

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JUL 23 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable R. Markley Dennis, Jr., Presiding Judge, Ninth Judicial Circuit

Case No. 2012-CP-10-5887

Harbor National Bank,

Respondent,

v.

Anthony M. Whitfield,

Appellant.

MOTION TO DISMISS APPEAL

COMES NOW Respondent Harbor National Bank (“Harbor”), by and through its undersigned counsel, and hereby moves to dismiss the above-captioned appeal for lack of appellate jurisdiction, on the ground that the order from which Appellant appeals is interlocutory and not immediately appealable.

Appellant filed a Motion to Amend his Answer, Crossclaim and Counterclaims (“Motion to Amend”) on May 18, 2015. (See Exhibit A: Motion to Amend). The trial court denied the Motion to Amend on June 11, 2015, based on the prejudice to Respondent inherent in granting such motion not long before trial. (See

Exhibit B: E-mail from Lindsey Coffey to Parties and Form 4 Order denying Defendant's Motion to Amend).

On June 18, 2015, Appellant filed a motion to alter or amend the trial court's denial of the Motion to Amend, pursuant to South Carolina Rule of Civil Procedure 59(e). (See Exhibit C: Motion to Reconsider). By order entered June 29, 2015, the trial court denied Appellant's Motion to Reconsider. (See Exhibit D: June 29, 2015 Order).

Appellant purports to appeal the order denying the Motion to Amend, claiming that it should have been granted because otherwise his substantive rights will be affected and because his proposed new counterclaims are logically related to the transactions or occurrences set out in his original Answer.

The order denying the Motion to Amend affects no substantial right of the Appellant, is interlocutory, and is not immediately appealable. "Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330." Woodard v. Westvaco Corp., 319 S.C. 240, 242, 460 S.E.2d 392, 393 (1995). Under Section 14-3-330(2), this Court may "review upon appeal [a]n order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action."

Appellant's reliance on Section 14-3-330(2) is meritless. South Carolina courts have ruled that an order denying a motion to amend is interlocutory and not immediately appealable when denial is based on prejudice to the opposing party and not the merits of the proposed amendment. Baldwin Const. Co. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004); Jefferson by Johnson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988); Southern States & Mktg. Grp., Inc. v. AMCO Const. Co., No. 2006-UP-278, 2006 WL 7286061, at *3 (S.C. Ct. App. June 13, 2006) (unpublished).

In Baldwin, petitioners sought to amend their answer more than a year after the plaintiff filed suit against them. 357 S.C. at 229, 593 S.E.2d at 147. The proposed amendment included new counterclaims and set-offs. Id. The trial judge denied the motion to amend and stated that, “[u]nder the circumstances, I find the relief requested by [petitioners] to be unduly prejudicial to the [respondent], and that the [petitioners] simply are not entitled, as a matter of the Court's discretion to substantially change the parameters and issues involved in the lawsuit at this late date.” Id. The Court of Appeals reversed the trial judge's decision, claiming that petitioners had to appeal the denial in order to preserve their right to a jury trial. Id. The Supreme Court ultimately reversed the Court of Appeals and stated that it “reached this conclusion because the trial judge did not rule on the substantive contents of the answer . . . but [only] refused to allow its filing” based on prejudice to the opposing party. Id. at 230, 593 S.E.2d at 147.

The Southern States case involved similar facts. There the Court of Appeals stated that an order denying a motion to amend a complaint was interlocutory because

it “did not delve into the merits” of the action and was based on prejudice to the opposing party. 2006 WL 7286061, at *4. Finally, in Jefferson, the Supreme Court deemed interlocutory an order denying a motion to amend because “the judge expressed no opinion on the substantive contents of the answer, but determined only that appellants had not shown good cause to be allowed to file late.” 295 S.C. at 318, 368 S.E.2d at 456.

The trial court’s denial of the Motion to Amend did not address the merits of Appellant’s proposed new counterclaims and was based solely on prejudice. The decision only stated that the Judge “decided to deny the motion, finding that it would be unduly prejudicial this late in time.” See Exhibit B. The order is therefore not subject to immediate appeal.

Because the trial court’s order denying the Motion to Amend is interlocutory, this Court lacks jurisdiction over this action. See Brown v. Greenwood School Dist. 50 Bd. of Trustees, 344 S.C. 522, 524-25, 544 S.E.2d 642, 643 (Ct. App. 2001) (dismissing an appeal because “[w]here an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to the [appellate] [c]ourt . . .”). Thus, Harbor’s Motion to Dismiss Appeal should be granted and this appeal dismissed for lack of appellate jurisdiction.

(Signature on following page)

Respectfully submitted,



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Seth W. Whitaker
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July 22, 2015
Charleston, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-5887

HARBOR NATIONAL BANK,
Plaintiff,

vs.

DEFENDANT'S MOTION TO AMEND
ANSWER TO ADD COUNTERCLAIMS
AND CROSSCLAIM

ANTHONY M. WHITFIELD and
CINDY WHITFIELD
Defendants.

FILED
2015 MAY 18 PM 3:57
JULIE L. ANDERSON
CLERK OF COURT
BY _____

TO: SETH WHITAKER AND BRIAN DUFFY, ATTORNEYS FOR PLAINTIFF
AND KEVIN SEIBERT, ATTORNEY FOR CINDY WHITFIELD.

PLEASE TAKE NOTICE that the Defendant, Anthony M. Whitfield, by and through his undersigned attorney will, on the tenth (10th) day after service hereof at 10:00 o'clock a.m., or as soon thereafter as counsel may be heard, move the Court at the Charleston County Court of Common Pleas, 100 Broad Street Charleston, S.C., for an order allowing Defendant to amend his Answer to add certain Counterclaims and a crossclaim. Said Motion is made under Rules 13 and 15 on the following grounds:

1. Defendant seeks permission to amend his Answer and Counterclaims to add certain counterclaims in his Answer, as specifically provided for pursuant to Rule 13(f):

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect,

or when justice requires, he may by leave of court set up the counterclaim by amendment.

South Carolina Rule of Civil Procedure 13(f).

2. Counsel for Plaintiff has not consented to allowing the amendment, and therefore, it is necessary to ask the Court for permission to file an amended pleading by filing a motion and scheduling a hearing on the matter.

3. The law strongly favors amendments and the court is encouraged to freely grant leave to amend. See Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987). In Pool v. Pool 329 S.C. 324, 328, 494 S.E.2d 820, 822 - 823 (1998), the Court held:

The focal inquiry in allowing amendment of pleadings is whether doing so will prejudice the opposing party. See Soil & Material Eng'rs, Inc. v. Folly Assocs., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) ("Simply because an amendment to conform to proof was made late in the trial affords no basis for holding that the amendment comes too late. The question is one of prejudice to the opposing party."). See also Foggie v. CSX Transp., Inc., 315 S.C. 17, 23, 431 S.E.2d 587, 590 (1993) ("It is well established that a motion to amend is addressed to the sound discretion of the trial judge, and that the party opposing the motion has the burden of establishing prejudice"); Ball v. Canadian Am. Express Co., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) ("Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge. Ordinarily, amendments to conform to proof should be liberally allowed.").

4. The prejudice that Rule 15 contemplates is lack of notice that the new issue is to be tried and lack of a full opportunity to introduce testimony to refute it. See Armstrong v. Collins 366 S.C. 204, 228, 621 S.E.2d 368, 380 (S.C.App. 2005); Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296, 299 (2004) (holding that new claims were properly added to lawsuit two years after the underlying incident and South Carolina Supreme Court observed that, "the

factual circumstances of the tort claims of trespass and conversion have already been set out in the original complaint . . . and no new information was required to assert the added claims").

5. Specifically with regard to new claims, the law has set forth the following analysis:

An amendment to a pleading relates back to the date of the original pleading "[w]henver the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings." The central requirement here is that the party defending against the new claim have sufficient notice of it, i.e., "the new claim must be 'logically related' to the matters originally pleaded so that the defendant is not prejudiced by the new claim [sic]. In federal practice, the factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the party defending against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back.

Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 525 S.E.2d 888,

(Ct. App.1999)

6. In this case, Plaintiff cannot demonstrate prejudice and has sufficient notice of all the issues embodied in the causes of action to be added. Specifically, Mr. Whitfield seeks to add counts for Constructive Fraud, Negligence, Breach of Fiduciary Duties, and Violation of the SC Consumer Protection Act, which are all based upon the same conduct that was alleged in his previous amended answers and counterclaims.

7. Mr. Whitfield previously alleged in his pre-existing counterclaims that Plaintiff's action were tainted with fraud, and it has already been disclosed in discovery to Plaintiff that Mr. Whitfield alleges that the Plaintiff made misrepresentations to him. Therefore, Plaintiff has had ample notice of these issues, and they are by no means new, or any kind of surprise.

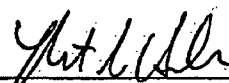
8. Mr. Whitfield also desires to amend his Answer to assert a crossclaim against co-defendant Cindy Whitfield for equitable indemnification, pursuant to Rule 13(g).

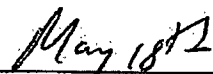
9. A copy of the proposed amended pleading is attached hereto as Exhibit "A".

WHEREFORE, Defendant respectfully requests this Honorable Court grant its motion for leave to amend and issue any and all other relief deemed just and appropriate.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: 
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Attorneys for Defendant Anthony Whitfield


_____, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Amend upon all parties of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 18 day of May, 2015.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen

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JULIE J. ARMSTRONG
CLERK OF COURT

2015 MAY 18 PM 3:37

FILED

Charleston, SC
May 18, 2015

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
)

CASE NO. 2012-CP-10-5887

HARBOR NATIONAL BANK,
Plaintiff,

vs.

ANTHONY WHITFIELD and CINDY
WHITFIELD
Defendants.

)
)
) **DEFENDANT'S FOURTH AMENDED**
) **ANSWER, AFFIRMATIVE DEFENSES,**
) **CROSSCLAIM, AND COUNTERCLAIMS**
)

) (Breach of Contract, Breach of Fiduciary
) Duties, Breach of Contract Accompanied
) by Fraudulent Act, Negligent
) Misrepresentation, Fraud, Constructive
) Fraud, Unfair Trade Practices,
) Promissory Estoppel, Tortious
) Interference with Prospective Contractual
) Relations, Violation of Consumer
) Protection Act, Negligence *Per Se*, and
) Equitable Indemnity)

(Jury Trial Demanded)

TO: ROBERT A. BERNSTEIN, BRIAN DUFFY, AND SETH WHITAKER, ATTORNEYS
FOR PLAINTIFF

Comes now Defendant, Anthony Whitfield (hereinafter, "Mr. Whitfield") and responds to the allegations of Plaintiff's Complaint as follows:

1. Mr. Whitfield admits the allegations of Paragraphs 2, 3, 4, 10 and 19.
2. Mr. Whitfield denies the allegations of Paragraphs 15 and 27 to the extent such Paragraphs reference previous allegations which are herein denied.
3. Mr. Whitfield admits an assignment was made but denies the event of default as alleged in Paragraph 20, 28, 25, 26 and 27.

Exhibit "A"

4. Mr. Whitfield denies Paragraphs 1, 5, 6, 7, 8, 9, 11, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28 and 29.

5. Mr. Whitfield denies each and every allegation not specifically enumerated herein.

FIRST AFFIRMATIVE DEFENSE

6. Plaintiff's claims to foreclose on the 2007 Mortgage should be waived, estopped, barred, and/or dismissed as Defendant made all payments as was required under the Note and was told by Plaintiff numerous times that the maturity date as referenced in the Note would be automatically extended. Plaintiff ultimately agreed to renew the loans and then refused to close the renewals as previously agreed.

SECOND AFFIRMATIVE DEFENSE

7. Plaintiff's claims in equity are barred by the doctrine of unclean hands and equitable estoppel.

THIRD AFFIRMATIVE DEFENSE

8. Plaintiff's action should be barred by the doctrines of unconscionability, waiver, fraud and duress.

FOURTH AFFIRMATIVE DEFENSE

9. Plaintiff has failed to comply with the mandatory provisions of the South Carolina Supreme Court Administrative Order 2011-05-02-01. As such, this matter should be stayed or dismissed.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Failure to Provide Required Truth in Lending Disclosures; Recoupment and Set-Off

10. Defendants, whose ownership interest in the residential property being foreclosed upon with address of 1055 Black Rush Circle, Mount Pleasant, SC 29466 (the "Subject Property") is subject to the security interest created by the Plaintiff's 2007 mortgage, elect to rescind the mortgage and note being foreclosed upon (the "2007 Loan").

Plaintiff violated TILA and Regulation Z by, inter alia:

- a. failing to provide interest rate disclosures at the 2007 and 2012 closings;
- b. failing to provide material disclosures in a form Defendants could keep prior to consummation of the 2007 and 2012 closing;
- c. failing to provide Notices of Right to Cancel;
- d. failing to provide disclosures as part of the 2007 and 2012 transactions.

11. Plaintiff was obligated to provide the information set forth in the preceding Paragraph as Plaintiff knew, at all material times, that the subject property was residential and was Defendant Cindy Whitfield's primary residence.

12. Plaintiff's violations of the Truth-in-Lending Act give rise to a three year continuing right of rescission on the part of Defendants.

13. Defendants hereby elect to rescind the 2007 loan transaction with Plaintiff, pursuant to the continuing right of rescission.

14. When a consumer elects to rescind pursuant to the Truth-in-Lending Act, any security interest taken in connection with the transaction becomes void. 15 U.S.C. § 1635(b).

15. When a consumer elects to rescind pursuant to the Truth-in-Lending Act, the consumer is not liable for any finance or other charge. 15 U.S.C. § 1635(b).

16. The 2007 mortgage that is the subject of this foreclosure action was taken in connection with the transaction that Defendant has elected to rescind.

17. Defendant has the ability to tender repayment of their rescission obligations through procurement of a buyer of the home.

18. Since the mortgage is void, the foreclosure action must be dismissed.

SIXTH AFFIRMATIVE DEFENSE

19. Upon information and belief, the subject note attempted to be foreclosed upon is not the original note and therefore Plaintiff does not have standing pursue this foreclosure action.

COUNTERCLAIMS

Factual Allegations

20. In 2006, Mr. Whitfield approached Charlie Rivers (hereinafter, "Mr. Rivers") of Harbor National Bank to purchase and refinance certain real estate in the lowcountry counties of Berkeley, Dorchester and Charleston. Mr. Rivers previously helped Mr. Whitfield refinance over 30 loans when Mr. Rivers was a loan officer with Southtrust Bank. These loans always had 15 and 30 year terms and never had balloon payments or required refinancing or re-approval.

21. Mr. Rivers promised Mr. Whitfield the same loans as he was previously given by Mr. Rivers, to-wit, 30 year loans with the best rate possible, with a ½ point

origination fee, on FNMA loan documents. There was no mention of balloon payments or re-qualification anytime during the 30 year loans. After a review of Mr. Whitfield's financial condition, Mr. Rivers approved \$1.5 million in loans to refinance rental properties, and shortly after extended the line to \$2.0 million. At the time, Mr. Whitfield made clear to Mr. Rivers that the loans could not have demand features or have a balloon payment. Mr. Rivers agreed. Ms. Angie Bell, Plaintiff's loan officer, also represented to Mr. Whitfield that the loans would be automatically renewed in five years despite offering loans that had five year maturities.

