

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
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SC Court of Appeals

Townes at Pelham Owners' Association, Inc.,
Respondent,

v.

Donna Boyd, Bank of America, N.A. by Assignment
From Mortgage Electronic Registration Systems,
Defendants,

And

Donna Boyd, Third Party Plaintiff

v.

Eric Hedrick, in his Individual and Official Capacity as
Owner or President of Cornerstone Realty, Inc. and
Cornerstone Realty, Inc., Third Party Defendants,

Of whom Donna Boyd is the Appellant

Appellate Case No. 2014-000701

The Honorable Charles B. Simmons, Jr.
Greenville County
Trial Court Case No. 2102CP2303686

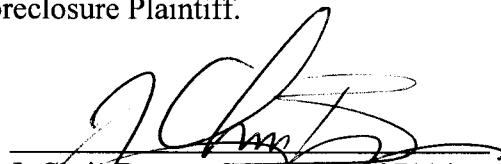
MOTION FOR CONTINUANCE

NOW COMES, the Respondent, Townes at Pelham Owners' Association, Inc., by and through its undersigned counsel, and moves for a ninety (90) day continuance to file its initial brief and designation of matter in the above-referenced matter. This motion is based upon the following facts:

- 1) Lakewood Loan Servicing, LLC (Foreclosure Plaintiff) currently holds the first lien against the real property owned by Appellant and the subject property in this appeal.

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- 2) Lakeview Loan Servicing, LLC filed a foreclosure action involving the subject property on August 22, 2014. The Appellant and Respondent are both named as Defendants in this foreclosure action. A copy of the Summons and Complaint in this foreclosure action is attached as Exhibit A and incorporated herein by reference.
- 3) Foreclosure Plaintiff has requested a judgment of foreclosure and, if granted by the court, said judgment will eliminate any legal or equitable interest that Appellant or Respondent has in the subject property and eliminate both parties' standing to have the appellate case decided before this court.
- 4) Therefore, in the interest of judicial efficiency, Respondent respectfully requests a ninety (90) day extension to file its initial brief pending the adjudication of the pending foreclosure action initiated by Foreclosure Plaintiff.



J. Chris Brown, SC Bar No. 07114
Babb & Brown, P.C.
505 West Butler Road
Greenville, SC 29607
(864) 422-0022
Attorney for Respondent, Townes at Pelham
Owners' Association, Inc.

Greenville, South Carolina
December 1, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Lakeview Loan Servicing, LLC,

PLAINTIFF,

vs.

Donna Boyd, and The Townes at Pelham Owners' Association, Inc.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

SUMMONS

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: 2014-CP-23-04648

DEFICIENCY WAIVED

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMMER
2014 AUG 22 PM 12:59

F13-02716

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you or otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 1300 Pickens Street, P.O. Box 11264, Columbia, South Carolina, 29211-1264, within thirty (30) days after service hereof, except as to the United States of America, which shall have Sixty (60) days, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

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

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817

Kristen Washburn
PETER D. KORN / DEAN HAYES / KEVIN T. HARDY / ELIZABETH R. POLK / KRISTEN E. WASHBURN / NOAH M. HICKS II
Attorneys for Plaintiff

Columbia, South Carolina
August 21, 2014

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Lakeview Loan Servicing, LLC,
PLAINTIFF,

vs.

Donna Boyd, and The Townes at Pelham Owners'
Association, Inc.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

COMPLAINT

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO: **2014-CP-23-04648**

DEFICIENCY WAIVED

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 AUG 22 PM 12 58

F13-02716

The Plaintiff, complaining of the Defendants above-named would respectfully show unto this Honorable Court:

1. That the Plaintiff is a limited liability company organized and existing under and by virtue of the laws of the State of New York; and that the Defendant, Donna Boyd, is upon information and belief, a citizen and resident of the County of Greenville, State of South Carolina. That the Defendant, The Townes at Pelham Owners' Association, Inc., is upon information and belief a corporation organized and existing under the laws of South Carolina.

