interest)
- Demetrius Huggins Nelms (1/1260th undivided interest)
- Darius Simmons (1/1260th undivided interest)
- Dondre Simmons (1/1260th undivided interest)

3. Pursuant to this Court's Order filed February 15, 2012, the Mortgage constitutes a first priority lien that encumbers the interests of all of the Cotenants. However, as to its lien on the combined

2/9ths fractional interest in the Subject Property of the Cotenants other than Vandora Huggins-Edwards, Plaintiff is secured only to the extent of the \$92,490.22 in loan proceeds used to satisfy the NovaStar debt.

4. The legal descriptions in the Deed of Distribution, the Quit Claim Deed, and the Tax Deed are hereby reformed to the following:

ALL that certain lot, piece or parcel of land, with the building and improvements thereon, situate, lying and being in the Town of Maryville, St. Andrew's Parish, in Charleston County, State aforesaid, and known as Lot 324. This being the same property shown as Lot "A" on the "Plat of Resubdivision of Lots 322-323 and 324, Maryville - St. Andrews Parish, Charleston County, So. Carolina owned by Buster Huggins" prepared by W.L. Gaillard dated April 30, 1976, and recorded in the Office of the Register Mesne Conveyance for Charleston County on January 24, 1978, in Plat Book X at Page 132, said lot being approximately sixty (60) feet by one hundred (100) feet.

BUTTING AND ABOUNDING to the North on the property now or formerly of J.S. and Eva Washington, to the East on property of Buster Huggins, to the South on Gunn Avenue and to the West on Diana Street.

TMS# 418-05-00-280

5. Bigler shall have the option to purchase an additional fifteen (15) foot by one hundred (100) strip of land, or fifteen hundred (1500) square feet, from the Subject Property and have the boundary line dividing the Adjoining Property and the Subject Property moved fifteen (15) feet toward the east for five thousand (\$5,000) dollars ("Encroachment Funds").

6. In order to exercise this option, Bigler shall complete all of the following at his own expense no later than May 15, 2012:

- a. Pay the Encroachment Funds into the Clerk of Court for Charleston County no later than May 15, 2012, where they will be held pending conclusion of the foreclosure sale of the Subject Property;
- b. Commission a South Carolina registered land surveyor to re-survey the Adjoining Lot and Subject Property and draw up a new plat showing the final new boundary line;
- c. Submit a copy of the new plat to Plaintiff's counsel before seeking city and/or county approval;
- d. Obtain approval for the new boundary line and lot sizes from the appropriate city and/or county regulatory bodies;
- e. Have the new plat recorded in the appropriate public office; and
- f. Conduct all other actions necessary to finalize and effectuate the new boundary line and property dimensions of the Adjoining Property and the Subject Property.

7. Upon completion of the above conditions, Bigler is entitled to possession of the additional land purchased pursuant to the option.

8. Upon receipt of the Encroachment Funds, the Clerk of Court for Charleston County is hereby directed pursuant to Rule 67, SCRPC, to deposit the funds in an interest-bearing account of a bank or institution authorized to receive public funds until such time as directed by the Court to distribute them.

9. Nothing in this Order shall prohibit or limit Bigler from negotiating with Plaintiff to purchase a lesser amount of additional land from Lot 323 at a price agreed upon by them.

10. There is due on the Note and Mortgage set forth in the Complaint the sum of \$306,066.94 ("Total Debt"), together with interest at the rate provided therein on the balance of principal from February 28, 2012, to the date of this Order.

11. The Total Debt shall accrue interest at the per annum rate set forth in the Note and together with such interest shall constitute the total judgment debt due Plaintiff.

12. The amount of the judgment shall be subject to increase to permit Plaintiff to recover additional costs, commissions, and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. § 14-11-310. It may also increase to include supplemental compensation for attorneys' services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs or supplemental compensation. Such additional costs, commissions, and expenses may be established by affidavit and shall be adjudicated by the Court without further hearing.

13. The Defendant liable for the aforesaid judgment debt of the Note and Mortgage including interest at the rate of 8.8% per annum, Vandora Huggins-Edwards, shall pay on or before the date of sale of the Subject Property hereinafter described to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt, along with the costs and disbursements of this action.

14. On default of payment at or before the time of the foreclosure sale, the Subject Property shall be sold by the below-signed Master in Equity or other court-appointed or designated agent or auctioneer at public auction at the Charleston County Courthouse, in the City of Charleston, and State of South Carolina on the first available sales date in June 2012 or a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

- a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or

refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

- b. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.
- c. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.
- d. Purchaser shall pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.
- e. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity.

15. A deficiency judgment having been demanded against Vandora Huggins-Edwards, the sale will remain open for thirty (30) days pursuant to S.C. Code Ann. § 15-39-720.

16. Plaintiff may waive any of its rights, including its right to a personal or deficiency judgment, at any time prior to the foreclosure sale.

17. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after the date of sale, then the Master in Equity may advertise the Subject Property 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.

18. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

19. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

20. The Master in Equity will apply the proceeds of the sale as follows:
FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) up to \$92,490.22 or so much thereof as the purchase money will pay on the same. In the event that the proceeds from the foreclosure sale of the Subject Property exceed \$92,490.22, but fail to satisfy the Total Debt owed to Plaintiff by Vandora Huggins-Edwards, the Court may, at its option, either hold further hearing(s) as necessary to determine who shall be entitled to the portion of the foreclosure sale proceeds exceeding \$92,490.22 or apportion the remainder of the foreclosure sale proceeds as follows:

- Plaintiff will receive \$92,490.22 (minus the costs and expenses of sale) plus 7/9th of the remaining proceeds (i.e., the share that would have gone to Vandora Huggins-Edwards) up to the amount of Total Debt with any leftover funds being treated as surplus and distributed pursuant to Rule 71(c), SCRCPP;
- Samuel Huggins will receive 1/36th of the proceeds;
- Michael Huggins will receive 1/36th of the proceeds;
- Ira Huggins a/k/a Ira S. Huggins will receive 1/36th of the proceeds, but subject to any claim to the surplus proceeds of White Directory Holdings Carolina, Inc. dba The Talking Phone Book by virtue of a judgment filed in civil action number 2005-CP-10-2035 on September 21, 2005, and of Monogram Credit Card Bank of Georgia by virtue of a judgment in the amount of \$2,412.16 filed in civil action number 2002-CP-10-3506 on March 19, 2003, and of Michael Twitty and Deborah Twitty by virtue of a judgment number 2003-JG-10-629 in the amount of \$3,173.50 filed on March 18, 2003, and of The United States of America, by and through its agency, the Internal Revenue Service by virtue of federal tax lien #3-50572690-5 filed on September 10, 2004;
- Donnell Huggins will receive 1/36th of the proceeds;
- Glenn M. Huggins will receive 1/36th of the proceeds;
- Sylvia Anne Lawrence a/k/a Sylviette Anne Lawrence will receive 1/36th of the proceeds, but subject to any claim to the surplus proceeds of the South Carolina Department of Revenue by virtue of Tax lien number 3-50531421-0 filed on November 24, 2003;
- Andrean Huggins Cotton a/k/a Adrienne Huggins Cotton will receive 1/180th of the proceeds;
- Sharon H. Smack will receive 1/180th of the proceeds, but subject to any claim to the surplus proceeds of Safeway Finance

by virtue of a judgment 2000-JG-10-121 in the amount of \$1,644.61;

- Dewayne Dixon will receive 1/180th of the proceeds;
- Derwin Huggins will receive 1/180th of the proceeds;
- Reginald Huggins will receive 1/144th of the proceeds;
- Joseph Huggins will receive 1/144th of the proceeds;
- Heather Huggins will receive 1/144th of the proceeds;
- Barbara Huggins will receive 1/144th of the proceeds;
- Kimberly Nelms will receive 1/1260th of the proceeds;
- Timothy Nelms will receive 1/1260th of the proceeds;
- Jennifer Nelms will receive 1/1260th of the proceeds;
- Michael Brown will receive 1/1260th of the proceeds, but subject to any claim to the surplus proceeds of Ford Motor Credit Company by virtue of a judgment in the amount of \$10,470.75 filed in civil action number 2000-CP-10-4695 and the South Carolina Department of Revenue by virtue of Tax lien number 3-50690369-9 filed on February 15, 2006; Tax lien number 3-50725140-7 filed on August 2, 2006; Tax lien number 3-50780184-0 filed on February 13, 2007; and Tax lien number 3-50691442-2 filed on February 15, 2006;
- Demetrius Huggins Nelms will receive 1/1260th of the proceeds;
- Darius Simmons will receive 1/1260th of the proceeds;
- Dondre Simmons will receive 1/1260th of the proceeds;

NEXT: Any surplus remaining after the first two steps above shall be held pending further Order of this court.

21. After crediting the proceeds of the sale, net of any commission on sale, an Order for Deficiency Judgment against Vandora Huggins-Edwards shall be entered without further notice of hearing.

22. In the event the successful bidder is someone other than the Defendants in possession of the Subject Property, and title by deed from the Court is vested in such purchaser, the Sheriff of Charleston County, upon issuance of a writ of assistance by the Court, is ordered and directed to eject and remove from the property 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 property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

23. In the event the successful bidder is other than the Defendants in possession of the Subject Property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, and title by deed from the Court is vested in such purchaser, upon receipt of title from the Court, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the Subject Property by placing said personal property on the public street or highway or by any other means.

24. The Defendants named herein, and all persons whatsoever claiming under Defendants, are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said Subject Property so sold, or any part thereof.

25. In accordance with Rule 77(d), SCRPC, the Clerk of Court shall serve a notice of entry of this Order upon all parties not in default for failure to appear in this action.

26. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendants, the Defendants who were the titleholders of the Subject Property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register Mesne Conveyance Office is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

27. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

28. The following is a description of the property herein ordered to be sold:

ALL those two (2) lots of land, together with the buildings thereon, situate, lying and being on the public road or street known formerly as Seventh Avenue, but now known as Gunn Avenue, in the portion of Hillsboro called Maryville, in St. Andrews Parish, in the County of Charleston, State of South Carolina, and known and designated as Lot Nos. 322 and 323 on a plat of Hillsboro called Maryville, which plat is recorded in Plat Book "F", at Page 188 of Charleston County. Reference is hereby craved to said plat for a more complete and accurate metes and bounds description.

