

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2014-002627
Common Pleas Case No. 2011-CP-40-7187

RECEIVED
OCT 13 2015
SC Court of Appeals

South Carolina Community Bank,.....Respondent,

v.

Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia
Empowerment Zone, and Frank Mitchell, Defendants,

Of which Salon Proz, LLC is the.....Appellant.

RECORD ON APPEAL

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Post Office Box 50143
Columbia, South Carolina 29250
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Attorney for Appellant

S. Nelson Weston, Jr.
Carmen V. Ganjehsani
Charles J. Webb
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Post Office Box 7788
Columbia, South Carolina 29202
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
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South Carolina Community Bank,.....Respondent,

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Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia
Empowerment Zone, and Frank Mitchell, Defendants,

Of which Salon Proz, LLC is the.....Appellant.

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Attorney for Columbia Empowerment Zone, Inc.

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,
v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia Empowerment
Zone and Frank Mitchell,
Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-40-7187

ORDER ON PLAINTIFF'S AND
DEFENDANT'S MOTIONS HEARD ON
MARCH 21, 2013

2013 JUN 21 AM 10:20

This matter comes before the Court pursuant to the following motions filed by the
Plaintiff South Carolina Community Bank ("SCCB") and Defendant Salon Proz, LLC:

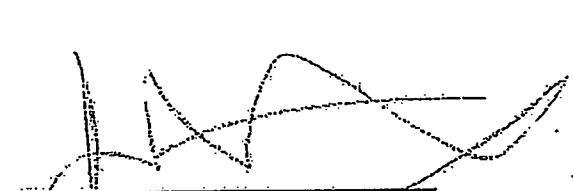
- a) Motion to Dismiss Counterclaims filed by Plaintiff on January 19, 2012;
- b) Motion to Appoint Receiver filed by Plaintiff on November 15, 2011;
- c) Defendant Salon Proz, LLC's Motion to Transfer Case to General Docket filed
on September 14, 2012;
- d) Defendant Salon Proz, LLC's Motion to Amend Complaint filed on September
14, 2012.

That Court after hearing arguments of Counsel and other evidence reviewed by
the Court finds as follows:

- a) That Plaintiff's Motion to Dismiss is continued;
- b) That Plaintiff's Motion to Appoint Receiver is granted with a separate Order to
follow;
- c) That Defendant's Motion to Transfer to General Docket is denied;
- d) That Defendant's Motion to Amend Answer and Counterclaim is granted;

AND IT IS SO ORDERED

April
March 29, 2013
Columbia, South Carolina


The Honorable Joseph M. Strickland
Richland County Master in Equity

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

ORDER ON
MOTION TO RECONSIDER

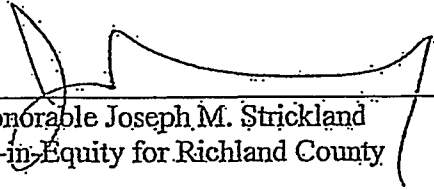
RICHLAND COUNTY
FILED
2014 NOV -7 PM 2:34
JEANNETTE W. MURPHY
C.C.P. & G.S.

This matter comes before me on Defendant Salon Proz, LLC's motion to reconsider the above-captioned action. The court had decided to deny the motion to reconsider; however, the parties agreed to resolve that motion insofar as it relates to the order that granted the Plaintiff's motion for receivership. Accordingly, the court issues the instant order with regard to the motion to reconsider.

It is therefore hereby ORDERED that:

- 1) The order granting the Plaintiff's motion for receivership is hereby vacated by the consent of all parties who have appeared in this action;
- 2) The Plaintiff's previously made motion for receivership is withdrawn, without prejudice to the ability of the Plaintiff to make another such motion;
- 3) The remainder of Defendant Salon Proz, LLC's motion is denied.

And IT IS SO ORDERED.


The Honorable Joseph M. Strickland
Master-in-Equity for Richland County

Columbia, South Carolina

Nov. 4, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
☒ Plaintiff

v.

Salon Proz, LLC Columbia Empowerment Zone,
Inc. D/B/A The Columbia Empowerment Zone
And Frank Mitchell,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-40-7187

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: S. Nelson Weston, Jr., Bar No. 12902 Address: 1900 Barnwell Street Columbia, SC 29201 phone: (803) 771-4400 fax: (803) 779-0016 e-mail: NWeston@rpclaw.com other:		Defendant's Attorney: Andrew A. Aun, Bar No. Address: P.O. Box 3568 Irmo, SC 29063 phone: (803) 744-0824 fax: (803) 744-0830 e-mail: andy@aunmckaylaw.com other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION 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: Order of Reference Estimated Time Needed: 15min 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: 1/23/12	
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, 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:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____	
		CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>Amica</u>		Date Filed: _____	
☐ MOTION FEE COLLECTED: <u>25</u>			
☐ CONTESTED - AMOUNT DUE: _____			

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE # 2011-CP-40-7187

ORDER OF REFERENCE

2012 FEB 13 PM 4:16
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

This matter comes before me upon motion of the Plaintiff for an Order
Reference.

It appears from the pleadings that the within action has been brought for the
foreclosure of a mortgage and lies within the equity jurisdiction of this Court.

NOW, THEREFORE, UPON MOTION of S. Nelson Weston, Jr., of Richardson
Plowden & Robinson, P.A., attorneys for the Plaintiff,

2012 FEB 17 PM 5:12
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

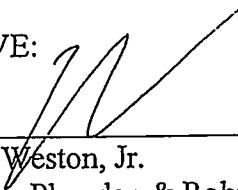
IT IS ORDERED that the above-captioned case be and the same is referred to the
Master in Equity for Richland County, to take testimony, determine the issues involved
and report his findings of fact and conclusions of law to this Court with all convenient
dispatch, with leave to make findings of fact and conclusions of law as to any special
matter, with authority to enter final judgment herein. The Master in Equity shall have
authority to enter final judgment with appeal, if any, directly to the South Carolina
Supreme Court.

Jeanette W. McBride
cc

Columbia, South Carolina

2-14, 2012

ISO MOVE:



S. Nelson Weston, Jr.
Richardson, Plowden & Robinson PA
Post Office Drawer 7788
Columbia, South Carolina 29202
803-771-4400
Attorneys For The Plaintiff

COUNTY OF RICHLAND

South Carolina Community Bank

Plaintiff(s)

vs.

CIVIL ACTION COVERSHEET

_____-CP-_____-

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia Empowerment
Zone and Frank Mitchell,

Defendant(s)

(Please Print)

Submitted By: S Nelson Weston, Jr / Charles J. Webb

Address: c/o Richardson Plowden & Robinson, PA
1900 Barnwell Street, Columbia, SC 29201

SC Bar #: 12902 / 73757

Telephone #: 803-771-4400

Fax #: 803-779-0016

Other:

E-mail: nweston@richardsonplowden.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings on 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
☐ Constructions (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 (299) | ☐ 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 Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | | | |
| ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | | |

Submitting Party Signature: _____

Date: 10/25

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.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Case No.:

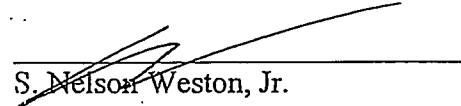
CERTIFICATE OF NON-OWNER
OCCUPANCY

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 OCT 26 PM 3:59

RICHLAND COUNTY
FILED

The undersigned attorney for the Plaintiff has reviewed one or more of the following: tax records, affidavits of service or non-service, other documents, or information provided by the Plaintiff or other persons with knowledge as to the occupancy status of the dwelling that is the subject of the above-captioned action. Upon information and belief, the dwelling is not "Owner-Occupied" as defined by South Carolina Supreme Court Administrative Order 2011-05-02-01.


S. Nelson Weston, Jr.

Richardson, Plowden

& Robinson, P.A.

Post Office Drawer 7788

Columbia, South Carolina 29202

(803) 771-4400

Attorneys for Plaintiff

Columbia, South Carolina

October 25, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,
Defendant(s).

COURT OF COMMON PLEAS

C/A NO:

SUMMONS
(Non-Jury)

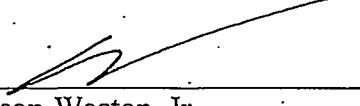
RICHLAND COUNTY
FILED
2011 OCT 26 PM 3:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the subscribers at their offices located at 1900 Barnwell Street, Post Office Drawer 7788, Columbia, South Carolina 29202, within thirty (30) days after the date of such service, exclusive of the day of 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 answer the said Complaint within the time aforesaid, 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.

RICHARDSON, PLOWDEN & ROBINSON, P.A.


S. Nelson Weston, Jr.
Charles J. Webb
P.O. Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR THE DEFENDANT

10/25, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia Empowerment
Zone and Frank Mitchell,
Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.:

FORECLOSURE COMPLAINT

2011 OCT 26 PM 3:59
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

The Plaintiff, complaining of the Defendant(s), above-named, alleges that:

1. South Carolina Community Bank is a banking institution doing business in the State of South Carolina authorized to do business under the laws of the United States of America.
2. Upon information and belief, the Defendant, Salon Proz, LLC is a limited liability company organized and existing in the State of South Carolina and doing business in the County of RICHLAND, State of South Carolina, and subject to the jurisdiction of this Court.
3. Upon information and belief, the Defendant, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone is a corporation organized and existing in the State of South Carolina and doing business in the County of RICHLAND, State of South Carolina, and subject to the jurisdiction of this Court.
4. Upon information and belief, the Defendant, Frank Mitchell is a citizens and resident of the County of Richland, State of South Carolina, and subject to the jurisdiction of this Court.
5. The real property hereinafter described, which is the subject of this action, is situated and located in Richland County, South Carolina.

6. Heretofore, Salon Proz, LLC, (hereinafter sometimes referred to as the "Mortgagor") did on 07/16/2009, execute and deliver for value received, a Commercial Line of Credit Agreement and Note payable to the order of South Carolina Community Bank (the "Mortgagee"), a copy of said Note is attached hereto as Exhibit "A" and incorporated herein by reference (the "Note") and that the Mortgagee advanced to the Mortgagor the sum of Eight Hundred Sixty Four Thousand and 00/100 (\$864,000.00) on the Note.

7. On or about 07/16/2009, Salon Proz, LLC, in order to better secure the payment of the indebtedness evidenced by said Note and according to the terms and conditions thereto, executed and delivered to South Carolina Community Bank, its successors and assigns, a Mortgage secured by the following-described real estate (the "Property"), to wit:

ALL THAT CERTAIN PIECE, PARCEL, OR LOT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON THE WESTERN SIDE OF TWO NOTCH ROAD, IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, SAID LOT BEING DESIGNATED AS 2901 TWO NOTCH ROAD, AND IS SHOWN AND DELINEATED AS 2.2965 ACRES ON A PLAT PREPARED FOR T.N., A PARTNERSHIP, BY PALMETTO ENGINEERING CO., INC., DATED DECEMBER 22, 1977, RECORDED IN THE OFFICE OF THE REGISTER OF MESNE CONVEYANCES FOR AFORESAID COUNTY IN PLAT BOOK Y AT PAGE 571; BEING MORE SPECIFICALLY SHOWN AND DELINEATED ON A PLAT PREPARED FOR PULLIUM MOTOR COMPANY, BY COX AND DINKINS, INC. DATED DECEMBER 15, 1994, AND RECORDED IN THE OFFICE OF THE RMC FOR RICHLAND COUNTY IN PLAT BOOK 55 AT PAGE 5972. THIS PARCEL MORE SPECIFICALLY SHOWN AND DELINEATED ON A ALTA/ACSM LAND TITLE SURVEY PREPARED FOR RPC PROPERTIES, LLC AND RPC HOLDINGS, LLC BY COX AND DINKINS, INC. DATED FEBRUARY 25, 2003; RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY, SOUTH CAROLINA IN RECORD BOOK 770 AT PAGE 80. THIS PARCEL BEING MORE SPECIFICALLY SHOWN AND DELINEATED ON A PLAT PREPARED FOR SALON PROZ & YVONNE JONES, BY COLLINGWOOD SURVEYING, INC. DATED SEPTEMBER 7, 2008, AND RECORDED SIMULTANEOUSLY HERewith IN THE RICHLAND COUNTY ROD OFFICE; SAID PLATS ARE INCORPORATED HEREIN AND REFERENCE IS CRAVED THERETO FOR A MORE

COMPLETED AND ACCURATE DESCRIPTION OF THE METES, BOUNDS, COURSES AND DISTANCES OF THE PROPERTY CONCERNED HEREIN. BE ALL MEASUREMENTS A LITTLE MORE OR LESS.

TMS # 11613-12-32

THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO ASTAR TWO NOTCH COLUMBIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY BY DEED IN LIEU OF FORECLOSURE OF RCP PROPERTIES, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY DATED APRIL 18, 2007 AND RECORDED APRIL 19, 2007 IN DEED BOOK 1304, PAGE 2611 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY.

THIS BEING THE IDENTICAL PROPERTY CONVEYED TO SALON PROZ, LLC BY DEED OF ASTAR TWO NOTCH COLUMBIA, LLC DATED JUNE 2, 2009, AND RECORDED ON JULY 20, 2009 IN BOOK R1540, PAGE 508, RICHLAND COUNTY RECORDS.

8. Said Mortgage constitutes a first lien on the Property and was duly filed and recorded in the Office of the Register of Deeds for Richland County, South Carolina, on July 20, 2010, in Book 1540 at Page 510. A copy of said Mortgage, is attached hereto as Exhibit "B" and incorporated herein by reference (the "Mortgage").

9. On or about July 16, 2009, Salon Proz, LLC did execute and deliver to South Carolina Community Bank an Assignment of Rents, Leases, Profits and Security Deposits which was recorded July 20, 2009 with the Richland County Register of Deeds Office in Record Book 1540 at Page 515. A copy of said Assignment is attached hereto as Exhibit "C" and incorporated herein by reference.