2. Any Defendant described herein as a judgment creditor(s) has, by filing the judgment(s), designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of Section 15-35-840 of the S.C. Code of Laws (1976) as amended.

3. That the real property hereinafter described, which is the subject of this action, is situated and located in the County of Greenville, State of South Carolina.

4. That on or about January 7, 2008, for value received, Donna Boyd did execute and deliver to NVR Mortgage Finance, Inc., a certain promissory note in writing according to the terms and conditions set out therein, wherein and whereby said Donna Boyd promised to pay to NVR Mortgage Finance, Inc., the sum of Two Hundred Twenty-Two Thousand Seven Hundred Ninety-Two And 00/100 Dollars (\$222,792.00), together with interest thereon at the rate of Five And 50/100 per cent (5.50%) per annum.

5. That in order to better secure the payments of the said note and debt, in accordance with the terms and conditions thereof, Donna Boyd did execute and deliver on January 7, 2008 unto Mortgage Electronic Registration Systems, Inc., as nominee for NVR Mortgage Finance, Inc., its successors and assigns, a mortgage covering the following described property:

Legal description and property address:

All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville being shown and designated as Lot 1 of The Townes at Pelham as shown on plat thereof being recorded in Plat Book 1029 at Page 25 and being shown and designated on a new plat prepared by Sinclair & Associates, LLC for Donna Boyd being recorded in Plat Book 67 at Page 8 and having, according to said plat, metes and bounds as shown thereon.

This being the same property conveyed to Donna Boyd by virtue of a Deed from NVR, Inc., a Virginia Corporation, dated January 7, 2008 and recorded January 9, 2008, in Book 2308 at Page 734 in the Office of the Register of Deeds for Greenville County, South Carolina.

6 Pelham Townes Drive, Greenville, SC 29615
TMS# 054045-01-028-00

6. Thereafter said mortgage was recorded in Book 4905 at page 464 on January 9, 2008 in the office of the Register of Deeds of Greenville County.

7. The above referenced instrument constitutes a first mortgage lien and is a purchase money mortgage with the proceeds of the loan being used to purchase the property above described.

8. Thereafter, by virtue of an assignment dated April 19, 2012, recorded April 24, 2012, in Mortgage Book 5158 at page 5959, Mortgage Electronic Registration Systems, Inc. assigned said mortgage unto Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP; however said assignment is invalid due to it fails to reference the mortgage book and page.

9. Thereafter, by virtue of a corrective assignment dated May 1, 2014, recorded May 14, 2014, in Mortgage Book MO 5265 at page 0533, Mortgage Electronic Registration Systems, Inc. as nominee for NVR Mortgage Finance, Inc., its successors and assigns assigned said mortgage unto Bank of America, N.A.

10. Thereafter, by virtue of an assignment dated July 21, 2014, recorded August 18, 2014, in Mortgage Book MO 5265 at page 2158, Bank of America, N.A. by Manufacturers and Traders Trust Company, a/k/a M&T Bank, A New York Corporation, as Attorney in Fact for Bank of America, National Association pursuant to a Limited Power of Attorney Dated July 3, 2013 from Bank of America, National Association to Manufacturers and Traders Trust Company a/k/a M&T Bank assigned said mortgage unto Lakeview Loan Servicing, LLC Lakeview Loan Servicing, LLC the present lien holder and Plaintiff herein.

11. Pursuant to South Carolina law, Plaintiff is entitled to enforce the terms of the subject note and mortgage.

12. That the Defendant, The Townes at Pelham Owners' Association, Inc., is made a party by virtue of the following:

(a) Notice of Lien filed by The Townes at Pelham Owners' Association, Inc. against Donna Boyd, dated November 10, 2009, on November 11, 2009, in Book 5062 at Page 18, in the amount of \$805.54.

(b) Default Judgment filed by The Townes at Pelham Owners' Association, Inc. against Donna Boyd, dated December 15, 2010 and recorded December 23, 2010, in the amount of \$6,699.36 and identified as Judgment Roll/Case # 10-CP-23-10365.

