

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**RECEIVED**  
AUG 04 2015  
SC Court of Appeals

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

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Circuit Court Case No. 2012-CP-10-5887  
Appellate Case No. 2015-001516

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Harbor National Bank,

Respondent,

v.

Anthony M. Whitfield,

Appellant.

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**RETURN TO MOTION**

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**COMES NOW** Appellant Anthony M. Whitfield (hereinafter, "Mr. Whitfield") by and through his undersigned counsel, and hereby files his Return to Motion, opposing and responding to the Motion to Dismiss filed by Respondent Harbor National Bank (hereinafter, "Harbor") on or about July 22, 2015. Appellant hereby responds and opposes Harbor's Motion to Dismiss on the grounds that the circuit court's denial of the May 18, 2015 motion to amend (hereinafter, "the Motion to Amend") is immediately appealable, and therefore not interlocutory, by virtue of the application of S.C. Code Ann. § 14-3-330(1) and (2)(a).

## Procedural Background

Appellant sought leave of the circuit court to amend his Answer to add certain new causes of action and amend the Answer to conform to the proof<sup>1</sup>. The proposed amended answer attached to Mr. Whitfield's motion included new claims for: equitable indemnification, breach of fiduciary duty, constructive fraud, violations of the South Carolina Consumer Protection Code §§ 37-3-301, 37-5-203, and 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*. The cause of action for equitable indemnification asserted in the motion to amend was not opposed by Harbor as it involved a crossclaim against co-defendant Cindy Whitfield. Therefore, the pleadings will necessarily have to be re-opened irrespective of the circuit court's denial of the Motion to Amend as to the newly sought counterclaims against Harbor<sup>2</sup>.

The Motion to Amend was filed over three months before the date certain trial date of August 24, 2015<sup>3</sup>. Despite this length of time before the trial date, and Mr. Whitfield's proposed agreement to the Court to allow Harbor any extra time it may need in responding to the new allegations,<sup>4</sup> the circuit court denied the motion indicating that, "it would be unduly prejudicial this late in time." No other reason for the denial was

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<sup>1</sup> The proposed fourth amended answer attached to Mr. Whitfield's Motion to Amend filed May 18, 2015 was revised to incorporate facts gleaned in discovery, in addition to adding new causes of action. See Hearing Transcript, Page 18, L. 6- P. 19., L.12, attached hereto as Exhibit "A".

<sup>2</sup> See Affidavit of Brent S. Halversen, ¶¶ 3-7, attached hereto as Exhibit "B".

<sup>3</sup> There is a scrivener's error on Page 4 of Mr. Whitfield's Motion to Alter or Amend Order Pursuant to Rule 59(e), wherein it states "two" months before trial. It should read three as it is undisputed by all parties the motion to amend was filed on May 18, 2015 and the trial date of the matter had been scheduled for August 24, 2015.

<sup>4</sup> See Hearing Transcript P. 18, L. 8-23.

given, although the court reserved ruling on the Motion to Amend at the May 28, 2015 hearing and stated, “I’m going to look at it and if there are new matters not previously raised, I don’t know, we’ll – I’ll take that under advisement. I am not granting that. I am not granting it at this point<sup>5</sup>.” It was not until June 11, 2015 that the circuit court’s law clerk informed all parties that the motion was being denied- not because there were any new matters that were raised as a result of the circuit court’s review, but solely because it was, “unduly prejudicial this late in time,” according to the law clerk.

Although the circuit court provided the date-certain trial date of August 24, 2015 at a status conference on April 9, 2015, each Harbor and Mr. Whitfield continued to engage in discovery by taking depositions and propounding paper discovery to each other after receiving the date-certain trial date at the status conference<sup>6</sup>. On May 4, 2015, Appellant took the deposition of his ex-wife Cindy Whitfield where evidence supporting his cause of action for the equitable indemnification crossclaim became apparent. Harbor had no objections to Mr. Whitfield amending his pleadings to assert the crossclaim against Cindy Whitfield, but simultaneously objected to the addition of amendments concerning new counterclaims to be added against Harbor. After receiving Harbor’s consent to interpose the crossclaim, and Harbor’s objections to the new counterclaims, Mr. Whitfield filed his Motion to Amend on May 18, 2015 for a judicial determination as to the new counterclaims<sup>7</sup>. As indicated above, the circuit court denied the Motion to Amend to assert the new counterclaims against Harbor solely on the basis that it was, “unduly prejudicial this late in time.

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<sup>5</sup> See Hearing Transcript P. 19, L. 8-12.

<sup>6</sup> See Affidavit of Brent S. Halversen, ¶ 3, attached hereto as Exhibit “B”.

<sup>7</sup> See Affidavit of Brent S. Halversen, ¶¶ 3-7, attached hereto as Exhibit “B”.

## Argument

Mr. Whitfield filed a motion to alter or amend the circuit court's denial of the Motion to Amend on June 18, 2015, arguing that the court's ruling had effectively been a disposition on the merits and affected his substantive rights as his statutory claims under the Consumer Protection Act were subject to a one year statute of limitation<sup>8</sup> and therefore would not be barred if the amendment was granted as the amendments would related back to the date of filing under SCRPC 15(c). Conversely, if the amendments were denied, at least as to the Consumer Protection Act claims, the denial would have *ipso facto* disposed of those claims. It was because of this reality that Mr. Whitfield asked the court in his last paragraph of the motion to alter or amend for a ruling that the proposed counterclaims if denied could be brought in a separate action, were not compulsory in nature, and that Plaintiff could not object to the addition of the claims in this matter and also object to their inclusion in a subsequent new action containing those claims. The circuit court denied the motion to alter or amend without hearing, precipitating the filing of this Appeal.

In the case of Southern Sales and Marketing Group, Inc. v. AMCO Construction, No. 2006-UP-278, 2006 WL 7286061 (Ct. App. 2006)(unpublished) this Court considered similar, although not identical issues as presented here. In Southern Sales, the appellant filed a motion to amend two months before the trial to amend its answer and add a new party. Id at \*1. The circuit court denied the motion and found, *inter-alia*, that the respondent would have been prejudiced by the late amendment given the case was on the roster for the October 31, 2005 term of court. Id at \*2.

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<sup>8</sup> See S.C. Code Ann. §§37-5-203(5) and 37-3-105(2)(a)

The appellant Southern Patio argued, as does Mr. Whitfield here, that the circuit court's denial of the motion was immediately appealable as the order effectively determined the merits of the action against the appellant and affected a substantial right. In Southern Sales, this Court confined its analysis to sections 14-3-330(1) and (2)(a).

Those sections provide:

(1) Any intermediate judgment, order or decree in a law case *involving the merits in actions commenced in the court of common pleas* and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) *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 or discontinues the action,*

S.C. Code § 14-3-330 (1976) (emphasis added).