This being the identical property conveyed to Vandora H. Edwards a/k/a Vandora M. Huggins-Edwards by deed of Lucille Huggins, dated November 15, 2004 and recorded December 2, 2004 in Deed Book Y517 at Page 835.

LESS the portions of the land known as Lot 323 designated as Lot Nos. 322 and 323 on a plat of Hillsboro called Maryville, which plat is recorded in Plat Book "F", at Page 188 of Charleston County, to be acquired by John C. Bigler pursuant to the terms of the Final Order entered in civil action # 2006-CP-10-2859 in Charleston County.

Property Address: 1218 Gunn Avenue
Charleston, SC 29407

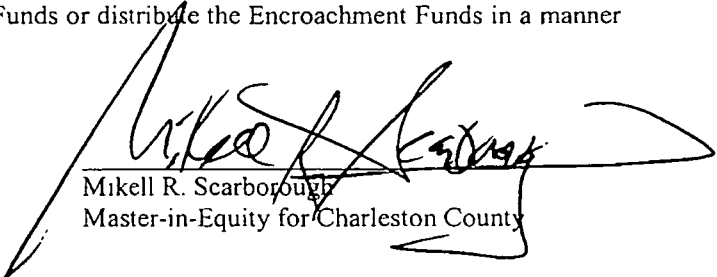
TMS# 418-05-00-279

29. Upon Bigler exercising the option to acquire additional land from Lot 323 and satisfying the conditions imposed by this Order for exercising the option, the Court shall supplement this Order to establish the new legal description of the property to be sold at the foreclosure sale and shall thereafter issue the Notice of Sale with the new legal description.

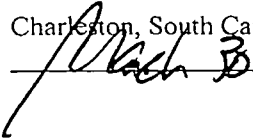
30. In the event that the proceeds from the foreclosure sale of the Subject Property are less than \$92,490.22, Plaintiff shall be permitted, without a further hearing, to apply for and receive all or a portion of the Encroachment Funds up to the amount necessary to reach \$92,490.22.

31. In the event that proceeds from the foreclosure sale of the Subject Property exceed \$92,490.22, the Court may, at its option, either hold further hearing(s) as necessary to determine who shall be entitled to the remaining Encroachment Funds or distribute the Encroachment Funds in a manner it determines equitable without further hearing.

AND IT IS SO ORDERED!



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

Charleston, South Carolina
, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2006-CP-10-2859

Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pass Through Certificates, Series 2005-R4CGM under the Pooling and Servicing Agreement dated as of May 1, 2005, without recourse

Vandora M. Huggins-Edwards a/k/a Vandora H. Edwards *et al*

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: Sean M Foerster (SC Bar # 77466) Attorneys for the Plaintiff Rogers Townsend & Thomas, PC 220 Executive Center Drive (29210) Post Office Box 100200 Columbia, SC 29202-3200 (803) 771-7900 - Tcl. (803) 343-7013 - Fax sean.foerster@rtt-law.com</p>	<p>Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
---	---

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 _____

FILED
 2012 JUL 16 PM 4:29
 JULIE J. ARMSTRONG
 CLERK OF COURT

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 :

Supplemental order

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

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

All that certain piece, parcel, or tract of land, with the buildings and improvements thereon, situate, lying, and being on the public road or street known formerly as Seventh Avenue, but now known as Gunn Avenue, in the portion of Hillsboro called Maryville, in St. Andrews Parish, being in the County of Charleston, South Carolina, and being known and designated as "New Lot 323/322" containing 0.17 acres (7,455 sq. ft.) on that Plat prepared by Charles F. Dawley, Jr., R.L.S., Dawley Surveying Company, LLC, S.C. Reg. No. 9314, and entitled "A Resurvey and Property Line Adjustment at Lots 322, 323 and 324 in Maryville, City of Charleston, Charleston County, South Carolina, Prepared at the Request of John C. Bigler," said Plat being recorded in the RMC Office for Charleston County on June 15, 2012, in Plat Book S12 at Page 114. Reference is hereby craved to said plat for a more complete and accurate metes and bounds description.

This being the identical property conveyed to Vandora H. Edwards a/k/a Vandora M. Huggins-Edwards by deed of Lucille Huggins, dated November 15, 2004 and recorded December 2, 2004 in Deed Book Y517 at page 835, but the dimensions of which were modified pursuant to the Final Order entered on April 5, 2012, in Civil Action # 2006-CP-10-2859 in the Court of Common Pleas for Charleston County, South Carolina

Property Address: 1218 Gunn Avenue
Charleston, SC 29407

TMS #: 418-05-00-279

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.

Master in Equity

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2012, and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2012, to attorneys of record or to parties (when appearing pro se) as follows.