10. It was agreed in said Mortgage that, should the Mortgagor default in any of the payments as therein provided, the whole amount of the debt secured by said Mortgage shall become due and payable at the election of the Mortgagee, after notice has been given to the Mortgagor. The Mortgagor failed and refused to pay to the Plaintiff the installment of principal and interest, which

became due on May 16, 2011, and has failed to make any payment since September 9, 2011.

11. Said Mortgagor further agreed that in the case of foreclosure of said Mortgage, by suit or otherwise, the Mortgagee shall recover from the Mortgagor a reasonable sum as attorneys' fees, which shall be secured by the Mortgage, and included in the judgment of foreclosure.

12. Said Mortgage further provides that said Mortgagor thereby assigned, set over, and transferred to the Mortgagee, its successors and assigns, all of the rents, issues and profits of the mortgaged premises, including those past due, upon acceleration of payment of all sums secured by the Mortgage.

13. The said Mortgage further provides that the Mortgagor shall insure and keep insured against loss and damage by fire the premises covered by said Mortgage, and in the event of the failure of the said Mortgagors to insure and keep insured the said premises, the said Mortgagee, its successors or assigns, may cause the same to be insured in its own name, and reimburse itself for the premium and expenses of such insurance under the Mortgage, whereupon the entire debt secured by the said Mortgage shall become due and payable, if the Mortgagee, or its successors or assigns, shall so elect.

14. The said Mortgage further provided that the Mortgagors shall promptly pay all taxes assessed and chargeable against said property, and in default thereof, that the said Mortgagee, its successors or assigns, may pay the same and reimburse itself under the said Mortgage, whereupon the entire debt secured by said Mortgage shall become immediately due and payable, if the Mortgagee or its successors or assigns, shall so elect.

15. The aforesaid Note and Mortgage are now in default. The Plaintiff has made demand on the Defendants, for payment of the aforesaid Note and Mortgage; however, the demands of the

Plaintiff have been ignored by the Mortgagors, and, by reason of failure of the Mortgagors to pay the installment of principal and interest becoming due on , and subsequent payments as they became due, the Plaintiff has elected and does hereby elect that the entire indebtedness evidenced by the Note and secured by said Mortgage is immediately due and payable.

16. Since it has become and is necessary for the Plaintiff to employ legal counsel to prosecute this action, a reasonable fee for the services of the Plaintiff's counsel should, according to the terms of said Note and Mortgage, be added to the amount of the Mortgage debt. Said reasonable fee should take into consideration the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, and preparing the pleadings; the time anticipated to be performed in preparing for and attending hearings and until final adjudication of the within action, under the terms of the Note and Mortgage; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the potential beneficial results obtained for the Plaintiff. Services anticipated to be performed until final adjudication contemplate completion of this matter within a reasonable time and do not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

17. The Plaintiff is informed and believes that it is entitled to judgment and foreclosure of said Mortgage, together with reasonable attorneys' fees and the costs of this action.

18. The payments due on said Note and Mortgage are in default due to failure to pay the payments due , and all subsequent payments; the conditions of said Note and Mortgage have been broken and the Plaintiff elects to and does declare the entire balance of said indebtedness due and payable, and that there is due on said Note and Mortgage as of September 16, 2011 is Eight

Hundred Eighty Three Thousand Six Hundred Thirty Four and 04/100 (\$883,634.04), and for the costs and disbursements of this action, including a reasonable attorneys' fee.

19. The Defendant, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone claims or may claim an interest in the subject property by virtue of an Mortgage dated July 16, 2009 in the amount of \$150,000.00 recorded on July 20, 2009, in Book R1540 at Page 524 and UCC filed on July 21, 2009 in Book R1540 at Page 1848 with the Richland County Register of Deeds. Said Mortgage is junior and subordinate to the lien being foreclosed.

20. The Defendant, Frank Mitchell, claims or may claim an interest in the subject property by virtue of an Judgment dated August 30, 2011 in the amount of \$6,365.00 filed September 22, 2011, in Case No. 2004-CP-40-6338 with the Richland County Clerk of Court. The Judgment is junior and subordinate to the lien being foreclosed.

21. If the Plaintiff pays any utility charges, which constitute or could constitute a lien on the premises, Plaintiff's payments should be added to the amount of any judgment rendered on its behalf.

22. That this foreclosure involves a Mortgage that is not owned, securitized or guaranteed by Fannie Mae or Freddie Mac nor is the Plaintiff, as the servicer of the Note and Mortgage, participating in the Home Affordable Modification Program.

23. The Plaintiff demands a personal or deficiency judgment against the Defendant, Salon Proz, LLC.

24. Upon foreclosure and sale of the property hereinabove described, in order that the purchaser at said sale may duly acquire peaceful possession of the property, the Court is respectfully requested to include in its Decree of Foreclosure and Sale the following proviso, to wit:

After the sale of the premises, and as soon as the sale by the Master-in-Equity is complete, the Mortgagor(s), or person(s) in possession, shall, within twenty (20) days of the date of sale, move from the premises, and give up the premises, without damage or vandalism. Upon failure of any Mortgagor(s) or person(s) to vacate premises within twenty (20) days of the date of sale by the Court, the Sheriff is authorized, empowered and directed to enter upon the premises and forcibly eject the parties therefrom, unless prior to such date, the Mortgagor(s) or person(s) in possession has obtained from the Court an Order extending the time which said Mortgagor(s) or person(s) shall have to vacate said premises. The Sheriff (or his deputies) is also authorized to remove from the premises any furniture or other possessions of the Mortgagor(s) or person(s) in possession, and any interference with the activities of the Sheriff will be upon penalty of contempt of Court.

WHEREFORE, the Plaintiff prays judgment:

A. That the amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorneys' fees and costs of this action; and

B. That the said Plaintiff's Mortgage be declared a valid first lien on the subject Property and that the said Plaintiff be allowed to have judgment of foreclosure for the amount so found to be due and owing to Plaintiff, together with any taxes or insurance premiums which may be due, or utility charges paid by Plaintiff, with a reasonable sum as attorneys' fees and costs of this action; and

C. That the mortgaged Property be sold under the direction of this Court, subsequent to the first mortgage holder, the equity of redemption be barred, and the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale including reasonable attorneys' fees;

Second, to the payment and discharge of the amount due on the Plaintiff's

Mortgage as determined by this Court;

Third, the surplus, if any, to be distributed according to law in such manner as may be determined by this Honorable Court; and

D. That the Plaintiff demands a deficiency judgment against the Defendant, Salon Proz, LLC in the event that the proceeds of the sale of the mortgaged Property are insufficient to pay in full the indebtedness, including costs of collection; and

E. For such other and further relief as may be just and proper.



S. Nelson Weston, Jr.
Charles J. Webb
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
Telephone: (803) 771-4400
ATTORNEYS FOR THE PLAINTIFF

10/25, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia Empowerment
Zone and Frank Mitchell,
Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.:

CERTIFICATE OF EXEMPTION/

WITHDRAWAL FROM ARBITRATION

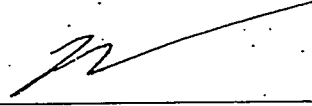
(Collection)
(Non-Jury)

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 a forfeiture proceeding brought by the State
- ☒ this is a case involving a mortgage foreclosure; or
- ☐ the parties submitted the case to a voluntary mediation with a certified mediator
prior to the filing of this civil action

2011 OCT 27 AM 9:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED


S. Nelson Weston, Jr.
Charles J. Webb
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Columbia, South Carolina 29202
Telephone: [803] 771-4400
ATTORNEYS FOR THE PLAINTIFF,

10/25, 2011

EXHIBIT "A"

NAME(S)/ADDRESS(ES) OF BORROWER(S) ("Borrower, I, My, or Me")
SALON PROZ, LLC

2901 TWO NOTCH ROAD

COLUMBIA SC 29240

NAME/ADDRESS OF LENDER (CREDITOR) ("Lender, You or Your")
S C COMMUNITY BANK
PO BOX 425
COLUMBIA, SC 29202

NOTE NUMBER	DATE OF TRANSACTION	MATURITY DATE	OFFICE	OFFICER	INTEREST RATE
101287	7/16/09	8/16/29	1	002	7.75

For value received, on or before the Maturity Date, the undersigned Borrower promises to pay the principal amount or such lesser sum as shall have been advanced by Lender to Borrower under the line of credit hereinafter described, together with interest, and any other charges, including service charges, to the order of Lender at its address noted above or holder, all in lawful money of the United States of America. The undersigned further agrees to the terms below and on page two of this Note. Words, numbers or phrases preceded by a box are applicable only if the box is checked.

PRINCIPAL AMOUNT:

\$ 864,000.00

Eight hundred sixty four thousand & no/100

PAYMENT SCHEDULE:

Payments on this Line of Credit will be due as follows:

☒ interest only starting _____ and payable ☐ monthly. ☐ quarterly.

☐ interest, principal and other charges due on Maturity Date.

☒ other payment schedule: ONE (1) INTEREST ONLY PAYMENT DUE ON MAY 15, 2010; THEREAFTER 228 PAYMENTS OF PRINCIPAL AND INTEREST IN THE AMOUNT OF \$7,154.36 AND A FINAL PAYMENT OF ALL PRINCIPAL, INTEREST, FEES AND OTHER CHARGES DUE AT MATURITY.

INTEREST RATE:

This Line of Credit is subject to ☒ a fixed interest rate of 7.75 % per annum. ☐ a variable simple interest rate, which is
☐ % greater than: ☐ equal to: ☐ % less than: the following Index:

Initial Simple Interest Rate	Present Variable Index Rate	Minimum Interest Rate	Maximum Interest Rate	Interest Rate Changes May Occur Every
%	%	%	%	

Interest may be calculated on the unpaid balance for the actual days outstanding on a ☐ 365/365 Day Basis ☒ 365 / 360 Day Basis

DEFAULT RATE: If in default the interest rate shall be: ☐ % per annum. ☐ % in excess of the Index.

LATE CHARGE: If Borrower is more than 10 days late in making any payment, in addition to such payment, Borrower will pay a late charge of:
☐ the lesser of ☐ the greater of ☐ an amount equal to ☐ \$ ☒ 5.00 % of the payment in default.

PAYABLE ON DEMAND: ☐ Payment is due upon demand. ☐ Payment is due upon demand, but in any event, not later than Maturity Date.

TERMS/ADVANCES: This Line of Credit is:

☒ Obligatory: Lender will continue to make advances under this Line of Credit unless: (a) the maximum amount on this Line of Credit is outstanding; (b) the undersigned has breached any of the promises contained in this Agreement or any other agreement noted below; (c) the undersigned makes a request for an advance after the Maturity Date noted above; (d) other:

☐ Discretionary: Lender may refuse to make additional advances under this Line of Credit for the following reasons: (a) the aggregated advances under this Line of Credit exceeds \$ _____; (b) other:

☐ ANNUAL MEMBERSHIP FEE: Lender will assess an Annual Membership Fee of (\$ _____) Dollars, which will be due when Borrower's Line of Credit is first opened and on the yearly anniversary of the opening date. This fee will be charged to this Line of Credit as an advance. This fee is not refundable under any circumstance and does not assure Borrower that this Line of Credit will not be terminated, credit suspended or credit limit reduced as permitted under this Line of Credit Agreement and Note.

☐ ADDITIONAL NOTE PROVISIONS:

By initialing, I acknowledge this is page 1 of 2 of the Commercial Line of Credit Agreement and Note.

Initials Initials Initials Initials

EXHIBIT "B"



MORTGAGE (Participant)

This mortgage made and entered into this 11th day of July, 2009
by and between **Salon Proz, LLC**
(hereinafter referred to as mortgagor) and **South Carolina Community Bank**

(hereinafter referred to as mortgagee), who maintains an office and place of business at **1545 Sumter Street, Columbia, S.C. 29201**
WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign, and convey unto the mortgagee, his successors and assigns, all of the following described property situated and being in the County of **Richland** State of **South Carolina**

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREWITH.

Book 1540-510

2009054904 07/20/2009 11:06:19:327

Mortgage

Fee:\$11.00 County Tax:\$0.00

State Tax:\$0.00



2009054904 Richard W. Rodden

Richland County R.O.D.

Together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, inclnerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues, and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

The mortgagor covenants that he is lawfully seized and possessed of and has the right to sell and convey said property; that the same is free from all encumbrances except as hereinabove recited; and that he hereby binds himself and his successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

The instrument is given to secure the payment of a promissory note dated July 11th, 2009 principal sum of **\$864,000.00** in behalf of **Salon Proz, LLC** **Yvonne Jones**

Said promissory note was given to secure a loan in which the Small Business Administration, an agency of the United States of America, has participated. In compliance with section 101.1(d) of the Rules and Regulations of the Small Business Administration [13 C.F.R. 101.1(d)], this instrument is to be construed and enforced in accordance with applicable Federal law.

1. The mortgagor covenants and agrees as follows:

- a. He will promptly pay the indebtedness evidenced by said promissory note at the times and in the manner therein provided.
- b. He will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefor to the said mortgagee.
- c. He will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosures by mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall be paid by the mortgagor.
- d. For better security of the indebtedness hereby secured, upon the request of the mortgagee, its successors or assigns, he shall execute and deliver a supplemental mortgage or mortgages covering any additions improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to mortgagee). Furthermore, should mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, mortgagor hereby agrees to permit mortgagee to cure such default, but mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.
- e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the indebtedness evidenced by said promissory note or any part thereof secured hereby.
- f. He will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, mortgagor will give immediate notice in writing to mortgagee, and mortgagee may make proof of loss if not made promptly by mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to mortgagee instead of to mortgagor and mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the indebtedness secured hereby, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or mortgagee or, at the option of the mortgagee, may be surrendered for a refund.
- g. He will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.
- h. He will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises.
- i. He will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or substantially alter any building without the written consent of the mortgagee.
- j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to mortgagee, who may apply the same to payment of the installments last due under said note, and mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.
- k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

2. Default in any of the covenants or conditions of this instrument or of the note or loan agreement secured hereby shall terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or his assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default the mortgagee shall become the owner of all of the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to enter upon said property for the purpose of collecting such rents and profits. This instrument shall operate as an assignment of any rentals on said property to that extent.