For an interlocutory order to be appealable, the order must “involve the merits.”

S.C.Code Ann. § 14-3-330 (1985). To involve the merits, an order “ ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense....’ ” Cooke v. Palmetto Health Alliance, 367 S.C. 167, 174, 624 S.E.2d 439, 442 (Ct. App. 2005)(citing Mid-State Distributors, Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (quoting Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)).

*Importantly*, this Court noted in the particular facts of the Southern Sales case that the denial there **did not** finally determine, “a ‘substantial matter forming the whole or

part of a [sic] some cause of action or defense.’ ” 2006 WL 7286061, at \*4. The Court further indicated that it was necessary to address the appellant’s, “*legitimate concern that it will be barred in the future from alleging any individual action against Evans in light of the circuit court’s rulings.*” *Id.* (emphasis added). The Court then found that the appellant in the case, Southern Patio, “*is not precluded from alleging, at a procedurally appropriate time, a cause of action against Evans in his individual capacity.*” *Id.* In essence, this Court in Southern Sales, held that the appellant in the case **could still sue** the third party as long it was procedurally appropriate and not time barred<sup>9</sup>. In this case, Mr. Whitfield would be time barred (not from suing a third party the subject of the motion to amend as in Southern Sales) but in asserting additional causes of action as those causes of action **will be time barred** if not alleged in the circuit court in Case Number 2012-CP-10-5887.

It is for these reasons, the Appellant in this case, Mr. Whitfield, asserts that the circuit court’s denial of his Motion to Amend has effectively disposed of these causes of action, has affected a substantial right, and therefore this Court has jurisdiction to entertain this Appeal. This Court determined in Southern Sales that the fact the Appellant in that case could still sue a third party was a factor in determining that the circuit court’s denial of the motion to amend was not a final determination. In contradistinction, the denial of Mr. Whitfield’s Motion to Amend was a final determination of the Consumer Protection Act claims as it effectively terminated Mr. Whitfield’s pursuit of those claims and is equivalent to a disposition on the merits. Mr. Whitfield therefore respectfully

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<sup>9</sup> The facts giving rise to the appellant’s motion to amend to add the third party in Southern Sales happened in either 2004 or 2005 so the claims against the non-party would not have been time-barred as this Court’s decision was rendered in 2006. 2006 WL 7286061, at \*1

requests this Court deny Harbor's Motion to Dismiss, on the grounds that the denial of the Motion to Amend was a disposition on the merits of the Consumer Protection Act claims, and to allow this Appeal to be perfected and ruled upon by this Court.

Respectfully Submitted,



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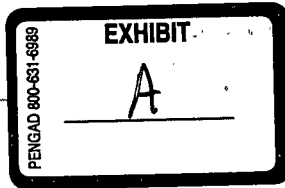
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STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
 COUNTY OF CHARLESTON )  
 Harbor National Bank, )  
 )  
 Plaintiff, )  
 v. ) Case No. 12-CP-10-5887  
 )  
 Anthony Whitfield, )  
 )  
 Defendant. )

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 28, 2014, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Brian Duffy, Esq.  
 Stephen Bell, Esq.  
 96 Broad Street  
 Charleston, South Carolina 29402  
 Appearing for Plaintiff

Brent S. Halversen, Esq.  
 Dan Slotchiver, Esq.  
 171 Church Street, Suite 300  
 Charleston, South Carolina 29401  
 Appearing for Defendant

Deborah Garrison  
 Circuit Court Reporter – 9<sup>th</sup> Judicial Circuit  
 P O Box 901  
 Johns Island, South Carolina 29457  
 dgarrison@sccourts.org

1 THE COURT: Thank you, Gentlemen.  
2 Identify yourself and the parties that you're  
3 representing, please.

4 MR. DUFFY: Thank you, Your Honor.  
5 I am Brain Duffy here on behalf of Harbor  
6 National Bank and I would like to introduce  
7 to the court the newest member of our firm  
8 Stephen Bell, who has returned to Charleston  
9 after practicing in North Carolina for a bit.

10 THE COURT: Nice to see you.

11 MR. BELL: You, too, Judge.

12 THE COURT: Look forward to  
13 working with you, too.

14 MR. HALVERSEN: Your Honor, Brent  
15 Halversen and Dan Slotchiver on behalf of  
16 Defendant Anthony Whitfield.

17 THE COURT: All right. I believe  
18 that it is your Motion to strike the jury  
19 trial.

20 MR. DUFFY: Yes, sir.

21 THE COURT: Be glad to hear from  
22 you.

23 MR. DUFFY: I apologize for  
24 bringing the case to you. It's not an easy  
25 one and it's a little bit -- I think it's a

1 little muddled, kind of like the law is on  
2 this issue. I think the reason that's true  
3 is because the courts are trying to prevent  
4 the kind of thing that is going on here in  
5 foreclosure cases where there's just a whole  
6 lot of counterclaims that come up to try to  
7 frustrate the efficient adjudication of those  
8 claims. Certainly there are more arguments  
9 to that that the other side will have.

10 I think at the end of the day what  
11 this issue boils down to, with all these  
12 counterclaims, is 'what is permissive and  
13 what isn't?' I mean, there are certain ones  
14 that are clearly equitable, we can show that  
15 they are equitable.

16 There are some cases that suggest  
17 that if the counterclaim -- well, let me  
18 state first that the real rule is that you  
19 look at the logical relationship, the logical  
20 relationship test. In these cases that test  
21 is whether the counterclaim would prevent the  
22 enforcement of the Note and Mortgage.

23 Here what we have is -- there are --  
24 there are claims that we had notes and  
25 mortgages in a guidance line that started in

1 2007, matured in 2012. Later in 2012, in the  
2 summer of 2012 there was an attempt to renew  
3 these loans that failed. There are claims  
4 that failed. There are counterclaims that  
5 relate to that.

6 Our point is that those claims do  
7 not prevent enforcement of the Note and  
8 Mortgage. So they are not logically related  
9 to that line of cases.

10 There are some cases that suggest  
11 that if there was an oral agreement alleged  
12 that would have prevented default, then that  
13 is by agreement related and it is compulsory.

14 But in this case, Your Honor, that  
15 would not have happened. The loan at issue  
16 in this case had already been in default.

17 The lead cases, the lead examples in  
18 the other counties, as well.

19 So I think that is what the  
20 distinction comes down to if you accept that  
21 line of some of those cases suggesting that  
22 some oral modification, as alleged. But I  
23 don't think that applies to this case here,  
24 for the reasons I've already told you.

25 The purpose of the counterclaims, I

1 think, is another issue. If you look at the  
2 fraud and inducement claim, that is to try  
3 and rescind the loan and yet get equitable  
4 remedy, so that doesn't entitle you to a jury  
5 trial because it is equitable.

