

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825
Appellate Case No. 2014-000906
2015-UP-353

RECEIVED

OCT - 7 2015

S.C. Supreme Court

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust as Trustee of the
American Mortgage Investment Partners Fund I Trust.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Petitioner.

APPENDIX

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Attorney for Respondent

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Selene RMOF REO Acquisition, LLC.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

RECORD ON APPEAL

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Attorney for Respondent

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JAN 05 2015

SC Court of Appeals

Appendix000000001

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO. 10-CP-10-5825

**MOTION AND ORDER
INFORMATION FORM
AND COVER SHEET**Wachovia Mortgage Corporation ☒ Plaintiff
v.Melissa Furmanchik; Masonborough at Park West Association, Inc.; Wells Fargo Bank, N.A.; ☐ Defendant

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar # 74935)
Kevin T. Hardy (SC Bar #76015) Benjamin J. Powell (SC Bar #77205)
John P. Fetner (SC Bar # 77460) Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109, Columbia, SC 29210
telephone: 803-744-4444 fax: 803-343-7013

name, S.C. Bar no. and address of
Defendant's attorneytelephone:
email: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: YES/NO

SECTION II: Motion Fee

- ☒ PAID —AMOUNT: \$25.00 _____
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: Referred to Master by Motion and Order of Court

SECTION III: Motion Type

- ☐ Written motion attached
☒ Form Motion —

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff/Defendant

August 30, 2010

Date submitted

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other

JUDGE

CODE: _____

Date: _____

CLERK'S VERIFICATIONDATE FILEDCollected by: _____
(print name)

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (1/2003)

00 003

Appendix000000004

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park
West Association, Inc.; Wells Fargo Bank, N.A.;

Defendant(s).

(011784-14524)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-10-5825

ORDER OF REFERENCE

Deficiency Judgment Waived

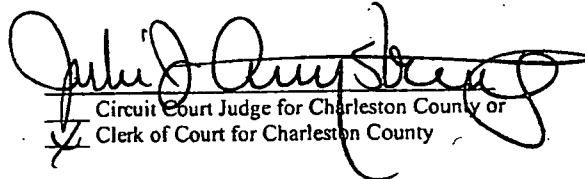
FILED
2010 SEP 16 AM 9:54
JULIE A. STRONG
CLERK OF COURT
BY _____

Pursuant to Rules 53(b) of the South Carolina Rules of Civil Procedure, the above-entitled case is an action for foreclosure and may be referred to a Master in Equity or Special Referee in the above-entitled county by order of a circuit court judge or the clerk of court.

10-15623
IT IS HEREBY ORDERED, that this action is referred to the Honorable Mikell R. Scarborough, as Master in Equity to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRPC, and all matters arising from or reasonably related to such action. The Master in Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action including issuance of a writ of assistance or issuance of any rule to show cause including but not limited to any rule to show cause why a party should not be bound by the judgment of foreclosure. Further, the Master in Equity shall retain jurisdiction to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to the South Carolina Rules of Civil Procedure including but not limited to Rule 60(b). Judicial sales will be conducted pursuant to S.C. Code Section 15-39-680 or on any other convenient sale's date as may be determined by the Master in Equity/Special Referee.

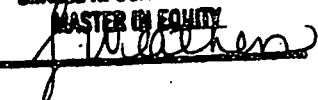
The hearing shall be held in the Office of the Honorable Mikell R. Scarborough, as Master in Equity for Charleston County, located at:

Charleston County Courthouse, 100 Broad Street, Courtroom 2A
Charleston, SC 29401


Circuit Court Judge for Charleston County or
Clerk of Court for Charleston County

Charleston, South Carolina

9/15, 2010.

Date 9-9-2010
Amount \$ 125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By 

00 004

Appendix000000005



RECEIVED SEP 09 2010

ROGERS TOWNSEND & THOMAS, PC

ATTORNEYS AND COUNSELORS AT LAW

Default Services Department Attorneys

Samuel C. Waters	Cheryl H. Fisher	Reginald P. Corley	Jennifer W. Rubin	Ellie C. Floyd
Michael P. Morris	Mary R. Powers	Robert P. Davis	William S. Koehler	Shawn R. Willis
Eve Moredock Stacey	Kelsey K. Brockbank	John P. Fetner	Kevin T. Hardy	Benjamin J. Powell

August 30, 2010

The Honorable Mikell R. Scarborough
Master in Equity for Charleston County
100 Broad Street, Suite 266
Charleston, SC 29401

Re: Wachovia Mortgage Corporation vs. David Furmanchik
Case No. 10-CP-10-5825; Charleston County
Our File No. 011784-14524

Dear Sir/Madam:

I am enclosing originals and copies of a proposed Motion and Order of Reference along with our check in the amount of \$125. I would appreciate your having the originals executed and returning the clocked copies to my office in the envelope provided.

Thank you for your kind assistance in this matter. Do not hesitate to contact me should you have any questions or need anything further.

Rogers Townsend & Thomas, PC
Default Servicing Section

Sincerely,
Christina Miller

00 005

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Wachovia Mortgage Corporation,)

Plaintiff,)

vs.)

Melissa Furmanchik; Masonborough At)
Park West Association, Inc.; Wells)
Fargo Bank, N.A.)

Defendant(s).)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2010-CP-10-5825

CONSENT ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2011 DEC -2 PM 2:40

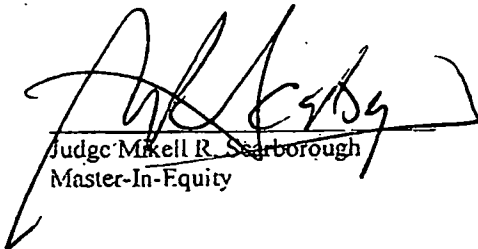
FILED

WHEREAS, Mary Leigh Arnold, has filed a Motion to For Leave to File Answer and
Notice of Election to Participate Out of Time on behalf of the Defendant, Melissa Furmanchik,
in this action; and

NOW, THEREFORE, by consent of the parties as evidenced by their signatures below, it
is

ORDERED that Defendant Melissa Furmanchik has leave to file Defendant's Answer
and Notice of Election to Participate in Foreclosure Intervention out of time within 10 days of
the date of this order.

IT IS SO ORDERED.

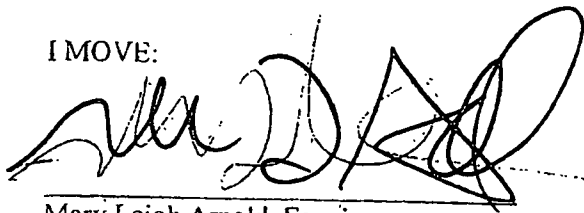

Judge Mikell R. Scarborough
Master-In-Equity

Charleston, S.C.
November 14, 2011

00 006

Appendix000000007

I MOVE:



Mary Leigh Arnold, Esquire
749 Johnnie Dodds Blvd
Mount Pleasant, SC 29464
Facsimile: (843) 971-6055
(843) 971-6053

Sammie@marvarnoldiaw.com

Attorney for Defendant Melissa Furmanchik

WE CONSENT:



Rogers Townsend & Thomas, PC
P.O. Box 100200 (29202)
220 Executive Center Drive
Columbia, SC 29212
Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO. 10-CP-10-5825

**MOTION
INFORMATION
FORM
AND COVER SHEET**

Wachovia Mortgage Corporation ☒ Plaintiff

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.; Wells Fargo Bank, N.A.; ☐ Defendant

Check box above indicating submitting party

name, S.C. Bar no. and address of plaintiff's attorney

Jason D. Wyman (SC Bar # 100271)

220 Executive Center Drive, Suite 109, Columbia, SC 29210

telephone: 803-744-4444

fax: 803-343-7013

name, S.C. Bar no. and

address of Defendant's
attorney

telephone:

fax:

email:

other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (Complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: YES/NO

SECTION II: Motion Fee

☒ PAID —AMOUNT: \$ 25.00

☐ EXEMPT:

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

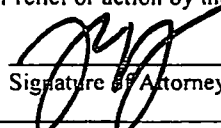
☐ Other: _____

SECTION III: Motion Type

☐ Written motion attached

☒ Form Motion —

I hereby move for relief or action by the court as set forth in the attached proposed order.

 (SC Bar # 100271)
Signature of Attorney for Plaintiff/Defendant

8/8/12
Date submitted

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed: _____

Collected by: _____

(print name)

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED—AMOUNT DUE: _____

SCCA/233 (11/2003) 014332-00072

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Appendix000000009

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park West
Association, Inc.; Wells Fargo Bank, N.A.;

Defendant(s).

(514332-00072 JDW)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP-10-5825

ORDER SUBSTITUTING PLAINTIFF
Deficiency Judgment Waived

FILED
2012 SEP 10 PM 2:12
CLERK OF COURT
J. ADAMS STRONG

WHEREAS, Wachovia Mortgage Corporation, brought the above styled action to foreclose a mortgage lien on property more fully described in the Complaint;

AND WHEREAS, the subject mortgage was subsequently transferred to Selene Finance, LP, by assignment dated October 7, 2010; thereafter transferred to SRMOF 2009-1 Trust, by assignment dated March 29, 2011; thereafter transferred to Selene RMOF REO Acquisition, LLC, by assignment dated March 29, 2011;

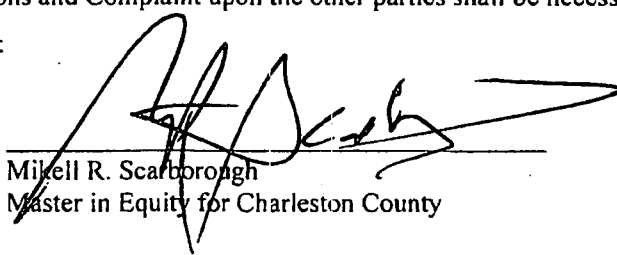
AND WHEREAS, it appearing to the court that Selene RMOF REO Acquisition, LLC has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest by the original mortgage dated September 7, 2005 and recorded September 19, 2005 in Book F554 at Page 170,

THEREFORE, IT IS ORDERED, pursuant to Rule 17(a) of the South Carolina Rules of Civil Procedure and for good cause indicated that:

(1) Selene RMOF REO Acquisition, LLC shall be and is hereby substituted as Plaintiff and as the real party in interest and that Wachovia Mortgage Corporation, shall be dismissed without prejudice; and

(2) This order amends such caption of the Lis Pendens, Summons and Complaint ab initio so that no re-service of the Summons and Complaint upon the other parties shall be necessary.

AND IT IS ORDERED:


Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina
8/28, 2012.

00 008

Appendix000000010

ROGERS TOWNSEND & THOMAS, P.C.
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
P 803.771.7900 F 803.343.7017
W RTT-LAW.COM

JASON D. WYMAN
ASSOCIATE
JASON.WYMAN@RTT-LAW.COM
P 803.744.5303
F 803.343.7017

LICENSED IN SOUTH CAROLINA



August 8, 2012

The Honorable Julie J. Armstrong
Clerk of Court for County of Charleston
100 Broad Street, Suite 106
Charleston, SC 29401

Re: *Wachovia Mortgage Corporation v. Melissa Furmanchik; Masonborough at
Park West Association, Inc.; Wells Fargo Bank, N.A.*
C/A#: 10-CP-10-5825
Our file # 514332-00072

Dear Ms. Armstrong

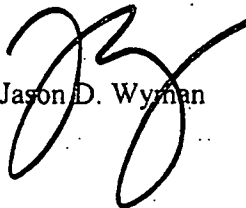
Enclosed please find the original and one copy of Plaintiff's Motion and Proposed Order Substituting Plaintiff. The motion coversheet and my firm's check in the amount of 25.00 for the motion fee are also enclosed. Please return the clocked copies to me in the enclosed self-addressed stamped envelope.

By copy of this letter, I am serving the same on counsel of record.

Please note that this matter has been referred to the Master in Equity.

Thank you for your assistance in this matter.

Sincerely,



Jason D. Wyman

JDW/

Enclosures

00 009

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property

Appendix000000011

cc:

Mary Leigh Arnold, Esq.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29465

00 010

Appendix000000012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Selene RMOF REO Acquisition, LLC

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park
West Association, Inc.; Wells Fargo Bank, N.A.

Defendants.

(514332.00072 JDW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2010-CP-10-5825

ORDER

FILED
2013 MAY 20 AM 9:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on April 8, 2013 for a Pre-Trial Hearing. At the Pre-Trial hearing, the Court heard Defendant Melissa Furmanchik's Motion to Dismiss or in the Alternative for Summary Judgment and Motion to Compel. Jason D. Wyman, Esquire, appeared on behalf of Plaintiff. Mary Leigh Arnold, Esquire, appeared on behalf of Defendant Melissa Furmanchik. At the hearing, the parties agreed to continue the motion to compel in order to allow Plaintiff to supplement its discovery responses. After taking into consideration the record and arguments of counsel, the Court denies Defendant's Motion to Dismiss or in the Alternative for Summary Judgment.

FACTS

This lawsuit arises out of the foreclosure of a real estate mortgage. In September 2005, David H. Furmanchik executed a Note. In order to secure payment of the Note, David H. Furmanchik and Defendant Melissa Furmanchik executed a Mortgage in favor of Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189). The Mortgage was dated September 7, 2005 and recorded on September 19, 2005 in the Office of the RMC for Charleston County in Mortgage Book F554-at Page 170. Prior to the filing of this lawsuit, the Mortgage was assigned to

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Appendix000000013

Wachovia Mortgage Corporation by an assignment dated July 7, 2010 and recorded on July 15, 2010 in Book 0133 at Page 352. Due to the alleged default on the loan, Wachovia Mortgage Corporation filed this foreclosure action on or about July 20, 2010. Following the initiation of this lawsuit, the Mortgage was then assigned three times. First, Wachovia Mortgage Corporation assigned to the Mortgage to Selene Finance LP, by assignment October 7, 2010 and recorded March 18, 2011 in Book 0177 at Page 657. Then, Selene Financial LP assigned the Mortgage to SRMOF 2009-1 Trust by assignment dated March 29, 2011 and recorded May 3, 2011 in Book 0185 at Page 205. Finally, SRMOF 2009-1 Trust assigned the Mortgage to Selene RMOF REO Acquisition, LLC by assignment dated March 29, 2011 and recorded May 3, 2011 in Book 0185 at Page 206.

Defendant Melissa Furmanchik filed an answer on or about December 2, 2011. On or about September 10, 2012, this Court entered an Order substituting Selene RMOF REO Acquisition, LLC as Plaintiff. Thereafter, on March 28, 2013, Defendant Melissa Furmanchik filed a Motion to Dismiss or in the Alternative for Summary Judgment, which is the subject of this Order.

STANDARD OF REVIEW

In deciding a Rule 12(b)(6) motion, "[t]he question for the court is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the allegations set forth on the face of the complaint state any valid claim for relief." *Logan v. Cherokee Landscaping & Grading Co.*, 389 S.C. 611, 617, 698 S.E.2d 879, 882 (Ct. App. 2010). "The court will not sustain the motion if the 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" *Id.*

In deciding a motion for summary judgment, the question for the court is whether there exists a genuine issue as to any material fact. Rule 56, SCRPC. To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Sauner v. Pub. Serv. Auth. of S. Carolina*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Even when the evidentiary facts are not in dispute, summary judgment should not be granted if there is disagreement concerning the conclusion to be drawn from those facts. *BPS, Inc. v. Worthy*, 362 S.C. 319, 325-26, 608 S.E.2d 155, 159 (Ct. App. 2005). Finally, summary judgment is a drastic remedy and should be cautiously invoked so as not to deny a litigant the opportunity to present its case to the court. *Id.*

ANALYSIS AND CONCLUSIONS

Standing refers to a “[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.” *Black's Law Dictionary* 1536 (9th ed. 2009). Generally, to have standing, a party must be a real party in interest to the litigation. *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000) (citing *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996)). A real party in interest is a party with “a real, material, or substantial interest in the outcome of the litigation.” *Baird v. Charleston County*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). In South Carolina, standing is composed of three elements.

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

Smiley v. South Carolina Dep't of Health & Env'tl Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32-33 (2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). The elements of standing, however, "are not mere pleading requirements but rather an indispensable part of the plaintiff's case"; therefore, "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stage of the litigation." *Beaufort Cnty. v. Trask*, 349 S.C. 522, 528 n. 14, 563 S.E.2d 660, 663 n. 14 (Ct.App.2002) (quoting *Lujan*, 504 U.S. at 561).

Under South Carolina law, "[p]ossession of a bearer instrument [note] is *prima facie* evidence of ownership." *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008). South Carolina law "does not require both possession of the note and a written assignment of the mortgage to prove ownership." *Id.* at 376. "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of the mortgage.'" *Midfirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F. Supp. 1304, 1318 (D.S.C. 1994) (citing *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930); *Ballou v. Young*, 42 S.C. 170, 20 S.E. 84 (1894)). In July 2012, the South Carolina Supreme Court again held that an "assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012). The Court finds that the law in South Carolina is that demonstrating the right to collect the underlying debt (for instance, by being a holder of the Note) is controlling on the issue of whether the Plaintiff has standing to collect the debt and foreclose this Mortgage and is the real party in interest.

In the present case, Wachovia Mortgage Corporation had standing at the time it filed the instant lawsuit. First, it suffered an "injury in fact" based on the alleged default under the terms

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Appendix000000016

of the Note and Mortgage. Second, "causal connection" between the alleged injury is "fairly traceable" to the alleged default under the terms of the Note and Mortgage. Finally, the third element is satisfied since it is likely that the "injury in fact" will be "redressed" by a judgment of foreclosure and sale. Moreover, the current Plaintiff, Selene RMOF REO Acquisition, LLC, has standing and is the real party in interest to continue prosecuting this mortgage foreclosure action. At the hearing, Plaintiff's counsel produced the original Note, bearing Mr. Furmanchik's signatures, and indorsed in blank. As Plaintiff, through its attorneys, is in possession of the Note, which is endorsed in blank, it is the holder of the Note. S.C. Code Ann. §36-1-201 (1976). The holder of the Note is entitled to enforce it. S.C. Code Ann. §36-3-301. Therefore, as a person entitled to enforce the Note, Plaintiff is a real party in interest and has standing to maintain this suit.

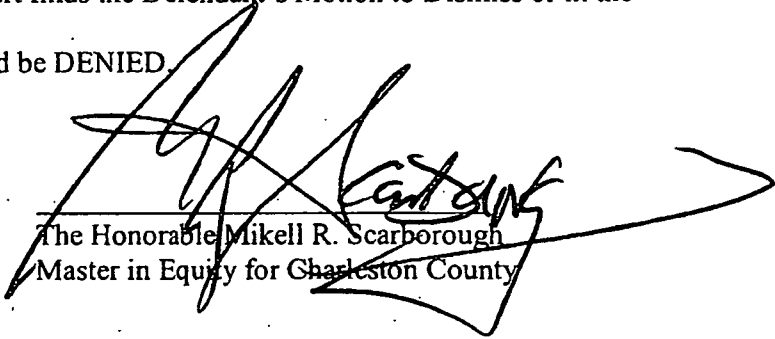
Based on the evidence presented by Plaintiff and the arguments of the parties, I find that Plaintiff does indeed have standing to prosecute this action and is the real party in interest; that Plaintiff is the current owner and holder of the note; and that Plaintiff has properly recorded an assignment of Mortgage in its favor.

For the foregoing reasons, the Court finds the Defendant's Motion to Dismiss or in the Alternative for Summary Judgment should be DENIED.

AND IT IS SO ORDERED.

Charleston, South Carolina

5/16, 2013


The Honorable Mikell R. Scarborough
Master in Equity for Charleston County

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-5825

Selene RMOF REO Acquisition, LLC

Melissa Furmanchik, et al.

PLAINTIFF(S)

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.
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

After trial and review of the defendants Rule 59e, this court finds that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done pursuant to Rule 50(d), SCRPC. This matter is to be reset for Monday, August 12 at 10:00 a.m.

INFORMATION FOR THE PUBLIC 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:
N/A

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.

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)_____

ATTORNEY(S) FOR THE DEFENDANT(S)_____
CLERK OF COURT**Court Reporter:**

FORM 4

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

JUDGMENT IN A CIVIL

CASE NO. 10-CP-10-5825

Selene RMOF REO Acquisition, LLC

Melissa Furmanchik; Masonborough at
Park West Association, Inc.; Wells Fargo
Bank, N.A.;

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jason D. Wyman (SC Bar#100271)
Attorneys for the Plaintiff
Rogers Townsend & Thomas, PC
220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 771-7900
(803) 343-7013 - Fax
info@rtt-law.com

Attorney for : ☒ Plaintiff
☐ Defendant
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other __
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCp; ☐ 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: _____

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ORDER INFORMATION

This order ☒ ends ☐ does not end the case. As required by statute, a foreclosure sale has been or will be scheduled, which will officially end the case.

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:

All that certain piece, parcel or lot of land, together with all the improvements thereon, if any, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as Lot 57 on a plat entitled "A Conditional Subdivision Plat of Winterbrooke Subdivision Phase 4, Phase III Park West, Formerly a Portion of Masonborough Subdivision, Owned by Park West Development, Inc., Located in the Town of Mount Pleasant, Charleston County, South Carolina," prepared by Southeastern Surveying of Charleston, Inc., dated February 26, 2004 and recorded March 23, 2004 in the RMC Office for Charleston County in Plat Book EG at Pages 968 and 969. Said lot having such size, shape dimensions and boundaries as will by reference to said plat more fully appear.

This being the identical property conveyed to David H. Furmanchik by Deed of Park West Development, Inc. dated April 20, 2004 and recorded May 7, 2004 in Deed Book R493 at Page 580. Subsequently, David H. Furmanchik conveyed the subject property to David H. Furmanchik and Melissa Furmanchik, as joint tenants with the right of survivorship, by Deed dated September 13, 2005 and recorded September 19, 2005 in Deed Book D554 at Page 866. Subsequently, David H. Furmanchik died on March 3, 2008 vesting his interest in Melissa Furmanchik as the surviving joint tenant. Subsequently, Melissa Furmanchik conveyed the subject property to Melissa Furmanchik, as Trustee of the Melissa Furmanchik Living Trust by Deed dated October 23, 2012 and recorded November 21, 2012 in Deed Book 0292 at Page 659.

TMS# 594-12-00-781

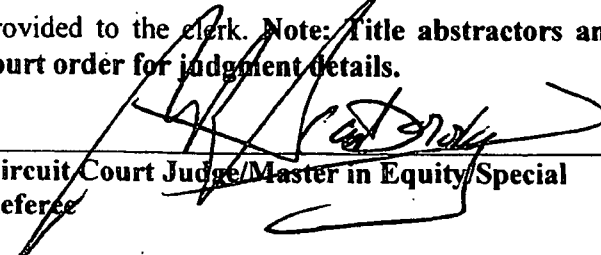
1820 West Canning Drive
Mt Pleasant, SC, 29466

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

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provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge/Master in Equity/Special
Reference

3062
Judge Code

2/3/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this __ day of _____, 20__ to attorneys of record or
to parties (when appearing pro se) as follows:

Jason D. Wyman (SC Bar #100271)
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202-3400

**ATTORNEY(S) FOR THE
PLAINTIFF(S)
514332-00072**

**ATTORNEY(S) FOR THE
DEFENDANT(S)**

CLERK OF COURT

Mary Arnold, Esq.
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29465
Attorney for Melissa Furmanchik

Masonborough at Park West Association,
Inc.
3301 Salterbeck St Ste 201
Mount Pleasant, SC 29466

Wells Fargo Bank, N.A.
1703 Laurel St
Columbia, SC 29201

Court Reporter:

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Appendix000000022

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Selene RMOF REO Acquisition, LLC,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park
West Association, Inc.; Wells Fargo Bank,
N.A.,

Defendants.

(514332.00072 JDW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2010-CP-10-5825

**JUDGMENT OF FORECLOSURE
AND SALE**

Deficiency Judgment Waived

FILED
2014 FEB -7 PM 2:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court for a final foreclosure hearing on all matters pending on June 20, 2013 and August 12, 2013. At the conclusion of the hearings, the Court took the case under advisement. Having considered the pleadings, testimony at both hearings, exhibits admitted into evidence, and arguments of counsel, the Court now issues this Order.

BACKGROUND AND PROCEDURAL HISTORY

This lawsuit arises out of the foreclosure of a real estate mortgage. On or about July 20, 2010, Wachovia Mortgage Corporation filed the foreclosure complaint. Defendants Masonborough at Park West Association, Inc. and Wells Fargo Bank, N.A. failed to answer, plead or otherwise respond and are in default as evidenced by the Affidavit of Default filed on September 16, 2010. That same day, this case was referred to the undersigned as Master in Equity for Charleston County.

On or about September 10, 2012, this Court entered an Order substituting Selene RMOF REO Acquisition, LLC as Plaintiff.

Defendant Melissa Furmanchik initially failed to answer, plead or otherwise respond to the Complaint and was held in default. On or about September 21, 2010, Defendant Melissa Furmanchik retained counsel and filed a Motion for Leave to File out of Time Answer and Notice of Election to Participate in Foreclosure Intervention. Plaintiff and Defendant entered into a Consent Order resolving the motion. On December 2, 2010, Defendant Furmanchik filed an Answer and raised two affirmative defenses to the foreclosure: lack of standing and failure to provide notice.

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Thereafter, on March 28, 2013, Defendant Melissa Furmanchik filed a Motion to Dismiss or in the alternative for Summary Judgment. In her Motion, Defendant argued that Plaintiff lacked standing and was not the real party in interest to maintain the foreclosure action. The Court denied the motion by Order entered on May 20, 2013.

The Court held a final foreclosure trial in this matter on June 20, 2013. Following the June 20, 2013 hearing, Defendant Melissa Furmanchik filed a motion to reconsider. After reviewing Defendant Furmanchik's motion, the Court determined that this case should be reopened for the express purpose of taking additional testimony regarding the note and subsequent modification agreement. The second hearing took place on August 12, 2013. At the hearings, Defendant Furmanchik made evidentiary objections to almost every exhibit Plaintiff attempted to introduce. The Court's rulings on these evidentiary objections, as well as its findings with respect to the foreclosure cause of action, are set forth below.

STANDARD OF REVIEW

As stated above, much of the parties dispute surrounds the admissibility of various documents. "The admission of evidence is within the trial court's discretion, and the trial court's decision will not be reversed on appeal absent an abuse of discretion." *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 360, 725 S.E.2d 112, 119 (Ct. App. 2012).

As to the foreclosure cause of action, "[g]enerally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009) (citing *Franklin Credit Mgmt. Corp. v. Nicholas*, 812 A.2d 51, 57-58 (2002)) ("In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note."); *Campaign v. Barba*, 23 A.D.3d 327 (N.Y. App. Div. 2005) ("To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must

establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment."); *In re Foreclosure of Real Prop. for \$143,600.00*, 577 S.E.2d 398, 406 (N.C. Ct. App. 2003) ("In a foreclosure proceeding, the lender bears the burden of proving that there was a valid debt, default, right to foreclose under power of sale, and notice."); 55 Am. Jur. 2d *Mortgages* § 604 ("[T]he burden of proof of any particular issue rests upon the party asserting the affirmative of that issue under the pleadings.").

DISCUSSION

I. ADMISSIBILITY OF EXHIBITS

A. Ms. Clark's Testimony

Ms. Mamie Clark appeared at both hearings and testified on behalf of the Plaintiff. Ms. Clark testified that she worked for Selene Finance, L.P. which serves as the servicer for the Plaintiff. (June 20, 2013 Hr'g Tr. 7:19-23). She is employed as a contested default manager. (Id.) One of her job duties is to appear at the trials and provide testimony. (Aug. 12, 2013 Hr'g Tr. 4:21-23). Further, she testified that she was familiar with the records maintained for the loan at issue. (Id.) She further testified that the loan was service transferred to Selene from Wells Fargo and that she was familiar with how loans and the accompanying documentation were transferred. (June 20, 2013 Hr'g Tr. 16:12-14). She further explained what a service transfer was and what occurred during the service transfer of this loan. (Aug. 12, 2013 Hr'g Tr. 5:22-25). She further testified that loan document and records for the subject loan were kept and maintained in the ordinary course of business. (Aug. 12, 2013 Hr'g Tr. 6:10-11).

The Court finds that based on a close review of Ms. Clark's testimony that she was sufficiently familiar with the record keeping system for Selene. This is all that is required under the business record exception. *See Midfirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F.Supp. 1304, 1311 (D.S.C. 1994).

B. Note, Mortgage and Modification

At the hearing, the Court reviewed the Original Note and a copy of the recorded Mortgage and Modification Agreement. The Court noted the Original Note contained an Allonge for the purpose of endorsement. As to the Mortgage, Ms. Clark testified to its recording in the public records. Finally, the Modification Agreement was also recorded in the public

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record. Ms. Clark testified to the key terms of the Modification. The Court finds that the Note, Mortgage and Modification are not hearsay. The Court finds Bank of America NA v. Neis, 349 Wis. 2d 461, 835 N.W.2d 527 (Ct. App. 2013) instructive. There, the Wisconsin Court of Appeals addressed the admissibility of various documents in a mortgage foreclosure action. The court concluded that the note and mortgage attached to the summary judgment affidavit were not hearsay and found that the note and mortgage was "offered only for their legal effect." *Neis*, 349 Wis. 2d at 490, 835 N.W.2d at 541.

In the present case, the Court finds that the Note, Mortgage and Modification are admissible.

C. Assignments of Mortgage

The Court finds and concludes that the four assignments of mortgages are admissible. They are self-authenticating documents in the fact that they were recorded in the public records and Ms. Clark testified to the recording dates and book and page numbers.

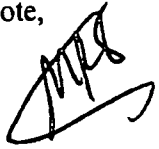
D. Payment History, Demand Letter, and Judgment Figures

It is undisputed that Wells Fargo, the prior servicer of the loan, records were used to generate the Payment History, Demand Letter and Judgment Figures. Defendant Furmanchik argued Plaintiff's witness could not authenticate the prior servicer's business records and that such evidence is inadmissible. Plaintiff argued that the documents were admissible as business records. The Court concludes that the Demand Letter, Payment History and Judgment Figures are admissible under S.C. Code Ann. § 19-5-510 and Rule 803(6), SCRE. As succinctly stated by Judge Duncan in In re McFadden, 471 B.R. 136 (Bankr. D.S.C. 2012), "*Midfirst Bank* makes clear that for documents to be admissible under the business records exception, they do not have to be actually created by the witness testifying to authenticate them, as Trustee's counsel appears to argue, nor do they even have to be created by the entity by which the witness is employed." *In re McFadden*, 471 B.R. at 160. The Court's decision is further supported by *Twelfth RMA Partners, L.P. v. National Safe Corporation*, 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999). In *Twelfth RMA Partners, LP*, the Court of Appeals held that the master in equity did not err by allowing the testimony of the plaintiff's witness despite the fact that the records were generated by a previous entity. *Twelfth RMA Partners, L.P.*, 335 S.C at 642, 518 S.E.2d at 48.



II. Plaintiff is entitled to a Judgment of Foreclosure and Sale.

The Court finds that Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure. Plaintiff, Selene RMOF REO Acquisition, LLC, has standing and is the real party in interest to continue prosecuting this mortgage foreclosure action. At the trial, Plaintiff's counsel produced the Original Note. After close examination of the Original Note, the Court finds the original payee was Wachovia Mortgage Corporation. The Original Note was then properly endorsed to Wachovia Bank, N.A. Next, Wells Fargo as Successor by Merger to Wachovia Bank, N.A., through an allonge, endorsed the Original Note in blank. Plaintiff, through its attorneys, is in possession of the Original Note, which is endorsed in blank, it is the holder of the Note. S.C. Code Ann. §36-1-201 (1976). The holder of the Note is entitled to enforce it. S.C. Code Ann. §36-3-301. Therefore, as a person entitled to enforce the Note, Plaintiff is a real party in interest and has standing to maintain this suit.



FINDINGS OF FACTS

In September 2005, David H. Furmanchik obtained a construction loan for the purpose of constructing improvements on the Subject Property described in the Complaint. The loan was evidenced by an Adjustable Rate Note executed by David H. Furmanchik, dated September 7, 2005, in the principal amount of \$464,000 (the "Original Note"). A Construction/Permanent Financing Addendum supplemented the Original Note (the "Construction Addendum"). The Construction Addendum provided for payments of interest only during the construction phase and that interest would accrue on the unpaid principal balance of the Original Note "at a rate equal to the 'WSJ Prime Rate.'"

To better secure the repayment of the Loan described above, David H. Furmanchik and



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Melissa Furmanchik made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) a certain real estate Mortgage in writing, dated September 7, 2005, covering real property in Charleston County, which is the same as that described in the Complaint. This Mortgage was filed on September 19, 2005, and is of record in the Office of RMC/ROD in Book F554 at Page 170.

After completion of the construction phase, David H. Furmanchik for value received, made, executed and delivered a "Mortgage Modification Agreement Amendment to Note and Security Instrument (the "Modification Agreement"). The Modification Agreement was dated August 31, 2006, and recorded in the Office of the RMC for Charleston County on September 11, 2006, in Book W597 at Page 260. The Modification Agreement modified certain terms of the Original Note and Mortgage. Specifically, the Modification Agreement provided that the Original Note and Mortgage were amended and modified in accordance with Exhibits A, Exhibit B, Exhibit A2 and B2. Exhibit A of the Modification Agreement provided that the principal amount of the loan was \$464,000.00, with interest accruing at the rate of 6.375% per annum. Exhibit A2 of the Modification Agreement provided for interest only payments for the first 120 months of the loan.

Prior to the filing of this lawsuit, the Mortgage was assigned to Wachovia Mortgage Corporation by an assignment dated July 7, 2010, and recorded on July 15, 2010, in Book 0133 at Page 352. Following the initiation of this lawsuit, the Mortgage was then assigned three times. First, Wachovia Mortgage Corporation assigned to the Mortgage to Selene Finance LP, by assignment October 7, 2010, and recorded March 18, 2011 in Book 0177 at Page 657. Then, Selene Financial LP assigned the Mortgage to SRMOF 2009-1 Trust by assignment dated March

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29, 2011, and recorded May 3, 2011, in Book 0185 at Page 205. Finally, SRMOF 2009-1 Trust assigned the Mortgage to Selene RMOF REO Acquisition, LLC by assignment dated March 29, 2011, and recorded May 3, 2011, in Book 0185 at Page 206.

After the execution of the Mortgage, David H. Furmanchik conveyed the subject property to David H. Furmanchik and Melissa Furmanchik, as joint tenants with the right of survivorship, by Deed dated September 13, 2005, and recorded September 19, 2005, in Deed Book D554 at Page 866. Subsequently, David H. Furmanchik died on March 3, 2008, vesting his interest in Melissa Furmanchik as the surviving joint tenant. Subsequently thereafter, Melissa Furmanchik conveyed the subject property to Melissa Furmanchik, as Trustee of the Melissa Furmanchik Living Trust by Deed dated October 23, 2012, and recorded November 21, 2012, in Deed Book 0292 at Page 659.

At the trial, Plaintiff produced the Original Note, Modification Agreement, Mortgage, and Assignments of Mortgage, and the Court admitted these originals into evidence. Based on Plaintiff's possession of these original documents and the testimony put forth from Mamie Clark, an employee of Plaintiff's servicing agent, Selene Finance LP, the Court finds that Plaintiff has the legal right to enforce the negotiable instrument.

The Mortgage constitutes a first priority lien on the subject property, subject only to ad valorem taxes or other liens given priority by statute.

Payment due on the Note was not made as provided for therein, and Plaintiff, as the holder of the Note, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of its attorney to commence this foreclosure action.

At the trial, Plaintiff produced letters evidencing that the notice required by the terms of the Mortgage was given prior to the commencement of this action.

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Plaintiff seeks to recover a reasonable attorney's fee of \$10,000.00 pursuant to its rights under the Note and Mortgage for amounts it has paid its counsel for services performed and anticipated to be performed until final adjudication of this action.

According to Plaintiff's accounting and based upon the testimony of Ms. Clark, after all payments received by Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, advances made by Plaintiff, and other costs and expenses of the action, including a reasonable attorney fee, all secured by the Note and Mortgage, is as follows:

Principal	\$464,000.00
Interest from December 1, 2009 to June 20, 2013	\$105,069.78
Late Charges	\$1,232.49
Tax Advances	
12/1/2010 \$1,829.36	
12/1/2011 \$2,102.85	\$3,932.21
Hazard/Flood Insurance	
1/4/2010 \$ 318.77	
7/20/2010 \$3,318.00	
12/6/2010 \$ 428.00	
7/12/2011 \$3,518.00	
8/8/2012 \$3,714.00	
12/28/2012 \$ 428.00	\$11,724.77
Attorney's Fees (paid, unpaid or unbilled)	\$10,000.00
Expenses (Filing fees, motion fees, Master's fee, Mileage Reimbursement, Title Search)	\$1,217.21
TOTAL DEBT SECURED BY NOTE AND MORTGAGE	\$597,176.46

Interest shall accrue to the above stated "Total Debt" after the date of judgment at the rate of 6.375% per annum (pursuant to the terms of the Note and Mortgage) which amounts to \$81.04 per diem. Accrued interest shall be added to the "Total Debt" and shall comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

Pursuant to the South Carolina Supreme Court Administrative Order 2009-05-20-01, Plaintiff filed an Affidavit of Non-Eligibility on June 23, 2009, stating that the mortgage loan

which is the subject of this foreclosure action was not eligible for modification pursuant to the terms of the Home Affordable Modification Program (HAMP). Plaintiff's attorney received no counter affidavits from any Defendant.

Pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01, Plaintiff served a Notice of Foreclosure Intervention. After reviewing Defendant Melissa Furmanchik for foreclosure intervention alternatives, she failed to qualify as evidenced by the Attorney Certification filed on January 26, 2012.

Plaintiff is seeking the usual foreclosure of the purchase money first mortgage and has in the Complaint (or subsequently thereto in writing) expressly waived the right to a personal or deficiency judgment.

The following Defendant(s) may claim a subordinate lien upon or subordinate legal interest in the subject property and in the event there is a surplus from the sale of the subject property, these Defendant(s) may present through any such lien or legal interest a claim to the surplus at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant(s) and such liens or legal interests are as follows:

a. Wells Fargo Bank, N.A., by virtue of a mortgage given by David H. Furmanchik and Melissa Furmanchik to Wachovia Bank, National Association in the amount of \$140,000.00, dated January 4, 2007, and recorded January 11, 2007 in Book T611 at Page 170. Wells Fargo Bank, N.A. is successor in interest to Wachovia Bank, National Association.

b. Masonborough at Park West Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions and any amendments thereto.

IT IS THEREFORE ORDERED:

1. Plaintiff has fully complied with The South Carolina Supreme Court Administrative Orders 2009-05-22-01 dated May 22, 2009 and 2011-05-02-01 dated May 2, 2011, and the foreclosure action may proceed.

2. There is due on the Note and Mortgage set forth in the Complaint the sum of \$597,176.46, as set out in the Findings of Fact *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

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3. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective note rate(s) per annum and together with such interest shall constitute the total judgment debt due Plaintiff.

4. The Defendant(s) liable for the aforesaid judgment debt of the Adjustable Rate Note and Mortgage including interest at the rate of 6.375% per annum shall pay on or before the date of sale of the property hereinafter described, to Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, including with the costs and disbursements of this action.

5. On default of payment at or before the time of the sale of the property, the mortgaged property described hereinafter shall be sold by the below signed Master in Equity or Special Referee or other court-appointed or designated agent or auctioneer at public auction at the Charleston County Courthouse, in the City of Charleston, and State of South Carolina on the next available sales date, at 11:00 AM, or a sales day determined by the below signed Master in Equity or Special Referee, on the following terms:

a. For cash or its equivalent: An immediate deposit of 5% is required on the amount of the bid. The deposit will be applied to the purchase price when total compliance is made. In the event compliance is not made, the deposit shall be forfeited without further hearing and applied first to costs and expense of the action and then to plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse either to make the required deposit at time of bid or to comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day and at the risk of the defaulting bidder.

b. Interest on the balance of the bid after the deposit is applied shall be paid through the day of compliance at the note rate of 6.375%.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions, and any other senior encumbrances.

d. Purchaser shall pay for any statutory commission on sale from the proceeds of the final bid amount.

e. Purchaser to pay for deed preparation, costs of recording the deed and the satisfaction of mortgage, and transfer taxes on the deed.

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f. Purchaser shall be entitled to possession of the premises only after Purchaser fully complies with the bid amount and a deed is issued by the Master in Equity or Special Referee.

6. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

7. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, of the South Carolina Rules of Civil Procedure, prior to sale.

8. The Master in Equity will give notice of the time and place of the sale by advertisement according to law and the terms thereof by advertisement according to law and will execute to the Purchaser a deed to the property sold. Plaintiff or any other party to this action may become a purchaser at such sale. If, upon such sale being made, the Purchaser should fail to comply with the terms thereof within 30 days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

9. If Plaintiff is the successful bidder at the said sale for a sum not exceeding the amount of costs and expenses of the sale, plus the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

10. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this sale and to any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including a reasonable attorney fee) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this court.

11. In the event the successful bidder is someone other than the Defendant(s) in possession of the subject property, the Sheriff of Charleston County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full,

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quiet, and peaceable possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

12. In the event the successful bidder is other than the Defendant(s) in possession of the subject property and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in said property, the Purchaser is authorized to remove from the property all furnishings, fixtures and items not subject to the lien of Plaintiff's Mortgage. The personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

13. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s), is forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

14. In accordance with Rule 77(d), of the South Carolina Rules of Civil Procedure, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear in this action.

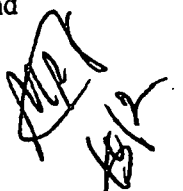
15. The deed of conveyance made pursuant to the foreclosure sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee. The Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

16. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

17. The following is a description of the property herein ordered to be sold:
All that certain piece, parcel or lot of land, together with all the improvements thereon, if any, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as Lot 57 on a plat entitled "A Conditional Subdivision Plat of Winterbrooke Subdivision Phase 4, Phase III Park West, Formerly a Portion of Masonborough Subdivision, Owned by Park West Development, Inc., Located in the Town of Mount Pleasant, Charleston County, South Carolina," prepared by Southeastern Surveying of Charleston, Inc., dated February 26, 2004 and recorded March 23, 2004 in the RMC Office for Charleston County in Plat Book EG at Pages 968 and 969. Said lot having such size, shape dimensions and

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Appendix000000034

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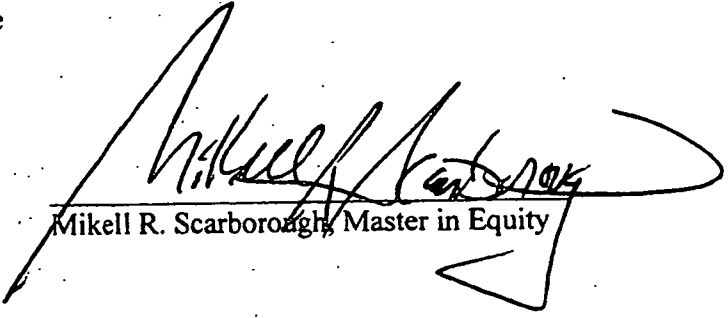
boundaries as will by reference to said plat more fully appear.

This being the identical property conveyed to David H. Furmanchik by Deed of Park West Development, Inc. dated April 20, 2004 and recorded May 7, 2004 in Deed Book R493 at Page 580. Subsequently, David H. Furmanchik conveyed the subject property to David H. Furmanchik and Melissa Furmanchik, as joint tenants with the right of survivorship, by Deed dated September 13, 2005 and recorded September 19, 2005 in Deed Book D554 at Page 866. Subsequently, David H. Furmanchik died on March 3, 2008 vesting his interest in Melissa Furmanchik as the surviving joint tenant. Subsequently, Melissa Furmanchik conveyed the subject property to Melissa Furmanchik, as Trustee of the Melissa Furmanchik Living Trust by Deed dated October 23, 2012 and recorded November 21, 2012 in Deed Book 0292 at Page 659.

Property Address: 1820 West Canning Drive
Mt Pleasant, SC 29466

TMS# 594-12-00-781

2/3, 2014
Charleston, South Carolina


Mikell R. Scarborough, Master in Equity

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10 5825

Selene RMOF REO Acquisitions LLC

Furmanchik

PLAINTIFF(S)

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41, SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore, to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICATION):**
☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Upon review of Defendant's 59(e) motion, it is respectfully denied.

INFORMATION FOR THE PUBLIC 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:
N/A

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

4062

Judge Code

3/20/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first-class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Selene RMOF REO Acquisitions LLC)

Plaintiff,)

vs.)

MELISSA FURMANCIK;
MASONBOROUGH AT PARK WEST
ASSOCIATION, INC.; WELLS FARGO
BANK, N.A.)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5825

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Jason Wyman, Bar No. _____

Address:

P.O. Box 100200

Cola. S.C. 29202

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

MARY LEIGH ARNOLD, P.A., Bar No. 00419

Address:

749 Johnnie Dodds Blvd., Suite B

Mount Pleasant, S.C.

Phone: 843-971-6053 Fax 843-971-6055

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

2/20/2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status: ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

00-038

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

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Appendix000000039

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Selene RMOF REO Acquisition, LLC)
)
Plaintiff,)
)
v.)
)
Melissa Furmanchik; Masonborough At)
Park West Association; Inc.;)
Wells Fargo Bank, N.A.:)
)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-10-5825

MOTION FOR RECONSIDERATION
AND VACATE

FILED
2014 FEB 21 AM 8:48
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE HONORABLE MIKELL R. SCARBOROUGH, MASTER-IN-EQUITY,
CHARLESTON COUNTY AND ROGERS TOWNSEND THOMPSON, LLP,
ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Melissa Furmanchik (hereinafter "Defendant"), by and through her undersigned attorney will move before the Master-In-Equity for Charleston County, at chambers, Charleston County Courthouse, Charleston, South Carolina, at such place and time as the court may appoint, in order for the Court to reconsider that certain Order of Foreclosure, which appears by examination of the public record to have been filed on February 7, 2014 (hereinafter "Order"), but not received until February 12, 2014. Defendant makes this motion pursuant all applicable Rules of Civil Procedure including but not limited to Rules 7, 50, 52, 59, 60 and 71, SCRPC. The basis for said motion is as follows:

1. On June 20, 2013 a hearing was held before this Court. On July 11, 2013, this Court *sua sponte* issued an Order stating "after trial and review of defendant's Rule 59e, this court finds that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done

pursuant to Rule 50(d), SCRPC. This matter is to be reset for Monday, August 12 at 10:00 a.m." This Court improperly relied on Rule 50(d), SCRPC. First no motion was made by Plaintiff pursuant to Rule 50, SCRPC. Second, Rule 50(d), SCRPC provides for a judgment notwithstanding the verdict. In order for Rule 50(d), SCRPC to be applicable here the Court would have had to rule in favor of the Defendant at the time of the June 20, 2013 hearing which it did not. Third, even if it were appropriate for this Court to act *sua sponte* (which Defendant contends it was not), the Court had to act within ten (10) days of the June 20, 2013 hearing. See *State v. Dicapua*, 680 S.E.2d 292, 383 S.C. 394 (S.C. 2009)(citing *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985) (" The sole issue is whether a trial judge *ex mero motu* can grant a new trial on a ground not raised by a party. We hold he cannot.")); See also, *Heins v. Heins*, 543 S.E.2d 224, 344 S.C. 146 (Ct. App. 2001)(a Family Court judge does not have the authority to alter or amend a judgment, *sua sponte*, once the judgment is more than 10-days-old). Lastly, and with all due respect to this Court by the Court on its own accord providing the Plaintiff with an opportunity to correct evidentiary issues and present additional evidence after it had closed its case, remove itself from being a neutral and placed itself in the role of an advocate on behalf of Plaintiff. This Court should not have provided for a new hearing for the benefit of Plaintiff to present additional evidence and to correct evidentiary issues presented at the time of the hearing, when Plaintiff had not sought that relief. This Court should have granted judgment in favor of Defendant due to lack of evidence and proof.

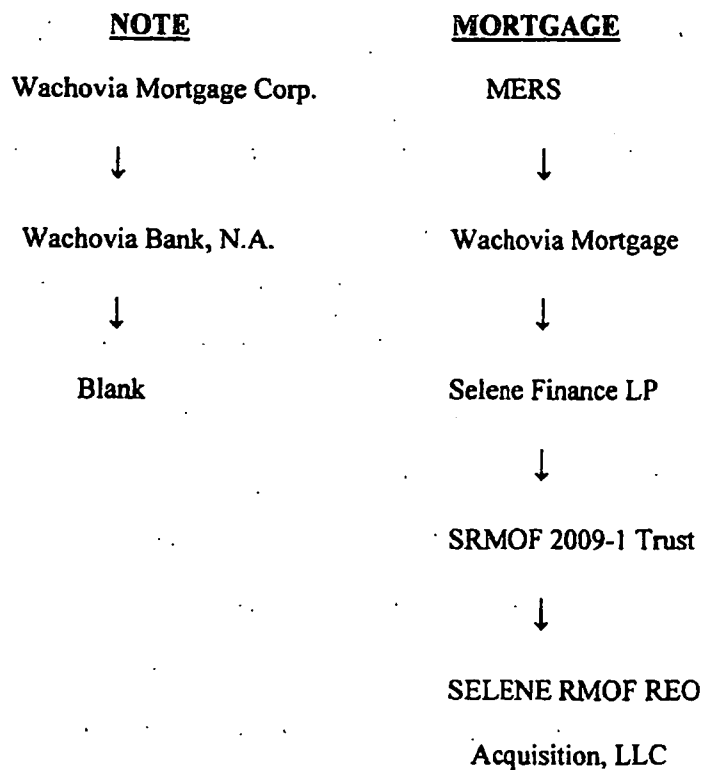
2. Plaintiff failed to establish the proper foundation for the introduction of a single exhibit it offered into evidence through Plaintiff's witness Mamie Clark. (Plaintiff's Exhibit 1 Note (First); Exhibit 2 Mortgage; Exhibits 3, 4, 5 and 6, Assignment of Mortgages; Exhibit 7

payment history, Exhibit 8, Wells Fargo Demand letter; Exhibit 9 Judgment Figures; Exhibit 2A Modification Agreement; Exhibit 2B exhibits to "Exhibit 2A" including a Second Note, Fixed/Adjustable Rate Rider, Addendum to Note for Interest Only Payments, and Interest Only Payment Rider; and Exhibit 2C which is a combination of Exhibits 2A and 2B)

Ms. Clark is an employee of Selene Finance, L. P. and holds the job title of Contested Default Case Manager. (Tr. P. 7). Ms. Clark testified she was authorized to testify on behalf of her company (Tr. P. 8), a company which is different from the named Plaintiff, Selence RMOF REO Acquisitions, LLC. (Tr. P. 9). Ms. Clark further testified as follows: she was not an employee of the originally named Plaintiff, Wachovia Mortgage Corporation (Tr. P. 32); she is not an employee of the substituted Plaintiff, Selence RMOF REO Acquisitions, LLC. (Tr. 33.); the allonge presented was not affixed to the Note offered as an exhibit (Tr. P. 33); the allonge was not prepared by her or anyone at Selene (Tr. P. 37); she was not the custodian of records for Selene Finance L. P. (Tr. P. 34, In 4-16); the current owner of the note and mortgage was Selene RMOF REO Acquisition, LLC (Tr. P. 26); that she did not know the person who signed the note David Furmanchik nor could she identify his signature (Tr. P. 35); the Note presented, on the fifth page, has several endorsements one of which is marked void (Tr. P. 35); a second endorsement is marked canceled and she has no knowledge as to why it is marked canceled (Tr. P. 36); she had no knowledge or documentation that showed how the Note came into Selene's possession (Tr. P. 36); there is no endorsement on the Note from MERS (Tr. P. 38); there is no endorsement on the Note to Selene Finance L.P. (Tr. P. 38); there is no endorsement on the Note to SRMOF 2009-1 Trust (Tr. P. 38); there is no endorsement on the Note to

Selene RMOF REO Acquisitions, LLC (Tr. P. 38); that the Note identified as Exhibit 1 does not provide an interest rate (Tr. P. 39); that no interest would be owed under the Note identified as Exhibit 1 due to zero being specified as the interest rate (Tr. P. 41); the principle amount due is \$464,000 (Tr. P. 30); late charges assessed were \$1,232.42 (Tr. P. 30); interest from December 1, 2009 through June 20, 2013 is \$105,069.78 (Tr. P. 30); total tax charges are \$3,932.21 (Tr. P. 31); flood insurance chargers were \$11,727.77 (Tr. P. 31); property inspections totaled \$169 (Tr. P. 31); charges for BPO's and appraisals were \$200.00 (Tr. P. 31)

The sequential transfers of the Note and Mortgage admitted into evidence are illustrated below:



At time of the second hearing held on August 12, 2013, Ms. Clark was the only offered witness. Ms. Clark testified that Exhibit 2A was a mortgage modification dated August 31, 2006 (Tr. Vol. II, p. 9). She further testified that Exhibit 2C was a combination of Exhibits 2A and 2B. (Tr. Vol. II P. 13); that Mr. Furmanchik signed the mortgage modification but Mrs. Furmanchik had not (Tr. Vol. II P. 14-15); that the document starting on Page 265 is identified as and entitled as a Fixed Adjustable Rate Note which is not signed by Mrs. Furmanchik (Tr. Vol. II, P. 15); that the Fixed Adjustable Rate Note is a brand new note (Tr. Vol. II, P. 15-16); the new Fixed Adjustable Rate Note has no allonge (Tr. Vol. II, p. 16); the new Fixed Adjustable Rate Note has no endorsement (Tr. Vol. II, p. 16); and that Wachovia never endorsed or assigned the new Fixed Adjustable Rate Note to any other entity. (Tr. Vol. II. P. 16). This Court erred in admitting Plaintiff's exhibits over Defendant's objections.

A number of the South Carolina Rules of Evidence are relevant to explaining the foundation which should have been required to be laid down by Plaintiff's witness prior to testifying as to Plaintiff's Exhibits. Rule 602, SCRE, states: "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." Rule 803(6), SCRE, states "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness,

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness." Rule 901, SCRE, states "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims."

In this case Plaintiff witness Plaintiff's witness did not testify in such a manner to lay a proper foundation for the admission of Plaintiff's Exhibits. The witness offered to testify, testified she was an employee of Selene Finance, LP. The witness acknowledged she was not an employee of the presently named Plaintiff, Wachovia, or Wells Fargo. The witness acknowledged the Note and Mortgage were originated by Wachovia Mortgage Corporation. The witness testified that the signature page of the Note contains several endorsements, such of which are marked void and/or cancelled, but she did not know why the endorsements were marked void and/or cancel. The witness testified that the allonge which Plaintiff alleges grants it title to the Note is not affixed to the Note. The witness testified that the documents in question were not created by Selene Finance, LP or Plaintiff. The witness testified she had no evidence or testimony that established the chain of title of Note. She offered no testimony which would establish how or when Plaintiff became in possession of the Note. Upon direct examination the witness testified that she is a default case manager whose duties include to "review loans where there are differences to attempt to resolve those issues" and testify at trials. Upon cross-examination the witness testified that she is not the custodian of records for Selene Finance, LP, then changes to testimony to state that her duties and functions do be the custodian of records for the documents in question. Plaintiff failed to establish the witness had the required personal knowledge as required by Rule 602, SCRE to authenticate the documents. See *Hundley ex rel. Hundley v.*

Rite Aid of South Carolina Inc., 339 S.C. 285, 529 S.E. 2d 45 (Ct. App. 2000)(“generally under Rule 602, SCRE [a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”)

Plaintiff failed to lay a proper foundation for the documents to be considered business records pursuant to Rule 803(6), SCRE, or that Plaintiff's witness could testify as a custodian of records or other qualified witness pursuant to 803(6), SCRE. “A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in S.C. Code Section 19-5-510 or Rule 803(6), SCRE. Business records entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept...” *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007). The Court erred in admitting the exhibits offered by Plaintiff in contradiction to the provisions of Rule 803, SCRE. Neither a proper foundation nor an exception to hearsay was established by Plaintiff any document entered into evidence. Plaintiff's witness admitted that neither the Note nor Mortgage was originated by her employer or the entity for which she was testifying. (Exhibits 1 and 2). She had no knowledge as to the assignments entered into evidence. (Exhibits 3, 4, 5 and 6). She offered no evidence of how the records were created or maintained, the source of the information, where maintained or when they were created. She certainly offered not a single shred of evidence that allowed for the admission of documents clearly created by Wells Fargo an entity with which she testified she had absolutely no relationship. (Exhibits 8 (Wells Fargo Demand letter) and 9 (Wells Fargo Account History)). The Court erred by admitting these documents into evidence.

The Court further erred in allowing Exhibit 2C into evidence at the continuation

hearing or reopening hearing, but assuming for the sake of argument that Plaintiff did seek to admit the Exhibit 2C through evidence of a proper witness at the August 12, 2013 hearing, said evidence should not have been admitted because Plaintiff did not produce the original. Rule 1002, SCRE, states "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." Rule 1003, SCRE, states "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." In this case both a genuine question as to authenticity of the original and circumstance that it would be unfair to admit the duplicate in lieu of the original are both present. The Court erred by admitting a Modification Agreement which Plaintiff's witness did not testify to in the original hearing. Further the Court erred by admitting a second note which is separate and distinct from the first note which certainly raises issues as to its authenticity.

Finally as the court noted in the August hearing "Did we go into the document 2B then? That was the one in issue? . . . 2B is the one I let in and we never did talk about. That's the only reason I reopened this thing, is to talk about 2B." However, then the Court asks "Is that the original?" Plaintiff states that it is not, saying "The original we're waiting on in West Columbia." Here there are clearly questions as to authenticity, it would be highly prejudicial to accept a duplicate, Plaintiff was well aware the documents were the remaining issue, and yet with over a month in between the two hearing Plaintiff failed to present the original documents at the second hearing.

This Court erred by relying on the case of *Midfirst Bank vs. Oklahoma*

Savings and Loan Association, 893 F. Supp. 1304 (D.S.C. 1944). A district court case decision has no binding authority on this Court. The cases of *High v. High*, 389 S.C. 226, 697 S.E. 2d 690 (Ct. App. 2010); and *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007) are persuasive and binding. Clearly Plaintiff did not establish the elements set forth in *High* or *Rice* and it was an abuse of discretion for this Court to enter the documents into evidence.

3. Court erred in determining Plaintiff had a right to enforce the negotiable instrument and had standing as the real party in interest. A holder is a person in possession of instrument drawn, issued, transferred, or indorsed to him or to his order or to bearer or in blank". S.C. Code An. §36-1-201(20)(2003). "However, possession is not necessarily sufficient to make one a holder. The payee is always a holder if the payee has possession. Whether other persons qualify as holder depends upon whether the instrument initially is payable to order or payable to bearer, and whether the instrument has been endorsed. Accordingly, a third party must prove both physical possession and the right to enforcement either through either a proper indorsement or transfer by negotiation. See *Bank of New York vs. Romero*, Op. No. _____ (Feb. 13, 2013, S.Ct. N. M.)(see attached opinion).

The Note presented as Exhibit "1" was initially made in favor of Wachovia Mortgage Corporation. As testified by Plaintiff's witness, the last page of the Note contains several endorsements which are either cancelled or marked void. The one endorsement not altered is undated and from Wachovia Mortgage to Wachovia Bank, N.A. (n/k/a Wells Fargo). Accompanying the Note is an Allonge. The Allonge is not affixed to the Note. No testimony was offered that it was to be affixed. The Allonge purports to transfer the Note in

blank from Wells Fargo. No other endorsements or allonge exist. The Note does not have sufficient endorsements to accomplish transfer to the now named Plaintiff. The evidence is completely lacking to establish Plaintiff is the holder of the Note. The Court erred in determining Plaintiff is the holder.

Additionally the Modification submitted at the time of the second hearing contains a complete Fixed Adjustable Rate Note. There is no endorsement on this document. Thus, to Court erred in allowing judgment on a note that there is not one iota of evidence that establishes it was endorsed to anyone much less the Plaintiff.

4. Where a negotiable note is secured by mortgage, the note and mortgage are inseparable, and the assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity. *Carpenter v. Longan*, 83 U.S. 271, 21 L. Ed. 313, (1872); *In re Leisure Time Sports, Inc.* 194 B.R. 859, 861 (9th Cir. 1996) (stating that “[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures” and that, “[i]f the debt is not transferred, neither is the security interest”); *Kelley v. Upshaw*, 39 Cal. 2d 179, 192 (1952) (stating that assigning only the deed without a transfer of the promissory note is completely ineffective); see also Restatement (3d) of Property (Mortgages) § 5.4 (stating that “[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the *obligation* that the mortgage secures”); *South Carolina Nat. Bank v. Halter*, 293 S.C. 121, 359 S.E.2d 74 (S.C.App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee, *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930), absent some indication that the parties also intended to transfer the debt. 59 C.J.S. Mortgages Section 359 (1949)).

The transfer of the Note and Mortgage do not take the same path. The independent transfers of the Mortgage are nugatory. The Plaintiff here has not rights to enforce the Mortgage and lacks standing. The Court erred in determining the now named Plaintiff has the right to enforce the Note and Mortgage.

Based on the foregoing, which is subject to amendment once a final Oder of Foreclosure is presented, the within action should be dismissed.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

MARY LEIGH ARNOLD, P.A.

Mary Leigh Arnold
749 Johnnie Dodds Blvd, Ste. B
Mount Pleasant, SC 29464
(843) 971-6053
Sammie@maryarnoldlaw.com
Attorney for Defendant

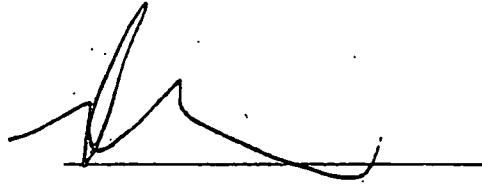
February 20, 2014
Mt. Pleasant, SC

CERTIFICATE OF MAILING

The undersigned, Assistant to Attorney Mary Leigh Arnold, Attorney for Defendant hereby certifies that on the 20 day of February, 2014, she caused a copy of the **MOTION TO RECONSIDER AND VACATE** to be placed in an envelope with first-class postage, prepaid, and mailed to the following:

The Honorable Mikell R. Scarborough
MASTER IN EQUITY- CHARLESTON COUNTY
100 Broad Street, Ste. 266
Charleston, SC 29401

Jason D. Wyman
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A handwritten signature in black ink, appearing to be 'J. Wyman', is written over a horizontal line.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: February 13, 2014

Docket No. 33,224

**BANK OF NEW YORK as Trustee for POPULAR
FINANCIAL SERVICES MORTGAGE/PASS
THROUGH CERTIFICATE SERIES #2006,**

Plaintiff-Respondent,

v.

**JOSEPH A. ROMERO and MARY ROMERO,
a/k/a MARY O. ROMERO, a/k/a MARIA ROMERO,**

Defendants-Petitioners.