3. The mortgagor covenants and agrees that if he shall fail to pay said indebtedness or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or the promissory note secured hereby, the entire indebtedness hereby secured shall immediately become due, payable, and collectible without notice, at the option of the mortgagee or assigns, regardless of maturity, and the mortgagee or his assigns may before or after entry sell said property without appraisal (the mortgagor having waived and assigned to the mortgagee all rights of appraisal);

(I) at judicial sale pursuant to the provisions of 28 U.S.C. 2001(a); or

(II) at the option of the mortgagee, either by auction or by solicitation of sealed bids, for the highest and best bid complying with the terms of sale and manner of payment specified in the published notice of sale, first giving four weeks' notice of the time, terms, and place of such sale, by advertisement not less than once during each of said four weeks in a newspaper published or distributed in the county in which said property is situated, all other notice being hereby waived by the mortgagor (and said mortgagee, or any person on behalf of said mortgagee, may bid with the unpaid indebtedness evidenced by said note). Said sale shall be held at or on the property to be sold or at the federal, county or city courthouse for the county in which the property is located. The mortgage is hereby authorized to execute for and on behalf of the mortgagor and to deliver to the purchaser at such sale a sufficient conveyance of said property, which conveyance shall contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends; and the said mortgagor hereby constitutes and appoints the mortgagee or any agent or attorney of the mortgagee, the agent and attorney in fact of said mortgagor to make such recitals and to execute said conveyance and hereby covenants and agrees that the recitals so made shall be effectual to bar all equity or right of redemption, homestead, dower, and all other exemptions of the mortgagor, all of which are hereby expressly waived and conveyed to the mortgagee; or

((III)) take any other appropriate action pursuant, to state or Federal statute, either in state or Federal court or otherwise for the disposition of the property.

In the event of a sale as hereinbefore provided, the mortgagor or any persons in possession under the mortgagor shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

4. The proceeds of any sale of said property in accordance with the preceding paragraphs shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting or maintaining said property, and reasonable attorneys' fees; secondly, to pay the indebtedness secured hereby; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument and evidenced by said promissory note, the mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisal.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at his option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the indebtedness evidenced by said note, subject to the same terms and conditions. If the mortgagor shall pay and discharge the indebtedness evidenced by said promissory note, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing, and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order, or judgment holding any provision or portion of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at

and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at

IN WITNESS WHEREOF, the mortgagor has executed this instrument and the mortgagee has accepted delivery of this instrument as of the day and year aforesaid:

Salon Proz, LLC

Member & Manager

[Signature]

Executed and delivered in the presence of the following witnesses:

[Signature]

The loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

b) Lender or SBA may use local or state procedures for purposes such as filling papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of The Note secured by this instrument.

(Add Appropriate Acknowledgement)

State of South Carolina
County of Richland

On this 16th day of July, 2009, before me personally appeared Yvonne Jones, Member & Manager of Salon Proz, LLC who provided satisfactory evidence of her identification to be the person whose name is subscribed to this instrument, and she acknowledged that she executed the foregoing instrument.

[Signature]
-Notary Public

Richland County, South Carolina

My Commission Expires 11 Sept 2015

EFFECTIVE DATE: DECEMBER 1, 1997

(4)

This form was electronically Record on Appeal 25

EXHIBIT "A"

ALL THAT CERTAIN PIECE, PARCEL, OR LOT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON THE WESTERN SIDE OF TWO NOTCH ROAD, IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, SAID LOT BEING DESIGNATED AS 2901 TWO NOTCH ROAD, AND IS SHOWN AND DELINEATED AS 2.2965 ACRES ON A PLAT PREPARED FOR T.N., A PARTNERSHIP, BY PALMETTO ENGINEERING CO., INC., DATED DECEMBER 22, 1977, RECORDED IN THE OFFICE OF THE REGISTER OF MESNE CONVEYANCES FOR AFORESAID COUNTY IN PLAT BOOK Y AT PAGE 571; BEING MORE SPECIFICALLY SHOWN AND DELINEATED ON A PLAT PREPARED FOR PULLIUM MOTOR COMPANY, BY COX AND DINKINS, INC. DATED DECEMBER 15, 1994, AND RECORDED IN THE OFFICE OF THE RMC FOR RICHLAND COUNTY IN PLAT BOOK 55 AT PAGE 5972. THIS PARCEL MORE SPECIFICALLY SHOWN AND DELINEATED ON A ALTA/ACSM LAND TITLE SURVEY PREPARED FOR RPC PROPERTIES, LLC AND RPC HOLDINGS, LLC BY COX AND DINKINS, INC. DATED FEBRUARY 25, 2003, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY, SOUTH CAROLINA IN RECORD BOOK 770 AT PAGE 80. THIS PARCEL BEING MORE SPECIFICALLY SHOWN AND DELINEATED ON A PLAT PREPARED FOR SALON PROZ & YVONNE JONES, BY COLLINGWOOD SURVEYING, INC. DATED SEPTEMBER 7, 2008, AND RECORDED SIMULTANEOUSLY HERewith IN THE RICHLAND COUNTY ROD OFFICE; SAID PLATS ARE INCORPORATED HEREIN AND REFERENCE IS CRAVED THERETO FOR A MORE COMPLETED AND ACCURATE DESCRIPTION OF THE METES, BOUNDS, COURSES AND DISTANCES OF THE PROPERTY CONCERNED HEREIN. BE ALL MEASUREMENTS A LITTLE MORE OR LESS.

TMS #: 11613-12-32

THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO ASTAR TWO NOTCH COLUMBIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY BY DEED IN LIEU OF FORECLOSURE OF RCP PROPERTIES, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY DATED APRIL 18, 2007 AND RECORDED APRIL 19, 2007 IN DEED BOOK 1304, PAGE 2611 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY.

EXHIBIT "C"

This instrument prepared by and to be returned to:
Donald W. Tyler
Tyler, Cassell, Jackson, Peace & Silver, L.L.P.
Post Office Box 11656
Columbia, South Carolina 29211-1656

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

ASSIGNMENT OF RENTS, LEASES, PROFITS AND SECURITY DEPOSITS

THIS ASSIGNMENT OF RENTS, LEASES, PROFITS AND SECURITY DEPOSITS (this "Assignment") is made effective as of the 16th day of July, 2009, by SALON PROZ, LLC (the "Borrower"), a South Carolina limited liability company, in favor of SOUTH CAROLINA COMMUNITY BANK (the "Lender").

RECITALS:

This Assignment is made as additional security for the payment of indebtedness due by Borrower to Lender in the principal amounts of Eight Hundred Sixty Four Thousand and No/100 (\$864,000.00) Dollars (the "Loan"), with interest thereon as evidenced by a Note of even date herewith in said amounts (the "Note") executed and delivered by Borrower to Lender, and as additional security for the full and faithful performance by Borrower of all the terms and conditions of the Note and of a certain Mortgage of even date herewith (the "Mortgage") executed and delivered by Borrower to Lender encumbering the property described in Exhibit "A" (the "Property"), and to secure the payment of the Note.

Book 1540-515
2009054905 07/20/2009 11:06:19:403
Fee:\$11.00 County Tax:\$0.00

Asgmt Lease Rent Profit
State Tax:\$0.00



2009054905 Richard W. Rodden

Richland County R.O.D.

TEXT OF ASSIGNMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, and as an inducement to the Lender to make the Loans to Borrower, Borrower does hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the Borrower's interest in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, all or any part of the Property, and the improvements located thereon, including, without limitation, all the rents, issues, and profits now due and which may hereafter become due under or by virtue of said leases and agreements, written and oral, and any and all reservations (whether or not prepaid in whole or in part) and security deposits held or received as a consequence thereof, together with all rights thereto and with respect thereto (collectively, without limitation, the "rent").

Borrower agrees to duly operate and maintain the aforesaid Property and perform all requisites on its part to keep any and all leases of said Property in full force and effect.

Borrower agrees that this Assignment shall cover and assign any and all existing and all future leases, whether written or verbal and all renewals and extensions thereof, or any letting of, or any agreement for the use or occupancy of, any part of said Property.

Borrower further agrees that it will not assign the rent or any part of the rent of said Property, nor collect rent under any leases or other agreements relating to use of any part of the Property, for a period further in advance than one month without the written consent of the Lender, nor do any other act whereby the lien of the Mortgage and this Assignment may, in the opinion of the Lender, be impaired in value or quality.

Borrower warrants, represents and agrees that it has not and will not enter into any fictitious lease or any lease for the purpose of avoiding creditors, and any attempt to do so will be void.

Borrower further agrees that this Assignment is to remain in full force and effect so long as the Note remains unpaid, and that it may be enforced by Lender.

It is expressly understood and agreed by Borrower and Lender that Lender hereby grants Borrower a license to collect said rent upon, but not prior to, actual accrual under the aforesaid leases, and to retain, use and enjoy the same unless and until the occurrence of a default, event of default with respect to the Note or the Mortgage, or until the violation of any term, condition or agreement of this Assignment, each of which shall constitute an "Event of Default" hereunder.

Borrower does hereby authorize and empower Lender to collect, upon demand, after any Event of Default hereunder, all the rent, now due or which may hereafter become due under or by virtue of any lease, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of said Property, and to take such action, legal or equitable, as may be deemed necessary to enforce payment of such rents, issues and profits. Any lessee, tenant or guest making such payment to Lender shall be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lender.

Any amount received or collected by Lender by virtue of this Assignment shall be applied for one or more of the following purposes, but not necessarily all or in the order named, priority and application of such funds being within the sole discretion of Lender:

- (1) to the payment of all necessary expenses for the operation, protection and preservation of the Property, including the usual and customary fees for management services;

- (2) to the payment of taxes and assessments levied and assessed against the Property as said taxes and assessments become due and payable;

(3) to the payment of premiums due and payable on any insurance policy related to the Property;

(4) to the payment of installments of principal, interest and fees on the Note as and when they become due and payable pursuant to the terms of the Note, whether by acceleration or otherwise;

(5) to the payment of any other sums due to Lender, including those due under the Mortgage;

(6) to the payment of costs incurred by Lender, including reasonable attorneys' fees in asserting and pursuing its rights hereunder, under the Loan Agreements, the Notes or the Mortgage; and

(7) the balance remaining after payment of the above shall be paid to the then owner of record of said Property.

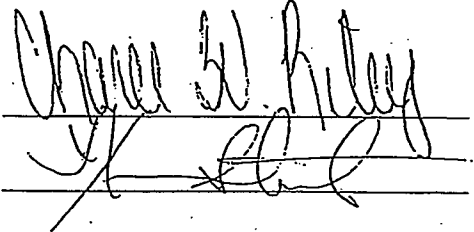
Borrower hereby agrees to indemnify Lender for, and to save it harmless from, any and all liability, loss or damage which Lender might incur under said leases or by virtue of this Assignment, and from any and all claims and demands whatsoever which may be assessed against Lender thereunder or hereunder, and, without limiting the generality of the foregoing, covenants that this Assignment, prior to any such default by said Borrower and entry upon the Property by said Lender by reason thereof, shall not operate to place responsibility for the control, care, management or repair of said Property upon Lender, nor the carrying out of any of the terms and conditions of said leases; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger or other person.

The terms "Note" and "Mortgage" shall refer to such instruments as they may hereafter be amended by Borrower and Lender. This Assignment shall be binding upon the Borrower, its legal

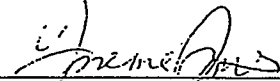
representatives, successors and assigns and subsequent owners of the Property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of the Note.

IN WITNESS WHEREOF, Borrower has executed this instrument UNDER SEAL as of the day and year first above written.

WITNESSES:



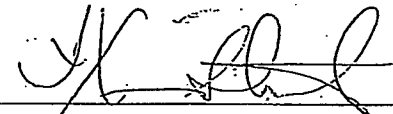
SALON PROZ, LLC

By:  (SEAL)
Its: Member & Manager

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me the 16th day of July, 2009, by Yvonne Jones, the Member and Manager of Salon Proz, LLC, a South Carolina limited liability company, on behalf of the company.



Notary Public for South Carolina
My commission expires: 11 Sept 2015

EXHIBIT "A"

ALL THAT CERTAIN PIECE, PARCEL, OR LOT OF LAND, TOGETHER WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING ON THE WESTERN SIDE OF TWO NOTCH ROAD, IN THE COUNTY OF RICHLAND, STATE OF SOUTH CAROLINA, SAID LOT BEING DESIGNATED AS 2901 TWO NOTCH ROAD, AND IS SHOWN AND DELINEATED AS 2.2965 ACRES ON A PLAT PREPARED FOR T.N., A PARTNERSHIP, BY PALMETTO ENGINEERING CO., INC., DATED DECEMBER 22, 1977, RECORDED IN THE OFFICE OF THE REGISTER OF MESNE CONVEYANCES FOR AFORESAID COUNTY IN PLAT BOOK Y AT PAGE 571; BEING MORE SPECIFICALLY SHOWN AND DELINEATED ON A PLAT PREPARED FOR PULLIUM MOTOR COMPANY, BY COX AND DINKINS, INC. DATED DECEMBER 15, 1994, AND RECORDED IN THE OFFICE OF THE RMC FOR RICHLAND COUNTY IN PLAT BOOK 55 AT PAGE 5972. THIS PARCEL MORE SPECIFICALLY SHOWN AND DELINEATED ON A ALTA/ACSM LAND TITLE SURVEY PREPARED FOR RPC PROPERTIES, LLC AND RPC HOLDINGS, LLC BY COX AND DINKINS, INC. DATED FEBRUARY 25, 2003, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY, SOUTH CAROLINA IN RECORD BOOK 770 AT PAGE 80. THIS PARCEL BEING MORE SPECIFICALLY SHOWN AND DELINEATED ON A PLAT PREPARED FOR SALON PROZ & YVONNE JONES, BY COLLINGWOOD SURVEYING, INC. DATED SEPTEMBER 7, 2008, AND RECORDED SIMULTANEOUSLY HERewith IN THE RICHLAND COUNTY ROD OFFICE; SAID PLATS ARE INCORPORATED HEREIN AND REFERENCE IS CRAVED THERETO FOR A MORE COMPLETED AND ACCURATE DESCRIPTION OF THE METES, BOUNDS, COURSES AND DISTANCES OF THE PROPERTY CONCERNED HEREIN. BE ALL MEASUREMENTS A LITTLE MORE OR LESS.