22. In reliance on Mr. Rivers' and Ms. Bell's representations, Mr. Whitfield purchased the property at 1055 Black Rush Circle, Mount Pleasant, SC 29466 (hereinafter, "the Subject Property" or "Black Rush Property").

23. On or about March 27, 2007 Mr. Whitfield was provided documentation from Plaintiff stating that Mr. Whitfield would have the choice of a 7.5% fixed interest rate or a floating rate of prime minus $\frac{1}{4}$ % (See Exhibit "A" attached hereto). Ms. Bell advised that the fixed rate was the best option and that Mr. Whitfield could convert to a floating rate if the interest rates dropped. Upon information and belief, Ms. Bell knew or should have known in April of 2007 that the interest rates were going to fall.

24. Plaintiff was aware at all material times, before and after the loan was closed, that the home was being purchased as a primary residence for Mr. Whitfield's ex-wife, Cindy Whitfield. Mr. Whitfield provided all documents associated with the purchase of the home to Ms. Bell, including the real estate purchase contract to purchase Black Rush and the separation agreement which stated that Mr. Whitfield was to purchase the Black Rush property for Cindy Whitfield and deed a one half interest to

her after the home was purchased, and deed the remaining one-half interest to Cindy Whitfield in 7 years, to-wit, June 13, 2015. Mr. Whitfield also provided Ms. Bell a copy of the deed to Cindy Whitfield in July of 2007.

25. Despite being provided documentation by Plaintiff that Mr. Whitfield would have the choice of a 7.5% fixed interest rate or a floating rate of prime minus $\frac{1}{4}$ %, Mr. Whitfield was advised by Ms. Bell that the higher 7.5% fixed rate was the best option as opposed to the lower floating rate of prime minus $\frac{1}{4}$ %. Mr. Whitfield was told he could later change to the floating rate.

26. Despite being provided documents at the closing with a April 13, 2012 maturity date on some of the loans, Mr. Whitfield was assured numerous times by loan officer Angela Bell that the maturity date was just a formality and in fact was just a renewal date and would be extended automatically with only adjustments of interest without any re-qualifying or costs to extend. Despite making such assurances to Mr. Whitfield, loan officer Angela Bell determined as early as 2010 that the loans would not be renewed as she felt Mr. Whitfield was not providing financial information to her. At the time she indicated she needed to "grease the wheel" with Mr. Whitfield's accountant so the accountant would tell her more information about Mr. Whitfield's financial status.

27. Because of Ms. Bell's assurances and representations, Mr. Whitfield purchased the Black Rush property and made payments on the loan for the subject properties from the origination of the loan every month until the renewal date. Moreover, Mr. Whitfield repeatedly asked Ms. Bell to lower the rates on the subject property and all of Mr. Whitfield's other loans and was told by Ms. Bell each time that the bank could not lower the interest rates.

28. In January, 2012, Plaintiff asked Mr. Whitfield for a copy of his recent tax returns so that the loan could be automatically extended. As late as February 6, 2012, loan officer Angela Bell sent an email to Mr. Whitfield asking him for tax information to work on the "renewals." On February 21, 2012, Mr. Whitfield informed loan officer Angela Bell that he was under some financial pressure, that his health was suffering, and that he wanted interest rates on par with the other mortgages he held with other banks. The following day, Ms. Bell informed Harbor National Bank personnel (but not Mr. Whitfield) that she was going to let Mr. Whitfield know that she would be asking him to move the loans. Although she informed others of her intention not to renew the loans, Ms. Bell never told Mr. Whitfield that he needed to move the loans- at any point in time. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible.

29. One week later, on February 28, 2012 loan officer Angela Bell wrote Mr. Whitfield to let him know that she would have to have his 2010 tax returns in order to request approval for renewal of his upcoming maturing loans. On April 2, 2012, Mr. Whitfield informed loan officer Angela Bell that his 2010 tax returns were complete and that he urgently wanted his loans modified since the rates were extremely high, and that his health had been an issue. After receiving the information about receiving the tax returns, the following day loan officer Angela Bell told a senior credit analyst at Harbor National Bank, "I'm just glad the threats of no renewals finally worked." Five days later, on April 8, 2012, Mr. Whitfield suffered a heart attack. Ms. Bell then began demanding appraisals on the properties and \$2,700.00 worth of bank fees to perform the appraisals.

30. During a meeting with Ms. Bell and Mr. Willard Stout in May of 2012 (Ms. Bell's supervisor), Mr. Stout advised that appraisals were now required after the loans began to mature and indicated that additional collateral requirements would be required to determine if the loans were "underwater," including a "blanket mortgage," for the properties. Mr. Stout made these demands despite the fact that Mr. Whitfield had paid down all of his principal balances since 2007 and never missed a regularly scheduled payment.

31. Despite making assurances the loans would be renewed, two notes (732 Gahagan and 110 Mepkin) matured on April 13, 2012 without having been renewed by the Plaintiff. Mr. Stout and/or Ms. Bell then demanded Mr. Whitfield sign 60-day renewal notes on the Gahagan and Mepkin properties on or about May 29, 2012, for him to be signed by May 31, 2012. On or about June 14, 2012 Mr. Stout threatened to hold Mr. Whitfield in default in three business days if he refused to sign the 60 day notes and agree to new collateral demands.

32. The note for the Black Rush Property came due on May 3, 2012, again without renewal. Finally, on June 21, 2012 Charlie Rivers met with Mr. Whitfield and orally agreed to modify the notes and specifically agreed to: (a) extend the notes for a 25 year amortization with another 5 year maturity; (b) eliminate the need for any principal pay downs; (c) eliminate the need for additional collateral to secure the notes; (d) eliminate the need to cross collateralize the loans; (e) waive the default interest rate of 14%; (f) back date the rate of 4.75% to the maturity the May 3, 2012 maturity date; and (g) credit Mr. Whitfield's overpayment of interest. Mr. Rivers agreed to renew all of Mr. Whitfield's other loans at this meeting as well. A copy of the notes Mr. River took at

the meeting is attached hereto as Exhibit "B". The notes confirmed Mr. Rivers' agreement to renew the loans on the specified terms. After the meeting, the bank contacted the closing attorney Mark Weeks and set up a closing for the following week, on June 28, 2012.

33. On June 27, 2012, only one day before the scheduled closing, Harbor National Bank vice president Scott Warren signed and provided a loan commitment letter dated June 26, 2012 to Mr. Whitfield stating the terms and conditions of the renewals of all Mr. Whitfield's loans held by Harbor National Bank. The proposed new loans dropped the interest rate to 4.75% and extended the maturities another 5 years. (See loan commitment¹, attached hereto as Exhibit "C"). The letter reflected Mr. Rivers' agreements from the June 21, 2012 meeting. Notably, the document contained no requirement that a title endorsement was required, or that Cindy Whitfield was required to give her permission or sign a mortgage to renew the loan for the Black Rush Property.

On the same day, Mr. Whitfield was given drafts of new notes and documents to sign for the closing which was to be held the following day, on June 28, 2012. The new note and documents for the Black Rush Property included: (a) a "Business Loan Agreement; (b) a "Business Purpose Statement; (c) a Commercial Promissory Note; (d) a Commercial Settlement Statement; and (e) a Waiver of Appraisal Rights.²

At the meeting on June 27, 2012, Mr. Warren mentioned the bank "may" need a title endorsement in order to close but never represented that one was required in order

¹ "Loan commitment" or "commitment" means a statement, written or electronic, by the mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower. See SC Code § 37-22-110(24).

² A waiver of appraisal rights is exempted in a consumer credit transaction. See SC Code §29-3-680(b).

to close, or that it was a condition of closing - - nothing to that effect was stated in the June 26, 2012 letter that was given to Mr. Whitfield at the meeting with Mr. Warren, either. Similarly, Mr. Warren never expressed that Mrs. Cindy Whitfield was required to sign any documents in order to renew the loan for the subject properties.

34. In reliance upon Mr. Warren's June 26, 2012 commitment letter, Mr. Whitfield attended a scheduled closing at attorney Mark Weeks' law office. At the closing, Mr. Warren informed Mr. Whitfield that a signed endorsement from a title company was required so that Mr. Whitfield's ex-spouse Cindy Whitfield would not be required to sign the loan documents for the Black Rush Property, the home that Cindy Whitfield resided in.³ At a certain point, Mr. Whitfield was informed by the closing attorney that the endorsement could not be procured, that Mrs. Whitfield was refusing to sign the mortgage to the Black Rush Property, and Mr. Warren proposed that it would only be possible to close two of the subject properties - Mepkin and Gahagan since they had matured, but that if the Black Rush Property ultimately couldn't be closed, all properties including Mepkin and Gahagan would have to be foreclosed upon. He then withdrew the offer to close Mepkin and Gahagan and stated that Black Rush must close or none of the nine loans could close. Outside Mr. Weeks law office, Mr. Warren imparted to Mr. Whitfield that the only option left was for Mr. Whitfield was to substitute collateral for Black Rush.

35. Despite Harbor National Bank's representations that a title endorsement was required to renew the Black Rush Property, Mr. Whitfield has subsequently learned that no such endorsement was required from the title company, or the closing attorney

³ Plaintiff also attempted to procure a "Business Purpose Statement" from Mr. Whitfield indicating that the property was to be used in Mr. Whitfield's business despite having previous knowledge that the Black Rush Property was in fact a residential property for Mr. Whitfield's ex-wife Cindy Whitfield.

Mark Weeks. Moreover, Harbor National Bank failed to renew any of the loans listed in the June 26, 2012 commitment letter despite agreeing to do so, willfully breaching their agreements, and causing Mr. Whitfield damages as to be determined by the trier of fact.

36. Harbor National Bank claims to have relied upon the advice of their attorney, Mr. David Swanson, who indicated that a title endorsement was needed to renew the loan for the Black Rush Property. Mr. Warren never mentioned to Mr. Whitfield, at or after the closing, that the bank had procured Mr. Swanson's advice that a title endorsement be obtained in order to renew the Black Rush loan- and that he was relying on that advice in refusing to close the Black Rush loan. Recently, Mr. Swanson conceded that the Black Rush Property loan could have been renewed without such an endorsement. He also indicated that he was not told there were any other properties besides the Black Rush Property that were being renewed. Mark Weeks, the closing attorney at the June 28, 2012 closing, stated that no endorsement was necessary or required for the Black Rush Property and that he could have renewed any of the loans without an endorsement or Mr. Cindy Whitfield's permission and/or authorization to renew the loans. Mr. Swanson also conceded that his advice to procure a "title endorsement" was provided to Harbor National Bank without reviewing any documents, without performing any legal research, without providing any written opinion, and without charging the bank any money for the advice.

37. The attorney at the closing, Mr. Mark Weeks, has stated that there was absolutely no valid or legal reason that justified the bank's refusal to close any of Mr. Whitfield's loans. (See Affidavits of Mark Weeks, attached hereto as Exhibit "D").

38. Mr. Whitfield has also retained a banking expert, that has testified that the

bank's actions were unreasonable as: (1) there was no risk to the bank in renewing the Black Rush Property without the title endorsement; (2) an endorsement was not contractually called for in the bank's agreement to renew the Black Rush Property; and (3) the bank knew that Mrs. Whitfield was on title and received advice from Mr. Swanson on the subject prior to giving Mr. Whitfield the June 26, 2012 commitment letter that made no mention of a title endorsement. (See Affidavit of Peter Seitz, attached hereto as Exhibit "E").

39. Mr. Whitfield has also retained an experienced real estate attorney that has provided sworn testimony that the closing attorney had all the necessary paperwork in order to renew Mr. Whitfield's loans, and that no title endorsement or mortgage signature of Mrs. Cindy Whitfield was required. (See Affidavits of David Collins, attached hereto as Exhibit "F").

40. Adding insult to injury, after the bank failed to renew the loans at the June 28, 2012 closing, the bank continued to demand Mr. Whitfield's ex-wife sign the "necessary paperwork" when they had been advised four days after the closing by their own outside bank compliance expert Patti Blendon that the wife, "may not have to sign anything." The bank compliance expert Patti Blendon also told the bank the situation was, "a mess," and that the loan was a consumer – and not—a commercial loan, despite the bank treating the loan as commercial in 2007 when the loan was originated, and again treating the loan as commercial in 2012 when the bank made a condition of the renewal that Mr. Whitfield sign an affidavit that the loans (including the Black Rush Property) were, "owned and pledged for business purposes." Again, at all material times alleged herein, the bank knew the Black Rush Property was being purchased for Mrs.

Whitfield to live in before origination in 2007, as well as at the time of the agreed-upon renewal in 2012⁴—yet ignored following federal Truth-In-Lending laws to provide mandatory disclosures to Mr. Whitfield in 2007 and again in 2012, and otherwise not treating it as a consumer loan under RESPA and TILA.

41. The bank compliance expert Patti Blendon also instructed the bank to get an attorney involved regarding these issues. The bank contacted Mr. Robert Bernstein on July 12, 2012, twelve days after giving their advice. Mr. Rivers, the bank president, stated that he felt comfortable in saying that all these issues were discussed with Mr. Bernstein. Mr. Bernstein, however, stated under oath that he was not asked nor provided legal advice as to technicalities, preparation or closing of the renewal of the Black Rush Property, during this exact same time period. Mr. Bernstein stated that he "wasn't clear why it didn't close," in June of 2012, but yet continued to demand that Mrs. Whitfield sign a mortgage in order to renew the loans after the failed closing, but before this foreclosure action was filed. He also has indicated that the reason the closing did not proceed was because of his conclusion that the existence of the transfer of the one-half interest "encumbered" the first mortgage.

42. Mr. Bernstein, at the time, made no efforts to contact Mr. Warren the loan officer, Mr. Weeks the closing attorney, or Mr. Swanson bank's counsel in order to determine if a title endorsement or Mrs. Whitfield's signature was truly necessary to renew the Black Rush Property (or any of the other properties)- but instead continued to demand that Mrs. Whitfield sign a mortgage in order to renew not just the Black Rush Property, but all eight others, or substitute collateral for the Black Rush Property to convert the loan from a consumer to business loan. The bank also retreated from its

⁴(See bank Credit Offering Reports from 2007 and 2012, attached hereto as Exhibit "G").

June 28, 2012 terms and conditions to renew the loans and went back to offering May, 2012 demands for collateral changes to unnecessarily interfere with Mr. Whitfield's business.

43. Despite disputing the default, Plaintiff instituted receivership proceedings on seven of his properties, took possession of the properties, and selected a receiver whom Mr. Whitfield had a litigation history with, Ms. Candace Pratt. Ms. Pratt unilaterally leveraged the properties with loans from the plaintiff and squandered the properties' income for her own benefit with the bank's approval and acceptance.

44. As a direct consequence of the foreclosure actions and the bank's failure to renew the loans it agreed to, Mr. Whitfield has liquidated income producing assets in order to defend the foreclosures, pursue these counterclaims, and dispute Plaintiff's claimed default.