ORIGINAL APPEAL ON CERTIORARI

James A. Hall, District Judge

**Joshua R. Simms, P.C.
Joshua R. Simms
Albuquerque, NM**

**Frederick M. Rowe
Daniel Yohalem
Katherine Elizabeth Murray
Santa Fe, NM**

for Petitioners

**Rose Little Brand & Associates, P.C.
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Albuquerque, NM**

**Severson & Werson
Jan T. Chilton
San Francisco, CA**

for Respondents

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Appendix000000052

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for Amicus Curiae New Mexico Bankers Association

OPINION

DANIELS, Justice.

{1} We granted certiorari to review recurring procedural and substantive issues in home mortgage foreclosure actions. We hold that the Bank of New York did not establish its lawful standing in this case to file a home mortgage foreclosure action. We also hold that a borrower's ability to repay a home mortgage loan is one of the "borrower's circumstances" that lenders and courts must consider in determining compliance with the New Mexico Home Loan Protection Act, NMSA 1978, §§ 58-21A-1 to -14 (2003, as amended through 2009) (the HLP Act), which prohibits home mortgage refinancing that does not provide a reasonable, tangible net benefit to the borrower. Finally, we hold that the HLP Act is not preempted by federal law. We reverse the Court of Appeals and district court and remand to the district court with instructions to vacate its foreclosure judgment and to dismiss the Bank of New York's foreclosure action for lack of standing.

I. FACTUAL AND PROCEDURAL BACKGROUND

{2} On June 26, 2006, Joseph and Mary Romero signed a promissory note with Equity One, Inc. to borrow \$227,240 to refinance their Chimayo home. As security for the loan, the Romeros signed a mortgage contract with the Mortgage Electronic Registration Systems

(MERS), as the nominee for Equity One, pledging their home as collateral for the loan.

{3} The Romeros allege that Equity One cold-called them and urged them to refinance their home for access to their home's equity. The terms of the Equity One loan were not an improvement over their current home loan: Equity One's interest rate was higher (starting at 8.1 percent and increasing to 14 percent compared to 7.71 percent), the Romeros' monthly payments were greater (\$1,683.28 compared to \$1,256.39), and the loan amount due was greater (\$227,240 compared to \$176,450). However, the Romeros would receive a cash payout of nearly \$43,000, which would cover about \$12,000 in new closing costs and provide them with about \$30,000 to pay off other debts.

{4} Both parties agree that the Romeros' loan was a no income, no assets loan (NINA) and that documentation of their income was never requested or verified. The Romeros owned a music store in Espanola, New Mexico, and Mr. Romero allegedly told Equity One that the store provided him an income of \$5,600 a month. Also known as liar loans because they are based solely on the professed income of the self-employed, NINA loans have since been specifically prohibited in New Mexico by a 2009 amendment to the HLPa and also by federal law. See NMSA 1978, § 58-21A-4(C)-(D) (requiring a creditor to document a borrower's ability to repay); 15 U.S.C.A. § 1639c(a)(1) (2010) (requiring creditors to make a reasonable and good-faith effort to determine a borrower's ability to repay); see also Pub. L. No. 111-203, § 1411(a)(1), 124 Stat. 2142 (2010) (same). The Romeros stated that they did not read the note or the mortgage contracts thoroughly before signing them, allegedly because of limited time for review, the complexity of the documents, and their own limited education. They admit having signed a document prepared by Equity One reciting that the home loan provided them a "reasonable tangible net benefit" based on the \$30,000 cash payout.

{5} The Romeros soon became delinquent on their increased loan payments. On April 1, 2008, a third party—the Bank of New York, identifying itself as a trustee for Popular Financial Services Mortgage—filed a complaint in the First Judicial District Court seeking foreclosure on the Romeros' home and claiming to be the holder of the Romeros' note and mortgage with the right of enforcement.

{6} The Romeros responded by arguing, among other things, that the Bank of New York lacked standing to foreclose because nothing in the complaint established how the Bank of New York was a holder of the note and mortgage contracts the Romeros signed with Equity One. According to the Romeros, Securities and Exchange Commission filings showed that their loan certificate series was once owned by Popular ABS Mortgage and not Popular Financial Services Mortgage and that the holder was JPMorgan Chase. The Romeros also raised several counterclaims, only one of which is relevant to this appeal: that the loan violated the antiflipping provisions of the New Mexico HLPa, Section 58-21A-4(B) (2003).

{7} The Bank responded by providing (1) a document showing that MERS as a nominee for Equity One assigned the Romeros' mortgage to the Bank of New York on June 25, 2008,

(MERS), as the nominee for Equity One, pledging their home as collateral for the loan.

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{7} The Bank responded by providing (1) a document showing that MERS as a nominee for Equity One assigned the Romeros' mortgage to the Bank of New York on June 25, 2008,

three months after the Bank filed the foreclosure complaint and (2) the affidavit of Ann Kelley, senior vice president for Litton Loan Servicing LP, stating that Equity One intended to transfer the note and assign the mortgage to the Bank of New York prior to the Bank's filing of the foreclosure complaint. However, the Bank of New York admits that Kelley's employer Litton Loan Servicing did not begin servicing the Romeros' loan until November 1, 2008, seven months after the foreclosure complaint was filed in district court.

{8} At a bench trial, Kevin Flannigan, a senior litigation processor for Litton Loan Servicing, testified on behalf of the Bank of New York. Flannigan asserted that the copies of the note and mortgage admitted as trial evidence by the Bank of New York were copies of the originals and also testified that the Bank of New York had physical possession of both the note and mortgage at the time it filed the foreclosure complaint.

{9} The Romeros objected to Flannigan's testimony, arguing that he lacked personal knowledge to make these claims given that Litton Loan Servicing was not a servicer for the Bank of New York until after the foreclosure complaint was filed and the MERS assignment occurred. The district court allowed the testimony based on the business records exception because Flannigan was the present custodian of records.

{10} The Romeros also pointed out that the copy of the "original" note Flannigan purportedly authenticated was different from the "original" note attached to the Bank of New York's foreclosure complaint. While the note attached to the complaint as a true copy was not indorsed, the "original" admitted at trial was indorsed twice: first, with a blank indorsement by Equity One and second, with a special indorsement made payable to JPMorgan Chase. When asked whether either of those two indorsements included the Bank of New York, Flannigan conceded that neither did, but he claimed that his review of the records indicated the note had been transferred to the Bank of New York based on a pooling and servicing agreement document that was never entered into evidence.

{11} The district court also heard testimony on the circumstances of the loan, the points and fees charged, and the calculus used to determine a reasonable, tangible net benefit. Following trial, the district court issued a written order finding that the Flannigan testimony and the assignment of the mortgage established the Bank of New York as the proper holder of the Romeros' note and concluding that the loan did not violate the HLPa because the cash payment to the Romeros provided a reasonable, tangible net benefit. The district court also determined that because the Bank of New York was a national bank, federal law preempted the protections of the HLPa.

{12} On appeal, the Court of Appeals affirmed the district court's rulings that the Bank of New York had standing to foreclose and that the HLPa had not been violated but determined as a result of the latter ruling that it was not necessary to address whether federal law preempted the HLPa. *See Bank of N.Y. v. Romero*, 2011-NMCA-110, ¶ 6, 150 N.M. 769, 266 P.3d 638 ("Because we conclude that substantial evidence exists for each of the district court's findings and conclusions, and we affirm on those grounds, we do not address

the Romeros' preemption argument.").

{13} We granted the Romeros' petition for writ of certiorari.

II. DISCUSSION

A. The Bank of New York Lacks Standing to Foreclose

1. Preservation

{14} As a preliminary matter, we address the Bank of New York's argument that the Romeros waived their challenge of the Bank's standing in this Court and the Court of Appeals by failing to provide the evidentiary support required by Rule 12-213(A)(3) NMRA. *See Bank of N.Y.*, 2011-NMCA-110, ¶¶ 20-21 (dismissing the Romeros' challenge to standing as without authority and based primarily on the note's bearer-stamp assignment to JPMorgan Chase); *see also* Rule 12-213(A)(3) ("A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing upon the proposition.").

{15} We have recognized that "the lack of [standing] is a potential jurisdictional defect which 'may not be waived and may be raised at any stage of the proceedings, even sua sponte by the appellate court.'" *Gunaji v. Macias*, 2001-NMSC-028, ¶ 20, 130 N.M. 734, 31 P.3d 1008 (citation omitted). While we disagree that the Romeros waived their standing claim, because their challenge has been and remains largely based on the note's indorsement to JPMorgan Chase, whether the Romeros failed to fully develop their standing argument before the Court of Appeals is immaterial. This Court may reach the issue of standing based on prudential concerns. *See New Energy Economy, Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 16, 149 N.M. 42, 243 P.3d 746 ("Indeed, 'prudential rules' of judicial self-governance, like standing, ripeness, and mootness, are 'founded in concern about the proper—and properly limited—role of courts in a democratic society' and are always relevant concerns." (citation omitted)). Accordingly, we address the merits of the standing challenge.

2. Standards of Review

{16} The Bank argues that under a substantial evidence standard of review, it presented sufficient evidence to the district court that it had the right to enforce the Romeros' promissory note based primarily on its possession of the note, the June 25, 2008, assignment letter by MERS, and the trial testimony of Kevin Flannigan. By contrast, the Romeros argue that none of the Bank's evidence demonstrates standing because (1) possession alone is insufficient, (2) the "original" note introduced by the Bank of New York at trial with the two undated indorsements includes a special indorsement to JPMorgan Chase, which cannot be ignored in favor of the blank indorsement, (3) the June 25, 2008, assignment letter from MERS occurred *after* the Bank of New York filed its complaint, and as a mere assignment

of the mortgage does not act as a lawful transfer of the note, and (4) the statements by Ann Kelley and Kevin Flannigan are inadmissible because both lack personal knowledge given that Litton Loan Servicing did not begin servicing loans for the Bank of New York until seven months after the foreclosure complaint was filed and after the purported transfer of the loan occurred. For the following reasons, we agree with the Romeros.

{17} The Bank of New York does not dispute that it was required to demonstrate under New Mexico's Uniform Commercial Code (UCC) that it had standing to bring a foreclosure action at the time it filed suit. *See* NMSA 1978, § 55-3-301 (1992) (defining who is entitled to enforce a negotiable interest such as a note); *see also* NMSA 1978, § 55-3-104(a), (b), (e) (1992) (identifying a promissory note as a negotiable instrument); *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9 n.1, 144 N.M. 471, 188 P.3d 1222 (recognizing standing as a jurisdictional prerequisite for a statutory cause of action); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-71 n.5 (1992) ("[S]tanding is to be determined as of the commencement of suit."); *accord* 55 Am. Jur. 2d *Mortgages* § 584 (2009) ("A plaintiff has no foundation in law or fact to foreclose upon a mortgage in which the plaintiff has no legal or equitable interest."). One reason for such a requirement is simple: "One who is not a party to a contract cannot maintain a suit upon it. If [the entity] was a successor in interest to a party on the [contract], it was incumbent upon it to prove this to the court." *L.R. Prop. Mgmt., Inc. v. Grebe*, 1981-NMSC-035, ¶ 7, 96 N.M. 22, 627 P.2d 864 (citation omitted). The Bank of New York had the burden of establishing timely ownership of the note and the mortgage to support its entitlement to pursue a foreclosure action. *See Gonzales v. Tama*, 1988-NMSC-016, ¶ 7, 106 N.M. 737, 749 P.2d 1116 ("One who holds a note secured by a mortgage has two separate and independent remedies, which he may pursue successively or concurrently; one is on the note against the person and property of the debtor, and the other is by foreclosure to enforce the mortgage lien upon his real estate." (internal quotation marks and citation omitted)).

{18} Because the district court determined after a trial on the issue that the Bank of New York established standing as a factual matter, we review the district court's determination under a substantial evidence standard of review. *See Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153 ("We have many times stated the standard of review of a trial court's findings of fact: Findings of fact made by the district court will not be disturbed if they are supported by substantial evidence."). "Substantial evidence" means relevant evidence that a reasonable mind could accept as adequate to support a conclusion." *Id.* "This Court will resolve all disputed facts and indulge all reasonable inferences in favor of the trial court's findings." *Id.* However, "[w]hen the resolution of the issue depends upon the interpretation of documentary evidence, this Court is in as good a position as the trial court to interpret the evidence." *Kirkpatrick v. Introspect Healthcare Corp.*, 1992-NMSC-070, ¶ 14, 114 N.M. 706, 845 P.2d 800; *see also United Nuclear Corp. v. Gen. Atomic Co.*, 1979-NMSC-036, ¶ 62, 93 N.M. 105, 597 P.2d 290 ("Where all or substantially all of the evidence on a material issue is documentary or by deposition, the Supreme Court will examine and weigh it, and will review the record, giving some weight to the findings of the trial judge on such issue." (citation omitted)).

3. None of the Bank's Evidence Demonstrates Standing to Foreclose

{19} The Bank of New York argues that in order to demonstrate standing, it was required to prove that before it filed suit, it either (1) had physical possession of the Romeros' note indorsed to it or indorsed in blank or (2) received the note with the right to enforcement, as required by the UCC. *See* § 55-3-301 (defining "[p]erson entitled to enforce" a negotiable instrument). While we agree with the Bank that our state's UCC governs how a party becomes legally entitled to enforce a negotiable instrument such as the note for a home loan, we disagree that the Bank put forth such evidence.

a. Possession of a Note Specially Indorsed to JPMorgan Chase Does Not Establish the Bank of New York as a Holder

{20} Section 55-3-301 of the UCC provides three ways in which a third party can enforce a negotiable instrument such as a note. *Id.* ("Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the [lost, destroyed, stolen, or mistakenly transferred] instrument pursuant to [certain UCC enforcement provisions]."); *see also* § 55-3-104(a)(1), (b), (e) (defining "negotiable instrument" as including a "note" made "payable to bearer or to order"). Because the Bank's arguments rest on the fact that it was in physical possession of the Romeros' note, we need to consider only the first two categories of eligibility to enforce under Section 55-3-301.

{21} The UCC defines the first type of "person entitled to enforce" a note—the "holder" of the instrument—as "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." NMSA 1978, § 55-1-201(b)(21)(A) (2005); *see also* Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code*, § 12.02(1) at 12-13 to 12-15 (2012) ("The first requirement of being a holder is possession of the instrument. However, possession is not necessarily sufficient to make one a holder. . . . The payee is always a holder if the payee has possession. Whether other persons qualify as a holder depends upon whether the instrument initially is payable to order or payable to bearer, and whether the instrument has been indorsed." (footnotes omitted)). Accordingly, a third party must prove both physical possession *and* the right to enforcement through either a proper indorsement or a transfer by negotiation. *See* NMSA 1978, § 55-3-201(a) (1992) ("Negotiation" means a transfer of possession . . . of an instrument by a person other than the issuer to a person who thereby becomes its holder."). Because in this case the Romeros' note was clearly made payable to the order of Equity One, we must determine whether the Bank provided sufficient evidence of how it became a "holder" by either an indorsement or transfer.

{22} Without explanation, the note introduced at trial differed significantly from the original note attached to the foreclosure complaint, despite testimony at trial that the Bank of New York had physical possession of the Romeros' note from the time the foreclosure complaint was filed on April 1, 2008. Neither the undorsed note nor the twice-indorsed

note establishes the Bank as a holder.

{23} Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it. See NMSA 1978, § 55-3-109 cmt. 1 (1992) ("An instrument that is payable to an identified person cannot be negotiated without the indorsement of the identified person."). The Bank's possession of the Romeros' unindorsed note made payable to Equity One does not establish the Bank's entitlement to enforcement.

{24} The Bank's possession of a note with two indorsements, one of which restricts payment to JPMorgan Chase, also does not establish the Bank's entitlement to enforcement. The UCC recognizes two types of indorsements for the purposes of negotiating an instrument. A blank indorsement, as its name suggests, does not identify a person to whom the instrument is payable but instead makes it payable to anyone who holds it as bearer paper. See NMSA 1978, § 55-3-205(b) (1992) ("If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a 'blank indorsement.'"). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." *Id.*

{25} By contrast, a special indorsement "identifies a person to whom it makes the instrument payable." Section 55-3-205(a). "When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person." *Id.*; accord Baxter Dunaway, *Law of Distressed Real Estate*, § 24:105 (2011) ("When an instrument is payable to an identified person, only that person may be the holder. A person in possession of an instrument not made payable to his order can only become a holder by obtaining the prior holder's indorsement.").

{26} The trial copy of the Romeros' note contained two undated indorsements: a blank indorsement by Equity One and a special indorsement by Equity One to JPMorgan Chase. Although we agree with the Bank that if the Romeros' note contained only a blank indorsement from Equity One, that blank indorsement would have established the Bank as a holder because the Bank would have been in possession of bearer paper, that is not the situation before us. The Bank's copy of the Romeros' note contained two indorsements, and the restrictive, special indorsement to JPMorgan Chase establishes JPMorgan Chase as the proper holder of the Romeros' note absent some evidence by JPMorgan Chase to the contrary. See *Cadle Co. v. Wallach Concrete, Inc.*, 1995-NMSC-039, ¶ 14, 120 N.M. 56, 897 P.2d 1104 ("[A] special indorser . . . has the right to direct the payment and to require the indorsement of his indorsee as evidence of the satisfaction of own obligation. Without such an indorsement, a transferee cannot qualify as a holder in due course." (omission in original) (internal quotation marks and citation omitted)). Because JPMorgan Chase did not subsequently indorse the note, either in blank or to the Bank of New York, the Bank of New York cannot establish itself as the holder of the Romeros' note simply by possession.

{27} Rather than demonstrate timely ownership of the note and mortgage through

JPMorgan Chase, the Bank of New York urges this Court to infer that the special indorsement was a mistake and that we should rely only on the blank indorsement. We are not persuaded. The Bank provides no authority and we know of none that exists to support its argument that the payment restrictions created by a special indorsement can be ignored contrary to our long-held rules on indorsements and the rights they create. *See, e.g., id.* (rejecting each of two entities as a holder because a note lacked the requisite indorsement following a special indorsement); *accord* NMSA 1978, § 55-3-204(c) (1992) ("For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.").

{28} Accordingly, we conclude that the Bank of New York's possession of the twice-indorsed note restricting payment to JPMorgan Chase does not establish the Bank of New York as a holder with the right of enforcement.

b. None of the Bank of New York's Evidence Demonstrates a Transfer of the Romeros' Note

{29} The second type of "person entitled to enforce" a note under the UCC is a third party in possession who demonstrates that it was given the rights of a holder. *See* § 55-3-301 ("Person entitled to enforce" an instrument means . . . a nonholder in possession of the instrument who has the rights of a holder."). This provision requires a nonholder to prove both possession and the transfer of such rights. *See* NMSA 1978, § 55-3-203(a)-(b) (1992) (defining what constitutes a transfer and vesting in a transferee only those rights held by the transferor). A claimed transferee must establish its right to enforce the note. *See* § 55-3-203 cmt. 2 ("[An] instrument [unindorsed upon transfer], by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it").

{30} Under this second category, the Bank of New York relies on the testimony of Kevin Flannigan, an employee of Litton Loan Servicing who maintained that his review of loan servicing records indicated that the Bank of New York was the transferee of the note. The Romeros objected to Flannigan's testimony at trial, an objection that the district court overruled under the business records exception. We agree with the Romeros that Flannigan's testimony was inadmissible and does not establish a proper transfer.

{31} As the Bank of New York admits, Flannigan's employer, Litton Loan Servicing, did not begin working for the Bank of New York as its servicing agent until November 1, 2008—seven months after the April 1, 2008, foreclosure complaint was filed. Prior to this date, Popular Mortgage Servicing, Inc. serviced the Bank of New York's loans. Flannigan had no personal knowledge to support his testimony that transfer of the Romeros' note to the Bank of New York prior to the filing of the foreclosure complaint was proper because Flannigan did not yet work for the Bank of New York. *See* Rule 11-602 NMRA ("A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the

witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony."'). We make a similar conclusion about the affidavit of Ann Kelley, who also testified about the status of the Romeros' loan based on her work for Litton Loan Servicing. As with Flannigan's testimony, such statements by Kelley were inadmissible because they lacked personal knowledge.

{32} When pressed about Flannigan's basis of knowledge on cross-examination, Flannigan merely stated that "our records do indicate" the Bank of New York as the holder of the note based on "a pooling and servicing agreement." No such business record itself was offered or admitted as a business records hearsay exception. *See* Rule 11-803(F) NMRA (2007) (naming this category of hearsay exceptions as "records of regularly conducted activity").

{33} The district court erred in admitting the testimony of Flannigan as a custodian of records under the exception to the inadmissibility of hearsay for "business records" that are made in the regular course of business and are generally admissible at trial under certain conditions. *See* Rule 11-803(F) (2007) (citing the version of the rule in effect at the time of trial). The business records exception allows the records themselves to be admissible but not simply statements about the purported contents of the records. *See State v. Cofer*, 2011-NMCA-085, ¶ 17, 150 N.M. 483, 261 P.3d 1115 (holding that, based on the plain language of Rule 11-803(F) (2007), "it is clear that the business records exception requires some form of document that satisfies the rule's foundational elements to be offered and admitted into evidence and that testimony alone does not qualify under this exception to the hearsay rule" and concluding that "testimony regarding the contents of business records, unsupported by the records themselves, by one without personal knowledge of the facts constitutes inadmissible hearsay." (citation omitted)). Neither Flannigan's testimony nor Kelley's affidavit can substantiate the existence of documents evidencing a transfer if those documents are not entered into evidence. Accordingly, Flannigan's trial testimony cannot establish that the Romeros' note was transferred to the Bank of New York.

{34} We also reject the Bank's argument that it can enforce the Romeros' note because it was assigned the mortgage by MERS. An assignment of a mortgage vests only those rights to the mortgage that were vested in the assigning entity and nothing more. *See* § 55-3-203(b) ("Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course."); *accord* Hart & Willier, *supra*, § 12.03(2) at 12-27 ("Th[is] shelter rule puts the transferee in the shoes of the transferor.").

{35} Here, as Equity One and MERS explained to the district court in a joint filing seeking to be dismissed as third parties to the Romeros' counterclaims, "MERS . . . is merely the nominee for Equity One, Inc. in the underlying Mortgage and was not the actual lender. MERS is a national electronic registry which keeps track of the changes in servicing and ownership of mortgage loans." *See also* Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. Cin. L. Rev.

1359, 1361-63 (2010) (explaining that MERS was created by the banking industry to electronically track and record mortgages in order to avoid local and state recording fees). The Romeros' mortgage contract reiterates the MERS role, describing "MERS [a]s a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." A "nominee" is defined as "[a] person designated to act in place of another, usu. in a very limited way." *Black's Law Dictionary* 1149 (9th ed. 2009). As a nominee for Equity One on the mortgage contract, MERS could assign the mortgage but lacked any authority to assign the Romeros' note. Although this Court has never explicitly ruled on the issue of whether the assignment of a mortgage could carry with it the transfer of a note, we have long recognized the separate functions that note and mortgage contracts perform in foreclosure actions. See *First Nat'l Bank of Belen v. Luce*, 1974-NMSC-098, ¶ 8, 87 N.M. 94, 529 P.2d 760 (holding that because the assignment of a mortgage to a bank did not convey an interest in the loan contract, the bank was not entitled to foreclose on the mortgage); *Simson v. Bilderbeck, Inc.*, 1966-NMSC-170, ¶¶ 13-14, 76 N.M. 667, 417 P.2d 803 (explaining that "[t]he right of the assignee to enforce the mortgage is dependent upon his right to enforce the note" and noting that "[b]oth the note and mortgage were assigned to plaintiff. Having a right under the statute to enforce the note, he could foreclose the mortgage."); accord 55 Am. Jur. 2d *Mortgages* § 584 ("A mortgage securing the repayment of a promissory note follows the note, and thus, only the rightful owner of the note has the right to enforce the mortgage."); Dunaway, *supra*, § 24:18 ("The mortgage only secures the payment of the debt, has no life independent of the debt, and cannot be separately transferred. If the intent of the lender is to transfer only the security interest (the mortgage), this cannot legally be done and the transfer of the mortgage without the debt would be a nullity."). These separate contractual functions—where the note is the loan and the mortgage is a pledged security for that loan—cannot be ignored simply by the advent of modern technology and the MERS electronic mortgage registry system.

{36} The MERS assignment fails for several additional reasons. First, it does not explain the conflicting special indorsement of the note to JPMorgan Chase. Second, its assignment of the mortgage to the Bank of New York on June 25, 2008, three months after the foreclosure complaint was filed, does not establish a proper transfer prior to the filing date of the foreclosure suit. Third, except for the inadmissible affidavit of Ann Kelley and trial testimony of Kevin Flannigan, nothing in the record substantiates the Bank's claim that the MERS assignment was meant to memorialize an earlier transfer to the Bank of New York. Accordingly, neither the MERS assignment nor Flannigan's testimony establish the Bank of New York as a nonholder in possession with the rights of a holder by transfer.

c. Failure of Another Entity to Claim Ownership of the Romeros' Note Does Not Make the Bank of New York a Holder.

{37} Finally, the Bank of New York urges this Court to adopt the district court's inference that if the Bank was not the proper holder of the Romeros' note, then third-party-defendant Equity One would have claimed to be the rightful holder, and Equity One made no such claim.

(38) The simple fact that Equity One does not claim ownership of the Romeros' note does not establish that the note was properly transferred to the Bank of New York. In fact, the evidence in the record indicates that JPMorgan Chase may be the lawful holder of the Romeros' note, as reflected in the note's special indorsement. As this Court has recognized,

The whole purpose of the concept of a negotiable instrument under Article 3 [of the UCC] is to declare that transferees in the ordinary course of business are only to be held liable for information appearing in the instrument itself and will not be expected to know of any limitations on negotiability or changes in terms, etc., contained in any separate documents.

First State Bank at Gallup v. Clark, 1977-NMSC-088, ¶ 10, 91 N.M. 117, 570 P.2d 1144. In addition, the UCC clarifies that the Bank of New York is not afforded any assumption of enforcement without proper documentation:

Because the transferee is not a holder, there is no presumption under Section [55-3-308 ((1992) (entitling a holder in due course to payment by production and upon signature))] that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it.

Section 55-3-203 cmt. 2. Because the Bank of New York did not introduce any evidence demonstrating that it was a party with the right to enforce the Romeros' note either by an indorsement or proper transfer, we hold that the Bank's standing to foreclose on the Romeros' mortgage was not supported by substantial evidence, and we reverse the contrary determinations of the courts below.

B. A Lender Must Consider a Borrower's Ability to Repay a Home Mortgage Loan in Determining Whether the Loan Provides a Reasonable, Tangible Net Benefit, as Required by the New Mexico HLPAs

(39) For reasons that are not clear in the record, the Romeros did not appeal the district court's judgment in favor of the original lender, Equity One, on the Romeros' claims that Equity One violated the HLPAs. The Court of Appeals addressed the HLPAs violation issue in the context of the Romeros' contentions that the alleged violation constituted a defense to the foreclosure complaint of the Bank of New York by affirming the district court's favorable ruling on the Bank of New York's complaint. As a result of our holding that the Bank of New York has not established standing to bring a foreclosure action, the issue of HLPAs violation is now moot in this case. But because it is an issue that is likely to be addressed again in future attempts by whichever institution may be able to establish standing to foreclose on the Romero home and because it involves a statutory interpretation issue of substantial public importance in many other cases, we address the conclusion of both the

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

Plaintiff(s)

vs.

Melissa Furmanchuk, Masonborough at Park West Association, Inc., Wells Fargo Bank, N.A.;

Defendant(s)

Submitted By: Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar #68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar #5300), Mary R. Powers (SC Bar #16534), Robert P. Davis (SC Bar #74030), William S. Koehler (SC Bar #74935), Shawn R. Willis (SC Bar #71155), Kevin T. Hardy (SC Bar #76015), Benjamin J. Powell (SC Bar #77205), John P. Fetner (SC Bar #77460), Kelsey K. Brockbank (SC Bar #77519)

Attorneys for the Plaintiff
011784-14524

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220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444
(803) 343-7013 - Fax
info@rtt-law.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Construction (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-_____ ☐ Notice/File Med Mal (230) ☐ Other (229)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☒ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)		
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Commission (991) ☐ Other (999)		
Special/Complex/Other <table border="0"><tr><td>☐ Environmental (600) ☐ Automobile Arb (610) ☐ Medical (620) ☐ Other (699)</td><td>☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Deposition (650) ☐ Motion to Quash Subpoena in An Out-of-County Action (660) ☐ Sexual Predator (510)</td></tr></table>				☐ Environmental (600) ☐ Automobile Arb (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of-State Deposition (650) ☐ Motion to Quash Subpoena in An Out-of-County Action (660) ☐ Sexual Predator (510)
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Submitting Party Signature: _____

Date: 3/19/2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

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Appendix000000065

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form or by the 210th day of filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals;
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

011784-14524

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

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Appendix000000066

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

Wachovia Mortgage Corporation,
Plaintiff

vs.

Melissa Furmanchik; Masonborough at Park West
Association, Inc.; Wells Fargo Bank, N.A.;
Defendant.

IN THE CIRCUIT COURT FOR THE
NINTH
JUDICIAL CIRCUIT

CERTIFICATE OF EXEMPTION
FROM ADR

DOCKET NO.

10-CL-10-5825

I certify that this action is exempt from ADR because:

- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus or prohibition;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter;
- ☐ this is a contempt of court proceeding;
- ☐ this is forfeiture proceeding brought by the State;
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to voluntary mediation with a certified mediator prior to the filing of this action.

Plaintiff/Attorney(s) for Plaintiff(s)

Samuel C. Waters (SC Bar #5958), Cheryl H. Fisher (SC Bar #15213), Reginald P. Corley (SC Bar #69453), Jennifer W. Rubin (SC Bar #16727), Ellie C. Floyd (SC Bar # 68635), Michael P. Morris (SC Bar #73560), Eve Moredock Stacey (SC Bar # 5300), Mary R. Powers (SC Bar# 16534), Robert P. Davis (SC Bar # 74030), William S. Koehler (SC Bar# 74935), Shawn R. Willis (SC Bar # 71155), Kevin T. Hardy (SC Bar #76015), Benjamin J. Powell (SC Bar #77205), John P. Fetner (SC Bar # 77460), Kelsey K. Brockbank (SC Bar # 77519)

Rogers Townsend & Thomas, PC

220 Executive Center Drive, Suite 109
Post Office Box 100200
Columbia, SC 29202
(803) 744-4444

Defendant/Attorney(s) for Defendant(s)

Date: July 19, 2010

011784-14524

7-20-2010
11:30am

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park West
Association, Inc.; Wells Fargo Bank, N.A.;

Defendant(s).

(011784-14524)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-CP 10-SP25

LIS PENDENS
Deficiency Judgment Waived

FILED
2010 JUL 20 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

10-12323
NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by David H. Furmanchik and Melissa Furmanchik to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) dated September 7, 2005, and recorded in the Office of the RMC/ROD for Charleston County on September 19, 2005, in Mortgage Book F554 at Page 170. This Mortgage is subject to a Loan Modification Agreement dated August 31, 2006 and recorded September 11, 2006 in Book W597 at Page 260.

The premises covered and affected by the said mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, described as follows:

All that certain piece, parcel or lot of land, together with all the improvements thereon, if any, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as Lot 57 on a plat entitled "A Conditional Subdivision Plat of Winterbrooke Subdivision Phase 4, Phase III Park West, Formerly a Portion of Masonborough Subdivision, Owned by Park West Development, Inc., Located in the Town of Mount Pleasant, Charleston County, South Carolina," prepared by Southeastern Surveying of Charleston, Inc., dated February 26, 2004 and recorded March 23, 2004 in the RMC Office for Charleston County in Plat Book EG at Pages 968 and 969. Said lot having such size, shape dimensions and boundaries as will by reference to said plat more fully appear.

This being the identical property conveyed to David H. Furmanchik by Deed of Park West Development, Inc. dated April 20, 2004 and recorded May 7, 2004 in Deed Book R493 at Page 580. Subsequently, David H. Furmanchik conveyed the subject property to David H. Furmanchik and Melissa Furmanchik, as joint tenants with the right of survivorship, by Deed dated September 13, 2005 and recorded September 19, 2005 in Deed Book D554 at Page 866. Subsequently, David H. Furmanchik died on March 3, 2008 vesting his interest in Melissa Furmanchik as the surviving joint tenant.

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Property Address: 1820 West Canning Drive
Mt Pleasant, SC 29466

TMS# 594-12-00-781

Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)

220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
July 19, 2010

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park West
Association, Inc.; Wells Fargo Bank, N.A.;

Defendant(s).

(011784-14524)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-cP-10-5825

SUMMONS AND NOTICES
(NON-JURY)
FORECLOSURE OF REAL ESTATE
MORTGAGE
Deficiency Judgment Waived

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 JUL 20 AM 11:13

FILED

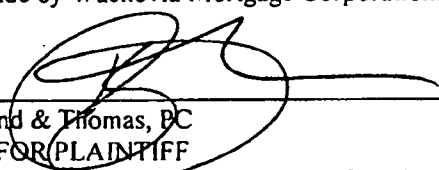
TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 220 Executive Center Drive, Suite 109, Post Office Box 100200, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an order of reference or that the Court may issue a general order of reference of this action to a master in equity/special referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Wachovia Mortgage Corporation.



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
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Kelsey K. Brockbank (SC Bar # 77519)

220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
July 19, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at Park West
Association, Inc.; Wells Fargo Bank, N.A.;

Defendant(s).

(011784-14524)

IN THE COURT OF COMMON PLEAS

DOCKET NO. 10-cP-10-SP25

COMPLAINT

(NON-JURY)

FORECLOSURE OF REAL ESTATE
MORTGAGE

Deficiency Judgment Waived

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2010 JUL 20 AM 11:13

FILED

Plaintiff alleges:

1. This is an action for the foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina.
2. Pursuant to S.C. Code Section 33-15-101, Plaintiff is a corporation or other legal entity doing business in the State of South Carolina.
3. Plaintiff has the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure.
4. The Plaintiff's servicing agent for the mortgage loan described in this foreclosure action is participating in the Home Affordable Modification Program ("HMP"), but the subject loan is not eligible for modification because the HMP modification process has been completed without a modification.
5. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
6. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of South Carolina Code Section 15-35-840.
7. Heretofore, on or about September 7, 2005, David H. Furmanchik made, executed

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and delivered a certain Adjustable Rate Note ("Note") in the principal sum of \$464,000.00, payable in monthly installments.

8. In order to secure the payment of the Note according to the terms and conditions thereof, David H. Furmanchik and Melissa Furmanchik made, executed and delivered unto Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) a certain real estate mortgage ("Mortgage") covering the following described property and any and all improvements to the property, including but not limited to a mobile/manufactured home:

All that certain piece, parcel or lot of land, together with all the improvements thereon, if any, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as Lot 57 on a plat entitled "A Conditional Subdivision Plat of Winterbrooke Subdivision Phase 4, Phase III Park West, Formerly a Portion of Masonborough Subdivision, Owned by Park West Development, Inc., Located in the Town of Mount Pleasant, Charleston County, South Carolina," prepared by Southeastern Surveying of Charleston, Inc., dated February 26, 2004 and recorded March 23, 2004 in the RMC Office for Charleston County in Plat Book EG at Pages 968 and 969. Said lot having such size, shape dimensions and boundaries as will by reference to said plat more fully appear.

This being the identical property conveyed to David H. Furmanchik by Deed of Park West Development, Inc. dated April 20, 2004 and recorded May 7, 2004 in Deed Book R493 at Page 580. Subsequently, David H. Furmanchik conveyed the subject property to David H. Furmanchik and Melissa Furmanchik, as joint tenants with the right of survivorship, by Deed dated September 13, 2005 and recorded September 19, 2005 in Deed Book D554 at Page 866. Subsequently, David H. Furmanchik died on March 3, 2008 vesting his interest in Melissa Furmanchik as the surviving joint tenant.

Property Address: 1820 West Canning Drive
Mt Pleasant, SC 29466

TMS# 594-12-00-781

9. The Mortgage was signed, witnessed and probated September 7, 2005; thereafter the Mortgage was recorded in the Office of the RMC/ROD for Charleston County on September 19, 2005, in Mortgage Book F554 at Page 170. This Mortgage is subject to a Loan Modification Agreement dated August 31, 2006 and recorded September 11, 2006 in Book W597 at Page 260.

10. The Mortgage evidences and secures the repayment of money advanced by Plaintiff or its predecessor in interest to, or on behalf of, the mortgagor(s) and constitutes a first lien on the mortgaged premises.

11. Any notice required by the terms of the Mortgage or by state or federal law has been given to the applicable Defendant(s) prior to the commencement of this action.

12. Subsequently, David H. Furmanchik died on March 3, 2008 vesting his interest in

Melissa Furmanchik as the surviving joint tenant..

13. After all payments received by the Plaintiff have been credited to the subject loan, the loan is in default and due for January 1, 2010, and the conditions of the Note and Mortgage have been broken. Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on the Note and Mortgage as of January 1, 2010, the principal sum of \$464,000.00, with interest from December 1, 2009, advances, late charges, and also for the costs and disbursements of this action, including attorney's fees.

14. Plaintiff's right to a personal or deficiency judgment pursuant to South Carolina Code Sections 29-3-650 and 29-3-660 is expressly waived.

15. Pursuant to the terms of the Mortgage, Plaintiff has employed counsel to prosecute this action and a reasonable value of services of counsel in this action is the sum as the Court may find appropriate.

16. Plaintiff may be forced to pay sums for taxes and insurance and costs for securing the property, which sums, according to the terms of the Mortgage, should be added to the amount of the debt.

17. Pursuant to the terms of the Mortgage and applicable state law, Plaintiff requests the mortgage be foreclosed and that the property be sold at public auction in accordance with law, subject to any liens for taxes, special assessments of record against such property, and existing easements or restrictions of record.

18. The hereinafter named Defendant(s) may have some interest in or lien upon the premises covered by the Mortgage set forth above, or some part thereof, but that such interests or liens are junior and subsequent to the lien of Plaintiff's Mortgage or, if specified below, have been paid in full and either should be satisfied of record or the lien released from the subject real estate. Said liens or interests are of record in the Office of the RMC or Clerk of Court of the aforesaid county and are described as follows:

A. Wells Fargo Bank, N.A., by virtue of a mortgage given by David H. Furmanchik and Melissa Furmanchik to Wachovia Bank, National Association in the amount of \$140,000.00, dated January 4, 2007, and recorded January 11, 2007 in Book T611 at Page 170. Wells Fargo Bank, N.A. is successor in interest to Wachovia Bank, National Association.

B. Masonborough at Park West Association, Inc. by virtue of any lien enforceable assessments claimed as provided for in the Declaration of Covenants, Conditions, and Restrictions recorded herein, and any amendments thereto.

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

(1) Under the direction of this Court, ascertain and determine the amount due upon the Note and Mortgage held by Plaintiff together with attorney's fees and costs of this action.

(2) Declare Plaintiff's Mortgage a first lien and render judgment of foreclosure for the amount so found to be due and owing thereon, together with any ad valorem taxes, or insurance premiums, and any other expenses which may be due and have been advanced by Plaintiff, with reasonable attorney's fees, and for the costs of this action.

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

(4) Appoint a Receiver to collect the rents, issues, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.

(5) Under the direction of this Court, sell the mortgaged premises, bar any equity of redemption, and apply the proceeds of sale as follows:

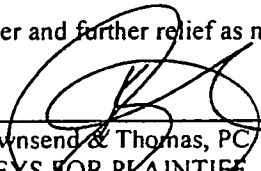
First, to the costs and expenses of the within action and sale;

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

Third, to the distribution of any surplus pursuant to Rule 71, of the South Carolina Rules of Civil Procedure;

(6) Issue an order directing the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary;

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



Rogers Townsend & Thomas, PC
ATTORNEYS FOR PLAINTIFF

Samuel C. Waters (SC Bar #5958) Cheryl H. Fisher (SC Bar #15213)
Reginald P. Corley (SC Bar #69453) Jennifer W. Rubin (SC Bar #16727)
Ellie C. Floyd (SC Bar # 68635) Michael P. Morris (SC Bar #73560)
Eve Moredock Stacey (SC Bar # 5300) Mary R. Powers (SC Bar #16534)
Robert P. Davis (SC Bar # 74030) William S. Koehler (SC Bar# 74935)
Shawn R. Willis (SC Bar # 71155) Kevin T. Hardy (SC Bar #76015)
Benjamin J. Powell (SC Bar #77205) John P. Fetner (SC Bar # 77460)
Kelsey K. Brockbank (SC Bar # 77519)
220 Executive Center Drive, Suite 109 Post Office Box 100200 (29202)
Columbia, SC 29210 (803) 744-4444

Columbia, South Carolina
July 19, 2010

001 073

Appendix000000075

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1692, As Amended

1. The amount of the debt as of January 1, 2010, is the principal sum of \$464,000.00, with interest from December 1, 2009, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
2. Wachovia Mortgage Corporation is the Creditor to whom the debt is owed. Wells Fargo Bank, N.A. is the servicing agent for the Creditor to whom the debt is owed.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Consumer, within thirty (30) days after the receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Consumer, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Consumer, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Consumer, make a written request to the Creditor's law firm within the (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you request proof of the debt or the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the complaint if we serve one on you. The summons is a command from the court, not from the Creditor's law firm, and you would have to follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.
8. This is an attempt to collect a debt, and any information obtained will be used for that purpose. The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

00 074

Appendix000000076

MARY LEIGH ARNOLD, P.A.
ATTORNEY AND COUNSELOR AT LAW

749 Johnnie Dodds Blvd. • Suite B • Mt. Pleasant, SC 29464
Telephone: 843.971.6053 • Facsimile: 843.971.6055
Sammie@maryarnoldlaw.com
maryarnoldlaw.com

September 21, 2011

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street, #6
Charleston, SC 29401

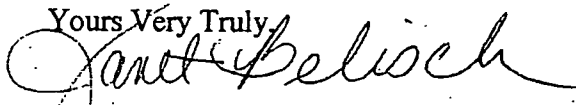
RE: Wachovia Mortgage Corporation v. Melissa Furmanchik; Masonborough at Park
West Association, Inc.; Wells Fargo Bank, N.A.
Case No.: 2010-CP-10-5825

Dear Madam Clerk:

Enclosed please find the original and (3) copies of the Notice of Appearance and Motion for Leave to File Out of Time Answer and Notice of Election to Participate in Foreclosure Intervention with attached Proposed Order, Answer and Notice of Election to Participate, in the above referenced matter. I kindly request you file the same and return the filed copies to our office in the self-addressed stamped envelope provided.

By copy of this letter to opposing counsel, we hereby serve them with a copy of the same.

With Kind Regards,

Yours Very Truly,

Janet Belisch
Paralegal
MARY LEIGH ARNOLD, PA

/jb
Enclosures
Cc: Kelsey K. Brockbank, Esq.
Capers G. Barr, IV

00 075

Appendix000000077

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Wachovia Mortgage Corporation)
Plaintiff,)
v.)
Melissa Furmanchik; Masonborough)
At Park West Association, Inc.;)
Wells Fargo Bank, N.A.:)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
CASE NO: 2010-CP-10-5825

NOTICE OF APPEARANCE

FILED
2011 SEP 27 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned hereby enters her appearance as attorney for Defendant Melissa Furmanchik in the above matter.

Respectfully submitted,


MARY LEIGH ARNOLD, PA
Mary Leigh Arnold
749 Johnnie Dodds Blvd. Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055
sammie@maryarnoldlaw.com
Attorney for Defendant

00 076

Appendix000000078

CERTIFICATE OF SERVICE

I, Janet Belisch, do hereby certify on this 21st day of September, 2011, the
aforementioned Notice of Appearance has been placed in U.S. Mail, postage prepaid to
be sent to the following addresses:

Kelsey K. Brockbank
Rogers Townsend & Thomas, PC
Attorney for Plaintiff
220 Executive Center Drive, Suite 109
Columbia, SC 29210
(803)744-4444

Other counsel:

Capers G. Barr, IV
Barr Unger & McIntosh, LLC
11 Broad Street
Charleston, SC 29401
(843) 577-5083
(843) 723-9039

FILED
2011 SEP 27 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



Janet Belisch
Paralegal
Mary Leigh Arnold, PA
749 Johnnie Dodds, Blvd., Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055
sammie@maryarnoldlaw.com
Attorney for Defendant

September 21, 2011

00 077

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wachovia Mortgage Corporation,

☐ Plaintiff

v.

Melissa Furmanchik; Masonborough At Park West
Association, Inc.; Wells Fargo Bank, N.A.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2010-CP-10-5825

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Mary Leigh Arnold, P.A., Bar No. 0419
Address:
749 JOHNNIE DODDS BLVD, Ste B
MOUNT PLEASANT, SC 29464
phone: (843)971-6053 fax: (843) 971-6055
e-mail: other:

Defendant's Attorney:
Kelsey K. Brockbank
Rogers Townsend & Thomas, P C, Bar No. 77519
Address:
220 Executive Center Drive
Columbia, SC 29210
phone: (803) 744-4444 fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: and Order for Sanction and Motion to Strike Answer

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

September 21, 2011

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: 25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached
order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Wachovia Mortgage Corporation,)
Plaintiff(s),)
vs.)
Melissa Furmanchik; Masonborough)
At Park West Association, Inc.; Wells Fargo)
Inc.; Wells Fargo Bank, N.A.,)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-10-5825

NOTICE AND MOTION FOR
LEAVE TO FILE OUT OF TIME
ANSWER AND NOTICE OF ELECTION
TO PARTICIPATE IN FORECLOSURE
INTERVENTION OF DEFENDANT

FILED
2011 SEP 27 PM 2:40
JULIE B. BARTS-TRONG
CLERK OF COURT

TO: PLAINTIFF, WACHOVIA MORTGAGE CORPORATION, AND PLAINTIFF
COUNSEL,

The Defendant, Melissa Furmanchik, hereby moves before this Court for an order granting
leave to file out of time Defendant's Answer and Notice of Election to Participate in Foreclosure
Intervention. The grounds for said motion are as follows:

Owing to unexpected circumstances, including but not limited to; the death of
Defendant's husband, the fact that she has been in a state of confusion upon information and
belief, and she has been attempting to obtain a modification, Defendant has understandably been
unable to complete her Answer and Notice of Election to Participate in Foreclosure Intervention
until today. Obviously, this filing is crucial to defendant, and late filing will not prejudice
plaintiff. In the interests of justice, Defendant hereby moves for leave to file her Answer and
Notice of Election to Participate in Foreclosure Intervention out of time.

See Attached Proposed Order.

Respectfully Submitted,

[Signature Block continued on next page]

MARY LEIGH ARNOLD, P.A.



MARY LEIGH ARNOLD, PA
749 Johnnie Dodds Blvd, Suite B
Mount Pleasant, SC 29464
Phone: (843) 971-6053
Facsimile: (843) 971-6055

Mount Pleasant, S.C.
September 21, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Wachovia Mortgage Corporation,)

Plaintiff(s),)

vs.)

Melissa Furmanchik; Masonborough)
At Park West Association, Inc.; Wells Fargo)
Inc.; Wells Fargo Bank, N.A.,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2010-CP-10-5825

**ORDER GRANTING DEFENDANT'S
MOTION FOR LEAVE TO FILE
ANSWER AND NOTICE OF
ELECTION TO PARTICIPATE OUT OF
TIME**

THIS MATTER is before the Court on the Motion of Mary Leigh Arnold, Esquire,
Attorney for Defendant, Melissa Furmanchik, to file Defendant's Answer and Notice of Election
to Participate in Foreclosure Intervention out of time.

NOW, THEREFORE, it is ordered, that Defendant has leave to file Defendant's Answer
and Notice of Election to Participate.

AND IT IS SO ORDERED.

JUDGE, NINTH JUDICIAL CIRCUIT

CHARLESTON, SOUTH CAROLINA

This ____ day of _____, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Wachovia Mortgage Corporation,	)	Case No.: 2010-CP-10-5825
	)	
Plaintiff(s),	)	
	)	
vs.	)	ANSWER OF DEFENDANT
	)	MELISSA FURMANCHIK
	)	
Melissa Furmanchik,	)	
	)	(JURY TRIAL DEMANDED)
Defendant(s).	)	
	)	
	)	

The Defendant Melissa Furmanchik hereby answers the allegations of the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations of the Plaintiff's Complaint which are not hereinafter specifically admitted are denied.
2. The allegations in paragraph 1 are admitted, upon information and belief.
3. The allegations in paragraph 2 are admitted, upon information and belief.
4. Paragraph 3 consists of conclusions of law which Defendant is required neither to confirm nor deny.
5. Defendant lacking sufficient information upon which to form a belief as to the allegations contained in paragraph 4, therefore denies the same and demands strict proof thereof.
6. Paragraphs 5 and 6 consist of conclusions of law which Defendant is required neither to confirm nor deny.
7. Answering the allegations of Paragraphs 7, 8, and 9 Defendant craves reference to

the documents identified therein and denies any allegation inconsistent with the specific terms of said documents and to the extent that they consist of legal conclusions, Defendant is required neither to confirm nor deny.

8. Paragraph 10 consists of legal conclusions which Defendant is required neither to confirm nor deny.

9. Lacking sufficient information upon which to form a belief as to the remaining allegations of paragraph 11, the same are denied.

10. Paragraphs 12 through 8 consist of legal conclusions which Defendant is required neither to confirm nor deny.

FOR AND AS A SECOND DEFENSE
(Failure To State Of Claim)

11. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff's Complaint fails to set forth a sufficient cause of action.

FOR AND AS A THIRD DEFENSE
(Lack of Standing)

12. Further answering the Complaint and as and for a further defense thereto, the Defendant alleges, Plaintiff lacks standing and is not the real party in interest and the Complaint should be dismissed.

FOR AND AS A FOURTH DEFENSE
(Failure to Provide Notice)

13. Further answering the Complaint and as and for a further defense thereto, the Defendant alleges, Plaintiff has failed to give the notices required by Federal and State law therefore Complaint must be dismissed.

FOR AND AS A FIFTH DEFENSE
(Affirmative Defenses)

14. Further answering said Complaint and for a further defense thereto Defendants specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, duress, fraud, illegality, laches, statute of limitations, misrepresentation, mistake, payment, release, waiver, standing, lack of consideration or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this progresses.

FOR AND AS A SIXTH DEFENSE
(Unclean Hands)

15. Further answering the Complaint and as and for a further defense thereto, the Defendant alleges, a mortgage foreclosure is an action in equity. The Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this equitable action.

FOR AND AS A SEVENTH DEFENSE
(Reservation and Non-Waiver)

16. Defendant(s) reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

WHEREFORE, Defendant, Melissa Furmanchik, having fully answered the Complaint of the Plaintiffs herein, Defendant, prays the same be dismissed with cost, and for such other and further relief as the court may deem just and proper.

Respectfully Submitted,

MARY LEIGH ARNOLD, P.A.,

[Signature Block continued on the next page]

MARY LEIGH ARNOLD, P.A.,



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Ste B.
Mt. Pleasant, South Carolina 29464
Telephone: (843) 971-6953 Fax (843) 971-6055
Sammie@maryarnoldlaw.com
Attorney for Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Wachovia Mortgage Corporation)
)
Plaintiff(s),)
)
vs.)
)
Melissa Furmanchik; Masonborough at)
At Park West Association, Inc.;)
Wells Fargo Bank, N.A.:)
)
Defendant(s).)
)

COURT OF COMMON PLEAS

CASE NO. 2010-CP-10-5825

**NOTICE OF ELECTION TO
PARTICIPATE IN
FORECLOSURE INTERVENTION**

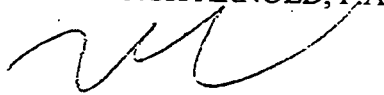
**TO: PLAINTIFF, WACHOVIA MORTGAGE CORPORATION, AND PLAINTIFF'S
ATTORNEY KELSEY K. BROCKBANK**

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina
Administrative Order 2011-05-02-01, the Defendant(s), Melissa Furmanchik, elects to invoke her
right to participate in any and all foreclosure intervention programs for the purpose of resolving
the above referenced foreclosure action.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

Respectfully Submitted,

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Ste .B
Mt. Pleasant, South Carolina 29464
Telephone(843) 971-6053
Fax (843) 971-6055
Sammie@maryarnoldlaw.com
Attorney for Defendant

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Appendix000000089

CERTIFICATE OF SERVICE

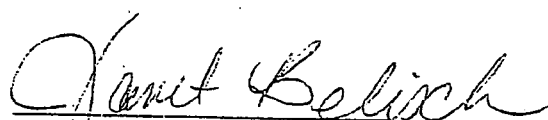
I, Janet Belisch, do hereby certify that on this 21st day of September, 2011, the
aforementioned Notice and Motion for Leave to File Out of Time Defendant's Answer and
Notice of Election to Participate in Foreclosure Intervention with the attached Proposed Order,
Answer, and Notice of Election to Participate, has been placed in the U.S. Mail, postage prepaid
to the following:

Kelsey K. Brockbank
Rogers Townsend & Thomas, PC
Attorney for Plaintiff
220 Executive Center Drive, Suite 109
Columbia, SC 29210
(803)744-4444

Other counsel:

Capers G. Barr, IV
Barr Unger & McIntosh, LLC
11 Broad Street
Charleston, SC 29401
(843) 577-5083
(843) 723-9039

September 21, 2011



Janet Belisch
Paralegal
Mary Leigh Arnold, PA
749 Johnnie Dodds, Blvd., Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
(843) 971-6055
sammie@maryarnoldlaw.com
Attorney for Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Wachovia Mortgage Corporation,)
)
Plaintiff(s),)
)
vs.)
)
Melissa Furmanchik,)
)
Defendant(s).)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No.: 2010-CP-10-5825

ANSWER OF DEFENDANT
MELISSA FURMANCHIK

(JURY TRIAL DEMANDED)

FILED
2011 NOV 28 PM 3:38
JULIE J. ARNOLD
CLERK OF COURT

The Defendant Melissa Furmanchik hereby answers the allegations of the
Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. All allegations of the Plaintiff's Complaint which are not hereinafter specifically admitted are denied.
2. The allegations in paragraph 1 are admitted, upon information and belief.
3. The allegations in paragraph 2 are admitted, upon information and belief.
4. Paragraph 3 consists of conclusions of law which Defendant is required neither to confirm nor deny.
5. Defendant lacking sufficient information upon which to form a belief as to the allegations contained in paragraph 4, therefore denies the same and demands strict proof thereof.
6. Paragraphs 5 and 6 consist of conclusions of law which Defendant is required neither to confirm nor deny.

7. Answering the allegations of Paragraphs 7, 8, and 9 Defendant craves reference to the documents identified therein and denies any allegation inconsistent with the specific terms of said documents and to the extent that they consist of legal conclusions, Defendant is required neither to confirm nor deny.

8. Paragraph 10 consists of legal conclusions which Defendant is required neither to confirm nor deny.

9. Lacking sufficient information upon which to form a belief as to the remaining allegations of paragraph 11, the same are denied.

10. Paragraphs 12 through 8 consist of legal conclusions which Defendant is required neither to confirm nor deny.

FOR AND AS A SECOND DEFENSE
(Failure To State Of Claim)

11. Further answering said Complaint and for a further defense thereto Defendant alleges that Plaintiff's Complaint fails to set forth a sufficient cause of action.

FOR AND AS A THIRD DEFENSE
(Lack of Standing)

12. Further answering the Complaint and as and for a further defense thereto, the Defendant alleges, Plaintiff lacks standing and is not the real party in interest and the Complaint should be dismissed.

FOR AND AS A FOURTH DEFENSE
(Failure to Provide Notice)

13. Further answering the Complaint and as and for a further defense thereto, the Defendant alleges, Plaintiff has failed to give the notices required by Federal and State law therefore Complaint must be dismissed.

FOR AND AS A FIFTH DEFENSE
(Affirmative Defenses)

14. Further answering said Complaint and for a further defense thereto Defendants specifically plead as an affirmative defense to the allegations of the Complaint, accord and satisfaction, comparative negligence, duress, fraud, illegality, laches, statute of limitations, misrepresentation, mistake, payment, release, waiver, standing, lack of consideration or any other matter constituting avoidance or affirmative defense which may arise and develop as discovery in this progresses.

FOR AND AS A SIXTH DEFENSE
(Unclean Hands)

15. Further answering the Complaint and as and for a further defense thereto, the Defendant alleges, a mortgage foreclosure is an action in equity. The Plaintiff comes to this action with unclean hands and is therefore precluded from maintaining this equitable action.

FOR AND AS A SEVENTH DEFENSE
(Reservation and Non-Waiver)

16. Defendant(s) reserve and do not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery.

WHEREFORE, Defendant, Melissa Furmanchik, having fully answered the Complaint of the Plaintiffs herein, Defendant, prays the same be dismissed with cost, and for such other and further relief as the court may deem just and proper.

Respectfully Submitted,

MARY LEIGH ARNOLD, P.A.,

[Signature Block continued on the next page]

LEIGH ARNOLD, P.A.,

MARY



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Ste B.
Mt. Pleasant, South Carolina 29464
Telephone:(843) 971-6953 Fax (843) 971-6055
Sammie@maryarnoldlaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Janet Belisch, do hereby certify that on this 21st day of September, 2011, a copy of the within Defendant Melissa Furmanchik's was placed in the United States Mail Postage pre-paid, addressed to Counsel for the Plaintiff as listed below:

Kelsey K. Brockbank, Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200 (29202)
220 Executive Center Drive
Columbia, S.C. 29210
~~Attorney's for Plaintiff~~

Other counsel:

Capers G. Barr, IV
Barr Unger & McIntoch, LLC
11 Broad Street
Charleston, SC 29401

FILED
2011 NOV 28 PM 3:38
JULIE J. ARISTIDE
CLERK OF COURT

MARY LEIGH ARNOLD, P.A.



Janet Belisch
Paralegal to Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Ste B.
Mt. Pleasant, South Carolina 29464
Telephone: (843) 971-6953
Fax (843) 971-6055
Sammie@maryarnoldlaw.com

MARY LEIGH ARNOLD, P.A.
ATTORNEY AND COUNSELOR AT LAW

749 Johnnie Dodds Blvd. • Suite B • Mt. Pleasant, SC 29464
Telephone: 843.971.6053 • Facsimile: 843.971.6055
Sammie@maryarnoldlaw.com
maryarnoldlaw.com

November 23, 2011

The Honorable Julie J. Armstrong
Clerk of Court
100 Broad Street, #6
Charleston, SC 29401

Re: Wachovia Mortgage Corporation v. Melissa Furmanchik; Masonborough at Park
West Association, Inc.; Wells Fargo Bank, N.A.
Case No.: 20-CP-

Dear Madam Clerk:

Enclosed please find the original and one (1) copy of the Answer of Defendant Melissa Furmanchik, in the above referenced matter. I kindly request you file the same and return the filed copy to our office in the self-addressed stamped enveloped provided.

By copy of this letter to opposing counsel, we hereby serve her with a copy of the same.

With Kind Regards,

Yours Very Truly,

MARY LEIGH ARNOLD

Mary Leigh Arnold

/jb
enclosures
cc: Kelsey K. Brockbank, Esq.

00 094

Appendix000000096

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO. 2010-CP-10-5825

Setene RMU of RED Acquisition
Plaintiff,

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Melissa Fumagalli
at Park West Assoc, Inc.
Wells Fargo Bank, N.A.
Defendant.

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

_____, Bar No. 00419

Address: 749 Johnnie Dodds Blvd
Mt. Pleasant, SC 29464

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion Dismiss/Complete

Estimated Time Needed: 15

Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff ☒ Defendant

3/28/13
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

00 095

Appendix000000097

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO: 2010-CP-10-5825

Selene RMOF REO Acquisition, LLC)
Plaintiff,)
v.)
Melissa Furmanchik; Masonborough)
At Park West Association, Inc.;)
Wells Fargo Bank, N.A.:)
Defendant(s).)

FILED
2013 MAR 28 AM 10:01
JULIE J. ARISTOTRIS
CLERK OF COURT

**DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR
SUMMARY JUDGMENT FOR LACK OF PROOF OF STANDING AND
DEFENDANT'S MOTION TO COMPEL**

Now comes Defendant, Melissa Furmanchik, and moves this Court for an Order dismissing or in the alternative granting summary judgment for the reasons that there is no material fact that Plaintiff lacks standing to maintain this action. There is no dispute as to the following facts:

1. Plaintiff has failed to identify documents or produced documents establishing that it holds the promissory note and mortgage;
2. Plaintiff has failed to identify or produce the full trail of assignments of the note and mortgage from the original lender or mortgagee;
3. Plaintiff is not the true owner of the claim sued upon;
4. Plaintiff is not the real party in interest; and
5. Plaintiff has failed to show that it is authorized to bring or maintain this action.

These undisputed facts established in part by virtue of Plaintiff's responses to discovery or lack thereof demonstrate that Plaintiff is not the real party in interest and

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Appendix000000098

therefore does not have standing to bring this action and, therefore Defendant is entitled to judgment as a matter of law.

The facts and laws which support this motion are more fully set forth in the attached memorandum.

Alternatively and additionally, Defendant seeks to compel full and complete responses to Defendant's discovery requests. (See Attached Responses.)

Respectfully submitted,



Mary Leigh Arnold
MARY LEIGH ARNOLD PA
749 Johnnie Dodds Blvd, Suite B
Charleston, SC 29464

CERTIFICATE OF MAILING

I hereby certify that on this 28 day of March, 2013, a copy of the attached Notice of Motion and Motion to Dismiss and to Compel was placed in in the mail postage prepaid, addressed as follows:

Jason Wyman, Esq.
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202

MARY LEIGH ARNOLD, PA



ROGERS TOWNSEND & THOMAS, PC
POST OFFICE BOX 100200 (29202)
220 EXECUTIVE CENTER DRIVE
COLUMBIA, SOUTH CAROLINA 29210
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W RTT-LAW.COM

JASON D. WYMAN
ASSOCIATE
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P 803.744.5303
F 803.343.7017

LICENSED IN SOUTH CAROLINA



November 8, 2012

Mary Leigh Arnold, Esq.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, SC 29465

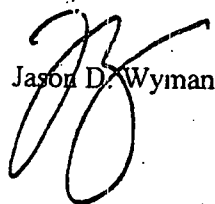
Re: *Selene RMOF REO Acquisition, LLC v. Melissa Furmanchik; Masonborough at
Park West Association, Inc.; Wells Fargo Bank, N.A.*
Case No.: 10-CP-10-5825
Our File No.: 514332-00072

Dear Sammie:

Enclosed and hereby served upon you, are Plaintiff's Responses to Defendant's First
Set of Interrogatories & Request for Production of Documents and Plaintiff's Privilege Log
Pursuant to Rule 26(b)(5), SCRPC in the above referenced matter.

With kind personal regards, I remain

Very truly yours,



Jason D. Wyman

JDW/

Enclosures

This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only an enforcement of the lien against the property

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Appendix000000100

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Selene RMOF REO Acquisition, LLC,

Plaintiff,

v.

Melissa Furmanchik; Masonborough At Park
West Association, Inc.; Wells Fargo Bank,
N.A.:

Defendants.

(514332.00072 JDW)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 10-CP-10-5825

**PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST SET OF
INTERROGATORIES &
REQUEST FOR PRODUCTION
OF DOCUMENTS**

Pursuant to Rules 33 & 34 of the South Carolina Rules of Civil Procedure, Plaintiff Selene RMOF REO Acquisition, LLC, by and through its undersigned counsel, submits the following Responses to Interrogatories and Request for Production of Documents of Defendant Melissa Furmanchik.

