

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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James O. Spence, Master in Equity, Lexington County

APR 09 2015

SC Court of Appeals

Appellate Case No.: 2014-002710

FV-I, Inc., in trust for Morgan Stanley Mortgage  
Capital Holdings LLC .....Appellant,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells Fargo  
Bank, N.A.; Branch Banking and Trust Company .....Defendants,

Of whom

Bryon J. Dolan and Lisa S. Dolan, are .....Respondents.

**APPELLANT’S RETURN TO RESPONDENT’S MOTION FOR COSTS ON  
APPEAL AND ATTORNEY’S FEES**

FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC  
("Appellant"), hereby submits its Return to Respondent’s Motion for Costs on Appeal  
and Attorney’s Fees.

**I. Awarding of Costs Pursuant to Rule 222(b), SCACR.**

Appellant does not contest the awarding of costs in the amount of \$1,095.20 to  
Respondents under Rule 222(b).

## **II. Awarding of Sanctions Pursuant to Rule 269, SCACR.**

In addition to allowable costs imposed under Rule 222(b), SCACR, the Respondents also seek an Order for sanctions against Appellant under Rule 269, SCACR. Respondents' motion for sanctions lacks both a legal or factual basis that would remotely justify sanctions.

Respondents' motion contends that Appellants improperly filed both 1) a motion for relief in the appeal of the jury verdict on the legal counterclaims, App. Case No. 2014-001384, and 2) improperly filed an appeal of the Master-in-Equity's order denying a motion to proceed with the underlying foreclosure action unaffected by the appeal of the jury verdict.

Respondents contend these actions by the Appellant were not in compliance with the South Carolina Appellate Court Rules and Appellant "sought two bites at the apple." However, a more appropriate idiom is that the Appellant was simply "covering its bases." If Appellant chose to file the motion in App. Case No. 2014-001384, then Appellant risked Respondents arguing the proper course of action was for Appellant to appeal the Master-in-Equity's Order or vice versa. The unique procedural posture of this case has created novel issues of law, and Respondents' contention that Appellant's actions rise to the level of sanctionable conduct lacks merit.

### **FACTS AND PROCEDURAL HISTORY**

This is a residential mortgage foreclosure action. The subject property is an approximately 5,000 square foot house on a lake front lot on Lake Murray in Lexington County, South Carolina. (See Exhibit A, April 17, 2014 Transcript page 63 line 24 to Page 64, line 3 and page 66, lines 13-19). On March 28, 2005 Respondent Bryon J. Dolan

took out the subject loan in the amount of \$721,000. (See Exhibit A, April 17, 2014 Transcript page 68, lines 11-13). The last regular on-time mortgage payment he made was on November 1, 2008. (See Exhibit A, April 17, 2014 Transcript page 118, lines 9-13).

At the trial on April 17, 2014 the Respondents' counterclaim for violation of the South Carolina Unfair Trade Practices Act did not survive Appellant's motion for a directed verdict. (See Exhibit A, April 17, 2014 Transcript page 139, lines 17 to page 142 to line 17). Following the trial on April 17, 2014, a Lexington County jury found against the Respondents on their Breach of Contract counterclaim. (See Exhibit A, April 17, 2014 Transcript page 203, lines 5-13).

To put it another way, for nearly the past seven years Respondents have avoided repaying their loan and instead have portrayed themselves as victims of improper conduct on the part of the Plaintiff and various loan servicers. Yet their claims have been found to be without merit by a Lexington County jury and a Circuit Court Judge. Meanwhile, for nearly the past seven years, at the cost of tens of thousands of dollars in attorney's fees and costs, Appellant and the prior lender have attempted to advance the case to a resolution through settlement or a trial on the merits. Additionally, for nearly the past seven years Appellant and the prior lender have been paying the taxes on the subject property even though there is nothing preventing the Respondents from paying those taxes. (See Exhibit A, April 17, 2014 Transcript page 119, line 2 to page 120 line 3). For nearly the past seven years Respondents have been content with having others pay to keep them in their home, and Appellants find it disingenuous that Respondents are now

claiming improper conduct on the part of the Appellants in attempting to move the case to a resolution as quickly as possible.