6 And there are really only two  
7 others, as I see it, of the main counter-  
8 claims that relate really to the same  
9 transaction and occurrence. That would be  
10 the unfair trade practice claim and the  
11 negligent misrepresentation claim. Neither  
12 of those were part of the enforcement in the  
13 mortgage. So in that light of the  
14 relationship test for these types of cases, I  
15 think they fail in a jury trial.

16 THE COURT: Okay. Mr. Halversen?

17 MR. HALVERSEN: Your Honor, we  
18 have provided ---

19 THE COURT: I have it, and your  
20 memorandums are of course incorporated for  
21 the purposes of review. Certainly you're  
22 entitled to rely upon them, the positions  
23 stated therein. I will be happy to hear from  
24 you.

25 MR. HALVERSEN: We are relying on

1 the case primarily of -- it's a North  
2 Carolina federal case, that was Supreme Court  
3 case where it was stayed as to this Motion.  
4 The facts and circumstances are identical as  
5 the North Carolina federal case where the  
6 counterclaim defendant said, 'if you make an  
7 agreement to renew these loans', uh, and in  
8 that case the Court held that those were  
9 compulsory counterclaims because they would  
10 affect the lender's ability to foreclose on  
11 the Note. It's the same thing here, Your  
12 Honor.

13 We're saying that if the agreement  
14 which our client contends was made, and we  
15 have evidence of it, we have writings to  
16 establish it for the purpose of the statute  
17 of frauds, we, uh, summary judgments and  
18 those summary judgments were denied.

19 So we believe that under the North  
20 Carolina federal case that authority clearly  
21 states that if there are compulsory  
22 counterclaims, if they arise out of the same  
23 transaction or rise from the plaintiff's  
24 claims. The plaintiff's claims in this case  
25 were three causes of action: nonpayment,

1 foreclosure action on the Note and appoint-  
2 ment of a receiver.

3 They are basing their claims on  
4 nonpayment in 2012. We're saying that our  
5 claims arise out of their claim for  
6 nonpayment, which are -- there is no default  
7 because you agreed to renew the loan. We've  
8 made counterclaims asserting legal damages  
9 for that; hence, we have asserted some  
10 equitable relief for that. And that's the  
11 province of the trial judge to say what he  
12 wants to do in terms of those issues.

13 But we believe that under the North  
14 Carolina federal case that we have a right to  
15 a jury trial on all six counterclaims not on  
16 the promissory estoppel, that's clearly  
17 equitable.

18 I would also bring to the court's  
19 attention the case of *HFVC Mortgage versus*  
20 *Otterbien*, which was -- just went up to the  
21 Court of Appeals, where I believe Your Honor  
22 denied a Motion to strike. That was affirmed  
23 by the Court of Appeals this year.

24 That's it, Your Honor.

25 THE COURT: Thank you very much.

1 MR. DUFFY: Your Honor, the North  
2 Carolina Federal Safety v. DAB Corp  
3 (phonetic) is a case out of -- one of the  
4 cases that I was referring to that suggests  
5 if you were going to prevent default on the  
6 Note then that affects the enforcement.  
7 They're claiming an agreement that occurred  
8 after the default had already occurred, was  
9 in existence.

10 THE COURT: But let me -- just --  
11 I understand, uh, -- there is a distinction,  
12 at least in part, that you're proceeding on a  
13 matter that was already in default. But what  
14 -- how can we go forward with the foreclosure  
15 if in fact there was an agreement to  
16 refinance, which would have eliminated the  
17 default. Wouldn't have it?

18 MR. HALVERSEN: Yes, Your Honor.  
19 It would have cured, taken care of that  
20 claim.

21 THE COURT: That is precisely what  
22 I think that case is saying. I had one that  
23 I did, and thank goodness my client didn't  
24 take me up and sue me on it. Because I said,  
25 'we will fight this battle after the

1           foreclosure.' But should have fought it when  
2           the foreclosure was entered, because that's  
3           where you have to really attack that if in  
4           fact -- just taking it through -- if in fact  
5           they should prevail.

6                        I agree with you on its face that it  
7           may appear to be permissive in the sense of,  
8           'I can sue you anyway, and I can get damages  
9           for your failure and the damages are the loss  
10          of my property.' That's one of the -- just  
11          taking it to its logical progression.

12                       But to me it shouldn't have happened  
13          in the first place. There is no reason for  
14          somebody to incur damage and then have the  
15          matter -- have it, uh, tried where -- you get  
16          your property, you sell it, they sue you and  
17          say, 'no, you shouldn't have done that.'

18                       Well, that's why you are fighting  
19          that. To me that become my logical, pitiful  
20          as it is, it seems to me that that falls into  
21          what the North Carolina case is saying. It  
22          really, really is so interwoven with the  
23          foreclosure that it really has to be raised  
24          at this time.

25                       Now, all the others, the unfair

1 trade practices, those things can be -- they  
2 are totally permissive.

3 But if you have -- if you're going  
4 to have a jury trial anyway, might as well  
5 deal with all of them just for the sake of  
6 judicial economy.

7 I understand where we are going. I  
8 don't quarrel with, I don't disagree with  
9 your assessment of where our Court seems to  
10 be going right now. One of the things, and -  
11 - in fact, I did it again this week, and I  
12 need to re-read that case, but I refused to  
13 -- I had referred the foreclosure to the  
14 Master and they say 'strike the jury trial'  
15 and I said I'm denying that. That is up to  
16 the Master as to whether or not this matter  
17 can be determined -- that matter being the  
18 foreclosure -- without prejudicing the  
19 plaintiff's and defendant's rights. I think  
20 that's what the statute -- I think that's  
21 what the Rule provides.

22 In this case we're not talking about  
23 referring it, are we?

24 MR. DUFFY: No, sir.

25 THE COURT: We're talking about

1 striking the jury trial. So I'm not -- I  
2 don't have that option. I really think that  
3 is where this foreclosure. I think what I'm  
4 doing is what will ultimately have to be done  
5 based on what I have gleaned thus far, at  
6 least at this point. I'm not ruling one way  
7 or the other, I just think that there is an  
8 issue that says that I cannot strike a jury  
9 trial now. Maybe the trial judge will. I  
10 don't know. I mean, obviously the trial  
11 judge could make a ruling and the jury never  
12 see it. So, I don't know.

13 At this point I think it's too  
14 closely connected, the allegations are.  
15 Because that's exactly what my situation was.  
16 My guy was trying to be a jackleg contractor  
17 and, as most of them do, they depend on the  
18 next job to finish funding the job they are  
19 finishing. He got caught in that shuffle and  
20 -- but he had one sort of on the line and the  
21 bank sort of indicated 'we will cover you'  
22 and then they changed their mind. You know,  
23 that's where we are here.