GENERAL OBJECTIONS

1. Plaintiff objects to the Interrogatories and Request for Production of Documents to the extent they call for Responses that would disclose privileged information including information protected by the attorney-client privilege, attorney work product doctrine, confidential business information or trade secret privileges or any other applicable privileges.

2. Plaintiff objects to the Interrogatories and Request for Production of Documents to the extent they request information, documents, things, facts, opinions or any other matter prepared in anticipation of litigation or for trial including such trial preparation materials relating to expert witnesses, which is outside the scope of discovery permitted by Rule 26(b), SCRPC.

3. Plaintiff objects to the Interrogatories and Request for Production of Documents to the extent they seek to require Responses, information, identification of documents or persons

or things, or to impose any obligations beyond what is permitted by the applicable South Carolina Rules of Civil Procedure.

4. Plaintiff reserves the right to supplement its Responses to the Interrogatories and Request for Production of Documents as additional information or documents become known.

Subject to the above General Objections, Plaintiff answers the Defendant's Interrogatories and Request for Production of Documents as follows:

INTERROGATORIES

1. Please describe in detail every communication between the originator, servicer, predecessor in interest or yourself and the Defendant with regard to the subject loan. In response to this interrogatory, please state the name and job title of the person communicating with said Defendant, a summary of the communication, and the date on which said communication occurred.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

2. Do you have any insurance or surety bond policy that may cover the acts/omissions alleged in the Defendant's counterclaim, including any policy for which coverage has been denied? Please produce a copy of the declaration page for each such policy and/or the denial of coverage letter from the insurance company and/or copy of the surety bond. If a bond exists, please state if any payments have been made out of the bond, the amount(s) of said payments, the date(s) of said payments, and the date(s) of the conduct covered by said payments.

ANSWER: Plaintiff objects to this discovery request on the grounds that Defendant's Answer does not contain a counterclaim. Accordingly, Plaintiff would object

to this discovery request as irrelevant and not appearing reasonably calculated to the discovery of admissible evidence.

3. Please identify by full name and address who is the holder of the Defendant's loan and, if applicable, the full name of the pool in which the Defendant's loan is located. If the originating lender is not the current holder, please describe the transactions, including the time, date, agreements, and parties involved, that resulted in the Defendant's loan being held by its current holder.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, Plaintiff is the holder of the Note and is entitled to enforce it.

4. If the originating lender is not the current servicer of the loan, please describe the transactions, including any written or oral agreements that led to the current servicer servicing the loan and/or any intervening transfer of servicing rights.

ANSWER: Wells Fargo Bank, N.A. was the servicer of the loan until 11/11/2010.

5. Who has possession of the original note?

ANSWER: Counsel for the Plaintiff is in possession of the original note.

6. Please identify all individuals who may have knowledge of the facts of this case, and provide each individual's contact information and the facts of which they have knowledge.

ANSWER:

A representative of Selene RMOF REO Acquisition, LLC

Selene RMOF REO Acquisition, LLC has been substituted as the Plaintiff in this action. A representative of the Plaintiff is expected to testify regarding the facts and

circumstances of the events that are the subject matter of this case. Plaintiff is not aware of any written or recorded statements, other than any written correspondence produced in response to Defendants' Request for Production.

Melissa Furmanchik

Mrs. Furmanchik is a Defendant in this case. She is expected to testify regarding the facts and circumstances of the events that are the subject matter of this case. Plaintiff is not aware of any written or recorded statements of this party.

7. Please identify each individual that you plan to use as an expert in this litigation, the topics about which the expert may testify, the conclusions that the expert has reached and the basis for said conclusions, the expert's qualifications, and what the expert consulted in reaching his/her conclusions.

ANSWER: Plaintiff has not retained an expert witness in this case. However, Plaintiff reserves the right to retain an expert witness. In that event, Plaintiff will supplement its Answer.

8. Did/do you have a written agreement with one or more entity at any point from the origination of the Defendant's loan to the present, which would govern any party's conduct in relation to the solicitation, origination, purchase, assignment, modification, short sale or servicing of Defendant's loan (including, but not limited to a purchase contract or pooling and servicing agreement)? If so, please identify and describe each responsive agreement, including the title, date, and substance of the agreement, and produce a copy of said agreement, as requested in Defendant's Request to Produce Documents.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

9. Please identify all requests you, a servicer, or predecessor in interest received from Defendant for either approval of a short sale or modification, providing the date received and the name and address of the person who was assigned to respond to the request.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

10. Please identify all actions taken by you a servicer, or predecessor in interest relating to a request for approval of either a short sale or modification.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, please see the collection notes contained on the enclosed CD for information that may be responsive to this discovery request.

11. Describe in detail how you, a servicer, or predecessor in interest determined whether to approve or deny a request for a short sale or modification including the information used to make such determination, the analysis used to make such determination, the names and addresses of all that had authority or input to make such determination, the actual determination made and how and when such determination was provided to Defendant.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the

discovery of admissible evidence. Subject to this objection, please see the collection notes contained on the enclosed CD for information that may be responsive to this discovery request.

12. Please identify all NPV determinations made by Plaintiff, a servicer, or predecessor in interest pursuant to HMP Guidelines with regard to the subject loan, including all factors used to make such determine and all results reached.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, please see the collection notes contained on the enclosed CD for information that may be responsive to this discovery request.

13. Please describe in detail the information used to determine Defendant had an unacceptable debt to income (DTI) and how determined.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection,

14. For the period of 24 months prior to the filing of the Complaint in this case, please identify how many (a) loan modification request you received; (b) trial loan modifications you granted; and (c) permanent loan modifications you granted.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

15. Please list every late fee that has been assessed to the subject account, including the date the fee was assessed and the amount that was assessed on said date. If you respond by referring to a document produced in discovery, please specifically identify that document and explain how it responds to this interrogatory.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, please see the Payment History on the enclosed CD that may be responsive to this discovery request.

16. Please list every fee that was assessed to the subject account for payment by borrower, excluding late fees, including the date the fee was assessed, the amount that was assessed on said date, and the purpose of said fee. If you respond by referring to a document produced in discovery, please specifically identify that document and explain how it responds to this interrogatory.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, please see the Payment History on the enclosed CD that may be responsive to this discovery request

17. Please provide a breakdown and explanation of the purpose of every fee assessed against the borrower at the loan closing, as reflected on the settlement statement, including but not limited to document preparation fees. If you respond by referring to a document produced in discovery, please specifically identify that document and explain how it responds to this interrogatory.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, please see the HUD-1 Settlement Statement on the enclosed CD that may be responsive to this discovery request

18. Please set forth in detail all amounts you claim are due and owing under the subject note and mortgage.

ANSWER: Plaintiff seeks to foreclose its mortgage which is the subject of its Complaint and Plaintiff craves reference to the relief prayed for in its Complaint. The damages available to Plaintiff cannot be calculated until a final hearing on its foreclosure claim, but will include principal, interest, corporate advances, collection costs, title abstract costs, late charges, attorney's fees and any other damages recoverable under the note and mortgage.

19. Please set forth all payments received from Defendant.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence. Subject to this objection, please see the Payment History on the enclosed CD that may be responsive to this discovery request.

20. Please set forth all actions taken by Plaintiff or Plaintiff's predecessor in interest or the servicer to determine if the subject transaction was subject to modification under any program.

ANSWER: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. Please produce copies of all contracts or documents evidencing any agreements, including any purchase contract or pooling and servicing agreement, between you and any Defendant; any one Defendant with any other Defendant; and/or you and any other entity (such as the lender or servicer) involved in the subject loan transaction.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is vague, overly broad, unduly burdensome and oppressive.

2. Please produce copies of all loan (or sale) contracts, originating documents, loan applications, underwriting documents (including underwriting checklists and reviews), rate sheets, credit matrices, memoranda, disclosure statements, appraisals, security agreements, credit reports, financing statements, credit information forms, and other instruments evidencing or related to the loan transactions involving the named Defendants.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

3. Please produce copies of all account records for the subject loan(s) with, including a detailed statement of account and/or payment history listing application of payments and assessment of any fees or charges (including documents or computer screen printouts such as a loan history and corporate advance history). Please include any document that describes, identifies, or explains the meaning of the codes used in said records.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

4. Please produce copies of records of all contact regarding the subject account, including, but not limited to: (i) communication logs and/or servicing notes from each department (loss mitigation, collections, etc.) and (ii) copies of all notices, correspondence, statements, or documents of any kind sent by and Plaintiff to the named Defendant or her agents. Please provide said records in both paper and the original electronic format. Please include any document that describes, identifies, or explains the meaning of the codes used in said records.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

5. Please produce copies of records of all communications regarding the subject account, including but not limited to internal communications within your organization, and including but not limited to memoranda, emails, facsimiles, and notes of phone contact.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

6. Copies of any documents concerning or related to the securitization of the subject loan, if applicable, including but not limited to the following: (a) the applicable Pooling and

Servicing Agreement, along with any exhibits and attachments; (b) any Prospectus; and (c) all benchmark/guidelines for servicer performance.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

7. Copies of (a) any and all assignments, recorded or unrecorded; and (b) any power of attorney relied on by any party to transfer or assign the subject loan or loan documents.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

8. Copies of any exhibits which you may offer at the trial of this matter.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it seeks trial strategy and materials protected by the work product doctrine. Subject to this objection, Plaintiff has not yet determined which exhibits it may offer at the trial of this matter.

9. Copies of any other writings or documents in the control of the Plaintiff relevant to the subject matter of this action.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

10. Make available for viewing the original of the loan document (i.e. Note) together with any endorsements and/or allonges.

RESPONSE: The original Note is in the possession of the Plaintiff's attorney and can be made available for inspection at a mutually convenient time.

11. Any document indicating the ownership status of the promissory note, identifying the actual owner and the date ownership was acquired.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is vague, overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

12. Copies of all expert reports prepared for this litigation, including the expert's qualifications and the basis of the expert's opinion, as well as copies of any documents consulted by the expert in preparing the report.

RESPONSE: Plaintiff has not retained an expert witness in this case. However, Plaintiff reserves the right to retain an expert witness. In that event, Plaintiff will supplement its Response at a later date.

13. Please produce copies of all servicing guidelines and procedures that have applied to the servicing of the subject loan, including all procedures related to force-placing insurance, the assessment of fees, the application of payments, and contacts with borrowers.

RESPONSE: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

14. Please produce any internal guidelines, procedures, or other documents governing the loan modification, forbearance, or loss mitigation process for loans serviced by Plaintiff during the period in which it serviced the subject loan. Documents should include, but are not limited to, any approval signing authorization guidelines, procedures for collection agents, procedures or guidelines for negotiators and/or the workout group, and guidelines and/or manuals for any computerized system utilized in the loan modification process.

RESPONSE: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

15. Please produce any documents relevant to loss mitigation (including loan modification, forbearance, short sale, deed in lieu, or other programs) for the loan that is the subject of this action, including but not limited to underwriting documents for any loss mitigation effort on the subject loan, the applicable investor guidelines for loss mitigation on the subject loan, screen shots for any loan modification and/or loss mitigation effort stated on this loan such as those screens relating to Defendant's income qualifications, internal notes regarding loss mitigation on the subject account, documents mailed to or received from Plaintiff regarding loss mitigation efforts, and/or signed loss mitigation agreements.

RESPONSE: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

16. Please produce any documents consulted in the preparation of the answers to Defendant's first set of interrogatories.

RESPONSE: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

17. Please produce copies of all valuation, including, but not limited to, appraisals and broker price opinions (both prior to and post-closing), of the subject property in Plaintiff's possession; all reviews conducted of said valuation; all documents related to said valuations including but not limited to appraisal/valuation order forms, appraisal/valuation underwriting or review checklists, and communications with third party vendors or appraisers related to the subject property and/or loan; and appraisal guidelines or standards provided to third party vendors and/or used internally for the year in which the loan was originated.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

18. Please produce (a) copies of all written communications between Plaintiff or internally between employees, contractees, or agents of any Plaintiff regarding the subject loan, including emails, facsimile transmissions, and letters; and (b) copies of all communication logs regarding communications between Plaintiff or internally between employees, contractees, or agents of any Plaintiff regarding the subject loan.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

19. Please produce copies of all documents relating to or including foreclosure information regarding the subject account.

RESPONSE: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

20. Please produce copies of all guidelines, policies, or procedures relating to foreclosure, eviction, and REO in place beginning from the first date that Plaintiff claims that Defendant was in default on the loan until the present.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is vague, overly broad, unduly burdensome and oppressive and does not appear reasonably calculated to lead to the discovery of admissible evidence.

21. Please produce all documents in your possession that contain anywhere on the document (i) one or both mortgagors names; (ii) Defendant's loan number; and/or (iii) Defendant's property address.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

22. Please produce all guidelines, procedures, or policies relating to the solicitation of loan customers for new loans with Plaintiff during the time period of the subject loans(s).

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is irrelevant, overly broad, unduly burdensome, oppressive and not likely to lead to the discovery of admissible evidence.

23. Please produce copies all computerized records regarding the subject loan, including, but not limited to, those records describing the loan history, the borrowers on the loan, major events for the loan, and set-up screen prints.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

24. Please produce copies of the complete mortgage loan file.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

25. Please produce copies of all property inspections, property inspection invoices, and correspondence regarding property of plaintiffs home.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is overly broad, unduly burdensome and oppressive. Subject to this objection, please see the documents, on the enclosed CD that may be responsive to this discovery request. Plaintiff reserves the right to supplement its Response at a later date.

26. Please produce all policies and procedure in place from the date of origination of the subject loan to the present relating to quality assurance and prevention of error in the servicing of loans.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is irrelevant, overly broad, unduly burdensome, oppressive and not likely to lead to the

discovery of admissible evidence. Plaintiff further objects on the grounds that it did not originate the subject loan.

27. Please produce any document or agreement relating to or evidencing the transfer of ownership or servicing rights of the subject loan between any entity involved in the ownership, trusteeship, or servicing of the loan.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is irrelevant, overly broad, unduly burdensome, oppressive and not likely to lead to the discovery of admissible evidence.

28. Please provide copies of all invoices for all fees charged as listed on the settlement statement for closing of the loan including invoices for all document preparation fees.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is irrelevant, overly broad, unduly burdensome, oppressive and not likely to lead to the discovery of admissible evidence.

29. Please produce all policies, procedures, and guidelines that governed the origination and underwriting of the subject loan, and the rate sheets for the month of the loan.

RESPONSE: Plaintiff objects to this discovery request on the grounds that it is irrelevant, overly broad, unduly burdensome, oppressive and not likely to lead to the discovery of admissible evidence.

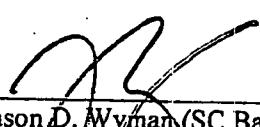
30. Please produce the personnel file for the originating loan officer, the compensation plan for the originating loan officer, any evaluations of the originating loan officer, and the employee handbook for originating loan officer.

RESPONSE: Plaintiff objects to this discovery request as being vague, overly broad, unduly burdensome, irrelevant, and does not appear reasonably calculated to lead to the discovery of admissible evidence.

31. Please produce any documents related to any surety bond and/or insurance policy that might provide coverage for the conduct alleged in the Complaint, any documents relating to any claim made on said bond or policy for the conduct alleged by Defendant, and any documents relating to any claim made for any similar conduct alleged by other individuals during the year(s) of the conduct alleged in Defendant's Counterclaim.

RESPONSE: Plaintiff objects to this discovery request on the grounds that Defendant's Answer does not contain a counterclaim. Accordingly, Plaintiff would object to this discovery request as irrelevant and not appearing reasonably calculated to the discovery of admissible evidence.

Plaintiff shall supplement the foregoing discovery responses as required by the South Carolina Rules of Civil Procedure.



Jason D. Wyman (SC Bar # 100271)
ROGERS TOWNSEND & THOMAS, PC
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Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900 Tel
(803) 343-7017 Fax
jason.wyman@rtt-law.com
Attorneys for Plaintiff
Rogers Townsend & Thomas, PC, and its staff are debt collectors

November 6, 2012

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Selene RMOF REO Acquisition, LLC,

Plaintiff,

v.

Melissa Furmanchik; Masonborough At Park
West Association, Inc.; Wells Fargo Bank,
N.A.;

Defendants.

(514332.00072 JDW)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 10-CP-10-5825

CERTIFICATE OF SERVICE BY MAIL

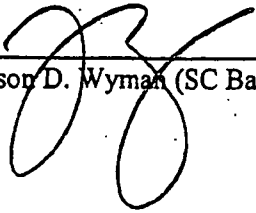
I, Jason D. Wyman, an attorney with the law offices of Rogers Townsend and Thomas, PC, attorneys for Plaintiff, do hereby certify that I have served a copy of the following documents by mailing a copy of the same by United States mail, postage prepaid, on November 8, 2012 to the following:

Documents:

*PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST SET OF INTERROGATORIES &
REQUEST FOR PRODUCTION OF DOCUMENTS*

Parties served:

Mary Leigh Arnold
MARY LEIGH ARNOLD, PA
749 Johnnie Dodds Blvd, Suite B
Mount Pleasant, SC 29464



Jason D. Wyman (SC Bar# 100271)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Selene RMOF REO Acquisition, LLC,

Plaintiff,

v.

Melissa Furmanchik; Masonborough at
Park West Association, Inc.; Wells
Fargo Bank, N.A.,

Defendants.

(514332.00072 JDW)

IN THE COURT OF COMMON PLEAS

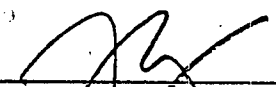
DOCKET NO.: 10-CP-10-5825

**PLAINTIFF'S PRIVILEGE LOG
PRODUCED PURSUANT TO RULE
26(b)(5), SCRCP**

**TO: MARY LEIGH ARNOLD, ESQUIRE, ATTORNEY FOR DEFENDANT MELISSA
FURMANCHIK:**

Pursuant to Rule 26(b)(5) of the South Carolina Rules of Civil Procedure, Plaintiff Selene RMOF REO Acquisition, LLC ("Plaintiff") identifies the following materials withheld from production as Attorney-Client Privileged or protected under the Attorney Work Product Doctrine:

1. Portions of PLF-001446 to PLF-001457.



Jason D. Wyman (SC Bar # 100271)
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220 Executive Center Drive â Suite 109 (29210)
Post Office Box 100200
Columbia, South Carolina 29202-3200
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ATTORNEYS FOR PLAINTIFF
Rogers Townsend & Thomas, PC and its staff are debt collectors

Dated: November 8, 2012

STATE OF SOUTH CAROLINA

COUNTY OF Chas

IN THE COURT OF COMMON PLEAS

JUDICIAL CIRCUIT

CASE NO.: 10 -CP- 10-5825

Selene RMOF REO Acquisition LLC

Plaintiff,

vs.

Melissa Furmanchik etc.

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRPC)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

00 119

Appendix000000121

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Selene RMOF REO Acquisition, LLC)
)
Plaintiff;)
)
v.)
)
Melissa Furmanchik; Masonborough At-)
Park West Association, Inc.;)
Wells Fargo Bank, N.A.:)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-10-5825

CP-10-6825

MOTION FOR RECONSIDERATION

FILED
2013 JUN 28 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE HONORABLE MIKELL R. SCARBOROUGH, MASTER-IN-EQUITY,
CHARLESTON COUNTY AND ROGERS TOWNSEND THOMPSON, LLP,
ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Melissa Furmanchik, by and through her undersigned attorney will move before the Master-In-Equity for Charleston County, at chambers, Charleston County Courthouse, Charleston, South Carolina, at such place and time as the court may appoint, in order for the Court to reconsider that certain Order and/or decision rendered orally on June 20, 2013, without final formal Order having yet been received, granting Plaintiff's request for foreclosure and to enjoin any sale proceedings pursuant to all applicable Rules of Civil Procedure including but not limited to Rules 52, 59, 60 and 7, SCRPC. The basis for said motion is as follows:

1. Plaintiff failed to establish the proper foundation for the introduction of a single exhibit it offered into evidence. (Plaintiff's Exhibit 1 Note; Exhibits 2a and 2b Mortgage; Exhibits 3, 4, 5 and 6, Assignment of Mortgages; Exhibit 7, Exhibit 8, Wells Fargo Demand letter; Exhibit 9, combined Wells Fargo and Selene Account History and Exhibit 10, Summary of Costs.) This

Court erred in admitting Plaintiff's exhibits over Defendant's objections. Plaintiff's witness did not testify in such a manner to lay a proper foundation for the admission of Plaintiff's Exhibits. The witness offered to testify, testified she was an employee of Selene Finance Inc. The witness acknowledged she was not an employee of the presently named Plaintiff. The witness acknowledged the Note and Mortgage were originated by Wells Fargo. The witness acknowledged she was not nor has ever been an employee of the prosecuting Plaintiff or Wells Fargo. The witness testified she had no evidence or testimony that established the chain of title of Note. She offered no testimony which would establish how or when Plaintiff became in possession of the Note. Plaintiff failed to establish the witness had the required personal knowledge as required by Rule 602, SCRE to authenticate the documents. See Hundley ex rel. Hundley v. Rite Aid of South Carolina Inc., 339 S.C. 285, 529 S.E. 2d 45 (Ct. App. 2000) ("generally under Rule 602, SCRE [a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.")

2. "A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in either S.C. Code Section 19-5-510 or Rule 803(6), SCRE. Business records entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept..." State v. Rice, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007). The Court erred in admitting the exhibits offered by Plaintiff in contradiction to the provisions of Rule 803, SCRE.

3. Neither a proper foundation nor an exception to hearsay was established by Plaintiff any document entered into evidence. Plaintiff's witness admitted that neither the Note nor Mortgage were originated by her employer or the entity for which she was testifying. (Exhibits 1 and 2). She had no knowledge as the assignments entered into evidence. (Exhibits 3, 4, 5 and 6). She offered

no evidence of how the records were created or maintained, the source of the information, where maintained or when they were created. She certainly offered not a single shred of evidence that allowed for the admission of documents clearly created by Wells Fargo an entity with which she testified she had absolutely no relationship. (Exhibits 8 (Wells Fargo Demand letter) and 9 (Wells Fargo Account History)). The Court erred by admitting these documents into evidence.

4. The Court further erred by admitting documentation after Plaintiff had closed its case and no further witness was offered to testified; the Court erred by admitting a document for which no witness testified about or was even asked to identify; the Court erred by admitting a document which Defendant could not cross examine the witness about since the witness was never presented the document. The document was readily available and in Plaintiff's possession at the commencement of the hearing. Certainly this was not evidence that could not have been discovered prior to the hearing (again it was in hand.) Plaintiff had every opportunity to have the document identified and properly admitted, however it elected not to do so. Plaintiff's failure to have or attempt to have a document properly admitted precludes it from presenting the document for consideration after the close of the case. The process was improper and highly prejudicial to the Defendant. The Court erred by allowing the document into evidence.

5. The prosecuting Plaintiff lacked standing. Plaintiff asserts it is the holder of the subject note. A holder is a person in possession of instrument drawn, issued, transferred, or indorsed to him. S.C. Code An. §36-1-201(20)(2003). This Court erred in determining Plaintiff established its claimed status as a holder.

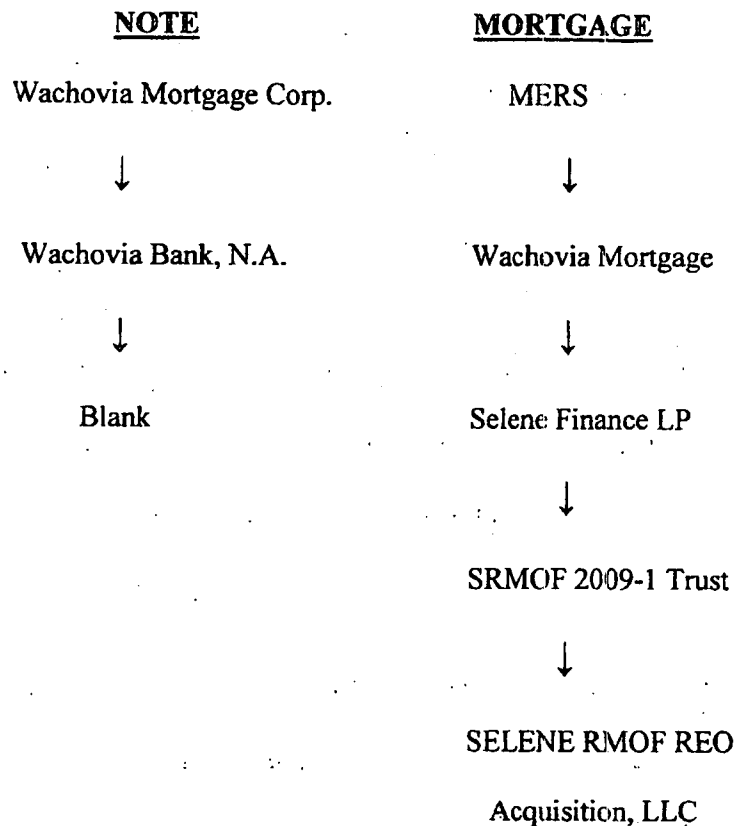
6. The Note presented as Exhibit "1" was initially made in favor of Wachovia Mortgage Corporation. As testified by Plaintiff's witness, the last page of the Note contains several endorsements which are either cancelled or marked void. The one endorsement not altered is

undated and from Wachovia Mortgage to Wachovia Bank, N.A. (n/k/a Wells Fargo). Accompanying the Note is an Allonge. The Allonge is not affixed to the Note. No testimony was offered that it was to be affixed. The Allonge purports to transfer the Note in blank from Wells Fargo. No other endorsements or allonge exist. The Note does not have sufficient endorsements to accomplish transfer to the now named Plaintiff. The evidence is completely lacking to establish Plaintiff is the holder of the Note. The Court erred in determining Plaintiff is the holder.

7. This case was initiated by Wachovia Mortgage Corporation on July 20, 2010 to foreclose the subject mortgage. The four (4) assignments of mortgage show: On July 7, 2010, MERS assigned to Wachovia; on October 7, 2010, Wachovia assigned to Selene Finance LP; on March 29, 2011, Selene Finance assigned to SRMOF-2009-1 Trust; and on March 29, 2011, the Trust assigned to Selene RMOF REO Acquisition, LLC, the now named Plaintiff.

(INTENTIONAL PAGE BREAK)

8. The history of transfers of the Note and Mortgage are illustrated below:



9. Where a negotiable note is secured by mortgage, the note and mortgage are inseparable, and the assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity. Carpenter v. Longan, 83 U.S. 271, 21 L. Ed. 313, (1872); In re Leisure Time Sports, Inc. 194 B.R. 859, 861 (9th Cir. 1996) (stating that “[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures” and that, “[i]f the debt is not transferred, neither is the security interest”); Kelley v. Upshaw, 39 Cal. 2d 179, 192 (1952) (stating that assigning only the deed without a transfer of the promissory note is completely ineffective); see also Restatement (3d) of Property (Mortgages) § 5.4 (stating that “[a] mortgage may be

enforced only by, or in behalf of, a person who is entitled to enforce the *obligation* that the mortgage secures”); South Carolina Nat. Bank v. Halter, 293 S.C. 121, 359 S.E.2d 74 (S.C.App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee, Hahn v. Smith, 157 S.C. 157, 154 S.E. 112 (1930), absent some indication that the parties also intended to transfer the debt. 59 C.J.S. Mortgages Section 359 (1949)).

10. The transfer of the Note and Mortgage do not take the same path. The independent transfers of the Mortgage are nugatory. The Plaintiff here has not rights to enforce the Mortgage and lacks standing. The Court erred in determining the now named Plaintiff has the right to enforce the Note and Mortgage.

11. The Court erred in concluding it “assumed” interest was intended. Parties have the right to make their own contracts. Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); MailSource, LLC v. M.A. Bailey & Assocs., 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003). A court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994) ; Jordan v. Security Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975) (“[T]he parties have a right to make their own contract and it is not the function of this Court to rewrite it or torture the meaning of a policy to extend coverage never intended by the parties.”). Succinctly stated, a court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction. See, e.g., Lewis v. Premium Inv. Corp., 351 S.C. 167, 171,

568 S.E.2d 361, 363 (2002) ("It is not the function of the court to rewrite contracts for parties."); E. Bus. Forms, Inc. v. Kistler, 258 S.C. 429, 189 S.E.2d 22 (1972) (finding the court may not make a new agreement for the parties into which they did not voluntarily enter). The Court erred in determining interest was assumed. The Court imposed its own assumption, and in essence rewrote the contract the Plaintiff attempts to enforce for the benefit of Plaintiff and to the detriment of Defendant. The Court erred in so doing.

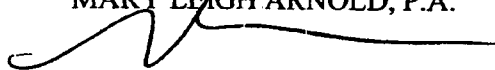
12. The Court erred in determining default had been established. First no payments were due under the Note proffer by Plaintiff. Plaintiff prepared the Note and elected to provide for zero interest. Thus the Note being interest only payments for the first five (5) years no payments were due. No payments being due, no default occurred. The Court erred in so concluding.

13. The Court erred in admitting into evidence the demand letter of Wells Fargo. The again the single witness offered by Plaintiff had no relationship with Wells Fargo. The witness could not and did not lay the proper foundation pursuant to Rules 603 or 803, SCRE.

Based on the foregoing, which is subject to amendment once a final Oder of Foreclosure is presented, the within action should be dismissed.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd, Ste. B
Mount Pleasant, SC 29464
(843) 971-6053
Sammie@maryamoldlaw.com
Attorney for Defendant

June 26, 2013
Mt. Pleasant, SC

CERTIFICATE OF MAILING

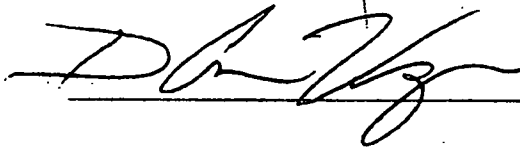
The undersigned, Assistant to Attorney Mary Leigh Arnold, Attorney for Defendant hereby certifies that on the 28 day of June, 2013, she caused a copy of the **MOTION TO RECONSIDER** to be placed in an envelope with first-class postage, prepaid, and mailed to the following:

The Honorable Mikell R. Scarborough
MASTER IN EQUITY- CHARLESTON COUNTY
100 Broad Street, Ste. 266
Charleston, SC 29401

Jason D. Wyman
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202

2013 JUN 28 PM 4:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED



A MARY LEIGH ARNOLD P.A.

Attorney and Counselor at Law

749 Johnnie Dodds Blvd
Suite B
Mount Pleasant, South Carolina
29464
T 843 971 6053
F 843 971 6055
Sammie@maryarnoldlaw.com

June 28, 2013

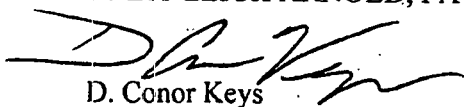
The Honorable Julie J. Armstrong
Clerk of Court Charleston County
100 Broad Street, Suite 106
Charleston, SC 29401

RE.: Selene RMOF REO Acquisition, LLC v. Melissa Furmanchik, et al.
Case No.: 2010-CP10-5825

Ms. Armstrong:

Please find enclosed Defendant's Motion for Reconsideration, in the above referenced matter, along with a check for the same. I would kindly request that you file the same.

MARY LEIGH ARNOLD, PA


D. Conor Keys

Enclosures:
(as stated)
CC:
Jason Wyman, Esquire

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Appendix000000130

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-5825

Selene RMOF REO Acquisitions LLC)

Plaintiff,)

vs.)

MELISSA FURMANCIK;
MASONBOROUGH AT PARK WEST
ASSOCIATION, INC.; WELLS FARGO
BANK, N.A.)

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Jason Wyman, Bar No. _____

Address:

P.O. Box 100200

Cola. S.C. 29202

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

MARY LEIGH ARNOLD, P.A., Bar No. 00419

Address:

749 Johnnie Dodds Blvd., Suite B

Mount Pleasant, S.C.

Phone: 843-971-6053 Fax 843-971-6055

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: _____

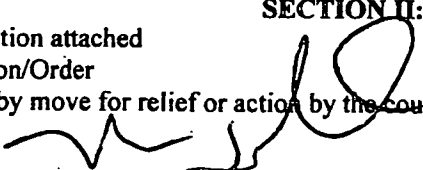
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

2/20/2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Selene RMOF REO Acquisition, LLC)
)
Plaintiff,)
)
v.)
)
Melissa Furmanchik; Masonborough At)
Park West Association, Inc.;)
Wells Fargo Bank, N.A.:)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS.
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-10-5825

MOTION FOR RECONSIDERATION
AND VACATE

FILED
2014 FEB 21 AM 8:48
JULIE J. ARMSTRONG
CLERK OF COURT

TO: THE HONORABLE MIKELL R. SCARBOROUGH, MASTER-IN-EQUITY,
CHARLESTON COUNTY AND ROGERS TOWNSEND THOMPSON, LLP,
ATTORNEYS FOR PLAINTIFF:

PLEASE TAKE NOTICE that the Defendant, Melissa Furmanchik (hereinafter "Defendant"), by and through her undersigned attorney will move before the Master-In-Equity for Charleston County, at chambers, Charleston County Courthouse, Charleston, South Carolina, at such place and time as the court may appoint, in order for the Court to reconsider that certain Order of Foreclosure, which appears by examination of the public record to have been filed on February 7, 2014 (hereinafter "Order"), but not received until February 12, 2014. Defendant makes this motion pursuant all applicable Rules of Civil Procedure including but not limited to Rules 7, 50, 52, 59, 60 and 71, SCRCP. The basis for said motion is as follows:

1. On June 20, 2013 a hearing was held before this Court. On July 11, 2013, this Court *sua sponte* issued an Order stating "after trial and review of defendant's Rule 59e, this court finds that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done

pursuant to Rule 50(d), SCRCF. This matter is to be reset for Monday, August 12 at 10:00 a.m.” This Court improperly relied on Rule 50(d), SCRCF. First no motion was made by Plaintiff pursuant to Rule 50, SCRCF. Second, Rule 50(d), SCRCF provides for a judgment notwithstanding the verdict. In order for Rule 50(d), SCRCF to be applicable here the Court would have had to rule in favor of the Defendant at the time of the June 20, 2013 hearing which it did not. Third, even if it were appropriate for this Court to act *sua sponte* (which Defendant contends it was not), the Court had to act within ten (10) days of the June 20, 2013 hearing. See *State v. Dicapua*, 680 S.E.2d 292, 383 S.C. 394 (S.C. 2009)(citing *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985) (“ The sole issue is whether a trial judge *ex mero motu* can grant a new trial on a ground not raised by a party. We hold he cannot.”)): See also, *Heins v. Heins*, 543 S.E.2d 224, 344 S.C. 146 (Ct. App. 2001)(a Family Court judge does not have the authority to alter or amend a judgment, *sua sponte*, once the judgment is more than 10-days-old). Lastly, and with all due respect to this Court by the Court on its own accord providing the Plaintiff with an opportunity to correct evidentiary issues and present additional evidence after it had closed its case, remove itself from being a neutral and placed itself in the role of an advocate on behalf of Plaintiff. This Court should not have provided for a new hearing for the benefit of Plaintiff to present additional evidence and to correct evidentiary issues presented at the time of the hearing, when Plaintiff had not sought that relief. This Court should have granted judgment in favor of Defendant due to lack of evidence and proof.

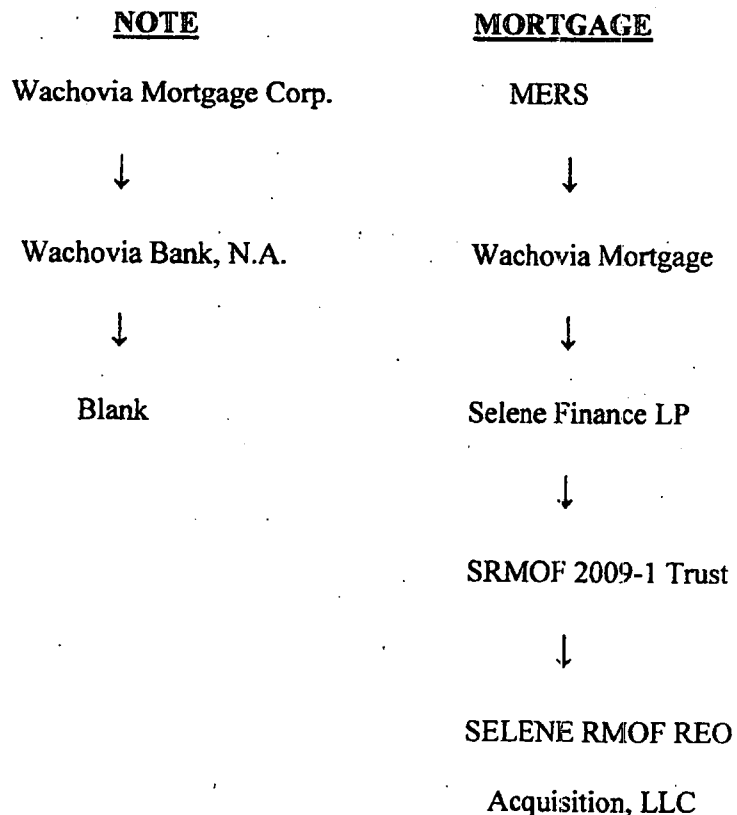
2. Plaintiff failed to establish the proper foundation for the introduction of a single exhibit it offered into evidence through Plaintiff’s witness Mamie Clark. (Plaintiff’s Exhibit 1 Note (First); Exhibit 2 Mortgage; Exhibits 3, 4, 5 and 6, Assignment of Mortgages; Exhibit 7

payment history, Exhibit 8, Wells Fargo Demand letter; Exhibit 9 Judgment Figures; Exhibit 2A Modification Agreement; Exhibit 2B exhibits to "Exhibit 2A" including a Second Note, Fixed/Adjustable Rate Rider, Addendum to Note for Interest Only Payments, and Interest Only Payment Rider; and Exhibit 2C which is a combination of Exhibits 2A and 2B)

Ms. Clark is an employee of Selene Finance, L. P. and holds the job title of Contested Default Case Manager. (Tr. P. 7). Ms. Clark testified she was authorized to testify on behalf of her company (Tr. P. 8), a company which is different from the named Plaintiff, Selence RMOF REO Acquisitions, LLC. (Tr. P. 9). Ms. Clark further testified as follows: she was not an employee of the originally named Plaintiff, Wachovia Mortgage Corporation (Tr. P. 32); she is not an employee of the substituted Plaintiff, Selence RMOF REO Acquisitions, LLC. (Tr. 33.); the allonge presented was not affixed to the Note offered as an exhibit (Tr. P. 33); the allonge was not prepared by her or anyone at Selene (Tr. P. 37); she was not the custodian of records for Selene Finance L. P. (Tr. P. 34, ln 4-16); the current owner of the note and mortgage was Selene RMOF REO Acquisition, LLC (Tr. P. 26); that she did not know the person who signed the note David Furmanchik nor could she identify his signature (Tr. P. 35); the Note presented, on the fifth page, has several endorsements one of which is marked void (Tr. P. 35); a second endorsement is marked canceled and she has no knowledge as to why it is marked canceled (Tr. P. 36); she had no knowledge or documentation that showed how the Note came into Selene's possession (Tr. P. 36); there is no endorsement on the Note from MERS (Tr. P. 38); there is no endorsement on the Note to Selene Finance L.P. (Tr. P. 38); there is no endorsement on the Note to SRMOF 2009-1 Trust (Tr. P. 38); there is no endorsement on the Note to

Selene RMOF REO Acquisitions, LLC (Tr. P. 38); that the Note identified as Exhibit 1 does not provide an interest rate (Tr. P. 39); that no interest would be owed under the Note identified as Exhibit 1 due to zero being specified as the interest rate (Tr. P. 41); the principle amount due is \$464,000 (Tr. P. 30); late charges assessed were \$1,232.42 (Tr. P. 30); interest from December 1, 2009 through June 20, 2013 is \$105,069.78 (Tr. P. 30); total tax charges are \$3,932.21 (Tr. P. 31); flood insurance chargers were \$11,727.77 (Tr. P. 31); property inspections totaled \$169 (Tr. P. 31); charges for BPO's and appraisals were \$200.00 (Tr. P. 31)

The sequential transfers of the Note and Mortgage admitted into evidence are illustrated below:



At time of the second hearing held on August 12, 2013, Ms. Clark was the only offered witness. Ms. Clark testified that Exhibit 2A was a mortgage modification dated August 31, 2006 (Tr. Vol. II, p. 9). She further testified that Exhibit 2C was a combination of Exhibits 2A and 2B. (Tr. Vol. II P. 13); that Mr. Furmanchik signed the mortgage modification but Mrs. Furmanchik had not (Tr. Vol. II P. 14-15); that the document starting on Page 265 is identified as and entitled as a Fixed Adjustable Rate Note which is not signed by Mrs. Furmanchik (Tr. Vol. II, P. 15); that the Fixed Adjustable Rate Note is a brand new note (Tr. Vol. II, P. 15-16); the new Fixed Adjustable Rate Note has no allonge (Tr. Vol. II, p. 16); the new Fixed Adjustable Rate Note has no endorsement (Tr. Vol. II, p. 16); and that Wachovia never endorsed or assigned the new Fixed Adjustable Rate Note to any other entity. (Tr. Vol. II. P. 16). This Court erred in admitting Plaintiff's exhibits over Defendant's objections.

A number of the South Carolina Rules of Evidence are relevant to explaining the foundation which should have been required to be laid down by Plaintiff's witness prior to testifying as to Plaintiff's Exhibits. Rule 602, SCRE, states: "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony." Rule 803(6), SCRE, states "A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness,

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” Rule 901, SCRE, states “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

In this case Plaintiff witness Plaintiff's witness did not testify in such a manner to lay a proper foundation for the admission of Plaintiff's Exhibits. The witness offered to testify, testified she was an employee of Selene Finance, LP. The witness acknowledged she was not an employee of the presently named Plaintiff, Wachovia, or Wells Fargo. The witness acknowledged the Note and Mortgage were originated by Wachovia Mortgage Corporation. The witness testified that the signature page of the Note contains several endorsements, such of which are marked void and/or cancelled, but she did not know why the endorsements were marked void and/or cancel. The witness testified that the allonge which Plaintiff alleges grants it title to the Note is not affixed to the Note. The witness testified that the documents in question were not created by Selene Finance, LP or Plaintiff. The witness testified she had no evidence or testimony that established the chain of title of Note. She offered no testimony which would establish how or when Plaintiff became in possession of the Note. Upon direct examination the witness testified that she is a default case manager whose duties include to “review loans where there are differences to attempt to resolve those issues” and testify at trials. Upon cross-examination the witness testified that she is not the custodian of records for Selene Finance, LP, then changes to testimony to state that her duties and functions do be the custodian of records for the documents in question. Plaintiff failed to establish the witness had the required personal knowledge as required by Rule 602, SCRE to authenticate the documents. See *Hundley ex rel. Hundley v.*

Rite Aid of South Carolina Inc., 339 S.C. 285, 529 S.E. 2d 45 (Ct. App. 2000)(“generally under Rule 602, SCRE [a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”)

Plaintiff failed to lay a proper foundation for the documents to be considered business records pursuant to Rule 803(6), SCRE, or that Plaintiff's witness could testify a custodian of records or other qualified witness pursuant to 803(6), SCRE. “A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in S.C. Code Section 19-5-510 or Rule 803(6), SCRE. Business records entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept...” *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007). The Court erred in admitting the exhibits offered by Plaintiff in contradiction to the provisions of Rule 803, SCRE. Neither a proper foundation nor an exception to hearsay was established by Plaintiff any document entered into evidence. Plaintiff's witness admitted that neither the Note nor Mortgage was originated by her employer or the entity for which she was testifying. (Exhibits 1 and 2). She had no knowledge as the assignments entered into evidence. (Exhibits 3, 4, 5 and 6). She offered no evidence of how the records were created or maintained, the source of the information, where maintained or when they were created. She certainly offered not a single shred of evidence that allowed for the admission of documents clearly created by Wells Fargo an entity with which she testified she had absolutely no relationship. (Exhibits 8 (Wells Fargo Demand letter) and 9 (Wells Fargo Account History)). The Court erred by admitting these documents into evidence.

The Court further erred in allowing Exhibit 2C into evidence at the continuation

hearing or reopening hearing, but assuming for the sake of argument that Plaintiff did seek to admit the Exhibit 2C through evidence of a proper witness at the August 12, 2013 hearing, said evidence should not have been admitted because Plaintiff did not produce the original. Rule 1002, SCRE, states "[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." Rule 1003, SCRE, states "A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." In this case both a genuine question as to authenticity of the original and circumstance that it would be unfair to admit the duplicate in lieu of the original are both present. The Court erred by admitting a Modification Agreement which Plaintiff's witness did not testify to in the original hearing. Further the Court erred by admitting a second note which is separate and distinct from the first note which certainly raises issues as to its authenticity.

Finally as the court noted in the August hearing "Did we go into the document 2B then? That was the one in issue? . . . 2B is the one I let in and we never did talk about. That's the only reason I reopened this thing, is to talk about 2B." However, then the Court asks "Is that the original?" Plaintiff states that it is not, saying "The original we're waiting on in West Columbia." Here there are clearly questions as to authenticity, it would be highly prejudicial to accept a duplicate, Plaintiff was well aware the documents were the remaining issue, and yet with over a month in between the two hearing Plaintiff failed to present the original documents at the second hearing.

This Court erred by relying on the case of *Midfirst Bank vs. Oklahoma*

Savings and Loan Association, 893 F. Supp. 1304 (D.S.C. 1944). A district court case decision has no binding authority on this Court. The cases of *High v. High*, 389 S.C. 226, 697 S.E. 2d. 690 (Ct. App. 2010); and *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007) are persuasive and binding. Clearly Plaintiff did not establish the elements set forth in *High* or *Rice* and it was an abuse of discretion for this Court to enter the documents into evidence.

3. Court erred in determining Plaintiff had a right to enforce the negotiable instrument and had standing as the real party in interest. A holder is a person in possession of instrument drawn, issued, transferred, or indorsed to him or to his order or to bearer or in blank". S.C. Code An. §36-1-201(20)(2003). "However, possession is not necessarily sufficient to make one a holder. The payee is always a holder if the payee has possession. Whether other persons qualify as holder depends upon whether the instrument initially is payable to order or payable to bearer, and whether the instrument has been endorsed. Accordingly, a third party must prove both physical possession and the right to enforcement either through either a proper indorsement or transfer by negotiation. See *Bank of New York vs. Romero*, Op. No. _____ (Feb. 13, 2013, S.Ct. N. M.)(see attached opinion).

The Note presented as Exhibit "1" was initially made in favor of Wachovia Mortgage Corporation. As testified by Plaintiff's witness, the last page of the Note contains several endorsements which are either cancelled or marked void. The one endorsement not altered is undated and from Wachovia Mortgage to Wachovia Bank, N.A. (n/k/a Wells Fargo). Accompanying the Note is an Allonge. The Allonge is not affixed to the Note. No testimony was offered that it was to be affixed. The Allonge purports to transfer the Note in

blank from Wells Fargo. No other endorsements or allonge exist. The Note does not have sufficient endorsements to accomplish transfer to the now named Plaintiff. The evidence is completely lacking to establish Plaintiff is the holder of the Note. The Court erred in determining Plaintiff is the holder.

Additionally the Modification submitted at the time of the second hearing contains a complete Fixed Adjustable Rate Note. There is no endorsement on this document. Thus, to Court erred in allowing judgment on a note that there is not one iota of evidence that establishes it was endorsed to anyone much less the Plaintiff.

4. Where a negotiable note is secured by mortgage, the note and mortgage are inseparable, and the assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity. *Carpenter v. Longan*, 83 U.S. 271, 21 L. Ed. 313, (1872); *In re Leisure Time Sports, Inc.* 194 B.R. 859, 861 (9th Cir. 1996) (stating that “[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures” and that, “[i]f the debt is not transferred, neither is the security interest”); *Kelley v. Upshaw*, 39 Cal. 2d 179, 192 (1952) (stating that assigning only the deed without a transfer of the promissory note is completely ineffective); see also Restatement (3d) of Property (Mortgages) § 5.4 (stating that “[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the *obligation* that the mortgage secures”); *South Carolina Nat. Bank v. Halter*, 293 S.C. 121, 359 S.E.2d 74 (S.C.App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee, *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930), absent some indication that the parties also intended to transfer the debt. 59 C.J.S. Mortgages Section 359 (1949)).

The transfer of the Note and Mortgage do not take the same path. The independent transfers of the Mortgage are nugatory. The Plaintiff here has not rights to enforce the Mortgage and lacks standing. The Court erred in determining the now named Plaintiff has the right to enforce the Note and Mortgage.

Based on the foregoing, which is subject to amendment once a final Order of Foreclosure is presented, the within action should be dismissed.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

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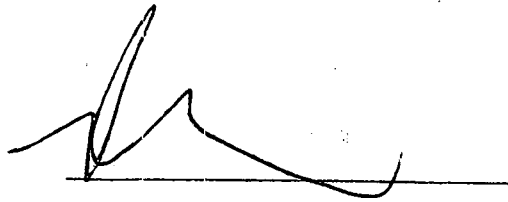
February 20, 2014
Mt. Pleasant, SC

CERTIFICATE OF MAILING

The undersigned, Assistant to Attorney Mary Leigh Arnold, Attorney for Defendant hereby certifies that on the 20 day of February, 2014, she caused a copy of the **MOTION TO RECONSIDER AND VACATE** to be placed in an envelope with first-class postage, prepaid, and mailed to the following:

The Honorable Mikell R. Scarborough
MASTER IN EQUITY- CHARLESTON COUNTY
100 Broad Street, Ste. 266
Charleston, SC 29401

Jason D. Wyman
Rogers Townsend & Thomas, PC
P.O. Box 100200
Columbia, SC 29202

A handwritten signature in black ink, appearing to be 'J. Wyman', is written over a horizontal line.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: February 13, 2014

Docket No. 33,224

**BANK OF NEW YORK as Trustee for POPULAR
FINANCIAL SERVICES MORTGAGE/PASS
THROUGH CERTIFICATE SERIES #2006,**

Plaintiff-Respondent,

v.

**JOSEPH A. ROMERO and MARY ROMERO,
a/k/a MARY O. ROMERO, a/k/a MARIA ROMERO,**

Defendants-Petitioners.

ORIGINAL APPEAL ON CERTIORARI

James A. Hall, District Judge

Joshua R. Simms, P.C.
Joshua R. Simms
Albuquerque, NM

Frederick M. Rowe
Daniel Yohalem
Katherine Elizabeth Murray
Santa Fe, NM

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Nancy Ana Garner
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for Amicus Curiae Civic Amici

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Edward R. Ricco
John P. Burton
Albuquerque, NM

James J. White
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for Amicus Curiae New Mexico Bankers Association

OPINION

DANIELS, Justice.

{1} We granted certiorari to review recurring procedural and substantive issues in home mortgage foreclosure actions. We hold that the Bank of New York did not establish its lawful standing in this case to file a home mortgage foreclosure action. We also hold that a borrower's ability to repay a home mortgage loan is one of the "borrower's circumstances" that lenders and courts must consider in determining compliance with the New Mexico Home Loan Protection Act, NMSA 1978, §§ 58-21A-1 to -14 (2003, as amended through 2009) (the HLP), which prohibits home mortgage refinancing that does not provide a reasonable, tangible net benefit to the borrower. Finally, we hold that the HLP is not preempted by federal law. We reverse the Court of Appeals and district court and remand to the district court with instructions to vacate its foreclosure judgment and to dismiss the Bank of New York's foreclosure action for lack of standing.

I. FACTUAL AND PROCEDURAL BACKGROUND

{2} On June 26, 2006, Joseph and Mary Romero signed a promissory note with Equity One, Inc. to borrow \$227,240 to refinance their Chimayo home. As security for the loan, the Romeros signed a mortgage contract with the Mortgage Electronic Registration Systems

(MERS), as the nominee for Equity One, pledging their home as collateral for the loan.

{3} The Romeros allege that Equity One cold-called them and urged them to refinance their home for access to their home's equity. The terms of the Equity One loan were not an improvement over their current home loan: Equity One's interest rate was higher (starting at 8.1 percent and increasing to 14 percent compared to 7.71 percent), the Romeros' monthly payments were greater (\$1,683.28 compared to \$1,256.39), and the loan amount due was greater (\$227,240 compared to \$176,450). However, the Romeros would receive a cash payout of nearly \$43,000, which would cover about \$12,000 in new closing costs and provide them with about \$30,000 to pay off other debts.

{4} Both parties agree that the Romeros' loan was a no income, no assets loan (NINA) and that documentation of their income was never requested or verified. The Romeros owned a music store in Espanola, New Mexico, and Mr. Romero allegedly told Equity One that the store provided him an income of \$5,600 a month. Also known as liar loans because they are based solely on the professed income of the self-employed, NINA loans have since been specifically prohibited in New Mexico by a 2009 amendment to the HLPa and also by federal law. *See* NMSA 1978, § 58-21A-4(C)-(D) (requiring a creditor to document a borrower's ability to repay); 15 U.S.C.A. § 1639c(a)(1) (2010) (requiring creditors to make a reasonable and good-faith effort to determine a borrower's ability to repay); *see also* Pub. L. No. 111-203, § 1411(a)(1), 124 Stat. 2142 (2010) (same). The Romeros stated that they did not read the note or the mortgage contracts thoroughly before signing them, allegedly because of limited time for review, the complexity of the documents, and their own limited education. They admit having signed a document prepared by Equity One reciting that the home loan provided them a "reasonable tangible net benefit" based on the \$30,000 cash payout.

{5} The Romeros soon became delinquent on their increased loan payments. On April 1, 2008, a third party—the Bank of New York, identifying itself as a trustee for Popular Financial Services Mortgage—filed a complaint in the First Judicial District Court seeking foreclosure on the Romeros' home and claiming to be the holder of the Romeros' note and mortgage with the right of enforcement.

{6} The Romeros responded by arguing, among other things, that the Bank of New York lacked standing to foreclose because nothing in the complaint established how the Bank of New York was a holder of the note and mortgage contracts the Romeros signed with Equity One. According to the Romeros, Securities and Exchange Commission filings showed that their loan certificate series was once owned by Popular ABS Mortgage and not Popular Financial Services Mortgage and that the holder was JPMorgan Chase. The Romeros also raised several counterclaims, only one of which is relevant to this appeal: that the loan violated the antiflipping provisions of the New Mexico HLPa, Section 58-21A-4(B) (2003).

{7} The Bank responded by providing (1) a document showing that MERS as a nominee for Equity One assigned the Romeros' mortgage to the Bank of New York on June 25, 2008,

three months after the Bank filed the foreclosure complaint and (2) the affidavit of Ann Kelley, senior vice president for Litton Loan Servicing LP, stating that Equity One intended to transfer the note and assign the mortgage to the Bank of New York prior to the Bank's filing of the foreclosure complaint. However, the Bank of New York admits that Kelley's employer Litton Loan Servicing did not begin servicing the Romeros' loan until November 1, 2008, seven months after the foreclosure complaint was filed in district court.

{8} At a bench trial, Kevin Flannigan, a senior litigation processor for Litton Loan Servicing, testified on behalf of the Bank of New York. Flannigan asserted that the copies of the note and mortgage admitted as trial evidence by the Bank of New York were copies of the originals and also testified that the Bank of New York had physical possession of both the note and mortgage at the time it filed the foreclosure complaint.

{9} The Romeros objected to Flannigan's testimony, arguing that he lacked personal knowledge to make these claims given that Litton Loan Servicing was not a servicer for the Bank of New York until after the foreclosure complaint was filed and the MERS assignment occurred. The district court allowed the testimony based on the business records exception because Flannigan was the present custodian of records.

{10} The Romeros also pointed out that the copy of the "original" note Flannigan purportedly authenticated was different from the "original" note attached to the Bank of New York's foreclosure complaint. While the note attached to the complaint as a true copy was not indorsed, the "original" admitted at trial was indorsed twice: first, with a blank indorsement by Equity One and second, with a special indorsement made payable to JPMorgan Chase. When asked whether either of those two indorsements included the Bank of New York, Flannigan conceded that neither did, but he claimed that his review of the records indicated the note had been transferred to the Bank of New York based on a pooling and servicing agreement document that was never entered into evidence.

{11} The district court also heard testimony on the circumstances of the loan, the points and fees charged, and the calculus used to determine a reasonable, tangible net benefit. Following trial, the district court issued a written order finding that the Flannigan testimony and the assignment of the mortgage established the Bank of New York as the proper holder of the Romeros' note and concluding that the loan did not violate the HLPAs because the cash payment to the Romeros provided a reasonable, tangible net benefit. The district court also determined that because the Bank of New York was a national bank, federal law preempted the protections of the HLPAs.

{12} On appeal, the Court of Appeals affirmed the district court's rulings that the Bank of New York had standing to foreclose and that the HLPAs had not been violated but determined as a result of the latter ruling that it was not necessary to address whether federal law preempted the HLPAs. *See Bank of N.Y. v. Romero*, 2011-NMCA-110, ¶ 6, 150 N.M. 769, 266 P.3d 638 ("Because we conclude that substantial evidence exists for each of the district court's findings and conclusions, and we affirm on those grounds, we do not address

the Romeros' preemption argument.").

{13} We granted the Romeros' petition for writ of certiorari.

II. DISCUSSION

A. The Bank of New York Lacks Standing to Foreclose

1. Preservation

{14} As a preliminary matter, we address the Bank of New York's argument that the Romeros waived their challenge of the Bank's standing in this Court and the Court of Appeals by failing to provide the evidentiary support required by Rule 12-213(A)(3) NMRA. *See Bank of N.Y.*, 2011-NMCA-110, ¶¶ 20-21 (dismissing the Romeros' challenge to standing as without authority and based primarily on the note's bearer-stamp assignment to JPMorgan Chase); *see also* Rule 12-213(A)(3) ("A contention that a verdict, judgment or finding of fact is not supported by substantial evidence shall be deemed waived unless the summary of proceedings includes the substance of the evidence bearing upon the proposition.").

{15} We have recognized that "the lack of [standing] is a potential jurisdictional defect which 'may not be waived and may be raised at any stage of the proceedings, even sua sponte by the appellate court.'" *Gunaji v. Macias*, 2001-NMSC-028, ¶ 20, 130 N.M. 734, 31 P.3d 1008 (citation omitted). While we disagree that the Romeros waived their standing claim, because their challenge has been and remains largely based on the note's indorsement to JPMorgan Chase, whether the Romeros failed to fully develop their standing argument before the Court of Appeals is immaterial. This Court may reach the issue of standing based on prudential concerns. *See New Energy Economy, Inc. v. Shoobridge*, 2010-NMSC-049, ¶ 16, 149 N.M. 42, 243 P.3d 746 ("Indeed, 'prudential rules' of judicial self-governance, like standing, ripeness, and mootness, are 'founded in concern about the proper—and properly limited—role of courts in a democratic society' and are always relevant concerns." (citation omitted)). Accordingly, we address the merits of the standing challenge.

2. Standards of Review

{16} The Bank argues that under a substantial evidence standard of review, it presented sufficient evidence to the district court that it had the right to enforce the Romeros' promissory note based primarily on its possession of the note, the June 25, 2008, assignment letter by MERS, and the trial testimony of Kevin Flannigan. By contrast, the Romeros argue that none of the Bank's evidence demonstrates standing because (1) possession alone is insufficient, (2) the "original" note introduced by the Bank of New York at trial with the two undated indorsements includes a special indorsement to JPMorgan Chase, which cannot be ignored in favor of the blank indorsement, (3) the June 25, 2008, assignment letter from MERS occurred *after* the Bank of New York filed its complaint, and as a mere assignment

of the mortgage does not act as a lawful transfer of the note, and (4) the statements by Ann Kelley and Kevin Flannigan are inadmissible because both lack personal knowledge given that Litton Loan Servicing did not begin servicing loans for the Bank of New York until seven months after the foreclosure complaint was filed and after the purported transfer of the loan occurred. For the following reasons, we agree with the Romeros.

{17} The Bank of New York does not dispute that it was required to demonstrate under New Mexico's Uniform Commercial Code (UCC) that it had standing to bring a foreclosure action at the time it filed suit. *See* NMSA 1978, § 55-3-301 (1992) (defining who is entitled to enforce a negotiable interest such as a note); *see also* NMSA 1978, § 55-3-104(a), (b), (e) (1992) (identifying a promissory note as a negotiable instrument); *ACLU of N.M. v. City of Albuquerque*, 2008-NMSC-045, ¶ 9 n.1, 144 N.M. 471, 188 P.3d 1222 (recognizing standing as a jurisdictional prerequisite for a statutory cause of action); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-71 n.5 (1992) ("[S]tanding is to be determined as of the commencement of suit."); *accord* 55 Am. Jur. 2d *Mortgages* § 584 (2009) ("A plaintiff has no foundation in law or fact to foreclose upon a mortgage in which the plaintiff has no legal or equitable interest."). One reason for such a requirement is simple: "One who is not a party to a contract cannot maintain a suit upon it. If [the entity] was a successor in interest to a party on the [contract], it was incumbent upon it to prove this to the court." *L.R. Prop. Mgmt., Inc. v. Grebe*, 1981-NMSC-035, ¶ 7, 96 N.M. 22, 627 P.2d 864 (citation omitted). The Bank of New York had the burden of establishing timely ownership of the note and the mortgage to support its entitlement to pursue a foreclosure action. *See Gonzales v. Tama*, 1988-NMSC-016, ¶ 7, 106 N.M. 737, 749 P.2d 1116 ("One who holds a note secured by a mortgage has two separate and independent remedies, which he may pursue successively or concurrently; one is on the note against the person and property of the debtor, and the other is by foreclosure to enforce the mortgage lien upon his real estate." (internal quotation marks and citation omitted)).

{18} Because the district court determined after a trial on the issue that the Bank of New York established standing as a factual matter, we review the district court's determination under a substantial evidence standard of review. *See Sims v. Sims*, 1996-NMSC-078, ¶ 65, 122 N.M. 618, 930 P.2d 153 ("We have many times stated the standard of review of a trial court's findings of fact: Findings of fact made by the district court will not be disturbed if they are supported by substantial evidence."). "Substantial evidence" means relevant evidence that a reasonable mind could accept as adequate to support a conclusion." *Id.* "This Court will resolve all disputed facts and indulge all reasonable inferences in favor of the trial court's findings." *Id.* However, "[w]hen the resolution of the issue depends upon the interpretation of documentary evidence, this Court is in as good a position as the trial court to interpret the evidence." *Kirkpatrick v. Introspect Healthcare Corp.*, 1992-NMSC-070, ¶ 14, 114 N.M. 706, 845 P.2d 800; *see also United Nuclear Corp. v. Gen. Atomic Co.*, 1979-NMSC-036, ¶ 62, 93 N.M. 105, 597 P.2d 290 ("Where all or substantially all of the evidence on a material issue is documentary or by deposition, the Supreme Court will examine and weigh it, and will review the record, giving some weight to the findings of the trial judge on such issue." (citation omitted)).