### **STANDARD OF REVIEW**

Appellant's counsel finds limited case law interpreting the standard of review for awarding sanctions under Rule 269, SCACR, or its former number Rule 240. Appellant's believes it is appropriate to look to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 and Rule 11, SCRCF, for guidance.

The South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"), S.C. Code Ann. § 15-36-10 applies a "reasonable attorney" standard to actions taken in a civil or administrative action. Southeastern Site Prep. LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 107,713 S.E.2d 650, 655 (Ct. App. 2011). According to the Act:

An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing

proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

S.C. Code Ann. § 15-36-10(A)(4)(a)-(c).

"All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives." S.C. Code Ann. § 15-36-10(M).

"Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned." S.C. Code Ann. § 15-36-10(C)(2). In addition, "[t]he provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law." S.C. Code Ann. § 15-36-10(J).

In determining whether an attorney, party or pro se litigant has violated the Act, the court shall take into account:

- (1) the number of parties;
- (2) the complexity of the claims and defenses;
- (3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

S.C. Code Ann. § 15-36-10(E)(I)-(7).

Rule 11 of the South Carolina Rules of Civil Procedure allows for sanctions when a party acts frivolously. According to Rule 11:

(a) Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name...The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay....If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11, SCRC.P.

The decision whether to impose sanctions sounds in equity. Father v. S.C. Dep't of Soc. Servs., 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003).

## DISCUSSION

a. Appellant's actions were reasonable and taken in good faith based on the unique factual issues and novel procedural posture of this case.

This case involves an equitable foreclosure complaint in which the Respondents filed an answer and asserted one equitable counterclaim and two legal counterclaims.

Appellant and Respondents agreed to bifurcate the action pursuant to Rule 42(b), SCRCF, and sever the legal counterclaims from the foreclosure claim and equitable counterclaim. After they lost their jury trial, the Respondents appealed the jury verdict on their two legal counterclaims in App. Case No. 2014-001384.

On July 14, 2014, Appellant filed a Motion to Dismiss Respondent's appeal in App. Case No. 2014-001384 due to the fact that there has not been a final judgment on the Appellant's equitable claims. On August 25, 2014, the Courts of Appeals issued an Order denying Respondent's Motion to Dismiss, but of significant note, did not address the underlying merits of the motion and specially stated that the parties were allowed to address the appealability of the legal counterclaims in their briefs to the court. Therefore, there was, and still is, a question as to the validity of Respondents' appeal in App. Case No. 2014-001384.

Presented with this unique factual and procedural posture and a strong desire to have its day in court for a trial on the merits of the equitable claims (after enduring nearly seven years without an on time payment), Appellant filed a motion to proceed with the foreclosure case pending before the Master-in-Equity. The Master-in-Equity denied the motion, and Appellant appealed that order. Concurrently, Appellant also sought relief by filing a motion in App. Case No. 2014-001384 to lift the stay imposed by the Master-in-Equity's order pursuant to Rule 241, SCACR. The fact that the appeal and the motion had overlapping legal arguments does not create a situation where the filing of one was frivolous.

In fact, the Master-in-Equity's order denying the motion to proceed with the foreclosure case created a de facto indefinite stay of clearly severed and bifurcated

equitable claims. The case law cited in Appellant's initial brief in this appeal interpreting the consequences of bifurcating a case under Rule 42(b) certainly justified Appellant's argument that the equitable claims were no longer in any way connected to or subject to an appeal of the severed legal claims and a lifting of the stay would not have resulted in inconsistent verdicts. Appellant's appeal of an order that indefinitely stayed severed claims from being heard created (at a minimum) a reasonable argument that a substantial right of the Appellant had been violated. The fact that the Court of Appeals disagreed and dismissed the Appeal does not mean the Appeal was frivolous or not in compliance with the South Carolina Appellate Court Rules.