TMS #: 11613-12-32

THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO ASTAR TWO NOTCH COLUMBIA, LLC, A DELAWARE LIMITED LIABILITY COMPANY BY DEED IN LIEU OF FORECLOSURE OF RCP PROPERTIES, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY DATED APRIL 18, 2007 AND RECORDED APRIL 19, 2007 IN DEED BOOK 1304, PAGE 2611 IN THE OFFICE OF THE REGISTER OF DEEDS FOR RICHLAND COUNTY.

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,

Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER:
2011-CP-40-7187

ANSWER AND COUNTERCLAIM

(Jury Trial Demanded)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 NOV 23 PM 4:38

RICHLAND COUNTY
FILED

The Defendants, SALON PROZ, LLC. (hereinafter Defendant), answers the Plaintiff's

Complaint and complain as follows:

FOR A FIRST AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION

1. That each and every allegation contained in the Plaintiff's Complaint that is not expressly admitted, qualified, modified or explained is expressly denied and strict proof is required thereof.
2. The Defendant is without sufficient information to either admit or deny the allegations of paragraph 1 of the Plaintiff's Complaint, and therefore, deny the same, requiring strict proof thereof.
3. The allegations of paragraph 2 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.

4. The allegations of paragraph 3 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof.
5. The allegations of paragraph 4 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
6. The Defendant is without sufficient information to either admit or deny the allegations of paragraph 5 of the Plaintiff's Complaint, and therefore, deny the same, requiring strict proof thereof.
7. The allegations of paragraph 6 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief and Admit, the Defendant is not required to answer. To the extent an answer is required, the Defendant denies the allegations and requires strict proof thereof.
8. The allegations of paragraph 7 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
9. The allegations of paragraph 8 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
10. The allegations of paragraph 9 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.

11. The allegations of paragraph 10 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
12. The allegations of paragraph 11 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
13. The allegations of paragraph 12 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
14. The allegations of paragraph 13 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
15. The allegations of paragraph 14 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
16. The allegations of paragraph 15 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
17. The allegations of paragraph 16 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.

18. The allegations of paragraph 17 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
19. The allegations of paragraph 18 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
20. The allegations of paragraph 19 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
21. The allegations of paragraph 20 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
22. The allegations of paragraph 21 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
23. The allegations of paragraph 22 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.
24. The allegations of paragraph 23 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.

25. The allegations of paragraph 24 of the Plaintiff's Complaint call for legal conclusions which, upon information and belief, the Defendant is not required to answer. To the extent an answer is required; the Defendant denies the allegations and requires strict proof thereof.

FOR A SECOND AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Motion to Dismiss - Rule 12(b)(6)
(Failure To State Sufficient Facts To Constitute A Cause)

26. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.
27. Defendant assert that the Plaintiff has not alleged sufficient facts to constitute a cause of action upon which relief can be granted, because it has failed to show, among other issues to be more fully developed through discovery and trial, that it has provided sufficient right to cure, and that it has conducted business properly under the law and/or that it has a valid and enforceable debt.

FOR A THIRD AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Lack of Notice)

28. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.
29. If a breach of any contract occurred on the part of the Defendant with the Plaintiff, which is denied, Plaintiff has failed to provide proper and sufficient notice to Defendant, and therefore has waived any and all rights to which it has alleged it is entitled.

FOR A FOURTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Failure to Provide Sufficient Right to Cure)

30. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.
31. If a breach of any contract occurred on the part of the Defendant with the Plaintiff, which is denied, Plaintiff has failed to provide proper and sufficient right to cure to Defendant, and therefore has waived any and all rights to which it has alleged it is entitled.

FOR A FIFTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Motion to Dismiss – Failure to Provide Proper Service of Process)

32. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.

33. Upon information and belief, Plaintiff has failed to properly serve Defendant, and therefore, this matter should be dismissed for failure to provide proper service.

FOR A SIXTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Motion to Dismiss)
(Insufficiency of Process – Rule 12(b)(4))

34. Each and every allegation contained herein above is incorporated by reference as if fully and effectually set out herein verbatim.

35. That upon information and belief, the named and served Defendant was not properly served. Process is therefore insufficient.

FOR A SEVENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
AND AS A FIRST COUNTERCLAIM
AGAINST PLAINTIFF
(Breach of Implied Covenant of Good Faith and Fair Dealing)

36. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.

37. That the Plaintiff was required to comply with the implied covenant of good faith and fair dealing.

38. That the acts and conduct of Plaintiff were negligent, careless and reckless and/or motivated by bad faith and/or malice and were contrary to the best interests of our economic system and the public good and constituted a breach of said covenant when it made this loan that it now attempts to enforce.

39. That by reason of the Plaintiff's breach of the implied covenant of good faith and fair dealing, and as a direct and proximate result thereof, Defendant has suffered damages on account thereof which they are entitled to collect from Plaintiff.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
AND BY WAY OF A SECOND COUNTERCLAIM
AGAINST PLAINTIFF
(Slander of Title)

40. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.

41. That upon information and belief, by filing of this action without providing proper and sufficient notice and right to cure to the Defendant, Plaintiff has encumbered the marketability of the property with malice and the specific intent to gain ownership interest in portions of Defendant's property.

42. As a direct and proximate cause to this slander of title, the marketability of the Defendant's property has been adversely affected, and they have and/or will suffer damages to include attorneys fees in the defense of this action, and a diminishment in the value of its property.

43. Defendant should therefore be awarded any and all damages to include consequential, actual and punitive for the deliberate slandering of title to the Defendants' property.

FOR A NINTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
AND BY WAY OF A THIRD COUNTERCLAIM
AGAINST PLAINTIFF
(Usury Law)

45. Each and every allegation above is re-alleged herein below as if set out herein below verbatim.

46. That upon information and belief, Plaintiff has violated the Usury Law and/or standards and Defendant has been damaged as set forth herein.

FOR AN TENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
AND BY WAY OF A FOURTH COUNTERCLAIM
AGAINST PLAINTIFF
(Predatory Lending)

47. That each and every paragraph stated above is incorporated herein as if fully restated herein verbatim.

48. That Plaintiff committed and engaged in predatory lending by representing that the interest rate would be lower than it was in actuality.

49. That upon information and belief, Defendant is entitled to judgment against said Plaintiff for actual and punitive damages on account thereof.

FOR A ELEVENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
AND BY WAY OF A FIFTH COUNTERCLAIM
AGAINST PLAINTIFF
(Unclean Hands)

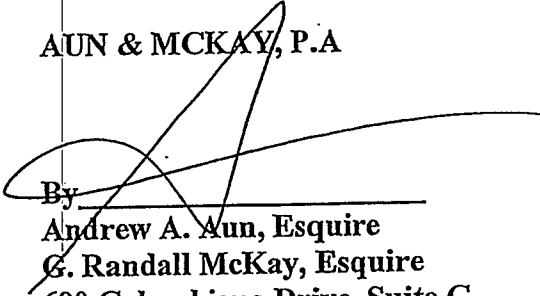
49. Each and every allegation contained herein above is incorporated by reference as if fully and effectually set out herein verbatim.

50. The Plaintiffs are barred from asserting any causes of action under equity including, but not limited to equitable indemnity and/or contractual indemnity because of their own negligence and/or breach and/or violations of the law which will be more fully developed through discovery and shown at trial. Such violations should bar Plaintiffs in this action under the equitable doctrine of unclean hands.

~~WHEREFORE~~, Defendant, having fully answered the Complaint, pray that the Complaint be dismissed with prejudice and for judgment against the Plaintiff for actual, consequential and punitive

damages as well as attorney's fees and the costs of this action. Further, Defendant prays for any and all other relief deemed appropriate by the court and for jury trial on all issues so triable.

AUN & MCKAY, P.A.

By 

Andrew A. Aun, Esquire

G. Randall McKay, Esquire

690 Columbiana Drive, Suite C

Columbia, South Carolina 29212

Phone (803) 744-0824

Facsimile (803) 744-0830

ATTORNEYS FOR DEFENDANTS

Dated: 11/23/11
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Community Bank,

Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NUMBER:
2011-CP-40-7187

CERTIFICATE OF SERVICE

JEANETTE W. McBRIDE
C.C.P. & G.S.

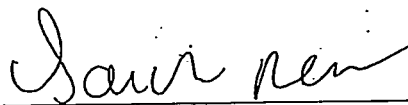
2011 NOV 23 PM 4:38

FILED

RICHLAND COUNTY

The undersigned hereby certifies that she is an employee with Aun and McKay, P.A.; that a copy of the Answer and Counterclaim was served in the foregoing action by depositing the same in the United States mail, with sufficient postage affixed thereon and return address clearly visible on November 23, 2011 addressed to the following:

S. Nelson Weston, Jr., Esquire
RICHARDSON, PLOWDEN & ROBERSON, P.A.
1900 Barnwell Street
Columbia, SC 29202



Sarah Nease

November 23, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,

Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia Empowerment
Zone and Frank Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A # 2011-CP-40-7187

PLAINTIFF SOUTH CAROLINA
COMMUNITY BANK'S ANSWER/REPLY
TO COUNTERCLAIM OF DEFENDANT
SALON PROZ, LLC

2011 DEC 19 AM 9:28
JANETTE W. MCBRIDE
C.S.P. & G.S.

RICHLAND COUNTY
FILED

Plaintiff South Carolina Community Bank (hereinafter, "Plaintiff") by and through its undersigned counsel, hereby answers and replies to the Defendant Salon Proz, LLC (hereinafter, "Defendant") Answer and Counterclaim as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION RELATING TO PLAINTIFF

1. Plaintiff denies each and every allegation of the Answer and Counterclaim of Defendant except those hereinafter specifically admitted or modified.

2. Plaintiff reasserts its Complaint in full response to the Answer and Counterclaim of Defendant.

3. As to the allegations in Paragraphs 1 through 27 of the Answer and Counterclaim of Defendant, no response is required. However, if a response is required, the Plaintiff denies the allegations contained in these paragraphs, and demands strict proof thereof.

4. Plaintiff denies the allegations in Paragraphs 27-50 of the Answer and Counterclaim of Defendant and demands strict proof thereof.

FOR A SECOND DEFENSE TO ALL AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
RELATING TO THE PLAINTIFF

(Rule 12(b)(6) of the South Carolina Rules of Civil Procedure)

5. Defendant's Answer and Counterclaim fails to state sufficient facts to constitute a cause of action against the Plaintiff.

FOR A THIRD DEFENSE TO ALL AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
RELATING TO PLAINTIFF
(Estoppel/ Waiver)

6. The Plaintiff pleads the doctrines of estoppel and waiver as a complete defense to the claims

FOR AN FOURTH DEFENSE TO ALL CAUSES OF ACTION RELATING TO PLAINTIFF
(Statute of Limitations/ Laches)

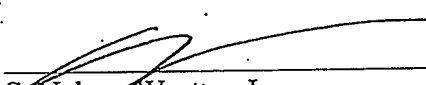
7. The claims asserted in Defendant's Affirmative Defenses and Counterclaim are barred by the applicable statute of limitations and/or laches.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION RELATING TO PLAINTIFF
(Punitive Damages Barred)

8. Defendant's claim for punitive damages, if directed towards the Plaintiff, is barred as a matter of law because an assessment or award of punitive damages would violate the constitutional rights of the Plaintiff including but not limited to those under the due process clause of the Fifth Amendment, as applied to the states through the Fourteenth Amendment to the United States Constitution; those under the Eighth Amendment, which prohibits excessive fines, as applied to the states through the Fourteenth Amendment; those under the Sixth Amendment as made applicable to the states through the Fourteenth Amendment; and, relevant provisions of the South Carolina Constitution, including but not limited to, Article 1, Section 3, all of which are asserted as bars to recovery of punitive damages against the Plaintiff.

WHEREFORE, Plaintiff South Carolina Community Bank, having fully answered and replied to the Answer and Counterclaim of Defendant Salon Proz, LLC, respectfully requests that the Counterclaim of Defendant be dismissed with prejudice, that the Plaintiff be awarded costs, attorneys' fees, and prejudgment interest, and that the Court award such other relief in favor of the Plaintiff South Carolina Community Bank as deemed just and proper, including that set forth in its Complaint.

RICHARDSON PLOWDEN & ROBINSON, P.A.



S. Nelson Weston, Jr.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
Telephone: (803) 771-4400
ATTORNEYS FOR PLAINTIFF
SOUTH CAROLINA COMMUNITY BANK

DECEMBER 16, 2011

CERTIFICATE OF SERVICE

I, Crystal L. Bilka, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for South Carolina Community Bank do hereby certify that I have served Plaintiff South Carolina Community Bank's Answer/Reply to Counterclaim of Defendant Salon Proz, LLC, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on December 16, 2011.