3. None of the Bank's Evidence Demonstrates Standing to Foreclose

{19} The Bank of New York argues that in order to demonstrate standing, it was required to prove that before it filed suit, it either (1) had physical possession of the Romeros' note indorsed to it or indorsed in blank or (2) received the note with the right to enforcement, as required by the UCC. See § 55-3-301 (defining "[p]erson entitled to enforce" a negotiable instrument). While we agree with the Bank that our state's UCC governs how a party becomes legally entitled to enforce a negotiable instrument such as the note for a home loan, we disagree that the Bank put forth such evidence.

a. Possession of a Note Specially Indorsed to JPMorgan Chase Does Not Establish the Bank of New York as a Holder

{20} Section 55-3-301 of the UCC provides three ways in which a third party can enforce a negotiable instrument such as a note. *Id.* ("Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the [lost, destroyed, stolen, or mistakenly transferred] instrument pursuant to [certain UCC enforcement provisions]."); see also § 55-3-104(a)(1), (b), (e) (defining "negotiable instrument" as including a "note" made "payable to bearer or to order"). Because the Bank's arguments rest on the fact that it was in physical possession of the Romeros' note, we need to consider only the first two categories of eligibility to enforce under Section 55-3-301.

{21} The UCC defines the first type of "person entitled to enforce" a note—the "holder" of the instrument—as "the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." NMSA 1978, § 55-1-201(b)(21)(A) (2005); see also Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code*, § 12.02(1) at 12-13 to 12-15 (2012) ("The first requirement of being a holder is possession of the instrument. However, possession is not necessarily sufficient to make one a holder. . . . The payee is always a holder if the payee has possession. Whether other persons qualify as a holder depends upon whether the instrument initially is payable to order or payable to bearer, and whether the instrument has been indorsed." (footnotes omitted)). Accordingly, a third party must prove both physical possession *and* the right to enforcement through either a proper indorsement or a transfer by negotiation. See NMSA 1978, § 55-3-201(a) (1992) ("Negotiation" means a transfer of possession . . . of an instrument by a person other than the issuer to a person who thereby becomes its holder."). Because in this case the Romeros' note was clearly made payable to the order of Equity One, we must determine whether the Bank provided sufficient evidence of how it became a "holder" by either an indorsement or transfer.

{22} Without explanation, the note introduced at trial differed significantly from the original note attached to the foreclosure complaint, despite testimony at trial that the Bank of New York had physical possession of the Romeros' note from the time the foreclosure complaint was filed on April 1, 2008. Neither the unindorsed note nor the twice-indorsed

note establishes the Bank as a holder.

{23} Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it. See NMSA 1978, § 55-3-109 cmt. 1 (1992) ("An instrument that is payable to an identified person cannot be negotiated without the indorsement of the identified person."). The Bank's possession of the Romeros' unindorsed note made payable to Equity One does not establish the Bank's entitlement to enforcement.

{24} The Bank's possession of a note with two indorsements, one of which restricts payment to JPMorgan Chase, also does not establish the Bank's entitlement to enforcement. The UCC recognizes two types of indorsements for the purposes of negotiating an instrument. A blank indorsement, as its name suggests, does not identify a person to whom the instrument is payable but instead makes it payable to anyone who holds it as bearer paper. See NMSA 1978, § 55-3-205(b) (1992) ("If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a 'blank indorsement.'"). "When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed." *Id.*

{25} By contrast, a special indorsement "identifies a person to whom it makes the instrument payable." Section 55-3-205(a). "When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person." *Id.*; accord Baxter Dunaway, *Law of Distressed Real Estate*, § 24:105 (2011) ("When an instrument is payable to an identified person, only that person may be the holder. A person in possession of an instrument not made payable to his order can only become a holder by obtaining the prior holder's indorsement.").

{26} The trial copy of the Romeros' note contained two undated indorsements: a blank indorsement by Equity One and a special indorsement by Equity One to JPMorgan Chase. Although we agree with the Bank that if the Romeros' note contained only a blank indorsement from Equity One, that blank indorsement would have established the Bank as a holder because the Bank would have been in possession of bearer paper, that is not the situation before us. The Bank's copy of the Romeros' note contained two indorsements, and the restrictive, special indorsement to JPMorgan Chase establishes JPMorgan Chase as the proper holder of the Romeros' note absent some evidence by JPMorgan Chase to the contrary. See *Cadle Co. v. Wallach Concrete, Inc.*, 1995-NMSC-039, ¶ 14, 120 N.M. 56, 897 P.2d 1104 ("[A] special indorser . . . has the right to direct the payment and to require the indorsement of his indorsee as evidence of the satisfaction of own obligation. Without such an indorsement, a transferee cannot qualify as a holder in due course." (omission in original) (internal quotation marks and citation omitted)). Because JPMorgan Chase did not subsequently indorse the note, either in blank or to the Bank of New York, the Bank of New York cannot establish itself as the holder of the Romeros' note simply by possession.

{27} Rather than demonstrate timely ownership of the note and mortgage through

JPMorgan Chase, the Bank of New York urges this Court to infer that the special indorsement was a mistake and that we should rely only on the blank indorsement. We are not persuaded. The Bank provides no authority and we know of none that exists to support its argument that the payment restrictions created by a special indorsement can be ignored contrary to our long-held rules on indorsements and the rights they create. *See, e.g., id.* (rejecting each of two entities as a holder because a note lacked the requisite indorsement following a special indorsement); *accord* NMSA 1978, § 55-3-204(c) (1992) (“For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.”).

{28} Accordingly, we conclude that the Bank of New York’s possession of the twice-indorsed note restricting payment to JPMorgan Chase does not establish the Bank of New York as a holder with the right of enforcement.

b. None of the Bank of New York’s Evidence Demonstrates a Transfer of the Romeros’ Note

{29} The second type of “person entitled to enforce” a note under the UCC is a third party in possession who demonstrates that it was given the rights of a holder. *See* § 55-3-301 (“‘Person entitled to enforce’ an instrument means . . . a nonholder in possession of the instrument who has the rights of a holder.”). This provision requires a nonholder to prove both possession and the transfer of such rights. *See* NMSA 1978, § 55-3-203(a)-(b) (1992) (defining what constitutes a transfer and vesting in a transferee only those rights held by the transferor). A claimed transferee must establish its right to enforce the note. *See* § 55-3-203 cmt. 2 (“[An] instrument [unindorsed upon transfer], by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it.”).

{30} Under this second category, the Bank of New York relies on the testimony of Kevin Flannigan, an employee of Litton Loan Servicing who maintained that his review of loan servicing records indicated that the Bank of New York was the transferee of the note. The Romeros objected to Flannigan’s testimony at trial, an objection that the district court overruled under the business records exception. We agree with the Romeros that Flannigan’s testimony was inadmissible and does not establish a proper transfer.

{31} As the Bank of New York admits, Flannigan’s employer, Litton Loan Servicing, did not begin working for the Bank of New York as its servicing agent until November 1, 2008—seven months after the April 1, 2008, foreclosure complaint was filed. Prior to this date, Popular Mortgage Servicing, Inc. serviced the Bank of New York’s loans. Flannigan had no personal knowledge to support his testimony that transfer of the Romeros’ note to the Bank of New York prior to the filing of the foreclosure complaint was proper because Flannigan did not yet work for the Bank of New York. *See* Rule 11-602 NMRA (“A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the

witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony."). We make a similar conclusion about the affidavit of Ann Kelley, who also testified about the status of the Romeros' loan based on her work for Litton Loan Servicing. As with Flannigan's testimony, such statements by Kelley were inadmissible because they lacked personal knowledge.

{32} When pressed about Flannigan's basis of knowledge on cross-examination, Flannigan merely stated that "our records do indicate" the Bank of New York as the holder of the note based on "a pooling and servicing agreement." No such business record itself was offered or admitted as a business records hearsay exception. *See* Rule 11-803(F) NMRA (2007) (naming this category of hearsay exceptions as "records of regularly conducted activity").

{33} The district court erred in admitting the testimony of Flannigan as a custodian of records under the exception to the inadmissibility of hearsay for "business records" that are made in the regular course of business and are generally admissible at trial under certain conditions. *See* Rule 11-803(F) (2007) (citing the version of the rule in effect at the time of trial). The business records exception allows the records themselves to be admissible but not simply statements about the purported contents of the records. *See State v. Cofer*, 2011-NMCA-085, ¶ 17, 150 N.M. 483, 261 P.3d 1115 (holding that, based on the plain language of Rule 11-803(F) (2007), "it is clear that the business records exception requires some form of document that satisfies the rule's foundational elements to be offered and admitted into evidence and that testimony alone does not qualify under this exception to the hearsay rule" and concluding that "testimony regarding the contents of business records, unsupported by the records themselves, by one without personal knowledge of the facts constitutes inadmissible hearsay." (citation omitted)). Neither Flannigan's testimony nor Kelley's affidavit can substantiate the existence of documents evidencing a transfer if those documents are not entered into evidence. Accordingly, Flannigan's trial testimony cannot establish that the Romeros' note was transferred to the Bank of New York.

{34} We also reject the Bank's argument that it can enforce the Romeros' note because it was assigned the mortgage by MERS. An assignment of a mortgage vests only those rights to the mortgage that were vested in the assigning entity and nothing more. *See* § 55-3-203(b) ("Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course."); *accord* Hart & Willier, *supra*, § 12.03(2) at 12-27 ("Th[is] shelter rule puts the transferee in the shoes of the transferor.").

{35} Here, as Equity One and MERS explained to the district court in a joint filing seeking to be dismissed as third parties to the Romeros' counterclaims, "MERS . . . is merely the nominee for Equity One, Inc. in the underlying Mortgage and was not the actual lender. MERS is a national electronic registry which keeps track of the changes in servicing and ownership of mortgage loans." *See also* Christopher L. Peterson, *Foreclosure, Subprime Mortgage Lending, and the Mortgage Electronic Registration System*, 78 U. Cin. L. Rev.

1359, 1361-63 (2010) (explaining that MERS was created by the banking industry to electronically track and record mortgages in order to avoid local and state recording fees). The Romeros' mortgage contract reiterates the MERS role, describing "MERS [a]s a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns." A "nominee" is defined as "[a] person designated to act in place of another, usu. in a very limited way." *Black's Law Dictionary* 1149 (9th ed. 2009). As a nominee for Equity One on the mortgage contract, MERS could assign the mortgage but lacked any authority to assign the Romeros' note. Although this Court has never explicitly ruled on the issue of whether the assignment of a mortgage could carry with it the transfer of a note, we have long recognized the separate functions that note and mortgage contracts perform in foreclosure actions. See *First Nat'l Bank of Belen v. Luce*, 1974-NMSC-098, ¶ 8, 87 N.M. 94, 529 P.2d 760 (holding that because the assignment of a mortgage to a bank did not convey an interest in the loan contract, the bank was not entitled to foreclose on the mortgage); *Simson v. Bilderbeck, Inc.*, 1966-NMSC-170, ¶¶ 13-14, 76 N.M. 667, 417 P.2d 803 (explaining that "[t]he right of the assignee to enforce the mortgage is dependent upon his right to enforce the note" and noting that "[b]oth the note and mortgage were assigned to plaintiff. Having a right under the statute to enforce the note, he could foreclose the mortgage."); accord 55 Am. Jur. 2d *Mortgages* § 584 ("A mortgage securing the repayment of a promissory note follows the note, and thus, only the rightful owner of the note has the right to enforce the mortgage."); Dunaway, *supra*, § 24:18 ("The mortgage only secures the payment of the debt, has no life independent of the debt, and cannot be separately transferred. If the intent of the lender is to transfer only the security interest (the mortgage), this cannot legally be done and the transfer of the mortgage without the debt would be a nullity."). These separate contractual functions—where the note is the loan and the mortgage is a pledged security for that loan—cannot be ignored simply by the advent of modern technology and the MERS electronic mortgage registry system.

{36} The MERS assignment fails for several additional reasons. First, it does not explain the conflicting special indorsement of the note to JPMorgan Chase. Second, its assignment of the mortgage to the Bank of New York on June 25, 2008, three months after the foreclosure complaint was filed, does not establish a proper transfer prior to the filing date of the foreclosure suit. Third, except for the inadmissible affidavit of Ann Kelley and trial testimony of Kevin Flannigan, nothing in the record substantiates the Bank's claim that the MERS assignment was meant to memorialize an earlier transfer to the Bank of New York. Accordingly, neither the MERS assignment nor Flannigan's testimony establish the Bank of New York as a nonholder in possession with the rights of a holder by transfer.

c. Failure of Another Entity to Claim Ownership of the Romeros' Note Does Not Make the Bank of New York a Holder

{37} Finally, the Bank of New York urges this Court to adopt the district court's inference that if the Bank was not the proper holder of the Romeros' note, then third-party-defendant Equity One would have claimed to be the rightful holder, and Equity One made no such claim.

{38} The simple fact that Equity One does not claim ownership of the Romeros' note does not establish that the note was properly transferred to the Bank of New York. In fact, the evidence in the record indicates that JPMorgan Chase may be the lawful holder of the Romeros' note, as reflected in the note's special indorsement. As this Court has recognized,

The whole purpose of the concept of a negotiable instrument under Article 3 [of the UCC] is to declare that transferees in the ordinary course of business are only to be held liable for information appearing in the instrument itself and will not be expected to know of any limitations on negotiability or changes in terms, etc., contained in any separate documents.

First State Bank at Gallup v. Clark, 1977-NMSC-088, ¶ 10, 91 N.M. 117, 570 P.2d 1144. In addition, the UCC clarifies that the Bank of New York is not afforded any assumption of enforcement without proper documentation:

Because the transferee is not a holder, there is no presumption under Section [55-]3-308 [(1992) (entitling a holder in due course to payment by production and upon signature)] that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it.

Section 55-3-203 cmt. 2. Because the Bank of New York did not introduce any evidence demonstrating that it was a party with the right to enforce the Romeros' note either by an indorsement or proper transfer, we hold that the Bank's standing to foreclose on the Romeros' mortgage was not supported by substantial evidence, and we reverse the contrary determinations of the courts below.

B. A Lender Must Consider a Borrower's Ability to Repay a Home Mortgage Loan in Determining Whether the Loan Provides a Reasonable, Tangible Net Benefit, as Required by the New Mexico HLPAs

{39} For reasons that are not clear in the record, the Romeros did not appeal the district court's judgment in favor of the original lender, Equity One, on the Romeros' claims that Equity One violated the HLPAs. The Court of Appeals addressed the HLPAs violation issue in the context of the Romeros' contentions that the alleged violation constituted a defense to the foreclosure complaint of the Bank of New York by affirming the district court's favorable ruling on the Bank of New York's complaint. As a result of our holding that the Bank of New York has not established standing to bring a foreclosure action, the issue of HLPAs violation is now moot in this case. But because it is an issue that is likely to be addressed again in future attempts by whichever institution may be able to establish standing to foreclose on the Romero home and because it involves a statutory interpretation issue of substantial public importance in many other cases, we address the conclusion of both the

Plaintiff,)
VS.) 2010-CP-10-5825
A FURMANCHIK, ET AL.,)
Defendant.)

 COPY

A P P E A R A N C E S

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00 155

1 (Hearing commenced.)

2 THE COURT: All right. This afternoon we've
3 got the case of Selene Acquisitions versus Melissa
4 Furmanchik.

5 MS. ARNOLD: Yes, Your Honor.

6 MR. WYMAN: Yes, Your Honor.

7 THE COURT: Today we were set for motions and
8 pretrial. Mr. Wyman for the Plaintiffs, and
9 Ms. Arnold for the Defendant; 2010-CP-10-5825.

10 MS. ARNOLD: There are two motions on behalf
11 of the Defendant. One motion is the Motion to
12 Compel. The other motion is a Motion For Summary
13 Judgment.

14 I've got for you -- this is the Memorandum in
15 support of the Motion For Summary Judgment. If I
16 may, I'll just go through a little bit of the
17 facts.

18 This is an issue on standing and ownership of
19 the Note and Mortgage, Your Honor; a number of
20 exhibits have been attached. We've engaged in
21 some discovery. We have received some certain
22 documentation, and what I've done in the back for
23 you, is marked a number of exhibits.

24 The first Exhibit A to the motion is a copy
25 of the fixed adjustable rate mortgage that was

1 produced to us; Plaintiff's Number 296, 297, 298,
2 299, 300. It ends at 300.

3 As you know, Your Honor, there are no
4 endorsements on this particular document that was
5 produced.

6 Exhibit B attached, Your Honor, is a copy of
7 a response letter from Selene, who is a servicer
8 to Ms. Furmanchik, in response to a qualified
9 written request. It is dated January 3rd, 2011.
10 What they produced to Ms. Furmanchik at that date
11 is another copy of the Note. It is essentially --
12 it's marked in the Bate's Number identical to
13 Exhibit A. Again, no endorsements on this Note.

14 Then, Your Honor, we get to Exhibit C which
15 is the only assignment of mortgage that was
16 produced to us in response to discovery.

17 What I've done for the Court, I've also
18 attached the Exhibits D, E and F and G, which are
19 all assignment of mortgage that we found
20 independently recorded in the Charleston RMC
21 office, none of which were produced.

22 Then, Your Honor, the last exhibit that I
23 have -- or actually some notes from what I call a
24 running screen of entries of communication between
25 the debtor and the creditor. And I've attached a

1 couple of pages, the ones that are most relevant
2 to us for the purposes of standing.

3 If you look at the second page, Your Honor,
4 attached to Exhibit H you will see a notation, if
5 you look on the date 7/7/10, July 7, 2010, says
6 notes, on hold for missing assignment. It's
7 entered a number of times.

8 Then if you go to the third page that I have
9 marked, which is identified -- I think it's
10 Plaintiff's identified document 334 but it's the
11 last one. You'll see several entries on there
12 that says assignment problem. It's dated on May
13 1st, 2010. Then June 21st, 2010, assignment not
14 in file. Then we get to 7/28. These are the
15 shorter condensed running notes. This says
16 assignment problem corrected.

17 What our motion for summary judgment is, is
18 standing, Your Honor. As to standing in South
19 Carolina in the context of foreclosure I know
20 there are a number of other Master-in-Equity
21 opinions out there. I find no real good opinions
22 from our appellate courts.

23 The best opinion that I can find on this
24 issue is the U.S. National Trust Bank versus Bell
25 which is 2009 where it made notation that

1 essential in a foreclosure action is you have to
2 prove that at the time the action was filed the
3 existence of the debt, and that the debt is in
4 default. In footnote 9 to that case they cite to
5 a number of cases in other jurisdictions.

6 What it says there is that you must be the
7 owner. Not the holder, not a holder --
8 non-perfect holder, none of those theories. It
9 says you must be the owner.

10 That's the only case that I can find that
11 tells us in South Carolina at this point from the
12 appellate court -- I'm sure this Court is aware of
13 opinions that come out of Greenville and Lexington
14 County on the issue of standing.

15 This is the essence of our argument here. At
16 the time this action was brought -- this is a MERS
17 note. There were no endorsements on this Note.
18 There hasn't been a single endorsement on the Note
19 that was produced to us in discovery.

20 I'll hand up with Mr. Wyman's position. He
21 brought today -- collateral file. In it is the
22 copy of the original Note which I would love for
23 the Court to look at.

24 (Hands up document.)

25 MS. ARNOLD: That hasn't been produced in

1 discovery to date. But I still should have gotten
2 a copy of it quite honestly. I'm sure the reason
3 I didn't is because it wasn't in Mr. Wyman's
4 possession. I have no doubt about that. My
5 arguments are as to this creditor and/or creditors
6 that have been in succession of chain of title,
7 allegedly. It is not to Mr. Wyman or his firm. I
8 just want that clear on the record.

9 But if you look at that Note that's been --
10 that wasn't produced, but it is here with us
11 today, you'll see there are endorsements on the
12 back of it. Interestingly enough, a number of
13 canceled or void endorsements.

14 The allonge that is now attached looks to me
15 as if it goes from Wachovia, which was, I think,
16 the original creditor on this situation, and at
17 best that -- that is it. It doesn't go further
18 than that. If that -- we can't tell from that
19 particular allonge the date of it.

20 But if Your Honor will recall, this case
21 we've had a substitution of parties since it has
22 started. We now have, it's RMOF REO Acquisitions,
23 LLC. But when the substitution of parties was
24 filed there was an averment to the Court that said
25 the subject mortgage was subsequently transferred

1 to Selene Finance, LP by assignment dated
2 October 7, 2010. That's the first date of
3 assignment they allege in the substitution.

4 Your Honor, again, on the notes that were
5 produced to us, that's not an assignment that ever
6 showed up or an endorsement on the Note. It is
7 actually now, I do not believe, still an
8 endorsement that this Court sees on the one that
9 is before it. I just looked at it quickly today.
10 I could have missed it. Then from there after
11 that assignment that allegedly happened in 2010 --
12 and Your Honor I want you to draw attention to my
13 second Exhibit B that I attached to my Motion For
14 Summary Judgment. That was the Note that was
15 produced in response to the qualified written
16 request, and that letter is dated January 2011.

17 So this first assignment or endorsement that
18 should be revealed still isn't revealed to the
19 creditor or, excuse me, the debtor or related
20 person at that point in time in response to a
21 qualified written request.

22 Then after that we have several transfers.
23 The first transfer allegedly is to this SRMOF 2009
24 Trust in March 29, 2011. Then we have on the same
25 day a second alleged assignment. I'm talking

1 mortgage (inaudible) on March 29, 2011.

2 I'm not sure it ever left MERS, but all these
3 assignments are coming after the fact.

4 Assignments that were not produced and we went out
5 and found on the record. When you look at those
6 assignments one of the first assignments is from
7 good old Mr. John Kennerty, who I'm sure you've
8 heard his name tossed about in the courts before.
9 I don't need to make the Court aware of that.

10 So then, Your Honor, we get to these
11 allegedly subsequent transfers that are going on.
12 Clearly the endorsements now on the Note that we
13 see don't follow the alleged assignments of the
14 mortgages.

15 But, Your Honor, more critical here, I'm
16 claiming against the banks and it's successors,
17 then I have no entries which are just intriguing
18 to me. I get note entries that say, quote, put it
19 on hold, stop, there is a problem with the
20 assignment, then they record their problems, then
21 finally they say, well, we fixed it. Well, they
22 allegedly fixed it in 2010. They didn't fix it,
23 allegedly, in 2010, but they knew there was a
24 problem. So each one of those documents that you
25 see up there now I clearly question. They have

1 the burden of proof. I think at this stage I have
2 asked for it, I don't get it. I see these
3 problems. We clearly see a problem with the
4 endorsements and assignments of mortgages.

5 There is the Ohio case, Your Honor, that was
6 decided on October 21st. I cited -- October 31st
7 of 2012. I cited it in my Memorandum. It
8 basically says the assignment -- you can't come
9 back and cure after the fact. If you didn't own
10 it on the day the case started you can't correct
11 it after the case is started. Clearly from the
12 documents that I'm seeing, non-produced and now
13 produced, there is a problem.

14 Your Honor, I wouldn't purport to tell the
15 Court if you dismiss this case for lack of
16 standing that they may not be able to cure it.
17 They might. But it would still be subject to
18 scrutiny by counsel and by this Court. If they go
19 back and they do cure it and they cure it
20 correctly, have they done it appropriately with
21 the proper authorization and whatnot? It still
22 might be subject to attack, but as I stand when
23 this case was brought, what we have gone through
24 to this point in litigation and asked for
25 documentation, not to get any single note produced

1 to us that had a single endorsement on it, but
2 we're asking today's time to dismiss this case for
3 lack of standing. If they bring it back they
4 bring it back then we'll have to deal with it no
5 doubt. But I believe as it stands right now it is
6 appropriate for a Motion For Summary Judgment on
7 behalf of the Defendant.

8 THE COURT: All right.

9 MS. ARNOLD: Thank you, Your Honor.

10 THE COURT: Mr. Wyman, you had a chance to
11 review the Memorandum?

12 MR. WYMAN: Just briefly, Your Honor. I just
13 received it as the Court did today.

14 I would just point out that Ms. Arnold has
15 handed up the original Note. It's properly
16 endorsed. It's now in blank. There is an
17 endorsement to Wachovia -- from Wachovia. Then
18 into an allonge into blank as attached there.

19 As to her arguments about the assignment, if
20 there was an oversight in the discovery process
21 that I overlooked the production of assignments I
22 certainly take full blame for that, Your Honor.

23 But the assignment for MERS into Wachovia was
24 filed on July 15, 2010. This Complaint was filed
25 on July 2010, so the argument that the mortgage

1 was not properly assigned prior to filing the
2 Complaint, public record, would show -- would
3 actually cut against her argument. And --

4 THE COURT: How do we know that?

5 MR. WYMAN: Attached to her exhibit --

6 THE COURT: How do we know that the
7 assignment was rendered on July 15, 2010?

8 MR. WYMAN: Look at her Exhibit D. She
9 attached the recorded page.

10 THE COURT: Okay.

11 MR. WYMAN: Page 2 on Exhibit D shows it was
12 recorded July 15, 2010. If the Court were to take
13 judicial notice of the filing of the Lis Pendens
14 and Summons and Complaint that was filed July 20,
15 2010 --

16 So as to that argument that the original
17 Plaintiff, Wachovia, lacks standing to file the
18 Complaint in 2010 I think that the public record
19 and the Note certainly cut against that argument.

20 Then subsequent transfers of the assignments
21 of mortgage with the properly endorsed in blank,
22 and based on the case law, Union National Bank
23 versus -- BAC Home Loans versus Woodberry, we
24 would argue the Plaintiff has standing. We are in
25 possession of an original note that's endorsed in

1 blank and is prima facie evidence of ownership.
2 Even if so the UCC does not require that the
3 holder of the note be the owner of the note, even
4 be if so. But in this case, Your Honor, we have
5 the original Note properly endorsed and I would
6 argue that there is no issue as to the standing
7 here and that Defendant's motion should be denied.

8 THE COURT: So the July 15, 2010 assignment
9 conveyed it from MERS directly into Wachovia; is
10 that right?

11 MR. WYMAN: That is correct, Your Honor.

12 THE COURT: That was the original Plaintiff
13 in this action?

14 MR. WYMAN: Yes, Your Honor.

15 THE COURT: It's taken on these other forms
16 to get to Selene?

17 MR. WYMAN: Yes.

18 THE COURT: Is that what all these other
19 exhibits reference, that have been filed of
20 record, or not?

21 MR. WYMAN: Yes, there was an assignment to
22 Wachovia to Selene Finance, LP, then Selene
23 Finance, LP assigned it to an SRMOF 2009-1 Trust.
24 There was an assignment on March 29, 2011. The
25 Trust then assigned it to Selene RMOF REO

1 Acquisitions, LLC, that is our current Plaintiff
2 right now. The last chain in the assignment.

3 MS. ARNOLD: Wow.

4 THE COURT: All right. So just based on the
5 assignments of mortgage I think clearly this does
6 appear to be an original. It's in my possession.

7 MS. ARNOLD: Your Honor, the one -- Exhibit D
8 is the one that's signed by Mr. Kennerty. On the
9 filing date it shows it is July 15. It does.
10 Whether or not it's a valid assignment, that's a
11 whole 'nother issue.

12 But unless I missed it, Your Honor, what we
13 see is more assignments of the mortgage through
14 the chain than we actually see endorsements on the
15 present Note, and so either you have assignments
16 that are a nullity because you can't have, under
17 South Carolina law, a separate assignment of the
18 mortgage if you follow the theory that the
19 mortgage follows the note under that through
20 endorsements.

21 There is also law in South Carolina that says
22 if you have a separate assignment of the mortgage
23 independent of the note that's a nullity.

24 So what we may have is we have, I'm not
25 mapping up endorsements again. I've only seen it

1 for few minutes today. I don't see the
2 endorsements that lead us now to who we are now
3 dealing with in this litigation for the
4 substitution of parties.

5 Your Honor, July 15 is there. It's on the
6 record. I take issue whether or not it was a
7 valid assignment in light of who assigned it.
8 That may be attack for a full merit hearing, but
9 based upon the fact that we're in discovery, we've
10 asked for it, we haven't received it, we're asking
11 for summary judgment.

12 THE COURT: Take me through the progression.
13 I think you just did that, but you were talking so
14 fast my court reporter couldn't --

15 MR. WYMAN: I apologize.

16 THE COURT: I was having trouble myself. And
17 I wasn't typing it.

18 MR. WYMAN: The original mortgagee, under the
19 mortgage instrument, Your Honor, was MERS. MERS
20 then, by virtue of an assignment which was
21 referenced in Exhibit D, transferred -- or by
22 assignment to Wachovia Mortgage Corporation. That
23 was July 15 of 2010.

24 Wachovia then transferred by assignment of
25 October 7, 2010 to Selene Finance, LP. Selene

1 Finance, LP transferred by assignment to
2 SRMOF-2009-1 Trust. That was March 29, 2011.

3 I would have to point to the time stance, but
4 again on March 29, 2011 the Selene RMOF or, excuse
5 me, the -- Selene, the Trust, SRMOF-2009-1 Trust
6 assigned it to our current Plaintiff the Selene
7 RMOF, LLC; all recorded in proper order. And,
8 Your Honor, there is simply no law in South
9 Carolina that requires a specific endorsement to a
10 particular party. The notice endorsed in blank,
11 bare paper transferred funds.

12 (pause)

13 THE COURT: The last two assignments of
14 record are the two dated the same date. They are
15 recorded.

16 MS. ARNOLD: Minutes apart.

17 MR. WYMAN: Yes, minutes apart. That was
18 based on the fact that we informed our client that
19 a trust could not hold property.

20 THE COURT: That would be, of course, since
21 inception of the action this is being done May 3
22 of '11, recorded.

23 All right. So just tracking it down. You
24 know -- anything further you want to add?

25 MS. ARNOLD: Not on that argument, Your

1 Honor.

2 THE COURT: On the issue -- I'll come back to
3 that one. Mr. Wyman, your argument rests on, one,
4 you-all are in possession of the original Note.
5 Is that the original Mortgage attached to it?

6 MR. WYMAN: The original mortgage is not
7 attached to it, but we argue it's public record.

8 THE COURT: Because this a standing issue it
9 seems to me standing is something -- it can come
10 and go. So I don't know. I'll take a look at
11 your -- I have not had a chance to review your
12 memoranda. I'll be glad to do that. Your
13 argument is if they didn't have standing at the
14 time they commenced the action they could not get
15 standing. That's not necessarily consistent with
16 my understanding of the law. Jurisdiction is a
17 different issue but standing itself, do they have
18 the right to bring the action, do they have it
19 today and did they have it when they brought it?

20 MS. ARNOLD: Your Honor, standing is an
21 interesting concept you see within different
22 jurisdictions. Some courts hold it as a
23 jurisdictional issue. South Carolina law and our
24 appellate courts said it's not necessarily
25 jurisdictional which is non-waive-able. I believe

1 we have some case law that says 'standing is a
2 waive-able issue in South Carolina.

3 But standing on the Ohio case I cited which
4 is a judicial foreclosure state, it can't be fixed
5 after you bring the action. If you lacked it, you
6 lacked it. Not that it can't be fixed later. You
7 don't fix it once the litigation starts. You had
8 to have it at that moment in time..

9 THE COURT: They make you come back and start
10 over?

11 MS. ARNOLD: I know of no cases in South
12 Carolina that hold that. We haven't really had a
13 ruling in South Carolina as I know.

14 THE COURT: From a judicial economy
15 standpoint what would be the benefit of doing
16 that?

17 MS. ARNOLD: Your Honor, I may be attacking
18 the authority and the appropriateness, for
19 instance the trust, able to hold it (inaudible).
20 What do we have there? No doubt. But at least --
21 it doesn't -- we may be litigating the same issues
22 if it is brought back. The reality of it, it may
23 give us opportunity to say, well, maybe I want to
24 work this out. That's the reality.

25 THE COURT: Okay. I'm with you. Mr. Wyman,

1 anything more?

2 MR. WYMAN: Your Honor, I would just argue
3 that the BAC Homeowners (inaudible) -- South
4 Carolina Court of Appeals -- or Supreme Court,
5 excuse me, really addresses the assignment issue.
6 The assignment -- it's not necessary at the time
7 of filing of the Complaint. In this case we did
8 have assignment intact at the time of the
9 Complaint.

10 THE COURT: Well, I'll take it under
11 advisement for now. I'm inclined to deny the
12 motion on the basis of lack of standing, but I'll
13 read that and then get back with you-all.

14 The other issue had to do with the Motion to
15 Compel.

16 MS. ARNOLD: That's right, Your Honor.

17 THE COURT: Is that related to this
18 particular issue?

19 MS. ARNOLD: And then some.

20 THE COURT: Go ahead on that.

21 MS. ARNOLD: I did not receive all the
22 documents. I think those were some of the
23 critical missing documents. I didn't get a copy
24 of the full note, endorsed note or any allonges or
25 any assignment so that was an issue. I don't

1 think there is much missing from the documentation
2 other than that, that I can tell, Your Honor. I
3 did, what I call transactional history because I
4 referred the Court to the notes.

5 The other issue on answers to
6 interrogatories, quite honestly, is witnesses.
7 Who is going to get called on behalf of the bank?
8 I would like to depose whoever that would be. I
9 understand, again, the restraints that they deal
10 with. But I wanted a full complete list of those.
11 Most our requests for interrogatories were
12 objected to. I just want complete answers,
13 answers to my questions. Specifically witnesses,
14 specifically someone I know will come to trial
15 that I can do a deposition if I so choose.

16 THE COURT: All right.

17 MR. WYMAN: Your Honor, on that point when we
18 get a date certain I can get you a witness.
19 Unfortunately, how it has to work. Date certain
20 trial, a month or two out I can give you the name
21 and who that person will be. Unfortunately, I
22 don't know who will come, sometimes, a week
23 beforehand.

24 THE COURT: They might not have a job the day
25 of the hearing.

1 MR. WYMAN: Your Honor, no comment.

2 MS. ARNOLD: And, Judge, I appreciate that.

3 At the same time in normal litigation I wouldn't
4 have to worry about that. I just want a name.

5 MR. WYMAN: With a 30(b)(6) notice we would
6 certainly produce a witness.

7 THE COURT: That should be sufficient.

8 MS. ARNOLD: Well, Your Honor, a 30(b)(6) is
9 one thing. That does not mean that's going to be
10 the person they bring to trial, and I can do a
11 30(b)(6) and I might can get headway on that, but
12 I want also the person that comes to trial and
13 take their deposition; yes.

14 THE COURT: Why don't you notice the 30(b)(6)
15 and then at some point in time prior to the
16 trial -- I can give you trial date today if that's
17 what you-all would like, provide that witness and
18 make him or her available for either deposition or
19 interview, whatever you-all need to do, so it's
20 not fresh and cold at the same time. If they
21 testify materially differently at the trial than
22 at the 30(b)(6) deposition, expounds upon, I would
23 be very interested in hearing that.

24 MS. ARNOLD: Understood.

25 THE COURT: I think we all would.

1 MS. ARNOLD: Yes, sir.

2 THE COURT: I think that's fair to do that.

3 How much time, from a defense perspective, do you
4 see?

5 MS. ARNOLD: Your Honor, having tried to
6 schedule a 30(b)(6) -- as long as I can get that
7 30(b)(6) done.

8 (Discussion off the record.)

9 MS. ARNOLD: Usually I find it very difficult
10 for them to find -- get the deponent. That's my
11 experience.

12 THE COURT: I'm going to give them 60 days.
13 If they don't get you a witness by then you let me
14 know that. They may not be able to prove their
15 case.

16 MR. WYMAN: Your Honor, my client is very
17 anxious to get this resolved. This is a smaller
18 servicer. I'm pushing as hard as I can. Just
19 need a little motivation.

20 THE COURT: All right, Mr. Wyman. Does that
21 take care of that issue?

22 MS. ARNOLD: It does.

23 THE COURT: Nothing else discovery-wise that
24 you're concerned with?

25 MS. ARNOLD: No, that was it, Your Honor.

1 THE COURT: All right. Mr. Wyman, one
2 witness, two witnesses?

3 MR. WYMAN: I believe I'm just bringing one
4 witness, Your Honor.

5 THE COURT: I'm assuming a couple of hours.
6 Got the payment history? Is that an issue?

7 MR. WYMAN: He can get a fresh one.

8 (Discussion off the record.)

9 THE COURT: How about a reinstatement letter?

10 MS. ARNOLD: Anything I can get to prepare.

11 MR. WYMAN: We've tried to work through the
12 loss mitigation process, Your Honor.

13 THE COURT: All right. Thursday June 20.
14 Let's say 10:00 o'clock.

15 I will review that and get you-all a ruling.

16 MS. ARNOLD: Appreciate it.

17 THE COURT: Thank you.

18 (Hearing concluded.)

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STATE OF SOUTH CAROLINA)

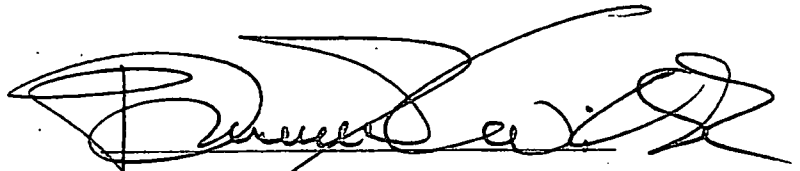
C E R T I F I C A T E

COUNTY OF CHARLESTON)

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this May 14, 2014.

A handwritten signature in dark ink, appearing to read "Bernadette A. Cali", is written over a horizontal line.

Bernadette A. Cali, CSR

Notary Public

My Commission Expires

April 5, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

FOR THE NINTH JUDICIAL CIRCUIT

SELENE RMOF REO ACQUISITION, LLC,)

Plaintiff,)

VS.)

MELISSA FURMANCIK, ET AL,)

Defendants.)

CASE NO.: 2010-CP-10-5825

 COPY

Hearing before the
Honorable Mikell R. Scarborough, reported by Bernadette A.
Cali, CSR and Notary Public, at 10:00 a.m. on June 20,
2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

For the Plaintiff: Jason D. Wyman, Esq.
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For the Defendant: Mary Leigh Arnold, Esq.
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Bernadette A. Cali, CSR
Notary Public

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EXHIBITS

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1 (Plaintiff's Exhibits 1 through 10 and 2A premarked for
2 identification.)

3 (Defendant's Exhibit 1 premarked for identification.)

4 (Hearing commenced.)

5 THE COURT: Good morning. This morning we have
6 the case captioned Selene RMOF REO Acquisition, LLC as
7 the Plaintiff versus Melissa Furmanchik and others,
8 Masonborough At Park West Association, Inc. and Wells
9 Fargo Bank, N.A. Case number 2010-CP-10-5825.

10 Present today for the Plaintiffs is Mr. Jason
11 Wyman of the Richland County Bar.

12 MR. WYMAN: And Lexington, Your Honor.

13 THE COURT: For the Defendant Mary Leigh Sammie
14 Arnold of the Charleston County Bar. Good morning.

15 MS. ARNOLD: Good morning, sir.

16 THE COURT: We were previously before the Court --
17 there was a motion for summary judgment. That was
18 denied and an Order entered May 20. That really had to
19 do with standing.

20 MR. WYMAN: That is correct, Your Honor.

21 THE COURT: I did see another motion in the file
22 about some discovery issues. Did that get addressed,
23 has that been resolved? What's the status of that?

24 MR. WYMAN: Your Honor, my motion was filed, I
25 guess, back June 5th or so; correspondence or email

1 from Ms. Arnold as regards to a deposition. Deposition
2 notice was never served with either of those documents.
3 So out of an abundance of caution I filed a motion for
4 protective order as to it just because the second
5 amended deposition was scheduled for June 12th and to
6 force the Plaintiff to provide a witness both on the
7 12th and the 20th was unduly burdensome and, Your
8 Honor, we would argue untimely and never properly
9 served.

10 THE COURT: Did we enter a Scheduling Order in
11 this case?

12 MR. WYMAN: No, we just set it for final hearing.

13 THE COURT: All right. Let me hear from you.

14 MS. ARNOLD: Your Honor, we had attempted to
15 notice the deposition of whomever was going to
16 allegedly testify in this trial; only had two names;
17 sent the notice twice. Last time it did -- it went by
18 email. No question counsel got it. Hence the
19 protective order. What we wanted to do is be able to
20 examine the witness prior to trial. We were not given
21 that opportunity. But that's what we were attempting
22 to do.

23 THE COURT: When was the first notice sent?

24 MS. ARNOLD: In May. And set for a prior date I
25 don't have in my head. Second notice was then amended

1 and set for a date in June; a couple of weeks ago.

2 MR. WYMAN: Your Honor, I would argue the first
3 notice we never received. I've never received proof it
4 was actually sent; no evidence so far of that.

5 MS. ARNOLD: I sent the first notice, we thought
6 we did. I called Mr. Wyman, said we have this
7 deposition scheduled, haven't heard from you. Then I
8 sent him what -- the notice by email. That one did not
9 go out, hence we did the amended one.

10 THE COURT: I do find a Scheduling Order in here.
11 Looks like it was filed March 15. Discovery was to
12 have been completed by April 1, so I'll find that it
13 was outside the time for discovery and, therefore, no
14 prejudice should befall us. If you do find prejudice
15 based upon the testimony and you're not able to address
16 it in cross examination you let me know.

17 All right. So based upon that then I would
18 imagine we're ready to go forward. Is Plaintiff ready?

19 MR. WYMAN: Yes, Your Honor. Your Honor, may it
20 please the Court, Jason Wyman here on behalf of
21 Plaintiff. I have Ms. Mamie Clark with Selene. Your
22 Honor, this case was referred to you as Master in
23 Equity on or about September 16, 2010.

24 Before I begin Plaintiff's case, Your Honor, I
25 would like to bring to the Court's attention that

1 Ms. Furmanchick has subsequently deeded the property
2 that is the subject of this action to Melissa
3 Furmanchik Trustee or her successors in trust under the
4 Furmanchik Living Trust dated December 1, 2008 of the
5 trust document. The actual deed out is dated
6 October 23rd, 2012 and recorded on November 21st, 2012
7 in Book 0292 at Page 659. Your Honor, we just argue
8 the lis pendens statute, that this new owner of the
9 property would be bound by today's proceedings.

10 THE COURT: Lis pendens was filed with the
11 original action?

12 MR. WYMAN: Yes.

13 MS. ARNOLD: Mr. Furmanchik died. Through the
14 estate the property was transferred and transferred
15 into a trust as a result of his death. That's what's
16 going on. It's public record.

17 THE COURT: When I reread the Order this morning
18 denying the summary judgment I think the title was --
19 there was a difference between who was on the note and
20 who was on the title.

21 MS. ARNOLD: The note is only Mr. Furmanchik. The
22 title was husband and wife.

23 THE COURT: Got you..

24 MS. ARNOLD: The husband is passed away.

25 THE COURT: So it's full title now in the living

1 trust?

2 MS. ARNOLD: It is.

3 THE COURT: All right. And since, I assume, as
4 the obligor of the note is now deceased you-all are
5 seeking a deficiency judgment?

6 MR. WYMAN: Not seeking a deficiency today, Your
7 Honor.

8 THE COURT: All right. Thank you.

9 MR. WYMAN: Finally, Your Honor, I would let the
10 Court know that Masonborough Park West Association and
11 Wells Fargo Bank are in default and both are notified
12 of the hearing today.

13 THE COURT: Very good.

14 MR. WYMAN: At this time I would call Ms. Clark to
15 the stand.

16 (Mamie Clark, 10914 Buggy Whip Drive, Jacksonville, Florida,
17 32257, duly sworn testifies as follows:)

18 DIRECT EXAMINATION BY MR. WYMAN:

19 Q Ms. Clark, good morning. What company do you work
20 for?

21 A Selene Finance, L.P.

22 Q What's the physical location of your office?

23 A 7077 Bonnevillle Drive in Jacksonville, Florida.

24 Q What's your job title at Selene?

25 A Contested Default Case Manager.

1 Q What are your job duties as Contested Default Case
2 Manager?

3 A Review loans where there are differences to
4 attempt to resolve those issues.

5 Q Do you appear at trials on behalf of your company?

6 A I do.

7 Q Are you authorized to testify on behalf of your
8 company here today?

9 A Yes.

10 Q In the ordinary course of its business does Selene
11 maintain the records for the mortgage loan that's the
12 subject of this action?

13 A Yes.

14 Q And as part of your job duties are you familiar
15 with those records?

16 A Yes.

17 Q And do you have personal knowledge of the mortgage
18 loan based on the review of such records?

19 A Yes.

20 Q In the ordinary course of its business does Selene
21 maintain electronic payment history for this loan?

22 A Yes.

23 Q And the electronic payment history, would that be
24 updated at or near the time credits are received or
25 recorded?

1 A Yes.

2 Q And have you reviewed the payment history to this
3 loan?

4 A I have.

5 Q Do you know -- previously this action was filed in
6 the named Plaintiff Wachovia. Was this loan subsequently
7 service transferred to Selene?

8 A Yes, it was.

9 MR. WYMAN: Your Honor, at this time I would like
10 to approach the witness.

11 THE COURT: You may.

12 MS. ARNOLD: Can we get her to state who she said
13 she was employed with?

14 THE COURT: I think she did. It was Selene.

15 A Selene Finance, L.P.

16 MS. ARNOLD: Different from the Plaintiffs Selene
17 RMOF REO Acquisition, LLC; correct? Just want to make
18 sure I heard the correct testimony.

19 THE COURT: Different entity.

20 A Yes, Selene Finance L.P. is a servicer.

21 THE COURT: Right. Okay.

22 Q Ms. Clark, I hand you what's been marked as
23 Exhibits 1, 2 and 2A. If you could review those?

24 (pause)

25 A This is --

1 Q Exhibit 1. What is Plaintiff's Exhibit 1? What's
2 that a copy of?

3 A Copy of the fixed adjustable rate note. .

4 Q According to the note who is the borrower?

5 MS. ARNOLD: Your Honor, I'm going to object,
6 because I've heard testimony today, but if I might,
7 that note is not made out to Selene and/or the servicer
8 who she is here testifying on behalf of today. So I
9 haven't heard anything about how it came into
10 possession of the servicer here today and/or the
11 Plaintiff. It's made out to Wachovia not to the Selene
12 entity; before she starts to testify.

13 MR. WYMAN: Your Honor, I believe we already
14 addressed this at the summary judgment hearing as far
15 as standing. I brought a copy of the original note
16 with me today. I would certainly establish as to the
17 note and the endorsements on it. As far as how it
18 came, I don't I think have to establish it because it's
19 endorsement in blank.

20 THE COURT: That's my recollection, again, from
21 reading it. Let's have her testify to it and before it
22 comes -- it's not yet in evidence.

23 MS. ARNOLD: And my objection is, I understand
24 standing, I know there are issues. We are now at a
25 different stage in this hearing. This is -- has a

1 foundation been set for proper admissibility of this
2 particular note? Thank you, Your Honor.

3 Q According to the note, Exhibit 1, who is the
4 borrower?

5 A The borrower on this note is David H. Furmanchik.

6 Q When was that note signed?

7 A Looks like 9/7/05. September 7, '05.

8 Q Does the signature appear above the block for
9 David H. Furmanchik?

10 A That's correct.

11 Q According to the note who was the original lender?

12 A The original lender is Wachovia Mortgage
13 Corporation.

14 Q Has that note been endorsed in blank?

15 A Yes, it has.

16 Q Does the note cover the subject property address
17 of 1820 West Canning Drive, Mt. Pleasant, South Carolina
18 29466?

19 A It does.

20 Q At the time the note was signed what was the
21 principle amount borrowed under it?

22 A Yes, the principle amount is \$464,000.

23 MR. WYMAN: Your Honor, at this time we would move
24 into evidence Plaintiff's 1, copy of the note.

25 MS. ARNOLD: Your Honor, I would object.

1 THE COURT: Okay.

2 MS. ARNOLD: Do you want to hear my grounds?

3 THE COURT: Sure.

4 MS. ARNOLD: This witness has testified she's only
5 acknowledged what's on the --

6 (Interruption by court reporter.)

7 MS. ARNOLD: She can't authenticate the signature
8 that she's now read as being on the signature line.
9 We've heard no testimony as to how it may have come
10 into their possession. Was there a chain of title? Is
11 there a transcript of record that says on this day it
12 was received or went from Wachovia and then from
13 Wachovia it went somewhere? All we have heard is
14 blanket testimony about a blanket endorsement. That's
15 it. So that does not authenticate this note nor does
16 it put it properly in the possession of the entity that
17 is now testifying.

18 THE COURT: Can you establish chain of custody on
19 that the document, how it came? She testified she's a
20 business records person. How did it come into her
21 possession?

22 MR. WYMAN: Your Honor, the note would have --

23 Q If you could, Ms. Clark, would you look at what's
24 been marked as the -- attached to the note is an allonge.

25 A Yes.

1 Q Is that allonge -- what does it say at the top of
2 that document?

3 A Allonge for the purpose of endorsement. The note
4 date is September 7, 2005. The loan amount \$464,000. The
5 borrower is David H. Furmanchik. The property address is
6 1820 West Canning Drive in Mt. Pleasant, South Carolina and
7 it is endorsed in blank.

8 Q Who is it endorsed by?

9 A Wells Fargo.

10 Q What else does that sentence say?

11 A Wells Fargo NA, successor by merger to Wachovia
12 Bank NA.

13 MR. WYMAN: Your Honor, we would argue this is
14 a -- the note should be entered into evidence. There
15 has been no allegation of forgery raised in the
16 pleadings. We would argue as a negotiable instrument
17 and business record it is properly admissible.

18 THE COURT: Endorsed in blank. Yes? All right.

19 MS. ARNOLD: Your Honor, the endorsement or the
20 -- allonge that they are now talking about, I would
21 physically like the Court to look at this allonge.

22 THE COURT: Okay.

23 MR. WYMAN: Would the Court prefer to see the
24 original note?

25 MS. ARNOLD: Do you have it? I'm sorry.

1 THE COURT: You do have the original and she has a
2 copy.

3 MS. ARNOLD: This was the note that was presented
4 at the time of the hearing, Your Honor, that we saw the
5 first time on the motion for summary judgment. My
6 purpose for handing you that is a couple of things.

7 One, as you can see that we're talking about an
8 allonge that is not affixed to this note. For some
9 reason it has been removed. We have now -- you can
10 look at several spots where it was stapled and removed
11 and now is just paper clipped.

12 More importantly, that allonge is supported
13 allegedly in blank by somebody at Wells Fargo. There
14 is no one here testifying for Wells Fargo; no one that
15 has the ability to testify on behalf of Wells Fargo.

16 Again, Your Honor, I'm going to make this argument
17 so the record is clear. What we have through this
18 case, and by presentation of the Plaintiff, and in
19 order, is we know we have a series of transactions by
20 assignment, but they had you put a record -- and what
21 we know is there are at least three intervening
22 entities. One in blank. Nothing else. To an allonge
23 that is not properly affixed. So what we have, again,
24 we don't have proper authentication for admissibility,
25 excuse me.

1 But I want the Court to note what is now found as
2 the series of the transactions by virtue of
3 assignment --

4 MS. ARNOLD: So what we don't have is we have one
5 in blank and that in blank would have gone to an
6 entity. I don't know now if it was a Selene entity at
7 that point in time. It might have been Wells Fargo.
8 From Wells Fargo it went to -- your order that they
9 presented to you or -- and the order substitution that
10 you signed for them is the first entity would have been
11 Selene Finance L.P. From there it went to a trust and
12 then from a trust has now allegedly gone to the
13 Plaintiff, named Plaintiff, who the servicer is here
14 for today.

15 So, Your Honor, again I object to admissibility;
16 not a proper foundation.

17 THE COURT: All right. Have her describe how
18 Selene operates and what entity -- she works for Selene
19 Finance L.P. which I think was the original assignee
20 from Wachovia, according to the order that I entered.
21 If she knows she can -- that would be fine.

22 Q Ms. Clark, you work for Selene L.P.?

23 A Yes.

24 Q Does that company act as a servicer for various
25 Selene entities as far as the named Plaintiff in this case?

1 A Yes, we do.

2 Q The purpose of -- why would -- there are several
3 entities -- is it for vesting purpose as far as foreclosure
4 of the deed would be? Why would it be named Selene RMOF?

5 A My understanding is that the reason that the
6 transfer into Selene RMOF is to further identify loans that
7 may become -- that are severely delinquent and may become an
8 asset. This identifies that property that it may become an
9 REO, so there are certain steps that are set up to trace
10 that property to make sure that the servicing follows what
11 the investors are asking us to do on certain properties.

12 Q Likewise, when a loan is service transferred does
13 Selene have a certain process in place for bringing those
14 materials on from the previous servicer?

15 A Yes.

16 MR. WYMAN: Your Honor, we would argue that the
17 notice endorsed in blank, as far as these assignments
18 have been argued, it is established Plaintiff has
19 standing as the note is a negotiable instrument
20 endorsed in blank. Anyone can enforce it and we're
21 here on behalf of the Plaintiff to enforce the note,
22 and the mortgage travels with it. There is no
23 requirement to establish a chain of title as far as a
24 negotiable instrument as such notice. Endorsed in
25 blank (inaudible).

1 THE COURT: Ms. Arnold, how do you get over the
2 fact that I'm holding in my hand what appears to be the
3 original note signed by Mr. Furmanchik?

4 MS. ARNOLD: Your Honor, they have taken the
5 position that this is a negotiable instrument subject
6 to Article 3 Title 36 -- Article 3. They have not --
7 they've claimed they are a holder. They have not
8 claimed that they are a non-holder in possession.
9 There is a distinction in those concepts. They again
10 submitted something in both complaints and in the order
11 they submitted with regard to our motion to dismiss for
12 standing, again saying they are a holder of a
13 negotiable instrument. If you look at the most recent
14 case that just came out a couple of weeks ago, not that
15 I agree with it, but I do like one citation. That is
16 the Bank of America case versus the Draper case. The
17 court doesn't do an excellent job of it, unfortunately,
18 for all of us, which they did, but one of the things
19 that they acknowledge here in one of the paragraphs is
20 a holder in possession -- or a holder is a person in
21 possession of an instrument drawn, issued, transferred
22 or endorsed. If they were a non-holder in possession
23 that would be a whole different concept where we could
24 see how they actually got possession, if they presented
25 evidence to you of how they came in possession. We

1 have yet to hear that, even though that's what I've
2 been trying to elicit through this objection. So what
3 do we have? We have Title 36-1-1021 under South
4 Carolina law that identifies first what a holder is and
5 a negotiable instrument. So what do we have to have?
6 Endorsements under Article 3. We could have an
7 endorsement by blank. I admit that. No question. The
8 statute provides for it. But what we have are a number
9 of intervening, recognized by the court, of transfers.
10 So what we have today is a note that stops at a point
11 in time. It stops after Wells Fargo. It does not go
12 beyond the subsequent transfers that are acknowledged
13 in an assignment. So then where do we run into
14 conflict? They haven't proven the ability to get this
15 document into evidence. They haven't brought the
16 proper witness. But more importantly we have that
17 conflict that then runs afoul with the South Carolina
18 law that says that you can have -- well, excuse me.
19 The note's typically -- mortgage is supposed to follow
20 the note. We have got that acknowledgment here, but
21 you can also have the concept of South Carolina law
22 that recognizes it can go afoul. The mortgage can, by
23 virtue of assignment, assignment loan nullity. That
24 runs us to an exact problem in this case. Because we
25 clearly have assignments way outside of the concept of

1 what we've been presented with this note right now. So
2 those two run afoul and, again, we run into the issue
3 of standing; admissibility of the document, and then
4 standing.

5 THE COURT: All right. So would the assignments
6 take care of that issue or not? And why not?

7 MS. ARNOLD: I don't believe so. Because the
8 assignments don't assign or endorse the note. The
9 assignments deal with the mortgage. This is a mortgage
10 created -- went to, first, to MERS. We know MERS only
11 gets interest in a mortgage; doesn't get an interest in
12 a note. Those documents, as they follow through,
13 address the mortgage. So what you really do have in
14 this particular situation on the documents presented to
15 us as we see it right now, you've got two documents
16 that have gone different directions in different paths.

17 THE COURT: All right. The assignments are as to
18 the mortgage, recorded as such. No objection to those?

19 MS. ARNOLD: They are public record.

20 THE COURT: All right. Your issue has to do with
21 the note?

22 MR. WYMAN: We would argue as a blank endorsement
23 it never stops. It's bare paper and can be transferred
24 upon possession alone. That's all that's required for
25 endorsement. Ms. Arnold is arguing with endorsements

1 clearly marked as allonge for purposes of endorsement,
2 so I think that she is trying to argue two different
3 things as far as the assignments of mortgage go, as far
4 as the note appears in front of you today. We would
5 argue it's admissible. We'll offer a copy into the
6 Court's record because of the original note present
7 here today.

8 THE COURT: All right. I'm assuming the copy is
9 exactly what you handed me.

10 MR. WYMAN: Yes, Your Honor.

11 THE COURT: The note, the allonge. Permanent
12 financing and then note and then also attached to this
13 original is a cover letter a bailment letter which got
14 into your possession.

15 MR. WYMAN: That's how it became as counsel for
16 the Plaintiff.

17 THE COURT: All right. Can your witness testify
18 as to how that came to be? Just the transfer of the
19 note itself? The actual chain of title of the note?

20 MR. WYMAN: Your Honor, it's endorsed in blank. I
21 don't know how you transfer that as far as --

22 THE COURT: It was sent to you from -- I don't
23 need you to be the witness, but clearly Selene Finance
24 L.P. according to this February 3, 2012 letter sent
25 the -- to who it may concern (inaudible) has been

1 retained by Selene Finance to -- the bailment would be
2 in possession of the original?

3 MR. WYMAN: Correct.

4 THE COURT: So, Ms. Arnold, I'm going to find -- I
5 understand your argument. I'm going to find, based on
6 what I think the law is, that the holder in possession
7 of the original note, and I believe that to be settled
8 South Carolina law to be controlling on the issue of
9 both standing and, because I am in possession of the
10 original note, would establish their right to seek
11 election under that note. I understand your argument.

12 MS. ARNOLD: I want make it clear for the record
13 the argument is under 36-201 as identified by Draper.
14 That reads, a holder in possession of an instrument
15 drawn, issued, transferred or endorsed to him, and we
16 do have the endorsement, and that there has been a
17 determination in this case that this is a negotiable
18 instrument; therefore, certain things apply. I just
19 want to get that on the record.

20 THE COURT: All right. I'm with you. So based
21 upon that, with that objection, I'll allow the copy as
22 the best evidence. I'll return the original to you.

23 MS. ARNOLD: You might want to hold that as we go ,
24 through this today.

25 MR. WYMAN: Exhibit 1 is now in evidence.

1 (Whereupon Plaintiff's Exhibit 1 is received in evidence.)

2 Q Look at Exhibit 2. What is Exhibit 2 a copy of?

3 A Exhibit 2 is a copy of the mortgage.

4 MR. WYMAN: Your Honor, at this time we will move
5 into evidence Exhibit 2.

6 MS. ARNOLD: Same objection, Your Honor.

7 THE COURT: All right. Same objection, same
8 ruling.

9 (Whereupon Plaintiff's Exhibit 2 is received in evidence.)

10 Q Does the mortgage cover the same property address?

11 A Yes, it does.

12 Q Does the mortgage constitute a first lien on the
13 property?

14 A It does.

15 Q Who signed the mortgage?

16 A David H. Furmanchik and Melissa Furmanchik.

17 Q Now, I'm going to ask you what's been marked as
18 Exhibit 2A. What is that a copy of?

19 A This is a copy of a mortgage modification
20 agreement amended to note and security instrument.

21 Q Does that appear to be a recorded document in the
22 public record?

23 A Yes, it is; recorded in Book 597 Page 260.

24 MR. WYMAN: Your Honor, at this time we would
25 offer in Exhibit 2A, copy of the modification.

1 MS. ARNOLD: Same objection.

2 THE COURT: Very good.

3 (Whereupon Plaintiff's Exhibit 2A is received in evidence.)

4 Q Your understanding is Mr. Furmanchik passed away
5 in March of 2008?

6 A That's my understanding, yes.

7 Q I hand you what's been marked -- what's been
8 marked as Exhibits 3, 4, 5, and 6. Ms. Clark who is the
9 original mortgagee under the terms of the mortgage marked
10 Exhibit 2?

11 A Wachovia.

12 Q If you refer back to Exhibit 2. I apologize.

13 A Repeat your question, please?

14 Q Who is the original mortgagee under the terms of
15 Exhibit 2?

16 A Wachovia Mortgage Corporation is the lender.

17 Q Lender. I believe definitions are on the first
18 page.

19 A MERS is Mortgage Electronic Registration System as
20 nominee for lender, successor and assigns, and MERS is the
21 mortgagee.

22 Q Thank you. Now, I would like to direct you to a
23 copy of Exhibit 3. Was the mortgage subsequently assigned
24 from MERS to Wachovia by way of assignment?

25 A Yes, it transfers and assigns unto Wachovia

1 Mortgage Corporation care of Wells Fargo Mortgage.

2 Q Is that a copy of the assignment of mortgage?

3 A Yes, it is.

4 Q And that's -- what is the date of that assignment
5 of mortgage?

6 A September 7 -- I'm sorry --

7 Q Date it was recorded. I apologize.

8 A It's recorded on July 15, 2010.

9 MR. WYMAN: Your Honor, at this time we move into
10 evidence Exhibit 3, first assignment.

11 MS. ARNOLD: Your Honor, my objection is this is
12 public record so I acknowledge it can come in from
13 that. Just acknowledging this is not a document she
14 testified to is maintained within their record or
15 anything else, but acknowledge it's a public record.
16 (Whereupon Plaintiff's Exhibit 3 is received in evidence.)

17 Q Look at Exhibit 4. Was the mortgage subsequently
18 assigned from Wachovia to Selene Finance L.P.?

19 A Yes.

20 Q Is Exhibit 4 a copy of said assignment?

21 A Yes.

22 MR. WYMAN: Your Honor, at this time we move into
23 evidence Exhibit 4?

24 MS. ARNOLD: Same objection.

25 THE COURT: Okay.

1 (Whereupon Plaintiff's Exhibit 4 is received in evidence.)

2 Q Ms. Clark, Exhibit 5. Was the mortgage
3 subsequently assigned from Selene to SRMOF 2009-1 Trust?

4 A Yes, it was.

5 Q Is Exhibit 5 a copy of said assignment as recorded
6 in the public records?

7 A Yes, it is.

8 MR. WYMAN: Your Honor, at this time we move into
9 evidence Exhibit 5 or -- excuse me, five. I apologize.

10 Q And finally is Exhibit 6 a copy of an assignment
11 of mortgage?

12 A Yes, it is.

13 Q Assignment from SRMOF 2009-1 Trust to Selene RMOF
14 REO Acquisition L.P.?

15 A Yes.

16 MR. WYMAN: Your Honor, at this time we move into
17 evidence Exhibit 6; final assignment.

18 MS. ARNOLD: Same objection.

19 THE COURT: Very good.

20 (Whereupon Plaintiff's Exhibit 5 and 6 are received in
21 evidence.)