(c) Pending Foreclosure action filed by The Townes at Pelham Owners' Association, Inc. against Donna Boyd, et al, in the Court of Common Pleas for Greenville County bearing C/A No. 2012-CP-23-3686.

(d) Any homeowners liens or assessments recorded or unrecorded that are due or may become due in the future..

13. According to the terms and conditions of the said note and mortgage, it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if the same should be placed in the hands of an attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said mortgage as a part of the debt secured thereby.

14. That under the terms and conditions of said mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the mortgaged premises.

15. Further, under the terms and conditions of said mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said mortgage.

16. According to the terms of said mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default there under, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said mortgage.

17. The monthly payments due on said note and mortgage are in default since February 1, 2012, and the conditions of said note and mortgage have been broken and the Plaintiff elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said note and mortgage as of February 1, 2012 the sum of Two Hundred Nine Thousand Nine Hundred Eleven And 64/100 Dollars (\$209,911.64), together with interest at the rate of Five and 50/100 per cent (5.50%) per annum from January 1, 2012 and also for the costs and disbursements of this action, including attorney's fees.

18. That the Plaintiff specifically waives its rights to a deficiency judgment in the event the sale of the real estate herein does not yield a sum sufficient to satisfy all indebtedness due to the Plaintiff, including costs and attorney fees.

19. That the servicer is participating in the Home Affordable Modification Program (HMP). The loan is not subject to the HMP because it is a VA loan.

20. That upon information and belief, certain costs for inspecting and securing the subject property have been incurred by the Plaintiff as a result of this delinquency and Plaintiff is informed and believes it is entitled to reimbursement for such charges, if any.

21. The notice of consumer's right to cure, as contemplated under S.C. Code Sections 37-5-110 and 37-5-111, has been given or is not required, and all conditions precedent to the acceleration of the debt and foreclosure of the mortgage have been performed or have occurred.

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

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

(2) That the said Plaintiff's mortgage be declared a purchase money mortgage and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action.

(3) That the mortgaged premises be sold under the direction of this court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

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

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

Third, the surplus, if any, be distributed according to law.

(4) For an Order directing and empowering the Sheriff of Greenville County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

(5) For an Order granting the appointment of a receiver to secure and supervise the rental of the property sought to be foreclosed.

(6) For reimbursement of all costs for inspecting and securing the property incurred by the Plaintiff as a result of the delinquency.

(7) For such other and further relief as may be just and proper.

(8) For an order satisfying any prior liens that may be of record, but have been paid in full.

KORN LAW FIRM, P.A.
1300 Pickens Street
P.O. Box 11264
Columbia, S.C. 29211-1264
(803) 252-5817



PETER D. KORN / DEAN HAYES / KEVIN T. HARDY /
ELIZABETH R. POLK / KRISTEN E. WASHBURN / NOAH M.
HICKS II
Attorneys for Plaintiff

Columbia, South Carolina
August 21, 2014

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1601 As Amended

1. The amount of the debt is \$242,857.77 as of September 2, 2014. Because of interest, late charges that may vary from day to day, the amount due on the day you, the Debtor(s), pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after the Creditor receives the funds, in which event the Creditor will inform you before depositing the funds for collection. For further information, write as directed in Paragraph 6 of this Notice.
2. Lakeview Loan Servicing, LLC is the creditor to which the debt is owed.
3. The debt as described in the Complaint attached hereto will be assumed to be valid by the creditor's law firm, unless the debtor(s), within thirty (30) days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
4. If you, the Debtor(s) notify the Creditor's law firm within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the Debtor(s) by the Creditor's law firm
5. If the Creditor named as Plaintiff in the attached Summons and Complaint is not the original creditor, and if you, the Debtor(s), make a written request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Korn Law Firm, P.A., Post Office Box 11264, Columbia, South Carolina 29211-1264.
7. This notice should NOT be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days. Please be advised the time period in which you, the Debtor(s), have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.
8. If you, the Debtor(s), have received a discharge of the debt described in Paragraph 1 of this Notice pursuant to the United States Bankruptcy Code, then neither the Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for information purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Lakeview Loan Servicing, LLC,

Plaintiff,

vs.