Sean M. Foerster (SC Bar # 77466)
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400

ATTORNEY(S) FOR THE PLAINTIFF(S)
(010378-00062 SMF)

Arthur C. McFarland, Esquire
The Law Office of Arthur C. McFarland
1847 Ashley River Road
Charleston, SC 29407

Adam N. Marinelli, Esquire
Counsel for Litigation
South Carolina Dept. of Revenue
P.O. Box 12265
Columbia, SC 29211

Roy Boggs, Esquire
Korn Law Firm
P.O. Box 12369
Columbia, SC 29211-2369

Leo A. Dryer, Esquire

Dryer Law Firm

P O Box 11567

Columbia, SC 29211

Lee E. Berlinsky, Esquire

Assistant U. S. Attorney

151 Meeting Street, Suite 200

Charleston, SC 29401

Eben H Cockley, Esquire

56 Broad Street

Charleston, SC 29401

John C. Bigler, *pro se*

15 Leeann Lane

Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc , Asset Backed Pass Through Certificates, Series 2005-R4CGM under the Pooling and Servicing Agreement dated as of May 1, 2005, without recourse,

Plaintiff,

v.

Vandora M Huggins-Edwards a/k/a Vandora H Edwards *et al* ;

Defendants.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2006-CP-10-2859

SUPPLEMENTAL ORDER

JULIE J. ARMSTRONG
CLERK OF COURT

2012 JUL 16 PM 4:29

FILED

Pursuant to Rule 53, SCRPC, the above-entitled matter was referred to this Court. On April 5, 2012, the Court entered a Final Order that included an option for Defendant John C. Bigler ("Bigler") to acquire additional land from Lot 323 if Bigler satisfied certain conditions set forth therein by May 15, 2012. Bigler requested, and the Court granted, an extension of this deadline until June 15, 2012.

The legal description of the property subject to Plaintiff's mortgage was previously.

ALL those two (2) lots of land, together with the buildings thereon, situate, lying and being on the public road or street known formerly as Seventh Avenue, but now known as Gunn Avenue, in the portion of Hillsboro called Maryville, in St. Andrews Parish, in the County of Charleston, State of South Carolina, and known and designated as Lot Nos. 322 and 323 on a plat of Hillsboro called Maryville, which plat is recorded in Plat Book "F", at Page 188 of Charleston County. Reference is hereby craved to said plat for a more complete and accurate metes and bounds description.

This being the identical property conveyed to Vandora H. Edwards a/k/a Vandora M. Huggins-Edwards by deed of Lucille Huggins, dated November 15, 2004 and recorded December 2, 2004 in Deed Book Y517 at Page 835.

Property Address. 1218 Gunn Avenue
Charleston, SC 29407

TMS# 418-05-00-279

Defendant Bigler timely satisfied the conditions imposed by the Final Order and thereby exercised his option to acquire the additional land from Lot 323 free and clear of Plaintiff's mortgage. Plaintiff now seeks to proceed with the foreclosure sale of the remaining property that is subject to its mortgage—Lot 322 and the portion of 323 not acquired by Bigler. The Court hereby supplements the Final Order to establish the new legal description of the property to be sold at the foreclosure sale.

IT IS HEREBY ORDERED that

1. Defendant John C. Bigler now holds title to the land and improvements thereon designated as "New Lot 323/324" and situated to the west of the new boundary line shown on the Plat prepared by Charles F. Dawley, Jr., R.L.S., Dawley Surveying Company, LLC, S.C. Reg. No. 9314, and entitled "A Resurvey and Property Line Adjustment at Lots 322, 323 and 324 in Maryville, City of Charleston, Charleston County, South Carolina, Prepared at the Request of John C. Bigler" and recorded in the RMC Office for Charleston County on June 15, 2012, in Plat Book S12 at Page 114. Bigler's title to this portion of Lot 323 is free and clear of Plaintiff's mortgage lien.

2. The legal description of the property that is now subject to Plaintiff's mortgage and that shall be sold at the foreclosure sale is amended as follows:

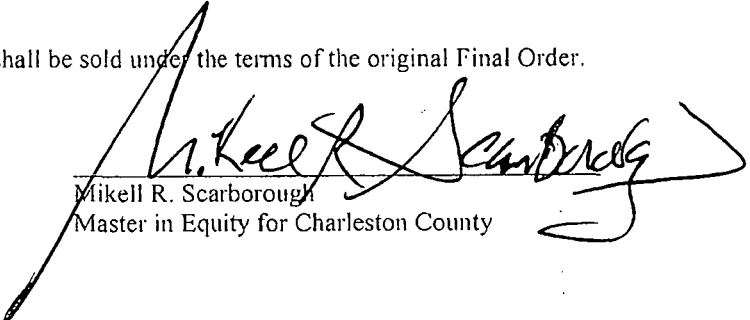
All that certain piece, parcel, or tract of land, with the buildings and improvements thereon, situate, lying, and being on the public road or street known formerly as Seventh Avenue, but now known as Gunn Avenue, in the portion of Hillsboro called Maryville, in St. Andrews Parish, being in the County of Charleston, South Carolina, and being known and designated as "New Lot 323/322" containing 0.17 acres (7,455 square feet) on that Plat prepared by Charles F. Dawley, Jr., R.L.S., Dawley Surveying Company, LLC, S.C. Reg. No. 9314, and entitled "A Resurvey and Property Line Adjustment at Lots 322, 323 and 324 in Maryville, City of Charleston, Charleston County, South Carolina, Prepared at the Request of John C. Bigler," said Plat being recorded in the RMC Office for Charleston County on June 15, 2012, in Plat Book S12 at Page 114. Reference is hereby craved to said plat for a more complete and accurate metes and bounds description.