22 Q So the current owner of the note and mortgage in
23 this particular case is Plaintiff.

24 MS. ARNOLD: Objection as to form.

25 THE COURT: You're making a statement.

1 MS. ARNOLD: Sounded like that to me, too, Your
2 Honor.

3 Q Who is the current owner of the note and mortgage
4 in this case?

5 A Selene RMOF REO Acquisition, LLC.

6 Q All right.

7 THE COURT: That would be the current Plaintiff;
8 is that correct?

9 MR. WYMAN: That is correct, Your Honor. Marked
10 as Exhibit 7.
11 (Discussion off the record.)

12 Q Have you reviewed the payment history for this
13 loan, Ms. Clark?

14 A Yes, I have.

15 Q Is Exhibit 7 a copy of the payment history for
16 this loan?

17 A It is.

18 MR. WYMAN: Your Honor, at this time we move into
19 evidence Exhibit 7, the payment history.

20 MS. ARNOLD: Your Honor, I would object. What we
21 have here, I believe, which constitutes Exhibit 7 are
22 two different histories. One is a Selene history.
23 Another is a Wells Fargo Home Mortgage history. I
24 haven't heard anything that qualifies her to testify as
25 to a document by Wells Fargo Home Mortgage.

1 THE COURT: Foundation.

2 Q I believe you previously testified this loan was
3 service transferred to Selene; is that correct?

4 A That's correct.

5 Q Do you know when that would have occurred, there
6 abouts, that date?

7 A Around about November 2010, I believe.

8 Q Thank you. And when a loan is service transferred
9 to Selene do certain records come along with that as far as
10 from the previous servicer?

11 A Yes, all the servicing records.

12 Q In this case would the previous records from the
13 prior servicer, Wells Fargo, have been delivered to Selene?

14 A Yes.

15 Q Is that then incorporated into your system?

16 A It is.

17 MR. WYMAN: Your Honor, we would move in evidence
18 the payment history.

19 MS. ARNOLD: Your Honor, again, in order to
20 properly do foundation for this document, this woman
21 does not work for Wells Fargo Home Mortgage. She
22 hasn't said she's in custody of these records. She
23 hasn't said she created them. She hasn't said she
24 enters any of the information. I acknowledge they
25 probably received it but in order to get this document

1 in they have to lay the proper foundation. You need a
2 Wells Fargo witness that can do it. Her working for
3 Selene does not entitle her to talk about a Wells Fargo
4 document.

5 THE COURT: I'm going -- I think you layed the
6 foundation on that. She came into the possession of
7 the payment history through transfer of the note and
8 mortgage?

9 MR. WYMAN: That is correct, Your Honor.

10 THE COURT: I'm going to allow it. I think it
11 comes into evidence.

12 (Whereupon Plaintiff's Exhibit 7 is received in evidence.)

13 Q Look at what's been marked as Exhibit 8.

14 A This is a demand letter dated February 14, 2010
15 sent to the borrowers David H. Furmanchik care of Melissa
16 Furmanchik at the address 1820 West Canning Drive in Mt.
17 Pleasant, South Carolina advising the borrowers that the
18 loan is in default and asking -- letting them know they have
19 a specific date in which to cure the default.

20 Q So based on that -- date of that letter again was?

21 A February 14, 2010.

22 MR. WYMAN: Your Honor, at this time we move into
23 evidence a copy of the demand letter.

24 THE COURT: Any objection?

25 MS. ARNOLD: Absolutely, Your Honor. Again, this

1 is a document created by Wells Fargo. It is here. It
2 is not an exception to the business record rule. This
3 witness has not testified she's custodian for Wells
4 Fargo documentation. She can't authenticate by Wells
5 Fargo; that she's not in possession properly of the
6 document. We would object. Doesn't meet the exception
7 rule.

8 THE COURT: All right. At the time of the sending
9 of the letter was it a Wells Fargo loan at that time?

10 MR. WYMAN: It was. We have established it was
11 transferred from Wells Fargo to Selene in November of
12 2010; loan was already in default prior to the
13 transfer. We argue that the demand letter would come
14 in as a business record along with the payment history
15 as Your Honor has already ruled.

16 THE COURT: And to the best of your knowledge that
17 came with the package from Wells Fargo?

18 A Yes.

19 THE COURT: All right. Got it. Came with the
20 transfer.

21 A Yes.

22 THE COURT: All right. I'll allow it.

23 (Whereupon Plaintiff's Exhibit 8 is received in evidence.)

24 Q Was there a default under the terms of the note
25 and mortgage?

1 A Yes.

2 Q Is the Plaintiff owed certain sums of money?

3 A Yes.

4 Q Have you reviewed the records to determine what
5 that amount is?

6 A I have.

7 Q Exhibit 9.

8 (Discussion off the record.)

9 Q Have you prepared a summary of those charges to
10 the account of what is owed to the Plaintiff?

11 A Yes.

12 Q Is this a copy of that summary here from that
13 record?

14 A Yes.

15 Q Can you tell the Court, for example, what's the
16 principle amount due?

17 A The principle amount due is \$464,000.

18 Q How about allowable late charges?

19 A \$1232.42.

20 Q What's the interest due on this loan?

21 A Interest from December 1, 2009 through June 20,
22 2013, \$105,069.78.

23 Q Were there tax advances made on this particular
24 account?

25 A Yes.

1 Q Total amount of that?

2 A Total amount is \$3,932.21.

3 Q Were there hazard or flood insurance advances made
4 on this particular account?

5 A Yes.

6 Q What is the total amount of those?

7 A \$11,727.77.

8 Q Were there property inspections?

9 A Yes.

10 Q What are the total amount of property inspections?

11 A \$169.

12 Q Were there any BPO's or appraisals done for this
13 particular property?

14 A Yes.

15 Q What is the amount of those?

16 A \$200.

17 Q Does the Plaintiff ask for reasonable attorneys
18 fees and costs as part of this action?

19 A Yes.

20 MR. WYMAN: No further questions.

21 CROSS EXAMINATION BY MS. ARNOLD:

22 THE COURT: Let me stop you. You finished with --

23 MR. WYMAN: If you would like me to put my
24 affidavit of attorneys fees.

25 THE COURT: You want to do that? Put judgment

1 figures in as well.

2 MR. WYMAN: Exhibit 9, copy of the internal system
3 as a summary of those figures.

4 THE COURT: Any objection to 9 or 10?

5 MS. ARNOLD: Yes, Your Honor, this is a document
6 we haven't received until today. Summary is a summary.
7 But, yes, based on the fact we haven't received it
8 until today I do.

9 THE COURT: I'll over rule it on that basis. I'll
10 let you cross examine her as to how she got to the
11 figures and your affidavit of attorneys fees. That was
12 part of the note and mortgage? All right.

13 (Whereupon Plaintiff's Exhibits 9 and 10 are received in
14 evidence.)

15 THE COURT: I'll allow those in, 9 and 10.

16 Ms. Clark, I'm going to have you step down for a
17 second.

18 (Recess)

19 CROSS EXAMINATION BY MS. ARNOLD:

20 Q Ms. Clark, so the record is clear, you are not an
21 employee of Wachovia Mortgage Corporation; correct?

22 A Correct.

23 Q You are not an employee of any form of Wachovia
24 Bank NA; is that correct?

25 A That's correct.

1 Q You're not an employee of Wells Fargo; is that
2 correct?

3 A That's correct.

4 Q You're not actually an employee of the named
5 Plaintiff that we have here today, which is Selene RMOF REO
6 Acquisition, LLC; is that correct?

7 A Correct.

8 Q Okay. You've never been an employee of any of
9 those entities that I've just asked you about; is that
10 correct?

11 A Yes.

12 Q Let me get you to look at what you've marked as
13 Plaintiffs Number 1 for me.

14 MS. ARNOLD: Your Honor, may I have the original,
15 please? Thank you, sir.

16 Q Ms. Clark, I'm going to hand you what is
17 identified as the original for the document of Number 1
18 identified as 1. Can you tell me, is that document stapled
19 together by chance?

20 A It's paper clipped together..

21 Q The staples have been removed from it?

22 A Appears to have been.

23 Q Is the allonge that's identified there affixed to
24 the document?

25 A They were all paper clipped together.

1 Q It's not stapled -- the allonge is not stapled or
2 affixed to the note; is that correct?

3 A No, there are no staples in this document.

4 Q Is that how it came -- are you the custodian of
5 records for Selene Finance L.P.?

6 A Selene is the custodian but, no, I personally am
7 not.

8 Q You are -- is that not part of your function, to
9 be custodian of records?

10 A Let me back up. The records are not kept in my
11 physical possession is what I'm saying. Selene is the
12 custodian of the records, yes.

13 Q But that's not part of your function with Selene,
14 to manage or be a custodian of the records for Selene? Is
15 that what you're telling me?

16 A That's not my title, no.

17 Q Title or function. Is that part of your
18 responsibilities in your role, in your job at the entity
19 you're employed with?

20 A Yes, it is.

21 Q I was misunderstanding you. That's part of your
22 function to be custodian of records for these documents?

23 A Yes.

24 Q Okay. Look at the document that is marked as the
25 note and look at the signature page for me.

1 A The signature page on the note?

2 Q It should have been five pages back, based upon
3 the copy that I have.

4 A Yes.

5 Q You don't know who David Furmanchik is, do you?

6 A He's the mortgagor.

7 Q Have you ever met Mr. Furmanchik?

8 A I have not.

9 Q Did you ever know him?

10 A No.

11 Q Could you recognize or testify to what his
12 signature is?

13 A No.

14 Q Okay. Now, on that page there are several --

15 MR. WYMAN: Object to the last question. There
16 are no allegations as far as forgery in this case. The
17 last line of questioning is irrelevant.

18 MS. ARNOLD: It's factual. It is what it is.

19 THE COURT: It is what it is. Go ahead.

20 Q On the face of this page, the fifth page, there
21 are several endorsements. One is marked void; is that
22 correct?

23 A Yes.

24 Q Is it just blank and marked void?

25 A Yes.

1 Q Then there is another endorsement that is marked
2 canceled; is that correct?

3 A Correct.

4 Q And is Karen Davis an employee of Selene Finance?

5 A No.

6 Q Do you know who Karen Davis is?

7 A No.

8 Q Do you know why it was marked canceled?

9 A No.

10 Q Is there any notation in your file, as the
11 custodian of records, that tells us why it was marked
12 canceled?

13 A Not that I have reviewed.

14 Q If I understand your testimony today, you don't
15 have anything here today to show this Court, for instance, a
16 ledger that showed where -- when this note came into
17 Selene's possession or when it was transferred and delivered
18 to Selene; is that correct?

19 A I did not bring documents supporting that today.

20 Q So that's what I was asking. You have nothing
21 here today that shows when delivery was actually made to
22 Selene; is that correct?

23 A Other than assignments.

24 Q Do you have anything else, not only Selene,
25 anything that you brought today that shows delivery of this

1 note to any other entity that came before Selene's interest
2 in this note?

3 A Other than the bailment letter, no.

4 Q And look at the next page, because the next page,
5 which should be 6 in the packet that I have, is entitled at
6 the top, allonge for the purpose of endorsement. Is that
7 correct?

8 A Yes.

9 Q My copy, for some reason the loan number is
10 blacked out. Can you see the loan number on yours or is it
11 blacked out?

12 A I don't have anything blacked out. The loan
13 number is 000572xxxx.

14 MR. WYMAN: Your Honor, I would ask the record
15 redact at least the first part of the -- don't want to
16 have any loan numbers as far as that goes. Last four
17 maybe showing -- I don't know.

18 THE COURT: Noted.

19 Q Thank you. This is a document not prepared by
20 you; is that correct?

21 A Correct.

22 Q And a document not prepared by anybody at Selene;
23 is that correct?

24 A Correct.

25 Q It appears to have an endorsement by Wells Fargo

1 Bank, NA; is that correct?

2 A Yes.

3 Q And it's signed by Susan Hubner; is that correct?

4 A Yes.

5 Q Do you know who Susan Hubner is?

6 A No.

7 Q Could you recognize her signature?

8 A No.

9 Q There is none -- it is blank; is that not correct?

10 A That's correct.

11 Q Okay. There are no other endorsements on this
12 note; is that correct?

13 A Correct.

14 Q You've testified earlier as to a number of
15 assignments. First assignment from a MERS, is there any
16 endorsement on this note from MERS to anybody?

17 A No.

18 Q Is there any endorsement on this note that you
19 have here today to a Selene Finance, L.P.?

20 A No.

21 Q Is there any endorsement on this note to SRMOF
22 2009-1 Trust?

23 A No.

24 Q Is there any endorsement on this note -- I will
25 read it again -- to Selene RMOF REO Acquisitions, LLC?

1 A No.

2 Q Now, Ms. Clark, look at the first page of this
3 note that you've marked -- we marked as Exhibit Number 1.

4 If you look at paragraph 2 for the Court. And why don't we
5 go ahead and give the Court back the original, let you work
6 off the copy. Put the paperclip back on it for me.

7 (Witness indicates.) (Hands document)

8 THE COURT: Thank you.

9 Q So if you look at paragraph 2 for me.

10 A Yes..

11 Q Where is there provided for an interest rate in
12 paragraph 2 of the note?

13 A There is not an interest rate in paragraph 2 of
14 this note.

15 Q There is not. It's just an asteric; isn't it?

16 A Yes..

17 Q Is there provided for an interest rate anywhere in
18 this note which is the first four pages or five pages before
19 you get to an allonge?

20 A Under calculations of changes it references that
21 the note holder would calculate the new interest rate by
22 adding a percentage point but, no, there is not a specific
23 interest rate.

24 Q I want to make sure the Court understands and it's
25 clear, there is no interest rate provided for in this note?

1 A No, there is not.

2 Q Okay. So let's go back. If you'll go back to the
3 same document. If you go, I believe it's to the last page
4 of that document. Excuse me. I'm sorry. Second to the
5 last page of your document that you've presented to the
6 Court, if you look at paragraph 2 there for me, it still
7 doesn't provide for an interest rate; does it?

8 A Which page are you referencing?

9 Q Two pages back to this packet. It says addendum
10 to note, construction financing at the top; paragraph 2.

11 A No, there is not.

12 Q Actually, it each spells out for us the word zero
13 for us; doesn't it?

14 A Yes.

15 Q So in your calculations of interest how did you
16 calculate any interest owed when the document itself
17 provides for zero?

18 A There was a modification to this note, to the
19 mortgage. From a construction loan to --

20 Q It's not attached to anything that's before the
21 Court at this point in time, is it, Ms. Clark?

22 A No.

23 Q Okay. So --

24 A I can't explain that. I'm not sure.

25 Q There is no interest owed under that note; the

1 note identified as Exhibit Number 1; correct?

2 A I need to take a moment.

3 Q That's fine. No problem.

4 (pause)

5 A No. Not that I can see.

6 Q So any calculations as to interest owed, there
7 would be no interest owed; correct?

8 A On this particular document it does state that the
9 interest in paragraph 2 -- it has the interest is zero.

10 Q So your prior testimony when you did your summary
11 of damages and you claim \$105,069.78 was owed, there is no
12 interest owed, not under that document?

13 A Not under this document.

14 Q Okay. I'm going to get you to then look at also,
15 I believe it was Plaintiff's Number 8.

16 A I have 7.

17 Q It was the Wells Fargo default letter.

18 A Sorry.

19 Q If that helps you.

20 A The demand letter.

21 Q Yes, the Wells Fargo -- find it?

22 A Yes.

23 Q So the record's clear, Ms. Clark, you were not an
24 employee of Wells Fargo who is the author, allegedly, of
25 this letter; is that correct?

1 A Correct.

2 Q The letter is actually dated, you've submitted as
3 evidence for demand, February 14, 2010; is that correct?

4 A Yes.

5 Q You're claiming that interest is owed under this
6 demand letter; is that correct?

7 A Yes.

8 Q But there is no interest owed as of this demand
9 letter because there is no interest owed under the note; is
10 that correct?

11 A The interest is owed.

12 Q Show me the document in your case that shows that
13 there is any interest owed that supports your demand letter
14 that you've submitted into evidence.

15 MR. WYMAN: If you want to do redirect right now
16 we can slow this down. I can show the Court where it's
17 clearly there.

18 THE COURT: I'm with you. You're trying to get
19 her to agree to that?

20 MS. ARNOLD: Yes.

21 THE COURT: So far that's been her testimony. You
22 have to rehabilitate your witness.

23 MR. WYMAN: I will, Your Honor.

24 THE COURT: I'm with you.

25 Q Under your note there is no interest owed as of

1 February 14, 2010, because under the note you've presented
2 it doesn't provide for any interest; is that correct?

3 MR. WYMAN: I'll object, just for the record, as
4 far as it's not reflective of the documents in
5 evidence.

6 THE COURT: All right. Objection sustained.

7 A In paragraph 2 of the document it does state zero.

8 Q So there is no interest owed as of the demand
9 letter date of --

10 A I can't testify to that because the interest is
11 owed.

12 MR. WYMAN: Same objection, Your Honor.

13 Q Is this the letter that you're claiming that is
14 proof of your demand of default?

15 A Yes.

16 Q But you acknowledge it's not your letter, it's a
17 Wells Fargo letter; correct?

18 A It was transferred along with the loan onto our
19 system.

20 Q It says interest is owed; is that correct?

21 A Yes.

22 Q And under the note you presented there is no
23 interest owed; is that correct?

24 MR. WYMAN: Same objection, doesn't reflect
25 documents in evidence.

1 THE COURT: You can answer.

2 A Under paragraph 2 it does state zero.

3 Q Okay. And in the documents you've also presented,
4 which is another Wells Fargo, was attached to your summary,
5 you presented a number of payments, interest payments only;
6 is that correct?

7 A Correct.

8 Q So if there was no interest owed on this note and
9 interest payment received, that would have reduced the
10 principle amount of the particular note?

11 A Pardon me?

12 Q If you received interest payments and no interest
13 was owed, those payments would have reduced the principle
14 amount of the note; is that correct?

15 A If no interest were owed.

16 Q So you're entitled -- or excuse me, the
17 Furmanchiks may be entitled to -- look -- if you look at the
18 summary you've presented; could you just eye ball it and
19 look at it? How many payments were made and the amount?
20 Very quickly for us?

21 (pause)

22 A There were several payments, interest-only
23 payments made.

24 Q I looked at it real quickly. You confirm it, but
25 looked like 20 payments, about, to me of approximately

1 \$2500.

2 A Okay.

3 Q If you look at it real quick does that look --

4 A I didn't count them.

5 Q Exhibit Number 8 does show a number of interest
6 payments made by the Furmanchiks on this particular loan
7 transaction, does it not?

8 A It does.

9 Q If it's approximately 20 at 2500 that would be a
10 rough estimate of probably, I believe, \$50,000. Do you
11 agree with my simple math?

12 A No.

13 Q But if we totaled up the numbers we could take
14 this document and total the number of all interest payments
15 made or allegedly you're claiming were made, total that
16 amount and see what it is; is that correct?

17 A Yes.

18 Q Then that amount, if it was paid, should reduce
19 the principle on this particular note, if no interest is
20 owed?

21 A If no interest was owed.

22 Q And then you've also had a summary you presented
23 to us that shows us a number of charges made against this
24 account. I'm looking at what looks to me on page 2 of mine
25 with property inspection fees. Do you have anything here

1 today that shows this Court a receipt for any property
2 inspection fee paid to any third party?

3 A The ledger speaks for itself. It states that
4 those are disbursements made from the account to a property
5 preservation vendor.

6 Q Do you have any receipts -- I understand this is a
7 summary. I'm asking do you have any receipts here, have you
8 ever produced any receipt to me that shows a third party
9 vendor was paid for a property inspection?

10 A I have none.

11 Q And if I understand this correctly, you've got,
12 looks like, 20 property inspection fees for \$1.50 a piece?

13 A That's what the ledger says.

14 Q \$1.50 a piece. Okay. And also have you ever
15 presented or do you have anything here today that -- for a
16 receipt going to a third party vendor for a BPO appraisal?

17 A I don't have the receipt.

18 Q Based upon the letter that you have presented,
19 Exhibit Number 8, the alleged default of this note occurred
20 prior to the entity that you're here testifying on behalf;
21 is that correct?

22 A That's correct.

23 Q Okay. You yourself can't testify as to any
24 default on this particular loan, can you?

25 A Yes. The payments were -- the loan is in default.

1 Payments were not made.

2 Q What shows in your documentation, yours being the
3 entity you're here testifying, that payment was not made?

4 A The transfer of the loan. All the documents from
5 Wells Fargo came over to Selene and Selene became owner of
6 those -- servicer of those loans.

7 Q Did Selene ever send a notice of default?

8 A We did not.

9 Q Was interest owed -- was it just an interest
10 payment owed to Selene? If interest was due and owing under
11 this note?

12 A Yes.

13 Q And we've established your document showing zero
14 interest rate; is that correct?

15 MR. WYMAN: Object, again, Your Honor. Not
16 reflective of the document that is in evidence.

17 THE COURT: Objection --

18 A Shows zero.

19 Q Thank you.

20 MS. ARNOLD: Nothing further, Your Honor.

21 REDIRECT EXAMINATION BY MR. WYMAN:

22 Q Ms. Clark, please refer to Exhibit 1. I have a
23 few questions for you on that. Were there certain addendums
24 to this particular note?

25 A Yes.

1 Q Do you know how many addendums there were?

2 A There were two addendums.

3 Q So let's start with the one immediately behind the
4 allonge. That would be -- what's that document say at the
5 top?

6 A Addendum to note for interest-only payments.

7 Q And in that addendum can you please read paragraph
8 4C?

9 A Calculation of changes. Before each change --
10 before each change date the note holder will calculate a new
11 interest rate by adding to a one fourth percentage points
12 2.250 to the current index.

13 Q Thank you. That is under the section that is
14 titled interest rate and monthly payment changes; is that
15 correct?

16 A Correct.

17 Q So there is interest provided for in this note?
18 Would that be a fair statement?

19 A That is correct. It's listed in the addendum.
20 Not in the note, in paragraph 2. It's -- but it is in the
21 addendum which is attached to --

22 Q We made a part of the note?

23 A Yes.

24 Q And the reason, just to go back to -- your
25 reference to zero earlier, as far as zero interest rate,

1 would be based on the addendum to the note that's the last
2 two pages there? Could you please look at the last two
3 pages?

4 THE COURT: To the original note?

5 MR. WYMAN: Yes. Construction --

6 A Construction permanent financing.

7 Q So that note as far as paragraph 2 goes does
8 provide for zero interest; correct?

9 A Correct.

10 Q But that ends at a certain date?

11 A Yes.

12 Q And so based on your understanding of the note and
13 all the addendums there is interest on this particular loan?

14 A Yes.

15 Q And the interest rate would be reflective of
16 paragraph 4 on the addendum of the note for interest-only
17 payments?

18 A Yes.

19 Q So the reason that so many payments were made that
20 were only interest-only was because the loan was an
21 interest-only loan?

22 A Interest only loan.

23 MR. WYMAN: Nothing further, Your Honor.

24 MS. ARNOLD: I've more, Your Honor.

25 THE COURT: On the interest?

1 MS. ARNOLD: Yes.

2 THE COURT: Let me just say this. I want to hear
3 it, but it's strange credulity to find an interest only
4 loan that's not charging interest.

5 MS. ARNOLD: Your Honor --

6 THE COURT: I understand they were making some bad
7 loans back then.

8 MS. ARNOLD: The documents they presented to you,
9 we've got the face of the document --

10 THE COURT: I've read them. Let me -- you want me
11 to state my findings? I'll be glad to hear from you.

12 There was a construction loan which provided for a
13 one-year construction term. It was Wall Street
14 Journal, the index -- this is -- maybe once in my life
15 my past is coming back to help me. It may hurt me.
16 You can correct me if I'm wrong, but under construction
17 loan the index was the Wall Street Journal prime.
18 States it right there in the construction loan. The
19 margin on top of the index was zero. So you had Wall
20 Street Journal prime plus zero is the amount of the
21 interest owed during the construction phase. The note
22 itself provides, then, for permanent financing, which
23 was -- this was an interest-only loan as shown by the
24 fact that today's principle balance is the same as it
25 was owed in 2007 when this note was taken out. But the

1 permanent financing was a LIBOR Index, which those were
2 great because I had one of those, too. They got down
3 to about as low as .25. But the index was LIBOR, the
4 margin was a two and a quarter, so the interest rate
5 should have been around, somewhere around two and a
6 half during the term of the loan. I don't know how
7 they got there. If you can show me something
8 otherwise. I see the asteric in there but you have to
9 read the whole document.

10 MS. ARNOLD: Your Honor, yes, I agree. You're
11 stuck with the four corners of the document created by
12 this Plaintiff for who they now stand -- to claim to
13 stand in the shoes of. What this says is a change
14 date. The first change date, paragraph 4, provides
15 for -- says on this date we will change your rate, then
16 we'll add the 2.5 which is the 2.5 that was just
17 referenced. The change date doesn't occur for the
18 first time until 2011.

19 THE COURT: Correct.

20 MR. SAPP: So what you have, in essence, by the
21 terms of their documents is a zero interest rate until
22 that change rate occurs. The change date is not until
23 2011.

24 THE COURT: Okay. So then it would have been the
25 Wall Street Journal prime.

1 MS. ARNOLD: That's not the testimony you have in
2 here. What you've got is a 6.35 rate is what's
3 calculated under their documents through the life of
4 it. So more importantly they are the one that have the
5 burden of default. If there was no interest under the
6 four corners of this document that was due under their
7 claim default of Wells Fargo, which was in 2010, we
8 don't have a loan that's in default. What we have,
9 possibly, is a loan paid well in advance. Because the
10 Furmanchiks are entitled to credit for the payments
11 they made that were not due and owing on this
12 particular transaction. I didn't write it, we didn't
13 write it. The scriveners -- whether it's a scrivener's
14 error or not -- worked to my benefit.

15 THE COURT: All right. I want to make sure I
16 understand your argument. Your argument is they gave
17 them an interest-only loan but didn't charge them
18 interest. I'm shortening it, but that's what I'm
19 hearing.

20 MS. ARNOLD: I'm telling you we have a document
21 that was created by the bank that provided for an
22 interim time period that it was supposed to be interest
23 only. It then provided for change dates. Once that
24 change date was triggered by the terms of the document
25 it would have converted not only to an interest-only

1 but a PI application loan where principle and interest
2 were being paid down. I'm not telling you it was an
3 interest-only loan for the life of it. Because it was
4 a 30-year loan that had a limited time period allegedly
5 of only interest-only, where they didn't provide for an
6 interest rate. So what you have is a document, a loan
7 that they created that provided for a principle pay
8 down over its life with a window where there wasn't any
9 principle pay down under it. It was --

10 THE COURT: Well, the loan was in default by the
11 time the change date happened; correct?

12 MS. ARNOLD: Your Honor, my argument is it wasn't
13 in default for that time period. It was only
14 interest-only that was -- that's what happened here.
15 You have a time period where the interest-only
16 provision was supposed to apply. The bank put in zero
17 interest. Their choice, their documents. So when the
18 alleged default occurred there was no payment due and
19 owing under this note. If a change date occurred they
20 determined default and declared default after that
21 point in time and used the proper interest rate at that
22 point in time, which was, under this document, an index
23 with a margin which we don't have. Your evidence in
24 front of you right now is they've charged 6.35 interest
25 rate consistently throughout the life of this loan.

1 THE COURT: All right. Let's look at the addendum
2 to the note, construction slash permanent financing;
3 paragraph 2, which you took Ms. Clark through. Two
4 says, borrower agrees from the date stated above until
5 satisfaction of the, quote, conversion requirements
6 interest -- (reading) until satisfaction of the quote
7 conversion requirements. Interest computed on 365 year
8 day basis shall approve on the unpaid principle balance
9 at a rate equal to Wall Street Journal prime rate on
10 the date of the note. As that rate may change from
11 time to time as provided below. Plus zero percent,
12 this interest rate shall never exceed 24 percent.

13 MR. WYMAN: It's still --

14 THE COURT: It's Wall Street Journal. It's the
15 rate. The index is stated in there. There is nothing
16 on top of that. It's a great loan. Wall Street
17 Journal rate. Whatever the rate is:

18 MS. ARNOLD: If you had testimony what the rate
19 was -- what we have got right now is a loan statement
20 that says 6.35. That's the evidence in front of you.
21 That's it.

22 THE COURT: I'm with you. I don't know what the
23 Wall Street Journal was.

24 MS. ARNOLD: I didn't bring a historical printout.

25 (Laughter)

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1 THE COURT: All right. Mr. Wyman, I think --

2 MR. WYMAN: I think we've established that there
3 is interest on this particular loan.. Is that correct,
4 Ms. Clark?

5 A Yes.

6 Q The current rate as per your system is 6.357
7 percent?

8 A Yes.

9 Q That is based on calculations under the terms of
10 the note and any addendums thereto?

11 A Correct.

12 Q And you previously testified the amount due and
13 owing of the interest, that was \$105,069 and 78 cents?

14 A Yes.

15 MR. WYMAN: Your Honor, I have no further
16 testimony as far as the note goes. If you would like
17 me to lay everything out as far as for the record --

18 THE COURT: Let me make sure Ms. Arnold made her
19 point.

20 MS. ARNOLD: Your Honor, my point is, this is the
21 note they presented. Paragraph 2 provides for
22 interest. Paragraph 4 you're referring to is an
23 addendum that addressed the interest rate charged upon
24 change date; change date did not occur on this loan
25 until 2011. That paragraph applies, as 2011 occurs

1 interest on this note during that time period is zero.
2 There was no default under this loan on their
3 testimony. I preserved all my evidentiary issues on
4 the documentation.

5 THE COURT: All right.

6 (pause)

7 THE COURT: All right. Anything further from this
8 witness, Mr. Wyman?

9 MR. WYMAN: Nothing, Your Honor.

10 THE COURT: All right. Ms. Clark, thank you. You
11 may step down?

12 A Thank you.

13 MR. WYMAN: Your Honor, for the record we state
14 that Plaintiff is seeking foreclosure of the mortgage
15 which constitutes a purchase money first mortgage on
16 the subject property and has in the Complaint waived
17 the right to a deficiency judgment. And Plaintiff asks
18 that the mortgage be foreclosed, property sold at
19 auction in accordance with law and total amount we're
20 seeking today is \$598,547.46. Would the Court like me
21 to provide a full breakdown of that amount?

22 THE COURT: Yes. Is that the exact same figures
23 that were provided previously?

24 MR. WYMAN: It would also include my attorneys
25 fees, so we have principle of \$464,000, interest of

1 \$105,069.78. Allowable late charges in the amount of
2 \$1232.49. Tax advances of \$3,932.21. Hazard and flood
3 insurance advances in the amount of \$11,724.77.
4 Property inspection fees of \$169. BPO and appraisal
5 fees \$200. Title search of \$300. Attorneys fees paid
6 unbilled or unpaid of \$9,252, anticipated attorneys
7 fees awarded herein would be \$1750, constitutes ten
8 hours more work and expenses that my firm has incurred
9 in the amount of \$917.21.

10 THE COURT: All right. Ms. Arnold?

11 MS. ARNOLD: Your Honor, I'll put on the record
12 all my objections. Your Honor, starting with the
13 introduction of the note and mortgage on the grounds
14 the witness was not properly layed foundation.

15 We object to the entry of the demand letter by
16 Wells Fargo or any entry of information by Wells Fargo
17 as Wells Fargo was not present in those documents. The
18 proper foundation was not layed for them.

19 We would note for the Court's record that the
20 Plaintiff did not establish a proper holder. The
21 Plaintiff has alleged it is the owner or holder of a
22 negotiable instrument. In order to do that under South
23 Carolina Title 36 sub section 1, 2 and 3 as applicable,
24 they are not a holder because that holder requires an
25 endorsement. What is clear, the testimony, the

1 evidence presented by the Plaintiff is that we have a
2 note. We have a note that has several endorsements
3 that are canceled. We have a note that allegedly has
4 an allonge that clearly is not affixed. We have a note
5 through a title of chain of mortgage, mortgage
6 transfers, that the two do not follow. Clearly there
7 are not endorsements for all of the entities that they
8 claim held an interest in this mortgage. Those two are
9 inconsistent chains.

10 They have not met the requirements to be a holder
11 which under the new Draper case says that you must have
12 endorsements. We're arguing that they have not
13 properly established the note and mortgage submitted,
14 Your Honor.

15 Under the terms of the note that they have
16 submitted it clearly shows there is zero interest due
17 and owing under this note. They are the creator of it,
18 they are the scrivener of it. Any inconsistency must
19 be construed against it. They have failed to prove the
20 essential element of foreclosure default under the
21 testimony of the witness. There would be -- there was
22 no default because zero interest is owed.

23 The first date there was a change date allegedly
24 under this note is not until 2011. The alleged default
25 letter or demand letter came and is dated-- created by

1 Wells Fargo, not an entity that was here to testify
2 today, a date clearly that predates any time period
3 which interest is owed. They've admitted that there
4 have been payments made on interest with no interest
5 owed. That balance is applied back and reduced to the
6 principle.

7 The testimony here today, only testimony you have
8 in front of you is that interest has been charged out
9 of a rate of 6.35. There is no rate. There is no
10 proof of a rate of 6.35 applicable to this note. They
11 have proffered nothing into evidence to show an index
12 or what the Wall Street Journal was charging during the
13 time period for an interest.

14 Your Honor, in essence they have not
15 established -- they have not proved their right to
16 foreclosure of this loan. We would ask that the Court
17 dismiss the foreclosure.

18 THE COURT: Just for the record?

19 MR. WYMAN: For the record. Your Honor, we would
20 argue we've properly established the admissibility of
21 the note and mortgage. Exhibits 1, 2 and the
22 modification thereof, Exhibit 2A. The Court has ruled,
23 based on the testimony, that they are properly into
24 evidence. To argue that the note, Ms. -- opposing
25 counsel has misrepresented the terms of the note as far

1 as the interest rate goes. It is not zero, as Your
2 Honor has established. There are several addendums
3 thereto that describe a rate plus zero, so there was
4 certainly an interest rate. And, Your Honor, I would
5 argue that the standing issue which Ms. Arnold seems to
6 go back to has already been decided. The Plaintiff has
7 the right to enforce the note and mortgage subject to
8 this action and is entitled to a judgment of
9 foreclosure and sale based on the default under the
10 terms thereof.

11 I prepared a proposed judgment and foreclosure of
12 sale for the Court's consideration.

13 THE COURT: All right. Very good. I'm going to
14 consider the motion to be one for, at this stage of the
15 trial, to be one for non-suit. And I'm going to deny
16 the motion and I'll state for the record why. This may
17 get us somewhere.

18 One, I have -- again, I've reviewed the record and
19 I've heard the testimony and while you were making
20 substantial head way with the witness, I think that
21 she's been properly rehabilitated through the questions
22 by Mr. Wyman.

23 This case -- while Draper is the most recent case
24 on this and it's only two weeks old -- it came out the
25 5th of June -- this is a different case from Draper.

1 Because in this case, unlike -- that was a summary
2 judgment for the Plaintiff granted. This is -- we're
3 at the trial stage.

4 One, when I look at the case Bank of America
5 versus Draper, Judge Konduris(phonetic) from the Court
6 of Appeals wrote the opinion. She's looking at a case
7 in which, one, they have not presented the original
8 note and in this case the original note has been
9 presented to the Court. The Court has seen it; has
10 held it in his hands and, in fact, is looking at it
11 now. Under Section 36-3-301, and I'm reading directly
12 from the Draper case now, of the code, a person
13 entitled to enforce an instrument means, i, the holder
14 of the instrument. I find that the Plaintiff Selene
15 Acquisition is the holder of the instrument. They have
16 provided it to -- they have bailed(phonetic) the
17 instrument to their attorneys Rogers, Townsend and
18 Thomas and it is in possession of the Plaintiff through
19 its agent counsel and who has brought it to court
20 today. So I find that it clearly -- they are the
21 holder of the instrument, therefore entitled to enforce
22 its terms.

23 When I start looking further it just becomes more
24 and more apparent that the holder of the original can
25 do it. All the other exceptions talk in terms of if

1 you can't find the original or some other reason to do
2 it -- Ms. Arnold spoke about a non-holder in possession
3 who has the rights of a holder, under Section 2. Or 3
4 a person not in (reading) pursuant to other sections
5 and I find those don't apply because in fact in this
6 case they are the holder. We don't have to look at the
7 duplicate of the original because we've got the
8 original here.

9 The other matter that is of interest to the Court,
10 and I think the argument was well put forth, but just
11 doesn't compute with this Court's understanding of the
12 terms of the note and mortgage, you've got a relatively
13 complicated transaction. This is evidently -- I don't
14 know whether this is a condominium or --

15 MS. ARNOLD: It's a primary residence.

16 THE COURT: Whatever it is. But clearly there was
17 some construction loan financing that was going on and
18 that would have been the basis for the addendum to the
19 note for construction slash permanent financing. The
20 way I read it the interest rate is the Wall Street
21 Journal prime plus, which is the index, plus a margin
22 of zero percent, so clearly whatever the Wall Street
23 Journal prime was at the time the note was entered into
24 was the interest rate. And that would have been set --
25 could have changed on a monthly basis. I don't think

1 that it did back then, but could have. That addendum
2 provides for -- there is a default provision in
3 paragraph 6 of that document, which doesn't state what
4 it is, but the bank can change the terms to include P
5 and I, principle and interest payment. The addendum to
6 the note for interest-only payments provides for the
7 margin to remain two and a quarter from the current
8 index, and under paragraph F of that document -- that's
9 a two page document, provides upon default, note holder
10 at its option may require (reading) making payments of
11 principle and interest. If the note holder elects this
12 option, the holder will deliver or mail written notice.
13 That was not ever done. So it remained an
14 interest-only payment, best I can tell.

15 Finally, the fixed slash adjustable rate note
16 states underneath it's a LIBOR one-year indexed, LIBOR
17 one year index as published in the Wall Street Journal
18 with caps. Again, the interest under yearly rate of
19 star, interest rate I will pay may change in accordance
20 with it; paragraph 4 of the note. The adjustable
21 interest rate and monthly payment changes, the change
22 date doesn't take place until October 2011. Meaning it
23 was basically a fixed interest loan for the life of the
24 loan, at least until it's default date, testimony of
25 which is in 2010. Again this states the index is LIBOR

1 and plus some margin of two and a quarter. So I'm
2 assuming as banks are oft to do, they charged the
3 higher rate which would have been the construction loan
4 rate for the life of the loan. I don't know if that's
5 right or wrong, but I am certain that the interest rate
6 was not zero. Okay?

7 So I find the bank is the holder of the original
8 and therefor entitled to enforce the original. I do
9 find there was an interest due on this interest-only
10 payment. As a result they are entitled to foreclosure.
11 I don't know how the rate was set at 6.35%. I have to
12 presume that's the Wall Street Journal prime. So I'm
13 going to find the principle is due, late fees are due,
14 interest is due, taxes are due, homeowners and flood
15 insurance would be due. I'll be glad to waive the \$369
16 for inspection and BPO. I'm going to set attorneys
17 fees at \$10,000 and costs at \$1217.21. That's what I'm
18 going to set those at. All right?

19 Now, that having been said, I've ruled on that.
20 Any defenses to the case?

21 MS. ARNOLD: I'll submit a motion for
22 reconsideration so I get my issues preserved for the
23 record. I think that's the simplest way to do it.
24 I've put it on the record already.

25 THE COURT: All right. So based on that, then,

1 the Court will find for the Plaintiff. I don't know
2 what that total figure is going to be but, Mr. Wyman,
3 if you'll address an order to that effect?

4 MR. WYMAN: Your Honor, I feel I have an
5 obligation to bring the Court's attention to what I
6 believe caused all this confusion. The mortgage and
7 modification agreement that was entered today as 2A had
8 several exhibits attached to it. And incorporated is a
9 recorded document that goes through all of the rate
10 changes. That's what provides for the 6.375%.

11 THE COURT: I haven't looked at that.

12 MR. WYMAN: I apologize. While mentioned in the
13 document I don't believe I stapled them or had them
14 stapled. They are recorded documents, though, and so I
15 feel I have the obligation to bring that to the Court's
16 attention.

17 THE COURT: Have you seen it?

18 MS. ARNOLD: I know what it is, Your Honor.

19 THE COURT: Okay.

20 (Laughter)

21 THE COURT: You disagree with it?

22 MS. ARNOLD: Oh, yes, Your Honor. It takes this
23 case on a whole different train. If they close their
24 case it's either for the Court or not. And --

25 THE COURT: You-all want to try it today or come

1 back another day?

2 MS. ARNOLD: No. It's okay.

3 MR. WYMAN: You did admit the documents in, and I
4 would argue that as by reference to it, the full
5 document should be --

6 THE COURT: Sure. Show me 2A. I never looked at
7 it. Show me 2A.

8 (Discussion off the record.)

9 THE COURT: 2A. Mortgage modification agreement.
10 Was the loan modified? She did testify to that.

11 MR. WYMAN: She did. We would argue all the
12 referenced exhibits and everything thereto should be
13 properly considered by the Court.

14 MS. ARNOLD: Your Honor --

15 THE COURT: When was this modification agreement?

16 MR. WYMAN: This was made in August of 2006.

17 THE COURT: So the first year?

18 MR. WYMAN: Correct.

19 THE COURT: Ms. Arnold, let me hear from you on
20 this one.

21 MS. ARNOLD: It's not before you. It wasn't
22 admitted. It wasn't attached. It's after the fact.
23 But it changes the entire case. My argument is, there
24 is no interest due on this note. I'm happy to appeal
25 that issue. What you have now in front of you is a

1 possible new note. If it's a new note that they should
2 have sued under they have a whole different issue with
3 ownership; who it is, was there endorsement or not.
4 They tried their case as they chose to. I was aware of
5 that document. But, Your Honor, I would object to the
6 Court considering it. It wasn't entered.

7 THE COURT: This exhibit --

8 MR. WYMAN: That exhibit was entered and would be
9 incorporated in the entire recorded document. It is a
10 recorded document for public records.

11 THE COURT: I got it. Exhibit 2A states it's a
12 mortgage modification agreement; restates the principle
13 amount. States construction loan agreement is of no
14 force and effect.

15 MS. ARNOLD: Exactly, Your Honor.

16 MR. WYMAN: Your Honor, it clearly refers to
17 amending certain terms of the note, already put into
18 evidence and as you said Exhibit 2A is already in. I
19 would argue the entire modification is in, including
20 all exhibits attached thereto.

21 THE COURT: I don't know. I tell you what, since
22 they did get put in today I'll let you both move to
23 reconsider. We'll come back another day. I don't know
24 what that's going to do but --

25 MS. ARNOLD: You know I have my theory, Your

1 Honor.

2 (Laughter)

3 THE COURT: Your argument will be whatever your
4 holding in your hands should be considered as part of
5 the 2A?

6 MR. WYMAN: Should be.

7 THE COURT: And is of public record?

8 MR. WYMAN: And is of public record.

9 THE COURT: So you'll have the public record
10 exception to get that in another day and I don't know
11 what that's going to do.

12 MS. ARNOLD: My argument is simply if that's the
13 note it's a brand new note. The construction loan is
14 gone.

15 MR. WYMAN: We can take it up right now.

16 MS. ARNOLD: Your Honor, I would object.

17 (Interruption by the court reporter.)

18 THE COURT: Let's just go ahead and do it. I want
19 to know what you're objecting to, 2A?

20 MS. ARNOLD: Not 2A that's before you that was
21 entered. No. I object to the Court considering
22 this -- they chose to try their case. The case is
23 closed. If this is going to be considered a
24 reconsideration the law is you don't get new evidence
25 in on a motion to reconsider. This is critical in this

1 case. And that is standard black letter law, there are
2 no new issues coming in on reconsideration. So I would
3 object to the Court addressing this at this point in
4 time.

5 THE COURT: Okay. Mr. Wyman, go ahead.

6 MR. WYMAN: Your Honor, Exhibit 2A was entered
7 into evidence. It was not a complete copy. I would
8 argue under the public record exception the entire copy
9 of the recorded document should be entertained by this
10 Court. It certainly refers to Exhibit 1, the note,
11 making certain amendments to the note dated
12 September 7, 2005. It's clearly layed out on the first
13 page there, Your Honor. It also refers to certain
14 changes on page 2 of Exhibit 2A. And, again, Your
15 Honor, this is a public record. It is recorded. That
16 simply because something was not fully stapled to it,
17 as far as for the Courts consideration, I would argue
18 that the Court should consider the entire document as a
19 whole and just as a -- as one recorded document, not
20 just certain pages of it.

21 THE COURT: Okay. All right. So let me ask this
22 question. Do those documents -- there is a reference
23 in here, a star, see below. (reading) The terms
24 provisions of the note and security instrument are
25 amended and modified according to terms of provisions

1 of -- incorporated here by reference of those
2 documents.

3 MR. WYMAN: Yes.

4 THE COURT: Those documents, those things were all
5 stamped?

6 MR. WYMAN: All stamped with individual book and
7 page numbers.

8 THE COURT: All right. Okay. You're objecting to
9 him making that part of the record?

10 MS. ARNOLD: I am. This is the grounds for my
11 objection, so the record is clear. The case is closed.
12 This is new evidence. Under the rules it can't be. We
13 don't have any testimony with regard to what you are
14 now looking at. It hasn't been properly established
15 with testimony. But if the Court were looking at that,
16 that is a new note, completely new date, 2006, new
17 terms. If that was a note they should have been suing
18 on it's not the note they chose to. It is not a note
19 that has any endorsement. It is not a note that we've
20 had any testimony about. There are no endorsements on
21 it. That very well may have been the correct note they
22 needed to sue on. They chose not to. They had it in
23 their possession. Did they produce it to me in their
24 documents? They did. But that is a whole new note
25 that takes over the existence of the 2005 note. That

1 note does provide for an interest rate, Your Honor.
2 Not what they sued on. It's their choice. Can't
3 correct it now. I think I made it clear, I have some
4 issues with the standing under the 2005. I want to
5 preserve those issues. No doubt. Whether or not they
6 established default under the note, because those are
7 the terms of their note. They are the ones that chose
8 to do it, it's their note. If this is a new note they
9 should have sued on, they had to establish the terms of
10 that note. They had to establish the holder and
11 ownership of that note. They had to establish the
12 default of that note. That's not what you have in
13 front of you today.

14 MR. WYMAN: Your Honor, Exhibit 2A, the portion
15 that's already into evidence clearly refers to amending
16 the 2005 or -- yes, 2005 note that's already into
17 evidence that you've seen the original of. This is not
18 a new note. This is a modification of said note. Your
19 Honor, it provides for certain amendments to the note
20 and they are incorporated by the attached exhibits that
21 are recorded documents. Simply because I did not
22 staple all the documents when I handed it up to the
23 witness does not take away from the fact this is a
24 public record that fully is in front of the Court based
25 on at least the first two pages incorporated by

1 reference and also signed by Mr. Furmanchik, signed by
2 Ms. Furmanchik as well. Your Honor, we would argue
3 that it is simply a modification of Exhibit 1 that's
4 already into evidence and since it's just a
5 modification, the endorsement on the original note is
6 sufficient.

7 THE COURT: All right. I'm with you.

8 MS. ARNOLD: Your Honor, my last comments are it's
9 a new document, it's a new note, it wasn't entered into
10 evidence, they closed their case, they chose not to
11 admit it; didn't give an opportunity for cross
12 examination. If you look at it you clearly see new
13 dates, whole different scenario than the scenario
14 presented to you.

15 THE COURT: Okay. All right. Here's what we're
16 going to do. This document 2A references an Exhibit A
17 and Exhibit A2 and a B2. Do we have each of those
18 documents?

19 MR. WYMAN: Yes, Your Honor.

20 THE COURT: All right. I'll allow you to staple
21 those together. We're going to call that 2B. Okay?
22 And it's going to come into evidence over the
23 objections of the Defendant who may then need to file
24 another alternative basis to reconsider. I haven't
25 looked at them yet. I'll look at them. I'll let them

1 in on the basis they should come in. All right. I
2 want Exhibit A2 and B2 referenced in this document.
3 You can staple those together and it's going to be
4 document 2B.

5 (Whereupon Plaintiff's Exhibit 2B is received in evidence.)

6 THE COURT: The question will be, to be or not to
7 be. All right?

8 (Discussion off the record.)

9 THE COURT: The Defendant had some kind of letter.
10 You-all are not proffering that?

11 MS. ARNOLD: No.

12 THE COURT: All right. I've issued my ruling.
13 Mr. Wyman, you can prepare an order based upon the
14 record we now have. I'll expect to get your motion
15 within ten days or receipt of the written entry of
16 notice.

17 MS. ARNOLD: Sure.

18 THE COURT: I'll set it for a hearing and we'll
19 come forward again, we'll discuss this again. I'll
20 entertain a motion.

21 (Discussion off the record.)

22 (Hearing concluded.)

23

24

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1 STATE OF SOUTH CAROLINA)

2) C E R T I F I C A T E

3 COUNTY OF CHARLESTON)

4

5 I, Bernadette A. Cali, Notary Public, do
6 hereby certify that the within hearing was taken and
7 transcribed by me; and that the foregoing pages are
8 a true and accurate transcript of the within proceedings
9 under the prevailing circumstances. I further certify that
10 the persons were present as stated.

11 I further certify that I am not of counsel
12 or kin to any of the parties to this action, nor am I
13 interested in the result of the said action.

14 IN WITNESS WHEREOF, I have hereunto
15 subscribed my name, this June 28, 2013.

16

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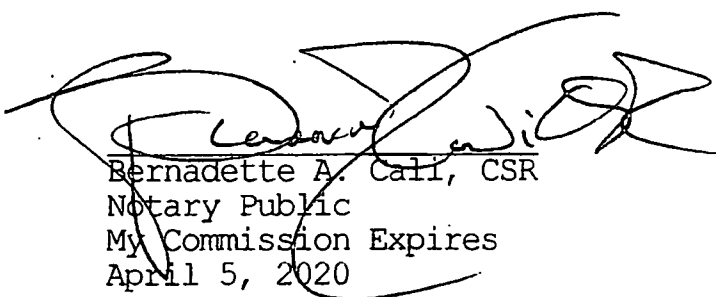
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Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

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IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

SELENE RMOF REO ACQUISITION, LLC,)

Plaintiff,

VS.

MELISSA FURMANCHIK, ET AL,

Defendant.

CASE NO.:2010-CP-10-5825

 COPY

Hearing before the
Honorable Mikell R. Scarborough, reported by Bernadette A.
Cali, CSR and Notary Public, at 11:00 a.m. on August 12,
2013 at 100 Broad Street, Charleston, South Carolina.

A P P E A R A N C E S

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Bernadette A. Cali, CSR
Notary Public

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1 (Hearing commenced.)

2 THE COURT: Good morning.

3 MR. WYMAN: Good morning, Your Honor.

4 MS. ARNOLD: Good morning.

5 THE COURT: Our first case up, then, today is the
6 Selene RMOF REO Acquisition, LLC versus Melissa
7 Furmanchik case. We were previously before the Court;
8 had a hearing on June 20th of this year.

9 Mr. Jason Wyman present for the Plaintiff, and
10 Ms. Mary Leigh Sammie Arnold for the Defendant.

11 And at the end of that case the Court allowed some
12 additional documentation to come into evidence. After
13 ~~that the Defendant filed a Rule 59(e) motion.~~ This
14 Court finds the matter should be reopened for the
15 express purpose of taking additional testimony with
16 regards to the note and subsequent modification
17 ~~agreement pursuant to Rule 50(d) and set this matter~~
18 today for hearing at 10 a.m. It's now eleven. Ms.
19 Arnold had to be in Circuit Court for awhile, so I
20 really want -- what I would like to do is go ahead and
21 get the testimony on the record this morning and then
22 let's talk about some alternative avenues to resolve
23 this matter.

24 MR. WYMAN: Thank you. Your Honor, I would call
25 Ms. Mamie Clark back to the stand. As far as exhibits,

1 would you like me to refer to the original?

2 THE COURT: Yes, I'll consider this to be a
3 continuation.

4 (Mamie Clark, 7077 Bonneville, Drive, Jacksonville, Florida,
5 32216, duly sworn, testifies as follows:)

6 DIRECT EXAMINATION BY MR. WYMAN:

7 Q Go ahead and re-put all your stuff on the record.

8 What's your full name?

9 A Mamie Clark.

10 Q What's your occupation?

11 A Contested default manager.

12 Q What company do you work for?

13 A Selene Finance.

14 Q How long have you worked at Selene Finance?

15 A Since June 2010.

16 Q How long have you held your current position?

17 A Since May of last year. I don't remember the
18 exact date.

19 Q In your current position what are some of your job
20 duties?

21 A Attend non-jury trials, review documents in
22 preparation for trials and work cases to determine if there
23 is any type of resolution.

24 Q Does your company maintain records for each loan
25 account that it manages in the ordinary course of its

1 business?

2 A Yes.

3 Q Is it important that your company keep such
4 records?

5 A Yes.

6 Q What kinds of records does your company maintain
7 for each loan account?

8 A Payment history, comment documentation, collateral
9 documents, note, mortgage; all of the documents associated
10 with the loan.

11 Q Is that kept in the ordinary course of your
12 business?

13 A Yes.

14 Q Ms. Clark, turning to the loan at issue do you
15 know when this foreclosure action was filed?

16 A In 2010.

17 Q When the foreclosure action was pending what
18 happened to this loan?

19 A Servicing transferred on the loan.

20 Q Can you explain to the Court what a service
21 transfer is?

22 A The maintaining records, one company will transfer
23 all of the documents and responsibilities, ownership of a
24 specific loan to another company for the servicing of that
25 loan.

1 Q And servicing, what would servicing generally be
2 described as?

3 A Accepting payments, discussing options, disbursing
4 payments for taxes, insurance; monitoring the loan.

5 Q Have you reviewed the documents and records for
6 this loan?

7 A Yes.

8 Q Are you familiar with those records and documents?

9 A I am.

10 Q Were those loan documents and records kept and
11 maintained in the ordinary course of business?

12 A They were.

13 Q Do you know on what date this loan was originated?

14 A September 2005. September 7, 2005.

15 Q What type of loan was this originally?

16 A A construction loan.

17 Q How do you know it was a construction loan?

18 A There was an addendum attached to the documents
19 indicating that it was a construction loan.

20 Q Would that have been on Exhibit 1, the note
21 you previously testified to?

22 A Yes, to the best of my recollection.

23 MR. WYMAN: Your Honor, does the Court have the
24 actual exhibits? Or should I just --

25 THE COURT: I'm looking specifically for them.

1 One second.

2 MR. WYMAN: I have a copy of the original.

3 THE COURT: Yes, I do have them. Which one are we
4 talking about?

5 MR. WYMAN: Exhibit 1, copy of the original note.

6 THE COURT: I do have it.

7 MR. WYMAN: May I hand that to the witness?

8 THE COURT: Sure.

9 MR. WYMAN: Thank you.

10 THE COURT: Plaintiff's 1.

11 MR. WYMAN: Thank you.

12 Q I hand you what's been marked as I believe already
13 into evidence as Exhibit 1, the original note.

14 Under the terms of the September 7, 2005 note
15 you're holding there who was the borrower?

16 A David H. Furmanchik.

17 Q Would you look at the construction addendum
18 attached to that note? What was the interest rate under the
19 terms of that note?

20 A Just a moment.

21 (pause)

22 A In Section B it states the interest rate and
23 monthly payment changes will be further defined in Section
24 4C.

25 Q Are you looking to the addendum to the note titled

1 construction slash permanent financing?

2 A This is the addendum for interest-only payments.

3 Okay. I see what you're asking.

4 Addendum to note, construction permanent
5 financing -- is that the document you're referring
6 to?

7 Q Yes.

8 A In paragraph 2 it reads that the borrowers agreed
9 that from the dates stated above until satisfaction of the
10 conversion requirements the interest computed on a 365-day
11 year, basis shall accrue on the unpaid principle balance of
12 the note at a rate which is equal to the WSJ prime rate as
13 defined below on the date of the note as that rate may
14 change from time to time provided. So it's zero plus zero
15 percent. The interest rate shall never exceed 24 percent.
16 And so the interest rate is based on the Wall Street Journal
17 prime rate ~~at that~~ time.

18 Q According to your records was this loan modified?

19 A It was.

20 MR. WYMAN: May I approach, Your Honor?

21 THE COURT: You may.

22 MR. WYMAN: I believe I need to get 2B and C,
23 the -- I have an actual combined copy of the
24 modification if that would be easier. Or actually two
25 right there, and B and C.

1 (Discussion off the record.)

2 THE COURT: I'm sure I have a --

3 MS. ARNOLD: I think it was 2A and B and --

4 Q I hand you what's been marked as 2B.

5 THE COURT: And 2B made reference to other
6 documents not attached?

7 MR. WYMAN: That is correct.

8 Q And 2A and 2B I'm handing you a copy of that.

9 Could you describe to the Court what those are?

10 A Those are the addendums to the original signed
11 documents.

12 Q How about what's 2A?

13 A 2A is the mortgage modification agreement,
14 amendment to note and security instrument.

15 Q ~~When is that document dated, 2A?~~

16 A August 31st, 2006.

17 Q And 2A and 2B combined, were they recorded in the
18 public records?

19 A Yes.

20 Q Do you know what date it was recorded on? If I
21 may go a different -- does it appear the document was
22 recorded in the public records?

23 A Yes, it has a book number on the document.

24 Q Can you read the book and page number for the
25 Court, please?

1 A W597. It's the book. And page number is 260.

2 MR. WYMAN: I represent to the Court and ask you
3 take judicial notice that the mod was recorded on
4 September 11, 2006. Do not believe the exhibit has a
5 copy of the recorder page so she will not have a date
6 to know when it was actually recorded but ask the Court
7 take judicial notice of such fact.

8 THE COURT: All right.

9 Q Ms. Clark, what did the modification agreement do
10 to the terms of the note and mortgage?

11 A It amended the terms of the note and mortgage.

12 Q Can you tell the Court, for example, what type of
13 terms were amended?

14 A The loan was converted from a construction loan to
15 a permanent loan.

16 Q Under the terms of the modification what did the
17 interest rate become?

18 A The interest rate is currently 6.375.

19 Q Is that the same as referred to in Selene's
20 records for this particular loan?

21 A Yes.

22 Q Who signed the modified document, the note and
23 mortgage?

24 A David H. Furmanchik.

25 Q Does Ms. Furmanchik's name appear anywhere on

1 there, on any of the 2B or 2A?

2 A Yes.

3 Q Does her signature appear on the document?

4 A Her signature is on the document.

5 MR. WYMAN: Your Honor, my understanding is this
6 testimony would be limited solely to the note and
7 modification so at this time, Your Honor, we would have
8 no further questions for this witness.

9 THE COURT: Okay. Did we go into the document 2B
10 then? That was the one in issue?

11 MR. WYMAN: I can certainly go back into it. She
12 was reading from 2B.

13 THE COURT: She was reading from 2B?

14 MR. WYMAN: She was reading parts of 2B.

15 THE COURT: 2B is the one I let in and we never
16 did talk about. That's the only reason I reopened
17 this thing, is to talk about 2B.

18 MR. WYMAN: 2B was a part of 2A. Can I hand the
19 full recorded copy?

20 THE COURT: Yes.

21 MS. ARNOLD: Do you have a second copy?

22 MR. WYMAN: I do not.

23 THE COURT: Is that the original?

24 MR. WYMAN: The original we're waiting on in West
25 Columbia.

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1 MS. ARNOLD: I'm sorry. To make sure the record's
2 clear on this point, we have two documents. We're
3 talking about 2A and 2B. Now we have a third document
4 that's now presented that is a combination of those two
5 documents?

6 MR. WYMAN: That is correct, Your Honor. So I
7 don't know how we would like to refer to it as. 2A, 2B
8 and that is a complete copy of both 2A and B combined.

9 MS. ARNOLD: For the purpose of the record, Your
10 Honor, I would like to mark it as an exhibit. I don't
11 want it entered into evidence. I don't think it can
12 be, but so the record is clear for future purposes.

13 THE COURT: I think we need to give it a new name
14 without being too confusing. Is it 2C? Does that make
15 sense? My recollection is that -- I was re-reading the
16 record. Exhibit 2A came in. 2B originally did not.
17 And I believe that document referenced an Exhibit A2
18 and B2. That's what --

19 MR. WYMAN: That is correct. That is a complete
20 copy of everything.

21 THE COURT: Okay. We're going to name that
22 document Exhibit -- I think they are all modifications;
23 are they not?

24 MR. WYMAN: One complete modification of the note
25 and mortgage.

1 THE COURT: Let's make it 2C. Okay.

2 (Whereupon Plaintiff's Exhibit 2C is marked in evidence.)

3 THE COURT: I think you indicated it's a recorded
4 document?

5 MR. WYMAN: That is correct, Your Honor.

6 THE COURT: Of record. Let's call that one 2C.
7 I'm going to allow it into evidence over objection.

8 MS. ARNOLD: Thank you, Your Honor.

9 Q Ms. Clark, we'll refer back to 2C now which is a
10 combined -- or combination of Exhibits 2A and B; is that
11 correct?

12 A Yes.

13 Q If I could then direct your attention to
14 Exhibit -- Exhibit A in your packet there, in 2C, an
15 attached document. It should be -- if you could read the
16 book and page number on that actual -- says fixed adjustable
17 rate note?

18 A The book is W597 and page is 265.

19 Q What's the interest rate on that document?

20 A The interest rate is 6.375.

21 Q This is a recorded document; is that correct?

22 A Correct.

23 MR. WYMAN: Your Honor, I believe you already
24 entered it into evidence over Ms. Arnold's objection.
25 We would move 2C formally as a copy of the mortgage

1 modification agreement amendment to the note and
2 security agreement.

3 THE COURT: The date on that document is what?

4 THE WITNESS: This document is dated August 31st,
5 2006.

6 THE COURT: Okay.

7 MR. WYMAN: Thank you, Your Honor.

8 CROSS EXAMINATION BY MS. ARNOLD:

9 THE COURT: In evidence and, Ms. Arnold, subject
10 to your cross examination.

11 MS. ARNOLD: Thank you, Your Honor. May I please
12 see 2C? Thank you.

13 (pause)

14 Q I'm going to hand you back -- Ms. Clark; right?

15 A Yes.

16 Q Ms. Clark, because you just made a comment, if you
17 will look at the first page of 2C and identify the page
18 number on that at the top?

19 A The book is W597 and page is 260.

20 Q That document is entitled at the top, is it not --
21 at the top it's entitled mortgage modification agreement,
22 amendment to note and security agreement; is it not?

23 A Yes.

24 Q And if we go back three pages, which is identified
25 page 3 of page 4, we see Mr. David Furmanchik's signature to

1 that, but we don't see Mrs. Melissa Furmanchik's signature;
2 is that correct?

3 A Correct.

4 Q So Mrs. Furmanchik did not sign a modification to
5 the mortgage agreement; is that correct? Mrs. Furmanchik
6 did not sign this mortgage modification agreement amendment
7 to note and security agreement which goes from page 260 to
8 page 262?

9 A Her signature is not on the document.

10 Q Thank you. Then if we go back several pages you
11 made reference, page 265. What we have here is fixed
12 adjustable -- fixed adjustable rate note; is that correct?

13 A Yes.

14 Q Again, if we go back to pages 265 through 269 on
15 the signature page we only see a David Furmanchik; is that
16 correct?