24 I don't disagree with your argument  
25 that the Bank was in the position that they

1 would have to refinance, it wasn't required.  
2 What was the consideration for that? Those  
3 are issues that we deal with on merits of a  
4 contractual issue in the first place. So,  
5 again, -- I don't know, you've got maybe --  
6 maybe the argument is that the Bank doesn't  
7 want all this property. I was on the Board  
8 and that's for sure, they don't want a bunch  
9 of property that they then have to figure out  
10 how to sell. It's better for them to have it  
11 to earn their interest, they don't have to  
12 work very hard for that. Not being critical  
13 of banking, that's just the way that it  
14 works. Clearly that is a matter for the next  
15 step, for me to get into that logical -- into  
16 that analysis.

17 So, you're right, it is an interest-  
18 ing issue. Does it create an appeal right?  
19 Might be. It sure does change who is going  
20 to decide it. I don't know. That's up to  
21 you to make that call. I've asked the  
22 question of lawyers, 'do you want me to go  
23 ahead and deny' -- and so I did, I denied the  
24 Motion to strike and said, 'I'll let you make  
25 the call.' That was a ruling that didn't

1 take it off the table, but this one would.

2 So that's up to you.

3 You haven't filed an Motion, there  
4 have been no Motions to refer to the Master?

5 MR. DUFFY: No, sir. I shouldn't  
6 speak for the time that I wasn't involved in  
7 the case.

8 THE COURT: Well, thus far. I  
9 wouldn't be hearing it, obviously, if it has  
10 been. So it hasn't been.

11 Be that as it may, the Motion to  
12 strike a jury trial is denied. Thank you.  
13 Appreciate it.

14 MR. HALVERSEN: We have one more  
15 Motion, it's our Motion to amend two  
16 counterclaims that are existing counterclaims  
17 and we seek leave of the court to add counts  
18 for constructive fraud and violation of the  
19 Consumer Protection Code based on the  
20 elements of the transaction that we allege  
21 did not occur pursuant to the Consumer  
22 Protection Act.

23 We also allege a new cross-claim  
24 against defendant and the attorney, the new  
25 -- the other defendant got a new attorney and

1 he is protected for this week, so we can go  
2 forward on that aspect of the Motion to amend  
3 the added cross-claim but the new counter-  
4 claim would apply to ---

5 THE COURT: Does the Bank oppose  
6 the Motion to amend?

7 MR. DUFFY: Yes, Your Honor. If I  
8 may address it?

9 THE COURT: Sure.

10 MR. DUFFY: You know, there is  
11 always a chance that I am missing something  
12 along the way but I will say that -- I will  
13 try to stay reserved with this, but I was a  
14 little frustrated last night when I started  
15 looking into this because the counterclaim  
16 and the amendments that were proposed  
17 suggested at first that it was just going to  
18 be as to the Consumer Protection Act claim,  
19 one of them, and a cross-claim against Ms.  
20 Whitfield.

21 Then they were filed and we were led  
22 to believe that the only changes that were  
23 added were two claims under the Consumer  
24 Protection Act and the cross-claim against  
25 Ms. Whitfield.

1           But in truth what was filed is an  
2           entirely new case. It's an entirely new  
3           counterclaim, Your Honor.

4           I was frustrated looking at that  
5           last night, trying to find out how I was  
6           going to approach this. What I ended up  
7           doing was that I went through what had been  
8           filed as the last filing and the what the  
9           proposal was. Of a hundred and one  
10          paragraphs in the proposed Amended  
11          Counterclaim, Fourth Amended Counterclaim,  
12          Your Honor, only nineteen of them are not new  
13          or different. Seven of those are just re-  
14          incorporating the allegations. Really those  
15          are different because they re-incorporate  
16          other ones. So everything is different  
17          except for twelve paragraphs of over a  
18          hundred.

19          And there were more counterclaims  
20          that were added. There was a change in the  
21          fraud inducement to fraud. Let me add --  
22          well, I don't want to belabor the point but  
23          there were new claims added that weren't  
24          mentioned, changing fraud inducement to  
25          fraud, all new allegations added to.

1           Your Honor, there is a new breach  
2 of fiduciary duty claim. We didn't hear  
3 anything about that today, or in e-mails, and  
4 it's moot anyway because it's a ridiculous  
5 effort to say that he went to borrow money.  
6 That's been decided by the McGinnis and  
7 Burwell (phonetic) case, and I've looked at  
8 all those throughout time. But, anyway, that  
9 wasn't mentioned here.

10           What was proposed/suggested is that  
11 'we tacked on a couple of claims that relate  
12 to all this other stuff.' They changed the  
13 entire case after telling Your Honor they  
14 were ready for a date certain trial in  
15 August. Now here we are with a hundred and  
16 one paragraphs and only nineteen of them are  
17 the same as they were before.

18           There are allegations all the way  
19 through from where they started, you know, it  
20 starts at page twenty of the general  
21 allegations of the counterclaim. The  
22 different ones are twenty, twenty-one,  
23 twenty-two, twenty-three, twenty-four,  
24 twenty-five, twenty-seven, twenty-nine,  
25 thirty, thirty-one, thirty-three -- it just

1 goes on, Your Honor. I mean, it's an  
2 entirely different case that they are  
3 proposing to submit. Which is bad enough  
4 and causes plenty of prejudice to us at this  
5 point, particularly since some of it they are  
6 trying to bolster up this Motion to strike  
7 the jury trial with some of those claims,  
8 with how they re-do fraud rather than  
9 inducement to defraud and that type of thing.  
10 But on top of it, it's way different than  
11 what was represented to us and what was  
12 represented to the court.

13 MR. HALVERSEN: Your Honor, the  
14 court has a standard that amendments should  
15 be granted liberally.

16 THE COURT: Right.

17 MR. HALVERSEN: The allegations  
18 that are in the counterclaims are -- there is  
19 nothing new.

20 There is a case that says that --  
21 I believe it is *Armstrong v. Collins*, and  
22 *Stanley v. Kirkpatrick*, holding that new  
23 claims properly added to a lawsuit two years  
24 after the underlying incident and the South  
25 Carolina Supreme Court observed that,

1 (reading): "the factual circumstances of the  
2 tort claims of trespass and conversion have  
3 already been set out in the original  
4 Complaint and no new information was required  
5 to assert these added claims."