Andrew A. Aun, Esq.
Aun & McKay, P.A.
P.O. Box 3568
Irmo, SC 29063

Crystal L. Bilka
Crystal L. Bilka

RICHLAND COUNTY
FILED
2011 DEC 19 AM 9:28
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,

Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia Empowerment
Zone and Frank Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A # 2011-CP-40-7187

**PLAINTIFF SOUTH CAROLINA
COMMUNITY BANK'S REPLY TO
AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT
SALON PROZ, LLC**

2013 MAR 28 AM 10:10
FILED
RICHLAND COUNTY
CLERK OF COURT
W. MCBRIDE
S.C.

Plaintiff South Carolina Community Bank (hereinafter, "Plaintiff") by and through its undersigned counsel, hereby answers and replies to the Defendant Salon Proz, LLC (hereinafter, "Defendant") Answer and Counterclaim as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION RELATING TO PLAINTIFF

1. Plaintiff denies each and every allegation of the Amended Answer and Counterclaim of Defendant except those hereinafter specifically admitted or modified.
2. Plaintiff reasserts its Complaint in full response to the Answer and Counterclaim of Defendant.
3. As to the allegations in Paragraphs 1 through 51 of the Answer and Counterclaim of Defendant, no response is required. However, if a response is required, the Plaintiff denies the allegations contained in these paragraphs, and demands strict proof thereof.

**FOR A SECOND DEFENSE TO ALL AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
RELATING TO THE PLAINTIFF**

4. Defendant's Answer and Counterclaim fails to state sufficient facts to constitute a cause of action against the Plaintiff.

FOR A THIRD DEFENSE TO ALL AFFIRMATIVE DEFENSES AND COUNTERCLAIMS
RELATING TO PLAINTIFF
(Estoppel/ Waiver)

5. The Plaintiff pleads the doctrines of estoppel and waiver as a complete defense to the claims

FOR AN FOURTH DEFENSE TO ALL CAUSES OF ACTION RELATING TO PLAINTIFF
(Statute of Limitations/ Laches)

6. The claims asserted in Defendant's Affirmative Defenses and Counterclaim are barred by the applicable statute of limitations and/or laches.

7. FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION RELATING TO PLAINTIFF

8. That Plaintiff denies the allegations in Paragraphs 52 – 96 and demands strict proof thereof.

WHEREFORE, Plaintiff South Carolina Community Bank, having fully answered and replied to the Answer and Counterclaim of Defendant Salon Proz, LLC, respectfully requests that the Counterclaim of Defendant be dismissed with prejudice, that the Plaintiff be awarded costs, attorneys' fees, and prejudgment interest, and that the Court award such other relief in favor of the Plaintiff South Carolina Community Bank as deemed just and proper, including that set forth in its Complaint.

RICHARDSON PLOWDEN & ROBINSON, P.A

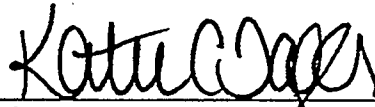

S. Nelson Weston, Jr.
1900 Barnwell Street (29201)
Post Office Drawer 7788
Columbia, South Carolina 29202
Telephone: (803) 771-4400
ATTORNEYS FOR PLAINTIFF
SOUTH CAROLINA COMMUNITY BANK

MARCH 27, 2013

CERTIFICATE OF SERVICE

I, Katie C. Tager, the undersigned employee of Richardson Plowden & Robinson, P.A., attorneys for South Carolina Community Bank do hereby certify that I have served **Plaintiff South Carolina Community Bank's Reply to Amended Answer and Counterclaim of Defendant Salon Proz, LLC**, in the above-referenced captioned case, by causing a copy of the same to be personally deposited in a United States Postal Service mail box, postage prepaid, with the return address clearly visible, addressed to the attorneys of records as indicated below on March 27, 2013.

Andrew S. Radeker
Harrison & Radeker, P.A.
PO Box 50143
Columbia, SC 29250


Katie C. Tager

FILED
2013 MAR 28 AM 10:10
DEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,

Plaintiff,

v.

Salon Proz, LLC Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION No.: 2011-CP-40-7187

PLAINTIFF SOUTH CAROLINA'S NOTICE
OF MOTION AND MOTION TO DISMISS
COUNTERCLAIMS PURSUANT TO RULE
12(b)(6), S.C.R. CIV. P.

2012 JAN 19 AM 10:37
JANETTE W. McBRIDE
& G.S.

RICHLAND COUNTY
FILED

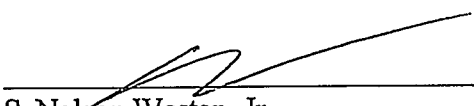
TO: ANDREW A. AUN, ESQUIRE, ATTORNEYS FOR DEFENDANT SALON
PROZ, LLC:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, South Carolina
Community Bank, [hereinafter "Plaintiff" or "SCCB"], by and through its undersigned
attorneys, ten (10) days hence, or as soon thereafter as counsel may be heard, will move
before the Presiding Circuit Court Judge of the Fifth Judicial Circuit, for an order
dismissing the counterclaims in the above-captioned case based upon failure to state facts
sufficient to constitute a cause of action, pursuant to Rule 12(b)(6) of the South Carolina
Rules of Civil Procedure. This motion is based on the following grounds: (1) There is no
fiduciary relationship between Plaintiff and Defendant; (2) Defendant's claim for Slander
of Title, Usury Law and Predatory Lending are barred by the express terms of the
agreements between the parties; (3) Defendant's claim for Predatory Lending fails
because all actions taken by Plaintiff were lawful and because the acts complained of are
of private matters not affecting public interest; and (4) That the claim of unclean hands is

an affirmation defense and not a separate cause of action, nor is there a basis for such claim.

Said Motion shall be based upon the pleadings, upon the case and statutory laws of South Carolina, and upon such other and further information or argument as may be received by the Court at the time the Motion is called for hearing.

Respectfully submitted,



S. Nelson Weston, Jr.
RICHARDSON, PLOWDEN & ROBINSON, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
(803) 771-4400
ATTORNEYS FOR SOUTH CAROLINA COMMUNITY
BANK

January 17, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION No.: 2011-CP-40-7187

CERTIFICATE OF SERVICE

2012 JAN 19 AM 10:37
FILED
RICHLAND COUNTY
JEANETTE W. McBRIDE
C.C.P. & G.S.

I, the undersigned, an employee of Richardson, Plowden, & Robinson, P.A., attorneys for the Plaintiff, South Carolina Community Bank, do hereby certify that I have this day served the foregoing Plaintiff South Carolina Community Bank's Notice of Motion and Motion to Dismiss Counterclaims Pursuant to Rule 12(b)(6), S.C.R.Civ.P. upon all counsel listed below by depositing the same in a United States Postal Service mail box, postage prepaid and the return address clearly indicated, addressed to the following:

Andrew A. Aun, Esq.
Aun & McKay, P.A.
P.O. Box 3568
Irmo, SC 29063

Attorneys for Defendants


Crystal L. Bilka

1/17, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
☒ Plaintiff

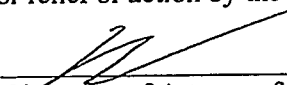
v.

Salon Proz, LLC Columbia Empowerment Zone,
Inc. D/B/A The Columbia Empowerment Zone
And Frank Mitchell,
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-40-7187

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: S. Nelson Weston, Jr., Bar No. 12902 Address: 1900 Barnwell Street Columbia, SC 29201 phone: (803) 771-4400 fax: (803) 779-0016 e-mail: NWeston@rpclaw.com other:		Defendant's Attorney: Andrew A. Aun, Bar No. Address: P.O. Box 3568 Irmo, SC 29063 phone: (803) 744-0824 fax: (803) 744-0830 e-mail: andy@aunmckaylaw.com 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 to Refer Estimated Time Needed: 15min 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		4/23/12 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			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

RICHLAND COUNTY
FILED
2012 FEB 17 PM 12:12
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED
2012 FEB 13 PM 4:15
JEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v. . .

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,
Defendant(s).

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-40-7187

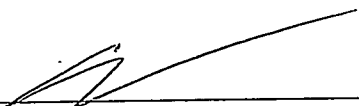
MOTION TO REFER

TO: ANDREW A. AUN, ESQUIRE, ATTORNEY FOR DEFENDANT SALON
PROZ, LLC:

PLEASE TAKE NOTICE that the Plaintiff, South Carolina Community Bank, by and through its undersigned Attorney, will move before the Presiding Judge for the Court of Common Pleas for Richland County, or his designee, in the Richland County Judicial Center, Columbia, South Carolina, on the tenth (10th) day after service hereof, at 10:00 a.m., or at such other time and place as the Court may instruct, for an Order referring this case to the Honorable Joseph M. Strickland, as Master In Equity for Richland County, to take testimony, determine the issues involved and report his findings of fact and conclusions of law with all convenient dispatch, with leave to make findings of fact and conclusions of law as to any special matter, with authority to enter final judgment herein, with appeal, if any, directly to the South Carolina Supreme Court.

This Motion is based on the grounds that this case is for the foreclosure of a mortgage of a judgment held by the Plaintiff herein, and that pursuant to Rules 53 of the South Carolina Rules of Civil Procedure, said case should be referred to the Master In Equity for Richland County.

Accordingly, the above-captioned collection action should be referred to the Honorable Joseph M. Strickland as Master In Equity for Richland County for final disposition.



S. Nelson Weston, Jr.
Richardson, Plowden
& Robinson, P.A.
1900 Barnwell Street
Post Office Drawer 7788
Columbia, South Carolina 29202
Telephone: [803] 771-4400
Attorneys for the Plaintiff

Columbia, South Carolina

1/23, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

South Carolina Community Bank,
Plaintiff,

v.

Salon Proz, LLC, Columbia Empowerment
Zone, Inc. d/b/a The Columbia
Empowerment Zone and Frank Mitchell,
Defendant(s).

IN THE COURT OF COMMON PLEAS

Case No.: 2011-CP-40-7187

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 FEB 13 PM 4:16
JEANETTE W. MURBRIDGE
C.C.P. & G.

I, the undersigned, an employee of Richardson, Plowden & Robinson, P. A.,
attorneys for South Carolina Community Bank do hereby certify that I have served the
foregoing Motion on the Defendant by causing it to be deposited in a United States Postal
Service mail box a copy of the same, postage prepaid, return address clearly indicated,
addressed to the following:

Andrew A. Aun, Esq.
Aun & McKay, P.A.
P.O. Box 3568
Irmo, SC 29063

1/25, 2012
Columbia, South Carolina

Crystal L. Bilka
Crystal L. Bilka

RICHLAND COUNTY
FILED
2012 FEB 17 PM 12:12
JEANETTE W. MURBRIDGE
C.C.P. & G.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

MOTION TO TRANSFER TO
GENERAL DOCKET
FOR JURY CASES

FILED
JUL 31 2012
S.C.P. & G.S.
J. W. McBRIDE

2012 AUG 31 AM 10:57

RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that Defendant Salon Proz, LLC (hereinafter "the Defendant") moves before this Court pursuant to Rules 53, 59, and 60, SCRCP, U.S. Const. Amds. VII and XIV, and S.C. Const. Art. I, § 14, as well as pursuant to all other applicable law, for an Order vacating or rescinding the Order of Reference in the above-captioned action and transferring this action to the general docket for jury cases.

The Defendant so moves on the following grounds:

1. The Defendant answered and counterclaimed in this foreclosure case, making a timely jury demand on at-law counterclaims.
2. Later, the Plaintiff in this case simply sent the Clerk of Court a proposed Order of Reference, along with a motion to refer the case. Rather than calendaring the motion to be heard and letting a Circuit Judge determine whether this action is properly referable, the Clerk of Court signed and filed the Plaintiff's proposed Order of Reference.

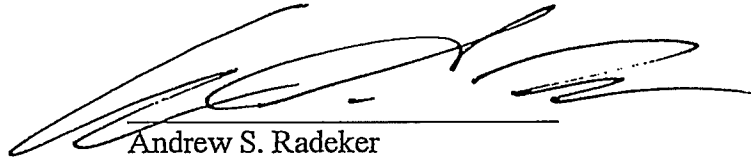
3. This action is not properly referable. The Master-in-Equity cannot conduct the mandatory, binding jury trial of the at-law claims in this action.
4. The Clerk of Court has no power or authority to refer this action to the Master-in-Equity. Absent the Defendant's consent to reference, which is not present here, the Clerk of Court has no ability to refer an action in which claims other than for mortgage foreclosure are pled to the Master-in-Equity. Rule 53(b), SCRCRCP.
5. The Order of Reference was not issued by a judge, nor was there any hearing conducted to determine whether this action should be referred. This violates the guarantee of Due Process.
6. The Order of Reference is void. Accordingly, it is of no effect and must be vacated.
7. The Defendant has the right to a jury trial on its counterclaims.
8. Pursuant to Rule 53(b), SCRCRCP, when a case has been referred to a master-in-equity, "[a]ny party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court." Accordingly, this case should be returned to the circuit court's general docket for common pleas jury cases.
9. In an action in which there are both legal and equitable claims, South Carolina law requires that the legal issues subject to jury trial be determined by a jury before the Court can decide the equitable issues. The Court could

not conduct a trial of the foreclosure claim prior to the final determination by a jury of the at-law claims in this action.

10. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

The undersigned has communicated with counsel for the Plaintiff in an effort to resolve the matters subject of this motion. The undersigned is hopeful that these matters will be resolved consensually, but this motion is being made in the interest of time.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANT
SALON PROZ, LLC

Columbia, South Carolina
August 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

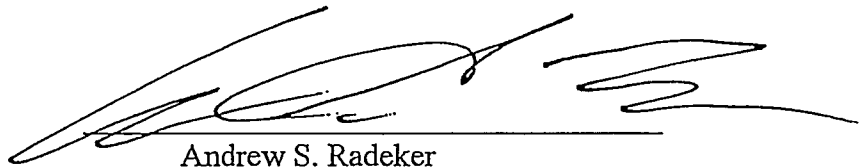
Defendants.