Respondents will likely argue that the Master-in-Equity's order only stayed the case until the appeal of the jury verdict was resolved. However, that basic statement neglects to include the fact that the equitable and legal claims are bifurcated. Therefore, even if the Respondents are successful in their appeal, the equitable claims would not be heard at the retrial of the jury claims and Respondents could appeal another unfavorable jury verdict. Appellant may never have its equitable foreclosure claims heard and never have its day in court, while the Respondents file potentially endless appeals of their jury claims, meanwhile enjoying their 5,000 square foot lakefront house on Lake Murray without making a payment.

Respondents' contention that there was a clear path of relief for Appellant to follow under the unique factual issues and novel procedural posture of the case at the time the Appellant filed its motion and appeal has no legal basis or reasonable argument behind it. Appellant actions were reasonable and taken in good faith.

Respondent's "two bites at the apple" argument implies that Appellant took one course of action and did not get the result it wanted so it took a separate course of action in an attempt to mislead and obtain the result it wanted. This argument is simply not accurate. Appellant served its initial brief in this action and its motion for relief in App. Case No. 2014-001384 nearly contemporaneously and in the same court. The Court of Appeals issued its Orders dismissing the appeal and denying the motion on the same date. There was no attempt to deceive the Court or manipulate the legal process.

**b. Respondents' Motion for Sanctions under Rule 269 lacks sufficient evidence for an award of attorney's fees.**

When awarding reasonable attorney's fees, "[t]he court should consider the following six factors ....: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." EFCO Corp. v. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 621, 635 S.E.2d 922, 927 (Ct. App. 2006) (quoting Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997)). "[O]n appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor." Id.

Respondent's Motion for Sanctions fails to provide sufficient evidence to justify an award for attorney's fees under the six factors noticed above. The motion fails to provide time sheets of actual work incurred, fails to provide a copy of the fee agreement justifying the fees, and fails to provide evidence that the Respondents actually paid the fees to their counsel.

**CONCLUSION**

For the reasons set forth above, Respondents' motion for sanctions should be denied.

Respectfully submitted,

April 9, 2015



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Attorney for the Appellant  
Rogers Townsend & Thomas, PC and its staff are debt collectors

STATE OF SOUTH CAROLINA )  
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County of Lexington )  
 )  
 )  
FV-I, Inc., )  
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 )  
Plaintiff, )  
 )  
vs. )  
 )  
Bryon J. Dolan, et al., )  
 )  
 )  
Defendants. )  
 )

COURT OF COMMON PLEAS

2012-CP-32-2816

TRANSCRIPT OF RECORD

April 17th, 2014  
Lexington, South Carolina

BEFORE:

THE HONORABLE R. KEITH KELLY, JUDGE; and a jury.

APPEARANCES:

CHARLES S. GWYNNE, ESQ.  
JASON D. WYMAN, ESQ.  
Attorneys for the Plaintiff

ANDREW S. RADEKER, ESQ.  
Attorney for the Defendants

AMINAH R. HARDY, CM  
Official Court Reporter

EXHIBIT  
A

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P2	Adjustable rate note	5	5
P3	Mortgage		
P4	540 Foreclosure complaint	5	5
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	<u>EXHIBITS</u> (continued)			
	No.	Description	Marked	Admitted
1				
2				
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5	D10	Foreclosure release	5	5
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7	D12	Value conciliation worksheet	5	5
8	D13	Foreclosure review	5	5
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## BRYON DOLAN - DIRECT EXAMINATION BY MR. RADEKER