17 A That's correct. The document --

18 Q Actually, if we go through all of these pages that
19 consist -- all the attachments which go all the way through
20 page filing 275, we only see Mrs. Furmanchik's signature on
21 one document, which is the interest-only payments rider? Is
22 that correct? And I turned it to the back page for you.

23 A Yes, that's what I testified that her signature
24 was on.

25 Q However, when we look at these documents, this is

1 a brand new fixed adjustable rate note and it consists of
2 the five pages; is that correct? You can look at it.

3 A Yes.

4 Q Attached to that note -- or not -- attached to
5 that note is not a single allonge assigning that particular
6 note; is that correct?

7 A That's correct. There is no allonge to this
8 particular note attached.

9 Q There are no endorsements to any of the note or
10 the attachments either?

11 A Not to these copies, no.

12 Q So this note still shows that it is held by
13 Wachovia Mortgage Corporation; is that correct? No
14 endorsements, no assignments?

15 MR. WYMAN: I would object to the extent she's
16 asking a legal question as far as referring to holder.
17 She's not a lawyer.

18 Q Wachovia never endorsed or signed, by looking at
19 the face of those documents, to another creditor or lender;
20 did it?

21 A The copy does not reflect that, no.

22 Q Okay.

23 MS. ARNOLD: Nothing further, Your Honor.

24 MR. WYMAN: If I may briefly on real direct?

25 REDIRECT EXAMINATION BY MR. WYMAN:

1 Q Ms. Clark, please look at page 2 of Exhibit 2C;
2 bottom. Is there an asteric?

3 A Yes.

4 Q Could you please read for the Court what that
5 states?

6 A The terms and provisions of the note and security
7 instrument are amended and modified in accordance with the
8 terms and provisions of Exhibit A and A2 and B2 as attached
9 hereto and incorporated herein by reference.

10 Q Referring back to Exhibit 1, the note, the
11 original note for the construction loan financing, was that
12 endorsed?

13 A Yes.

14 Q Was it endorsed in blank?

15 A Yes.

16 MR. WYMAN: No further questions, Your Honor.

17 THE COURT: Anything further?

18 MS. ARNOLD: Nothing further, Your Honor.

19 THE COURT: Let me see that document, if you
20 would, please.

21 (Hands up document..)

22 (pause)

23 THE COURT: All right. So in reviewing the
24 document 2C the only time I see Mrs. Melissa
25 Furmanchik's signature is on that interest-only

1 payments rider which is Exhibit B2 to this document.

2 Is that correct?

3 THE WITNESS: Yes.

4 THE COURT: Is that correct? And all of this is
5 designed to modify the initial note which was a
6 construction loan; is that correct?

7 THE WITNESS: Correct.

8 (pause)

9 THE COURT: All right. That's all the questions I
10 have. Any follow-up?

11 BY MR. WYMAN:

12 Q Ms. Clark, was the loan ever in the name of
13 Mrs. Furmanchik?

14 A Just by reference to that one note, the document.

15 Q Was the loan -- who took out the loan originally?

16 A David Furmanchik.

17 MR. WYMAN: Thank you, Your Honor.

18 THE COURT: All right.

19 MS. ARNOLD: Your Honor, nothing further.

20 THE COURT: All right. Was Mrs. Furmanchik also
21 on the mortgage then, on the title?

22 MR. WYMAN: On the mortgage.

23 THE COURT: Not an obligor.

24 MR. WYMAN: Not an obligor on the note. We've
25 waived deficiency in our Complaint, Your Honor.

1 THE COURT: Very good. Okay. Ms. Clark, thank
2 you. You may step down.

3 Let's talk about the significance of this and what
4 it means to our case. Ms. Arnold, I'll let you start.

5 MS. ARNOLD: Thank you, Your Honor. There are a
6 couple of things. We seem to have two chains of, I
7 guess, title going on, for lack of a better term.

8 One, the note that we originally were here on
9 first with the foreclosure, and now what I contend is a
10 new note with this new 2C.

11 Your Honor, my argument before was -- had to do in
12 part with ownership and proper endorsements. In my
13 motion for reconsideration on page 6 I did a chart for
14 the Court so the Court could see. If you look at the
15 original note that was used and offered into evidence,
16 it went from Wachovia Mortgage Corporation to Wachovia
17 Bank then it was in blank. Then we have a series of
18 assignments of the mortgage. Then there is one, two,
19 three, four, five -- five transfers there.

20 So in South Carolina law the mortgage typically
21 follows the note, if that's the intent. However, if
22 the mortgage is assigned separately it's a nullity.
23 What we have here is we have the mortgage going to
24 multiple spots, long beyond where there was an
25 endorsement. It sat or it ended up with Wachovia,

1 Wachovia in blank, then nothing further.

2 So if we were to follow the assignments, assuming
3 that was their intent, the last person to own it at
4 that point in time would have been Selene Finance, L.P.
5 That's under the original note that you looked at on
6 the first hearing.

7 Now we have a second note that was attached to
8 this modification, this mortgage modification
9 agreement. Important in the first thing is that the
10 mortgage modification agreement was not signed by
11 Mrs. Furmanchik. Mrs. Furmanchik at the time held
12 title. She did sign the original mortgage. She did.

13 When they did this and they converted it and
14 rolled it into a permanent loan, in layman's terms, to
15 get it out of the construction phase, they created a
16 new note. That note is signed by Mr. Furmanchik, not
17 Mrs. Furmanchik. They did a modification of mortgage
18 I'm assuming trying to tack it on to continue on,
19 didn't lose priority. Mrs. Furmanchik never signed
20 that agreement. But the new note that we see, and we
21 don't have the original, has no endorsements, no
22 allonge, nothing. It sat. It never left Wachovia

23 So here we have title issues now, because we have
24 an alleged modification of a mortgage by a party that
25 owns at least 50% of the ground that didn't agree to it

1 and didn't sign off on it, along with, well, is the
2 party that's here and is attempting to foreclose under,
3 whether it's the original note or now the second note
4 through this amendment, are they the real party?

5 My position has been, it stopped. It never got
6 past a certain point, even if they attempted to assign
7 that mortgage. Those subsequent assignments are just a
8 nullity, so the party here doesn't have the right to do
9 it. That's the gist of my argument, Your Honor.

10 THE COURT: All right. Mr. Wyman.

11 MR. WYMAN: We would argue that clearly the intent
12 of the parties here was to modify the note and
13 mortgage, to roll it over into a permanent type
14 financing, to get it out of the construction loan
15 phase.

16 Mr. Furmanchik took out the loan originally. He
17 was the only one on the note. And simply because
18 Mrs. Furmanchik did not -- she did sign at least a
19 portion of the mortgage modification. It was clear
20 that by the terms of the document -- the mortgage
21 modification agreement, or excuse me -- amendment to
22 the note and security instrument. They are not just --
23 just to intend to amend the mortgage only. It was to
24 roll this into a permanent financing and to -- it was
25 all recorded. It's all recorded documents. All

1 admissible under 803-14 and 15, effecting interests of
2 property and public recorded documents.

3 We would argue that as far as standing goes this
4 Court already entered an order saying the Plaintiff had
5 standing. Remember, Your Honor, originally this case
6 was filed by Wachovia. We substituted a new party
7 after the assignment of the mortgage. We would argue
8 that the assignment of the mortgage also brought with
9 it everything as far as that recorded document that's
10 recorded in 2006.

11 THE COURT: Here's where I'm wrestling. He's the
12 sole obligor on the note; right?

13 MR. WYMAN: That is correct, Your Honor.

14 THE COURT: So the only thing I'm seeing on this
15 Exhibit 2C, which is the whole reason we're here today,
16 was she signed on this interest-only payments rider.
17 That's neither a note nor a mortgage nor anything. I'm
18 assuming she signed on the original mortgage; right?

19 MR. WYMAN: She signed the original mortgage.
20 We're not alleging she's obligated whatsoever on the
21 note or anything. The mortgage is still enforceable
22 and still encumbered on the land. And has been
23 assigned through all these various entities that Ms.
24 Arnold has described. We would still argue that the
25 amendment to the note and security instrument is valid

1 and enforceable and would still carry with it the
2 mortgage that is still enforceable as a first lien that
3 was filed in 2005.

4 THE COURT: So take me back through as to how the
5 note was transferred into your client that gave you all
6 standing.

7 MR. WYMAN: The original note was signed in
8 September of 2005. Wachovia originated this loan.
9 Obviously with Wachovia being bought out by Wells in
10 2008-9, that went to Wells. Wells endorsed it in
11 blank, and then the loan service transferred to Selene.
12 There is -- the loan was acquired ultimately by the
13 Plaintiff which is a trust.

14 THE COURT: What about the mortgage itself?

15 MR. WYMAN: The mortgage was assigned multiple
16 times, Your Honor. I think I layed it out in my
17 previous order to the Court. It was assigned four
18 times, and ultimately it ended up into the Selene RMOF
19 REO Acquisition, LLC. Those occurred in 2000 -- final
20 assignments occurred in 2011.

21 THE COURT: Into the current Plaintiff?

22 MR. WYMAN: Yes, Your Honor.

23 THE COURT: All right.

24 MS. ARNOLD: Which was from out of the trust into
25 the current Plaintiff.

1 THE COURT: Right. I'm looking for your memo when
2 you did have that track record -- your disagreement is
3 more with the note and the transfer of the note; is it
4 not?

5 MS. ARNOLD: Yes, and I think the end result of
6 that.

7 (Hands up document.)

8 THE COURT: That's it.

9 MS. ARNOLD: Some of the transfers to the mortgage
10 are a nullity.

11 MR. WYMAN: Your Honor, originally it was a MERS
12 mortgage, so it went from MERS to Wachovia before the
13 foreclosure action was filed; Wachovia to Selene
14 Finance L.P., Selene then transferred -- assigned it to
15 a trust, then the trust assigned it back to our current
16 Plaintiff.

17 Also one more thing, just for the record, Your
18 Honor. This property has been quit claimed from
19 Mrs. Furmanchik to a trust in her name, but I believe
20 we've already put that down on the record from a
21 previous hearing.

22 THE COURT: Okay. All right. Well, I'm going to
23 sit on this one for a little bit. What I'm going to
24 do, as we discussed, I would like to order you-all to
25 mediation, and I'm going to give you period of 60 days

1 the see if you can't come to some understanding about
2 that. I'm happy to order you -- name you a mediator or
3 if you would like to get together with somebody you can
4 do that. I would like to know by the end of this week.
5 I'll issue an order to that effect. I'll take it under
6 advisement. I'll look at some of the case law Ms.
7 Arnold brought to me.

8 MR. WYMAN: Supplement any of my -- I believe my
9 proposed order would have the case law that I rely on,
10 Your Honor.

11 THE COURT: Okay. So I do have that as well.
12 Okay. I'll give you 60 days. I'll sit on it for that
13 time period. If you can resolve it great. If you
14 can't I'll issue a ruling. Let me know how that goes.
15 So August, September, sometime in the first week of
16 October, get back to me.

17 MS. ARNOLD: I have a case of interest that I'm
18 happy to provide to Jason. It's Bank of New York
19 Melon, FAA, The Bank of New York, 3476 Statesville
20 Boulevard, Fort Mills, South Carolina. I love that
21 they put Fort Mills, South Carolina in the caption of
22 the case. This is a good -- I find it as a good case
23 on holders, holders in possession and more recent
24 cases. I'm happy to give it to the Court.

25 THE COURT: All right. I'll take it.

1 MS. ARNOLD: The Bank of New York Mellon, FAA, The
2 Bank of New York, 3476 Statesville Boulevard, Fort
3 Mills, South Carolina.

4 Thank you, Your Honor.

5 THE COURT: Very good.

6 (Discussion off the record.)

7 THE COURT: If you'll get me a mediator's name by
8 the end of the week.

9 (Discussion off the record.)

10 (Hearing concluded.)

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STATE OF SOUTH CAROLINA)

)

C E R T I F I C A T E

COUNTY OF CHARLESTON)

I, Bernadette A. Cali, Notary Public, do hereby certify that the within hearing was taken and transcribed by me; and that the foregoing pages are a true and accurate transcript of the within proceedings. I further certify that the persons were present as stated.

I further certify that I am not of counsel or kin to any of the parties to this action, nor am I interested in the result of the said action.

IN WITNESS WHEREOF, I have hereunto subscribed my name, this November 14, 2013.



Bernadette A. Cali, CSR
Notary Public
My Commission Expires
April 5, 2020

14332-72

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

PLAINTIFF'S
EXHIBIT
1
6/15/16
p. 1 of 1

(B) Amount of My Initial Monthly Payments :

Each of my initial monthly payments will be in the amount of U.S. \$ _____ * . This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of October, 2011, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than _____ * % or less than _____ * %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than _____ * %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest.

I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

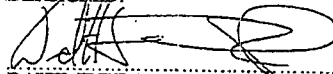
Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without

Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

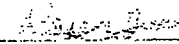
WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 9-7-05 (Seal)
 DAVID H. FURMANCHIK -Borrower

PAY TO THE ORDER OF

WACHOVIA BANK NATIONAL ASSOCIATION

MEMBER FDIC
 WACHOVIA AUTO SE CORPORATION

BY: 
 Assistant Vice President
 KAREN DAVIS

..... (Seal)
 -Borrower
 (Seal)
 -Borrower
 (Seal)
 -Borrower
 (Seal)
 -Borrower

[Sign Original Only]

PAY TO THE ORDER OF

VOID

PAY TO THE ORDER OF

WITHOUT RECEIPT
 WACHOVIA BANK NATIONAL ASSOCIATION
 BY: 
 Assistant Vice President
 KAREN DAVIS

*SEE ATTACHED CONSTRUCTION/PERM ADDENDUM

ALLONGE ATTACHED FOR THE
 PURPOSE OF ENDORSING THE NOTE

ALLONGE FOR THE PURPOSE OF ENDORSEMENT

LOAN NO. [REDACTED]

NOTE DATE: September 7, 2005

LOAN AMOUNT: \$ 464,000.00

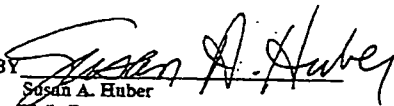
BORROWER (S): David H Furmanchik

PROPERTY ADDRESS: 1820 West Canning Drive
Mt. Pleasant, SC 29466

WITHOUT RECOURSE
PAY TO THE ORDER OF

Wells Fargo Bank, N.A., Successor By Merger To Wachovia Bank, N.A.

BY


Susan A. Huber
Wells Fargo Bank, N.A.
Vice President Loan Documentation

ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS

THIS ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS is made this 7th day of September, 2005, and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned ("Borrower"), in favor of WACHOVIA MORTGAGE CORPORATION ("Lender") and dated the same date as this Addendum (the "Note"). The Note is secured by a security instrument, as modified or amended, in favor of Lender dated the 7th day of September, 2005 (the "Security Instrument").

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. PAYMENTS: Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month. This payment will be for interest only for the first * months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on November 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on October 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ *.
This amount may change.

B. INTEREST RATE AND MONTHLY PAYMENT CHANGES: Section 4 (C) of the Note is amended as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. **BORROWER'S FAILURE TO PAY AS REQUIRED:** Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

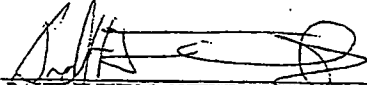
(A) **Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) **Termination of Interest Only Payments**

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

	(Seal)	_____	(Seal)
DAVID H FURMANCHIK	- Borrower		-Borrower
_____	(Seal)	_____	(Seal)
	- Borrower		-Borrower
_____	(Seal)	_____	(Seal)

[Sign Original Only]

*SEE ATTACHED CONSTRUCTION/PERM ADDENDUM

**ADDENDUM TO NOTE
CONSTRUCTION/PERMANENT FINANCING
(Prime Based)**

This Addendum contains provisions for payments of interest only at a variable rate.

THIS CONSTRUCTION/PERM ADDENDUM TO NOTE ("Addendum") is made this 7th day of September, 2005, and is incorporated into and shall be deemed to amend and supplement the promissory note of the same date in the principal amount of Four Hundred Sixty Four Thousand and no/100 Dollars (\$ 464,000.00) ("Note") given by the undersigned ("Borrower") to WACHOVIA MORTGAGE CORPORATION ("Lender") secured by the Mortgage, Deed of Trust or Security Deed of the same date ("Security Instrument") covering the property described therein ("Property") and located at: 1820 WEST CANNING DRIVE
MT. PLEASANT, SC 29466

ADDITIONAL COVENANTS: In addition to the agreements and provisions made in the Note, Borrower and Lender further agree as follows:

- 1. LOAN PURPOSE:** Borrower acknowledges that the loan evidenced by the Note ("Loan") is for the purpose of constructing improvements on the above described Property, and Borrower has executed a construction loan agreement of the same date (the "Construction Loan Agreement") which terms and conditions are incorporated herein. Certain terms used in this Addendum have defined meanings:

"Construction Loan Agreement": The Agreement dated the same date as the Note which contains the terms and conditions under which Note Holder has agreed to make Borrower a loan and disburse loan proceeds for construction of the Improvements.

"Construction Phase": The period during which construction of the Improvements must be completed. The Note provides that: (i) Borrower will pay interest only during the Construction Phase; and (ii) if Borrower meets all the Note Holder's requirements, the loan will convert from the Construction Phase to the Permanent Phase.

"Permanent Phase": A period following the Construction Phase during which Borrower must repay each month both a portion of the principal amount borrowed plus interest, as provided in the Note.

- 2. INTEREST:** Borrower agrees that from the date stated above until satisfaction of the "Conversion Requirements" (as defined in the Construction Loan Agreement) interest computed on a 365 day year basis, shall accrue on the unpaid principal balance of the Note at a rate which is equal to the "WSJ Prime Rate" (as defined below) on the date of the Note, as that rate may change from time to time as provided below plus ZERO percent (0.000 %). This Interest Rate shall never exceed twenty-four percent (24%) ("Interest Rate").

The "WSJ Prime Rate" shall mean the prime rate as published in the Wall Street Journal ("WSJ"). If more than one Prime Rate is published in the WSJ, the highest rate published shall apply. In the event the WSJ discontinues publishing the WSJ Prime Rate, Lender shall select another index and provide prior notice of the name of the new index and in what publication the new index can be found. Borrower acknowledges and agrees that the WSJ Prime Rate is not represented or intended to be the lowest or most favorable rate offered by Lender to any of its borrowers.

The Interest Rate will change from time to time as the WSJ Prime Rate changes in an amount equal to the change in the WSJ Prime Rate, but will not change more often than once a month which will occur on the first day of each calendar month and will be based on the WSJ Prime Rate published in the WSJ on the 25th day of the prior calendar month. If the 25th day of the prior calendar month or the date of the Note falls on a day when the WSJ Prime Rate is not published, the WSJ Prime Rate shall be the rate published on the last day prior to the 25th day of the prior calendar month or the date of the Note.

- 3. PAYMENTS:** Payments of interest only shall be due and payable on the first day of each month on the amounts actually outstanding and unpaid from time to time, beginning with the first day of November, 2005, and continuing thereafter on the first day of each succeeding month. Prior to satisfaction of the Conversion Requirements, if the interest payment is not received by the Lender by the end of twenty (20) business days after it is due, Borrower agrees to pay a late charge of 5.000 % of the interest for the month for which the interest is delinquent.
- 4. CONVERSION:** If Borrower has not satisfied the Conversion Requirements by September 30, 2006, the "Conversion Date" as defined in the Construction Loan Agreement, the loan will be in default. Lender may, at Lender's sole discretion, unilaterally move the Conversion Date to a later date. In such event, unless otherwise agreed in a modification agreement between Borrower and Lender, Borrower shall, prior to or on the Conversion Date, make a payment of principal equal to the amount of principal that would have been paid had the Note been amortizing from the date of the original amortization of principal and interest set out in this Note.

As a condition to Lender's consent to extend the Conversion Date set forth above, Lender may renegotiate any provision of the Note, including but not limited to increasing or decreasing the interest rate, increasing or decreasing the change in the interest rate allowed each year or for the life of the loan, the prepayment privilege and the amount of discount points and other loan fees. In addition, Lender may

require Borrower to submit such credit information as the Lender may reasonably require in order to determine that there has been no material adverse change in Borrower's financial condition and that Borrower qualifies for the new permanent terms of the Note using owner-occupied secondary market underwriting standards, or such other underwriting guidelines established by Lender.

5. **MODIFICATION OF PREPAYMENT PRIVILEGE:** The section of the Note entitled "Borrower's Right to Prepay", is amended to read as follows:

(A) **Prepayment:**

A prepayment of principal only is called a "prepayment". The Note Holder will use any prepayments to reduce the amount of principal I owe under this Note. When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may make a partial prepayment at any time during the Construction or Permanent Phase without paying any prepayment charge. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes.

If I prepay in full during the Construction Phase, I will also pay the Non-Conversion Fee as provided in Section (B) below. Once my loan has converted to the Permanent Phase, I may make a full prepayment at any time without paying the Non-Conversion Fee or any prepayment charge.

(B) **Non-Conversion Fee:**

Unless prohibited by applicable law, to compensate Note Holder for its costs in committing to provide me with permanent financing, I agree to pay Note Holder a non-refundable fee (called the "Non-Conversion Fee") equal to 1.000 % of my loan amount, if any of the following things happen:

- (i) I prepay in full the amount I owe at any time before the loan has converted from the Construction Phase to the Permanent Phase; or
- (ii) Construction of the Improvements as required by the Construction Loan Agreement does not occur; or
- (iii) I fail to do anything else required by the Construction Loan Agreement or the Note in order for the loan to convert from the Construction Phase to the Permanent Phase.

Unless prohibited by applicable law, the Non-Conversion Fee will be added to the total amount I owe under the Note.

6. **DEFAULT:** This Addendum and the Note and Security Instrument have been executed and delivered simultaneously with the Construction Loan Agreement. Any default in the payment of any installment of interest or principal, or both, or in the due performance of or compliance with any of the covenants, terms and conditions of the Security Instrument or the Construction Loan Agreement or any other Loan Documents (as defined in the Construction Loan Agreement), shall be deemed to be a default under the terms and conditions of the Note, and Lender may, at its option, declare the entire indebtedness of principal, interest and any other sums due Lender immediately due and payable in full or delay the Conversion Date, the commencement of interest at the interest rate set forth in the Note, and the commencement of payments of principal and interest at said interest rate.

7. **AMENDMENTS TO NOTE:** Any provisions of the Note or other such instruments executed in connection with the Note which are inconsistent with the provisions of this Addendum are hereby amended or negated to the extent necessary to conform such instruments to the provisions of this Addendum. Except as modified, supplemented or amended herein, all of the terms and conditions contained in the Note shall be and remain in full force and effect.

8. **TERMINATION OF THIS ADDENDUM:** The terms of this Addendum shall be effective only during the Construction Phase. Upon satisfaction of the Conversion Requirements, including written notification to Borrower by Lender that conversion to the permanent loan terms has occurred, this Addendum shall be null and void ab initio and of no further force or effect, and the other provisions of the Note (including any other Addenda thereto) shall be and remain in full force and effect as fully and to the same extent as if this Addendum had never existed.

IN WITNESS WHEREOF, Borrower has executed this Addendum.


DAVID H FURMANCHIK (SEAL)

(SEAL)

(SEAL)

(SEAL)

(SEAL)

BK F 554 PG 170

Return To:

WACHOVIA MORTGAGE CORPORATION
3563 PHILLIPS HWY., STE 400, 2ND FL.
JACKSONVILLE, FL 32207

[Space Above This Line For Recording Data]

MORTGAGE

MIN 100013700057266189

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated September 7, 2005, together with all Riders to this document.

(B) "Borrower" is

DAVID H FURMANCHIK

A MARRIED MAN

MELISSA FURMANCHIK

HIS WIFE

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

BK F 554 PG 171

(D) "Lender" is **WACHOVIA MORTGAGE CORPORATION**

Lender is a **CORPORATION**
organized and existing under the laws of **NORTH CAROLINA**
Lender's address is **1100 CORPORATE CENTER DRIVE**
RALEIGH, NC 27607-5066

(E) "Note" means the promissory note signed by Borrower and dated **September 7 2005**
The Note states that Borrower owes Lender **Four Hundred Sixty Four Thousand and no/100**

(U.S. \$ **464,000.00**) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than **October 1 2036**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

☒ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☒ Other(s) [specify] *
- * RIDER TO SEC INSTR / CONST / PERM

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used

in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the

of

CHARLESTON

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Parcel ID Number:

1820 WEST CANNING DRIVE

MT. PLEASANT

("Property Address"):

which currently has the address of

[Street]

[City], South Carolina

29466

[Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in

writing. In the event of such waiver, Borrower shall pay directly, when and where payable; the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.

5. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. Occupancy. Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. Borrower's Loan Application. Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. Protection of Lender's Interest in the Property and Rights Under this Security Instrument. If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement

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provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

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Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

12. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a

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prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. Borrower's Copy. Borrower shall be given one copy of the Note and of this Security Instrument.

18. Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right

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to reinstate; or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. Sale of Note; Change of Loan Servicer; Notice of Grievance. The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. Hazardous Substances. As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

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Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument.

23. Release. Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

24. Homestead Waiver. Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law.

25. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgement is taken or asked may within 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. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES 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. This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws.

26. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Signed, sealed and delivered in the presence of:

Wendy H. Wilson

K. Delmy

DAVID H FURMANCHIK (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

MELISSA FURMANCHIK (Seal)
-Borrower

Wendy H. Wilson (Seal)
Witness - Borrower

(Seal)
-Borrower

K. Delmy (Seal)
Witness - Borrower

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STATE OF SOUTH CAROLINA,
County of Charleston

Personally appeared before me ^{K. H. Wilson} ~~Wendy H. Wilson~~ Karen DeJong
and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed,
deliver the within written Mortgage; and that he/she with Wendy H. Wilson
, witnessed the execution thereof.

Sworn to before me this 7th day of Sept, 2005

My Commission Expires: Dec 31, 2014

Stacy S. Strain
Notary Public for South Carolina

SCHEDULE A

ALL that certain piece, parcel, or lot of land, together with the improvements thereon, if any, situate, lying and being in the Town of Mount Pleasant, County of Charleston, State of South Carolina, shown and designated as LOT 57 on a plat entitled, "A CONDITIONAL SUBDIVISION PLAT OF WINTERBROOKE SUBDIVISION PHASE 4, PHASE III PARK WEST, FORMERLY A PORTION OF MASONBOROUGH SUBDIVISION, OWNED BY PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Southeastern Surveying of Charleston, Inc., dated February 26, 2004 and recorded March 23, 2004 in the RMC Office for Charleston County in Plat Book EG at Pages 968 and 969. Said lot having such size, shape, dimensions, and boundaries as will by reference to said plat more fully appear.

THIS being a portion of the property conveyed to David H. Furmanchik herein by deed of Park West Development, Inc., dated April 20, 2004 and recorded on May 7, 2004 in the RMC Office for Charleston County in Book R 493, Page 580.

TMS#: 594-12-00-781

GRANTEE'S ADDRESS: 1820 West Canning Drive, Mt. Pleasant, SC 29466

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, conditions, restrictions and easements of record, including any shown or noted on the above referenced plat and those set forth in Exhibit "A" attached hereto and incorporated herein by reference (collectively the "Permitted Exceptions").

EXHIBIT "A"
WINTERBROOKE PHASE 4 AT PARK WEST
PERMITTED EXCEPTIONS

1. Taxes and user fees for the year 2004, which are not yet due and payable, and taxes for subsequent years.
2. Rollback taxes, as provided under Title 12, South Carolina Code of Laws of 1976, as amended, including Section 12-43-220 and others.
3. Interests created by, or limitations on use imposed by, The Federal Coastal Zone Management Act or other Federal Law or Regulation, or by S.C. Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said State or Federal laws.
4. General Permit to Southern Bell Telephone and Telegraph Company, dated November 6, 1935, and recorded in Book V-38 at Page 125, RMC Office for Charleston County, South Carolina.
5. Easement to South Carolina Power Company, dated April 30, 1937, and recorded in Book V-39 at Page 107 in the RMC Office for Charleston County, South Carolina.
6. Easement from Dunes West Joint Venture, a partnership, to South Carolina Electric and Gas Company recorded in Book N-193 at Page 185 in the RMC Office for Charleston County, South Carolina.
7. Right of Way and Easement to US Cable of Lake County, d/b/a US Cable Coastal Properties dated April 25, 1996, and recorded May 6, 1996, in Book U-268 at Page 730 in the RMC Office for Charleston County, South Carolina.
8. Subject to instrument entitled "Land Use and Density Agreement regarding Dunes West P.D. Ordinance Adopted by the Town of Mount Pleasant September 4, 1990" by and between Dunes West Joint Venture and LandTech Charleston, LLC, dated December 19, 1996, and recorded December 27, 1996 at 4:00 P.M., in Book G-278 at Page 527 in the RMC Office for Charleston County, South Carolina; and as amended by Partial Assignment dated June 18, 1998, and recorded June 19, 1998, in Book F-305 at Page 062; and by Partial Assignment dated September 16, 1998, and recorded October 6, 1998, in Book H-312 at Page 503; and by Collateral Assignment dated September 16, 1998, and recorded October 6, 1998, in Book H-312 at Page 508; and by Partial Assignment dated October 3, 1998, and recorded November 6, 1998, in Book L-314 at Page 282; and by Partial Assignment dated January 20, 1999, and recorded January 22, 1999, in Book X-318 at Page 457; and by Partial Assignment dated March 8, 1999, and recorded March 10, 1999, in Book C-322 at Page 660; and by Partial Assignment dated April 9, 1999, and recorded April 13, 1999, in Book H-324 at Page 845; and by Partial Assignment dated June 17, 1999, and recorded June 18, 1999, in Book W-328 at Page 297; and by Partial Assignment dated June 17, 1999, and recorded June 18, 1999, in Book W-328 at Page

301; and by Partial Assignment dated June 17, 1999, and recorded June 18, 1999, in Book W-328 at Page 305; and by Partial Assignment dated June 24, 1999, and recorded July 7, 1999, in Book B-330 at Page 095; and by Partial Assignment dated September 9, 1999, and recorded September 27, 1999, in Book X-334 at Page 447, re-recorded on October 14, 1999, in Book B-336 at Page 192; and by Partial Assignment dated September 9, 1999, and recorded September 27, 1999, in Book X-334 at Page 451, re-recorded in Book B-336 at Page 196; and by Partial Assignment dated October 15, 1999, and recorded October 25, 1999, in Book O-336 at Page 403; and by Partial Assignment dated November 29, 1999, and recorded December 8, 1999, in Book Y-338 at Page 723; and by Partial Assignment dated December 13, 1999, and recorded December 21, 1999, in Book S-339 at Page 793 in the RMC Office for Charleston County, South Carolina.

9. Park West Master Association Declaration of Covenants, Conditions, and Restrictions, dated December 11, 1997, and recorded December 17, 1997, in Book P-294 at Page 275, and as amended by First Amendment to Declaration of Covenants, Conditions and Restrictions for Park West Master Association dated June 10, 1998, and recorded in Book Y-304 at Page 606; as amended by Second Amendment to Declaration of Covenants, Conditions and Restrictions for Park West Master Association recorded January 5, 1999, in Book Y-317 at Page 081; as amended by Third Amendment to Declaration of Covenants, Conditions, and Restrictions for Park West Master Association recorded July 12, 1999, in Book H-330 at Page 022; as amended by Fourth Amendment to Declaration of Covenants, Conditions, and Restrictions for Park West Master Association recorded January 4, 2000, in Book K-340 at Page 696; as amended by Fifth Amendment dated October 9, 2001, and recorded October 12, 2001, in Book Y-384 at Page 233; as amended by Sixth Amendment dated November 1, 2001, and recorded in Book R-387 at Page 536 in the RMC Office for Charleston County, South Carolina; and as further amended from time to time.
10. Declaration of Covenants, Conditions, and Restrictions Park West Amenity Association, Inc. dated December 11, 1997, and recorded January 20, 1998, in Book C-296 at Page 678 in the RMC Office for Charleston County, South Carolina, as amended by First Amendment to Declaration of Covenants, Conditions, and Restrictions for Park West Amenity Association, Inc. dated June 10, 1998, and recorded in Book Y-304 at Page 613; as amended by Second Amendment recorded January 4, 2000, in Book K-340 at Page 704; as amended by Third Amendment dated October 9, 2001, and recorded October 12, 2001, in Book Y-384 at Page 228 in the RMC Office for Charleston County, South Carolina; and subsequent amendments thereto.
11. Easement from LandTech Charleston, LLC to SCE&G dated January 10, 1998, and recorded January 30, 1998, in Book R-296 at page 381 in the RMC Office for Charleston County, South Carolina.
12. Declaration of Restrictive Covenants for Wetlands Preservation dated June 19, 1998, and recorded in Book N-307 at Page 173 in the RMC Office for Charleston County, South Carolina, and re-recorded August 25, 1998, in Book P-309 at Page 750; as amended by

Supplemental Declaration to Declaration of Restrictive Covenants for Wetlands Preservation (Lands Adjacent to Summerlin at Park West), dated March 25, 1999, and recorded in Book F-323 at Page 479; as amended by First Amendment recorded in Book A-325 at Page 035; as further amended by Amendment dated March 19, 2003, and recorded March 21, 2003 in Book O-441 at Page 205; as further amended by Amendment dated March 13, 2003, and recorded April 15, 2003 in Book W-444 at Page 544, in the RMC Office for Charleston County, South Carolina; and subsequent amendments thereto.

13. Reservation of right of Park West Development, Inc. or Park West Master Association, Inc. to grant easements for installation and operation of utilities within twenty (20) feet of the right-of-way of all roads within the Property which are dedicated or are subsequently dedicated to public use.
14. All easements, setbacks and restrictions shown on that plat of survey, consisting of Sheets 1 and 2, made by Southeastern Surveying of Charleston, Inc. entitled, "A CONDITIONAL SUBDIVISION PLAT OF WINTERBROOKE SUBDIVISION PHASE 4, PHASE III PARK WEST, FORMERLY A PORTION OF MASONBOROUGH SUBDIVISION, OWNED BY PARK WEST DEVELOPMENT, INC., LOCATED IN THE TOWN OF MOUNT PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" dated February 26, 2004, and recorded March 23, 2004, in the RMC Office for Charleston County in Plat Book EG at Pages 968 and 969.
15. Masonborough at Park West Association, Inc., A Park West Neighborhood, Declaration of Covenants, Conditions, and Restrictions, recorded June 30, 2000, in Book M-350 at Page 001; as amended by First Amendment recorded September 15, 2000, in Book Z-354 at Page 816 in the RMC Office for Charleston County, South Carolina; and any subsequent amendments and supplements thereto.
16. All matters apparent from a visual inspection of the lots.
17. The zoning ordinances of the Town of Mount Pleasant and Charleston County, South Carolina.

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FURMANCHIK**FIXED/ADJUSTABLE RATE RIDER**
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 7th day of September, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to WACHOVIA MORTGAGE CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

1820 WEST CANNING DRIVEMT. PLEASANT, SC 29466

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of _____ %. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of October, 2011 and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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FURMANCHIK

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than _____ * % or less than _____ * %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than _____ * %.

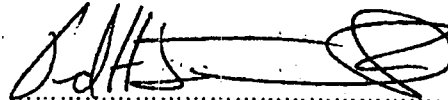
(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.



DAVID H FURMANCHIK

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

(Seal)

-Borrower

***SEE ATTACHED CONSTRUCTION/PERM RIDER**

INTEREST ONLY PAYMENTS RIDER

THIS INTEREST ONLY PAYMENTS RIDER is made this 7th day of September, 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed and any incorporated Fixed/Adjustable Rate Rider or Adjustable Rate Rider (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note or Adjustable Rate Note (the "Note") to WACHOVIA MORTGAGE CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

1820 WEST CANNING DRIVEMT. PLEASANT, SC 29466

[Property Address]

AN ADDENDUM ATTACHED TO THE NOTE CONTAINS PROVISIONS WHICH ALLOW THE PAYMENT OF INTEREST ONLY AT A VARIABLE RATE DURING AN INITIAL PORTION OF THE LOAN TERM.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument as amended if applicable by any Fixed/Adjustable Rate Rider or Adjustable Rate Rider, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. **PAYMENTS:** Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. **PAYMENTS:**

(A) **Time and Place of Payments**

I will make a payment every month. This payment will be for interest only for the first * months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on November 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on October 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) **Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ *.
This amount may change.

B. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:** Section 4 (C) of the Note is amended as follows:

4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:**

(C) **Calculation of Changes**

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Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. **BORROWER'S FAILURE TO PAY AS REQUIRED:** Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

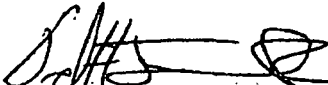
(A) **Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest and/or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) **Termination of Interest Only Payments**

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal) _____ (Seal)
DAVID H FURMANCHIK - Borrower -Borrower

_____ (Seal) _____ (Seal)
- Borrower -Borrower

 (Seal) _____ (Seal)
MELISSA FURMANCHIK

[Sign Original Only]

*SEE ATTACHED CONSTRUCTION/PERM RIDER

ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS

THIS ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS is made this 7th day of September, 2005, and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned ("Borrower"), in favor of WACHOVIA MORTGAGE CORPORATION ("Lender") and dated the same date as this Addendum (the "Note"). The Note is secured by a security instrument, as modified or amended, in favor of Lender dated the 7th day of September, 2005 (the "Security Instrument").

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. **PAYMENTS:** Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. **PAYMENTS**

(A) **Time and Place of Payments**

I will make a payment every month. This payment will be for interest only for the first * months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on November 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on October 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) **Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ *.
This amount may change.

B. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:** Section 4 (C) of the Note is amended as follows:

4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES**

(C) **Calculation of Changes**

Before each Change Date, the Note Hblder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. **BORROWER'S FAILURE TO PAY AS REQUIRED:** Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

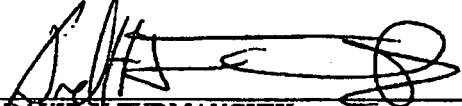
(A) **Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) **Termination of Interest Only Payments**

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

	(Seal)	_____	(Seal)
DAVID H FURMANCHIK	- Borrower		-Borrower
_____	(Seal)	_____	(Seal)
	- Borrower		-Borrower
_____	(Seal)	_____	(Seal)

[Sign Original Only]

***SEE ATTACHED CONSTRUCTION/PERM ADDENDUM**

618
FURMANCHIK**PLANNED UNIT DEVELOPMENT RIDER**

THIS PLANNED UNIT DEVELOPMENT RIDER is made this 7th day of September 2005, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to

WACHOVIA MORTGAGE CORPORATION

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at:

1820 WEST CANNING DRIVE**MT. PLEASANT, SC 29466**

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in

(the "Declaration"). The Property is a part of a planned unit development known as

PARK WEST

[Name of Planned Unit Development]

(the "PUD"). The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest.

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. PUD Obligations. Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration; (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association; and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

618
FURMANCHIK

B. Property Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then:

(i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property; and

(ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C. Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E. Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender;

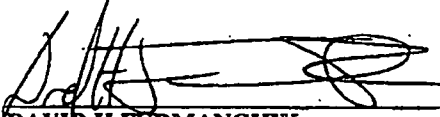
(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F. Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

618
FURMANCHIK

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this PUD Rider.



DAVID H FURMANCHIK (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower



MELISSA FURMANCHIK (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

RECORDER'S PAGE

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**Filed By:**

Karen Dejong, ESQ, LLC

317 Wingo Way

Suite 305

Mt. Pleasant

SC 29464

FILED

September 19, 2005

10:01:09 AM

BK F 554 PG 170

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 34.00
Postage	

TOTAL	\$ 34.00

DRAWER:

	B - ecp

DO NOT STAMP BELOW THIS LINE



BP0133352

RMC BK 0133 Pg 352 : pg 1 *

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

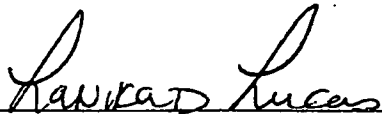
ASSIGNMENT OF MORTGAGE

Mortgage Book F554 at Page 170

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto Wachovia Mortgage Corporation, c/o Wells Fargo Home Mortgage, 3476 Stateview Boulevard, MAC X7801-02R, Fort Mill, SC29715, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, together with the Note executed by David H. Furmanchik and Melissa Furmanchik to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) dated September 7, 2005, and duly recorded in the public records of Charleston County, State of South Carolina, on September 19, 2005, in Mortgage Book F554 at Page 170.

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) has caused this instrument to be executed in its corporate name and behalf by John Kennerty, as its Assistant Secretary, duly authorized, on this 7th day of July, 2010.

Mortgage Electronic Registration Systems, Inc.,
acting solely as nominee for Wachovia Mortgage
Corporation (MIN #100013700057266189)



LaNika D Lucas

By: 

John Kennerty
its: Assistant Secretary



RoseAna Cortinez

STATE OF SOUTH CAROLINA

COUNTY OF YORK

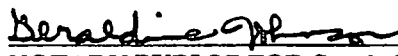
ACKNOWLEDGMENT

S.C. Code § 30-5-30

(Effective January 1, 1995)

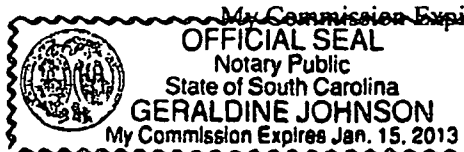
I, the undersigned, Notary Public for the State of South Carolina, do hereby certify that Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) by John Kennerty, its Assistant Secretary, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 7th day of July, 2010.



NOTARY PUBLIC FOR South Carolina

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(011784-14524)



00 319

Appendix000000321

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NOTE: This page **MUST** remain
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Filed By:

ROGERS TOWNSEND & THOMAS
PO BOX 100200

COLUMBIA SC 29202-9250

RECORDED

Date: July 15, 2010

Time: 1:40:20 PM

Book

Page

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0133

352

Asgt

Charlie Lybrand, Register
Charleston County, SC

MAKER:

MERS INC

RECIPIENT:

WACHOVIA MTG CORP

of Sats:

of Pages: 2

of References: 1

Note:

Recording Fee \$ 6.00

Extra Reference Cost \$ -

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 6.00

Original Book:

F554

Original Page:

170

**DRAWER
CLERK**

**Drawer 1
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Recorded Date



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BP0177657

RMC Bk 0177 Pg 657 : pg 1 *

After Recording Please Return To:

Poppe Mortgage Services
17006 Seven Pines Drive
Spring, Texas 77379

Wachovia Mortgage Corporation**Assignment of Mortgage**

Pool #: LPO #: Loan #: ~~618~~ - ~~1480~~

For value received, Wachovia Mortgage Corporation, 1100 Corporate Center Drive, Raleigh, NC 27607, hereby sells, assigns and transfers to

Selene Finance, LP

its successors and assigns, all its right, title and interest in and to a certain Mortgage
executed by DAVID H. FURMANCHIK, A MARRIED MAN AND MELISSA FURMANCHIK, HIS WIFE

To: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

and bearing the date the 7TH day of SEPTEMBER A.D. 2005 and
recorded in the office of the Recorder of CHARLESTON County,
State of SOUTH CAROLINA in Book F 554 at Page 170
as Document No. on the 11TH day of SEPTEMBER A.D. 2006

Signed the 7TH day of OCTOBER A.D. 20 10

Witness Edward Olson

Wachovia Mortgage Corporation

Witness Susan A. Huber

By Michael L. Hambleton
MICHAEL L. HAMBLETON
Title Vice President

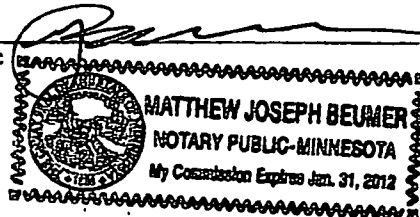
State of MINNESOTA)
County of HENNEPIN) SS

On this 7TH day of OCTOBER A.D. 20 10 Before me, a Notary Public,
personally appeared MICHAEL L. HAMBLETON 2701 Wells Fargo Way, Minneapolis, MN 55467
to me known, who being duly sworn, did say that (he/she) is the Vice President
of Wachovia Mortgage Corporation, and acknowledged to me that he/she/they executed the same in
his/her/their capacity (ies) and that said instrument was executed on behalf of said company.

PREPARED BY: Edward Olson
Wells Fargo Bank, N.A.
2701 Wells Fargo Way
Minneapolis, MN 55467

612-312-9469

Notary Public



00 321



618

Name: FURMANCHIK

Location: KASOTA

Customer: SELN

Appendix000000325

Book: WFB02-WARE

RECORDER'S PAGE

NOTE: This page MUST remain
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**Filed By:**

POPPE MORTGAGE SERVICES LLC
17006 SEVEN PINES DRIVE

SPRING, TX 77379

RECORDED		
Date:	March 18, 2011	
Time:	12:27:41 PM	
Book	Page	DocType
0177	657	Asgt
Charlie Lybrand, Register Charleston County, SC		

MAKER:

WACHOVIA MTG CORP

RECIPIENT:

SELENE FINANCE

of Pages: 2
of Sats: # of References:

Note:

Original Book:

F554

Original Page:

170

Recording Fee	\$ 6.00
Extra Reference Cost	\$ -
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 6.00

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CLERK **KLH**



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

ASSIGNMENT OF MORTGAGE
Mortgage Book F554 at Page 170

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto SRMOF 2009-1 Trust, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by David H. Furmanchik and Melissa Furmanchik to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) dated September 7, 2005, and duly recorded in the public records of Charleston County, State of South Carolina, on September 19, 2005, in Mortgage Book F554 at Page 170.

IN WITNESS WHEREOF, Selene Finance, LP has caused this instrument to be executed in its corporate name and behalf by Charles Nicholas, as its UP, duly authorized, on this 29 day of MARCH, 2011.
Selene Finance, LP

[Signature]
Witness No. 1

By: [Signature]
its: UP

[Signature]
Witness No. 2

STATE OF Texas
COUNTY OF Harris

ACKNOWLEDGMENT

S.C. Code § 30-5-30
(Effective January 1, 1995)

I, the undersigned, Notary Public for the State of Texas, do hereby certify that Selene Finance, LP by Charles Nicholas, its UP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 29 day of MARCH, 2011.



CARINE TOUMA
Notary Public
STATE OF TEXAS
My Comm Exp. Feb. 21, 2012

NOTARY PUBLIC FOR Texas
My Commission Expires 2/21/2012

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(014332-00072)

C/O SELENE FINANCE
9990 Richmond
Houston, TX 77042

Furmanchik
1820 West Canning Drive
Mt Pleasant, SC 29466

00 323

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**Filed By:**

ROGERS TOWNSEND & THOMAS
PO BOX 100200
COLUMBIA SC 29202-9250

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Date:	May 3, 2011	
Time:	12:30:04 PM	
Book	Page	DocType
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Charlie Lybrand, Register Charleston County, SC		

MAKER:

SELENE FINANCE

RECIPIENT:

SRMOF 2009 ETC

Original Book:

F554

Original Page:

170

of Sats: # of Pages: 2
of References:

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RMC BK 0185 Pg 206 : pg 1 *

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ASSIGNMENT OF MORTGAGE

Mortgage Book F554 at Page 170

FOR VALUE RECEIVED, we hereby set over, transfer and assign unto Selene RMOF REO Acquisition, LLC, its successors and assigns, all its rights, title and interest in and to a certain Mortgage, executed by David H. Furmanchik and Melissa Furmanchik to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) dated September 7, 2005, and duly recorded in the public records of Charleston County, State of South Carolina, on September 19, 2005, in Mortgage Book F554 at Page 170.

IN WITNESS WHEREOF, SRMOF 2009-1 Trust has caused this instrument to be executed in its corporate name and behalf by Charles Nicholas, as its VP, duly authorized, on this 29 day of MARCH, 2011.
SRMOF 2009-1 Trust.

[Signature]
Witness No. 1

By: [Signature]its: VP

[Signature]
Witness No. 2

STATE OF TexasCOUNTY OF HARRIS

ACKNOWLEDGMENT

S.C. Code § 30-5-30
(Effective January 1, 1995)

I, the undersigned, Notary Public for the State of Texas, do hereby certify that SRMOF 2009-1 Trust by Charles Nicholas, its VP, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand this 29 day of MARCH, 2011.



CARINE TOUMA
Notary Public
STATE OF TEXAS
My Comm. Exp. Feb. 21, 2012

NOTARY PUBLIC FOR Texas
My Commission Expires: 2/21/2012

RETURN TO:
Rogers, Townsend & Thomas, P.C.
Post Office Box 100200
Columbia, South Carolina 29202
(014332-00072)

C/O SELENE FINANCE
9990 Richmond
Houston, TX 77042.

00 325

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Charlie Lybrand, Register Charleston County, SC		

MAKER:

SRMOF 2009 ETC

RECIPIENT:

SELENE RMOF ETC

of Pages: **2**
of Sats: # of References:

Note:

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Extra Reference Cost	\$ -
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TOTAL	\$ 6.00

Original Book:

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Original Page:

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CLERK **KLH**



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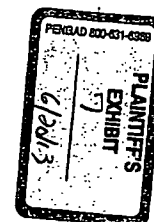
DATE 11/11/10
PAGE 01

DAVID H FURMANCIK
C/O MELISSA FURMANCIK
1820 WEST CANNING DR
MT PLEASANT SC 29466

LOAN NUMBER	PAYMENT DUE	PAYMENT AMOUNT	& INTEREST PAYMENT	INTEREST RATE	PRINCIPAL BALANCE	ESCROW BALANCE
6618	01-01-10	3001.31	0.00	6.37500	0.00	

TRANSACTION	PRIN PD/	ESCROW PD/	-----OTHER-----	
AMOUNT	BALANCE	INTEREST	BALANCE	AMOUNT CODE/DESCRIPTION

11-10-10	01-10	132	LATE CHARGE ADJUSTMENT					
	0.00		0.00	0.00	0.00	232.50	1	LATE FEE
11-10-10	01-10	132	LATE CHARGE ADJUSTMENT					
	0.00		0.00	0.00	0.00	999.99	1	LATE FEE
11-10-10	01-10	156	LOAN TRANSFERRED					
	0.00	464,000.00	0.00	0.00	3,636.77			
			0.00	0.00				NEW PRINCIPAL/ESCROW BALANCES
11-10-10	01-10	168	REPAY OF ESCROW ADVANCE					
	0.00		0.00	0.00	3,636.77	3,636.77		
11-02-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT					
	6.00		0.00	0.00	0.00			
11-02-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT					
	405.00		0.00	0.00	0.00			
11-02-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT					
	150.00		0.00	0.00	0.00			
11-02-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT					
	150.00		0.00	0.00	0.00			
11-02-10	00-00	630	ATTORNEY ADVANCE DISBURSEMENT					
	420.00		0.00	0.00	0.00			



Appendix000000329

10-28-10 00-00 633 MISC. F/C AND B/R EXPENSE DISBURSEMENT
 100.00 0.00 0.00 0.00
 10-28-10 00-00 633 MISC. F/C AND B/R EXPENSE DISBURSEMENT
 100.00 0.00 0.00 0.00
 10-22-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 20.00 0.00 0.00 0.00
 10-18-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 10-11-10 01-10 132 LATE CHARGE ADJUSTMENT
 0.00 0.00 0.00 0.00 0.01 1 LATE FEE
 09-28-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 15.00 0.00 0.00 0.00
 09-16-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 P7081-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 11/11/10
 REQ BY SELEN11/10 PAGE 02
 DAVID H FURMANCHIK
 LOAN NUMBER: 000000006618

ACTIVITY FOR PERIOD 12-01-08 - 11-11-10

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
08-24-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	15.00		0.00 0.00 0.00	
08-16-10	01-10	152	LATE CHARGE ASSESSMENT	
	0.00		0.00 0.00 0.00 123.25-1 LATE FEE	
07-23-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	15.00		0.00 0.00 0.00	
07-21-10	01-10	161	ESCROW ADVANCE	
	3,318.00		0.00 0.00 3,318.00	
07-20-10	08-10	351	HAZ INS	
	3,318.00-		0.00 0.00 3,318.00-	
			3,636.77- NEW PRINCIPAL/ESCROW BALANCES	
07-16-10	01-10	152	LATE CHARGE ASSESSMENT	
	0.00		0.00 0.00 0.00 123.25-1 LATE FEE	
06-22-10	00-00	631	PROPERTY PRESERVATION DISBURSEMENT	
	15.00		0.00 0.00 0.00	
06-21-10	00-00	632	STATUTORY EXPENSE DISBURSEMENT	
	300.00		0.00 0.00 0.00	

00 329

06-21-10 00-00 630 ATTORNEY ADVANCE DISBURSEMENT
 315.00 0.00 0.00 0.00
 06-16-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 05-19-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 15.00 0.00 0.00 0.00
 05-17-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 04-26-10 00-00 631 PROPERTY PRESERVATION DISBURSEMENT
 15.00 0.00 0.00 0.00
 04-16-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 03-16-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 02-16-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 01-19-10 01-10 152 LATE CHARGE ASSESSMENT
 0.00 0.00 0.00 0.00 123.25-1 LATE FEE
 01-04-10 01-10 161 ESCROW ADVANCE
 318.77 0.00 0.00 318.77
 12-31-09 01-10 352 FLOOD INS
 447.00- 0.00 0.00 447.00-
 318.77- NEW PRINCIPAL/ESCROW BALANCES
 12-18-09 12-09 312 COUNTY TAX DISBURSEMENT
 1,854.36- 0.00 0.00 1,854.36-
 128.23 NEW PRINCIPAL/ESCROW BALANCES
 12-11-09 12-09 172 ADJ ESCROW PAYMT
 1,500.00 0.00 2,465.00 536.31 1,501.31-
 1,982.59 NEW PRINCIPAL/ESCROW BALANCES
 P7081-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 11/11/10
 REQ BY SELEN11/10
 DAVID H FURMANCHIK
 LOAN NUMBER: 6618

ACTIVITY FOR PERIOD 12-01-08 - 11-11-10
 PROCESS DUE TRANSACTION TRANSACTION EFFECTIVE DATE
 DATE DATE CODE DESCRIPTION OF TRANSACTION

 TRANSACTION PRIN PD/ ESCROW PD/ ----- OTHER-----
 AMOUNT BALANCE INTEREST BALANCE AMOUNT CODE/DESCRIPTION

 12-01-09 12-09 172 ADJ ESCROW PAYMT
 1,501.31 0.00 0.00 0.00 1,501.31

00 330

11-06-09	11-09	172	ADJ ESCROW PAYMT						
	3,001.31		0.00	2,465.00	536.31				
					1,446.28			NEW PRINCIPAL/ESCROW BALANCES	
10-05-09	10-09	173	ESCROW PAYMENT						
	3,001.31		0.00	2,465.00	536.31				
					909.97			NEW PRINCIPAL/ESCROW BALANCES	
09-25-09	10-09	173	ESCROW PAYMENT						
	15.00		0.00	0.00	0.00			15.00 C AMORTIZATION FEE	
09-10-09	08-09	351	HAZ INS						
	3,160.00-		0.00	0.00	3,160.00-				
					373.66			NEW PRINCIPAL/ESCROW BALANCES	
09-01-09	09-09	172	ADJ ESCROW PAYMT						
	3,001.31		0.00	2,465.00	536.31				
					3,533.66			NEW PRINCIPAL/ESCROW BALANCES	
07-31-09	08-09	172	ADJ ESCROW PAYMT						
	3,001.31		0.00	2,465.00	536.31				
					2,997.35			NEW PRINCIPAL/ESCROW BALANCES	
07-01-09	07-09	172	ADJ ESCROW PAYMT						
	3,001.31		0.00	2,465.00	536.31				
					2,461.04			NEW PRINCIPAL/ESCROW BALANCES	
05-27-09	06-09	172	ADJ ESCROW PAYMT						
	3,001.31		0.00	2,465.00	536.31				
					1,924.73			NEW PRINCIPAL/ESCROW BALANCES	
05-07-09	05-09	173	ESCROW PAYMENT						
	0.00		0.00	2,465.00	415.68		2,880.68-	05-04-09	
					1,388.42			NEW PRINCIPAL/ESCROW BALANCES	
04-29-09	05-09	172	ADJ ESCROW PAYMT						
	2,880.68		0.00	0.00	0.00			04-28-09	
03-30-09	04-09	172	ADJ ESCROW PAYMT						
	2,880.68		0.00	2,465.00	415.68		2,880.68	03-27-09	
					972.74			NEW PRINCIPAL/ESCROW BALANCES	
02-27-09	03-09	172	ADJ ESCROW PAYMT						
	2,880.68		0.00	2,465.00	415.68			02-26-09	
					557.06			NEW PRINCIPAL/ESCROW BALANCES	
02-06-09	02-09	168	REPAY OF ESCROW ADVANCE						
	0.00		0.00	0.00	274.30-		274.30		
02-06-09	02-09	172	ADJ ESCROW PAYMT						
	2,880.68		0.00	2,465.00	415.68			02-05-09	
					141.38			NEW PRINCIPAL/ESCROW BALANCES	
01-05-09	02-09	161	ESCROW ADVANCE						
	274.30		0.00	0.00	274.30				
01-05-09	01-09	352	FLOOD INS						

Appendix000000332

423.00- 0.00 0.00 423.00-
 274.30- NEW PRINCIPAL/ESCROW BALANCES
 P7081-45C CUSTOMER ACCOUNT ACTIVITY STATEMENT DATE 11/11/10
 REQ BY SELEN11/10 PAGE 04
 DAVID H FURMANCHIK
 LOAN NUMBER: 6618

ACTIVITY FOR PERIOD 12-01-08 - 11-11-10

PROCESS DATE	DUE DATE	TRANSACTION CODE	TRANSACTION DESCRIPTION	EFFECTIVE DATE OF TRANSACTION
12-30-08	01-09	168	REPAY OF ESCROW ADVANCE	
	0.00	0.00	0.00	266.98- 266.98
12-30-08	01-09	172	ADJ ESCROW PAYMT	
	2,880.68	0.00	2,465.00	415.68
				148.70 NEW PRINCIPAL/ESCROW BALANCES
12-02-08	01-09	161	ESCROW ADVANCE	
	266.98	0.00	0.00	266.98
12-02-08	12-08	312	COUNTY TAX DISBURSEMENT	
	1,693.36-	0.00	0.00	1,693.36-
				266.98- NEW PRINCIPAL/ESCROW BALANCES

S7081-2FW
LOAN SERV SOLD ID SELEN11/10

WELLS FARGO HOME MORTGAGE
SERVICING TRANSFER FORECLOSURE WORKSTATION REPORT FOR SELENE FINANCE

11/10/10
PAGE 1577

LOAN NUMBER MORTGAGOR BILLING
NEW SERV LOAN NO DAVID H FURMANCHIK
1820 WEST CANNING DR MT PLEASANT SC 29466
PROPERTY ADDRESS
1820 WEST CANNING DR
MT PLEASANT SC 29466
DEFAULT F/C START F/C REMOVAL
01/01/10 04/03/10

* DESCRIPTIONS *
F/C STATUS: ACTIVE 04/03/10 REMOVAL:
PROCESS TYP: JUDICIAL PROP DISP:
CLAIM TYPE: CONVENTIONAL CLAIM DEFAULT:
TEMPLATE: CONV UNINS SC PROP DAMG: FIRE DAMAG
ATTORNEY: ROGERS TOWNSEND & THOMF/C SETUP: 04/03/10
(803) 771-7900

PROP INSP: LAST/NEXT: 03/15/10 PROCESSOR: ROGERS PROCESS 6346

MSP FORECLOSURE ACCOUNTING
TAXES: .00
+ HAZARD INSURANCE: 3,318.00
+ MORTGAGE INSURANCE: .00
+ FORECLOSURE: .00
FORECLOSURE ADVANCES: 3,318.00
ATTORNEY: .00
ESCROW ADVANCE: .00
INVESTOR: .00
TOTAL: .00

CORPORATE ADVANCE BAL
MTGR REC CORP ADV BAL 1,850.00
3RD-REC CORP ADV BAL 206.00
NON-REC CORP ADV BAL .00

TOTAL CORP. ADV. BAL. 2,056.00

S7081-2FW
LOAN SERV SOLD ID SELEN11/10
LOAN NO. 5618 NEW SERVICER LOAN NUMBER

11/10/10
PAGE 1578

MSP TRANSACTION HISTORY
TRAN PAID DUE AMOUNT PRINCIPAL INTEREST ESCROW ESCROW
TYPE DATE DATE PAID PAID PAID PAID PAYEE
132 11-10-10 01-10 .00 .00 .00 .00
132 11-10-10 01-10 .00 .00 .00 .00

PL F-000338

Appendix000000334

00 333

156	11-10-10	01-10	.00	464,000.00	.00	3,636.77	
168	11-10-10	01-10	.00	.00	.00	3,636.77-	
632	11-02-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
632	11-02-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
632	11-02-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
632	11-02-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
630	11-02-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
633	10-28-10	00-00	.00	.00	.00	.00	RE-PRMRASS
633	10-28-10	00-00	.00	.00	.00	.00	RE-PRMRASS
631	10-22-10	00-00	.00	.00	.00	.00	SE-MCS
152	10-18-10	01-10	.00	.00	.00	.00	
132	10-11-10	01-10	.00	.00	.00	.00	
631	09-28-10	00-00	.00	.00	.00	.00	SE-MCS
152	09-16-10	01-10	.00	.00	.00	.00	
631	08-24-10	00-00	.00	.00	.00	.00	SE-MCS
152	08-16-10	01-10	.00	.00	.00	.00	
631	07-23-10	00-00	.00	.00	.00	.00	SE-MCS
161	07-21-10	01-10	3,318.00	.00	.00	3,318.00	
351	07-20-10	08-10	3,318.00-	.00	.00	3,318.00-	72064
152	07-16-10	01-10	.00	.00	.00	.00	
631	06-22-10	00-00	.00	.00	.00	.00	SE-MCS
632	06-21-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
630	06-21-10	00-00	.00	.00	.00	.00	ATY-SC-ROG
152	06-16-10	01-10	.00	.00	.00	.00	
631	05-19-10	00-00	.00	.00	.00	.00	SE-MCS
152	05-17-10	01-10	.00	.00	.00	.00	
631	04-26-10	00-00	.00	.00	.00	.00	SE-MCS
152	04-16-10	01-10	.00	.00	.00	.00	
152	03-16-10	01-10	.00	.00	.00	.00	
152	02-16-10	01-10	.00	.00	.00	.00	
152	01-19-10	01-10	.00	.00	.00	.00	
161	01-04-10	01-10	318.77	.00	.00	318.77	
352	12-31-09	01-10	447.00-	.00	.00	447.00-	74120
112	12-18-09	12-09	1,854.36-	.00	.00	1,854.36-	39019
172	12-11-09	12-09	1,500.00	.00	2,465.00	536.31	
172	12-01-09	12-09	1,501.31	.00	.00	.00	
172	11-06-09	11-09	3,001.31	.00	2,465.00	536.31	
173	10-05-09	10-09	3,001.31	.00	2,465.00	536.31	
173	09-25-09	10-09	15.00	.00	.00	.00	
351	09-10-09	08-09	3,160.00-	.00	.00	3,160.00-	75F27
172	09-01-09	09-09	3,001.31	.00	2,465.00	536.31	
172	07-31-09	08-09	3,001.31	.00	2,465.00	536.31	

PLF-000329

Appendix000000335

172 07-01-09 07-09 3,001.31 .00 2,465.00 536.31
 172 05-27-09 06-09 3,001.31 .00 2,465.00 536.31
 S7081-2FW WELLS FARGO HOME MORTGAGE
 LOAN SERV SOLD ID SELEN11/10 SERVICING TRANSFER FORECLOSURE WORKSTATION REPORT FOR SELENE FINANCE
 LOAN NO. 6618 NEW SERVICER LOAN NUMBER

11/10/10
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MSP TRANSACTION HISTORY								
TRAN	PAID	DUE	AMOUNT	PRINCIPAL	INTEREST	ESCROW	ESCROW	
TYPE	DATE	DATE		PAID	PAID	PAID	PAYEE	
173	05-07-09	05-09	.00	.00	2,465.00	415.68		
172	04-29-09	05-09	2,880.68	.00	.00	.00		
172	03-30-09	04-09	2,880.68	.00	2,465.00	415.68		
172	02-27-09	03-09	2,880.68	.00	2,465.00	415.68		
168	02-06-09	02-09	.00	.00	.00	274.30-		
172	02-06-09	02-09	2,880.68	.00	2,465.00	415.68		
161	01-05-09	02-09	274.30	.00	.00	274.30		
352	01-05-09	01-09	423.00-	.00	.00	423.00-	7D227	
168	12-30-08	01-09	.00	.00	.00	266.98-		
172	12-30-08	01-09	2,880.68	.00	2,465.00	415.68		
161	12-02-08	01-09	266.98	.00	.00	266.98		
312	12-02-08	12-08	1,693.36-	.00	.00	1,693.36-	39019	
173	11-28-08	12-08	2,880.68	.00	2,465.00	415.68		
172	10-31-08	11-08	2,880.68	.00	2,465.00	415.68		
172	09-26-08	10-08	2,880.68	.00	2,465.00	415.68		
168	08-26-08	09-08	.00	.00	.00	236.34-		
172	08-26-08	09-08	2,880.68	.00	2,465.00	415.68		
161	07-30-08	09-08	236.34	.00	.00	236.34		
351	07-30-08	08-08	3,070.00-	.00	.00	3,070.00-	7U956	
172	07-25-08	08-08	2,880.68	.00	2,465.00	415.68		
172	06-17-08	07-08	2,880.68	.00	2,465.00	415.68		
172	05-30-08	06-08	2,880.68	.00	2,465.00	415.68		
172	04-25-08	05-08	2,772.91	.00	2,465.00	415.68		
172	03-31-08	04-08	2,772.91	.00	2,465.00	307.91		
166	03-18-08	04-08	467.64	.00	.00	467.64		
172	02-27-08	03-08	2,772.91	.00	2,465.00	307.91		
168	01-31-08	02-08	.00	.00	.00	112.66-		
172	01-31-08	02-08	2,772.91	.00	2,465.00	307.91		
161	01-02-08	02-08	112.66	.00	.00	112.66		
352	01-02-08	01-08	440.00-	.00	.00	440.00-	7D227	

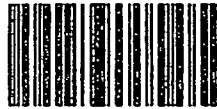
S7081-2FW WELLS FARGO HOME MORTGAGE
 LOAN SERV SOLD ID SELEN11/10 SERVICING TRANSFER FORECLOSURE WORKSTATION REPORT FOR SELENE FINANCE
 LOAN NO. 6618 NEW SERVICER LOAN NUMBER
 FORECLOSURE NOTES

11/10/10
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PF.000336

Appendix000000336

Wells Fargo Home Mortgage
P.O. Box 9039
Temecula, Ca 92589-9039



2230908529

Return Address only
Do not send payments to this address

02/14/2010

46773708DAY30/SC

DAVID H FURMANCHIK
C/O MELISSA FURMANCHIK
1820 WEST CANNING DR
MT PLEASANT, SC 29466-

Dear Borrower(s):

RE: Loan Number [REDACTED] 6618

Our records indicate that your loan is in default for failure to make payments due. Unless the payments on your loan can be brought current by March 16, 2010, it will become necessary to require immediate payment in full (also called acceleration) of your Mortgage Note and pursue the remedies provided for in your Mortgage or Deed of Trust, which include foreclosure.

