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Reply To

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COLUMBIA

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SC Court of Appeals

February 9, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29201

**Re: 21st Mortgage Corporation v. Robert Youmans and Tonya Stoney
Appellate Case No. 2013-001844**

Dear Ms. Kitchings:

As authorized by your letter dated February 5, 2015, I am writing this letter in response to Respondent's letter dated December 11, 2014.

Both in Respondents' Brief and in the letter dated December 11, 2014, Respondents assert that 21st Mortgage has not preserved the issue of whether Youmans' default judgment satisfies Section 37-2-404(1) of the South Carolina Code. However, this subsection does not address the circumstances under which a claim may be asserted against an assignee. Those circumstances are described in 37-2-404(2). In summary, 21st Mortgage acknowledges that, as an assignee of a consumer credit sale contract, subsection (1) of 37-2-404 is applicable to Youmans' retail installment contract. The issue is whether a default judgment entered in a proceeding that the creditor was not a party satisfies the requirements of 37-2-404(2).

As argued by 21st Mortgage in its Brief (pp. 7-9), subsection (2) of 37-2-404 and applicable case law make it very clear that neither constructive notice nor oral notice of a claim is sufficient, and written notice is sufficient only if it complies with the statute. Therefore, a default judgment entered in a proceeding that the creditor was not a party to does not meet the requirements of Section 37-2-404(2).

For further support of this conclusion, the Court can look to the principles of collateral estoppel outlined in Appellant's Brief (pp. 5-7). Applying those principles and the language of 37-2-404, Respondents clearly had the right to assert their claims as a defense to the lawsuit filed by 21st Mortgage, but they could not simply rely on a default judgment entered in a proceeding to which the creditor was not a party. Instead, they were obligated to present evidence to establish both the merits of their claim and the amount of their damages.

In summary, 21st Mortgage has never disputed that, pursuant to Section 37-2-404(1), the contract that is the subject of this action is subject to claims and defenses that Youmans had against the seller of the mobile home. Instead, the issue is whether a default judgment entered in a proceeding in which the creditor was not a party is binding upon the creditor. The clear language of subsection (2) of 37-2-404 and the well-established

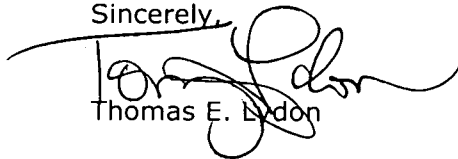
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principles of collateral estoppel confirm that the creditor is not bound by such a default judgment. The consumer must, therefore, present evidence to establish his claim and his damages in the proceeding brought by the creditor. This procedure is precisely what was required by California courts in *Lafferty v. Wells Fargo Bank*, 213 Cal. App. 4th 545, 153 Cal. Rptr. 3d 240 (Cal. App. 2013), which was cited in Respondents' Brief (p. 9) and summarized in the Reply Brief filed by 21st Mortgage (pp. 3-4).

Thank you for giving me the opportunity to respond to Respondents' letter. If you have any questions or need any additional information, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Lydon", written over a horizontal line. The signature is fluid and cursive.

Thomas E. Lydon

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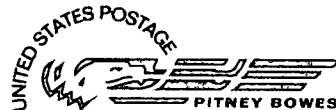
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