Donna Boyd, and The Townes at Pelham Owners' Association, Inc.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

NOTICE OF FORECLOSURE INTERVENTION

(NON-JURY MORTGAGE FORECLOSURE)

C/A NO:

2014-CP-23-0

DEFICIENCY WAIVED

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENSIMMER
2014 AUG 22 PM 12 59

F13-02716

TO: Donna Boyd

PLEASE TAKE NOTICE THAT pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01, (hereinafter "Order"), you may have a right to Foreclosure Intervention.

To be considered for any available Foreclosure Intervention, you may communicate with and otherwise deal with the Plaintiff through its law firm, Korn Law Firm, P.A., 1300 PICKENS STREET, COLUMBIA, SC 29201 or call (803) 252-5817. Korn Law Firm, P.A., represents the Plaintiff in this action and does not represent you. Under our ethical rules, we are prohibited from giving you any legal advice.

You must submit any requests for Foreclosure Intervention consideration within 30 days from the date of this Notice. Attached is a request form for your use. **IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN FORECLOSURE INTERVENTION, YOUR MORTGAGE COMPANY/AGENT MAY PROCEED WITH A FORECLOSURE ACTION.** If you have already pursued loss mitigation with the Plaintiff, this Notice does not guarantee the availability of loss mitigation options or further review of your qualifications.

BY: Kristen Washburn
PETER D. KORN / DEAN HAYES / KEVIN T. HARDY /
ELIZABETH R. POLK / KRISTEN E. WASHBURN / NOAH M.
HICKS II
Attorneys for Plaintiff

Korn Law Firm, P.A.
1300 PICKENS STREET
COLUMBIA, SC 29201

Dated August 21, 2014

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

Request for Foreclosure Intervention

File No.: F13-02716

This document is exchanged exclusively for the purpose of foreclosure intervention pursuant to S.C. Supreme Court Administrative Order 2011-05-02-01.

Property Address: 6 Pelham Townes Drive, Greenville, SC 29615

_____ I am the owner but do not occupy the property.

_____ I am the owner of and occupy the property.

Is this street address correct? ___ Yes ___ No

If Yes, please include proof of occupancy such as a utility bill, military orders, voter registration card, etc.

If No, what is the correct street address: _____

_____ I am actively working with the mortgage company to resolve my mortgage account's delinquency and last spoke with the mortgage company on _____.

_____ I submitted a complete loss mitigation package to the mortgage company on _____.

I am interested in the following type(s) of loss mitigation (please note that you may not qualify for any or all of these foreclosure intervention options):

_____ Reinstatement

_____ Loan Modification

_____ Payoff

_____ Deed in Lieu

_____ Payment Plan

_____ Short Sale

_____ Forbearance Agreement

_____ Other: _____

PLEASE NOTE THAT YOU MAY NOT QUALIFY FOR ALL THE OPTIONS LISTED ABOVE. NO REPRESENTATION OF ANY KIND IS BEING MADE REGARDING THE AVAILABILITY OF ANY LOSS MITIGATION OPTION OR YOUR QUALIFICATION FOR ANY OPTION.

_____ I elect not to participate in any Foreclosure Intervention.

_____ I am represented by counsel in this foreclosure action.

My attorney's name, address, and phone number is: _____

Contact #'s:

Home: _____

Work: _____

Cellular: _____

Other: _____

May we leave a phone message? At home ___ Yes ___ No

On your cellular phone: ___ Yes ___ No At work ___ Yes ___ No

May we call your cell phone? ___ Yes ___ No

May we send you an e-mail message? ___ Yes ___ No

Email: _____

PRINT NAME: _____

_____ (Signature)

Date: _____

Please note, if you are represented by counsel in the foreclosure action Korn Law Firm, P.A., will only communicate with you through your counsel.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

In the event the referenced debt has been discharged in United States Bankruptcy Court or the automatic stay has been lifted and you currently in Bankruptcy, this communication is not intended to be an attempt to collect a debt.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Circuit Court Judge

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COURT OF APPEALS

Case No. 2014-000701

Townes at Pelham Owners'
Association, Inc.