To correct the default you must pay the total delinquency against your account, which as of today's date is:

Past Due Payments	\$	\$6,002.62
Late Charge Balance	\$	\$123.25
Other Fees	\$	\$0.00
Unapplied Funds	-\$	\$0.00
Total Delinquency as of 02/14/2010	\$	\$6,125.87

To avoid the possibility of acceleration, you must pay this amount on or before March 16, 2010 in CERTIFIED funds, to **Wells Fargo Home Mortgage, 1 Home Campus, X2302-04A, Des Moines, IA 50328**. For the loan to be current and not in default, any additional monthly payments, late charges and other charges that may be due under the note, mortgage and applicable law after the date of this notice must also be paid.

If funds are not received by the above referenced date, we will proceed with acceleration. Once acceleration has occurred, we may take steps to terminate your ownership in the property by a foreclosure proceeding, which could result in Lender or another person acquiring ownership of the property. If foreclosure is initiated, you have the right to argue that you did keep your promises and agreements under the Mortgage Note and Mortgage, and to present any other defenses that you may have.

You have the right to reinstate your Mortgage Note and Mortgage or Deed of Trust after acceleration, and to have enforcement of the Mortgage discontinued and to have the Mortgage Note and Mortgage remain fully effective as if acceleration had never been required. However, any future negotiations attempting to reinstate your loan or any payment of less than the full amount due shall not require Wells Fargo Bank, N.A.'s waiver of the acceleration unless otherwise agreed to, in writing, by Wells Fargo Bank, N.A.

We are required by federal law to notify you of the availability of government approved home ownership counseling agencies designed to help homeowners avoid losing their home. To obtain a list of approved counseling agencies for your state please call 1-800-569-4287. We urge you to give this matter your immediate attention.

00. 335

46773.708.DAY30.SC.0

PLF-000241

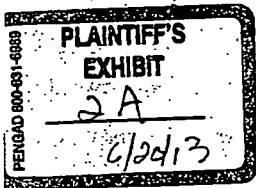
Appendix000000337

If you would like to discuss the present condition of your loan, or if we can be of further assistance, please call one of our Loan Service Representatives at 1-800-416-1472, Monday through Friday from 8:00 a.m. to 8:00 p.m. Central Time.

Sincerely,

Wells Fargo Home Mortgage
Default Management Department

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you have received a discharge of this debt in bankruptcy or are currently in a bankruptcy case, this notice is not intended as an attempt to collect a debt and, this company has a security interest in the property and will only exercise its rights as against the property.



BK W597PG260

Space Above This Line For Recording Data

STATE OF SOUTH CAROLINA) MORTGAGE MODIFICATION AGREEMENT
COUNTY OF CHARLESTON) AMENDMENT TO NOTE AND SECURITY INSTRUMENT
(Loan Program Change)

Prepared By: WACHOVIA MORTGAGE CORPORATION

Return To:

WACHOVIA MORTGAGE CORPORATION
1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066

Lenders Loan Number: [REDACTED]
MIN: [REDACTED] MERS Phone: 1-888-679-6377

THIS MODIFICATION AGREEMENT ("Agreement") is made this 31st day of August,
2006, by and between DAVID H FURMANCHIK A MARRIED MAN

WACHOVIA MORTGAGE CORPORATION ("Borrower") and
1100 CORPORATE CENTER DRIVE ("Lender") whose address is
RALEIGH, NC 27607-5066 and
Mortgage Electronic Registration Systems, Inc. whose address is P.O. Box 2026, Flint, MI 48501-2026 ("Mortgagee" or
"Beneficiary") and [REDACTED] ("Trustee") whose
address is [REDACTED]

RECITALS:

A. Lender is the owner and holder of that certain Promissory Note ("Note") dated September 7 2005, in the original amount of \$ 464,000.00, plus an Addendum to the Note and Construction Loan Agreement of the same date, secured by a Mortgage/Deed of Trust ("Security Instrument") which encumbers property located at 1820 WEST CANNING DRIVE MT. PLEASANT, SC 29466 and which property is more particularly described in said Security Instrument which incorporates a Construction/Permanent Rider of the same date, granted or assigned to MERS solely as a nominee for Lender and Lender's successors and assigns, recorded on September 19 2005 in Official Records/Deed Book F554, Page 170, Public Records of CHARLESTON County.

B. Borrower has requested Lender to modify the Note and Security Instrument, and the parties have mutually agreed to modify the terms as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other valuable consideration, the

receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. **LOAN AMOUNT.** The unpaid principal balance of the Note is \$ 464,000.00 and that interest has been paid through the date of this Agreement.
2. **AMENDMENTS TO THE NOTE.** The terms and provisions of the Note are amended and modified in accordance with the terms and provisions of Exhibit "A", attached hereto and incorporated herein by reference. The Construction/Permanent Addendum to the Note is null and void as of the date of this Agreement and is no longer in effect.
***SEE BELOW**
3. **AMENDMENTS TO THE SECURITY INSTRUMENT:**
 - ☐ (a) The unpaid principal balance of the Note that is secured by the Security Instrument is ☐ increased/
☐ decreased] to Four Hundred Sixty Four Thousand and no/100
Dollars (\$ 464,000.00).
 - ☒ (b) The entire outstanding principal due under the Note, if not sooner paid, will be due and payable on September 1, 2036.
 - ☒ (c) The Construction/Permanent Rider to the Security Instrument is null and void as of the date of this Agreement and is no longer in effect.
 - ☐ (d) The terms and provisions of the Security Instrument are amended and modified in accordance with the terms and provisions of Exhibit "B" attached hereto and incorporated herein by reference.

***E. SEE BELOW**

4. **CONSTRUCTION LOAN AGREEMENT OF NO FORCE AND EFFECT.** The original provisions of the Note and related Construction Loan Agreement provide for the payment of interest only during the Construction Phase of the loan and construction and completion of improvements on the security property. Borrower and Lender agree that the Construction Phase is now complete and that all construction draws and loan proceeds have been disbursed to the Borrower in accordance with the terms of the Note. Borrower further acknowledges Lender's compliance with all terms, conditions, and obligations of the Construction Loan Agreement and other loan documents during the Construction Phase and hereby releases Lender and any subsequent assignee or note holder of all liability thereunder.

Payments of principal and interest shall be due and payable as outlined in the Note, as amended by this Modification Agreement. The Construction Loan Agreement shall be null and void as of the date of this Agreement.

5. **NO RELEASE.** Nothing herein invalidates or shall impair or release any covenants, conditions, agreements or stipulations in Note and Security Instrument and the same, except as herein modified, shall continue in full force and effect, and the undersigned further covenant and agree to perform and comply with and abide by each of the covenants, agreements, conditions, and stipulations of Note and Security Instrument which are not inconsistent herewith. This Agreement shall not constitute a novation.
6. **BINDING EFFECT.** This agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assigns, or successors and assigns of the respective parties hereto.

***The terms and provisions of the Note and Security Instrument are amended and modified in accordance with the terms and provisions of exhibits A2 and B2 attached hereto and incorporated herein by reference.**

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the day and year first above written.

WITNESSES:

[Signature]
[Signature]

Attest:

[Signature]
 Vice President/Assistant Secretary
 (SEAL) **STEPHEN SLOAN**

BORROWERS:

[Signature] (SEAL)
DAVID H FURMANCHIK
 (SEAL)

LENDER: **WACHOVIA MORTGAGE CORPORATION**

By: *[Signature]*
 Vice President/Assistant Secretary **WILLIAM RICE**

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: *[Signature]*
 Vice President/Assistant Secretary **WILLIAM RICE**

TRUSTEE: _____

Vice President/Assistant Secretary
 (SEAL)

[Signature]

ACKNOWLEDGMENTS

By: _____
 Vice President/Assistant Secretary

[Signature]

_____ OF _____

COUNTY OF _____

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this _____ day of _____, _____ by, _____, the Borrower(s) named above. S/he/they is (are) personally known to me or has (have) produced satisfactory proof of his/her/their identity.

Signature of Person Administering Oath:

Printed Name of Person Administering Oath:

Title:

(If Applicable) My Commission Expires: _____

BK W597PG263

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this 29th day of AUGUST, by, WILLIAM RICE as VICE PRESIDENT of said

Lender named above, on behalf of the Lender pursuant to authority granted by its board of directors or other governing body. S/he is personally known to me or has produced satisfactory proof of his/her identity.

Signature of Person Administering Oath:

Mary Ragan

Printed Name of Person Administering Oath:

MARY RAGANTitle: NOTARY(If Applicable) My Commission Expires: JUNE 5, 2007

Mary Ragan
MY COMMISSION # DD220187 EXPIRES
June 5, 2007
BONDED THRU TROY FAIR INSURANCE, INC.

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this 29th day of AUGUST, 2006, by WILLIAM RICE as VICE PRESIDENT of Mortgage Electronic Registration Systems, Inc., on behalf of the Mortgage Electronic Registration Systems, Inc. pursuant to authority granted by its board of directors or other governing body. S/he is personally known to me or has produced satisfactory proof of his/her identity.

Signature of Person Administering Oath:

Mary Ragan

Printed Name of Person Administering Oath:

MARY RAGANTitle: NOTARY(If Applicable) My Commission Expires: JUNE 5, 2007

Mary Ragan
MY COMMISSION # DD220187 EXPIRES
June 5, 2007
BONDED THRU TROY FAIR INSURANCE, INC.

_____ OF _____

COUNTY OF _____

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this _____ day of _____, by _____, as _____ of said Trustee named above, on behalf of the Trustee pursuant to authority granted by Trustee's board of directors or other governing body. S/he is personally known to me or has produced satisfactory proof of his/her identity.

Signature of Person Administering Oath:

Printed Name of Person Administering Oath:

Title: _____

(If Applicable) My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BK W597PG264

Personally appeared before me Karen DeTong and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver the within written Mortgage Modification Agreement; and that he/she with Douglas Burke witnessed the execution thereof.

Sworn to before me this 31st day of
August, 2006.

Tony J. Pendavis

My Commission Expires: 1-18-2015

KDeTong

W597PG265

FIXED/ADJUSTABLE RATE NOTE

(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

August 31 2006 CHARLESTON SOUTH CAROLINA
[City] [State]
1820 WEST CANNING DRIVE MT. PLEASANT, SC 29466
[Property Address]

1. BORROWER'S PROMISE TO PAY.

In return for a loan that I have received, I promise to pay U.S. \$ 464,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is
WACHOVIA MORTGAGE CORPORATION
I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.375 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

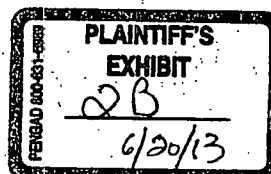
3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payments on the first day of each month beginning on October 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on September 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.



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(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2894.76. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of September, 2016, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.375 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.375 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

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(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest.

I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

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(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without

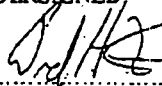
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Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


DAVID H FURMANCHIK

8-36-00

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

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FURMANCHIK**FIXED/ADJUSTABLE RATE RIDER**
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 31st day of August, 2006 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to WACHOVIA MORTGAGE CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

1820 WEST CANNING DRIVEMT. PLEASANT, SC 29466

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 6.375%. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**(A) Change Dates**

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of September, 2016 and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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FURMANCHIK

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.375 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.375 %.

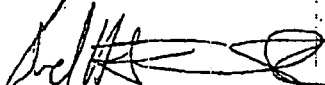
(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

 931-00 (Seal)
DAVID H. FURMANCHIK -Borrower

..... (Seal)
..... -Borrower

..... (Seal)
..... -Borrower

..... (Seal)
..... -Borrower

ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS

THIS ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS is made this 31st day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned ("Borrower"), in favor of WACHOVIA MORTGAGE CORPORATION ("Lender") and dated the same date as this Addendum (the "Note"). The Note is secured by a security instrument, as modified or amended, in favor of Lender dated the 31st day of August, 2006 (the "Security Instrument").

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. **PAYMENTS:** Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. **PAYMENTS**

(A) **Time and Place of Payments**

I will make a payment every month. This payment will be for interest only for the first 120 months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on October 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on September 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) **Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 2,465.00.
This amount may change.

B. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:** Section 4 (C) of the Note is amended as follows:

4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES**

(C) **Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. **BORROWER'S FAILURE TO PAY AS REQUIRED:** Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

(A) **Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) **Termination of Interest Only Payments**

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

  8-3/06

DAVID H FURMANCHIK - Borrower (Seal)

(Seal)
-Borrower

(Seal)
- Borrower

(Seal)
-Borrower

(Seal)

(Seal)

[Sign Original Only]

INTEREST ONLY PAYMENTS RIDER

THIS INTEREST ONLY PAYMENTS RIDER is made this 31st day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed and any incorporated Fixed/Adjustable Rate Rider or Adjustable Rate Rider (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note or Adjustable Rate Note (the "Note") to WACHOVIA MORTGAGE CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

1820 WEST CANNING DRIVEMT. PLEASANT, SC 29466

(Property Address)

AN ADDENDUM ATTACHED TO THE NOTE CONTAINS PROVISIONS WHICH ALLOW THE PAYMENT OF INTEREST ONLY AT A VARIABLE RATE DURING AN INITIAL PORTION OF THE LOAN TERM.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument as amended if applicable by any Fixed/Adjustable Rate Rider or Adjustable Rate Rider, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. PAYMENTS: Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. PAYMENTS:

(A) Time and Place of Payments

I will make a payment every month. This payment will be for interest only for the first 120 months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on October 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on September 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2,465.00.
This amount may change.

B. INTEREST RATE AND MONTHLY PAYMENT CHANGES: Section 4 (C) of the Note is amended as follows:

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES:

(C) Calculation of Changes

BK W597PG275

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. BORROWER'S FAILURE TO PAY AS REQUIRED: Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. BORROWER'S FAILURE TO PAY AS REQUIRED

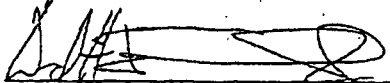
(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest and/or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) Termination of Interest Only Payments

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 8-31-00
(Seal) (Seal)
DAVID H FURMANCHIK - Borrower -Borrower

(Seal) (Seal)
- Borrower -Borrower

 (Seal) (Seal)
MELISSA FURMANCHIK

[Sign Original Only]

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STATE OF SOUTH CAROLINA) MORTGAGE MODIFICATION AGREEMENT
COUNTY OF CHARLESTON) AMENDMENT TO NOTE AND SECURITY INSTRUMENT
(Loan Program Change)

Prepared By: WACHOVIA MORTGAGE CORPORATION

Return To:

WACHOVIA MORTGAGE CORPORATION
1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066

Lenders Loan Number: 5618

MIN: 6189

MERS Phone: 1-888-679-6377

THIS MODIFICATION AGREEMENT ("Agreement") is made this 31st day of August, 2006, by and between DAVID H FURMANCHIK A HARRIED MAN

WACHOVIA MORTGAGE CORPORATION, ("Borrower") and
1100 CORPORATE CENTER DRIVE RALEIGH, NC 27607-5066 ("Lender") whose address is
and
Mortgage Electronic Registration Systems, Inc. whose address is P.O. Box 2026, Flint, MI 48501-2026 ("Mortgagee" or
"Beneficiary") and _____, ("Trustee") whose
address is _____

RECITALS:

A. Lender is the owner and holder of that certain Promissory Note ("Note") dated September 7, 2005, in the original amount of \$ 464,000.00, plus an Addendum to the Note and Construction Loan Agreement of the same date, secured by a Mortgage/Deed of Trust ("Security Instrument") which encumbers property located at 1820 WEST CANNING DRIVE MT. PLEASANT, SC 29466 and which property is more particularly described in said Security Instrument which incorporates a Construction/Permanent Rider of the same date, granted or assigned to MERS solely as a nominee for Lender and Lender's successors and assigns, recorded on September 19 2005 in Official Records/Deed Book F554, Page 170, Public Records of CHARLESTON County.

B. Borrower has requested Lender to modify the Note and Security Instrument, and the parties have mutually agreed to modify the terms as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and other valuable consideration, the

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Appendix



receipt and sufficiency of which is hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. **LOAN AMOUNT.** The unpaid principal balance of the Note is \$ 464,000.00 and that interest has been paid through the date of this Agreement.
2. **AMENDMENTS TO THE NOTE.** The terms and provisions of the Note are amended and modified in accordance with the terms and provisions of Exhibit "A", attached hereto and incorporated herein by reference. The Construction/Permanent Addendum to the Note is null and void as of the date of this Agreement and is no longer in effect.
***SEE BELOW**
3. **AMENDMENTS TO THE SECURITY INSTRUMENT.**
☐ (a) The unpaid principal balance of the Note that is secured by the Security Instrument is [☐ increased/
☐ decreased] to Four Hundred Sixty Four Thousand and no/100
Dollars (\$ 464,000.00)
☒ (b) The entire outstanding principal due under the Note, if not sooner paid, will be due and payable on September 1, 2036.
☒ (c) The Construction/Permanent Rider to the Security Instrument is null and void as of the date of this Agreement and is no longer in effect.
☐ (d) The terms and provisions of the Security Instrument are amended and modified in accordance with the terms and provisions of Exhibit "B" attached hereto and incorporated herein by reference.
***E. SEE BELOW**
4. **CONSTRUCTION LOAN AGREEMENT OF NO FORCE AND EFFECT.** The original provisions of the Note and related Construction Loan Agreement provide for the payment of interest only during the Construction Phase of the loan and construction and completion of improvements on the security property. Borrower and Lender agree that the Construction Phase is now complete and that all construction draws and loan proceeds have been disbursed to the Borrower in accordance with the terms of the Note. Borrower further acknowledges Lender's compliance with all terms, conditions, and obligations of the Construction Loan Agreement and other loan documents during the Construction Phase and hereby releases Lender and any subsequent assignee or note holder of all liability thereunder.

Payments of principal and interest shall be due and payable as outlined in the Note, as amended by this Modification Agreement. The Construction Loan Agreement shall be null and void as of the date of this Agreement.
5. **NO RELEASE.** Nothing herein invalidates or shall impair or release any covenants, conditions, agreements or stipulations in Note and Security Instrument and the same, except as herein modified, shall continue in full force and effect, and the undersigned further covenant and agree to perform and comply with and abide by each of the covenants, agreements, conditions, and stipulations of Note and Security Instrument which are not inconsistent herewith. This Agreement shall not constitute a novation.
6. **BINDING EFFECT.** This agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators and assigns, or successors and assigns of the respective parties hereto.

***The terms and provisions of the Note and Security Instrument are amended and modified in accordance with the terms and provisions of exhibits A2 and B2 attached hereto and incorporated herein by reference.**

OK W597PG262

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto the day and year first above written.

WITNESSES:

[Signature]
[Signature]

Attest:

[Signature]
Vice President/Assistant Secretary
(SEAL) STEPHEN SLOAN

BORROWERS:

[Signature] (SEAL)
DAVID H FURMANCHIK
[Signature] (SEAL)

LENDER: WACHOVIA MORTGAGE CORPORATION

By: [Signature]
Vice President/Assistant Secretary WILLIAM RICE

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

By: [Signature]
Vice President/Assistant Secretary WILLIAM RICE

TRUSTEE: _____

Vice President/Assistant Secretary
(SEAL)

[Signature]
ACKNOWLEDGMENTS

By: _____
Vice President/Assistant Secretary

[Signature]

OF _____

COUNTY OF _____

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official, qualified to administer oaths this _____ day of _____, _____ by,

_____, the
Borrower(s) named above. S/he/they is (are) personally known to me or has (have) produced satisfactory proof of his/her/their identity.

Signature of Person Administering Oath: _____

Printed Name of Person Administering Oath: _____

Title: _____

(If Applicable) My Commission Expires: _____

OK W597PG263

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this 29th day of AUGUST, by WILLIAM RICE as VICE PRESIDENT of said Lender named above, on behalf of the Lender pursuant to authority granted by its board of directors or other governing body. S/he is personally known to me or has produced satisfactory proof of his/her identity.

Signature of Person Administering Oath:

Mary Ragan

Printed Name of Person Administering Oath:

MARY RAGAN

Title: NOTARY

(If Applicable) My Commission Expires: JUNE 5, 2007



Mary Ragan
MY COMMISSION # DD220187 EXPIRES
June 5, 2007
BONDED THRU TROY FAIR INSURANCE, INC.

STATE OF FLORIDA

COUNTY OF DUVAL

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this 29th day of AUGUST, 2006 by WILLIAM RICE as VICE PRESIDENT of Mortgage Electronic Registration Systems, Inc., on behalf of the Mortgage Electronic Registration Systems, Inc. pursuant to authority granted by its board of directors or other governing body. S/he is personally known to me or has produced satisfactory proof of his/her identity.

Signature of Person Administering Oath:

Mary Ragan

Printed Name of Person Administering Oath:

MARY RAGAN

Title: NOTARY

(If Applicable) My Commission Expires: JUNE 5, 2007



Mary Ragan
MY COMMISSION # DD220187 EXPIRES
June 5, 2007
BONDED THRU TROY FAIR INSURANCE, INC.

STATE OF

COUNTY OF

The foregoing Mortgage Modification Agreement was acknowledged before me, a notary public or other official qualified to administer oaths this -- day of --, by -- as -- of said Trustee named above, on behalf of the Trustee pursuant to authority granted by Trustee's board of directors or other governing body. S/he is personally known to me or has produced satisfactory proof of his/her identity.

Signature of Person Administering Oath:

Printed Name of Person Administering Oath:

Title:

(If Applicable) My Commission Expires:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BR W597PG264

Personally appeared before me Karen DeToro and made oath that he/she saw the within named Borrower sign, seal, and as his/her/their act and deed, deliver the within written Mortgage Modification Agreement; and that he/she with Douglas Burke witnessed the execution thereof.

Sworn to before me this 31st day of
August, 2006.

Tony J. Pendavis

My Commission Expires: 1-18-2015

K DeToro

BK W597PG265

FIXED/ADJUSTABLE RATE NOTE(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)

THIS NOTE PROVIDES FOR A CHANGE IN MY FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THIS NOTE LIMITS THE AMOUNT MY ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

August 31, 2006 CHARLESTON SOUTH CAROLINA
[City] [State]
1820 WEST CANNING DRIVE MT. PLEASANT, SC 29466
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 464,000.00 (this amount is called "Principal"), plus interest, to the order of Lender. Lender is

WACHOVIA MORTGAGE CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that Lender may transfer this Note. Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.375 %. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month:

I will make my monthly payments on the first day of each month beginning on October 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on September 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$ 2894.76. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of September, 2016, and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.375 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.375 %.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

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(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under this Note.

I may make a full Prepayment or partial Prepayments without paying any Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial Prepayment may reduce the amount of my monthly payments after the first Change Date following my partial Prepayment. However, any reduction due to my partial Prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me that exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest.

I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal that has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

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(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Unless the Note Holder requires a different method, any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without

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BK W597PG269

Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


DAVID H FURMANCHIK

8-36-00
(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

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FIXED/ADJUSTABLE RATE RIDER
(LIBOR One-Year Index (As Published In *The Wall Street Journal*)—Rate Caps)

THIS FIXED/ADJUSTABLE RATE RIDER is made this 31st day of August, 2006 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note (the "Note") to WACHOVIA MORTGAGE CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

1820 WEST CANNING DRIVE

MT. PLEASANT, SC 29466

[Property Address]

THE NOTE PROVIDES FOR A CHANGE IN BORROWER'S FIXED INTEREST RATE TO AN ADJUSTABLE INTEREST RATE. THE NOTE LIMITS THE AMOUNT BORROWER'S ADJUSTABLE INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE BORROWER MUST PAY.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

ADJUSTABLE RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial fixed interest rate of 6.375%. The Note also provides for a change in the initial fixed rate to an adjustable interest rate, as follows:

4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The initial fixed interest rate I will pay will change to an adjustable interest rate on the first day of September, 2016 and the adjustable interest rate I will pay may change on that day every 12th month thereafter. The date on which my initial fixed interest rate changes to an adjustable interest rate, and each date on which my adjustable interest rate could change, is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my adjustable interest rate will be based on an Index. The "Index" is the average of interbank offered rates for one-year U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the date 45 days before each Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250%) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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FURMANCHIK

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 11.375 % or less than 2.250 %. Thereafter, my adjustable interest rate will never be increased or decreased on any single Change Date by more than two percentage points from the rate of interest I have been paying for the preceding 12 months. My interest rate will never be greater than 11.375 %.

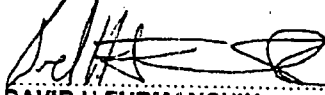
(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my initial fixed interest rate to an adjustable interest rate and of any changes in my adjustable interest rate before the effective date of any change. The notice will include the amount of my monthly payment, any information required by law to be given to me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Fixed/Adjustable Rate Rider.

 8-31-00 (Seal)
DAVID H FURMANCHIK -Borrower

..... (Seal)
..... -Borrower

..... (Seal)
..... -Borrower

..... (Seal)
..... -Borrower

ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS

THIS ADDENDUM TO NOTE FOR INTEREST ONLY PAYMENTS is made this 31st day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Note made by the undersigned ("Borrower"), in favor of WACHOVIA MORTGAGE CORPORATION ("Lender") and dated the same date as this Addendum (the "Note"). The Note is secured by a security instrument, as modified or amended, in favor of Lender dated the 31st day of August, 2006 (the "Security Instrument").

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Note, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. **PAYMENTS:** Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. **PAYMENTS**

(A) **Time and Place of Payments**

I will make a payment every month. This payment will be for interest only for the first 120 months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on October 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on September 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) **Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 2,465.00.
This amount may change.

B. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:** Section 4 (C) of the Note is amended as follows:

4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES**

(C) **Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

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FURMANCHIK

The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. **BORROWER'S FAILURE TO PAY AS REQUIRED:** Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

(A) **Late Charges for Overdue Payments:**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) **Termination of Interest Only Payments**

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 0-3/06 (Seal)
DAVID H FURMANCHIK - Borrower (Seal)
_____- Borrower (Seal)
_____- Borrower (Seal)
_____- Borrower (Seal)

[Sign Original Only]

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INTEREST ONLY PAYMENTS RIDER

THIS INTEREST ONLY PAYMENTS RIDER is made this 31st day of August, 2006, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed and any incorporated Fixed/Adjustable Rate Rider or Adjustable Rate Rider (the "Security Instrument") of the same date given by the undersigned ("Borrower") to secure Borrower's Fixed/Adjustable Rate Note or Adjustable Rate Note (the "Note") to WACHOVIA MORTGAGE CORPORATION ("Lender") of the same date and covering the property described in the Security Instrument and located at:

1820 WEST CANNING DRIVEMT. PLEASANT, SC 29466

[Property Address]

AN ADDENDUM ATTACHED TO THE NOTE CONTAINS PROVISIONS WHICH ALLOW THE PAYMENT OF INTEREST ONLY AT A VARIABLE RATE DURING AN INITIAL PORTION OF THE LOAN TERM.

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument as amended if applicable by any Fixed/Adjustable Rate Rider or Adjustable Rate Rider, Borrower and Lender further covenant and agree as follows with respect to the Permanent Phase of the loan:

A. **PAYMENTS:** Section 3 (A) and Section 3(B) of the Note are amended as follows:

3. **PAYMENTS:**

(A) **Time and Place of Payments**

I will make a payment every month. This payment will be for interest only for the first 120 months, and thereafter will consist of principal and interest.

I will make my monthly payment on the first day of each month beginning on October 1, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and if the payment includes both principal and interest it will be applied to interest before principal. If, on September 1, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 1100 CORPORATE CENTER DRIVE
RALEIGH, NC 27607-5066 or at a different place if required by the Note Holder.

(B) **Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 2,465.00.
This amount may change.

B. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:** Section 4 (C) of the Note is amended as follows:

4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES:**

(C) **Calculation of Changes**

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Before each Change Date, the Note Holder will calculate my new interest rate by adding Two and One Fourth percentage points (2.250 %) to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment, which during the first 120 months of my loan will be the interest on the amounts actually outstanding and unpaid on the first day of the preceding month at my new interest rate, and thereafter will consist of principal and interest in an amount sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

C. **BORROWER'S FAILURE TO PAY AS REQUIRED:** Section 7(A) of the Note is amended as follows and Section 7(F) is appended:

7. **BORROWER'S FAILURE TO PAY AS REQUIRED**

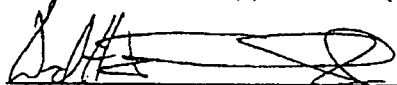
(A) **Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of interest and/or principal and interest. I will pay this late charge promptly but only once on each late payment.

(F) **Termination of Interest Only Payments**

Upon default, the Note Holder, at its option, may require me to immediately begin making payments of principal and interest as stated in Sections 3 and 4 of the Note and in an amount sufficient to pay the outstanding balance in full on the stated Maturity Date. If the Note Holder elects this option, the Note Holder will deliver or mail a written notice to me of the new monthly payment at least 30 days prior to the due date of the new monthly payment.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 8-31-00
(Seal) _____ (Seal)
DAVID H FURMANCHIK - Borrower - Borrower

(Seal) _____ (Seal)
- Borrower - Borrower


(Seal) _____ (Seal)
MELISSA FURMANCHIK

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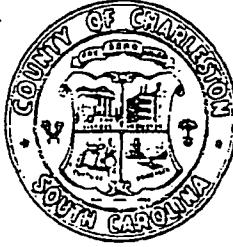
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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Selene RMOF REO Acquisition, LLC.....Respondent,

v.

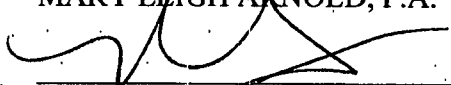
Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

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December 12, 2014

on 370

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IN THE STATE OF SOUTH CAROLINA
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The Honorable Mikell R. Scarborough, Master in Equity

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v.

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and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUES

1. DID THE LOWER COURT ERR BY *SUA SPONTE* GRANTING RELIEF TO PLAINTIFF UNDER RULE 50, SCRPC, WHEN THE RELIEF HAD NOT BEEN SOUGHT BY PLAINTIFF?
2. DID THE LOWER COURT ERR BY DETERMINING THE PLAINTIFF HAD STANDING TO PURSUE FORECLOSURE?
3. DID THE LOWER COURT ERR BY DETERMINING PLAINTIFF'S EVIDENCE WAS SUFFICIENT TO ESTABLISH FORECLOSURE?
4. DID THE COURT ERR BY AWARDING INTEREST WHEN THE CONTRACT FAILED TO PROVIDE FOR INTEREST?

STATEMENT OF CASE

PROCEDURAL AND FACTUAL HISTORY

On July 20, 2010, Wachovia Mortgage Corporation initiated the within foreclosure action alleging that on September 7, 2006, David Furmanchik, now deceased, entered into a loan transaction with it secured by a mortgage in the amount of \$464,000.00. Wachovia Mortgage Corporation further asserted that the mortgage was made to Mortgage Electronic Registration Services, Inc., as nominee. (R. pp. 68-74). On September 16, 2010, an Order of Reference was filed. (R. pp. 3-5). On December 2, 2011, a Consent Order granting leave to Defendant, Melissa Furmanchik (hereinafter "Furmanchik") to file a responsive pleading was filed. (R. p. 6). Furmanchik then timely filed an Answer and Counterclaim which included but was not limited to the following defenses: lack of standing; failure to provide notices required by federal and state law; and unclean hands. (R. pp. 89-94).

On September 10, 2012, an Order of Substitution of parties was filed that specifically states "the subject mortgage was subsequently transferred to Selene Finance LP, by assignment dated October 7, 2010, thereafter transferred to SRMOF-2009-1

Trust, by assignment dated March 29, 2011, thereafter transferred to Selene RMOF REO Acquisition, LLC, by assignment dated March 29, 2011.” (R. p. 7-10). The Order permitted Selene RMOF REO Acquisition, LLC to proceed as the named plaintiff. (hereinafter “Selene” or “Respondent”).

On March 28, 2013, Furmanchik filed a Motion to Dismiss or in the Alternative for Summary Judgment for lack of proof of standing. (R. pp. 95-118). On May 20, 2013, the Master in Equity filed an Order denying the relief sought by Furmanchik. (R. pp. 11-15).

On June 20, 2013, a hearing of foreclosure was held wherein live testimony was taken. No Order of Foreclosure was issued at the close of the case. On July 11, 2013, the Master in Equity *sua sponte* issued an Order pursuant to Rule 50(d), SCRCF finding “that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done pursuant to Rule 50(d), SCRCF. This matter is to be reset for Monday, August 12 at 10:00 a.m.” (R. pp. 16-17).

Hearing Testimony

At the time of the first hearing held on June 20, 2013, Plaintiff offered as a witness Mamie Clark. No other witness was offered to testify.

Ms. Clark is an employee of Selene Finance, L. P. who holds the job title of Contested Default Case Manager. (R. p. 184, lines 24-25). Ms. Clark testified she was authorized to testify on behalf of her company (R. p. 185, lines 7-9), a company which is different from the named Plaintiff, Selene RMOF REO Acquisitions, LLC. (R. p. 186, lines 12-20). Ms. Clark further testified as follows: she was not an employee of the

originally named Plaintiff, Wachovia Mortgage Corporation (R. p. 209, lines 20-25); she is not an employee of the substituted Plaintiff, Selene RMOF REO Acquisitions, LLC. (R. p. 210, lines 4-11); the allonge presented was not affixed to the Note offered as Plaintiff's Exhibit 1 (R. p. 210, line 16 – R. p. 211, line 3); the allonge was not prepared by her or anyone at Selene (R. p. 214, lines 4-24); she was not the custodian of records for Selene Finance L. P. (R. p. 211, lines 4-16); the current owner of the note and mortgage was Selene RMOF REO Acquisition, LLC (R. p. 203, lines 5-6); that she did not know the person who signed the note, David Furmanchik, nor could she identify his signature (R. p. 212, lines 5-13); the Note presented, on the fifth page, has several endorsements one of which is marked void (R. p. 211, line 24 – R. p. 212, line 25); a second endorsement is marked canceled and she has no knowledge as to why it is marked canceled (R. p. 211, line 24 – R. p. 213, line 12); she had no knowledge or documentation that showed how the Note came into Selene's possession (R. p. 213, line 14- R. p. 214, line 3); there is no endorsement on the Note from MERS (R. p. 215, lines 14-17); there is no endorsement on the Note to Selene Finance L.P. (R. p. 215, lines 19-20); there is no endorsement on the Note to SRMOF 2009-1 Trust (R. p. 215, lines 21-23); there is no endorsement on the Note to Selene RMOF REO Acquisitions, LLC (R. p. 215, line 24- R. p. 216, line 1); that the Note identified as Exhibit 1 does not provide an interest rate (R. p. R. p. 216, line 9 – R. p. 217, line 1); that no interest would be owed under the Note identified as Exhibit 1 due to zero being specified as the interest rate (R. p. 217, line 25 – R. p. 218, line 13); the principle amount due is \$464,000 (R. p. 207, lines 15-17); late charges assessed were \$1,232.42 (R. p. 207, lines 18-19); interest from December 1, 2009 through June 20, 2013 is \$105,069.78 (R. p. 207, lines 20-22); total tax charges are

\$3,932.21 (R. p. 202, line 23 – R. p. 208, line 2); flood insurance chargers were \$11,727.77 (R. p. 208, lines 3-7); property inspections totaled \$169 (R. p.208, lines 8-11); and charges for BPO's and appraisals were \$200.00 (R. p. 208, lines 12-16).

Over the objections of Furmanchik, Ms. Clark was allowed to testify (R. p 188, line 23 – R. p. 192, line 16) and the following documents were entered into evidence. Exhibit 1, Note 1 (R. p. 198, lines 4-25); Exhibit 2, Mortgage (R. p. 199, lines 2-9); Exhibit 3, Assignment dated 7/15/2010 (R. p. 200, line 22 – R. p. 201, line 16); Exhibit 4, Assignment dated 3/18/2011 (R. p. 201, line 17 – R. p. 202, line 1); Exhibit 5, Assignment dated 5/3/2011(R. p. 202, lines 2-21); Exhibit 6, Assignment dated 5/3/2011 (R. p. 202, lines 10-21); Exhibit 7, Payment history (R. p. 203, line 9 – R. p. 205, line 12); Exhibit 8, Demand Letter (R. p. 205, line 13 – R. p. 206, line 23; Exhibit 9, Judgment Figures (R. p. 207, line 7 – R. p. 209, line 14); Exhibit 10, (R. p. 208, line 17 – R.p. 209, line 14); and Exhibit 2A, (Note 2)(R. p. 199, line 17 – R. p. 200, line 3). After the close of Ms. Clark's testimony and over Furmanchik's continued objection, the lower court entered into evidence Exhibit 2B which are attachments to Exhibit to 2A (R. p. 241, line 7 – R.p. 250, line 5).

At time of the second hearing held on August 12, 2013 due to the Master in Equity's *sua sponte* relief, Ms. Clark was the only offered witness. Ms. Clark testified that Exhibit 2A was a mortgage modification dated August 31, 2006 (R. p. 261, lines 8 - 16). She further testified that Exhibit 2C was a combination of Exhibits 2A and 2B. (R. p. 265, lines 9-12); that Mr. Furmanchik signed the mortgage modification but Mrs. Furmanchik had not (R. p. 266, line 24 – R. p. 267, line 9); that the document starting on Page 265 is identified as and entitled as a Fixed Adjustable Rate Note which is not signed

by Mrs. Furmanchik (R. p. 267, lines 10-17); that the Fixed Adjustable Rate Note is a brand new note (sometimes hereafter referred to as "New Note")(R. p. 267, line 25 – R. p. 268, line 3); the New Note has no allonge (R. p. 267, line 25 – R. p. 268, line 8); the New Note has no endorsement (R. p. 267, line 25 – R. p. 268, line 21); and that Wachovia never endorsed or assigned the New Note to any other entity. (R. p. 267, line 25 – R. p. 268, line 21).

On February 7, 2014, the Master in Equity entered an Order of Foreclosure. (R. pp. 18-33) On, February 21, 2014, Furmanchik filed a Motion for Reconsideration. (R. pp. 129-154). On March 28, 2014, the Master in Equity denied the Motion for Reconsideration (R. pp. 34-62) wherein Furmanchik timely filed a Notice of Appeal on April 24, 2014.

STANDARD OF REVIEW

Two standards of review govern this appeal: *de novo* as to the granting of foreclosure and abuse of discretion as to the lower court's evidentiary rulings.

"An action to foreclose a real estate mortgage is an action in equity." *BB&T of South Carolina v. Kidwell*, 350 S.C. 382, 387, 565 S.E.2d 316, 319 (Ct. App. 2002). On appeal from an action in equity, this Court may "find facts in accordance with its views of the preponderance of the evidence." *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

A decision about the "admissibility or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." *Allegro Inc. v. Scully*, 400 S.C. 33, 733 S.E.2d 114 (Ct. App. 2012), quoting *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011). "An abuse of

discretion occurs when the trial court's ruling is based on an error of law." *Id.* Further, to warrant reversal, appellant must show prejudice in addition to the error of the ruling. *Id.*

ARGUMENT

I. THE MASTER IN EQUITY LACKED THE POWER TO GRANT *SUA SPONTE* RELIEF.

On June 20, 2013 a hearing was held before the Master in Equity for Charleston County. On July 11, 2013, approximately 20 days later, the Master in Equity *sua sponte* issued an Order stating "this court finds that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done pursuant to Rule 50(d), SCRPC. This matter is to be reset for Monday, August 12 at 10:00 a.m." (R. p. 16-17).

The Master in Equity improperly relied on Rule 50(d), SCRPC. First no motion for directed verdict was made by Plaintiff pursuant to Rule 50, SCRPC. Nor, at the time the Court had decided to act *sua sponte*, had relief been granted or verdict entered in favor of Plaintiff from which it could have moved for a judgment notwithstanding the verdict. In order for Rule 50(d), SCRPC to be applicable here the Court would have had to of ruled in favor of the Defendant at the time of the June 20, 2013 hearing. That had not occurred.

Moreover under Rule 50, SCRPC, *sua sponte* relief is not available. See *State v. Dicapua*, 680 S.E.2d 292, 383 S.C. 394 (S.C. 2009)(citing *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985) (" The sole issue is whether a trial judge *ex mero motu* can grant a new trial on a ground not raised by a party. We hold he cannot.")): See also, *Heins v. Heins*, 543 S.E.2d 224, 344 S.C. 146 (Ct. App. 2001)(a

Family Court judge does not have the authority to alter or amend a judgment, *sua sponte*, once the judgment is more than 10-days-old); and *Ellis v. Niles*, 316 S.C. 516, 459 S.E. 2d 631, 634 n.5 (Ct. App. 1994), vacated in part, reversed in part, 324, S.C. 223, 479 S.E. 2d 47 (1996)(“Rule 50(a), SCRCP provides that a motion for directed verdict may be made at the close of an opponent’s evidence. Moreover, the rule apparently does not give a trial judge authority to direct a verdict *sua sponte*. Compare Rule 19, SCrimP (specifically providing that court shall direct a verdict on motion of the defendant or on its own motion if there is a failure of evidence.)).” Thus Rule 50(d), SCRCP, had no application and it was error for the court to grant the unrequested relief.

Even in the event the lower court inadvertently referenced Rule 50(d), SCRCP, when it intended to cite Rule 59(d), SCRCP, the relief granted was not available. “Rule 59(d), SCRCP, provides that the court, upon its own initiative, may order a new trial ‘not later than 10 days after entry of judgment...[a]fter giving the parties notice an opportunity to be heard on the matter.’ This time limitation may not be extended.” *C&S National Bank v. Easton*, 310 S.C. 447, 427 S.E. 2d 640, 641 (1993). The relief granted by the lower court *sua sponte* was well past 10 days from the hearing. The Court lacked the authority to grant the relief and the decision based on the second hearing should be reversed.

A. The lower court not only exceeded its authority but strayed from its role as a neutral.

A fundamental concept in the process of justice is that all parties are entitled to a fair and impartial trial, and that a judge will act with neutrality. See, *State v. K.C. Langford*, 400 S.C. 421, 735 S.E. 2d 471 (2012), citing, *Schweiker v. McClure*, 456 U.S. 188, 195, 102 S. Ct. 1665, 72 L.Ed.2d 1 (1982) (“ [D]ue process demands impartiality on

the part of those who function in judicial or quasi-judicial capacities."). Here, and with all due respect to the lower court, the lower court by acting on its own accord and providing the Plaintiff with an opportunity to correct evidentiary issues and present additional evidence after Plaintiff had closed its case and had not sought such relief, removed itself from being a neutral and placed itself in the role of an advocate. The Master as with other tribunals is charged with making determinations and rulings based upon what the parties present. It is not charged with advocating for a party or providing a party with an opportunity for a new hearing for the benefit of one party to the detriment of another. Here the Plaintiff had not sought to reopen the matter or moved by any means to present additional evidence or to correct evidentiary deficiencies. By acting *sua sponte* the court appears to have ventured down the road of advocating, doing for a party what the party failed to do, elected not to do or chose not to do itself. The Master erred as a matter of law by granting a second trial.

II. THE PLAINTIFF FAILED TO ESTABLISH ITS RIGHT TO PROSECUTE THE FORECLOSE ACTION.

A. THE NOTE AND MORTGAGE TOOK SEPARATE PATHS MAKING THE TRANSFER OF THE MORTGAGE A NULITY.

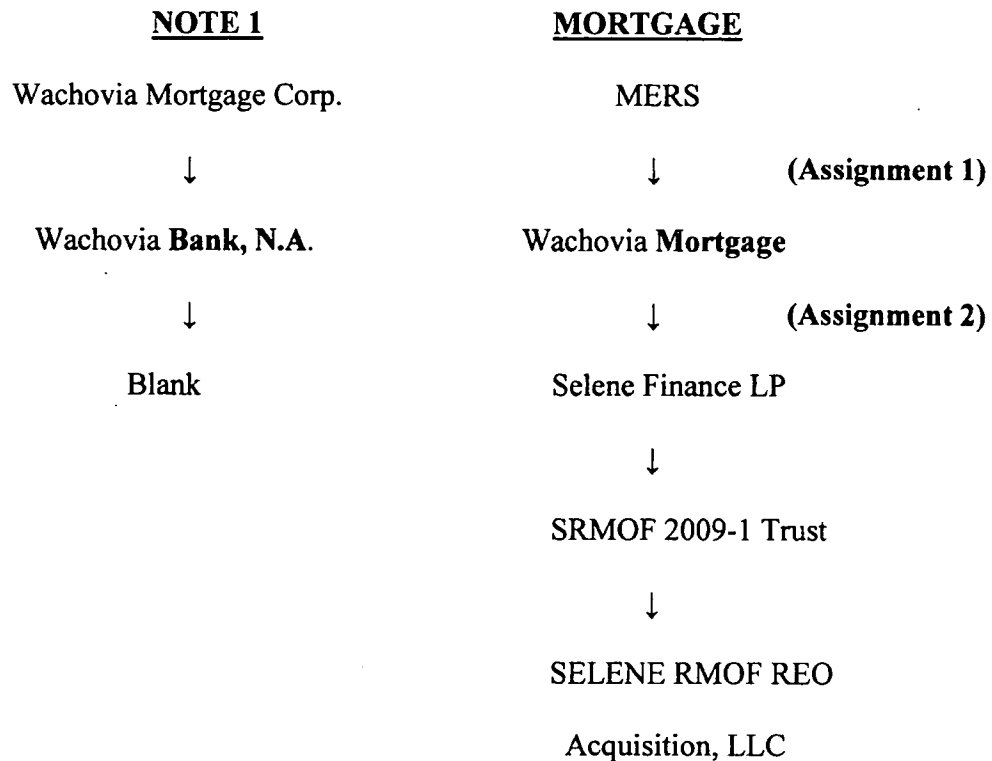
In South Carolina, "generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U. S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 147, 662 S.E. 2d 424 (Ct. App. 2008); *see also Cleveland v. Bomar*, 178 S.C. 455, 183 S.E. 2d 34 (1936)(dismissing a foreclosure action because it was not brought in the name of the real owners of the note and mortgage.) Plaintiff asserts it is the holder of the subject Note(s) and therefore entitled to pursue the within matter.

Where a negotiable note is secured by mortgage, the note and mortgage are inseparable, and the assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity. *Carpenter v. Longan*, 83 U.S. 271, 21 L. Ed. 313, (1872); *In re Leisure Time Sports, Inc.* 194 B.R. 859, 861 (9th Cir. 1996) (stating that “[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures” and that, “[i]f the debt is not transferred, neither is the security interest”); *Kelley v. Upshaw*, 39 Cal. 2d 179, 192 (1952) (stating that assigning only the deed without a transfer of the promissory note is completely ineffective); *see also* Restatement (3d) of Property (Mortgages) § 5.4 (stating that “[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the obligation that the mortgage secures”); *South Carolina Nat. Bank v. Halter*, 293 S.C. 121, 359 S.E.2d 74 (S.C. App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee, *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930), absent some indication that the parties also intended to transfer the debt. 59 C.J.S. Mortgages Section 359 (1949)).

Note 1, (R. pp. 280-289) demonstrates on its face that the originator of the Note was

Wachovia Mortgage Corporation which endorsed it to Wachovia Bank, N.A. Thereafter, by allonge to Note 1 (which was unattached and raises questions as to its validity raised below) Note 1 was endorsed in blank by Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank N.A.

Here it is undisputed and the evidence shows the Assignments of Mortgage do not follow the endorsements of Note 1. The sequential transfers of Note 1 and Mortgage admitted into evidence are illustrated below:



Assignment 1 appears to convey the Mortgage from MERS to the original Plaintiff Wachovia Mortgage Corporation. Thereafter, several months after this action was initiated, Assignment 2 appears to convey the Mortgage from Wachovia Mortgage Corporation to Selene Finance, LP. This second assignment conflicts with the chain of title depicted by the indorsements to Note 1. The first indorsement on Note 1 purports to transfer the Note from Wachovia Mortgage Corporation to Wachovia Bank, N.A. Then an indorsement by way of an unaffixed allonge reveals Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A. indorses Note 1 in blank (potentially to

Selene Finance, LP). The Mortgage and Note depart from each other at the second Assignment of Mortgage. Wachovia **Bank** and Wachovia **Mortgage** are two separate entities. Moreover, the Mortgage appears to have been assigned from Wachovia Mortgage Corporation directly to Selene Finance, LP, however at the time Wachovia Mortgage Corporation did not hold an interest to assign the mortgage because it had already transferred Note 1 to Wachovia Bank, N.A.

The departure of these two instruments deepens with the Assignments of Mortgage that have no parallel transfer of the Note. The two instruments take completely separate paths. As stated above a mortgage must follow the note it secures, without a transfer of the Note an assignment of the Mortgage alone is a nullity. *See South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct. App. 1987). The independent transfers of the Mortgage are nugatory. The Plaintiff here has not established a right to enforce the Mortgage since a number of the assignments it relies upon are void as a matter of law. Consequently the mortgage stopped in its path not following the note and never making its way to the Plaintiff. The Plaintiff under these circumstances never received an assignment of the mortgage and was not entitled to foreclosure.

**B. POSSESSION OF A NOTE DID NOT ESTABLISH SELENE'S
RIGHT TO PROSECUTE THE FORECLOSURE ACTION.**

Separate from the path of the Note and Mortgage is the proper transfer of the Note. The lower court erred in determining Plaintiff had a right to enforce the negotiable instrument and had standing as the real party in interest as to the subject Note. (R. p. 18-33).

S.C. Code Anno. §36-3-301 (2008) provides: "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the

instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.” A holder is “a person who is in possession of a document or title or an instrument or a certificated investment security drawn, issued or indorsed to him or to his order or to bearer or in blank”. S.C. Code Anno. §36-1-201(20)(2003); *see also* Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code*, § 12.02(1) at 12-13 to 12-15 (2012) (“The first requirement of being a holder is possession of the instrument. However, possession is not necessarily sufficient to make one a holder.”).

Possession is not necessarily sufficient to make one a holder, as the Plaintiff postulates and the lower court determined. Selene was required to prove both physical possession and the right to enforcement through either a proper indorsement or a transfer of negotiation. S.C. Code Ann. §36-3-201(a) (2008) (“Negotiation” means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.”); *See Bank of New York vs. Romero*, Op. No. 2014-NMSC-007, 320 P. 3d 1 (Feb. 13, 2013, S. Ct. N. M.). Selene failed in its burden of proof.

Note 1 presented as Exhibit “1” was initially made in favor of Wachovia Mortgage Corporation. As testified by Plaintiff’s witness, the last page of the Note contains several indorsements which are either cancelled or marked void. The one indorsement not altered is undated and from Wachovia Mortgage to Wachovia Bank,

N.A. Selene's witness further testified there is no indorsement on the Note from MERS (R. p. 215, lines 14-17); there is no endorsement on the Note to Selene Finance L.P. (R. p. 215, lines 18-20); there is no indorsement on the Note to SRMOF 2009-1 Trust (R. p. 215, lines 21-23); and there is no indorsement on the Note to Selene RMOF REO Acquisitions, LLC (R. p. 215, line 24 – R. p. 216, line 1). There being no indorsement on the Note to Selene, Selene lacked standing and right to enforce the note.

C. THE ALLONGE WAS INVALID THEREFOR E THE NOTE WAS NOT ENDORSED IN BLANK.

On the last page of Note 1 reference is made to an allonge. An unaffixed page is entitled "Allonge for the Purpose of Endorsement." The allonge however was not affixed to the Note. (R. p. 210, line 12 – R. p. 211, line 3)¹. No testimony was offered to suggest that at any time the allonge was affixed to the Note. The allonge not being affixed renders it invalid and inconsequential. The allonge not being affixed means Note 1 is specially endorsed and not in blank. (i.e. the last page of Note 1 specially indorsement was to Wachovia.); See S.C. Code Ann. §36-3-205(a) (2008)(If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to who it makes the instrument payable, it is a "special indorsement.") The Note is not bearer paper and remained with the last entity to which it was indorsed, Wachovia. Note 1 by indorsement never made its way to Selene; therefore the Court erred in determining Selene was the real party in interest.

¹ "Affixed" to the instrument demands that the paper be actually attached to the instrument, meaning some form of physical connection securing the paper to the instrument. See. S.C. Code Anno. §36-3-204 (2008); *See also, In re McFadden*, 471 B .R. 136, 173 (D.S.C. 2012). The attachment requirement serves two purposes: preventing fraud and preserving the chain of title to an instrument. *See Southwestern Resolution Corp. v. Watson*, 964 S.W.2d 262 (Tex.1997).

D. SELENE HAD NO EVIDENCE OF A TRANSFER OF THE NOTE.

As an alternative to simply saying I am in possession, one could attempt to establish pursuant to S.C. Code Anno. §36-3-301(ii) (2008) that it was given the rights as a holder. In order to establish rights as a nonholder, Selene would have had to prove both possession and the transfer of such rights. This argument is not available to Selene however. Here, as discussed *infra* there was no proper indorsement; the testimony of Selene's witness was that she had no knowledge or documentation that showed how the Note came into Selene's possession (R. p. 213, line 1 – R. p. 214, line 3). Selene lacked standing.

E. THE LACK OF ANY INDORSEMENT ON NOTE 2 DEPRIVED SELENE OF ANY RIGHT TO ENFORCE THE NOTE.

In addition to Note 1 (R. p. 280-289), Plaintiff submitted testimony relating to Note 2 at the time of the second hearing. (R. p. 337-352). At the second hearing held on August 12, 2013, again Ms. Clark was the only offered witness. Ms. Clark testified that Exhibit 2A was a mortgage modification dated August 31, 2006 (R. p. 261, lines 13-16). She further testified that Exhibit 2C was a combination of Exhibits 2A and 2B.(Sometimes referred herein as "New Note or Note 2") (R. p. 267, line 25 – R. p. 268, line 3); that Mr. Furmanchik signed the mortgage modification but Mrs. Furmanchik had not (R. p. 266, line 20 – R. p. 267, line 24); that the document starting on Page 265 is identified as and entitled as a Fixed Adjustable Rate Note which is not signed by Mrs. Furmanchik (R. pp. 337-352)(R. p. 267, lines 10-17); that the Fixed Adjustable Rate Note is a brand new note (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 3); the new Fixed Adjustable Rate Note has no allonge (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 8); the new Fixed Adjustable Rate Note has no endorsement (R. pp. 342-346)(R. p. 267,

line 25 – R. p. 268, line 21); and that Wachovia never endorsed or assigned the new Fixed Adjustable Rate Note to any other entity (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 21). There being no assignment of mortgage or indorsement of Note out of Wachovia, Selene never received any interest in Note 2. Selene had no right of enforcement as to Note 2.

III. NO ADMISSIBLE EVIDENCE WAS OFFERED.

A. THE WITNESS PRESENTED LACKED SUFFICIENT KNOWLEDGE TO TESTIFY.

Rule 602, SCRE, states: “A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony...” Plaintiff's witness lacked sufficient knowledge to testify.

In this case Plaintiff's witness did not testify in such a manner as to establish personal knowledge or to lay a proper foundation for the admission of Plaintiff's Exhibits. The witness offered to testify, testified she was an employee of Selene Finance, LP, and held the title of Contested Default Case Manager. (R. p. 184, lines 19-25). The witness acknowledged she was not an employee of the presently named Plaintiff, Wachovia, or Wells Fargo (R. p. 209, line 20- R. p. 210, line 11). The witness acknowledged the Note and Mortgage were originated by Wachovia Mortgage Corporation. The witness testified that the signature page of the Note contains several endorsements, such of which are marked void and/or cancelled, but she did not know why the endorsements were marked void and/or cancel. The witness testified that the documents in question were not created by Selene Finance, LP or Plaintiff. The witness testified she had no evidence or testimony that established the chain of title of

testimony which would establish how or when Plaintiff became in possession of the Note. Upon direct examination the witness testified that she is a default case manager whose duties include “review loans where there are differences to attempt to resolve those issues” and testify at trials. Upon cross-examination the witness testified that she is not the custodian of records for Selene Finance, LP, but also equivocated changing her testimony to state that her duties and functions do include custodian of records for the documents in question. (R. p. 211, lines 4-23). Notably the witness never testified how records were retained; the means of retention of records by Plaintiff or her employer; computer systems used by Plaintiff or her employer; the reliability of any computer system of Plaintiff or her employer; how data is entered or maintained by Plaintiff or her employer; or procedures used for obtaining records. Plaintiff failed to establish the witness had the required personal knowledge as required by Rule 602, SCRE to testify or authenticate the documents. See *Hundley ex rel. Hundley v. Rite Aid of South Carolina Inc.*, 339 S.C. 285, 529 S.E. 2d 45 (Ct. App. 2000)(“generally under Rule 602, SCRE [a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”). The lower court erred by admitting Ms. Clark’s testimony.

B. Plaintiff failed to establish an exception to the hearsay rule.

Rule 803(6), SCRE, states “A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by

the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” Rule 901, SCRE, states “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

Plaintiff failed to lay a proper foundation for the documents to be considered business records pursuant to Rule 803(6), SCRE, or that Plaintiff’s witness could testify a custodian of records or other qualified witness pursuant to 803(6), SCRE. “A business record without evidence about the manner in which it is prepared or the source of its information does not meet the requirements in S.C. Code Section 19-5-510 or Rule 803(6), SCRE. Business records entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept...” *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007). The Court erred in admitting the exhibits offered by Plaintiff in contradiction to the provisions of Rule 803, SCRE. Neither a proper foundation nor an exception to hearsay was established by Plaintiff for any document entered into evidence. Plaintiff’s witness admitted that neither the Note nor Mortgage was originated by her employer or the entity for which she was testifying. (R. pp. 280-318). She had no knowledge as the assignments entered into evidence. (R. pp. 319-326). She offered no evidence of how the records were created or maintained, the source of the information, where maintained or when they were created. She certainly offered not a single shred of evidence that allowed for the admission of documents clearly created by Wells Fargo an entity with which she testified she had absolutely no relationship. (R. pp. 335-336 (Wells Fargo Demand

letter), and R. pp. 327-334) (Wells Fargo Account History)). The Court erred by admitting these documents into evidence.

The Court further erred in allowing Exhibits 2 A, B and C into evidence at the continuation hearing or reopening hearing. Notwithstanding assuming for the sake of argument that Plaintiff did seek to admit the Exhibit 2C through evidence of a proper witness at the August 12, 2013 hearing, said evidence should not have been admitted because Plaintiff did not produce the original. Rule 1002, SCRE, states “[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.” Rule 1003, SCRE, states “A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” In this case both a genuine question as to authenticity of the original and circumstance that it would be unfair to admit the duplicate in lieu of the original are both present. The Court erred by admitting Note 2 which Plaintiff’s witness did not testify to in the original hearing.

Finally as the court noted in the August hearing “Did we go into the document 2B then? That was the one in issue? . . . 2B is the one I let in and we never did talk about. That’s the only reason I reopened this thing, is to talk about 2B.” However, then the Court asks “Is that the original?” Plaintiff states that it is not, saying “The original we’re waiting on in West Columbia.” Here there are clearly questions as to authenticity, it would be highly prejudicial to accept a duplicate, Plaintiff was well aware the documents

were the remaining issue, and yet with over a month in between the two hearing Plaintiff failed to present the original documents at the second hearing.