FOR A FOR FIRST COUNTERCLAIM
(Breach of Contract)

45. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

46. As described above, Plaintiff indicated before and after the origination of the loan, verbally and in writing, that the loan to the Subject Property (and Mr. Whitfield's eight other properties) with Harbor National Bank would be automatically renewed.

47. Despite repeatedly making these representations and reassurances, and making a specific agreement to renew the loans, Plaintiff failed to renew the loans and

instead declared Mr. Whitfield to be in default despite being paid all monthly installments on time, as and when due, breaching their agreement with Mr. Whitfield.

48. Although Plaintiff ultimately confirmed in writing to renew the loans in the June 26, 2012 letter, Plaintiff refused to close the loan on June 28, 2012, as described above, breaching the terms of the offer contained in the writing. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

49. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

50. The relationships of Bell, Rivers, and Warren recited above constituted a special relationship.

51. Mr. Whitfield came to the Plaintiff's bank from his long standing relationship with Mr. Charlie Rivers, which began in 1997, 15 years before the dispute arose herein. As recited above, Mr. Rivers made representations to Mr. Whitfield as to the kinds of loans he would receive at Harbor National Bank, and affirmative representations and an agreement that all of his loans would be renewed for another five year term at reduced interest rates on June 21, 2012:

52. Mr. Whitfield was assigned Ms. Bell as his loan officer, and, as recited above, was given representations by her concerning the interest rates and terms, as

well as the ability for Mr. Whitfield to renew the loans at the end of the initial five year term. Ms. Bell also provided affirmative advice to Mr. Whitfield as to whether the fixed or floating rate option would be desirable.

53. Mr. Warren was assigned to Mr. Whitfield's accounts after Mr. Rivers made an agreement to renew the loans on June 21, 2012. Mr. Warren personally met with Mr. Whitfield on June 27, 2012 (the day before the scheduled closing) to make sure, "it was what he had discussed with other members of the bank when the deal was put together."

54. The relationships of Bell, Rivers, and Warren cited above were more than casual. Because of Mr. Whitfield's long standing relationship with Rivers, he placed trust in the representations of each Bell, Rivers, and Warren.

55. Given these representations and their respective relationships, the bank was aware (or should have been aware) of the special trust that was reposed in it by their agents Rivers, Bell and Warren. Given these relationships, the Plaintiff is vicariously liable for the breach of duties made by Rivers, Bell and Warren in failing to deliver upon the representations they each made to Mr. Whitfield.

FOR A THIRD CAUSE OF ACTION
(Negligent Misrepresentation)

56. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

57. As described above, Harbor National Bank made affirmative representations to Mr. Whitfield that: (1) the initial loans would be 30 year loans; (2) the maturity date referenced in the Note was simply a renewal date; and (3) the interest rate to be

charged would be Mr. Whitfield's choice of a 7.5% fixed rate or prime minus ¼ %. The Plaintiff also made representations, and an offer, that the loans would be renewed at 4.75% with a new maturity date of July 10, 2017.

58. Plaintiff knew these representations were false, misleading, and incomplete when they were made. Such representations were (1) false, misleading and incomplete when made; (2) were made for a pecuniary interest of the Plaintiff; (3) the Plaintiff owed a duty of care to convey truthful information to Mr. Whitfield; (4) the Plaintiff breached that duty by failing to exercise due care; (5) Mr. Whitfield was unaware that the representations were false - and had no reason to suspect they were false as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his financial detriment as outlined above. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will be shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the actions of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Fraud)

59. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

60. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of a 7.5% fixed rate

or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations through Mr. Charlie Rivers, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

61. In addition to the aforementioned representations, Plaintiff made the representation and communicative action that it needed a "title endorsement" to the Black Rush Property in order to close not just the Black Rush loan, but all eight other loans as well.

62. The Plaintiff (as opposed to Mr. Whitfield) ought to have known the falsity of the representation of a need for a title endorsement as their own attorney that gave them the supposed advice for it stated the transaction could have been performed *without it and that the deed transfer to Cindy Whitfield was not a title defect.*

63. In addition to the aforementioned representations, Plaintiff made the representation and communicative action that it needed Cindy Whitfield to sign a mortgage to the Black Rush Property in order to close not just the Black Rush loan, but all eight other loans as well.

64. Mr. Whitfield was unaware that the representations were false and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loans, Mr. Whitfield would have previously refinanced the loans with another lender at a time when it was possible. In this regard,

at a minimum, the Plaintiff should have relayed their concerns about the renewals as early as documentary evidence suggest Harbor National Bank had a concern, to-wit, the year 2010.

65. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of their falsity.

66. Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into multiple high cost loans with the Plaintiff.

67. Mr. Whitfield made a mistake in entering into this and the other loans, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.

68. Subsequent to the origination of the loans, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; (3) charging, and stubbornly refusing to change and/or modify the interest rate of 7.5%; and (4) communicating to Mr. Whitfield orally and in writing that the loans would be renewed, as was agreed. The Plaintiff also made representations through Mr. Charlie Rivers, and an offer, to renew all nine loans at 4.75% with a new maturity date of July 10, 2017. As such, Mr. Whitfield is entitled to avoid or rescind the loans and to be returned to the status quo ante whereby the

Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into this loan transaction and the other loans with Plaintiff. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the repeated acts of indifference, malice, trickery and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Constructive Fraud)

69. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

70. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of a 7.5% fixed rate or prime minus $\frac{1}{4}$ %. The Plaintiff also made representations through Mr. Charlie Rivers, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

71. In addition to the aforementioned representations, Plaintiff made the

representation and communicative action that it needed a "title endorsement" to the Black Rush Property in order to close not just the Black Rush loan, but all eight other loans as well.

72. The Plaintiff (as opposed to Mr. Whitfield) ought to have known the falsity of the representation of a need for a title endorsement as their own attorney that gave them the supposed advice for it stated the transaction could have been performed *without it and that the deed transfer to Cindy Whitfield was not a title defect.*

73. In addition to the aforementioned representations, Plaintiff made the representation and communicative action that it needed Cindy Whitfield to sign a mortgage to the Black Rush Property in order to close not just the Black Rush loan, but all eight other loans as well.

74. The Plaintiff (as opposed to Mr. Whitfield) ought to have known the falsity of the representation that Cindy Whitfield needed to sign a mortgage in order to renew the loans as: (a) there was no valid or legal reason to require Cindy Whitfield to sign a mortgage in Charleston County to renew loans in Berkeley or Dorchester Counties; and (b) a simple review of the Black Rush 2007 mortgage and the deed into Cindy Whitfield would have made clear that the renewal of the Black Rush loan was subject to the pre-existing Harbor National Bank first mortgage.

75. Mr. Whitfield was unaware that the representations were false until recently, and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff's agents Bell, Rivers, and Warren. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above.

76. Subsequent to the origination of the loans, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; (3) charging, and stubbornly refusing to change and/or modify the interest rate of 7.5%; and (4) communicating to Mr. Whitfield orally and in writing that the loans would be renewed, as was agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loans and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by Plaintiff when they fraudulently induced Mr. Whitfield to enter into this loan transaction and the other loans with Plaintiff. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss. In addition thereto, the repeated acts of indifference, malice, trickery and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION

(Violation of Federal Trade Commission Act Section 5(a) 15 U.S.C. §45)
(Unfair Trade Practices, as made applicable through SC Code §39-5-10 et.seq.)

77. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

78. As stated above, Plaintiff made affirmative representations to Mr. Whitfield that: (1) all loans would be 30 year loans; (2) that the maturity dates referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of 7.5% fixed rate or prime minus $\frac{1}{4}$ %. The Plaintiff also represented, and made an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017.

79. Plaintiff's acts enumerated above constitute "unfair or deceptive acts or practices in or affecting commerce," as those terms are defined in the Act. This prohibition applies to all persons engaged in commerce, including banks. An act or practice is unfair where it: (1) causes or is likely to cause substantial injury to consumers; (2) cannot be reasonably avoided by consumers and; (3) is not outweighed by countervailing benefits to consumers or to competition. In this case, Plaintiff's actions set forth above have caused substantial injury to Mr. Whitfield.

80. An act or practice is deceptive where: (1) a representation, omission, or practice misleads or is likely to mislead the consumer; (2) a consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances and; (3) the misleading representation, omission, or practice is material. In this case, Plaintiff's actions were unethical and deceptive because Plaintiff clearly misrepresented that the loans would be renewed and misrepresented the interest rate that Mr. Whitfield would be charged. The bank's own commercial loan policy mandates that the loans provided to Mr. Whitfield should have been, "tied to Harbor National Bank's Base Rate with the interest rate adjusted as the Base rate changes." It was the bank's own policy that these loans were to be made variable, not fixed, and the loan

officer in 2007 Ms. Bell and the bank president Mr. Rivers in 2012 had no explanation as to what the circumstances were which demanded that Mr. Whitfield's loans were made fixed. Not only did Ms. Bell misrepresent the fact that the loan's interest rate feature could be switched from a fixed to a floating variable rate feature, but, it was never supposed to be fixed to begin with, per the bank's own loan policies. Mr. Rivers repeated this practice by not offering Mr. Whitfield a variable rate loan in accordance with their own loan policies in June of 2012.

81. The bank also committed unfair and deceptive acts by not complying with federal law and its own regulatory compliance program in failing to treat the Black Rush Property as a consumer loan, as defined in federal law. On June 21, 2012 Harbor National Bank made an offer to Mr. Whitfield to defer payment of debt on his loans until 2017, as confirmed in writing in the June 26, 2012 commitment letter. Such offer was accepted by Mr. Whitfield and was an extension of "credit" as defined in law.

82. The loan made by the Plaintiff to Mr. Whitfield for the Black Rush Property in 2007 and extension of credit offered in 2012 above was, at all material times, a consumer loan, as that term is defined in state and federal law. Specifically, the loan and the extension of credit was made for personal, family, or household purposes – and not a business use. The primary purpose of Mr. Whitfield procuring the loan for the Black Rush Property (and the extension of credit in 2012) was for personal and family reasons as he was obligated to provide the Black Rush home to Cindy Whitfield pursuant to his family court obligations.

83. Plaintiff attempted to provide a notice of right to cure to Mr. Whitfield for the Black Rush loan, further evidencing Plaintiff's treatment of the loan as a consumer loan.

84. Plaintiff's own bank compliance expert, Ms. Patti Blendon acknowledged that the loan for the Black Rush Property was a consumer, and not a commercial loan. Mr. Rivers, the president of the bank, acknowledged that the Black Rush Property could be classified as a Residential 1-4 family dwelling secondary residence—which according to the bank's own regulatory compliance program mandates disclosures under TILA and RESPA.

85. The Plaintiff was required under state and federal law (and their own regulatory compliance program) to provide interest rate and material disclosures to Mr. Whitfield and Mrs. Whitfield in 2007 and 2012 after agreeing to extend credit on the Black Rush and never did.

86. Plaintiff was obligated to provide the information set forth in the preceding Paragraph as Plaintiff knew, at all material times, that the subject property was not a rental (or for business) and was Defendant Mrs. Cindy Whitfield's personal, primary residence. The disclosure violations were intentional and not bona fide errors as Plaintiff attempted to procure a "business purpose affidavit" from Mr. Whitfield at a time knowing full well the Black Rush Property was for personal, family or household use.

87. Mr. Whitfield has been injured in reliance upon Harbor National Bank's practices and omissions as cited above, as will shown to the trier of fact, including but not limited to, actual, consequential and special damages, physical and mental distress and financial loss. In addition thereto, the repeated acts of indifference, malice, trickery

and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of treble damages, attorneys fees and costs and punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(Promissory Estoppel / Detrimental Reliance)

88. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

89. Mr. Whitfield relied on the promises of Angela Bell, Charlie Rivers, and Scott Warren to renew and modify the loans.

90. These promises were unambiguous in their terms and were relied upon by Mr. Whitfield. In particular, there were no contingencies placed upon Mr. Rivers' June 21, 2012 offer and agreement to renew the nine loans on specified terms, as the June 26, 2012 written reflection of the agreement, nor Mr. Warren's representations to renew the loans on June 27, 2012, as title insured first mortgages were already in place on all of the subject properties.

91. The reliance by Mr. Whitfield regarding renewing the nine loans was more than expected and more than foreseeable by Harbor National Bank.

92. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, actual, consequential and special damages, physical and mental distress and financial loss. In addition thereto, the repeated acts of indifference, malice, trickery and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A EIGHTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

93. Mr. Whitfield hereby incorporates the allegations of the foregoing

paragraphs as if fully restated herein.

94. As stated above, Mr. Rivers made an agreement to renew the loans at the June 21, 2012 meeting with Mr. Whitfield, as put in writing, as reflected in the June 26, 2012 commitment letter.

95. Plaintiff breached the agreement with Mr. Whitfield by failing to close the renewal of this loan and the 8 other loans. Such breach was made with the fraudulent intent of never actually intending to close the renewals when that representation was made, and such fraudulent intent was manifested by the fraudulent act of claiming a title endorsement was required to renew the loan on the Black Rush Property when in fact one was never needed, nor was any signature legally required of Mrs. Cindy Whitfield to effect the renewal of this loan.

96. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, actual, consequential and special damages, physical and mental distress and financial loss. In addition thereto, the repeated acts of indifference, malice, trickery and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR A NINTH CAUSE OF ACTION

(Tortious Interference with Prospective Contractual Relations)

97. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

98. The acts of Plaintiff described herein constituted an interference with Mr. Whitfield's business, were without justification, were done with improper purpose and motive, knowing it would place Mr. Whitfield under duress when filing these unfounded

legal proceedings and knowing that it would interfere with Mr. Whitfield's ability to sell and/or rent his properties.

99. As a result of Plaintiff's actions Mr. Whitfield has lost the ability to enter into contracts with identifiable prospective buyers and/or renters of his properties. As a direct and proximate result of the Plaintiff's actions, Mr. Whitfield has suffered special damages including but not limited to a diminished value of all his properties in the eyes of third parties, loss of income and loss of profits.

100. Plaintiff's actions proximately caused actual, consequential, and special damages, including but not limited to: a) inability to sell and/or rent his properties to third parties who meet requirements for sale and/or rental of his properties; b) foreclosure proceedings having been instituted on his properties; c) a diminished value of all his properties in the eyes of third parties; d) damage to Mr. Whitfield's reputation and business standing in the real estate profession; e) financial damage to Mr. Whitfield's business because of pre-mature liquidations and time spent away to defend these charges and prosecute these claims; f) financial damage for his inability to sell his properties following filing of the lis pendens and lawsuit; g) attorneys' fees and costs incurred; h) time spent away from work as a result of the lis pendens and lawsuit; i) emotional distress to Mr. Whitfield; j) injury to his health and mental pain and suffering; and k) adverse tax consequences. In addition thereto, the repeated acts of indifference, malice, trickery and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

FOR AN TENTH CAUSE OF ACTION

(Violations of the South Carolina Consumer Protection Code §§ 37-3-301, 37-5-203)

101. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

102. The subject loan transactions fall within the scope of the Consumer Protection Act pursuant to S.C. Code Ann. § 37-3-105 which states, in relevant part, that:

- "(1) Except as otherwise provided in subsection (2)... 'consumer loan' does not include a loan secured by a first lien or equivalent security interest in real estate. ...
- (2) Loans excluded from the definition of a "consumer loan" pursuant to subsection (1) shall nevertheless be subject to ... civil liability for violation of disclosure [requirements] ..."