1 Why would I spend that money only for them to turn around  
2 and foreclose on me again?

3 Q. All right. And what, if anything, did you rely on in  
4 making the decision to send that money?

5 A. Everything that Kevin Flannigan from Saxon told me.

6 Q. Now, what's your understanding of where Kevin  
7 Flannigan works now?

8 A. It's my understanding he works for SLS or FV-I Morgan  
9 Stanley.

10 Q. Thank you. Do you -- is he in the courtroom with us  
11 today?

12 A. No, he didn't come.

13 Q. Thank you, sir. Please answer any questions opposing  
14 counsel has for you.

15 THE COURT: Yes, sir.

16 MR. GWYNNE: Thank you, Your Honor. May it please  
17 the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. GWYNNE

21 Q. Good morning, Mr. Dolan. My name is Charlie Gwynne.  
22 We met before.

23 A. Yeah.

24 Q. I kind of want to start at the beginning of when you  
25 purchased the property. Is it correct you purchased a

## BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 parcel of land on Lake Murray back in 1999; is that  
2 correct?

3 A. Yes.

4 Q. And it was roughly .6-acres; is that correct?

5 A. No, it's not correct. It was -- I think 1.something  
6 acres.

7 Q. Going to show you -- can you tell me if you can see  
8 the exhibit if I put it over here so I can make sure we're  
9 all looking at the same document?

10 A. Sure.

11 Q. Show you what's been marked Plaintiff's Exhibit 1,  
12 and is already in evidence. Is that the property that you  
13 purchased in 1999?

14 A. The line dividing it was not there. It was all one  
15 piece. The two together added together comes over to 1  
16 acre.

17 Q. Yes, I'm sorry. So parcel A and parcel B, that's the  
18 large parcel you bought in 1999, correct?

19 A. That's correct.

20 Q. And when you purchased the property, you said there  
21 was a -- you called it a cottage. Thousand square foot  
22 house, correct?

23 A. Yes, sir.

24 Q. It's not depicted on here; is that correct?

25 A. It is, actually. It's the one right up there now.

## BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 everything. So you have two parcels, two houses that  
2 weren't there. You divided the lot and then you built the  
3 house eventually; is that correct?

4 A. Yes, sir.

5 Q. And just so we get an idea of what we're talking  
6 about, you got parcel A and parcel B. Now, what address  
7 is parcel A currently?

8 A. 544.

9 Q. And what is parcel B?

10 A. 540.

11 Q. And what property do you currently live in?

12 A. 540. The one on parcel B.

13 Q. Can you describe the two houses for me in general  
14 terms in terms of square footage, how big they are, that  
15 type of thing?

16 A. The parcel B house that we live in is about 5,000, 5,400  
17 square feet. And I think parcel A was about 6,000 square  
18 feet when we finished it for the homeowner that bought it  
19 in 2011.

20 Q. Now, according to Exhibit A, you see the dividing  
21 line; is that right?

22 A. Yes, sir.

23 Q. Okay. And you have a house there. Is that the  
24 location of the current house that's on 544?

25 A. The bottom corner -- see the bottom corner of the

## BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 right?

2 A. Yes, sir.

3 Q. Principal value according to section 1 is \$721,000.

4 A. The loan amount, correct.

5 Q. And I'll show you what's been marked Plaintiff's

6 Exhibit 3. Is this the mortgage for your property --

7 appear to be the mortgage for your property?

8 A. Yes, sir, it does.

9 Q. Dated March 28th, 2005?

10 A. Yes, sir.

11 Q. So the total amount you borrowed was \$721,000; is

12 that right?

13 A. That's correct.

14 Q. Now, do you understand how a mortgage and a note

15 work?

16 A. Yes, I do.

17 Q. Because you've built several houses, haven't you, in

18 your career, correct?

19 A. A few, yes.

20 Q. So you know if you don't pay back the money per the

21 terms of the note, the lender can enforce the

22 foreclosure -- enforce mortgage and foreclose on your

23 property. Do you understand that?

24 A. Yes, sir, I do.

25 Q. And the purpose of foreclosing is to sell the

## BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 rate according to the adjustable rate mortgage note which  
2 clearly states how interest payments and amounts are  
3 supposed to be done. Those were breached several times  
4 while your client had the note.