6 The only information that we added  
7 was stuff that had already been gleaned in  
8 discovery. We're not asking for a  
9 continuance, we are not going to be asking  
10 for a continuance, we have a date certain  
11 trial ---

12 THE COURT: I understand that but  
13 they may.

14 MR. HALVERSEN: Pardon?

15 THE COURT: I understand you're  
16 not.

17 MR. HALVERSEN: Right.

18 THE COURT: But that doesn't mean  
19 that they might not.

20 MR. HALVERSEN: If they -- I

21 THE COURT: Well, ---

22 MR. HALVERSEN: --- won't object  
23 it if they do.

24 THE COURT: I appreciate that but  
25 that brings me to -- you know, my statement

1 over the years has been in response to  
2 Motions to Amend is that if you can amend  
3 this to conform to proof at trial, why should  
4 you ever deny it? Well, proof at trial is  
5 restricted by what's been alleged. So you --  
6 you have that means of structuring that so  
7 that it is exactly what you just said.

8 I'm going to look at it and if there  
9 are new matters not previously raised, I  
10 don't know, we'll -- I'll take that under  
11 advisement. I am not granting that. I am  
12 not granting it at this point.

13 This case is set for a date certain  
14 in August? I think.

15 MR. HALVERSEN: Yes, sir.

16 THE COURT: All right. I will let  
17 you know. Thank you. Whatever you want to  
18 submit in writing, do it, and then you'll  
19 have fifteen days to respond.

20 MR. SLOTCHIVER: Your Honor,  
21 discovery is still ongoing in this case.

22 THE COURT: That's fine.

23 MR. HALVERSEN: So one of the  
24 things is that we're learning things as we  
25 are going along.

1                   THE COURT:     I understand that.  
2                   The whole thrust of this is -- I understand  
3                   that discovery is going on but at some point  
4                   when a date certain case has been set, at  
5                   your request, at your request, then the court  
6                   is going to look at what is fundamentally  
7                   right to -- to have the defendant have to  
8                   prepare for something that obviously you are  
9                   prepared for or you wouldn't be asking for if  
10                  you weren't, and I understand that. But it's  
11                  a new area and -- I think we're getting into  
12                  something that is almost trial-by-ambush now,  
13                  and that is something that we certainly guard  
14                  against in our civil proceedings.

15                  So thank you very much, I appreciate  
16                  it. At some point discovery -- there is no  
17                  scheduling Order that limits discovery in  
18                  this case?

19                  MR. HALVERSEN:     Your Honor, I  
20                  apologize, I don't know that. I think our  
21                  old Orders have expired. The last scheduling  
22                  Order, I think, was last fall.

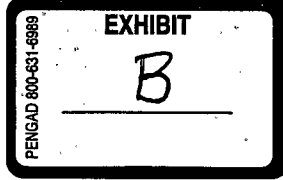
23                  THE COURT:     Y'all are moving in an  
24                  area where the ice is getting thinner. How  
25                  'bout that? Thank you.

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MR. DUFFY: Thank you, Your Honor.

(HEARING CONCLUDED)





THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. MARKLEY DENNIS, JR., Circuit Court Judge

Appellate Case No. 2015-001516

Harbor National Bank,

Respondent,

v.

Anthony M. Whitfield,

Appellant.

**AFFIDAVIT OF BRENT S. HALVERSEN**

I certify Brent Halversen, personally appearing before me, who being duly sworn, states the following:

1. My name is Brent Halversen, I am over the age of eighteen and have personal knowledge of the facts stated herein.
2. I am one of the attorneys that represents the Defendant Anthony M. Whitfield in the above captioned matter.
3. Each Respondent (“Harbor”) and Appellant (“Mr. Whitfield”) have noticed depositions and propounded written discovery to each other after the April 9, 2015 status conference in which the circuit court provided the parties a date certain trial of August 24, 2015- which was jointly requested by Harbor and Mr. Whitfield.
4. On May 4, 2015, I attended and took the continuation deposition of co-defendant Cindy Whitfield. The deposition had been re-noticed two times (after Cindy

Whitfield's first deposition on January 26, 2015) where she failed to appear. The subject of the non-appearances was the subject of a Motion for Sanctions (See Motion for Sanctions, attached hereto as Exhibit "1") which has since been resolved. New testimony elicited from Cindy Whitfield at the May 4, 2015 deposition prompted Mr. Whitfield to file the motion to amend to amend his Answer to assert the crossclaim of equitable indemnification, for the reasons asserted in the Fourth Amended Answer, attached as an exhibit to the motion filed on May 18, 2015.

5. Since the pleadings were being re-opened anyway, Mr. Whitfield asked the undersigned to incorporate and include all new information that had been gleaned in the discovery depositions into the proposed Fourth Amended Answer and assert any new causes of action that could be made against Harbor since the pleadings had last been amended.

6. On behalf of my client, Anthony M. Whitfield, I served a Motion to Amend Mr. Whitfield's Answer to add the new claims against Harbor and Cindy Whitfield and added facts into the proposed Fourth Amended Answer gleaned from the discovery depositions that conformed to the evidence. The motion was filed on May 18, 2015 in the Charleston County Circuit Court.

7. Harbor National Bank did not oppose the amendment to add the crossclaim for equitable indemnification, and neither did the co-defendant Cindy Whitfield. The consent order on the motion to amend as it pertains to the crossclaim has been submitted to the Charleston County Circuit Court for entry by the presiding judge. An unexecuted copy of the Consent Order is attached hereto as Exhibit "2".

**FURTHER AFFIANT SAYETH NOT.**

SWORN to and Subscribed before me  
this 31 day of July, 2015

Ashley King (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 3/1/20

Brent S. Halversen  
Brent Souther Halversen  
Attorney for Defendant

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.

ANTHONY M. WHITFIELD  
Defendant.

MOTION FOR SANCTIONS

2015 APR -7 PM 1:04  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

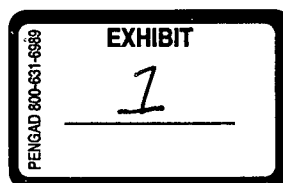
TO: KEVIN SEIBERT, ESQ., ATTORNEY FOR CO-DEFENDANT CINDY  
WHITFIELD

Pursuant to Rule 37(d) of the South Carolina Rules of Civil Procedure, Defendant Anthony Whitfield moves for an order for sanctions against co-defendant Cindy Whitfield for failure to cooperate in discovery. Pursuant to Rule 11, the undersigned counsel certifies that consultation would serve no useful purpose due to the course of dealing described herein.

GROUND FOR MOTION

Rule 37(d) states the following, in pertinent part:

**Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection.** If a party or an officer, director or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is



pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

S.C. R. Civ. P. 37(d).

The undersigned noticed co-defendant Cindy Whitfield to appear for deposition on January 26, 2015 (See notice attached hereto as Exhibit "A"). Cindy Whitfield appeared for deposition, however, was instructed not to answer a question posed to her by her attorney. After five (5) business days had passed, no motion for protective order regarding the instruction not to answer the question was served or filed with the Court pursuant to Rule 30(j), and therefore, the undersigned re-noticed Cindy Whitfield for deposition, such deposition set to occur on February 25, 2015 (See notice attached hereto as Exhibit "B").