103. On June 21, 2012 Harbor National Bank made an offer to Mr. Whitfield to defer payment of debt on his loans until 2017, as confirmed in writing in the June 26, 2012 commitment letter. Such offer was accepted by Mr. Whitfield and was an extension of "credit" as defined in law.

104. The loan made by the Plaintiff to Mr. Whitfield for the Black Rush Property and extension of credit offered above was, at all material times, a consumer loan, as that term is defined by SC Code § 37-3-104. Specifically, the loan and the extension of credit was made for personal, family, or household purposes – and not a business use. The primary purpose of Mr. Whitfield procuring the loan for the Black Rush Property (and the extension of credit in 2012) was for personal and family reasons as he was obligated to provide the Black Rush home to Cindy Whitfield pursuant to his family court obligations.

105. Plaintiff attempted to provide a notice of right to cure to Mr. Whitfield for the Black Rush loan, further evidencing Plaintiff's treatment of the loan as a consumer loan.

106. Plaintiff's own bank compliance expert, Ms. Patti Blendon acknowledged that the loan for the Black Rush Property was a consumer, and not a commercial loan. Mr. Rivers, the president of the bank, acknowledged that the Black Rush Property could be classified as a Residential 1-4 family dwelling secondary residence—which according to the bank's own regulatory compliance program mandates disclosures under TILA and RESPA.

107. Pursuant to SC Code §37-3-301, the Plaintiff was required under federal law to provide interest rate and material disclosures to Mr. Whitfield and Mrs. Whitfield⁵ after agreeing to extend credit on the Black Rush Property and prior to June 28, 2012 the date of consummation as the loan was a consumer loan.

108. Plaintiff violated §37-3-301 by, *inter-alia*, failing to provide mandatory disclosure requirements pursuant to 12 C.F.R. § 1026.17.

109. Plaintiff was obligated to provide the information set forth in the preceding Paragraph as Plaintiff knew, at all material times, that the subject property was not a rental and was Defendant Mrs. Cindy Whitfield's personal, primary residence. The disclosure violations were intentional and not bona fide errors as Plaintiff attempted to procure a "business purpose affidavit" from Mr. Whitfield at a time knowing full well the Black Rush Property was for personal, family or household use.

110. Plaintiff's violations of these statutes gives rise to a fine of twice of the

⁵ Mrs. Whitfield is also a consumer for purposes of federal truth in lending law as her ownership interest is encumbered by Harbor National Bank's first mortgage recorded April 24, 2007. See 12 C.F.R. §1026.23(a)(1), Official Commentary.

amount of the finance charge plus attorney's fees and costs pursuant to §37-5-203.

FOR AN TENTH CAUSE OF ACTION

(Violations of the South Carolina Consumer Protection Code §§ 37-3-301, 37-5-203, 37-22-190(A)(1), 37-22-190(A)(7), 37-22-190(A)(8), 37-22-190(A)(14), 37-22-190(A)(15), and 37-22-190(B) constituting *Negligence Per Se*)

111. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

112. The subject loan transactions fall within the scope of the Consumer Protection Act pursuant to S.C. Code Ann. § 37-3-105 which states, in relevant part, that:

- (1) Except as otherwise provided in subsection (2)... 'consumer loan' does not include a loan secured by a first lien or equivalent security interest in real estate. ...
- (2) Loans excluded from the definition of a "consumer loan" pursuant to subsection (1) shall nevertheless be subject to ... civil liability for violation of disclosure [requirements] ...
- (3) Loans excluded from the definition of a "consumer loan" pursuant to subsection (1) also are subject to the provisions of ... Chapter 10, Chapter 22, and Chapter 23 of this title."

113. Given the applicability of the Consumer Protection Code to the subject transactions, Harbor National Bank owed a duty to Anthony M. Whitfield to comply with the statutory provisions of the Consumer Protection Code, specifically, to ensure compliance with §§ S.C. Code Ann. 37-5-203 *et seq.* and 37-22-190 *et seq.* in their

dealings and transactions with Mr. Whitfield, a person whom the statutory scheme was intended to protect.

114. Harbor National Bank breached the duty it owed to Mr. Whitfield by and through its careless, negligent, grossly negligent, criminally negligent, reckless, and/or willful and wanton actions and/or omissions did violate the following relevant statutory provisions, among others, in their dealings with Mr. Whitfield:

(a) In misrepresenting or concealing material facts, or making false promises to Mr. Whitfield which influenced, persuaded, or induced his application to refinance the mortgage loan or by pursuing a continued course of misrepresentation through Harbor National Bank's agents or otherwise; (S.C. Code Ann. § 37-22-190(A)(1))

(b) In failing to consummate the refinancing transaction in good faith and in accordance with a written commitment or agreement to make the mortgage loan on the terms accepted by Mr. Whitfield; (S.C. Code Ann. § 37-22-190(A)(7))

(c) By engaging in a transaction, practice, or course of business in connection with the making or servicing of, or purchase or sale of, Mr. Whitfield's mortgage loans in a manner that was not in good faith or fair dealing, or that was unconscionable, and/or by conduct which constituted a fraud upon Mr. Whitfield; (S.C. Code Ann. § 37-22-190(A)(8))

(d) In failing to abide by and act in accordance with the statutory provisions as set forth in the Real Estate Settlement Procedures Act (RESPA) as codified by 12 U.S.C. §§ 2601-2617, and failing to abide by and act in conformance with the regulations adopted pursuant to them by the Secretary of the Department of Housing

and Urban Development and state law with respect to disclosure requirements; (S.C. Code Ann. §§ 37-22-190(A)(11); (14); and (15))

(e) In failing to provide the mandatory disclosures as required by state and/or federal law and by collecting fees on the subject loan transactions before providing Mr. Whitfield with the required disclosures; (S.C. Code Ann. § 37-22-190(A)(14))

(f) In failing to comply with the statutory duties imposed by Chapter 22 of Title 37, or any other state or federal law, including rules and regulations, applicable to Harbor National Bank as a mortgage loan originator; (S.C. Code Ann. § 37-22-190(A)(15))

(g) In violating any other state or federal law applicable to Harbor National Bank in its dealings with Mr. Whitfield, as such violations are also *per se* violations of Chapter 22 of Title 37. (S.C. Code Ann. § 37-22-190(B))

115. As a direct and proximate result of Harbor National Bank's violations of the statutory protections offered by the South Carolina Consumer Protection Code, whether carelessly, negligently, or willfully and wantonly, Anthony M. Whitfield suffered severely, incurring actual damages, both mental and pecuniary, including by way of example only and without limitation: shame, mortification, mental anguish, mental pain and suffering, emotional distress, loss of enjoyment of life, injury to feelings, an overall degradation of health, and was hindered from, and will continue to be hindered from attending to his usual duties and affairs of life, as a direct and proximate result of the

aforesaid conduct of Harbor National Bank, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

116. As a direct and proximate result of Harbor National Bank's violations of the statutory protections offered by the South Carolina Consumer Protection Code, whether carelessly, negligently, or willfully and wantonly, Anthony M. Whitfield suffered severely, including additional actual damages including, by way of example only and without limitation: deprivation of income due to lost rents and lost profits which would have been received but for the acts of the Defendants, along with lost investment opportunities due to increased interest costs and the inability to obtaining financing which would have been received but for the acts of the Plaintiff, as well as any wrongfully incurred fees or interest payments, in an exact amount of actual, consequential and special damages as to be determined by a trier of fact.

FOR A TENTH CAUSE OF ACTION

(Cross-Claim for Equitable Indemnity as to Co-Defendant Cindy Whitfield)

117. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

118. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, such liability would be a proximate result of the wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents in failing to give her permission and/or authorization to renew the loan for the subject property located at 1055 Black Rush Circle, Mount Pleasant, South

Carolina, said demand being made as a defense of Harbor National Bank to close all of the renewal loans set forth in Exhibit "C".

119. Specifically, the closing attorney Mark Weeks and Mr. Whitfield's previous counsel Lauren Felder have stated that Mrs. Cindy Whitfield's counsel Stanley Jaskiewicz was contacted regarding procuring her consent for the renewal of the Black Rush Property. Lauren Felder was advised by either Stanley Jaskiewicz or his paralegal Dena Hardison that Mrs. Cindy Whitfield, "would not sign off on the mortgage as Mr. Whitfield was solely responsible under the Final Family Court Order." Additionally, Mrs. Cindy Whitfield was told by Mr. Jaskiewicz' paralegal Dena Hardison that, "he [Mr. Whitfield] could not refinance my home or borrow the equity in it as he would be putting another nail in his coffin." According to Mrs. Whitfield, Ms. Dena Hardison gave her this advice before the closing⁶ and was also told by Ms. Hardison not to, "do anything until I talk to Stan," regarding gaining access to her home for an appraisal. According to Mrs. Whitfield, Mr. Jaskiewicz never called her back regarding any issues related to procuring her consent to renew her home.

120. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, these wrongful acts, breach of duties, omissions, and/or negligence of Cindy Whitfield and/or her agents have damaged Mr. Whitfield, including but not limited to consequential and special damages, and the imposition of attorney's fees and costs in defending the foreclosure and prosecuting the Counterclaims as alleged herein. Mr. Whitfield and Mrs. Cindy Whitfield had a special relationship by virtue of their continuing family court obligations that would support a

⁶ Mrs. Whitfield indicated this statement was made by Ms. Hardison at the time the appraiser was attempting to gain access to Mrs. Whitfield's home-- in May and June of 2012. Correspondence was sent to Stanley Jaskiewicz advising him of appraisal access issue on June 11, 2012.

claim for indemnity against Mrs. Cindy Whitfield. Moreover, Mr. Whitfield is wholly without fault for Cindy Whitfield failing to provide her permission and/or authorization to renew the loan for the Black Rush Property.

121. To the extent, if any, that Mr. Whitfield is held liable to the Plaintiff in this action, which such liability is expressly denied, Mr. Whitfield would be entitled to be equitably indemnified for such liability from Cindy Whitfield for any liability that Mr. Whitfield is found to have incurred to the Plaintiff such that Mr. Whitfield would be entitled to recover his consequential and special damages, attorney's fees and costs, monies adjudged owed to the Plaintiff and/or monies expended by way of settlement of Plaintiff's claims as a result of Cindy Whitfield and/or her agents wrongful acts, breach of duties, omissions, and/or negligence as afore-described.

WHEREFORE, Defendants prays for relief as set forth below together with such further relief as this court deems just:

- a. Actual damages
- b. Consequential and Special damages;
- c. Statutory damages;
- d. Treble Damages
- e. Disgorgement of profits;
- f. Restitution;
- g. Rescission;
- h. Injunctive relief;
- i. Attorneys' fees and costs;
- j. Punitive Damages; and

k. Equitable Indemnification from co-defendant Cindy Whitfield in the alternative.

DEMAND FOR JURY TRIAL

Mr. Whitfield demands a jury trial on all counts so triable as stated above. These causes of action must be tried before any equitable causes of action asserted by either party can be disposed of. See Gardner v. Travis, 316 S.C. 315, 450 S.E.2d 54 (Ct. App. 1994).

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

By: _____

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171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Attorneys for Defendant

-and-

Andrew J. McCumber, Esquire

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andrew@slotchiverlaw.com
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S.C. Bar No. 15129

Attorneys for Defendant

Charleston, SC
May 18, 2015

CERTIFICATE OF SERVICE

I certify that I served the foregoing Fourth Amended Answer, Affirmative Defenses and Counterclaims upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this _____ day of May, 2015.

HALVERSEN & ASSOCIATES, LLC

By: _____

Brent S. Halversen
171 Church Street, Suite 330
Charleston, SC 29401
T: 843-284-5790
F: 864-326-4844
Email: brent@halversenlaw.com

Charleston, SC
May 18, 2015



March 27, 2007

Mr. Anthony Whitfield
2141 Dorchester Road
N. Charleston, SC 29405

Re: Line of Credit

Dear Tony:

Harbor National Bank has approved an extension of credit to you subject to the specific terms and conditions outlined in the financing commitment below.

A. GENERAL TERMS.

1. BORROWER: Anthony M. Whitfield (hereinafter referred to as "Borrower")
2. AMOUNT OF LINE: Up to One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000.00). Each advance under this line to be approved individually by the Bank.
3. PURPOSE: Guidance Line of Credit to finance individual investment properties.
4. INTEREST RATE: Each individual credit facility shall bear and accrue interest at borrower's choice of 1) a fixed rate for each advance to be determined at time of advance (for example, loans approved today would be fixed at 7.50%) or 2) a floating rate of prime minus 1/4 %.
5. ORIGINATION FEES: At Closing of each individual loan, Borrower will pay Bank origination fee of 1/2 %.
6. GUARANTY: ~~All loans and extensions of all credit shall be unconditionally guaranteed by Whitfield Realty.~~
7. MATURITY: Guidance Line to be approved and renewed on an annual basis. Each individual loan will mature 60-months from its closing date.
8. REPAYMENT: Monthly principal and interest payments based on a 30-year amortization with a 60 month maturity.



9. **COVENANTS:**

On new purchases:

- Loan to Value will not be greater than 75%.
- minimum cash equity/down payment of 15%.
- with minimum Debt Service Coverage ratio of 1.0 times.

On refinances:

- Loan to Value will be not greater than 75%.
- with minimum Debt Service Coverage ratio of 1.0 times.

B. **SECURITY.** Title Insured First Mortgage on each property. In addition, Bank requires an assignment of all leases, rents, and profits.

C. **AFFRAISAL.** Prior to each loan closing, Bank shall order and receive an appraisal of the Property in form and substance satisfactory to Bank. Based on the appraisal, the loan will not exceed 75% of the value of the property.

D. **SURVEY.** Prior to closing, Bank shall receive and approve a survey, acceptable to the title company, showing the location of all physical matters affecting the Property, identified in Section B above. Such survey shall indicate the location of all boundary lines, means of ingress and egress, easements, rights of way and shall include a legal description of the Property.

Bank will waive such survey in the event that no exception would result with the title company.

E. **TITLE INSURANCE.** Receipt of an ALTA title insurance policy, and all title endorsements.

F. **INSURANCE.** Borrower will provide proof of insurance coverage with insurance companies satisfactory to Bank, on the Collateral, in such amounts and against such risks as typically required in this type of transaction.

G. **ENVIRONMENTAL.** Prior to loan closing, Bank shall be provided with proof of acceptable environmental conditions for the property through its environmental due diligence process. If Bank determines an environmental risk in this process, it reserves the right to require additional third party studies and/or insurance.

H. **FINANCIAL REPORTS AND OTHER DATA.**

1. Borrower will furnish Bank with annual personal financial statements and copies of tax returns within forty-five (45) days of filing with the Internal Revenue Service.