5 Q. Did my client breach any term of the mortgage  
6 document that's Exhibit 3, Plaintiff's Exhibit 3?

7 A. To be honest with you, I really could not say yes or  
8 no.

9 Q. Isn't it true the last time you made a regular  
10 monthly mortgage payment was November 1st, 2008?

11 A. With BB&T?

12 Q. On this loan.

13 A. That's correct.

14 Q. And according to the 2009 foreclosure action -- I'll  
15 show you Plaintiff's Exhibit 4, which is the foreclosure  
16 action for the property address -- 2009 foreclosure action  
17 for the property, 540?

18 A. The one that was eventually dismissed, that one?  
19 Just trying to keep track.

20 Q. According of the paragraph 21 of that complaint,  
21 second line down, it says, "I thought payments received by  
22 the plaintiff have been credited to the subject loan. The  
23 subject was in default and due for December 1, 2008." So  
24 you'll agree, once again, that the last monthly mortgage  
25 payment you made was November of 2008?

## BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. Thereabouts, correct.

2 Q. Mr. Dolan, do you pay your county taxes on the  
3 property?

4 A. Not at the this time now.

5 Q. When is the last time you paid your county taxes on  
6 the property?

7 A. Probably 2008.

8 Q. What's stopping you from making your county taxes on  
9 this property?

10 A. Well, because I'm in litigation with your client,  
11 it's in my best interests to let them pay it until we get  
12 this resolved.

13 Q. So it's true that Saxon and SLS have been paying your  
14 county taxes?

15 A. No, I'm not saying that at all. I'm saying they're  
16 getting paid. Whether SLS did, whether Saxon, whether  
17 BB&T did, I do not know.

18 Q. Are you aware that if it matters if your loan is in  
19 default or not if you can walk across the parking lot and  
20 go pay your taxes? Does it matter your loan is in  
21 default?

22 A. The question again, please?

23 Q. Is the fact that your loan is in default, does that  
24 prevent you from walking across the parking lot and paying  
25 your county taxes?

## BRYON DOLAN - CROSS-EXAMINATION BY MR. GWYNNE

1 A. No, it does not does not prevent me from doing that.

2 Q. You're just letting Saxon and SLS pay your taxes?

3 A. While they're in litigation with me, that's correct.

4 Q. Okay. When's the last time you paid the hazard  
5 insurance on the property?

6 A. I think in January.

7 Q. So you'd be surprised to find out that Saxon and SLS  
8 have been paying your hazard insurance since 2009? That  
9 would be a surprise to you?

10 A. One or two, they may have. I don't know about all of  
11 them.

12 Q. Does the fact your loan is in default prevent you  
13 from buying hazard insurance from your property?

14 A. Well, actually, I don't know it does but when I tried  
15 to purchase insurance at about \$3,000 cheaper than what  
16 your client was trying to charge me, they would not let me  
17 do it. That's all I can say about that, because I've  
18 tried to do that.

19 Q. You were asked some questions by your counsel about  
20 the value of your property. Will you agree with me if you  
21 had a buyer lined up who would pay you enough money from  
22 the property that would satisfy your loan, you would sell  
23 the property, correct?

24 A. If I could satisfy the loan. That's always been the  
25 question. You never know what was owed on the loan.

1 case, what's known as their case-in-chief, which means  
2 that's the only evidence they intend to put up. Before we  
3 hear from FV-I, there's matters that would be necessary  
4 for me to take up outside your presence. I don't  
5 anticipate this being very long whatsoever, but  
6 nonetheless, it would be improper for you to be here. So  
7 with that, Madame Forelady, I'm going to ask you take the  
8 jury to jury room. We'll probably be a good ten minutes  
9 or thereabouts. Do not begin to deliberate. The case is  
10 not over. With that, we excuse you from the courtroom.

11 (The jury left the courtroom at 2:29 p.m.)