IV. THE COURT ERRED IN AWARDING INTEREST WHEN NOTE 1 DID NOT PROVIDE FOR SUCH.

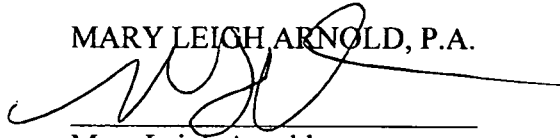
"The law in this state regarding the construction and interpretation of contracts is well settled." *ERIE Ins. Co. v. Winter Constr. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011). "In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties." *D.A. Davis Constr. Co. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984). "If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004). "A court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction." *Lowcountry Open Land Trust v. Charleston Southern University*, 376 S.C. 399, 656 S.E. 2d 775 (Ct. App. 2008).

Note 1 provides for zero interest. (No interest would be owed under the Note identified as Exhibit 1 due to zero being specified as the interest rate (R. p. 217, line 25 – R. p. 218, line 13)). To award interest under Note 1, the lower court, in essence, rewrote the terms of the contract to which the parties agreed. The Court was not at liberty to award interest when Note 1 failed to provide for such. Thus, the Court erred by awarding interest to Plaintiff.

CONCLUSION

For the reasons given, this Court should reverse the decision of the lower court and determine the Plaintiff lacked standing to prosecute the matter and failed to proffer sufficient evidence to proceed with foreclosure.

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December 31, 2014

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Selene RMOF REO Acquisition, LLC.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Brief complies with Rule 211(b), SCACR.

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SC Court of Appeals

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Of whom Melissa Furmanchik is the.....Appellant.

PROOF OF SERVICE

I certify that on this 2 day of January 2015, I have served Appellant's Final Brief and Appellant's Final Reply Brief on opposing counsel of record by depositing a copy a in the United States Mail, postage prepaid, addressed as follows:

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STATEMENT OF THE ISSUES ON APPEAL

- I. Did the Master-in-Equity abuse his discretion by granting *sua sponte* relief?**
- II. Did the Master-in-Equity err by determining Respondent had standing to pursue foreclosure?**
- III. Did the Master-in-Equity abuse his discretion by determining Respondent's evidence was sufficient to establish foreclosure?**
- IV. Did the Master-in-Equity correctly find that Respondent was entitled to a judgment of foreclosure?**
- V. Did the Master-in-Equity abuse his discretion by awarding interest?**

STATEMENT OF THE CASE

This lawsuit arises out of the foreclosure of a real estate mortgage. On or about July 20, 2010, Wachovia Mortgage Corporation filed a foreclosure complaint.

On or about September 10, 2012, the Master-in-Equity entered an Order substituting Selene RMOF REO Acquisition, LLC as Plaintiff.

Appellant Melissa Furmanchik ("Furmanchik") initially failed to answer, plead or otherwise respond to the Complaint and was held in default. On or about September 21, 2010, Furmanchik retained counsel and filed a Motion for Leave to File out of Time Answer and Notice of Election to Participate in Foreclosure Intervention. Respondent and Furmanchik entered into a Consent Order resolving the motion. On December 2, 2010, Furmanchik filed an Answer and raised two affirmative defenses to the foreclosure: lack of standing and failure to provide notice.

Thereafter, on March 28, 2013, Furmanchik filed a Motion to Dismiss or in the alternative for Summary Judgment. In her Motion, Furmanchik argued that Plaintiff lacked standing and was not the real party in interest to maintain the foreclosure action. The Master-in-Equity denied the motion by Order entered on May 20, 2013.

Then, the Master-in-Equity held a final foreclosure trial in this matter on June 20, 2013. Following the June 20, 2013 hearing, Furmanchik filed a motion to reconsider. After reviewing Furmanchik's motion, the Master-in-Equity determined *sua sponte* that this case should be reopened for the express purpose of taking additional testimony regarding the note and subsequent modification agreement. The second hearing took place on August 12, 2013.

The Master-in-Equity entered a judgment of foreclosure and sale on February 7, 2014. Furmanchik then filed a Motion to Reconsider and Vacate the Judgment of Foreclosure and Sale on or about February 21, 2014. The Master in Equity issued a Form 4 denying Furmanchik's

February 2014 motion to reconsider. Ms. Furmanchik then timely filed this appeal.

STATEMENT OF THE FACTS

In addition to the facts set forth in the Statement of the Case, in September 2005, David H. Furmanchik, now deceased, obtained a construction loan for the purpose of constructing improvements on the Subject Property. (R. pp. 25 - 29). The loan was evidenced by an Adjustable Rate Note executed by David H. Furmanchik, dated September 7, 2005, in the principal amount of \$464,000 (R. pp. 280 - 284). A Construction/Permanent Financing Addendum supplemented the Original Note (R. pp. 288 - 289). The Construction Addendum provided for payments of interest only during the construction phase and that interest would accrue on the unpaid principal balance of the Original Note "at a rate equal to the 'WSJ Prime Rate.'" (R. p. 288).

To better secure the repayment of the Loan described above, David H. Furmanchik and Melissa Furmanchik made, executed, and delivered to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Wachovia Mortgage Corporation (MIN #100013700057266189) a certain real estate Mortgage in writing, dated September 7, 2005, covering real property in Charleston County. (R. pp. 290 - 318). The Mortgage was filed on September 19, 2005, and is of record in the Office of RMC/ROD in Book F554 at Page 170. (R. p. 318).

After completion of the construction phase, David H. Furmanchik for value received, made, executed and delivered a "Mortgage Modification Agreement Amendment to Note and Security Instrument (R. pp. 337 - 369). The Modification Agreement was dated August 31, 2006, and recorded in the Office of the RMC for Charleston County on September 11, 2006, in Book W597 at Page 260. The Modification Agreement modified certain terms of the Original

Note and Mortgage. (R. pp. 337 – 352).

Prior to the filing of the instant case, the Mortgage was assigned to Wachovia Mortgage Corporation by an assignment dated July 7, 2010, and recorded on July 15, 2010, in Book 0133 at Page 352. (R. pp. 319 – 320). The Mortgage was then assigned three times. First, Wachovia Mortgage Corporation assigned the Mortgage to Selene Finance LP, by assignment October 7, 2010, and recorded March 18, 2011 in Book 0177 at Page 657 (R. pp. 321 – 322). Then, Selene Financial LP assigned the Mortgage to SRMOF 2009-1 Trust by assignment dated March 29, 2011, and recorded May 3, 2011, in Book 0185 at Page 205. (R. pp. 323 – 324). Finally, SRMOF 2009-1 Trust assigned the Mortgage to Selene RMOF REO Acquisition, LLC by assignment dated March 29, 2011, and recorded May 3, 2011, in Book 0185 at Page 206. (R. pp. 325 – 326)

After the execution of the Mortgage, David H. Furmanchik conveyed the subject property to David H. Furmanchik and Melissa Furmanchik, as joint tenants with the right of survivorship, by Deed dated September 13, 2005, and recorded September 19, 2005, in Deed Book D554 at Page 866. David H. Furmanchik passed away on March 3, 2008, vesting his interest in Melissa Furmanchik as the surviving joint tenant. (R. pp. 290 – 318). Subsequently thereafter, Melissa Furmanchik conveyed the subject property to Melissa Furmanchik, as Trustee of the Melissa Furmanchik Living Trust by Deed dated October 23, 2012, and recorded November 21, 2012, in Deed Book 0292 at Page 659. (R. p. 183, lines 1-7).

Payment due on the Note was not made as provided for therein, and Respondent, as the holder of the Note, elected to require immediate payment of the entire amount due thereon and placed the Note and Mortgage in the hands of its attorney to commence this foreclosure action. (R. pp. 68 - 74)

Mamie Clark, an employee of Respondent, testified at both hearings in this case. The main issue at both foreclosure hearings was the admissibility of certain exhibits and whether Selene had standing to enforce the negotiable instrument secured by the mortgage. Ms. Clark testified regarding various documents and the default under the terms of the subject note and mortgage. Her testimony is further discussed in the argument section of this brief.

Following the two hearings in this matter, the Court entered a judgment of foreclosure and sale in favor of the Respondent. Following her timely appeal, Appellant posted a bond to stop the sale of the subject property.

STANDARD OF REVIEW

This Court may affirm for any ground appearing in the record. Rule 220(c), SCAR; *see also I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000).

“The decision whether to reopen a record for additional evidence is within the trial court's sound discretion and will not be disturbed on appeal absent an abuse of that discretion.” *Brenco v. S. Carolina Dep't of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008) (citing *Wright v. Strickland*, 306 S.C. 187, 188, 410 S.E.2d 596, 597 (Ct.App.1991)). “An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support.” *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013).

“The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.” *State v. Byers*, 392 S.C. 438, 444, 710 S.E.2d 55, 57–58 (2011) (internal quotations omitted). “An abuse of discretion occurs when the trial court's ruling is based on an error of law.” *Id.* at 444, 710 S.E.2d at 58 (internal quotations omitted). Additionally, “[a] finding of abuse of discretion does not end the analysis, however, “because to warrant reversal based on the admission or exclusion of evidence, the appealing party must show both the error of the ruling and prejudice.” *Allegro, Inc. v. Scully*, 400 S.C. 33, 44, 733 S.E.2d 114, 120 (Ct. App. 2012) (quoting *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 557, 658 S.E.2d 80, 86 (2008)).

ARGUMENT

I. THE MASTER IN EQUITY DID NOT ABUSE HIS DISCRETION BY REOPENING THE CASE IN ORDER TO TAKE ADDITIONAL TESTIMONY

“The decision whether to reopen a record for additional evidence is within the trial court’s sound discretion and will not be disturbed on appeal absent an abuse of that discretion. *Brenco v. S. Carolina Dep’t of Transp.*, 377 S.C. 124, 127, 659 S.E.2d 167, 169 (2008). “The trial judge is endowed with considerable latitude and discretion in allowing a party to reopen a case.” *Spinx Oil. Co., Inc. v. Federated Mut. Ins. Co.*, 310 S.C. 477, 482, 427 S.E.2d 649, 651 (1993) *overruled on other grounds*, *Joe Harden Builders, Inc. v. Aetna Cas. and Sur. Co.*, 326 S.C. 231, 486 S.E.2d 89 (1997).

In the present case, the Master-in-Equity, following the trial and a review of Appellant’s initial Rule 59(e) motion, decided to reopen the case “for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement.” There is no evidence in the record to suggest that the Master in Equity abused his discretion; instead, he acted well within his “considerable latitude and discretion” to “reopen the record for additional evidence” on the note and modification agreement following the lengthy argument at the first hearing. Furthermore, Respondent cannot show prejudice as she was afforded the opportunity to cross-examine Ms. Clark during the second hearing. Finally, it appears that the Master in Equity’s ruling was actually based on Rule 59(d), SCRCP. Rule 59(d) provides that the Master in Equity could have on “its own initiative” grant a new trial “for any reason it might have granted a new trial on motion of any party.” The Master in Equity ruled from the bench at the first hearing but did not issue a written order. Thus, the clear implication of the July 11, 2013 Order is that the Master in Equity granted Respondent’s motion to reconsider the oral ruling from the bench and ordered a new trial on certain issues.

Under these circumstances, the Master in Equity did not abuse his discretion in reopening the case.

II. THE MASTER IN EQUITY CORRECTLY FOUND THAT PLAINTIFF HAD STANDING TO FORECLOSE ON THE MORTGAGE

Standing refers to a “[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.” *Black's Law Dictionary* 1536 (9th ed. 2009). Generally, to have standing, a party must be a real party in interest to the litigation. *Evins v. Richland County Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000) (citing *Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996)). A real party in interest is a party with “a real, material, or substantial interest in the outcome of the litigation.” *Baird v. Charleston County*, 333 S.C. 519, 530, 511 S.E.2d 69, 75 (1999). In South Carolina, standing is composed of three elements.

First, the plaintiff must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical.’ ” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

Smiley v. South Carolina Dep't of Health & Env't'l Control, 374 S.C. 326, 329, 649 S.E.2d 31, 32–33 (2007) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). The elements of standing, however, “are not mere pleading requirements but rather an indispensable part of the plaintiff's case”; therefore, “each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stage of the litigation.” *Beaufort Cnty. v. Trask*, 349 S.C. 522, 528 n. 14, 563 S.E.2d 660, 663 n. 14 (Ct.App.2002) (quoting *Lujan*, 504 U.S. at 561). Finally, in the context of a mortgage foreclosure action, this Court recently held that “[a] servicer

is a party in interest and has standing to move for relief from stay and to file proofs of claim on the owner's behalf.” *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. App. 2013) (quoting *In re McFadden*, 471 B.R. 136, 176 (Bankr. D.S.C.2012)).

In the present case, Wachovia Mortgage Corporation had standing at the time it filed the instant lawsuit. First, it suffered an “injury in fact” based on the alleged default under the terms of the Note and Mortgage. Second, “causal connection” between the alleged injury is “fairly traceable” to the alleged default under the terms of the Note and Mortgage. Finally, the third element is satisfied since it is likely that the “injury in fact” will be “redressed” by a judgment of foreclosure and sale. Moreover, Respondent has standing and is the real party in interest to continue prosecuting this mortgage foreclosure action. There is no dispute that Respondent is the current servicer of the loan. Based on this Court’s holding in *Draper*, the Master in Equity correctly found that Respondent had standing to foreclose on the mortgage.

III. THE MASTER IN EQUITY DID NOT ABUSE HIS DISCRETION BY DETERMINING THAT RESPONDENT’S EVIDENCE WAS SUFFICIENT TO ESTABLISH THE NECESSARY ELEMENTS FOR FORECLOSURE OF THE MORTGAGE

“Generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt.” *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009) (citing *Franklin Credit Mgmt. Corp. v. Nicholas*, 812 A.2d 51, 57–58 (2002) (“In a mortgage foreclosure action, to make out its prima facie case, the foreclosing party had to prove by a preponderance of the evidence that it was the owner of the note and mortgage and that the [defendant] had defaulted on the note.”); *Campaign v. Barba*, 23 A.D.3d 327 (N.Y. App. Div. 2005) (“To establish a prima facie case in an action to foreclose a mortgage, the plaintiff must establish the existence of the mortgage and mortgage note, ownership of the mortgage, and the defendant's default in payment.”); *In re Foreclosure of*

Real Prop. for \$143,600.00, 577 S.E.2d 398, 406 (N.C. Ct. App. 2003) (“In a foreclosure proceeding, the lender bears the burden of proving that there was a valid debt, default, right to foreclose under power of sale, and notice.”); 55 Am. Jur. 2d *Mortgages* § 604 (“[T]he burden of proof of any particular issue rests upon the party asserting the affirmative of that issue under the pleadings.”)).

A. The Master in Equity correctly concluded that Ms. Clark was a qualified witness.

Ms. Mamie Clark appeared at both hearings and testified on behalf of the Plaintiff. Ms. Clark testified that she worked for Selene Finance, L.P. which serves as the servicer for the Plaintiff. (R. p. 184, lines 19-23). She is employed as a contested default manager. One of her job duties is to appear at the trials and provide testimony. (R. p. 256, lines 21-23). Further, she testified that she was familiar with the records maintained for the loan at issue. She further testified that the loan was service transferred to Selene from Wells Fargo and that she was familiar with how loans and the accompanying documentation was transferred. (R. p. 193, lines 12-14). She further explained what a service transfer was and what occurred during the service transfer of this loan. (R. p. 257, lines 22-25). She further testified that loan document and records for the subject loan were kept and maintained in the ordinary course of business. (R. p. 258, lines 10-11).

In the present case, the Master correctly concluded that Ms. Clark was sufficiently familiar with the record keeping system for Selene. This is all that is required under the business record exception. *See Midfirst Bank, SSB v. C.W. Haynes & Co., Inc.*, 893 F.Supp. 1304, 1311 (D.S.C. 1994). There is nothing in record to support the conclusion that the Master in Equity abused his discretion in making this evidentiary conclusion.

B. The Note, Mortgage and Modification were properly admitted in to evidence.

At multiple hearings in this case, the Master in Equity reviewed the Original Note and a copy of the recorded Mortgage and Modification Agreement. The Master in Equity noted the Original Note contained an Allonge for the purpose of endorsement. As to the Mortgage, Ms. Clark testified to its recording in the public records. Finally, the Modification Agreement was also recorded in the public record. Ms. Clark testified to the key terms of the Modification. The Court correctly concluded that the Note, Mortgage and Modification were not hearsay. While South Carolina has not ruled on this issue, the court's opinion in *Bank of America, NA v. Neis*, 349 Wis. 2d 461, 835 N.W.2d 527 (Ct. App. 2013) is instructive. There, the Wisconsin Court of Appeals addressed the admissibility of various documents in a mortgage foreclosure action. The court concluded that the note and mortgage attached to the summary judgment affidavit were not hearsay and found that the note and mortgage was "offered only for their legal effect." *Neis*, 349 Wis. 2d at 490, 835 N.W.2d at 541.

In the present case, the Master in Equity correctly found that the Note, Mortgage and Modification are admissible and Respondent has failed to show an abuse of discretion.

C. Assignments of Mortgage were properly admitted into evidence.

The Master in Equity correctly found that the four assignments of mortgages were admissible. He correctly concluded that the publicly recorded assignments of mortgage were self-authenticating documents in the fact that they were recorded in the public records and Ms. Clark testified to the recording dates and book and page numbers.

D. The Payment History, Demand Letter, and Judgment Figures were properly admitted in to evidence under the business records exception to the hearsay rule.

It is undisputed that Wells Fargo, the prior servicer of the loan, records were used to generate the Payment History, Demand Letter and Judgment Figures. Appellant incorrectly

argues that Respondent's witness could not authenticate the prior servicer's business records and that such evidence is inadmissible. Respondent argued that the documents were admissible as business records. The Master in Equity correctly found that the Demand Letter, Payment History and Judgment Figures are admissible under S.C. Code Ann. § 19-5-510 and Rule 803(6), SCRE. As succinctly stated by Judge Duncan in *In re McFadden*, 471 B.R. 136 (Bankr. D.S.C. 2012), "*Midfirst Bank* makes clear that for documents to be admissible under the business records exception, they do not have to be actually created by the witness testifying to authenticate them, as Trustee's counsel appears to argue, nor do they even have to be created by the entity by which the witness is employed." *In re McFadden*, 471 B.R. at 160. The Master in Equity's decision was further supported by *Twelfth RMA Partners, L.P. v. National Safe Corporation*, 335 S.C. 635, 518 S.E.2d 44 (Ct. App. 1999). In *Twelfth RMA Partners, LP*, the Court of Appeals held that the master in equity did not err by allowing the testimony of the plaintiff's witness despite the fact that the records were generated by a previous entity. *Twelfth RMA Partners, L.P.*, 335 S.C at 642, 518 S.E.2d at 48.

For the foregoing reasons, the Master in Equity did not abuse his discretion and his decisions on the admissibility of evidence in this case should be affirmed.

IV. THE MASTER IN EQUITY CORRECTLY FOUND THAT RESPONDENT WAS ENTITLED TO A JUDGMENT OF FORECLOSURE

As stated above, "[g]enerally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt." *U.S. Bank Trust Nat. Ass'n v. Bell*, 385 S.C. 364, 374-75, 684 S.E.2d 199, 205 (Ct. App. 2009).

A. Respondent's possession of the original note makes it a person entitled to enforce the negotiable instrument and established the existence of the debt

The Master in Equity correctly found that Respondent had the legal right to enforce the negotiable instrument secured by the Mortgage and is the real party in interest as defined by Rule 17(a) of the South Carolina Rules of Civil Procedure. At the trial, Plaintiff's counsel produced the Original Note. After close examination of the Original Note, the Court finds the original payee was Wachovia Mortgage Corporation. The Original Note was then properly endorsed to Wachovia Bank, N.A. Next, Wells Fargo as Successor by Merger to Wachovia Bank, N.A., through an allonge, endorsed the Original Note in blank. Plaintiff, through its attorneys, is in possession of the Original Note, which is endorsed in blank, it is the holder of the Note. S.C. Code Ann. §36-1-201 (1976). The holder of the Note is entitled to enforce it. S.C. Code Ann. §36-3-301; *see also Schnieder v. Deutsche Bank National Trust Company*, 572 Fed. Appx. 185 (4th Cir. 2014) (unpublished) (applying South Carolina law).

Appellant argues that the allonge was not properly "affixed" to the Original Note. "While the Code requires that an allonge be "affixed" to a note in order for the signature on the allonge to be an indorsement on the note, it is clear from the Official Comments that the "no space" test does not apply in South Carolina." *In re McFadden*, 417 B.R. 136, 173 (Bankr. D.S.C. 2012). Further, Appellant incorrectly argues that the Note must have been specifically indorsed to Respondent in order for Respondent to have standing. This is a misstatement of the law and ignores the well-established case law regarding bearer paper. In the present case, the Note was endorsed in blank and thus became bearer paper.

Appellant further argues that "Note 2" was required to be indorsed in order to confer standing on Respondent. This, again, is incorrect. "Note 2" was actually part of a "Mortgage Modification Agreement Amendment to Note and Security Instrument." Paragraph 2 of the

“Mortgage Modification Agreement Amendment to Note and Security Instrument,” provides that the terms of the original Note (“Note 1”) “are amended and modified in accordance with the terms and provisions of Exhibit ‘A’” attached the modification. This language sufficiently incorporates the modification and its terms into the Note.

Importantly, Appellant does not challenge the accuracy of the amount of the debt. For the foregoing reasons, Respondent sufficiently established the existence of the debt and the Master in Equity’s decision should be affirmed.

B. Respondent established the default on the debt

Ms. Clark’s testimony sufficiently established that the loan was past due and was in default. (R. p. 206, line 24 – p. 207, line 1). Further, the Complaint alleged that the loan was in default and due for the December 2009 payment. Appellant has not put forth any argument to the contrary.

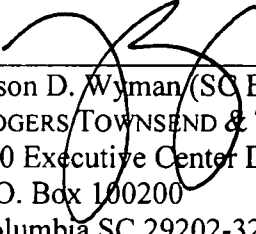
V. THE MASTER IN EQUITY CORRECTLY FOUND THAT INTEREST WAS PROVIDED FOR UNDER THE TERMS OF THE NOTE AND MORTGAGE

Appellant incorrectly states that that the Note provided for “zero interest.” The original loan was evidenced by an Adjustable Rate Note executed by David H. Furmanchik, dated September 7, 2005, in the principal amount of \$464,000. A Construction/Permanent Financing Addendum supplemented the Note. The Construction Addendum provided for payments of interest only during the construction phase and that interest would accrue on the unpaid principal balance of the Original Note “at a rate equal to the ‘WSJ Prime Rate.’” Appellant’s argument to the contrary is completely without merit.

CONCLUSION

Based on the foregoing and any additional sustaining grounds appearing in the record, Respondent respectfully requests that the Court affirm the Master's Order entered on February 3, 2014.

Respectfully submitted,



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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master In Equity

Case No.: 2010-CP-10-5825

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SC Court of Appeals

Selene RMOF REO Acquisition, LLC Respondent,

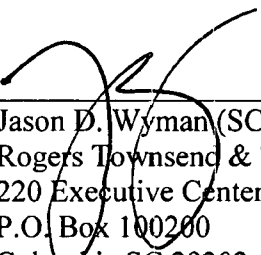
v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A., ...Defendants,

Of whom Melissa Furmanchik is the Appellant.

PROOF OF SERVICE

I certify that I have served the **Final Brief of Respondent** on Appellant by depositing a copy in the United States Mail, postage prepaid, on January 2, 2015, addressed to Appellant's attorney Mary Leigh Arnold, Esquire, 749 Johnnie Dodds Blvd., Suite B, Mt. Pleasant, SC 29465.



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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Selene RMOF REO Acquisition, LLC.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

FINAL REPLY BRIEF OF APPELLANT

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December 31, 2014

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SC Court of Appeals

Appendix000000421

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I. THE MASTER IN EQUITY ERRED BY GRANTING SUA SPONTE RELIEF.

The Master in Equity cited to Rule 50(d), SCRCP, when he granted sua sponte relief for a new trial for the benefit of Respondent. Respondent does not address any argument relating to Rule 50 or the case authority cited supporting the proposition that Rule 50, SCRCP, does not provided for sua sponte relief. There being no response to the argument, the argument should be deemed resolved. R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App.2000) (deeming an issue abandoned if the appellant's brief treats it in a conclusory manner).

Likewise, in the event the Court's reference to Rule 50(d), SCRCP is considered a clerical error and the proper citation was to Rule 59(d), SCRCP Respondent fails to address the time limitations imposed under Rule 59(d), SCRCP. Respondent having failed to respond to the argument, the issue should be concluded. Lastly, Respondent failed to address the argument that the lower court strayed from its role as acting as a neutral. Thus, the Master in Equity erred by acting outside his allowed authority under Rule 50(d), SCRCP or outside the allowed time period under Rule 59(d), SCRCP.

II. STANDING DID NOT EXIST AT THE TIME OF FILING OF THE COMPLAINT OR AT THE TIME OF TRIAL.

Respondent, in essence, limited its responsive arguments relating to standing by making the conclusory remark that the original Plaintiff had standing at the time the case was filed. This is nothing more than a conclusory remark, in light of the fact that Respondent offered no testimony or qualified witness that could testify as to

Wachovia's standing at the time of filing. The only witness offered was an employee for a servicer of the subsequent holder. Thus, no meaningful response has been offered.

Additionally the argument relating to the divergent paths taken by the Note and Mortgage was not addressed. The Mortgage never reached the Respondent because the assignment of mortgage ended when it went in a different direction from the Note. Respondent lacked standing and the foreclosure should be reversed.

Interesting is the assertion by Respondent that it is the servicer of the subject note and mortgage and therefore has standing under the holdings of Bank of America, N.A. v. Draper, 405 S.C. 214, 746 S.E. 2d 478 (Ct. App. 2013). At the time of trial Respondent did not contend it was the servicer but rather the holder. Therefore this argument not having been raised it is not properly before this Court. Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.")

A recent case just decided by the Florida Court of Appeals in the past several months provides guidance on the issue of standing. In the case of Daniel v. Nationstar Mortgage, 2014 Fla. App. LEXIS 16734, (October 13, 2014) the Court determined that Nationstar failed to establish that the original plaintiff, Auora Loan Services LLC, had standing to foreclose at the time it filed the original complaint, and reversed the foreclosure. The Court noted that in order to prove standing to foreclose a mortgage, a plaintiff must show that it is the holder both of the mortgage and of the note the mortgage secures. Id. (citations omitted) "The plaintiff must

prove it is a holder in due course of the note and mortgage both as of the time of trial and also [*2] that the (original) plaintiff had standing as of the time the foreclosure complaint was filed. Id. (citations omitted). “The plaintiff must prove not only physical possession of the original note but also, if the plaintiff is not the named payee, possession of the original note endorsed in favor of the plaintiff [*3] or in blank (which makes it bearer paper).” Id. If the foreclosure plaintiff is not the original, named payee, the plaintiff must establish that the note was endorsed (either in favor of the original plaintiff or in blank) before the filing of the complaint. Id.

The appellate court reversed the lower court finding that Nationstar failed to establish standing to foreclose at the time the original complaint was filed having only entered into evidence the original of the note which had been attached to the amended complaint. The note contained two endorsements neither of which were dated and neither which established the endorsement in blank antedated the filing of the original complaint. The only evidence Nationstar presented on the question of standing was the testimony of one witness, Mr. Hyne, an employee of Nationstar who only testified that Aurora was in possession of the note at the time the complaint was filed, not that the note had been endorsed at the time the complaint was filed.

Here, as in Daniel the evidence as to standing was lacking. Respondent offered nothing to support when any of the alleged endorsements were made. Respondent offered nothing about Wachovia’s ownership at the time the Complaint was filed. Respondent failed to establish the Respondent had an interest at the time of trial. Moreover, Respondent failed to address the impact of the note and mortgage

taking separate paths. As in Daniel, Respondent failed in its burden and foreclosure should be reversed.

CONCLUSION

Based on the foregoing, the arguments contained in Appellant's initial brief and the lack of arguments in Respondent's initial brief, the foreclosure should be reversed.

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December 31, 2014

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Selene RMOF REO Acquisition, LLC.....Respondent,

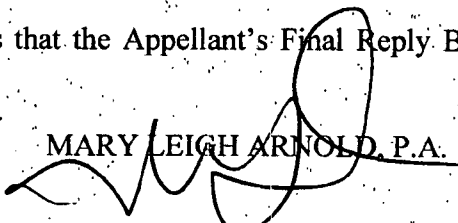
v.

Melissa Furmanchik; Masonborough at Park West Association, Inc,
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Reply Brief complies with
Rule 211(b), SCACR.


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December 31, 2014

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Wilmington Savings Fund Society, FSB, d/b/a Christiana
Trust as Trustee of the American Mortgage Investment
Partners Fund I Trust, Respondent,

v.

Melissa Furmanchik; Masonborough at Park West
Association, Inc. and Wells Fargo Bank, N.A.,
Defendants,

Of whom Melissa Furmanchik is the Appellant.

Appellate Case No. 2014-000906

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2015-UP-353
Heard June 2, 2015 – Filed July 15, 2015

AFFIRMED

Mary Leigh Arnold, of Mary Leigh Arnold, PA, of
Mount Pleasant, for Appellant.

Jason David Wyman, of Rogers Townsend & Thomas,
PC, of Columbia, for Respondent.

PER CURIAM: In this foreclosure action, Melissa Furmanchik argues the master-in-equity erred by (1) granting sua sponte relief, (2) determining Selene RMOF REO Acquisition, L.L.C. (Selene) had standing to pursue foreclosure, (3) determining Selene's evidence was sufficient to establish foreclosure, and (4) awarding interest to Selene.¹ We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the master-in-equity erred by granting sua sponte relief: *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."); *Ex parte McMillan*, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (holding a party cannot acquiesce to an issue at trial and then complain on appeal); *Walterboro Cmty. Hosp. v. Meacher*, 392 S.C. 479, 493, 709 S.E.2d 71, 78 (Ct. App. 2011) (stating for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court, raised by the appellant, raised in a timely manner, and raised to the trial court with sufficient specificity); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e)[, SCRPC,] motion which could have been raised at trial.").

2. As to whether the master-in-equity erred by determining Selene had standing to pursue foreclosure: Rule 17(a), SCRPC ("Every action shall be prosecuted in the name of the real party in interest."); *Smiley v. S.C. Dep't of Health & Envtl. Control*, 374 S.C. 326, 329, 649 S.E.2d 31, 32 (2007) (noting standing has three components, the first of which is the plaintiff must have suffered an injury in fact); *id.* at 329, 649 S.E.2d at 32-33 (stating the second component of standing is there must be a causal connection between the injury and the conduct complained of, so that the injury is fairly traceable to the challenged action of the defendant and not the result of the independent action of some third party not before the court); *id.* at 329, 649 S.E.2d at 33 (noting the third component of standing is that it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision"); S.C. Code Ann. § 36-3-205(b) (Supp. 2014) ("When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed."); S.C. Code Ann. § 36-3-301 (Supp. 2014) (noting the holder of an instrument is entitled to enforce the

¹ As indicated in the caption, we grant Selene's motion to substitute Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust as Trustee of the American Mortgage Investment Partners Fund I Trust, as the respondent in this action.

instrument); *In re Woodberry*, 383 B.R. 373, 377 (Bankr. D.S.C. 2008) (acknowledging that "[p]ossession of a bearer instrument is *prima facie* evidence of ownership" under South Carolina law); *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 623, 731 S.E.2d 547, 549 (2012) ("[T]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee."); *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 223, 746 S.E.2d 478, 482 (Ct. App. 2013) ("A holder is a person in possession of [an] instrument drawn, issued, transferred, or indorsed to him."); *id.* ("[T]here is a general view, which has been accepted in this jurisdiction and others, that a loan servicer is a 'party in interest' and has standing by virtue of its pecuniary interest in collecting payments under the terms of the note and mortgage." (quoting *In re Neals*, 459 B.R. 612, 617 (Bankr. D.S.C. 2011))); S.C. Code Ann. § 36-3-204(a) (Supp. 2014) ("For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument."); *Cannon v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 371 S.C. 581, 584, 641 S.E.2d 429, 430 (2007) ("It is presumed the Legislature, in adopting an amendment to a statute, intended to make some change in the existing law."); *Aristizabal v. I. J. Woodside-Div. of Dan River, Inc.*, 268 S.C. 366, 370, 234 S.E.2d 21, 23 (1977) (stating that when the legislature removed the word "written" from the notice requirement of section 72-301, oral or actual notice were thereafter sufficient); 2008 S.C. Acts 204, § 2 (amending the statutory language pertaining to indorsements by removing the requirement that a paper be "firmly affixed" in order to become an extension of the instrument and instead requiring a paper to merely be "affixed").

3. As to whether the master-in-equity erred by determining Selene's evidence was sufficient to establish foreclosure: Rule 602, SCRE ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony."); Rule 803(6), SCRE (setting forth the business records exception to the hearsay rule); *State v. Rice*, 375 S.C. 302, 330-31, 652 S.E.2d 409, 423 (Ct. App. 2007) (noting the business records exception in Rule 803(6) is "[p]atterned after the South Carolina Act and the Federal Rules"), *overruled on other grounds by State v. Byers*, 392 S.C. 438, 710 S.E.2d 55 (2011); *Midfirst Bank, SSB v. C.W. Haynes & Co.*, 893 F. Supp. 1304, 1310 (D.S.C. 1994) (holding exhibits can be admitted as business records of an entity, even when that entity was not the maker of those records, so long as the other requirements of Rule 803(6) of the Federal Rules of Civil Procedure are met and the circumstances indicate the records are trustworthy), *aff'd*, 87 F.3d 1308 (4th Cir. 1996); *id.* at 1311 ("Rule 803(6) does not require the testifying witness to have personally participated in the creation of the document or to know who

actually recorded the information."); *id.* ("Documents may properly be admitted under this Rule as business records even though they are the records of a business entity other than one of the parties, and even though the foundation for their receipt is laid by a witness who is not an employee of the entity that owns and prepared them." (internal quotation marks omitted)); *id.* ("Rule 803(6) does not require the documents be prepared by the testifying business."); *id.* ("[T]he business records exception should be liberally construed to avoid the former archaic practice of requiring authentication by the preparer of the record."); *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 642, 518 S.E.2d 44, 48 (Ct. App. 1999) (finding a witness's testimony was admissible under the business records exception when the witness testified about records that were part of the file she maintained in her employer's regular course of business); *id.* (noting that while the witness's testimony merely conveyed information from a person "with knowledge" at the time the records were created, such a situation was expressly allowed under Rule 803(6)); *Herron*, 395 S.C. at 465, 719 S.E.2d at 642 ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.").

4. As to whether the master-in-equity erred by awarding interest to Selene: *Rhodus v. Goins*, 129 S.C. 40, 41, 123 S.E. 645, 645-46 (1924) ("A note is a written instrument, and in computing the amount due thereon in principal and interest the computation must be made in accordance with the terms of said note.").

AFFIRMED.

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 29 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust as
Trustee of the American Mortgage Investment Partners Fund I,
Trust.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

PETITION FOR REHEARING

This Petition is filed pursuant to Rules 221 and 240 of the South Carolina Appellate Court Rules. Rule 221 governs rehearing. Rule 240 governs motions and petitions generally.

This Court issued the decision in this matter on July 15, 2015. See Op. No. 2015-UP-353 (Ct. App. Filed July 15, 2105). Petitioner received this Court's Opinion No. 353 on July 201, 2015. This petition is therefore timely. See Rule 221(a), SCACR.

The principal purpose of this Petition is to preserve Melissa Furmanchik's (hereinafter "Appellant") ability to request further review of the arguments that she offered this Court on the merits. To that end, Appellant wishes to incorporate by reference all the arguments made before the Court and contained in her briefs. Appellant strongly but respectful disagrees with the decision to affirm the lower court's decision.

INTRODUCTION

Appellant brought this appeal seeking to overturn the lower court's determination on several grounds the most focal of which was when a note and mortgage take divergent paths the prosecuting lender¹ did not receive an interest in the mortgage and therefore

¹ At the time of trial the prosecuting lender was Selene RMOF REO Acquisition, LLC. During the course of appeal a motion to substitute the named Plaintiff in the underlying action was granted, therefore, Wilmington Savings Fund Society, FSB is now the named Respondent.

lack standing to foreclosure. This Court failed to properly address this issue along with the other issues raised on appeal. This Court should have properly evaluated the circumstances and reversed the lower court's rulings.

ARGUMENT

I. ***THIS COURT IMPROPERLY DETERMINED THE LOWER COURT COULD GRANT SUA SPONTE RELIEF.***

This Court improperly determined the Master in Equity ("MIE") had the authority to grant relief under Rule 50, SCRCP. Under Rule 50, SCRCP, *sua sponte* relief is not available. See *State v. Dicapua*, 680 S.E.2d 292, 383 S.C. 394 (S.C. 2009)(citing *Southern Railway Co. v. Coltex, Inc.*, 285 S.C. 213, 214, 329 S.E.2d 736, 736 (1985) (" The sole issue is whether a trial judge *ex mero motu* can grant a new trial on a ground not raised by a party. We hold he cannot.")): See also, *Heins v. Heins*, 543 S.E.2d 224, 344 S.C. 146 (Ct. App. 2001)(a Family Court judge does not have the authority to alter or amend a judgment, *sua sponte*, once the judgment is more than 10-days-old); and *Ellis v. Niles*, 316 S.C. 516, 459 S.E. 2d 631, 634 n.5 (Ct. App. 1994), vacated in part, reversed in part, 324, S.C. 223, 479 S.E. 2d 47 (1996)("Rule 50(a), SCRCP provides that a motion for directed verdict may be made at the close of an opponent's evidence. Moreover, the rule apparently does not give a trial judge authority to direct a verdict *sua sponte*. Compare

Rule 19, SCrimP (specifically providing that court shall direct a verdict on motion of the defendant or on its own motion if there is a failure of evidence.)).”

Rule 50(d), SCRCP, had no application, here. On June 20, 2013 a hearing was held before the MIE for Charleston County. On July 11, 2013, approximately 20 after the foreclosure hearing, the MIE *sua sponte* issued an Order stating “this court finds that the matter should be reopened for the express purpose of taking additional testimony with regards to the note and subsequent modification agreement. This is done pursuant to Rule 50(d), SCRCP. This matter is to be reset for Monday, August 12 at 10:00 a.m.” (R. p. 16-17). The Master in Equity improperly relied on Rule 50(d), SCRCP. Plaintiff failed to move for a directed verdict at the time of trial. Consequently, Rule 50(d) was inapplicable. Moreover, at the time the Court decided to act *sua sponte*, no verdict entered or ruling had been granted in favor of Plaintiff. So again, Rule 50(d) had not application.

Assuming for the sake of argument the MIE inadvertently referenced Rule 50(d), SCRCP, when intending to cite Rule 59(d), SCRCP, the relief granted was not available. “Rule 59(d), SCRCP, provides that the court, upon its own initiative, may order a new trial ‘not later than 10 days after entry of judgment...[a]fter giving the parties notice an opportunity to be heard on the matter.’ This time limitation may not be extended.” C&S

National Bank v. Easton, 310 S.C. 447, 427 S.E. 2d 640, 641 (1993). The relief granted by the MIE *sua sponte* was well past ten (10) days from the hearing. The Court lacked the authority to grant the relief and this Court erred in affirming the improper acts.

A. The Respondent did not address any issue raised challenging the MIE's sua sponte relief and therefore waive any opposition.

Respondent did not address any argument relating to Rule 50 or the case authority cited supporting the proposition that Rule 50, SCRCP, does not provided for sua sponte relief. There being no response to the argument, the argument should have been deemed resolved. R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth., 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App.2000) (deeming an issue abandoned if the appellant's brief treats it in a conclusory manner). Likewise, in the event the MIE's reference to Rule 50(d), SCRCP is considered an inadvertent clerical error and the proper citation was to Rule 59(d), SCRCP, Respondent failed to address the time limitations imposed under Rule 59(d), SCRCP. Respondent having failed to respond to the argument, the issue should be concluded. Thus, the MIE erred by acting outside his allowed authority under Rule 50(d), SCRCP or outside the allowed time period under Rule 59(d), SCRCP and this Court should have reversed.

II. THIS COURT ERRED WHEN IT AFFIRMED THE MIE'S DECISION THAT THE RESPONDENT COULD PROSECUTE THE FORECLOSE ACTION.

**A. THE NOTE AND MORTGAGE TOOK SEPARATE PATHS MAKING
THE TRANSFER OF THE MORTGAGE A NULLITY.**

In South Carolina, “generally, the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor’s default on that debt.” *U. S. Bank Trust Nat’l Ass’n v. Bell*, 385 S.C. 147, 662 S.E. 2d 424 (Ct. App. 2008); *see also Cleveland v. Bomar*, 178 S.C. 455, 183 S.E. 2d 34 (1936) (dismissing a foreclosure action because it was not brought in the name of the real owners of the note and mortgage.) Plaintiff asserts it is the holder of the subject Note(s) and therefore entitled to pursue the within matter.

Where a negotiable note is secured by mortgage, the note and mortgage are inseparable, and the assignment of the note carries the mortgage with it, while an assignment of the mortgage alone is a nullity. *Carpenter v. Longan*, 83 U.S. 271, 21 L. Ed. 313, (1872); *In re Leisure Time Sports, Inc.* 194 B.R. 859, 861 (9th Cir. 1996) (stating that “[a] security interest cannot exist, much less be transferred, independent from the obligation which it secures” and that, “[i]f the debt is not transferred, neither is the security interest”); *Kelley v. Upshaw*, 39 Cal. 2d 179, 192 (1952) (stating that assigning only the deed without a transfer of the promissory note is completely ineffective); *see also*

Restatement (3d) of Property (Mortgages) § 5.4 (stating that “[a] mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the *obligation* that the mortgage secures”); *South Carolina Nat. Bank v. Halter*, 293 S.C. 121, 359 S.E.2d 74 (S.C. App. 1987) (The assignment of a mortgage as distinct from the debt it secures is nugatory and confers no rights upon the transferee, *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930), absent some indication that the parties also intended to transfer the debt. 59 C.J.S. Mortgages Section 359 (1949)).

Note 1, (R. pp. 280-289) demonstrates on its face that the originator of the Note was Wachovia Mortgage Corporation which endorsed it to Wachovia Bank, N.A. Thereafter, by allonge to Note 1 (which was unattached and raises questions as to its validity raised below) Note 1 was endorsed in blank by Wells Fargo Bank, N.A. as successor by merger to Wachovia Bank N.A.

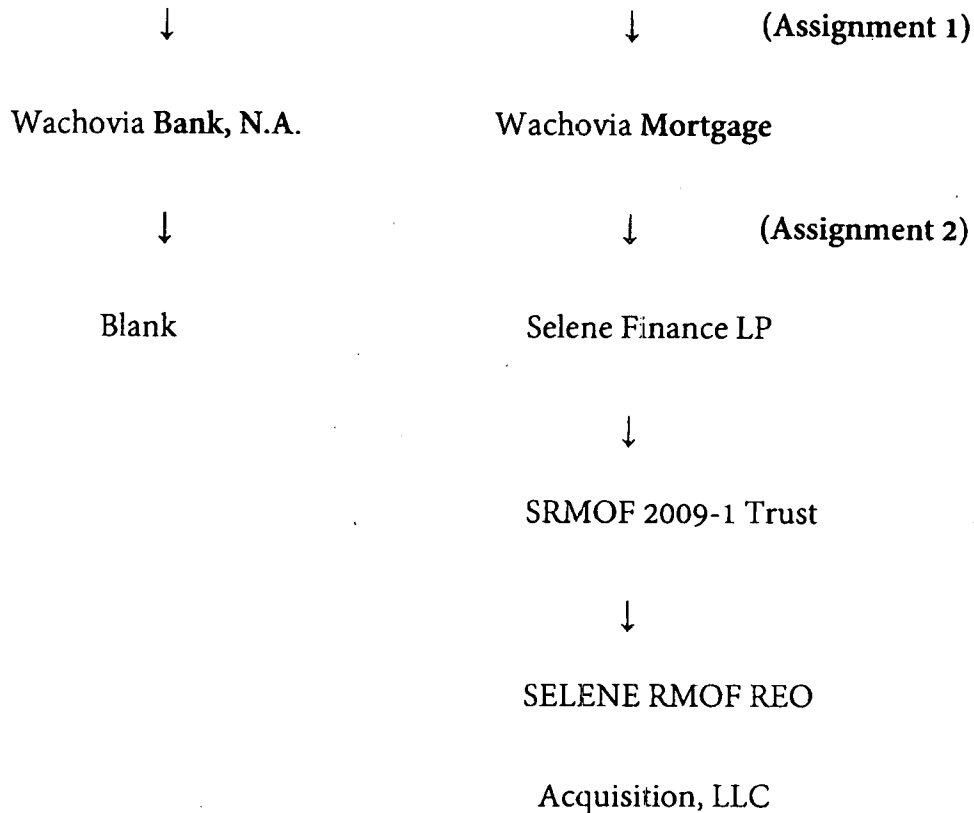
Here it is undisputed and the evidence shows the Assignments of Mortgage do not follow the endorsements of Note 1. The sequential transfers of Note 1 and Mortgage admitted into evidence are illustrated below:

NOTE 1

MORTGAGE

Wachovia Mortgage Corp.

MERS



Assignment 1 appears to convey the Mortgage from MERS to the original Plaintiff Wachovia Mortgage Corporation. Thereafter, several months after this action was initiated, Assignment 2 appears to convey the Mortgage from Wachovia Mortgage Corporation to Selene Finance, LP. This second assignment conflicts with the chain of title depicted by the indorsements to Note 1. The first indorsement on Note 1 purports to transfer the Note from Wachovia Mortgage Corporation to Wachovia Bank, N.A. Then an indorsement by way of an unaffixed allonge reveals Wells Fargo Bank, N.A., successor

by merger to Wachovia Bank, N.A. indorses Note 1 in blank (potentially to Selene Finance, LP). The Mortgage and Note depart from each other at the second Assignment of Mortgage. Wachovia Bank and Wachovia Mortgage are two separate entities. Moreover, the Mortgage appears to have been assigned from Wachovia Mortgage Corporation directly to Selene Finance, LP, however at the time Wachovia Mortgage Corporation did not hold an interest to assign the mortgage because it had already transferred Note 1 to Wachovia Bank, N.A.

The departure of these two instruments deepens with the Assignments of Mortgage that have no parallel transfer of the Note. The two instruments take completely separate paths. As stated above a mortgage must follow the note it secures, without a transfer of the Note an assignment of the Mortgage alone is a nullity. *See South Carolina Nat'l Bank v. Halter*, 293 S.C. 121, 128, 359 S.E.2d 74, 77 (Ct. App. 1987). The independent transfers of the Mortgage are nugatory. The prosecuting Plaintiff did not established a right to enforce the Mortgage since a number of the assignments it relied upon were void as a matter of law. Consequently the mortgage stopped in its path not following the note and never making its way to the prosecuting Plaintiff. The Plaintiff under these circumstances never received an

assignment of the mortgage and was not entitled to foreclosure. This Court erred as did the Respondent by failing to address the issue raised relating to the impact of the divergent paths taken by the note and mortgage. It was improper for this Court to ignore established principles of law.

A recent case just decided by the Florida Court of Appeals in the past several months provides guidance on the issue of standing. In the case of Daniel v. Nationstar Mortgage, 2014 Fla. App. LEXIS 16734, (October 13, 2014) the Court determined that Nationstar failed to establish that the original plaintiff, Auora Loan Services LLC, had standing to foreclose at the time it filed the original complaint, and reversed the foreclosure. The Court noted that in order to prove standing to foreclose a mortgage, a plaintiff must show that it is the holder both of the mortgage and of the note the mortgage secures. Id. (citations omitted) “The plaintiff must prove it is a holder in due course of the note and mortgage both as of the time of trial and also [*2] that the (original) plaintiff had standing as of the time the foreclosure complaint was filed. Id. (citations omitted). “The plaintiff must prove not only physical possession of the original note but also, if the plaintiff is not the named payee, possession of the original note endorsed in favor of the plaintiff [*3] or in blank

(which makes it bearer paper).” Id. If the foreclosure plaintiff is not the original, named payee, the plaintiff must establish that the note was endorsed (either in favor of the original plaintiff or in blank) before the filing of the complaint. Id.

The appellate court reversed the lower court finding that Nationstar failed to establish standing to foreclose at the time the original complaint was filed having only entered into evidence the original of the note which had been attached to the amended complaint. The note contained two endorsements neither of which were dated and neither which established the endorsement in blank antedated the filing of the original complaint. The only evidence Nationstar presented on the question of standing was the testimony of one witness, Mr. Hyne, an employee of Nationstar who only testified that Aurora was in possession of the note at the time the complaint was filed, not that the note had been endorsed at the time the complaint was filed.

Here, as in Daniel the evidence as to standing was lacking. Respondent offered nothing to support when any of the alleged endorsements were made. Respondent offered nothing about Wachovia’s ownership at the time the Complaint was filed. Respondent failed to establish the Respondent had an interest at the time of trial. Moreover, Respondent failed to address the impact of the note and mortgage taking

separate paths. As in Daniel, Respondent failed in its burden and foreclosure should be reversed.

B. POSSESSION OF A NOTE DID NOT ESTABLISH THE FORECLOSING ENTITY'S RIGHT TO PROSECUTE THE FORECLOSURE ACTION.

This Court erred in failing to recognize salient facts. Separate from the path of the Note and Mortgage is the proper transfer of the Note. The Note was not properly transferred.

S.C. Code Anno. §36-3-301 (2008) provides: "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 36-3-309 or 36-3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument."

A holder is "a person who is in possession of a document or title or an instrument or a certificated investment security drawn, issued or indorsed to him or to his order or to bearer or in blank". S.C. Code Anno. §36-1-201(20)(2003); *see also* Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code*, § 12.02(1) at 12-13 to 12-15 (2012) ("The first requirement of being a holder is possession

of the instrument. However, possession is not necessarily sufficient to make one a holder.”).

Possession is not necessarily sufficient to make one a holder, as the Plaintiff postulates and the lower court determined. Selene was required to prove both physical possession and the right to enforcement through either a proper indorsement or a transfer of negotiation. S.C. Code Ann. §36-3-201(a) (2008) (“Negotiation” means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.”); *See Bank of New York vs. Romero*, Op. No. 2014-NMSC-007, 320 P. 3d 1 (Feb. 13, 2013, S. Ct. N. M.). Selene failed in its burden of proof.

Note 1 presented as Exhibit “1” was initially made in favor of Wachovia Mortgage Corporation. As testified by Plaintiff’s witness, the last page of the Note contains several indorsements which are either cancelled or marked void. The one indorsement not altered is undated and from Wachovia Mortgage to Wachovia Bank, N.A. Selene’s witness further testified there is no indorsement on the Note from MERS (R. p. 215, lines 14-17); there is no endorsement on the Note to Selene Finance L.P. (R. p. 215, lines 18-20); there is no indorsement on the Note to SRMOF 2009-1 Trust (R. p. 215, lines 21-23);

and there is no indorsement on the Note to Selene RMOF REO Acquisitions, LLC (R. p. 215, line 24 – R. p. 216, line 1). There being no indorsement on the Note to Selene, Selene lacked standing and right to enforce the note.

**C. THE ALLONGE WAS NOT PROPERLY AFFIXED THEREFORE THE
WAS NO ENDORSED IN BLANK.**

On the last page of Note 1 reference is made to an allonge. An unaffixed page is entitled “Allonge for the Purpose of Endorsement.” The allonge however was not affixed to the Note. (R. p. 210, line 12 – R. p. 211, line 3)². No testimony was offered to suggest that at any time the allonge was affixed to the Note. The allonge not being affixed renders it invalid and inconsequential. The allonge not being affixed means Note 1 is specially endorsed and not in blank. (i.e. the last page of Note 1 specially indorsement was to Wachovia.); See S.C. Code Ann. §36-3-205(a) (2008)(If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to who it makes the instrument payable, it is a “special indorsement.”) The Note is not bearer paper and remained with the last entity to

² “Affixed” to the instrument demands that the paper be actually attached to the instrument, meaning some form of physical connection securing the paper to the instrument. See. S.C. Code Anno. §36-3-204 (2008); *See also, In re McFadden*, 471 B .R. 136, 173 (D.S.C. 2012). The attachment requirement serves two purposes: preventing fraud and preserving the chain of title to an instrument. *See Southwestern Resolution Corp. v. Watson*, 964 S.W.2d 262 (Tex.1997).

which it was indorsed, Wachovia. Note 1 by indorsement never made its way to Respondent; therefore this Court erred in inferring the Respondent was the real party in interest.

D. RESPONDENT HAD NO EVIDENCE OF A TRANSFER OF THE NOTE.

As an alternative to simply saying I am in possession, one could attempt to establish pursuant to S.C. Code Anno. §36-3-301(ii) (2008) that it was given the rights as a holder. In order to establish rights as a nonholder, Respondent would have had to prove both possession and the transfer of such rights. This argument is not available to Respondent however. Here, as discussed *infra* there was no proper indorsement; the testimony of Respondent's witness was that she had no knowledge or documentation that showed how the Note came into Respondent's possession (R. p. 213, line 1 – R. p. 214, line 3). Respondent lacked standing.

E. THE LACK OF ANY INDORSEMENT ON NOTE 2 DEPRIVED RESPONDENT OF ANY RIGHT TO ENFORCE THE NOTE.

In addition to Note 1 (R. p. 280-289), Plaintiff submitted testimony relating to Note 2 at the time of the second hearing. (R. p. 337-352). At the second hearing held on August 12, 2013, again Ms. Clark was the only offered witness. Ms. Clark testified that Exhibit 2A was a mortgage modification dated August 31, 2006 (R. p. 261, lines 13-16).

She further testified that Exhibit 2C was a combination of Exhibits 2A and 2B.(Sometimes referred herein as “New Note or Note 2”) (R. p. 267, line 25 – R. p. 268, line 3); that Mr. Furmanchik signed the mortgage modification but Mrs. Furmanchik had not (R. p. 266, line 20 – R. p. 267, line 24); that the document starting on Page 265 is identified as and entitled as a Fixed Adjustable Rate Note which is not signed by Mrs. Furmanchik (R. pp. 337-352)(R. p. 267, lines 10-17); that the Fixed Adjustable Rate Note is a brand new note (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 3); the new Fixed Adjustable Rate Note has no allonge (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 8); the new Fixed Adjustable Rate Note has no endorsement (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 21); and that Wachovia never endorsed or assigned the new Fixed Adjustable Rate Note to any other entity (R. pp. 342-346)(R. p. 267, line 25 – R. p. 268, line 21). There being no assignment of mortgage or indorsement of Note out of Wachovia, Respondent never received any interest in Note 2. Respondent had no right of enforcement as to Note 2. The Court erred in implying such was a correct determination.

III. RESPONDENT FAILED TO OFFER ANY PROPERLY ADMISSIBLE EVIDENCE.

A. THE WITNESS PRESENTED LACKED SUFFICIENT KNOWLEDGE TO TESTIFY.

Rule 602, SCRE, states: "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony..." Respondent's witness lacked sufficient knowledge to testify.

In this case Respondent's witness did not testify in such a manner as to establish personal knowledge or to lay a proper foundation for the admission of Respondent's Exhibits. The witness offered to testify, testified she was an employee of Selene Finance, LP, and held the title of Contested Default Case Manager. (R. p. 184, lines 19-25). The witness acknowledged she was not an employee of the presently named Plaintiff, Wachovia, or Wells Fargo (R. p. 209, line 20- R. p. 210, line 11). The witness acknowledged the Note and Mortgage were originated by Wachovia Mortgage Corporation. The witness testified that the signature page of the Note contains several endorsements, such of which are marked void and/or cancelled, but she did not know why the endorsements were marked void and/or cancel. The witness testified that the documents in question were not created by Selene Finance, LP or Respondent. The witness testified she had no evidence or testimony that established the chain of title of Note. She offered no testimony which would establish how or when Plaintiff became in

possession of the Note. Upon direct examination the witness testified that she is a default case manager whose duties include “review loans where there are differences to attempt to resolve those issues” and testify at trials. Upon cross-examination the witness testified that she is not the custodian of records for Selene Finance, LP, but also equivocated changing her testimony to state that her duties and functions do include custodian of records for the documents in question. (R. p. 211, lines 4-23). Notably the witness never testified how records were retained; the means of retention of records by Plaintiff or her employer; computer systems used by Plaintiff or her employer; the reliability of any computer system of Plaintiff or her employer; how data is entered or maintained by Plaintiff or her employer; or procedures used for obtaining records. Respondent failed to establish the witness had the required personal knowledge as required by Rule 602, SCRE to testify or authenticate the documents. See *Hundley ex rel. Hundley v. Rite Aid of South Carolina Inc.*, 339 S.C. 285, 529 S.E. 2d 45 (Ct. App. 2000)(“generally under Rule 602, SCRE [a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”). This Court contrary to its decision in *Deep Keel, LLC v. Atlantic Private Equity Group*, Op. No. 5320

(June 17, 2015) determine the evidence was not hearsay. This Court along with the lower court erred in admitting the testimony of Ms. Clark.

B. Respondent failed to establish an exception to the hearsay rule.

Rule 803(6), SCRE, states “A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” Rule 901, SCRE, states “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

Plaintiff failed to lay a proper foundation for the documents to be considered business records pursuant to Rule 803(6), SCRE, or that Plaintiff's witness could testify as a custodian of records or other qualified witness pursuant to 803(6), SCRE. “A business record without evidence about the manner in which it is prepared or the source of its

information does not meet the requirements in S.C. Code Section 19-5-510 or Rule 803(6), SCRE. Business records entries must have been made at or near the time of the act to which they relate; the purpose of this mandate is to aid in establishing that the record was honestly and fairly kept..." *State v. Rice*, 375 S.C. 302, 652 S.E. 2d 409 (Ct. App. 2007). The Court erred in admitting the exhibits offered by Plaintiff in contradiction to the provisions of Rule 803, SCRE. Neither a proper foundation nor an exception to hearsay was established by Plaintiff for any document entered into evidence. Plaintiff's witness admitted that neither the Note nor Mortgage was originated by her employer or the entity for which she was testifying. (R. pp. 280-318). She had no knowledge as the assignments entered into evidence. (R. pp. 319-326). She offered no evidence of how the records were created or maintained, the source of the information, where maintained or when they were created. She certainly offered not a single shred of evidence that allowed for the admission of documents clearly created by Wells Fargo an entity with which she testified she had absolutely no relationship. (R. pp. 335-336 (Wells Fargo Demand letter), and R. pp. 327-334) (Wells Fargo Account History)). The Court erred by admitting these documents into evidence.

The Court further erred in allowing Exhibits 2 A, B and C into evidence at the continuation hearing or reopening hearing. Notwithstanding assuming for the sake of argument that Plaintiff did seek to admit the Exhibit 2C through evidence of a proper witness at the August 12, 2013 hearing, said evidence should not have been admitted because Plaintiff did not produce the original. Rule 1002, SCRE, states “[t]o prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute.” Rule 1003, SCRE, states “A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.” In this case both a genuine question as to authenticity of the original and circumstance that it would be unfair to admit the duplicate in lieu of the original are both present. The Court erred by admitting Note 2 which Plaintiff’s witness did not testify to in the original hearing.

Finally as the court noted in the August hearing “Did we go into the document 2B then? That was the one in issue? . . . 2B is the one I let in and we never did talk about. That’s the only reason I reopened this thing, is to talk about 2B.” However, then the

Court asks "Is that the original?" Plaintiff states that it is not, saying "The original we're waiting on in West Columbia." Here there are clearly questions as to authenticity, it would be highly prejudicial to accept a duplicate, Plaintiff was well aware the documents were the remaining issue, and yet with over a month in between the two hearing Plaintiff failed to present the original documents at the second hearing.

CONCLUSION

For the reasons given, this Court should reverse its decision of July 15, 2015 and the decision of the lower court and determine the Respondent failed to establish or proof a right to foreclose.

MARY LEIGH ARNOLD, P.A.



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Attorney for Appellant

July 28, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

JUL 29 2015

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Mikell R. Scarborough, Master in Equity

Case No. 2010-CP-10-5825

Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust as
Trustee of the American Mortgage Investment Partners Fund I,
Trust.....Respondent,

v.

Melissa Furmanchik; Masonborough at Park West Association, Inc.
and Wells Fargo Bank, N.A.,.....Defendants,

Of whom Melissa Furmanchik is the.....Appellant.

PROOF OF SERVICE

I certify that on this 28th day of July 2015, I have served Appellant's Petition for Rehearing on opposing counsel of record by depositing a copy a in the United States Mail, postage prepaid, addressed as follows:

Jason Wyman, Esq.
Rogers Townsend & Thomas, PC
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Columbia, SC 29202
Attorney for Respondent

MARY LEIGH ARNOLD, PA

Mary Leigh Arnold



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July 28, 2015

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

JUL 29 2015

SC Court of Appeals

RE. Selene RMOF REO Acquisitions, LLC v. Melissa Furmanchik, et al.
Case No.: 2010-CP-10-5825
Appellate Case No.: 2014-000906

Ms. Kitchings:

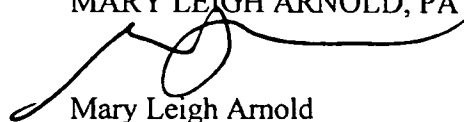
With regard to the above referenced matter the Appellant, submits the following to the Court:

1. Petition for Rehearing; and
2. Proof of Service.

The Court's consideration in this matter is greatly appreciated.

With kind regards,

MARY LEIGH ARNOLD, PA



Mary Leigh Arnold

CC:
Jason Wyman, Esq.

Аррелдх000000458

The South Carolina Court of Appeals

Wilmington Savings Fund Society, FSB, d/b/a Christiana
Trust as Trustee of the American Mortgage Investment
Partners Fund I Trust, Respondent,

v.

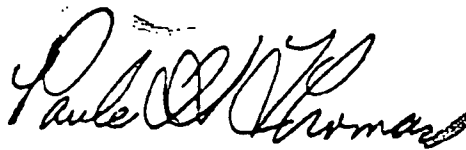
Melissa Furmanchik; Masonborough at Park West
Association, Inc. and Well Fargo Bank, N.A.,
Defendants,

Of whom Melissa Furmanchik is the Appellant.

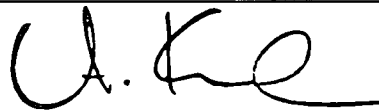
Appellate Case No. 2014-000906

ORDER

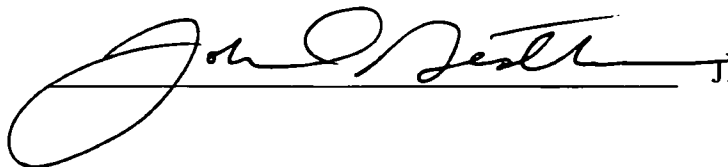
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


Paul W. Thomas

J.


U. K. Lee

J.


John D. Smith

J.

Columbia, South Carolina

FILED

August 19, 2015

Appendix000000459

cc: Jason David Wyman, Esquire
Mary Leigh Arnold, Esquire