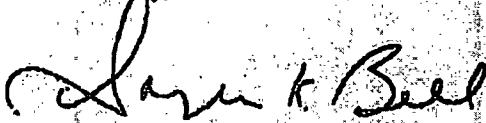
2. Within sixty (60) days after the close of each fiscal year, Borrower shall furnish Bank with annual financial statements, consisting of balance sheets, operating statements and such other statements as Bank may reasonably request. Copies of tax returns will be required on an annual basis within 45 days of filing.

I. GENERAL CONDITIONS.

1. Borrower shall be responsible for all reasonable and necessary expenses incidental to the transaction, including, but not limited to, all pre-closing, closing and post-closing expenses such as appraisal fees, legal fees, title insurance premiums, and architect's, surveyor's, engineer's expenses.
2. Unless otherwise provided in the Loan Documents, all terms, representations, warranties, covenants and agreements made herein and the terms and provisions thereof shall survive the making of the credit facilities described herein and the delivery of the Loan Documents, and shall continue in full force and effect, so long as the facilities remain outstanding and unpaid. These are not necessarily intended to represent all the conditions and requirements of our commitment that would be included in the subsequent loan documentation. In the event of irreconcilable inconsistency with any of the Loan Documents, the terms of the Loan Documents shall control. If the Loan Documents are silent to the issue, the terms of this Commitment Letter shall control.

If the aforementioned conditions are acceptable, please sign in the appropriate space and return to the undersigned. Unless accepted within ten (10) days, this commitment will be null and void. If this commitment is accepted, it will remain open for thirty (30) days after the acceptance date, or which time it will be null and void if the facility is not closed.

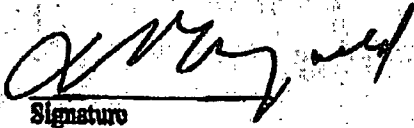
Sincerely,



Angela K. Bell
Vice President

Accepted this 28th day of March, 2007.

Anthony M. Whitfield


Signature

Guarantors

NA

By: _____
Whitfield Realty

~~X~~ Have to get new Appraisals

Tony Whitfield

1,266,000⁰⁰

~~X~~ Mark Weeks extend note
Back

9 individual loans

orig 30 yr Amm 5 yr Coll
all fixed Rates

3 currently due and 6 more by Oct

25 years left
original advance rate 75%

Issues

(1) Appraisals - 2500 fees he pays

(2) Rate ✓

(3) Term ✓

(4) LTV ✓

(5) Proc fees 2,250



~~X~~ Waive

Options

80% LTV

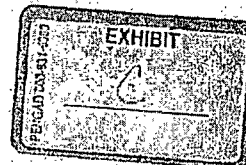
- ① Pay down 137,600
or pledge 177,600 value
@ 4.85% 25 yr 5 yr call
(4.25 - 4.50%)

- ② ~~Attorney closed records @ 5.25%~~
~~No paydown No New Collateral 4.75%~~
~~25 yr 5 yr call~~

Black Rush

- ① Need AV 350 M
- ② replace w/ other prop @ 350 value

~~Drive by App~~



June 26, 2012.

Re: Renewal & Modification Existing Debt on 9 Residential Properties

Dear Mr. Whitfield

Thank you very much for the opportunity to offer renewals and modifications on the 9 loans you presently have financed with Harbor National Bank. The following is not a commitment to lend, but is our proposal for the general terms and conditions of the subject loans if the transaction were to close on June 28, 2012.

A. GENERAL TERMS:

1. **BORROWER:** Anthony M. Whitfield (hereinafter referred to as "Borrower")
2. **AMOUNT OF LOAN:** Up to the current outstanding principal balances (accrued interest must be paid prior to renewal & is subject to change based on per diem).

Loan #	Property Address	6/28 Principal Balance	Accrued Interest
0400076000	98 Willow	\$ 97,627.80	\$ 295.08
0400047100	131 Tryon	\$114,010.17	\$ 344.61
0400047000	109 Mallory	\$130,164.03	\$ 393.44
0400046900	118 Clay	\$128,263.84	\$ 387.70
0400046800	308 Shortleaf	\$133,014.21	\$ 402.06
0400046700	9708 Jamison	\$130,163.98	\$ 393.44
0400031600	732 Cahagan	\$132,641.57	\$ 421.23
0400031700	110 Mapkin	\$ 85,269.58	\$ 277.93
0400032000	1055 Black Rush Cir.	\$114,866.30	\$ 379.21
Total		\$1,266,021.48	\$3,795.30

3. **MATURITY:** The maturity dates of all loans will be changed to July 10, 2017
4. **INTEREST RATE:** Fixed Rate of 4.75% for the term of the loan. *This rate is not guaranteed beyond July 10, 2017 & is subject to the loan closing by June 28th & performing as required.*

yes!

5. **ORIGINATION FEE:** None

6. **COLLATERAL:** *Title Insured 1st Real Estate Mortgage(s) plus an Assignment of all Leases, Rents, and Profits on real properties that were previously pledged as collateral to Harbor National Bank & identified under Section A (General Terms) part 2 of this subject term sheet. *The borrower's attorney will be responsible for conducting the closing and ensuring that the bank maintains its priority interest in the collateral. The Bank will require a minimum of title updates & new title opinion(s), but additional services and documentation may be required.*

7. **REPAYMENT:** Monthly payments of principal and interest to be based on a 25 year amortization with the balance due at maturity.

The due dates will all be changed to the 10th of the month with the first payment due on August 10th 2012.

Taxes & Insurance are not escrowed & must be paid directly by the borrower

Estimated Initial Payments

98 Willow	\$ 561.40	✓
131 Tryon	\$ 655.60	✓
109 Mallory	\$ 748.49	✓
118 Clay	\$ 737.57	✓
308 Shortleaf	\$ 764.88	✓
9708 Jamison	\$ 748.49	✓
732 Cahagan	\$ 762.74	✓
110 Mopkin	\$ 490.33	✓
1055 Black Rush Circle	\$1,810.60	✓
Total:	\$7,275.02	

8. **PREPAYMENT PENALTY:** None

B. GENERAL CONDITIONS:

1. The borrower will provide the bank updated financial statements to the bank on an annual basis. Tax Returns and an updated personal financial statement will be provided to the bank by April 15th of each year.
2. The proposed renewals/modifications will be closed under the supervision of the borrower's attorney. The borrower's attorney must ensure (a) the new closing documents are constructed & executed to be enforceable loan documents, and (b) ensure that parties signing the documents are educated about the content, their responsibilities, and the nature of their involvement. *All attorney fees will be paid by the borrower at or prior to closing (cost TBD by borrower's attorney).*

3. Bank shall order or be provided an appraisal of the property in form and substance satisfactory to Bank. \$2,700 is the cost of the appraisals (as invoiced by 3rd party vendors), and the borrower will pay the bank directly

WAIVER OF APPRAISAL RIGHTS. You are hereby notified pursuant to Section 29-3-680 of the 1976 Code of Laws for the State of South Carolina, prior to the transaction described above, that a Waiver of Appraisal Rights will be required as a condition of the Loan.

The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 29-3-680 of the Code of Laws of South Carolina, **THE UNDERSIGNED HEREBY WAIVE AND RELINQUISH THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Upon reaching an agreement on these general terms, we can proceed to a formal commitment very quickly.

Sincerely,



Scott Warren
Vice President

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HARBOR NATIONAL BANK,)

Plaintiff,)

vs.)

ANTHONY M. WHITFIELD)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-5887

AFFIDAVIT OF MARK WEEKS

Mark Weeks, personally appearing before me, who being duly sworn,
states the following:

1. My name is Mark Weeks, I am over the age of eighteen, and have personal knowledge of the facts stated herein.
2. I was contacted on June 21, 2012 to close the renewal of nine loans made between Harbor National Bank and Anthony Whitfield.
3. The closing for the renewals of the loans was set for June 28, 2012.
4. My office performed a title examination on the nine properties and found they all had good and marketable title, and that each parcel was already subject to a valid first mortgage in favor of Harbor National Bank.
5. As part of closing the loans, Scott Warren instructed our office (through Teresa Farley via an email communication on June 27, 2012) that a title endorsement on the Black Rush property needed to be obtained as a condition to



close all of the renewals.

6. My office attempted to procure a title endorsement but one could not be made. Notwithstanding this attempt, I believe there was already a valid first mortgage in place on the Black Rush property and I could have closed the renewal of the Black Rush property without the endorsement if Harbor National Bank had agreed to do so.

7. Mr. Whitfield's ex-wife, Cindy Whitfield is a co-owner of the Black Rush property by virtue of a deed conveying a one-half interest to her, conveyed on July 24, 2007- after the Harbor National Bank mortgage was placed on the property. As such, Cindy Whitfield took title to the Black Rush property subject to Harbor National Bank's pre-existing first mortgage.

8. Although Cindy Whitfield is on title to the Black Rush property, I do not believe this is, or ever was, a title defect or in any way affected Harbor National Bank as an insured to the pre-existing First American Title Insurance issued to them when the lender's policy was issued in 2007. Accordingly, I do not believe a title endorsement was necessary in order to renew the Black Rush loan.

9. I did not require a title endorsement to close any of the nine renewal loans, including the Black Rush property. I was ready, willing, and able to close any or all of the nine renewal loans if Harbor National Bank had not insisted on procuring a title endorsement to the Black Rush property.

10. Additionally, I did not: (1) require that the Black Rush mortgage be modified in order to close the renewal of the loan for another five years, or (2)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-5887

HARBOR NATIONAL BANK,

)
)
) Plaintiff,

vs.

)
) SUPPLEMENTAL AFFIDAVIT OF
) MARK WEEKS

ANTHONY M. WHITFIELD

)
)
) Defendant.
)
)

Mark Weeks, personally appearing before me, who being duly sworn, states the following:

1. My name is Mark Weeks, I am over the age of eighteen, and have personal knowledge of the facts stated herein.
2. Since I gave my first affidavit in this matter and deposition last year, I have had occasion to review the deposition transcript of David Swanson, given in this matter. Notably, Mr. Swanson reviewed no relevant documents (the deed, mortgage, or my title opinion) in rendering his opinions to the bank.
3. First, having reviewed the transcript, I do not believe the bank had a valid or legal reason in relying upon Mr. Swanson's opinion in deciding not to close on Mr. Whitfield's loans. Mr. Swanson's opinions given to the bank were limited to advice rendered concerning the Black Rush property—which had nothing to do with the eight other loans the bank sent to my office to close. For

this reason, there was absolutely no valid or legal reason that these eight loans could not have been closed. It is my opinion that Harbor National Bank had absolutely no valid or legal reason to refuse to close the loan renewal of the Black Rush property, either. There was no new mortgage or no new modification of mortgage provided to my office for Mrs. Whitfield to sign. No one advised my office that a new mortgage or new modification of mortgage was required to be signed in order to renew these loans. Neither was not needed in fact or law to renew the loan, and I did not require either.

4. The Black Rush loan could have been renewed had it not been for the bank's unilateral decision to demand a title endorsement. One was not required, and I could have closed this loan and still ensured the bank maintained its priority interest in the collateral as I had conducted a title search on all of the properties and found there to be good and marketable title to all.

5. Second, it appears Mr. Swanson himself conceded in his deposition that the Black Rush loan could have been closed *without* the title endorsement. In light of this statement I especially believe the bank was not reasonable nor acted in good faith in relying on Mr. Swanson's advice in directing me not to close the Black Rush loan. In fact, I would say the opposite is true: I believe the bank foreclosed on Mr. Whitfield's loans without a valid or legal reason. If Mr. Swanson's opinions were so important to the bank, they should have brought them to my attention, which they never did.

6. I was never told by Mr. Scott Warren (or anyone at the bank) at the closing on June 28, 2012 (or at any point in time) that Mr. Swanson had given

any advice to the bank that it was relying upon in not deciding to close. Furthermore, Mr. Swanson never contacted me at any time to discuss his opinions.

7. Had I been so contacted by Mr. Swanson, or had Mr. Warren indicated his reasons (as supposedly indicated by Mr. Swanson) for not closing the loans on June 28, 2012, I would have advised all parties concerned that all of the loans could have, and should have been, closed that day.

8. If Mr. Swanson's testimony was the basis for the bank's refusal to close the loans, I believe the bank was without excuse in its decision not to close any of the loans. In particular, there was no risk whatsoever to the bank in closing the Black Rush loan based upon Mr. Swanson's hypothetical concern that Mrs. Whitfield would object to the transaction—since Mrs. Whitfield was the main beneficiary of the renewal, as it is my understanding she lives in the home.

9. Furthermore, Mr. Swanson based his recommendation upon a theory called "equitable subordination," indicating that Mrs. Whitfield's ½ ownership interest could jeopardize the bank's previous first secured mortgage interest if the loans were to renew without her consent. I have closed over 40,000 real estate loans in my career and have never seen a single instance in which a property owner defeated a bank's claim of lien by deeding a portion of its ownership interest to another person. I do not believe there is law in South Carolina or any State that stands for that proposition.

[SIGNATURE ON FOLLOWING PAGE]

FURTHER AFFIANT SAYETH NOT.

Mark Weeks

SWORN TO before me this

8th day of April, 2015.

Laura Lynn Paris
Notary Public for South Carolina

My Commission Expires: 09-13-15



STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

HARBOR NATIONAL BANK,)

Plaintiff,)

vs.)

ANTHONY M. WHITFIELD)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO. CASE NO. 2012-CP-18-2119

AFFIDAVIT OF PETER SEITZ

Peter Seltz, personally appearing before me, who being duly sworn, states the following:

1. My name is Peter Seltz, I am over the age of eighteen, and have personal knowledge of the facts stated herein.
2. I am the Director of Enterprise Risk with First Bancorp. I hold a B.A. with Distinction from the University of Virginia and a J.D. *cum laude* from the Washington & Lee University School of Law. I have served over twenty years in bank management of four community banks, two of which regularly operated in South Carolina. In performing my responsibilities, I have had the opportunity assist the credit administrative and loan operation with issues similar to those which are the subject of this matter. Based on this banking experience, I prepared to offer several opinions in this matter. To that end, I have reviewed the pleadings, documents,



affidavits, met with Mr. Whitfield, and read certain deposition testimony in this matter.

3. Notwithstanding an attempted disclaimer to the contrary in a document dated June 26, 2012, Harbor National Bank, through its actions, demonstrated a commitment to close on the nine Whitfield loans (the "Whitfield Renewals") on June 28, 2012. Those actions include approving the selection of a closing attorney by Mr. Whitfield, preparing a loan package with specific terms, transmitting the closing package to the approved attorney, and sending a loan officer to the closing on behalf of the bank. Specifically, Harbor National Bank prepared and submitted to the closing attorney a closing package which included nine renewal notes for the borrower to execute secured by pre-existing mortgages covering nine distinct properties. Additionally, the bank coordinated with the closing attorney the preparation of a HUD-1 settlement statement containing the date, place of closing, property descriptions, identity of the borrower, identity of the lender, accrued interest, appraisal fees, closing fees, title search and opinion fees. As such, Harbor National Bank structured the Whitfield Renewals such that each of the Whitfield Renewals could close independently. Additionally, based on the closing documentation prepared, Harbor National Bank did not require any of the mortgages in the Whitfield Renewals to be modified.
4. Harbor National Bank further acknowledges the parties' respective desire to close on the Whitfield Renewals. The bank's own internal upcoming

maturities list documents that two of the loans on the list had been approved by the bank and documented Mr. Whitfield's acceptance of the terms. The second page of the list indicates a closing was scheduled.