This being the identical property conveyed to Vandora H. Edwards a/k/a Vandora M. Huggins-Edwards by deed of Lucille Huggins, dated November 15, 2004, and recorded December 2, 2004, in Deed Book Y517 at page 835, but the dimensions of which were modified pursuant to the Final Order entered on April 5, 2012, in Civil Action # 2006-CP-10-2859 in the Court of Common Pleas for Charleston County, South Carolina.

Property Address: 1218 Gunn Avenue
Charleston, SC 29407

TMS #: 418-05-00-279

3. The mortgaged property shall be sold under the terms of the original Final Order.
AND IT IS SO ORDERED!

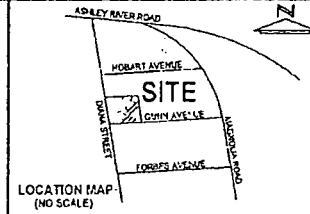

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
7/13, 2012

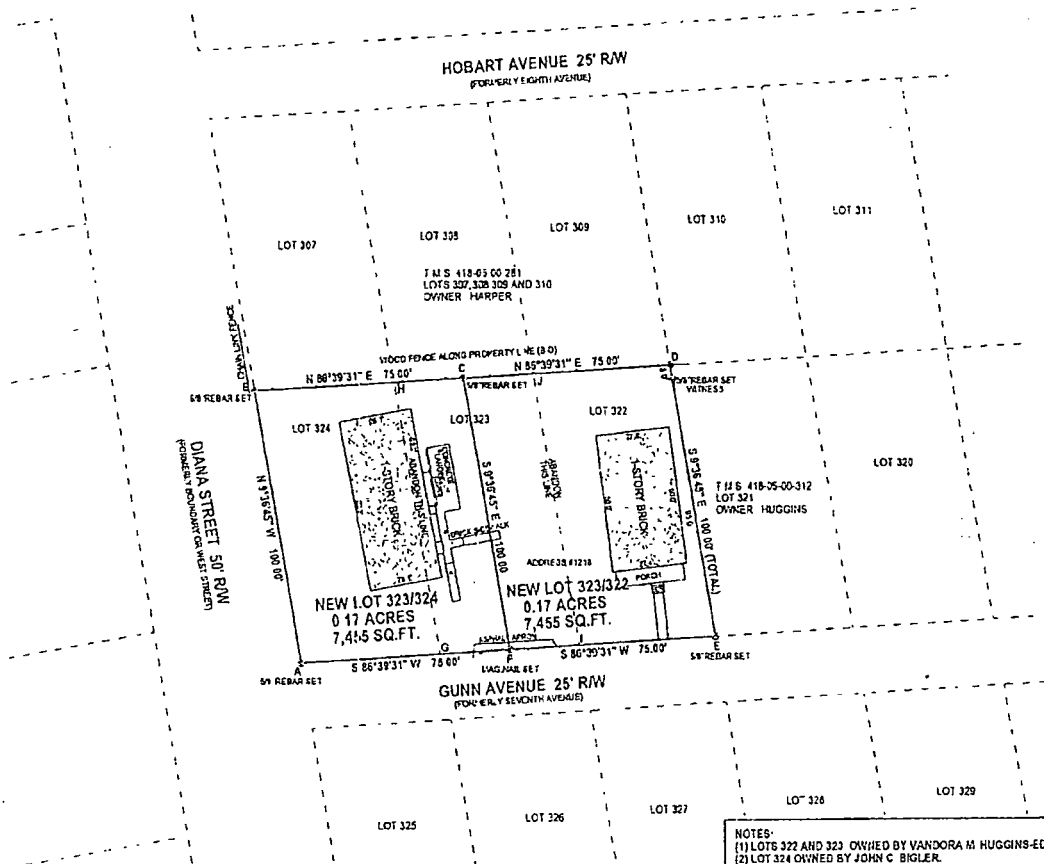
PLANNING AND RMC USE ONLY

APPROVED PLAT
DATE 6/15/12
S. J. WOODSON, P.E.
ENGINEERING DIVISION
CITY OF CHARLESTON

RECORDED	
DATE	June 15, 2012 TIME 11:10:45 AM
Book/Map	517 0114 (Small Plat)
Charle Lybrand Register, Charleston County, SC	
FILED IN THE PUBLIC RECORDS	
Filed By:	
Record Fee	3 10.00 CITY OF CHARLESTON
Postage	3 10.00 ATTENTION MICHAEL DRUMBO
TOTAL	6 20.00
Drawer	DRUMBO
Check	BLW
Location	GUINN AVENUE