On the day of the deposition (February 25, 2015), counsel for Cindy Whitfield informed the undersigned five hours before the deposition began that Mrs. Whitfield was ill and not could attend the deposition. (See email attached hereto as Exhibit "C "). Because of the information concerning Mrs. Whitfield's illness, the undersigned cancelled the deposition. Mrs. Whitfield's counsel informed the undersigned that a doctor's note would be provided, but one was never received by the undersigned.

The undersigned then re-noticed Cindy Whitfield for deposition, such deposition to occur on April 6, 2015 at 1:00 PM. (See notice attached hereto as

Exhibit "D"). Counsel for Cindy Whitfield, Mr. Kevin Seibert, appeared for the deposition on April 6, 2015, however, informed the undersigned's paralegal that his client Cindy Whitfield was coming but was caught in traffic (See Affidavit of Lori Hammons, attached hereto as Exhibit "E"). After approximately 30 minutes of waiting for Cindy Whitfield to appear, counsel for Cindy Whitfield informed the undersigned that his client, "had broken her toe," and would not be appearing at the deposition.

### **CONCLUSION**

Defendant respectfully requests an order sanctioning Cindy Whitfield for failing to appear at her scheduled deposition on April 6, 2015. Mrs. Whitfield's deposition had already been cancelled once on February 25, 2015 under dubious circumstances, as Cindy Whitfield's attorney informed the undersigned that she could not come to the deposition due to illness on the same day as the deposition (approximately 5 hours before), and no medical excuse was ever provided to the undersigned. Because of Cindy Whitfield's counsel's alternate explanations for Cindy Whitfield's lack of appearance on April 6, 2015, the undersigned submits that there was no valid excuse for failing to appear at this deposition either. Mr. Whitfield unnecessarily incurred attorney's fees, court reporter fees, and videographer fees occasioned by Mrs. Whitfield's non-appearance at the second scheduled non-appearance as follows:


Spectrum Court Reporting.....	\$50.00
Clearview Video Videographer.....	\$150.00

Daniel Slotchiver (\$350.00/hour, 45 minutes, 4.6.15).....\$280.00  
 Brent S. Halversen (\$250.00/hour, 45 minutes, 4.6.15).....\$200.00  
 Brent S. Halversen (\$250.00/hour, 1.5,  
 Prepare motion for sanctions and attend hearing<sup>1</sup>).....\$375.00  
 Circuit Court Motion Fee.....\$25.00  
  
 Total Attorney's Fees and Costs.....\$1,080.00

In addition to sanctioning Cindy Whitfield by paying this amount as a result of the failure to appear for her scheduled deposition on April 6, 2015, the undersigned would request a Court Order for Cindy Whitfield to appear for deposition at a date certain, and failing an appearance, that she may be held in contempt of court.

Respectfully submitted,

**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

Attorneys for Anthony Whitfield

April 7<sup>th</sup>, 2015  
 Charleston, South Carolina

<sup>1</sup> Estimate.

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Motion for Sanctions 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 7<sup>th</sup> day of April, 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  
April 7, 2015

BY \_\_\_\_\_

JULIE J. ARMSTRONG  
CLERK OF COURT

2015 APR -7 PM 1:05

FILED

Attorneys - at - Law

BRENT S. HALVERSEN  
Direct Line: (843) 284-5790  
brent@halversenlaw.com

ORANGE AVENUE, SUITE 330, CHARLESTON, SOUTH CAROLINA 29401

January 6, 2015

**VIA E-MAIL AND U.S. MAIL ONLY**

Mr. Kevin Michael Seibert, Esq.  
Seibert Law Firm, LLC  
1625 Remount Road  
North Charleston, SC 29406

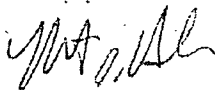
Re: Harbor National Bank v. Anthony M. Whitfield  
Case No.: 2012-CP-10-5887

Dear Kevin,

Enclosed please find a deposition re-notice for Cindy Whitfield set for **January 26, 2015 at 1:00 PM** at 171 Church Street, Suite 330, Charleston, South Carolina.

If you have any questions or comments, please do not hesitate to contact me.

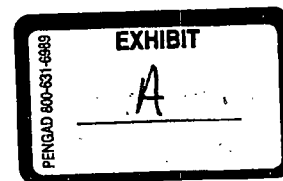
Sincerely yours,



Brent Souther Halversen

BSH/rh  
Enclosure(s)

cc: Mr. Seth Whitaker, Esq (Via U.S. Mail Only)  
Mr. Dan Slotchiver (Via E-Mail Only)  
Mr. Anthony M. Whitfield (Via E-Mail Only)



STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

HARBOR NATIONAL BANK, )

Plaintiff, )

vs. )

ANTHONY M. WHITFIELD )

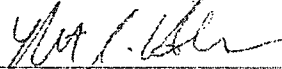
Defendant. )

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

**RE-NOTICE OF DEPOSITION FOR  
CINDY WHITFIELD**

YOU WILL PLEASE TAKE NOTICE that on Monday, January 26, 2015 at 1:00 PM at Halversen & Associates, LLC, 171 Church Street, Suite 330, Charleston, SC 29401, the attorney for the Defendant Anthony Whitfield will take the deposition of Cindy Whitfield on oral examination, pursuant to South Carolina Circuit Court Rule No. 30(h) before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take such part as is fit and proper. The deponent shall bring the items requested on the attached Exhibit "A".

**HALVERSEN & ASSOCIATES, LLC**

By: 

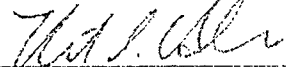
Brent S. Halversen  
171 Church Street, Suite 330  
Charleston, SC 29401  
T: 843-284-5790  
F: 864-326-4844  
Email: [brent@halversenlaw.com](mailto:brent@halversenlaw.com)

1/6, 2015.  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Notice of Deposition upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the counsel's last known address on this 6<sup>th</sup> day of January, 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](mailto:brent@halversenlaw.com)

January 6<sup>th</sup>, 2015.  
Charleston, South Carolina

*Harbor National Bank v. Anthony Whitfield*  
*Case No. 2012-CP-10-5887*

**EXHIBIT "A"**

1. All documents sent to or received from Kevin Seibert concerning the above captioned foreclosure.
2. All documents sent to or received from Stan Jaskiewicz concerning the above captioned foreclosure.
3. All documents sent to or received from Dena Hardison concerning the above captioned foreclosure.
4. All documents sent to or received from Robert Bernstein concerning the above captioned foreclosure.
5. All documents sent to or received from any non-party concerning the above captioned foreclosure, including any and all emails.
6. All documents exchanged between you and Wayne Freeman.
7. Any emails or documents you received regarding the June 28, 2012 loan renewal for your home at 1055 Black Rush Circle, Mount Pleasant, South Carolina.