Respondent,

v.

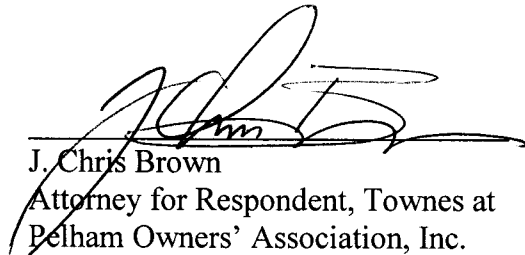
Donna Boyd

Appellant

PROOF OF SERVICE

I certify that I have served the Motion for Continuance requesting additional time to file the initial brief for the above-referenced action by overnight delivery to the South Carolina Court of Appeals at 1015 Sumter Street, Columbia, SC, 29201 and by depositing a copy of it in the United States Mail, postage prepaid on Monday, December 1, 2014, addressed to the Appellant, Donna Boyd, at Post Office Box 1168, Mauldin, South Carolina, 29662.

December 1, 2014


J. Chris Brown
Attorney for Respondent, Townes at
Pelham Owners' Association, Inc.
505 W. Butler Road
Greenville, SC 29607



BABB & BROWN, P.C.
ATTORNEYS AT LAW

ATTORNEYS
EVERETTE H. BABB
J. CHRIS BROWN*
H. STEWART JAMES
*ALSO LICENCED IN GEORGIA

December 1, 2014

VIA OVERNIGHT DELIVERY

Ms. Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

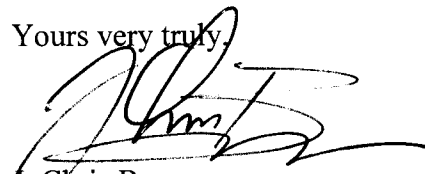
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DEC 02 2014
SC Court of Appeals

RE: Townes at Pelham v. Donna Boyd
Appellate Case No. 2014-000701

Dear Ms. Kitchings:

I have enclosed an original and one copy of a Motion for Continuance and Proof of Service for the above-referenced matter, as well as our firm's check in the amount of \$25.00 to cover the motion fee. Please file the original documents and clock and return the copy to me in the stamped, self-addressed envelope provided. If you have any questions, please contact me at your earliest convenience.

Yours very truly,



J. Chris Brown
Attorney at Law

JCB:ah

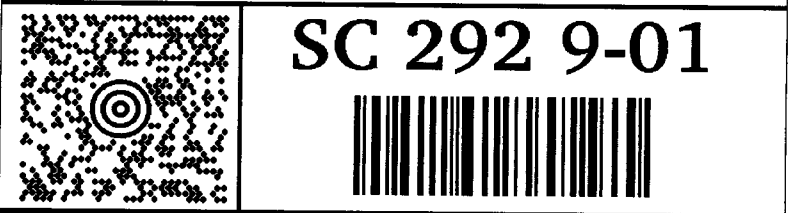
Enclosures

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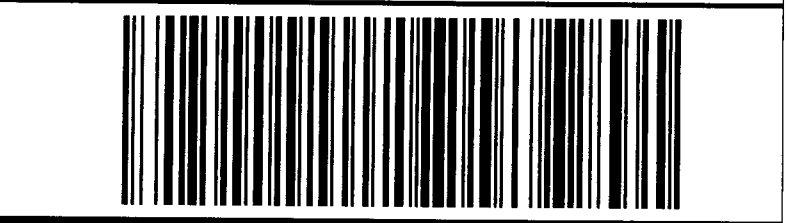
ANN HUTSELL
864-422-0022
MAULDIN OFFICE
505 W BUTLER RD
GREENVILLE SC 29607

0.0 LBS LTR 1 OF 1

SHIP TO:
MS. JENNY ABBOTT KITCHINGS
803-734-1890
SC COURT OF APPEALS
1015 SUMTER STREET
COLUMBIA SC 29201-3726




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BILLING: P/P

File #: townes at pelham

CS 16.7.04. WNTIE90 57.0A 10/2014 

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SC Court of Appeals