12 THE COURT: All right. Motions?

13 MR. RADEKER: I was just going to say Mr. Dolan asked  
14 if he could use the restroom if you don't have any problem  
15 with that. We don't need him here to argue the motions.

16 THE COURT: That would be fine. Yes, sir.

17 MR. WYMAN: Move for a motion for directed verdict on  
18 both causes of action, Your Honor. What would you like me  
19 to address first? I think the UTA claim probably easier  
20 to address. I don't see any evidence that's been  
21 presented to satisfied the public interest requirement  
22 showing repetition. This appears to be very similar to  
23 the Robertson versus First Union National Bank, case with  
24 a private wrong -- an alleged private wrong between two  
25 parties and that's just not sufficient to satisfy the

1 requirements of the Unfair Trade Practices Act.

2 THE COURT: I read the same case. Let me hear from  
3 you, Counsel.

4 MR. RADEKER: All right. Thank you, Your Honor. I'd  
5 say what we've got here is more than a private wrong.  
6 This conduct is capable of repetition. Further, our court  
7 has said many times that how you show potential for  
8 repetition or even how you show impact on public interest  
9 is not limited to any particular method. One could show  
10 impact on the public interest even without showing  
11 potential for repetition.

12 But here certainly these companies did servicing for  
13 banks, Morgan Stanley. They have a chance to repeat such  
14 behavior or behavior like it in the future. And simply to  
15 misrepresent to someone what the amount is to bring the  
16 loan current is repeatable behavior. All one has to  
17 demonstrate in order to satisfy the public interest  
18 prong -- which I understand is the only prong they're  
19 arguing we haven't satisfied -- is potential for  
20 repetition. It's capable of being repeated.

21 THE COURT: I don't think that's his argument at all,  
22 but I'll be happy to hear more. Go ahead. I'll hear more  
23 from you, I don't think that's what he said.

24 MR. WYMAN: Your Honor, that's not what I'm saying.

25 MR. RADEKER: All right. Well, Your Honor if simply

1 because there were a breach contract there could be no  
2 Unfair Trade Practices Act, we can tell that's not true  
3 because we can look at cases that are decided between  
4 parties where there was a breach of contract, and the  
5 court allowed Unfair Trade Practices Act cause of action,  
6 such as the Wright versus Craft case and Singleton versus  
7 Stokes Mazda case, I think, case that decided in  
8 memorandum. Were the law that simply because it's a  
9 contractual relationship between the parties means you can  
10 never have Unfair Trade Practice Act cause of action, the  
11 Act would be gutted. Totally meaningless.

12 That's not the law. Those cases focus on the  
13 typical, isolated nature of a breach of contract. They  
14 don't stand for the proposition that simply because  
15 there's a contract between the parties, there can't be an  
16 Unfair Trade Practices Act cause of action.

17 THE COURT: Yes, sir.

18 MR. WYMAN: Your Honor, I agree with his previous  
19 representation of the case law, but that was not my  
20 intention as far as my only argument. This is a unique  
21 set of facts. He's presented absolutely no evidence to  
22 satisfy that this is -- has been -- occurred in the past  
23 or there has the potential to be occurring in the future.  
24 Simply because there are loans serviced in South Carolina  
25 by different lenders, that does not lead to a viable cause

1 of action for the Unfair Trade Practices Act. And as Your  
2 Honor said, the Robertson versus First Union case is on  
3 point. This is a conduct which only affects the parties  
4 of the transaction here. This is between the plaintiff  
5 and the defendants, Dolans, and that just does not give  
6 rise to a Unfair Trade Practices Act claim, and we should  
7 be awarded a directed verdict because there's only one  
8 reasonable inference.

9 THE COURT: The Court, at this stage of the  
10 proceedings, is concerned only with a scintilla of  
11 evidence at the directed verdict stage and must look at --  
12 the Court must look at the motion in the favor -- in the  
13 light most favorable to the nonmoving party. However,  
14 there does have to be a scintilla of evidence, and this  
15 Court has heard nothing that would rise to a scintilla of  
16 evidence in this matter so that directed verdict motion is  
17 granted. Next cause of action?