5. The July 24, 2007 conveyance (the "Conveyance") of a partial interest in Lot 78, Phase 2, Whispering Marsh, Dunes West, Charleston County ("the Residence") by Mr. Whitfield did not impair the ability of the bank to close on the Whitfield Renewals and maintain the bank's primary lien position on the Residence. The deed into Cindy Whitfield expressly stated that she accepted her interest in the Residence subject to the terms and conditions of the 2007 Mortgage. The 2007 Mortgage defines "secured debt" as including: "The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date): One note of even date in the principal amount of \$325,000.00 with final payment due 05/03/2012." Under these circumstances, I conclude that it is of no benefit to the bank to require a title endorsement in order to confirm the bank's first lien position post-renewal.
6. Harbor National Bank unreasonably relied on the opinion of its attorney, David Swanson, in reaching a conclusion not to close on the Whitfield Renewals. In particular, Harbor National did not supply its attorney any documentation for him to support his conclusion, including the 2007 loan

documentation financing the purchase of the Residence and the deed evidencing the Conveyance. Notably, Mr. Swanson subsequently conceded the 2007 loan that secured the Residence could have been renewed without the title endorsement despite the Conveyance. (Deposition of David Swanson, P. 28). Finally, Harbor National Bank never advised Mr. Swanson that the closing attorney concluded that the Conveyance had no impact on the bank's primary lien position. Under such circumstances, it would have been customary and reasonable to expect Harbor National Bank to contact bank counsel to seek further clarification of why bank counsel believed that the Conveyance posed a risk to its first lien position on the Residence, particularly given the fact that: 1) Mr. Swanson's opinion was obtained without any opportunity to review the documentation at issue and, 2) the bank had been advised by the title attorney that Cindy Whitfield took title subject to the Harbor National Bank mortgage.

7. Harbor National Bank was aware of the Conveyance prior to the preparation of its June 26 documentation outlining the terms of the deal. Given this timing, it is reasonable to conclude that the bank would have documented an express closing condition based on such a known fact following the advice of counsel recommending that the closing attorney obtain a "title endorsement". Instead, the bank expressly conditioned closing on the existence of a first lien on the Residence post-renewal, but not on the receipt of a title endorsement. The closing attorney confirmed

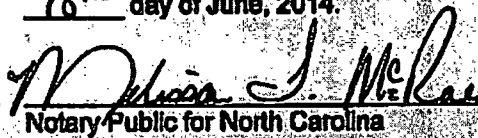
Harbor National Bank's first lien position. Under such circumstances and given the risk that the borrower would object to the bank's conclusion, it would be have been customary and reasonably expected for the bank to submit to the borrower and/or his closing attorney a written legal opinion supporting its conclusion that the borrower had not met its condition to close.

FURTHER AFFIANT SAYETH NOT.

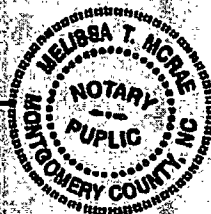

Peter Soltz

SWORN TO before me this

18th day of June, 2014.


Notary Public for North Carolina

My Commission Expires: 10-12-18



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HARBOR NATIONAL BANK,)

Plaintiff,)

vs.)

ANTHONY M. WHITFIELD)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-5887

AFFIDAVIT OF DAVID COLLINS, ESQ.

David Collins, personally appearing before me, who being duly sworn,
states the following:

1. My name is David Collins, I am over the age of eighteen, and have personal knowledge of the facts stated herein.
2. I am licensed to practice law in the State of South Carolina and have been actively engaged in the private practice of law for over twenty-five years.
3. I have reviewed the pleadings, documents, affidavits, met with Mr. Whitfield, and read certain deposition testimony in this matter.
4. I am of the firm opinion that Harbor National Bank made a detailed offer to lend money to Mr. Whitfield in the June 26, 2012 letter to him. (See Exhibit 9 to the Deposition of Scott Warren).
5. The June 26, 2012 letter contained all of the material terms of the



transaction, including: a) the identity of the borrower, Mr. Whitfield; b) the property addresses covering the loans; c) the principal balance and accrued interest amounts as of the date of the scheduling closing; d) the extended maturity dates of the loans; e) a new interest rate; and f) a proposed amortization repayment schedule; and f) information as to the escrows for taxes and insurance.

6. Furthermore, I have reviewed communications from the bank to the closing agent Mark Weeks providing certain instructions regarding the attempted closing of the loans. Such communications and instructions included: a) new notes and related documents for the borrower to sign for each property that were drafted by the bank, b) amounts to be withheld for appraisal services and accrued interest; c) a proposed HUD-1 settlement statement containing the date, place of closing, property descriptions, identity of the borrower Mr. Whitfield, identity of the lender Harbor National Bank, accrued interest, appraisal fees, closing fees, title search and opinion fees; and d) payoff amounts.

6. I am of the firm opinion that Mr. Whitfield accepted the terms of the offer, as outlined in the letter, and proceeded to a closing at the office of attorney Mark Weeks on the date of June 28, 2012.

7. I have reviewed the Affidavit signed by Mark Weeks, and concur with the closing agent that there were no obstacles to closing the loans offered by Harbor National Bank to Mr. Whitfield had Harbor National Bank not insisted on receiving a title endorsement for the Black Rush property. I do not believe a title endorsement was required to close any of the loans offered to Mr. Whitfield

In the June 28, 2012 letter - either contractually or in law.

8. Accordingly, I believe Harbor National Bank is in breach of contract of its obligations to renew the loans that were offered in the June 28, 2012 letter to Mr. Whitfield, and the bank should have renewed the loans on June 28, 2012 as they agreed to do.

FURTHER AFFIANT SAYETH NOT.



David Collins

SWORN TO before me this
16 day of ~~March~~ ^{April}, 2014.



Notary Public for South Carolina

My Commission Expires: 5/16/22

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

HARBOR NATIONAL BANK,
Plaintiff,

vs.

ANTHONY M. WHITFIELD
Defendant.

)
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-5887

)
)
) AFFIDAVIT OF DAVID COLLINS, ESQ.
)
)
)

David Collins, personally appearing before me, who being duly sworn,
states the following:

1. My name is David Collins, I am over the age of eighteen, and have personal knowledge of the facts stated herein.
2. I am licensed to practice law in the State of South Carolina and have been actively engaged in the private practice of law for over twenty-five years.
3. I have reviewed the pleadings, documents, affidavits, met with Mr. Whitfield, and read certain deposition testimony in this matter.
4. In addition to my previous affidavit in this matter, I am of the opinion that Plaintiff's excuse for failure to close the renewals of Mr. Whitfield's loans are not defensible on the basis of a hypothetical claim by Mr. Whitfield's ex-spouse.
5. I have reviewed South Carolina law and I can find no authority for

the proposition that the Plaintiff bank's lien of mortgage could have been equitably subordinated to Mr. Whitfield's ex-spouse's one-half undivided fee interest if the loan was renewed.

6. As such, I believe the bank received inadequate advice in failing to close Mr. Whitfield's loans and/or acted unreasonably in relying upon such advice. Furthermore, no equitable reasons for such a subordination claim have ever been presented by any party in this litigation, or could be presented.

6. A new mortgage or modified mortgage was not required in order to renew any of Mr. Whitfield's loans.

7. It is my opinion, to a reasonable degree of legal certainty, that the closing lawyer had all paperwork necessary to renew the loans.

FURTHER AFFIANT SAYETH NOT.



David Collins

SWORN TO before me this
1 ^{October}
day of ~~September~~, 2014



Notary Public for South Carolina

My Commission Expires: 5/16/22

Harbor National Bank Credit Offering

Borrower:	Anthony M. Whitfield	NAICS Code:	531110	Date:	4/8/2007
Address:	2141 Dorchester Road	Tax ID:	247-86-7213	Officer:	Bell
City, State, Zip:	N. Charleston, SC 29405	Loan #:		Prepared By:	CF by Werking
Principals:		Loan Ratings:	3x5	Loss Prob.:	82%
Nature of Business:	Real Estate			Bus Phone:	843-324-2556

Facility	Loan Type	Commitments (000)		Outstandings (000)		
		Harbor	Other	Harbor	Other	Total
Commitments Under Consideration	LOC	1,500	0	0	0	0
Existing Officer's Guidance Line						
1) TL Gahagan Dr.	TL			140		
2) TL Mepkin Dr	TL			90		
3) TL Black Rush Circle	TL			325		
The three loans above will be advanced under the existing approved \$1.5MM OGL leaving \$945M availability on the LOC.						
Related Debt						
Grand Total		1,500	0	555	0	555

TERMS

Request:

1&2) Refinance existing mortgages on residential rental property. Both properties are currently listed for sale.
 Gahagan Drive - Loan amount of \$140M, expected g/v of \$230M, monthly rental income of \$1300.00
 Monthly debt service of approximately \$979.00. Expected LTV = 61%
 Mepkin Drive - Loan amount of \$90M, expected a/v of \$140M, monthly rental income of \$975.00.
 Monthly debt service of approximately \$630. Expected LTV = 64%

3) Purchase of residential property:
 Black Rush Circle, Mt. Pleasant, SC. Purchase price \$425M, loan amount of \$325M, \$100M cash equity.
 LTC = 76%. Monthly payment of \$2272.45 + Taxes & Insurance
 This is the new purchase of a residence for ex-wife.

Repayment Plan:

1 & 2) Payments based on 30 year amortization, monthly payments of P&I, 5 year maturity.
 7.50% Fixed, 1/2% Origination

3) 24 M/I/O, to be followed by 36 M P&I, based on 30 year am, 7/5% fixed, 5 year maturity
 Include PSOR & SSOR - PSOR - Rental Income
 SSOR - Borrower's Income

Collateral:

1st REM and Assignment of Leases, Rents and Profits on each property

Approval	Req'd	Date	Approved	Declined	Comments:	CRA?	Reg Q Activity?
Loan Officer	Bell	4-5-07	<i>[Signature]</i>			Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Senior Loan Officer	Stout	4-5-07	<i>[Signature]</i>				
Chief Credit Officer	Ashburn	4/19/07	<i>[Signature]</i>				
Bank President	Rivers		<i>[Signature]</i>				
Executive Loan Comm			<i>[Signature]</i>				



Pricing/Terms						
No.	Credit Facility	Rate	Fee Amount / Type		Amortization	Term/Maturity
1	140000	7.5% fixed	1/2%	TL	30 year am	60 month mat
2	80000	7.5% fixed	1/2%	TL	30 year am	60 month mat
3	325000	7.5% fixed	1/2%	TL	30 year am	24 M I/O followed by 36 M P&I, 60 month maturity

Deposit Relationship			
Current Balances:	\$	6,000	
Demand			3 Months
Money Market	\$	153,000	6 Months
Certificates			12 Months
Business X Personal			Expected Deposits

Guarantor Financial Statements (000'S)

Name	Anthony M. Whitfield	2)	3)	4)	5)
Date	8/10/2008				
Joint w/Spouse (Y/N)	N				
Joint&Several or %? (JS or %)	100%				
Assets					
Cash	460				
Marketable Securities					
Retirement Accts					
Private Stock					
CVLI					
Personal Residence					
Other Real Estate	18,528				
Partnership Interests					
Business Assets	280				
Personal Property	915				
Total Assets	21,163				
Liabilities					
Accounts Payable					
Notes Payable	217				
Mortgages - Residence(s)	288				
Other Mortgage Debt	7,927				
Loans to related Co.					
Deferred Taxes					
Other Liabilities					
Total Debt	8,410				
Net Worth	12,743				
Total Contingent Liability					

Life Insurance (Include amount, insured, beneficiary, and assignment)

Owner	Beneficiary	Face	CSVI	Comments:

**COMMERCIAL & INDUSTRIAL
ACCOUNT MONITORING PLAN**

The account officer will track the following documentation as prescribed below:

Document	Frequency	Type	Days Within
Fiscal Year End Financial Statements	Annual	TR and PFS	120 Days Y/E
Interim Financial Statements			
Personal Guarantor Statements			
Receivable Aging			
Borrowing Base Certificates			
Compliance Certificates			
Status Memo			
Other:			

The account officer will monitor and enforce the following loan covenants. Check if applicable. Any changes from the below covenants are authorized during the loan agreement negotiations if approved by the department manager, bank president or the responsible credit officer.

FINANCIAL COVENANTS (Use standard definitions unless otherwise noted)

Tangible Net Worth - Total net worth minus liabilities and related party receivables (Subordinated debt is not included in net worth)
 Liability - Total liabilities, including subordinated debt
 Flood Charge Coverage - (After tax income + depreciation + amortization + lease expense + interest expense) divided by (Lease expense + interest expense + current maturities of long term debt)
 EBITDA - Earnings before interest, taxes, depreciation and amortization
 Funded Debt - All interest bearing debt, including subordinated debt

	Proposed	Actual	When Tested
Minimum Adjusted Tangible Net Worth of:			
Maximum Liability to Tangible Net Worth of:			
Minimum Flood Charge Coverage of:			
Funded Debt to EBITDA:			
Funded Debt to Capitalization:			
Minimum Consolidated Net Worth:			
Maximum Capital Expenditures:			
Minimum Consolidated EBITDA:			
Other:			

AFFIRMATIVE COVENANTS

Maintain insurance sufficient to protect Bank:
 Hazard Flood Liability _____ Key Principal _____
 Maintain its principal transaction account with bank
 Direct Deposit - Lock Box Yes _____ No _____
 Other: _____

NEGATIVE COVENANTS

Maximum investment in fixed assets per year _____
 Create or incur indebtedness except from Harbor National Bank _____
 Merge, consolidate or transfer assets _____
 Guarantee or become contingently liable _____
 Make loans _____
 Pay or declare dividends in excess of \$ _____ or _____ % of pre-tax profits
 Encumber assets in excess of \$ _____
 Other: _____

BORROWING BASE

1/3 Advanced on A/R: _____ % % Advanced on Inventory: _____ %
 Eligible Receivables Consist of _____
 Eligible Inventory Consist of _____
 Inventory Cap: \$ _____
 Maximum Advance on Line Secured by Margined Inventory: _____ %

Date: _____ Signature: _____

BUSINESS PURPOSE LOAN CHECKLIST

See by HNB Cash/CD
(Skip sections A & B)

New Loan/Money
(Complete sections A & B)

Renewal - No Change
(Complete Section B)

Workout Loan (Substandard)
(Complete Section B)

THIS PORTION MUST BE COMPLETED UNLESS THE CREDIT REPORT IS AN INTERIM RENEWAL WITH NO NEW MONEY ADVANCED OR A CHANGE IN TERMS: (see directions under each box, above, for sections to complete.)