Attorneys - at - Law

BRENTS HALVERSEN  
Direct Line: (843) 284-5790  
brent@halversenlaw.com

711 SO ADAMS STREET, FLORIDA

February 12, 2015

VIA E-MAIL AND U.S. MAIL

Mr. Kevin Michael Scibert, Esq.  
Scibert Law Firm, LLC  
1625 Remount Road  
North Charleston, SC 29406

Re: Harbor National Bank v. Anthony M. Whitfield  
Case No.: 2012-CP-10-5887  
Case No.: 2012-CP-08-2618  
Case No.: 2012-CP-18-2119  
Case No.: 2012-CP-08-3478  
Case No.: 2012-CP-18-2738

Dear Kevin,

Enclosed please find a Re-Notice of Deposition for your client Cindy Whitfield for **Wednesday, February 25, 2015 at 1:00 P.M.** at the office of Halversen & Associates, LLC, 171 Church Street, Suite 330, Charleston, SC 29401.

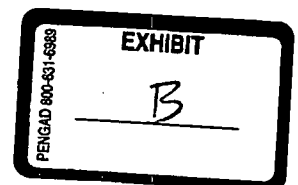
If you have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

Brent Souther Halversen

BSH/ih  
Enclosure(s)

cc: Mr. Anthony Whitfield (Via E-Mail Only)  
Mr. Daniel Slotchiver, Esq. (Via E-Mail Only)  
Mr. Seth Whitaker, Esq. (Via U.S. Mail Only)



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2012-CP-10-5887
HARBOR NATIONAL BANK,	)	
	)	
Plaintiff,	)	
	)	<b>*RE-NOTICE OF DEPOSITION FOR</b>
vs.	)	<b><u>CINDY WHITFIELD</u></b>
	)	
ANTHONY M. WHITFIELD	)	
	)	
Defendant.	)	
	)	

YOU WILL PLEASE TAKE NOTICE that on Wednesday, February 25, 2015 at 1:00 PM at Halversen & Associates, LLC, 171 Church Street, Suite 330, Charleston, SC 29401, the attorney for the Defendant Anthony Whitfield will reconvene the deposition of Cindy Whitfield on oral examination, pursuant to South Carolina Circuit Court Rule No. 30 (j) and (h) before a Notary Public, or before some other officer authorized by law to take depositions, said deposition to continue from day to day until completed. You are invited to attend and take such part as is fit and proper. The deponent shall bring the items requested on the attached Exhibit "A".

**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

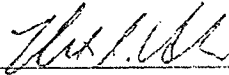
February 12<sup>th</sup>, 2015.  
 Charleston, South Carolina

\*Changed as time only.

**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Notice of Deposition upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the counsel's last known address on this 12<sup>th</sup> day of February, 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](mailto:brent@halversenlaw.com)

Feb 12<sup>th</sup>, 2015.  
Charleston, South Carolina

## Brent Halversen

---

**From:** Kevin M. Seibert [kevin@seibertlawfirm.com]  
**Sent:** Wednesday, February 25, 2015 8:18 AM  
**To:** Brent Halversen  
**Subject:** Whitfield Deposition

Brent,

Good morning. I hope you and yours are well. I attempted to call, but was unable to reach you.

We have just been in contact with our client, who we have found out is ill and will not be able to attend the deposition scheduled for today. We will send over a doctor's note as soon as we have it.

Kindest regards,  
Kevin

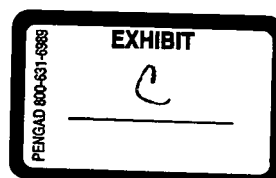
Kevin M. Seibert | Attorney | Seibert Law Firm, LLC

1625 Remount Road | North Charleston, South Carolina 29406

P: 843.554.0686 | F: 843.628.2405 | [kevin@seibertlawfirm.com](mailto:kevin@seibertlawfirm.com)

[www.seibertlawfirm.com](http://www.seibertlawfirm.com)

Please note that the information contained in this e-mail does not create an attorney-client relationship. An attorney client-relationship is not established until a signed agreement is made between the attorney and a prospective client. Nevertheless, the information contained in this e-mail transmission is legally privileged and confidential. It is intended for the use of the individual or company to whom it is directed. If the reader of this communication is not the intended recipient, you are hereby notified that no privilege is waived by your receipt and that any dissemination, distribution or copying of this communication is strictly prohibited by both State and Federal laws. Please delete any and all copies of the same from any media to which it may have been stored and destroy any hard copies which may have been printed. Please immediately notify the sender of this message by reply e-mail to [admin@seibertlawfirm.com](mailto:admin@seibertlawfirm.com) or by phone at (843) 554-0686. Thank you.



Attorneys - at - Law

BRENT S. HALVERSEN\*  
Direct Line: (843) 284-5790  
brent@halversenlaw.com

ALSO ADMITTED TO FLORIDA

March 19, 2015

VIA U.S. MAIL ONLY

Mr. Kevin Michael Seibert, Esq.  
Seibert Law Firm, LLC  
1625 Remount Road  
North Charleston, SC 29406

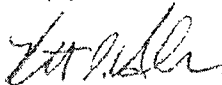
Re: Harbor National Bank v. Anthony M. Whitfield  
Case No.: 2012-CP-10-5887  
Case No.: 2012-CP-08-2618  
Case No.: 2012-CP-18-2119  
Case No.: 2012-CP-08-3478  
Case No.: 2012-CP-18-2738

Dear Kevin,

Enclosed please find a deposition re-notice for Cindy Whitfield set for **April 6, 2015 at 1:00 PM** at the office of Halversen & Associates, LLC, 171 Church Street, Suite 330, Charleston, South Carolina.

If you have any questions or comments, please do not hesitate to contact me.

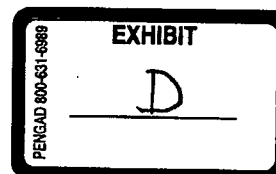
Sincerely yours,



Brent Souther Halversen

BSH/lrh  
Enclosure(s)

cc: Mr. Seth Whitaker, Esq (Via U.S. Mail Only)  
Mr. Dan Slotchiver (Via E-Mail Only)  
Mr. Anthony M. Whitfield (Via E-Mail Only)

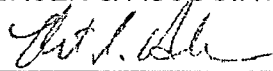




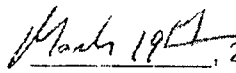
**CERTIFICATE OF SERVICE**

I certify that I served the foregoing Notice of Deposition upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to the counsel's last known address on this 19<sup>th</sup> day of March, 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](mailto:brent@halversenlaw.com)

, 2015.  
Charleston, South Carolina

*Harbor National Bank v. Anthony Whitfield*  
*Case No. 2012-CP-10-5887*

**EXHIBIT "A"**

1. All documents sent to or received from Kevin Seibert concerning the above captioned foreclosure.
2. All documents sent to or received from Stan Jaskiewicz concerning the above captioned foreclosure.
3. All documents sent to or received from Dena Hardison concerning the above captioned foreclosure.
4. All documents sent to or received from Robert Bernstein concerning the above captioned foreclosure.
5. All documents sent to or received from any non-party concerning the above captioned foreclosure, including any and all emails.
6. All documents exchanged between you and Wayne Freeman.
7. Any emails or documents you received regarding the June 28, 2012 loan renewal for your home at 1055 Black Rush Circle, Mount Pleasant, South Carolina.