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 AUG 31 AM 10:57
SEAN E L E W. MCBRIDE
C.C.P. & G.S.

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., attorneys for Defendant Salon Proz, LLC, do hereby certify that I have, on this the 30th day of August, 2012, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows, to wit:

S. Nelson Weston, Jr., Esq.
Charles J. Webb, Esq.
Richardson, Plowden & Robinson, P.A.
P.O. Box 7788
Columbia, SC 29202



Andrew S. Radeker

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

MOTION TO AMEND

2012 SEP 14 AM 9:00
FILED
RICHLAND COUNTY
CLERK OF COURT
JENNIFER W. HICKS
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that Defendant Salon Proz, LLC (hereinafter "the Defendant") moves before this Court pursuant to Rule 15, SCRCP, as well as pursuant to all other applicable law, for an Order granting it leave to amend its answer and counterclaim to assert additional defenses and counterclaims in the above-captioned action.

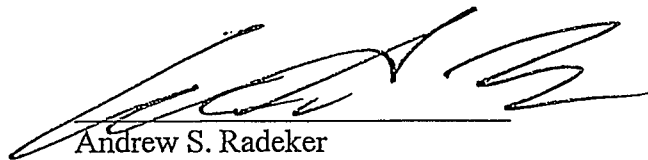
The Defendant so moves on the following grounds:

1. Leave to amend a pleading shall be freely given when justice so requires and the grant of such leave does not work prejudice to the other party. Rule 15, SCRCP, strongly favors amendment, and courts are encouraged to freely grant leave to amend.
2. The party opposing amendment has the burden of establishing that the motion should not be granted.
3. The Defendant has additional defenses and has counterclaims that its should be granted leave to amend her pleading to allege.
4. The Plaintiff will be unable to show that amendment will work sufficient prejudice to it for the Court to deny the Defendant leave to amend.

5. In the context of motions to amend pleading, prejudice means a lack of notice that a new issue is to be tried coupled with a lack of opportunity to refute the other party's position on the issue.
6. If this motion is granted, it can be done in such a way that the Plaintiff will have the opportunity to prepare to face the issues presented by the Defendant's amended answer and counterclaim. Rule 15, SCRCP, requires that this be done even if that means a delay of the trial of the case.
7. The Defendant's proposed amended answer and counterclaim is attached hereto.
8. This motion is also based upon all applicable statutory law, case law, common law, and the record in this action.

The undersigned has consulted with opposing counsel in a good faith effort to resolve the matter subject of this motion.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)

ATTORNEY FOR DEFENDANT
SALON PROZ, LLC

Columbia, South Carolina
September 13, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

AMENDED ANSWER AND
COUNTERCLAIM OF
DEFENDANT SALON PROZ, LLC
(JURY TRIAL DEMANDED)

Defendant Salon Proz, LLC (hereinafter "the Defendant"), in answer to the Plaintiff's Complaint and as counterclaim, answers and alleges as follows:

FOR A FIRST DEFENSE

1. Any allegation of the Complaint not herein admitted, qualified, or explained is denied. Any allegations of the Complaint subject of qualified admissions made herein are denied insofar as the allegations are not qualifiedly admitted, and any allegations of the Complaint subject of any other qualifications or explanations herein are denied insofar as they are not otherwise qualified or explained.

2. Answering the allegations of paragraphs 1 and 2 of the Complaint, the Defendant admits the same.

3. Answering the allegations of paragraph 3 of the Complaint, the Defendant admits the same upon information and belief.

4. Answering the allegations of paragraph 4 of the Complaint, the Defendant admits the same upon information and belief.

5. Answering the allegations of paragraph 5 of the Complaint, the Defendant admits the same.

6. Answering the allegations of paragraph 6 of the Complaint, the Defendant denies the same.

7. Answering the allegations of paragraph 7 of the Complaint, the Defendant denies the same as written.

8. Answering the allegations of paragraph 8 of the Complaint, the Defendant denies the same as written.

9. Answering the allegations of paragraph 9 of the Complaint, the Defendant admits the document at issue was signed but denies that it is effective.

10. Answering the allegations of paragraph 10 of the Complaint, the Defendant denies the same as written.

11. Answering the allegations of paragraph 11 of the Complaint, the Defendant denies the same as written.

12. Answering the allegations of paragraph 12 of the Complaint, the Defendant denies the same as written.

13. Answering the allegations of paragraph 13 of the Complaint, the Defendant denies the same as written.

14. Answering the allegations of paragraph 14 of the Complaint, the Defendant denies the same as written.

15. Answering the allegations of paragraph 15 of the Complaint, the Defendant denies the same.

16. Answering the allegations of paragraph 16 of the Complaint, the Defendant denies the same.

17. Answering the allegations of paragraph 17 of the Complaint, the Defendant denies the same.

18. Answering the allegations of paragraph 18 of the Complaint, the Defendant denies the same.

19. Answering the allegations of paragraph 19 of the Complaint, the Defendant lacks sufficient information to form a belief as to the truth or falsity of the same.

20. Answering the allegations of paragraph 20 of the Complaint, the Defendant lacks sufficient information to form a belief as to the truth or falsity of the same.

21. Answering the allegations of paragraph 21 of the Complaint, the Defendant denies the same.

22. Answering the allegations of paragraph 22 of the Complaint, the Defendant lacks sufficient information to form a belief as to the truth or falsity of the same.

23. Answering the allegations of paragraph 23 of the Complaint, the Defendant admits the Plaintiff demands what it demands but denies the Plaintiff is entitled to what it demands.

24. Answering the allegations of paragraph 24 of the Complaint, the Defendant admits the Plaintiff requests what it requests but denies the Plaintiff is entitled to what it requests.

25. No answer to the prayer in the Complaint is required.

FOR A SECOND DEFENSE

26. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

27. The Plaintiff has knowingly, intelligently, and voluntarily relinquished any right it may have had to prosecute the foreclosure claim subject of this action.

FOR A THIRD DEFENSE

28. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

29. The Plaintiff, itself and/or by and through its agents and servants, has engaged in such conduct with respect to the loan subject of this action as to make the Plaintiff's hands unclean with regard to the matters subject of this action.

30. This conduct includes, but is not necessarily limited to, refusing to honor the Plaintiff's promises to the Defendant that the loan would be modified, refinanced, or otherwise restructured on terms more favorable to the Defendant.

31. This conduct by the Plaintiff relates directly to the subject matter of this action.

32. The Plaintiff's said conduct has proximately caused the Defendant prejudice and injury.

FOR A FOURTH DEFENSE

33. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

34. The Plaintiff, itself and/or by and through its agents and servants, has made representations and engaged in conduct that was calculated to convey the impression to the Defendant that the status of the matters subject of this action are not as the Plaintiff claims, including, but not necessarily limited to, conduct calculated to convey the impression that the loan at issue in this action would be modified or otherwise restructured in a manner favorable to

the Defendant. This includes specific representations about how the terms of the loan would be changed.

35. The Plaintiff intended, or at least expected or desired, that the Defendant would rely upon the impressions conveyed by this conduct.

36. The Plaintiff knew that the status of the matters subject of this action could not be both as it represented to the Defendant and as it claims in this action.

37. The Defendant lacked the means to determine the true status of these matters.

38. The Defendant accordingly relied on these representations to its prejudice.

FOR A FIFTH DEFENSE

39. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

40. The Plaintiff unequivocally agreed to settle this matter through a modification of the loan subject of this action.

41. The Defendant is and has been ready, willing, and able to make monthly payments going forward at the monthly payment amount under the modification.

42. The Plaintiff cannot maintain this foreclosure action, having settled the foreclosure claim.

FOR A SIXTH DEFENSE

43. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

44. The Complaint fails to state facts sufficient to constitute a cause of action.

45. The Complaint seeks relief that is unavailable in a foreclosure action.

46. As shown by the exhibits to the Complaint, the purported note subject of this case is not signed.

47. As shown by the allegations of the Complaint, the Plaintiff's claim is dependent upon the existence of the purported note subject of this case.

48. The purported note subject of this case does not exist.

49. The Complaint should be dismissed.

FOR A SEVENTH DEFENSE

50. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

51. The Plaintiff's claim is barred by the statute of frauds.

FOR AN EIGHTH DEFENSE AND AS COUNTERCLAIM

52. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

53. Actions of the Plaintiff, itself and/or by and through its agents and servants, such actions including, but not necessarily being limited to, those stated in this pleading, constitute violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*

54. The Plaintiff has engaged in a pattern of reneging upon promises to modify or otherwise restructure loans, including, but limited to, the loan subject of this case.

55. The Plaintiff knew or should have known that the said actions were violations of the Unfair Trade Practices Act and were unfair and deceptive acts in trade or commerce.

56. These actions are capable of repetition, including, but not necessarily limited to, in that the Plaintiff is a lender and has repeatedly engaged in a pattern or practice of such conduct.

57. The Defendant has suffered damages as a result of the said actions.

58. The Defendant is entitled to treble damages, reasonable attorney's fees, and costs.

FOR A NINTH DEFENSE AND AS COUNTERCLAIM

59. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

60. The Plaintiff and the Defendant have a binding contractual relationship concerning the loan, mortgage, and promises to modify or otherwise restructure the loan subject of this action.

61. Before the loan subject of this action was made, the Plaintiff promised the Defendant that it would modify or otherwise restructure the loan on terms more favorable to the Defendant.

62. This promise was part of the consideration for the Defendant's entry into the loan subject of this case.

63. This promise is part of the terms of the loan subject of this case.

64. The Plaintiff has refused to honor this promise.

65. Among other things, the contractual relationship between the Plaintiff and the Defendant obligates the Plaintiff to honor the terms of this promise.

66. The Plaintiff has breached its obligations to the Defendant under this contractual relationship, including, but not necessary limited to, as is stated in this pleading.

67. The Plaintiff breached its duty under the covenant of good faith and fair dealing inherent in its contractual relationship with the Defendant.

68. The Plaintiffs' aforesaid breach or breaches of its obligations to the Defendant proximately caused damage to the Defendant.

69. The Defendant is entitled to recover from the Plaintiff for the damages caused by the Plaintiff's breaches of contract.

FOR A TENTH DEFENSE AND AS COUNTERCLAIM

70. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

71. The breach of contract by the Plaintiff was done with its fraudulent intent with regard to the breach and was accompanied by its fraudulent act or acts with regard to the breach.

72. The Defendant is entitled to recover actual damages, punitive damages, and the costs of this action from the Plaintiff as a result of this breach of contract accompanied by fraudulent act.

FOR AN ELEVENTH DEFENSE AND AS COUNTERCLAIM

73. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

74. The Plaintiff slandered the Defendant's title by recording in the public land records a mortgage document and assignment of rents document, both of which are by their terms dependent upon the existence of the purported note subject of this case.

75. The purported note subject of this case does not exist.

76. The mortgage and assignment of rents contain false statements.

77. These statements have diminished the value of the subject property in the eyes of third parties.

78. The Defendant has suffered damages as the consequent and proximate result.

79. The Defendant is entitled to recover actual damages, consequential damages, and the costs of this action from the Plaintiff.

FOR A TWELFTH DEFENSE AND AS COUNTERCLAIM

80. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

81. The Plaintiff has published statements concerning the Defendant in writing.

82. Such statements include statements to the effect that the Defendant is currently delinquent in its payments with regard to the loan subject of this action and is in default thereof.

83. These statements tended to impeach the honesty, integrity, virtue, creditworthiness, business soundness, and/or reputation of the Defendant.

84. These statements were false.

85. These statements were published with malice by the Plaintiff. These statements were published with the Plaintiff's knowledge of their falsity or with reckless disregard by the Plaintiff of whether they were true or false.

86. These statements were libelous *per se*.

87. The publication by the Plaintiff of these statements has proximately caused damages to the Defendant, such damages including, but not being limited to, embarrassment, humiliation, mental anguish and suffering, and damage to the Defendant's credit and reputation.

FOR A THIRTEENTH DEFENSE AND AS COUNTERCLAIM

88. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

89. The Plaintiff falsely represented to the Defendant that the Plaintiff would modify or otherwise restructure the terms of the loan more favorably to the Defendant.

90. The Plaintiff had a monetary interest in making the false representations noted in this pleading to the Defendant.

91. The Plaintiff owed the Defendant a duty of care to see that it communicated truthfully with the Defendant.

92. The Plaintiff breached this duty by communicating falsely with the Defendant as aforesaid. This was a failure to exercise due care and was negligence.

93. The Plaintiff made these representations intentionally or recklessly.

94. The Plaintiff should have known that its representations were false.

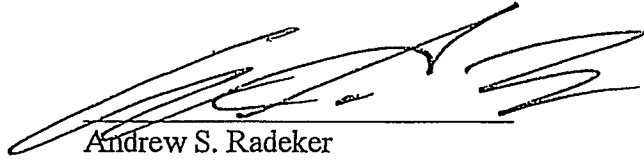
95. Justifiably, the Defendant relied on these representations.

96. The Defendant has suffered loss and damages as a direct and proximate result of its reliance on the representations.

WHEREFORE, the Defendant prays for the Court to:

- (a) Issue an Order dismissing the Complaint with prejudice;
- (b) Deny the Plaintiff the relief it seeks in this action;
- (c) Award the Defendant actual damages, punitive damages, treble damages, and all applicable statutory penalties;
- (d) Award the Defendant reasonable attorney's fees;
- (e) Award the Defendant the costs and expenses of this action; and
- (f) Grant the Defendant such other and further relief as the court deems just and proper.