A. UNDERWRITING POLICY EXCEPTIONS	DOES EXCEPTION EXIST (Y/N/N/A)			Will Close By Closing (Y/N)	JUSTIFICATION FOR EXCEPTION OR COMMENT
	COMPL. LOAN	COMPL. R/E	RES. R/E A & D		
1. Loan to Value		n			
2. Loan to Cost		n			
3. Term		n			
4. Guaranty		n			
5. F/S Quality (Company)					
6. Debt Service Coverage		n			
7. Pre Leasing		n			
8. Interest Only Term		n			
9. Interest Reserve		n			
10. Other: Questionable/Undesirable		n			
11. Other:					
B. DOCUMENTATION POLICY EXCEPTIONS	DOES EXCEPTION EXIST (Y/N/N/A)			Will Close By Closing (Y/N)	JUSTIFICATION FOR EXCEPTION OR COMMENT
	COMPL. LOAN	COMPL. R/E	RES. R/E A & D		
1. Current Credit Analysis					
2. Current F/S - Borrower		n			
3. Current F/S - Guarantor		n			
4. Current Appraisal/Revaluation		n			
5. Current Guarantor Analysis		n			
6. Cur.Cr.(or Mal.) Tenant Anal.		n			
7. Validation of Underwrtg. Terms		n			
8. Account Monitoring Plan					
9. Permanent Working Cap Analysis					
10. Other:					

C. LIST ANY ADDITIONAL POLICY EXCEPTIONS:

D. COMMENTS

Loan Officer's Signature

Steel

Concurring Officer's Signature (if applicable)

[Signature]

ATTACH TO NOTE (Checklist is Required for All Business Purpose Loans, Regardless of Size)

Harbor National Bank Credit Offering

Borrower:	Anthony M. Whitfield	NAICS Code:	631110	Request Date:	4/30/2012
Address:	2141 Dorchester Road	Tax ID:	247-95-7213	Officer:	Bell
City, State, Zip:	North Charleston, SC 29405	Loan #:	See list below	Analyst:	Griffin
Principals:	Anthony M. Whitfield	Loan Ratings:	4.5	Referred By:	Bell
Nature of Business:	Real Estate	Loss Prob.:	2	Bus Phone:	843-324-2550

Facility	Commitments Under Consideration	Loan Type	Commitments (000)			Outstandings (000)		
			Harbor	Other	Total	Harbor	Other	Total
See attached list of 9 residential properties with 9 individual notes & mortgages		TL's	1,269		1,269	1,269		1,269
Related Debt								
Grand Total			1,269	0	1,269	1,269	0	1,269

Request	Property	Loan Amount	Maturity Date	AVY	Am. date	TMS
Renewal of 9 individual residential mortgages.	732 Galapagos Rd	\$ 132,842	4/13/2012	\$	4/11/2007	1450705046
	110 Hopkin Drive	\$ 85,270	4/13/2012	\$	5/11/2007	7701002020
	1025 Black Rush	\$ 315,045	5/3/2012	\$	4/11/2007	6841002007
	9704 Jamison	\$ 130,453	10/13/2012	\$	12/27/07	1510300006
	309 Sburtonal	\$ 132,209	10/13/2012	\$	12/27/07	2420303042
	110 Choy Street	\$ 128,550	10/13/2012	\$	12/17/07	2431201044
	109 Liberty	\$ 130,453	10/13/2012	\$	10/24/07	2361407048
	131 Tyson Road	\$ 114,293	10/13/2012	\$	10/12/07	1291211034
	98 W32nd Lane	\$ 87,519	10/13/2012	\$	04/26/07	1641400005

Repayment Plan:
Monthly payments of P&I, 5 year maturity, continuing existing amortization.

PSOR - Rental Income, SSOR - Sale of Collateral

Collateral:
All properties to be appraised and LTV from bank ordered appraisals not greater than 80% each individual property. In the event LTV on any property is greater than 80% LTV bank will either take an un-mortgaged property as additional collateral, or group with another of those 9 properties which may have enough equity to keep both properties within 80% LTV requirement. Title insured first mortgages and assignments of leases, rents and profits.

Analyst Review:
SMG
RG or SR

Approval	Req'd	Date	Approved	Declined	Comments	HMDA?	CRAT?	Rpt. of Activity?
			Yes/No	Yes/No		Yes/No	Yes/No	Yes/No
Bell			<i>AB</i>					
Stout	X		<i>CR</i>					
Working	Y	5/29/12	<i>GW</i>					
Rivers								
Executive Loan Comm								

110 Hopkin Dr - Yes CRAT
Withdrawn, Customer never closed

APPLICATING/TERMS						
No.	Credit Facility	Rate	Fee Amount / Type	Amortization	Term/Maturity	
1-9	TL	1.88% 1.75%	\$250.00 each Waive	Processing Continue remainder of existing amortization (orig 30 yr) 240 mos. ab.	5 year 25 yr amort.	
Deposit Relationship						
	Current Balances	\$ 94,753				
	Demand	\$ 500	3 Months			
	Money Market	\$ 94,253	6 Months			
	Certificates		12 Months			
	Business	Personal	Expected Deposits			
Guarantor Financial Statements (000'S)						
	Name	Anthony Whitfield	2)	3)	4)	5)
	Date	10/1/2011				
	Joint w/Spouse (Y/N)	N				
	Joint & Several or %? (JS or %)	100				
	Assets					
	Cash	75				
	Marketable Securities					
	Retirement Accts					
	Private Stock					
	CVLI					
	Personal Residence					
	Other Real Estate	20,360				
	Partnership Interests					
	Business Property	125				
	Personal Property	545				
	Total Assets	21,105				
	Liabilities					
	Accounts Payable					
	Notes Payable	367				
	Mortgages - Residence(s)	483				
	Other Mortgage Debt	0,149				
	Loans to related Co.					
	Deferred Taxes					
	Other Liabilities	35				
	Total Debt	9,034				
	Net Worth	12,071				
	Total Contingent Liability					
Life Insurance (Include amount, insured, beneficiary, and assignment)						
	Owner	Beneficiary	Face	CSVLI	Comments:	

Harbor National Bank
Credit Narrative Over \$1,000,001
Anthony Whitfield

I. Request

Purpose: Renewal of 9 loans secured by 1-4 family residential investment properties. (2 of these loans matured in April, 1 is set to mature in May, 5 are set to mature in October, and 1 is set to mature in October 2013).

Terms: 5 - year balloon terms, keeping the same amortization schedules (originally 30 years), rate - ~~4.85%~~ ^{4.75%} for each loan.

Guarantors: Anthony Whitfield

Covenants:

Closing Contingencies:

Sources of Repayment (PSOR and SSOR):

PSOR: Rental income
 SSOR: Sale of collateral

II. Collateral

A summary of the existing collateral is below. All loans were originated within LTV policy, and are all currently listed on the borrower's PFS as under 80%. The bank has a list of unencumbered properties which may be added as additional collateral if updated appraised value result in a LTV policy exception.

Property Address	Committed Amount	Amount Outstanding	Maturity Date
732 Cahagan Rd	\$140,000	\$132,774	4-13-2012
110 Mepkin Dr	\$90,000	\$85,355	4-13-2012
1055 Black Rush Cir*	\$325,000	\$316,102	5-3-2012
9708 Jamison Rd	\$137,000	\$130,582	10-13-2012
308 Shortleaf Dr	\$140,000	\$133,442	10-13-2012
118 Clay St	\$135,000	\$128,676	10-13-2012
109 Mallory Dr	\$137,000	\$130,583	10-13-2012
131 Tyron Rd	\$120,000	\$114,377	10-13-2012
98 Willow Ln	\$101,000	\$97,904	10-16-2013

Total balance = \$1,269,795

*Black Rush Cir is non-income producing and is occupied by the borrower's ex-wife.

III. Business Review

Tony Whitfield owns over 100 residential investment properties with a combined value (from his recent PFS) of roughly \$20MM that he has acquired over the years from 1987 until 2008. His strategy was to finance them with conventional mortgages, rent the properties for cash flow, and sell once they appreciated to a profitable equity position. His equity position in the individual

properties varies, but he currently has 25 unencumbered properties in his portfolio and approximately \$8MM in total real estate debt. Like most real estate investors and operators, Tony's financial position has suffered due to the downturn in the real estate market. He now manages all of these properties by himself. His strained cash flow position has forced him to begin liquidating some of his properties. He sold three properties in 2010 and three more in 2011. He currently has over a dozen properties listed for sale which has made renting these listed properties difficult. Thus his vacancy rates are up, and his rental income is down, but his cash flow is still above 1:1 as outlined below.

Harbor National Bank currently has 8 loans on 8 rental properties and a 9th mortgage on a property that is occupied by Tony's ex-wife, as part of their divorce decree in which the debt is serviced by his global cash flow.

IV. Financial Analysis

All of Tony's rental properties are listed in Sched E of his personal tax returns. He has also provided the bank with an updated PFS and schedule of real estate owned, including a list of the properties in which the monthly payments includes escrows for taxes and insurance. The bank has not been able to verify the escrows but we believe the list to be accurate. (HNB does not escrow Tony's 9 loans). The Analyst has been able to combine information provided in the 2010 TR, the PFS with Sched of REO, and recent credit report into a consolidated global schedule of Tony's real estate. Based on rental income and expenses from his 2010 TR and the proposed renewal debt service, DSC for the bank's 8 rental property loans is 0.87x, insufficient to service the debt. However, from a global perspective, his entire real portfolio provides a DSC of 1.14x. The estimated three year average of cash proceeds from the liquidation of his properties is \$172M annually. When including his three year average in his personal cash flow, his global DSC is 1.31x. Based on the number of properties he owns and his equity position, it is reasonable to assume that he can continue to liquidate his properties going forward.

V. Management/Guarantor Review

Tony has been able remain current on all his debts, despite his strained cash flow position. In the meantime, he seems to have the right strategy of liquidating his real estate portfolio and deleveraging. Given his equity position, it is reasonable that he can continue to sell properties to increase his cash flow, even at lower than market values.

VI. Key Risks and Mitigants

1. The HNB properties do not provide adequate cash flow. This is mitigated by his global cash flow and his ability to liquidate his real estate with his high equity position.
2. The majority of Tony's outstanding mortgages are ARMs which have already adjusted into very favorable interest rates below 3.5%. If these rates adjust, he could face significant interest rate risk, further straining his cash flow.
3. The bank is anticipating that at least one or more of our 9 properties will be above 80% LTV once we receive updated appraisals. This will be mitigated by taking additional

unencumbered property as collateral or crossing another existing property so that our loans are properly margined. Adding additional rental property as collateral could also improve our DSC on the HNB properties which is currently under 1:1x.

VII. Summary and Recommendation

It is unlikely that the borrower will be able to refinance these 9 properties with another lender at this time. Renewing this debt at current market rates will lower his debt service and improve his ability to service the debt. The bank is comfortable with Tony's personal cash flow coverage of 1.31x. With properly margined collateral of no greater than 80%, analyst recommends moving forward with the renewals as proposed.

EXHIBIT B

Liane Marcotulli

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) <MDennisLC@sccourts.org>
Sent: Thursday, June 11, 2015 9:37 AM
To: Brent Halversen; 'Dan Slotchiver'; Liane Marcotulli
Cc: Brian Duffy; Andrew@slotchiverlaw.com; Seth Whitaker; Stephen Bell; 'Paul Ferrara III'; kevin@seibertlawfirm.com; 'Caroline Crisler. Leonard'
Subject: RE: Harbor / Whitfield 12-10-5887

Follow Up Flag: Follow up
Flag Status: Completed

All:

Judge Dennis has fully reviewed the Motion to Amend on this case, filed 5/18/15. He has decided to deny the motion, finding that it would be unduly prejudicial this late in time. I am assuming the hearing we previously scheduled on the motion to amend as to Cindy Whitfield is unnecessary, but let me know if you'd like me to ask Judge Dennis to keep the scheduled hearing set. I will do a Form 4 noting this decision if all parties are fine with that. If you have any further questions, please let me know. Thanks.

Lindsey M. Coffey

Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843)958-5062
Email: MDennisLC@sccourts.org

From: Brent Halversen [mailto:brent@halversenlaw.com]
Sent: Monday, June 01, 2015 1:45 PM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey); 'Dan Slotchiver'; 'Liane Marcotulli'
Cc: 'Brian Duffy'; Andrew@slotchiverlaw.com; 'Seth Whitaker'; 'Stephen Bell'; 'Paul Ferrara III'; kevin@seibertlawfirm.com; 'Caroline Crisler. Leonard'
Subject: RE: Harbor / Whitfield 12-10-5887

Lindsey,

As you may recall, we had our hearing on the motion to strike and motion to amend in this matter before Judge Dennis last Thursday.

The motion to strike was denied and the motion to amend Judge Dennis took under advisement and did not rule upon. The motion to amend was argued regarding the new claims to be added against the bank, however, the motion also sought leave to add a new claim against co-defendant Cindy Whitfield. New counsel for Cindy Whitfield just appeared in this matter on May 22, 2015 (Paul Ferrara- copied here), and he was protected last week. Can the motion to amend as it pertains to Cindy Whitfield and her new counsel (Mr. Ferrara) be set for hearing for Judge Dennis' determination ? Because of statute of limitations issues, we need the motion to be heard as soon as possible. Thanks,

Brent

Brent Souther Halversen, Esq.
Halversen & Associates, LLC
171 Church Street, Suite 330
Charleston, South Carolina 29401
(843) 284-5790 tel.
(864) 326-4844 fax.
brent@halversenlaw.com
www.halversenlaw.com

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From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [<mailto:MDennisLC@sccourts.org>]
Sent: Wednesday, May 27, 2015 2:17 PM
To: Dan Slotchiver; Brent Halversen; 'Liane Marcotulli'
Cc: 'Brian Duffy'; Andrew@slotchiverlaw.com; 'Seth Whitaker'; 'Stephen Bell'; 'Paul Ferrara III'; kevin@seibertlawfirm.com
Subject: RE: Harbor / Whitfield 12-10-5887

The hearing will now take place at **11:00am***** Sorry for the double emails, but I left out the most important detail!

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey)
Sent: Wednesday, May 27, 2015 2:13 PM

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-5887

FILED

Harbor National Bank

2015 JUN 16 PM 2: 16

Anthony M. Whitfield and Cindy Whitfield

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant's Motion to Amend, filed on 5/18/15, is DENIED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

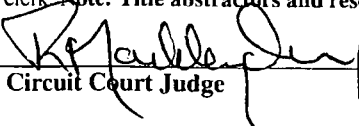
INFORMATION FOR THE JUDGMENT INDEX

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)
N/A		\$
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

2060

Judge Code

6/11/15

Date

For Clerk of Court Office Use Only

EXHIBIT C

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HARBOR NATIONAL BANK,)

Plaintiff,)

vs.)