BOOKED IN THE PUBLIC RECORDS
ON JULY 2011



NOTES:
(1) LOTS 322 AND 323 OWNED BY VANDORA M. HUGGINS-EDWARDS.
(2) LOT 324 OWNED BY JOHN C. BIGLER.
(3) THE PURPOSE OF THIS PLAT IS TO ABANDON THE ORIGINAL INTERIOR PROPERTY LINES OF LOTS 322, 323 AND 324, AND DIVIDE LOT 323 IN HALF AND COMBINE THE WESTERN HALF OF LOT 323 WITH LOT 324 AND COMBINE THE EASTERN HALF OF LOT 323 WITH LOT 322.
(4) I HAVE FOUND NO EVIDENCE THAT LOTS 322 AND 323 WERE OBTAINED BY EITHER BY DEED OR PLAT AT ANY TIME PRIOR TO THE DATE OF THIS PLAT.
(5) THIS PROPERTY IS LOCATED IN FLOOD ZONE X ACCORDING TO NFIP FIRM 45019C-0511 J 11/17/04

PLAT SHOWING

A RESURVEY AND PROPERTY LINE ADJUSTMENT
AT LOTS 322, 323 AND 324 IN MARYVILLE,
CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA

PREPARED AT THE REQUEST OF JOHN C. BIGLER

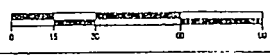


SURVEYOR'S CERTIFICATION

I HEREBY STATE THAT TO THE BEST OF MY PRESENT KNOWLEDGE, INFORMATION AND BELIEF, THE ABOVE SHOWN AND DESCRIBED INFORMATION IS TRUE AND CORRECT AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF SOUTH CAROLINA. I HAVE NOT BEEN DISQUALIFIED FROM PRACTICING SURVEYING IN SOUTH CAROLINA. I HAVE NOT BEEN CONVICTED OF A CRIME THAT WOULD DISQUALIFY ME FROM PRACTICING SURVEYING IN SOUTH CAROLINA.
CHARLES F. DAWLEY, L.L.C.
415 REGISTRATION FIDELITY
771A GRANDE LANE
YAMBOO, S.C. 29027
803-884-2151

- REFERENCES
- T11 S 418-05-00 270 (LOTS 323 AND 323)
 - T11 S 418-05-00-280 (LOT 324)
 - DEED BOOK '517', PAGE 335
 - DEED BOOK '008', PAGE 755
 - PLAT BOOK 'F', PAGE 188
 - PLAT BOOK 'G', PAGE 40A
 - PLAT BOOK 'T', PAGE 156
 - PLAT BOOK 'Y', PAGE 55
 - PLAT BOOK 'Z', PAGE 492

DATE: MAY 29, 2012
SCALE: 1" = 30'





City of Charleston

South Carolina

Department of Public Service

JOSEPH P. RILEY, JR.
Mayor

LAURA S. CABINESS, P.E.
Director

PLAT REVIEW COMMITTEE - PLAT RECORDATION BOOK and PAGE

Date: 6-15-2012
Pages: 1

To: Charles Dawley

From: Michael Dinunzio
(Engineering Tech.)

Attn: Charles Dawley

Tracking Number (Engineering): 2012 06 01 002

(Note this tracking number is for Engineering use only and is not intended to be used for RMC inquiries)

Re: Gunn Ave

The above plat (s) was recorded at the REGISTER MESNE CONVEYANCE
COUNTY OFFICE BUILDING, CHARLESTON, SOUTH CAROLINA

DATE-RECORDED: 6-15-2012
BOOK: 512
PAGE: 0114

Common Pleas
Julie Armstrong
Charleston County Judicial Center
Charleston, SC 29401

Date: 6/14/2012
Transaction Number: 1
Clerk: Julie Armstrong
Received By: cocsmc

Received From: BIGLER, John
Paying For: John BIGLER
Payment Type: CK
Payment Amount: \$ 5,000.00
Reference Number: 124070

<u>Case #</u>	<u>Caption</u>	<u>Amount Paid</u>
2006CP1002859	Deutsche Bank National Trust Company As Trustee Etc , plaintiff, et al VS Vandora M Huggins Edwards, defendant, et al	\$ 5,000.00



THIS CHECK IS VOID WITHOUT A COLORED BORDER AND BACKGROUND PLUS A KNIGHT & FINGERPRINT WATERMARK ON THE BACK - HOLD AT ANGLE TO VIEW

124070

FIRST RELIANCE
BANK
2170 West Pelmetto Street
Florence, South Carolina 29501
(843) 658-5000

REMITTER: JOHN C BIGLER

DATE: 6/14/12

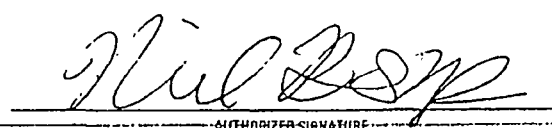
PAY TO THE
ORDER OF

THE CLERK OF COURT FOR CHARLESTON COUNTY, SC

EXACTLY **5,000 AND 00/100 DOLLARS

\$ 5,000.00

CASHIERS CHECK



ENCROACHMENT FUNDS #2006CP1002859

AUTHORIZED SIGNATURE

⑈0000124070⑈ ⑆053208008⑆ 01010000078⑈

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM CHARLESTON COUNTY

MASTER IN EQUITY COURT

Mikell R. Scarbrough

CASE NO. 2006-CP-10-2859

In the Matter of:

Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc. Asset Backed Pass Through Certificates, Series 2005-R4CGM under The pooling and Serving Agreement dated as of May 1, 2005, without recourse, Charleston County Master In Equity Court

Deutsche BankAppellants,

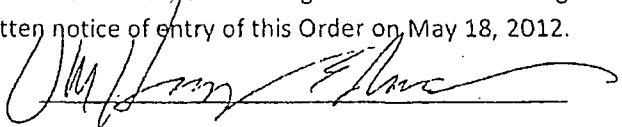
Vandora M. Huggins-EdwardsRespondent.