18 MR. WYMAN: Thank you, Your Honor. And as to the  
19 breach of contract, Your Honor, we would argue they have  
20 failed to present -- there's only one reasonable inference  
21 from the evidence that's been presented thus far, that my  
22 client did not breach the contract at issue. Mr. Gwynne  
23 through the cross-examination of Mr. Dolan point by point  
24 by point through that September 2011 agreement, and he  
25 stated that he complied with all terms of that agreement

1 THE COURT: Would you hand the verdict to my bailiff,  
2 please. Madame Clerk, would you publish the verdict,  
3 please.

4 VERDICT

5 THE CLERK: In the matter of FV-I, Inc. versus Bryon  
6 Dolan and Lisa Dolan, case number 2012-CP-32-2816, did the  
7 Dolans provide -- prove by a preponderance of the evidence  
8 that FV-I breached the contract? No. If this is, in  
9 fact, your verdict, please raise your right hand. All  
10 jurors have raised their right hand.

11 THE COURT: Polling of the jury, gentlemen?

12 MR. RADEKER: No, Your Honor.

13 THE COURT: Okay. Polling is waived. Madame  
14 Forelady, ladies and gentlemen of the jury, thank you so  
15 very much for your assistance in this matter. We could  
16 not do what we do here without you, and we appreciate you  
17 very much. It is late in the day. I was not going to be  
18 long-winded at all. It's about 12, 13 after. But again,  
19 we thank you for your service this week.

20 This does conclude your jury service. There will not  
21 be another trial started tomorrow. The lawyers on the  
22 other cases and Trey and I will be here, but we'll be  
23 doing what's called nonjury matters. In the event you  
24 just want to see what we do on cases like that, you're  
25 certainly welcome to be here. Again, I will be here along

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

James O. Spence, Master in Equity, Lexington County

RECEIVED

APR 09 2015

Appellate Case No.: 2014-002710

SC Court of Appeals

FV-I, Inc., in trust for Morgan Stanley Mortgage  
Capital Holdings LLC .....Appellant,

v.

Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells Fargo  
Bank, N.A.; Branch Banking and Trust Company.....Defendants,

Of whom

Bryon J. Dolan and Lisa S. Dolan, are .....Respondents.

**PROOF OF SERVICE**

I HEREBY CERTIFY that I have served the **APPELLANT'S RETURN TO RESPONDENT'S MOTION FOR COSTS ON APPEAL AND ATTORNEY'S FEES** on Respondents and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on April 9, 2015, at the addresses shown on the attachment listing Other Counsel of Record and Parties.

April 9, 2015



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LICENSED IN SOUTH CAROLINA



April 9, 2015

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals Clerk of Court  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: FV-I, Inc. in trust for Morgan Stanley Mortgage Capital Holdings LLC v. Bryon J. Dolan; Lisa S. Dolan; First Citizens Bank, Wells Fargo Bank, N.A., Branch Banking and Trust Company  
Appellate Case No.: 2014-002710  
C/A No.: 12-CP-32-2816  
Our file: 511792.00355

Dear Ms. Kitchings:

Enclosed are the original and seven (7) copies of the Appellant's Return to Respondent's Motion for Costs on Appeal and Attorney's Fees, along with a Proof of Service. Please return a filed copy of the document to me.

By copy of this letter, I am serving a copy of the Appellant's Return to Respondent's Motion for Costs on Appeal and Attorney's Fees and Proof of Service on all parties to this appeal.

Thank you for your assistance in this matter.

With kind personal regards, I am

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Charlie", is written over a horizontal line.

Charles S. Gwynne Jr.

**RECEIVED**

APR 09 2015

SC Court of Appeals

/dm  
Enclosures as stated

cc:

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