Respectfully submitted,



Andrew S. Radeker
HARRISON & RADEKER, P.A.
Post Office Box 50143
Columbia, South Carolina 29250
(803) 779-2211
(803) 779-6700 (facsimile)
drew@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANT
SALON PROZ, LLC

Columbia, South Carolina
September 13, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

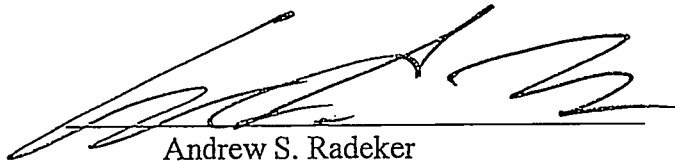
Defendants.

CERTIFICATE OF SERVICE

2012 SEP 14 AM 9:09
FILED
JEANETTE W. McBRIDE
C.C.P. & G.S.

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., attorneys for Defendant Salon Proz, LLC, do hereby certify that I have, on this the 13th day of September, 2012, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows, to wit:

S. Nelson Weston, Jr., Esq.
Charles J. Webb, Esq.
Richardson, Plowden & Robinson, P.A.
P.O. Box 7788
Columbia, SC 29202



Andrew S. Radeker

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

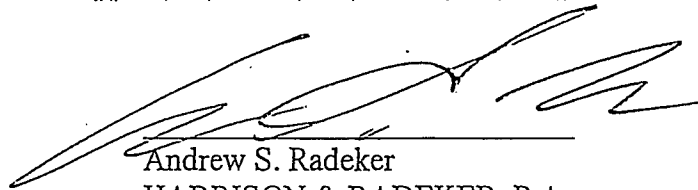
MOTION TO RECONSIDER

2013 JUN 28 AM 10:47
C.C.P. & G.S.

YOU WILL PLEASE TAKE NOTICE that Defendant Salon Proz, LLC (hereinafter "the Defendant") moves before this Court pursuant to Rules 52(b) and 59(e), SCRCPP, as well as pursuant to all other applicable law, in the above-captioned action for an Order that reconsiders and/or alters or amends this Court's Order filed June 21, 2013, that granted the Plaintiff's motion for receivership and denied the Defendant's motion to return this case to the general docket for jury cases. The grounds for this motion are more particularly shown in the attached memorandum, which is incorporated herein by reference as if here set forth verbatim.

Consultation by the undersigned with opposing counsel about the substance of this motion in advance of the making hereof would have served no useful purpose.

Respectfully submitted,



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Columbia, South Carolina
June 27, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

MEMORANDUM IN SUPPORT OF
MOTION TO RECONSIDER

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FILED

Defendant Salon Proz, LLC (hereinafter "the Defendant") hereby respectfully submits
this memorandum in support of its motion for the Court to reconsider, alter, or amend its Order

filed June 21, 2013, in the above-captioned action granting the Plaintiff's motion to appoint a
receiver and denying the Defendant's motion to transfer this action to the general docket for jury
cases.

ARGUMENTS OF COUNSEL ARE NOT A SUBSTITUTE FOR EVIDENCE

Arguments of counsel are not evidence. Trivelas v. S.C. Dept. of Transportation, 348
S.C. 125, 141, 558 S.E.2d 271, 279 (Ct. App. 2001); Higgins v. MUSC, 326 S.C. 592, 599
S.E.2d 269, 272 (Ct. App. 1997); Historic Charleston Foundation v. Krawcheck, 313 S.C. 500,
508 n. 7, 443 S.E.2d 401, 406 n. 7 (Ct. App. 1994); Gilmore v. Ivey, 290 S.C. 53, 58, 348 S.E.2d
180, 183 (Ct. App. 1986). Arguments of counsel were all that supported the Plaintiff's position
on these two motions.

The Plaintiff never served affidavits or otherwise adduced any factual matter whatsoever
with regard to either of these motions. Plaintiff's counsel, however, made (obviously)
unsupported statements of fact with regard to the matters subject of these motions. It is evident

that the Court accepted these bald assertions as though they were proven, established truths. That was error, and the Court should reconsider its rulings. The only factual material in the record establishes that the Defendant was entitled to prevail on both of these motions. The Court's decision indicates that it accepted the Plaintiff's unsupported contentions as fact while it ignored the affidavits served and filed by the Defendant.

THE PLAINTIFF DID NOT ESTABLISH THAT THERE IS A NOTE IN THIS CASE

The Plaintiff in this case is seeking mortgage foreclosure. The Plaintiff attached to its complaint an unsigned note document, which it alleges is the note subject of this action. In the complaint, the Plaintiff claims the Defendant signed the note.

The Defendant did not sign the note, as the filed affidavit of Yvonne Jones shows. The Plaintiff has presented no affidavit or other matter to contradict this. Indeed, if there were a signed note, the Plaintiff surely would have attached a copy of that signed note, not an unsigned document, to the complaint.

The Plaintiff has now amended its complaint to substitute another, different document that it now contends is the note. That, however, is just an allegation, not a fact. Moreover, if the Plaintiff really thought this newly added document were the note, why would the Plaintiff try in August of 2012 to get the Defendant's president to sign the unsigned document attached to the complaint?

"A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 36-3-402." S.C. Code Ann. § 36-3-401(a). Here, it was certainly not clearly shown to the Court that the note subject of this case actually exists at all. It was improper for the Court to accept the unsubstantiated arguments of

Plaintiff's counsel on this point as though they had the same effect as factual matter presented to the Court. They did not.

As an essential ground of the Plaintiff's motion for the appointment of a receiver hinged entirely on the existence of a signed note, it was error for the Court to grant the Plaintiff's motion for receivership where this was anything but established.

PLAINTIFF'S MOTION FOR RECEIVERSHIP SHOULD HAVE BEEN DENIED

The Plaintiff's motion for the appointment of a receiver presupposed the existence of the claimed note and presupposed that the Defendant is in default of it. The Plaintiff has not shown either one of these things.

For a foreclosure plaintiff to get past the first step of the analysis of a motion for pre-judgment receivership, the plaintiff "must prove to the court that it has a contractual right to the court's protection of the mortgaged property and/or its rents and profits." Stanley H. McGuffin, "State Court Receivers" 2010 Master-in-Equity Bench/Bar CLE materials 105, 107 (S.C. Bar 2010). The rights of a mortgagee with respect to mortgaged property are "limited by the terms of the contract as found in the mortgage[.]" Hardin v. Hardin, 34 S.C. 77, 80, 12 S.E. 936, 937 (1891).

The Plaintiff's motion makes the bare assertion that "Plaintiff's mortgage on the Property (the 'Mortgage') provides that it may seek appointment of a receiver upon any events of default under said Mortgage, which Mortgage is at this time in default." For one thing, the mortgage document attached to the Plaintiff's complaint does *not* say that it provides for the appointment of a receiver. The language from the mortgage document quoted in the Court's Order does not say that it provides for the appointment of a receiver. It never even mentions it. For another thing, it was certainly not established that there was a valid mortgage here anyway, as the

evidence tends to indicate that the note the Plaintiff seeks to use as evidence of debt does not exist, such that there is no note (and, thus, no debt) that the purported mortgage exists to secure. S.C. Code Ann. § 36-3-401(a); Union Natl. Bank of Columbia v. Cook, 110 S.C. 99, 108, 96 S.E. 484, 486 (1918) (“[t]he note is the principal and the mortgage is the incident”); Blackwell v. Blackwell, 289 S.C. 470, 472, 346 S.E.2d 731, 732 (Ct. App. 1986) (without a valid underlying debt, there is no valid mortgage). Further, the only purported default of the mortgage and assignment of rents documents (neither of which even mentions receivership) that the Plaintiff claims in support of its motion is default in payments under the dubious, ever-changing “note.” There is not even an affidavit about such a default in payments, or even an affidavit at all, that was served with the motion for receivership. See Rule 6(d), SCRPC (“[w]hen a motion is to be supported by affidavit, the affidavit shall be served with the motion”).

The Plaintiff thus did not establish what the terms of the purported loan are, much less that the Defendant is in default of those terms. The Plaintiff has made no factual showing that the Defendant is even in default of any agreement, nor has the Plaintiff shown the existence of an agreement that provides for a receiver to be appointed.

The Plaintiff has failed to satisfy the initial prong of the analysis on its motion.

Nor can the Plaintiff satisfy the second prong of the analysis. That analysis is as follows:

Once the court is satisfied that the mortgagee has a contractual right to have a receiver appointed for the mortgaged property, the mortgagee must prove that there is an “apparent necessity to appoint a receiver.” Greenwood Loan and Guarantee Assn. v. Childs, 67 S.C. 251, 254, 45 S.E. 167, 168 (1903). A South Carolina court should not appoint a receiver “[i]f the mortgagor is doing no injury or waste to the property and is threatening none” Seignious v. Pate, 32 S.C. 134, 138, 10 S.E. 880, 882 (1890). In a foreclosure action, the appointment of a receiver is given with great caution, and only when the mortgagee has no other adequate remedy.” Id.

McGuffin, supra at 107.

Here, the Plaintiff has not supported its motion with any factual material that tends to show that the Defendant is committing waste or doing injury to the property. In fact, the only factual material in the record about this is that the property is in no such danger. Plaintiff's counsel argued at the hearing that default in payments constituted the apparent injury or necessity for the appointment of a receiver; however, if that were true, receivership would be available in every mortgage foreclosure case, which we know is not the law. Even if the Plaintiff could satisfy the first prong of the analysis, which it cannot, it would still have failed to satisfy the second prong.

South Carolina law is replete with cases stating the principle that "[r]e receivership is a drastic course, allowed only under pressing circumstances and granted only with reluctance and caution." Vasiliades v. Vasiliades, 231 S.C. 366, 376, 98 S.E.2d 810 (1957). It is settled law that "receivership is a drastic remedy." Id. Whether to appoint a receiver is a decision "to be exercised with great circumspection." Truesdell v. Johnson, 144 S.C. 188, 197, 142 S.E. 343 (1928) (quoting Pelzer v. Hughes, 27 S.C. 408, 3 S.E. 781, 785 (1887)). "The power to appoint a receiver should be exercised with great caution[.]" Kirven v. Lawrence, 244 S.C. 572, 579, 137 S.E.2d 764 (1964). The Court did not exercise reluctance, caution, or great circumspection here. The Court essentially gave the Plaintiff receivership because the Plaintiff said it wanted one.

That a receiver should only be appointed upon an unusually strong showing of need is especially true with regard to requests for receivership prior to judgment in an action. In Pelzer v. Hughes, our Supreme Court noted that rule that "a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially

injured before the case can be determined." 3. S.E. at 785. "A remote or past danger will not suffice as a ground for relief, but there must be a well grounded apprehension of immediate injury." Brookshire v. Farmer's Alliance Exch., 73 S.C. 131, 135 (1905). There was no such well-grounded apprehension here. To quote from the affidavit of Yvonne Jones, the only affidavit that addresses this issue, "[t]here is no danger that the property involved in this case or the rents from the tenants are in any danger of being lost, injured, or impaired. The property has not been injured and is not being injured now, and I do not intend to do anything to injure it or allow someone else to do so."

Plaintiff's counsel contended that no payments had been made to the Plaintiff for a very long time. The uncontradicted supplemental affidavit of Yvonne Jones, however, shows that the Plaintiff was accepting payments from the Defendant even up into the month when the receivership motion was heard.

The Plaintiff has not shown that its motion for the appointment of a receiver should be granted.

THE RECEIVERSHIP CREATED IS IMPROPER

It was not proper for the Court to grant the Plaintiff receivership at all; however, even if it had been proper for the Court to grant a receivership, it would not have been proper to grant *this* receivership.

The receivership fashioned by the Court's Order is improper in a number of ways, including, but necessarily limited to, the following:

1. It purports to give the receiver the authority to take rents from lessees of the Defendant despite no notice of the application for a receivership having been given to them, in violation of S.C. Code Ann. § 15-65-20;

2. It appoints Curtis McLeod, LLC as the receiver, though the Plaintiff's motion sought the appointment of D. Christopher Twitty as receiver;
3. It requires the receiver to be paid from the rents belonging to the Defendant that the receiver collects, not by the Plaintiff;
4. It requires that the receiver be paid a minimum monthly amount that is very high;
5. It requires that the Defendant pay the receiver as soon as the receivership begins for the immediately preceding month, as though the receiver could possibly have done anything during that month;
6. It fails to distinguish between receivership of the property and a receivership of the Defendant (which was not what was sought in the Plaintiff's motion);
7. It purports to allow the receiver to hire and fire the Defendant's employees;
8. It purports to allow the receiver to obligate the Defendant;
9. It purports to enjoin the Defendant from using assets owned by the Defendant that are unrelated to the property at issue;
10. It treats the Plaintiff preferentially with regard to other creditors;
11. It does not require a bond of the receiver; and
12. It purports to exempt the receiver from liability.

THIS CASE IS REQUIRED TO BE RETURNED TO THE GENERAL JURY DOCKET

The Defendant answered and counterclaimed in this foreclosure case, making a timely jury demand on at-law counterclaims. Later, the Plaintiff in this case simply sent the Clerk of Court a proposed Order of Reference, along with a motion to refer the case. Rather than calendaring the motion to be heard and letting a Circuit Judge determine whether this action is

properly referable, the Clerk of Court signed and filed the Plaintiff's proposed Order of Reference.

The Clerk of Court has no power or authority to refer this action to the Master-in-Equity. Absent the Defendant's consent to reference, which is not present here, the Clerk of Court has no ability to refer an action in which claims other than for mortgage foreclosure are pled to the Master-in-Equity. Rule 53(b), SCRCF. As discussed above, claims other than for foreclosure were pending in this action at the time of Clerk's filing of the Order of Reference.