FILED
2012 MAY 18 PM 2:47
JULIE J. ANDERSON
CLERK OF COURT

NOTICE OF APPEAL

Vandora M. Huggins-Edwards appeal the Order of the Honorable Judge Mikell R. Scarborough dated April 05, 2012. Appellant received written notice of entry of this Order on May 18, 2012.

May 19, 2012



Other Counsel of Record

Vandora M Huggins-Edwards

Rogers Townsend & Thomas, PC
200 Executive Center Drive
Columbia, South Carolina 29210
Sean M. Foerster attorney for Respondent

1218 Gunn Ave
Charleston, S.C. 29407
Vandora M. Huggins-Edwards PRO SE for
Appellant

Enclosed herewith and served upon you is the copy of Notice of Appeal in this matter:

Rogers Townsend & Thomas, PC
200 Executive Drive Center Drive
Columbia, South Carolina 29210
Sean M. Foester

John C. Biger
15 Leeann Lane
Mt. Pleasant, SC 29464

Glenn Huggins
109 Spring Ave
Watertown, NY 13601

Ira S. Huggins
C/o FCI Petersburg-LOW
Reg. No. 12531-171
P.O. Box 1000
Petersburg, VA 23804

Ronald W. Urban, Esquire
Office of General Counsel for Litigation
P. O. Box 12265
Columbia, S. C. 29211

Roy Biggs , Esquire
Korn Firm
P. O. Box 12369
Columbia S. C. 29211-2369

Leo A. Dryer, Jr.
Dryer Law Office
P.O. Box 11567
Columbia, S.C. 29211

Lee Berlinsky
Assistant U. S. Attorney
151 Meeting St Ste 200
Charleston, S. C. 29401

Eben H. Cockley,
56 Broad St
Charleston, S. C. 29407

Sharon H. Smack
1957 Boeing Avenue
Charleston, SC 29407

Dewayne Dixon
2405 Southern Blvd. - Apt. 7F
Bronx, NY 10458

Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Kimberly Nelms
c/o Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Timothy Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Timothy Nelms
c/o Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Michael A. Brown
1957 Boeing Avenue
Charleston, SC 29407

Michael A. Brown
c/o Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Demetrius Huggins Nelms – a minor
1957 Boeing Avenue
Charleston, SC 29407

Darius Simmons – a minor
1957 Boeing Avenue
Charleston, SC 29407

Dondre Simmons – a minor
1957 Boeing Avenue
Charleston, SC 29407

Reginald Huggins
1064 Springfield Church
Trenton, SC 29847

Joseph Huggins
1064 Springfield Church
Trenton, SC 29847

Heather Huggins
1064 Springfield Church
Trenton, SC 29847

Barbara Huggins
1064 Springfield Church
Trenton, SC 29847

Michael Twitty
2412 Caslreagh Road
Charleston, SC 29414

Deborah Twitty
2412 Caslreagh Road
Charleston, SC 29414

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

Sean M. Foerster
Sean.Foerster@RTT-LAW.COM
P 803 744-1855



July 12, 2012

The Honorable Mikell R. Scarborough
Master in Equity for Charleston County
100 Broad Street, Suite 266
Charleston, SC 29401

Re: *Deutsche Bank National Trust Company, as Trustee of Ameriquest Mortgage Securities, Inc., Asset Backed Pass Through Certificates, Series 2005-R4CGM under the Pooling and Servicing Agreement dated as of May 1, 2005, without recourse vs. Vandora M. Huggins-Edwards a/k/a Vandora H. Edwards, et al.*
Civil Action# 2006-CP-10-2859
Our File # 010378-00062

Dear Judge Scarborough:

Pursuant to the Final Order entered in this case, enclosed are two copies of a proposed Supplemental Order amending the legal description of the property to be sold at the foreclosure sale. The new legal description is based on the new survey and plat done for John Bigler, which has been approved by the City of Charleston and recorded in the RMC Office for Charleston County on June 15, 2012, in Plat Book S12 at Page 114. A copy of the recorded plat is also enclosed for your review along with other documents showing Mr. Bigler's compliance with the Final Order.

If the Supplemental Order meets with your approval, please execute this Order and have the original filed with the Clerk of Court. Upon entry of the Supplemental Order, my office will prepare the Notice of Sale and forward it to January O'Neal with your office.