ANTHONY M. WHITFIELD)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-5887

MOTION TO ALTER OR AMEND
ORDER PURSUANT TO RULE 59(e)

2015 JUN 18 PM 3:25
JULIE S. AMERSON
CLERK OF COURT

FILED

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant, Anthony M. Whitfield, respectfully moves the Court to alter or amend the Order filed June 16, 2015 in which the Court denied Mr. Whitfield's Motion to Amend his Answer filed May 18, 2015 to assert additional counterclaims against the Plaintiff. Mr. Whitfield respectfully moves the Court for an Order reconsidering and altering or amending its June 11, 2015 Order. The undersigned certifies that consultation with opposing counsel would serve no useful purpose.

GROUNDS FOR MOTION

A party may file a motion to reconsider and alter or amend an order when it believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. See Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772,

780 (2004). Mr. Whitfield sought leave of Court to add counterclaims for Breach of Fiduciary Duty¹, Constructive Fraud, Violation of Consumer Protection Act, *Negligence Per Se* in his May 18, 2015 motion. The Court denied the Motion to Amend on the grounds that the amendments, "would be unduly prejudicial this late in time." (See E-mail from Court dated June 11, 2015, attached hereto as Exhibit "A").

I. The Court's denial of the motion to amend to add omitted counterclaims would affect the substantive rights of Mr. Whitfield².

The Court's disallowance of Mr. Whitfield's new claims takes away substantive rights he has, particularly, his claims for violations of Chapter 3 and 5 of Title 37 for of the Consumer Protection Act, as these claims are subject to a one year statute of limitation. If the amendment was granted, the new claims would relate back to the date of original filing so that the statute of limitations would not operate as bar to the claims being made now. Moreover, if Mr. Whitfield asserted these claims in a new, separate lawsuit, the Plaintiff would argue that the claim is barred by the one year statute of limitations, or argue the claim is compulsory and had to be brought in this case, and therefore barred.

If compulsory counterclaims are not raised in the first action, defendant is precluded from asserting those claims in any subsequent action. Beach Co. v. Twillman, Ltd., 351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002). Some of the

¹ Mr. Whitfield hereby abandons pursuit of this claim. Mr. Whitfield only seeks to amend his answer to assert the claims of Constructive Fraud, Violation of Consumer Protection Act and *Negligence Per Se*.

² The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal: An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken. See S.C. Code §14-3-330(2)

incident and South Carolina Supreme Court observed that, "the factual circumstances of the tort claims of trespass and conversion have already been set out in the original complaint . . . and no new information was required to assert the added claims"(emphasis added).

Specifically with regard to new claims, the law has set forth the following analysis:

An amendment to a pleading relates back to the date of the original pleading "[w]henver the claim or defense asserted in the amended pleading **arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings.**" The central requirement here is that the party defending against the new claim have sufficient notice of it, i.e., **"the new claim must be 'logically related' to the matters originally pleaded so that the defendant is not prejudiced by the new claim** [sic]. In federal practice, the factors to determine whether or not a claim arose out of the same conduct, transaction, or occurrence set forth in the original pleading include: (1) whether the party defending against the new claim had notice of it; (2) whether the party seeking to add the new claim will rely on the same kind of evidence offered in support of the original claim to prove the new claim; and (3) whether unfair surprise to the defending party would result if the amendment were to relate back.

Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 525 S.E.2d 888, (Ct. App.1999)(emphasis added)

In this case all of the proposed, new claims (Constructive Fraud, Violation of Consumer Protection Act, Negligence Per Se) "arose out of the conduct, transaction, occurrences set forth or attempted to be set forth in the original pleadings. In particular, the Constructive Fraud count is simply reiterations of the Fraud claim from Mr. Whitfield's Third Amended Answer and Counterclaims (See Redline version comparing original Fraud Count from Third Amended Answer and Counterclaims to proposed Count in the Fourth Amended Answer and

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Counterclaims attached hereto as Exhibit "B"). It does not contain any new allegation or subject matter not already present in Mr. Whitfield's Third Amended Answer and Counterclaims.

The new claims under the Consumer Protection Act are "logically related" to the matters previously plead by Mr. Whitfield as Mr. Whitfield originally plead federal truth in lending act violations concerning the transaction he had with the bank in his Fifth Affirmative Defense to his Third Amended Answer concerning the fact that interest rate disclosures were not provided to either Mr. or Mrs. Whitfield pursuant to 15 U.S.C. § 1635(b) as the Black Rush property was Cindy Whitfield's primary residence. Therefore, this is not any new issue the bank has not already been on notice of.

Finally, the pleadings have already been re-opened by virtue of the amendment to add a crossclaim against co-defendant Cindy Whitfield, an action for which the Plaintiff did not oppose, as addressed in correspondence to the Court earlier today.

Conclusion

As stated herein, Mr. Whitfield, not the bank, will be incurably prejudiced by the denial of the amendments. The prejudice to the bank for the amendments being sought two months before trial can be eliminated, totally, by allowing the bank a few additional months to respond to the new claims, should the bank seek more time. This request would not be opposed by Mr. Whitfield. In the alternative, Mr. Whitfield would seek a ruling from the Court that the that the proposed counterclaims that it denied can be brought be separate action, that the claims

are not compulsory, and that the Plaintiff is barred from objecting to its addition here and later objecting to its inclusion in a subsequent, new action. Without one of these actions curing the prejudice to Mr. Whitfield, he will have no alternative but to Appeal this Order in order to protect his substantive rights, which will invariably result in the very same delay which this Court stated as a basis for the denial of the Motion to Amend.

Respectfully submitted,

HALVERSEN & ASSOCIATES, LLC

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Attorneys for Defendant

-and-

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Attorneys for Defendant

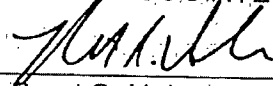
Charleston, SC
June 18, 2015

CERTIFICATE OF SERVICE

I certify that I served the foregoing Motion to Alter or Amend upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the parties and counsel's last known address on this 18th day of June, 2015.

HALVERSEN & ASSOCIATES, LLC

By: _____



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Email: brent@halversenlaw.com

Charleston, SC
June 18, 2015

2015 JUN 18 PM 3:25
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Brent Halversen

From: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey) [MDennisLC@sccourts.org]
Sent: Thursday, June 11, 2015 9:37 AM
To: Brent Halversen; 'Dan Slotchiver'; 'Liane Marcotulli'
Cc: 'Brian Duffy'; Andrew@slotchiverlaw.com; 'Seth Whitaker'; 'Stephen Bell'; 'Paul Ferrara III'; kevin@seibertlawfirm.com; 'Caroline Crisler. Leonard'
Subject: RE: Harbor / Whitfield 12-10-5887

All:

Judge Dennis has fully reviewed the Motion to Amend on this case, filed 5/18/15. He has decided to deny the motion, finding that it would be unduly prejudicial this late in time. I am assuming the hearing we previously scheduled on the motion to amend as to Cindy Whitfield is unnecessary, but let me know if you'd like me to ask Judge Dennis to keep the scheduled hearing set. I will do a Form 4 noting this decision if all parties are fine with that. If you have any further questions, please let me know. Thanks.

Lindsey M. Coffey
Law Clerk to the Honorable R. Markley Dennis, Jr.
100 Broad Street, Suite 439
Charleston, SC 29401
Phone: (843)958-5062
Email: MDennisLC@sccourts.org

From: Brent Halversen [mailto:brent@halversenlaw.com]
Sent: Monday, June 01, 2015 1:45 PM
To: Dennis, R. Markley Jr. Law Clerk (Lindsey M. Coffey); 'Dan Slotchiver'; 'Liane Marcotulli'
Cc: 'Brian Duffy'; Andrew@slotchiverlaw.com; 'Seth Whitaker'; 'Stephen Bell'; 'Paul Ferrara III'; kevin@seibertlawfirm.com; 'Caroline Crisler. Leonard'
Subject: RE: Harbor / Whitfield 12-10-5887

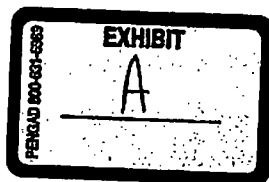
Lindsey,

As you may recall, we had our hearing on the motion to strike and motion to amend in this matter before Judge Dennis last Thursday.

The motion to strike was denied and the motion to amend Judge Dennis took under advisement and did not rule upon. The motion to amend was argued regarding the new claims to be added against the bank, however, the motion also sought leave to add a new claim against co-defendant Cindy Whitfield. New counsel for Cindy Whitfield just appeared in this matter on May 22, 2015 (Paul Ferrara- copied here), and he was protected last week. Can the motion to amend as it pertains to Cindy Whitfield and her new counsel (Mr. Ferrara) be set for hearing for Judge Dennis' determination? Because of statute of limitations issues, we need the motion to be heard as soon as possible. Thanks,

Brent

Brent Souther Halversen, Esq.
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Charleston, South Carolina 29401
(843) 284-5790 tel.
(864) 326-4844 fax.



FOR A THIRDFIFTH CAUSE OF ACTION
((Constructive Fraud-in-the Inducement))

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Widow/Orphan control

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4169. Mr. Whitfield hereby incorporates the allegations of the foregoing paragraphs as if fully restated herein.

4270. At or about the time of the initial loan originations, Plaintiff made affirmative representations to Mr. Whitfield that: (1) the loans would be 30 year loans; (2) that the maturity date referenced in the Notes were simply renewal dates; and (3) that the interest rate to be charged would be Mr. Whitfield's choice of a 7.5% fixed rate or prime minus ¼ %. The Plaintiff also made representations through Mr. Charlie Rivers, and an offer, that the loans would be renewed at 4.75% with new maturity dates of July 10, 2017. Such representations were false, incomplete and misleading when made, were material, were known by the Plaintiff to be false, misleading and incomplete, and were intended to be relied upon.

4371. In addition to the aforementioned representations, Plaintiff made the representation and communicative action that it needed a "title endorsement" to the Black Rush Property in order to close not just the Black Rush loan, but all eight other loans as well.

72. The Plaintiff (as opposed to Mr. Whitfield) ought to have known the falsity of the representation of a need for a title endorsement as their own attorney that gave them the supposed advice for it stated the transaction could have been performed without it and that the deed transfer to Cindy Whitfield was not a title defect.

73. In addition to the aforementioned representations, Plaintiff made



the representation and communicative action that it needed Cindy Whitfield to sign a mortgage to the Black Rush Property in order to close not just the Black Rush loan, but all eight other loans as well.

74. The Plaintiff (as opposed to Mr. Whitfield) ought to have known the falsity of the representation that Cindy Whitfield needed to sign a mortgage in order to renew the loans as: (a) there was no valid or legal reason to require Cindy Whitfield to sign a mortgage in Charleston County to renew loans in Berkeley or Dorchester Counties; and (b) a simple review of the Black Rush 2007 mortgage and the deed into Cindy Whitfield would have made clear that the renewal of the Black Rush loan was subject to the pre-existing Harbor National Bank first mortgage.

75. Mr. Whitfield was unaware that the representations were false until recently, and had no reason to suspect they were false, as he placed his trust and confidence in Plaintiff's agents Bell, Rivers, and Warren. As such, Mr. Whitfield had a right to rely on such information, and did so rely on said information to his detriment financial as outlined above. Had Mr. Whitfield known Plaintiff never intended to renew the loan, Mr. Whitfield would have previously refinanced the loan with another lender at a time when it was possible. At a minimum, the Plaintiff should have relayed their concerns about renewals as early as documentary evidence suggest Harbor National Bank had a concern, to wit, the year 2010.

44. These false representations were made to induce the Mr. Whitfield to enter a high cost loan, and were made by the Plaintiff with the knowledge of

their falsity.

45. ~~Mr. Whitfield reasonably relied on the material representations of Plaintiff and had no knowledge the representations made by the Plaintiff were false and the Mr. Whitfield was, therefore, fraudulently induced by the Plaintiff to enter into the high cost loan.~~

46. ~~Mr. Whitfield made a mistake in entering into the loan, which mistake was unilateral. Mr. Whitfield was fraudulently induced by the Plaintiff to make the unilateral mistake as a direct, proximate and foreseeable result of the fraud, deceit, misrepresentation, and active concealment perpetrated upon Mr. Whitfield by the Plaintiff.~~

4776. Subsequent to the origination of the loanloans, Mr. Whitfield has been informed and now believes that the Plaintiff misrepresented the terms of the loan, verbally and in writing by (1) not receiving 30 year loans, (2) representing that the maturity date was simply a renewal date; and (3) charging, and stubbornly refusing to change, and/or modify the interest rate of 7.5%. ~~The Plaintiff also made representations, %; and an offer, (4) communicating to renew~~ Mr. Whitfield orally and in writing that the loans at 4.75% with a new maturity date of July 10, 2017 would be renewed, as was agreed. As such, Mr. Whitfield is entitled to avoid or rescind the loanloans and to be returned to the status quo ante whereby the Plaintiff returns to Mr. Whitfield all monies paid by Mr. Whitfield in exchange for Mr. Whitfield returning the amount of the loan proceeds to the Plaintiff. In addition thereto, Mr. Whitfield is entitled to all incidental, consequential, direct and indirect damages proximately caused by

Plaintiff when they fraudulently induced Mr. Whitfield to enter into the~~the~~ this loan transaction and the other loans with Plaintiff. Mr. Whitfield has been injured in reliance upon Harbor National Bank's promises to him as will shown to the trier of fact, including but not limited to, physical and mental distress and financial loss.

In addition thereto, the ~~actions~~ repeated acts of indifference, malice, trickery and deceit (rather than mere accident) of the Plaintiff entitle Mr. Whitfield to an award of punitive damages.

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
Case No. 2012-CP-10-5887

HARBOR NATIONAL BANK

PLAINTIFF,

ANTHONY M. WHITFIELD,

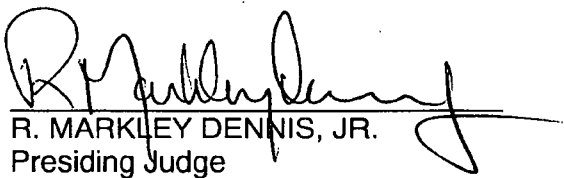
DEFENDANT.

ORDER

FILED
2015 JUN 29 PM 4:21
JULIE J. PRINCE
CLERK OF COURT

This matter comes before me upon Motion for Reconsideration of Court's order, filed on June 16, 2015, by Defendant, ANTHONY M. WHITFIELD. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is denied;

AND IT IS SO ORDERED!


R. MARKLEY DENNIS, JR.
Presiding Judge

Moncks Corner, South Carolina

June 26, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

JUL 23 2015

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Presiding Judge, Ninth Judicial Circuit

Case No. 2012-CP-10-5887

Harbor National Bank,

Respondent,

v.

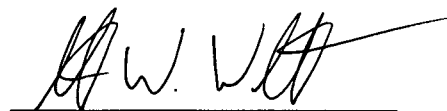
Anthony M. Whitfield,

Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on Appellant by depositing a copy of it in the United States Mail, postage prepaid, on July 22, 2015, addressed to his attorney of record, Brent S. Halversen, of Halversen & Associates, LLC, at their office at 171 Church Street, Suite 330, Charleston, South Carolina 29401.

This 22nd day of July, 2015.



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Seth W. Whitaker
Stephen Jenkins Bell
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044 (phone)
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Robert A. Bernstein
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Counsel for Respondent