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 LORI HAMMONS**

Lori Hammons, personally appearing before me, who being duly sworn, states the following:

1. My name is Lori Hammons, I am over the age of eighteen and have personal knowledge of the facts stated herein.

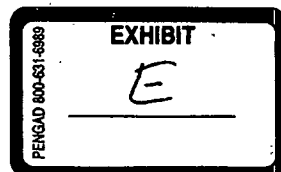
2. I am employed by Brent S. Halversen, Esq. of Halversen & Associates, LLC.

3. Our office scheduled the deposition of Cindy Whitfield to occur at our office at 1:00 PM on April 6, 2015, located at 171 Church Street, Suite 330, Charleston, SC 29401.

4. Personnel from Clearview video and Spectrum Court Reporting came to the deposition and set up their equipment to take the deposition.

5. Mr. Halversen, Mr. Daniel Slotchiver, and Mr. Seth Whitaker, the attorney for the bank were also present.

6. Upon his arrival, Mr. Kevin Seibert, the attorney for Cindy Whitfield,



Affidavit of Lori Hammons  
Case No. 2012-CP-10-5887


informed me that his client, Cindy Whitfield was coming to the deposition and was stuck in traffic.

7. Cindy Whitfield did not appear for the deposition on April 6, 2015 at 1:00 PM.

**FURTHER AFFIANT SAYETH NOT.**

  
Lori Hammons

SWORN to and Subscribed before me  
this 7<sup>th</sup> day of April, 2015

 (SEAL)  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: May 8 2023

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.

ANTHONY M. WHITFIELD  
Defendant.

)  
)  
)  
) **CONSENT ORDER ON DEFENDANT'S**  
) **MOTION TO AMEND TO ASSERT A**  
) **CROSS CLAIM AGAINST CINDY**  
) **WHITFIELD**  
)  
)  
)

This matter comes before the Court on consent on Defendant's Motion To Amend To Assert a Cross Claim Against Cindy Whitfield, filed on May 18, 2015. This Order applies only to the crossclaim(s) asserted in the motion and does not apply to the counterclaims which are associated with the same motion. Defendant has leave of court to file its crossclaim(s) as stated in the May 18, 2015 motion.

ORDERED that Defendant's Motion is granted in part, as stated herein.

AND IT IS SO ORDERED.

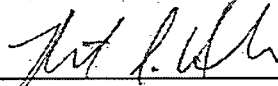
\_\_\_\_\_  
Chief Administrative Judge for the Ninth  
Judicial Circuit  
The Honorable R. Markley Dennis Jr.

This \_\_\_\_\_ day of \_\_\_\_\_, 2015.  
Charleston, South Carolina



WE SO MOVE.

HALVERSEN & ASSOCIATES, LLC

By: 

Brent S. Halversen  
171 Church Street, Suite 330  
Charleston, SC 29401  
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F: 864-326-4844  
Email: [brent@halversenlaw.com](mailto:brent@halversenlaw.com)

Attorney for the ~~Plaintiff~~  
*Defendant*

WE SO CONSENT.

DUFFY & YOUNG, LLC

By: 

Brian Duffy, Esquire  
96 Broad Street  
Charleston, SC 29401

FERRARA LAW FIRM, LLC

By:  (with express permission)

Paul Ferrara, Esquire  
2300 Orleans Road  
N. Charleston, SC 29406

*Attorneys for the Defendant*

July 30, 2015  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

R. MARKLEY DENNIS, JR., Circuit Court Judge

Appellate Case No. 2015-001516

Harbor National Bank,

Respondent,

v.

Anthony M. Whitfield,

Appellant.

**PROOF OF SERVICE**

I certify that I have served the Return to Motion on co-defendant Cindy Whitfield, by depositing a copy of it in the United States Mail, postage prepaid, on July 31, 2015, addressed to her attorney of record, Paul B. Ferrera, Esq., Ferrera Law Firm, PLLC, 2300 Otranto Road, N. Charleston, SC 29406.

July 31, 2015

  
Brent S. Halversen  
Halversen & Associates, LLC  
171 Church Street, Suite 330  
Charleston, SC 29401  
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E: brent@halversenlaw.com

Attorneys for Appellant

-and-

**RECEIVED**

AUG 04 2015

SC Court of Appeals

Andrew J. McCumber, Esquire

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S.C. Bar No. 101559

*&*

Daniel S. Slotchiver, Esquire

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S.C. Bar No. 15129

Attorneys for Appellant

LAW OFFICES OF  
**HALVERSEN & ASSOCIATES, L.L.C.**

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BRENT S. HALVERSEN\*  
Direct Line: (843) 284-5790  
brent@halversenlaw.com

\*ALSO ADMITTED IN FLORIDA

July 31, 2015

**RECEIVED**

AUG 04 2015

SC Court of Appeals

**VIA U.S. MAIL**

The Hon. Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Harbor National Bank v. Anthony M. Whitfield  
Circuit Court Case No.: 2012-CP-10-5887  
Appellate Case No.: 2015-001516

Dear Clerk of Court:

Enclosed for filing please find one original and seven (7) copies of Respondent's Return to Motion in the above-captioned matter. Also enclosed are the following:

- (1) Original and one copy of Proof of Service of the Return to Motion on the Respondent.
- (2) Original and one copy of the Proof of Service of the Return to Motion on co-defendant Cindy Whitfield.

Please file the originals and return a file stamped copy of the Return to Motion and the Proofs of Service in the enclosed self-addressed stamped envelope.

Thank you for your assistance in this matter.

Sincerely yours,



Brent Souther Halversen

BSH/sh  
Enclosure(s)

cc: Mr. Seth Whitaker (Via U.S. Mail Only)  
Mr. Brian C. Duffy (Via U.S. Mail Only)  
Mr. Paul Ferrera (Via U.S. Mail Only)  
Mr. Robert Bernstein (Via U.S. Mail Only)  
Mr. Anthony Whitfield (Via E-Mail Only)  
Mr. Dan Slotchiver (Via E-Mail Only)