Please be aware that Vandora M. Huggins-Edwards attempted to appeal the Final Order in this matter. She filed a Notice of Appeal (copy enclosed) on May 18, 2012, but she improperly filed it in the South Carolina Supreme Court rather than the South Carolina Court of Appeals. When my office last spoke with the Court of Appeals, they still had not received any paperwork concerning this appeal and did not have an active filed opened for it. Further, she filed the Notice of Appeal *pro se* even though she is still represented by Arthur McFarland,

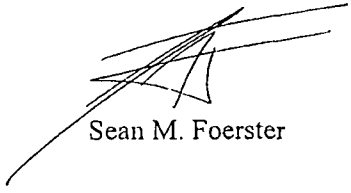
This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property.

which violates South Carolina's prohibition on hybrid representation. Mr. McFarland had no knowledge that his client had filed the Notice of Appeal. Ms. Huggins-Edwards then failed to order the transcript or file an Initial Brief of the Appellant as required by the rules. Nothing further has happened in the attempted appeal. Ms. Huggins-Edwards' appeal was not properly perfected, and, if the Court of Appeals ever opens a file for it, it will likely be administratively dismissed.

Even if Ms. Huggins-Edwards had properly perfected her appeal, Plaintiff's position is that the carrying out the provisions of the Final Order would be exempt from the appellate stay pursuant to S.C. Code Ann. § 18-9-170 and Rule 241(b), SCACR, because Ms. Huggins-Edwards has not posted a bond.

Thank you for your assistance in this matter. Please let me know if anything further is needed.

Very truly yours,



Sean M. Foerster

SMF/tds
Enclosure

cc:
Arthur C. McFarland, Esquire
The Law Office of Arthur C. McFarland
1847 Ashley River Road
Charleston, SC 29407

Vandora Huggins-Edwards
1218 Gunn Avenue
Charleston, SC 29407

Sylvia Anne Lawrence a/k/a Sylviatte Anne Lawrence
600 Cane Mill Court
Summerville, SC 29485

Glenn M. Huggins
109 Spring Avenue
Watertown, NY 13601

Donnell Huggins
1218 Gunn Avenue
Charleston, SC 29407

Samuel Huggins
1990 Ashley River Road
Charleston, SC 29407-4780

Ira Huggins
Petersburg Federal Correctional Institution
1100 River Road
Hopewell, VA 23860

Ira Huggins
P.O. Box 1008-Lee Hall
Reg. No. 12531-171
LSCI Petersburg
Petersburg, VA 23804-1000

Derwin Huggins
5752 Utrecht Road
Baltimore, MD 21206-2935

Sharon H. Smack
1957 Boeing Avenue
Charleston, SC 29407

Dewayne Dixon
2405 Southern Blvd. - Apt. 7F
Bronx, NY 10458

Timothy Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Jennifer Nelms
2802 Olinville Avenue - Apt. E-9
Bronx, NY 10467

Michael A. Brown
1957 Boeing Avenue
Charleston, SC 29407

Demetrius Huggins Nelms
1957 Boeing Avenue
Charleston, SC 29407

Darius Simmons
1957 Boeing Avenue
Charleston, SC 29407

Dondre Simmons
1957 Boeing Avenue
Charleston, SC 29407

Reginald Huggins
1064 Springfield Church
Trenton, SC 29847

Joseph Huggins
1064 Springfield Church
Trenton, SC 29847

Heather Huggins
1064 Springfield Church
Trenton, SC 29847

Barbara Huggins
1064 Springfield Church
Trenton, SC 29847

Adam N. Marinelli, Esquire
Counsel for Litigation
South Carolina Department of Revenue
P.O. Box 12265
Columbia, SC 29211

Roy Boggs, Esq.
Korn Law Firm
P.O. Box 12369
Columbia, SC 29211-2369

Leo A. Dryer, Jr., Esq.
Dryer Law Offices
P.O. Box 11567
Columbia, SC 29211

Michael Twitty
2412 Caslreagh Road
Charleston, SC 29414

Deborah Twitty
2412 Caslreagh Road
Charleston, SC 29414

Lee E. Berlinsky, Esq.
Assistant U.S. Attorney
151 Meeting Street, Ste. 200
Charleston, SC 29401

John C. Bigler
15 Leeann Lane
Mt. Pleasant, SC 29464

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2006-CP-10-2859

Deutsche Bank National Trust Company, as Trustee of
 Ameriquest Mortgage Securities, Inc., Asset Backed
 Pass Through Certificates, Series 2005-R4CGM under
 the Pooling and Servicing Agreement dated as of May
 1, 2005, without recourse

Vandora M. Huggins-Edwards a/k/a Vandora H.
 Edwards; et al.

PLAINTIFF

DEFENDANTS

<p>Submitted by: Sean M. Focrster (SC Bar # 77466) Attorneys for the Plaintiff Rogers Townsend & Thomas, PC 220 Executive Center Drive (29210) Post Office Box 100200 Columbia, SC 29202-3200 (803) 771-7900 - Tel. (803) 343-7013 - Fax Sean.focrster@rtt-law.com</p>	<p>Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
---	--

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), SCRPC; Rule 41, 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 _____

BY JULIE J. ARMSTRONG
 CLERK OF COURT
 2012 APR -5 AM 9:24

FILED

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)
		\$
		\$
		\$

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.

Master in Equity 3062 Judge Code 3/30/12 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____