The Order of Reference was not issued by a judge, nor was there any hearing conducted to determine whether this action should be referred. This violated the guarantee of Due Process.

~~The Order of Reference is void. Accordingly, it is of no effect and must be vacated.~~

~~This action is not and was not properly referable. The Master-in-Equity cannot conduct the mandatory, binding jury trial of the at-law claims in this action. "[A] defendant in an equity action, such as a mortgage foreclosure, has a right to a jury trial on a counterclaim that is legal and compulsory in character. A counterclaim is compulsory if the counterclaim arises out~~

~~of the same transaction or occurrence that is the subject matter of the opposing party's claim. Two tests a court may use in determining whether a claim arises out of the same transaction or occurrence are whether the issues of fact and law raised by the claim and counterclaim are largely the same and whether there is any logical relation between the claim and the counterclaim. A counterclaim is compulsory if the question posed by either test is answered affirmatively." N.C. Fed. Sav. & Loan Assn. v. DAV Corp., 294 S.C. 27, 30-31; 362 S.E.2d 308, 310 (Ct. App. 1987) (internal citations and quotation marks omitted). Under Rule 53(b), SCRCF, the return of this action to the circuit court's general docket for jury cases is required, as a jury demand has been made in the Defendant's amended answer and counterclaim. The "return~~

to the circuit court” described in Rule 53(b) is automatic, per the language of the Rule. It is not discretionary. If a decision is to be made concerning whether the Defendant’s legal counterclaims are compulsory (thus entitling the Defendant to a jury trial on them), that decision will need to be made by the circuit court after this action is returned to the circuit court’s general docket for jury cases per the mandatory language of Rule 53(b).

That said, under either its original answer and counterclaim or its amended answer and counterclaim, the Defendant has plainly asserted at-law counterclaims that are compulsory. Here, even a cursory examination of the counterclaims subject of the answer and counterclaim and the proposed amended answer and counterclaim shows that they mostly involve whether the facts are as the Plaintiff claims they are, whether the Plaintiff is entitled to prevail in this action, and the events concerning the Plaintiff’s representations to the Defendant about the terms of the loan. The counterclaims bear a logical relation to the Plaintiff’s foreclosure claim and arise out of the same note and mortgage the Plaintiff seeks foreclosure of in this action. They concern whether the Plaintiff has any note and mortgage to enforce.

In an action in which there are both legal and equitable claims, South Carolina law requires that the legal issues subject to jury trial be determined by a jury before the Court can decide the equitable issues. The Court cannot conduct a trial of the foreclosure claim prior to the final determination by a jury of the at-law claims in this action. Johnson v. S.C. Natl. Bank, 292 S.C. 51, 54-56, 354 S.E.2d 895, 897 (1987).

Plaintiff’s counsel argued that former counsel for the Defendant had tacitly consented to reference to the Master-in-Equity. Plaintiff’s counsel based this argument on the unsubstantiated assertion that Defendant’s counsel must have received written notice of the entry of the order of

reference at some unspecified time in the past. Again, Plaintiff's counsel simply made up "facts" without anything to support them.

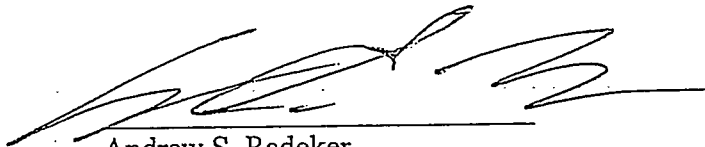
The Defendant has also brought new claims based on matters not addressed by its pre-amendment claims. The Defendant's right to a jury trial could not have been waived as to those claims. Our Court of Appeals has noted that "a litigant's entitlement to a jury trial on the issues presented by and amended pleading, when no prior demand for a jury trial has been made, turns on whether the amended pleadings created new issues of fact." King v. Shorter, 291 S.C. 501, 503, 354 S.E.2d 402, 403 (Ct. App. 1987).

The Defendant's motion to return this case to the general docket for jury cases should have been granted.

THE COURT DID NOT ADDRESS THE DEFENDANT'S ARGUMENTS

While this motion should be granted, even if it is not, the Court should address the Defendant's arguments, which it did not do in its Orders.

Respectfully submitted,



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Columbia, South Carolina
June 27, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

CERTIFICATE OF SERVICE

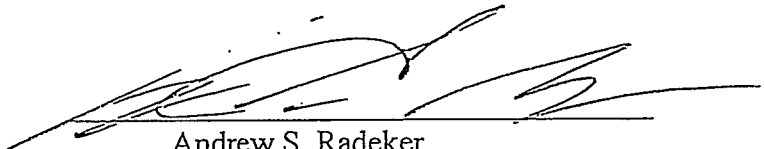
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JANET W. MONTGOMERY
C.C.P. & G.S.

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., attorneys for Defendant Salon Proz, LLC, do hereby certify that I have, on this the 27th day of June, 2013, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows, to wit:

The Hon. Joseph M. Strickland
Master-in-Equity for Richland County
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Columbia, SC-29202

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Andrew S. Radeker

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2011-CP-40-7187

South Carolina Community)
Bank,)
Plaintiff,)
v.)
Salon Proz, LLC, Columbia)
Empowerment Zone, Inc. d/b/a)
The Columbia Empowerment)
Zone, and Frank Mitchell,)
Defendants.)

COPY

MOTIONS HEARING

Thursday, March 21, 2013
2:13 p.m. to 2:58 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 21st day of March, 2013, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

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1 THE COURT: This is Civil Action Number 2011-CP-40-7187,
2 South Carolina Community Bank against Salon Proz,
3 LLC, and others. Our notes indicate that this is a
4 hearing on all motions. All right. Mr. Weston?

5 MR. WESTON: Yes, sir, Your Honor. Nelson Weston on
6 behalf of South Carolina Community Bank. I have Mr.
7 Walter Taylor, who is an officer with South Carolina
8 Community Bank.

9 THE COURT: Right. Mr. Weston, before we get started, for
10 clarity of the record, you know somebody may be
11 reading this record that hasn't been here throughout
12 the course of this litigation, in this case who's
13 suing who for what? What is it all about?

14 MR. WESTON: This, Your Honor, is a foreclosure action
15 brought by my client, South Carolina Community Bank.
16 The foreclosure action was filed in this -- in
17 Richland County in October of 2011. Salon Proz,
18 through Andy Aun, filed an answer and counterclaim
19 back in November 23rd, 2011. Subsequently, we filed
20 a reply and filed motions to dismiss, which were
21 filed in January of 2012, along with a motion to
22 refer, which was filed in February 2012. Columbia
23 Empowerment Zone and Fred Mitchell were initially in
24 default. Columbia Empowerment Zone, through Ms.
25 Moody, filed a late answer, which we've allowed, and

1 I don't think she's alleging any priority issues. I
2 think she's just for notice purposes, wants to know
3 what's going on.

4 **THE COURT:** Okay.

5 **MR. WESTON:** Your Honor, that's sort of where it stands.
6 And then I think in -- if I get my dates right,
7 correct me if I'm wrong, I think in September of
8 2012, would that be right?

9 **MR. RADEKER:** I think it was August that we appeared, but
10 I don't think the notice of substitution got filed
11 until September.

12 **MR. WESTON:** Right. So in August Mr. Radeker substituted
13 council for Mr. Aun, and Mr. Aun -- excuse me, Mr.
14 Radeker filed several motions in addition to our
15 motion, which we have a motion to dismiss pending,
16 the counterclaims, and we have a motion to appoint a
17 receiver pending. I think Mr. Radeker has filed a
18 motion -- in the interim, the case was referred to
19 the Master in February of 2012. No one objected to
20 that order of reference until over six months after
21 the fact, when Mr. Radeker got involved. Mr. Aun
22 never objected to the order of reference referring
23 the matter to you. Mr. Radeker has a motion to -- I
24 think two motions basically, a motion to have a
25 portion -- well, have the case go back to the

1 circuit court. Or in the alternative, some of the
2 causes of actions, to the extent they survive, go
3 back for a jury trial and a motion to ---

4 MR. RADEKER: To amend and to transfer the case back to
5 the jury docket. We had two others which have been
6 made moot in the interim.

7 MR. WESTON: Okay.

8 MR. RADEKER: One to compel overdue discovery responses.
9 They've provided it; it's moot now. And the other
10 one was, there was previously scheduled what was
11 docketed as a foreclosure hearing, was to continue
12 that pending the outcome ---

13 MR. WESTON: And we had a, initially we had a foreclosure
14 hearing pending.

15 MR. RADEKER: Yeah.

16 MR. WESTON: We have to have the motions heard before we
17 get to that.

18 THE COURT: Okay.

19 MR. WESTON: So, if that helps -- hopefully that helps you
20 understand where we are.

21 THE COURT: Okay. Ms. Moody, does your client have any
22 motions at all?

23 MS. MOODY: None at this point, Your Honor. Depends on
24 whether the Court sees fit to allow him to amend his
25 complaint. We may have some responses to that or

1 claims in regard to that, and we'd ask that we could
2 preserve our right to file an amended answer. Mr.
3 Weston, in thinking about what he's allowed us to
4 do, he allowed us to file an answer, and at that
5 point in time we didn't have an issue because
6 they're just basically following up on what their
7 contract was within -- with Salon Proz and South
8 Carolina Community Bank.

9 **THE COURT:** Okay. The two gentlemen in the back ---

10 **MR. WESTON:** Your Honor, that is Mr. Chris Twitty with
11 Curtis McLeod, an associate of his. And they were
12 the, my suggested receivers if we get that far.

13 **THE COURT:** All right. I'm trying to think of where we
14 should start. I guess the motion to remand would be
15 the best place to start because if I grant that,
16 y'all can go home.

17 **MR. WESTON:** Well, Your Honor, I guess -- he wants a
18 motion to transfer back to the jury -- this is a
19 foreclosure action.

20 **THE COURT:** No, I understand, I understand. But -- no, I
21 understand that. Because you're not entitled to a
22 jury trial in a foreclosure, that's -- well, in this
23 type of foreclosure, you're not.

24 **MR. WESTON:** Yeah.

25 **THE COURT:** If it were a mechanic's lien foreclosure you

1 might have a chance to get a jury trial, but. Okay.

2 Mr. Radeker?

3 MR. RADEKER: All right, thank you, Your Honor. In taking
4 the motion to return this case to the general jury
5 docket first, the defendant Salon Proz in this case,
6 Mr. Aun, as was just recited, served a timely answer
7 and counterclaim. Served at-law causes of action
8 and made a jury demand. After that, the plaintiff
9 in this case just sent to the clerk of court a
10 proposed order of reference, along with a motion to
11 refer the case. The clerk of court apparently,
12 because it's in the record, signed the order of
13 reference and it got referred. Now, there's nothing
14 indicating that that order was ever provided to
15 Salon Proz or Mr. Aun. When we got in the case we
16 went down and got a copy of the file, and that's
17 when we discovered it. Now, the clerk of court
18 doesn't have any power or authority to refer
19 anything that's at issue in this case, other than a
20 foreclosure case, to the Master-in-Equity. And here
21 there were a number of claims that were pending at
22 that time that were not foreclosure claims. It
23 wasn't referred by a judge; it was signed by the
24 clerk of court. And the defendant initially
25 asserted breach of contract; slander of title;

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1 something that Mr. Aun captioned as Usury Law, we
2 seek to amend that; predatory lending, seek to amend
3 that too. And those are at-law counterclaims, and
4 they center on how the transaction that's the
5 subject of all this was made. So, in other words,
6 that reference should never have been done. The
7 clerk never should have signed it. The clerk
8 couldn't refer the case to the Master-in-Equity
9 because it contained more than what the clerk is
10 simply allowed to refer. And so we'd note this
11 needs to be returned to the general docket for jury
12 cases. Now, possibly on some motion by the
13 plaintiff, a judge there would determine that our
14 counterclaims are not compulsory or something like
15 that and refer it to the Court. I don't think that
16 determination would be made; I think they are
17 compulsory. But in any event, that was for a
18 circuit judge to do in the first instance. I don't
19 think the clerk of court was trying to do anybody
20 wrong; she probably just didn't know. And so
21 that's, you know, what has brought us to where we
22 are here today. But, in any event, our first
23 position would be the order of reference is void.
24 Second, it would be that even if it was -- if it
25 does have some effect, under the terms of Rule 53 it

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1 needs to be undone. So that's our position on that.

2 THE COURT: Okay. Mr. Weston, any response?

3 MR. WESTON: Your Honor, the order of reference was issued
4 by the clerk back in February of 2012. Mr. Aun was
5 the attorney of record at that time. Mr. Aun never
6 objected to the order of reference when it was
7 filed. He never appealed the order of reference,
8 never filed a motion to undo the order of reference,
9 and that -- so Mr. Radeker gets in the case eight
10 months later and files a motion. We're going along
11 in this case -- and all his issues will be heard
12 before the Court. They're none of them waived,
13 they're all, all the counterclaims, all the
14 affirmative defenses that they've raised can be
15 heard by this Court. Saying that, if the Court does
16 decide to remand a portion of the case, saying
17 they're not properly before the Court, I would say
18 that only the legal issues be remanded back and that
19 the foreclosure remain with this Court. Otherwise,
20 it's just judicial economy and the fact that we're
21 just delaying this thing more. I mean, we've --
22 this case has been going on since July of 2011. We
23 would like to move it forward and have a hearing.

24 THE COURT: Mr. Radeker?

25 MR. RADEKER: Thank you, Your Honor. Again, I would just

1 note, and Mr. Weston hasn't told us anything
2 different, there's nothing indicating that Mr. Aun
3 ever knew that this proposed order of reference ever
4 got signed or filed, or that it was ever provided to
5 him. And so it's not like he's let his appeal time
6 run or something like that. As soon as we got in
7 the case, we found out about it and immediately made
8 a motion to transfer the case back to the general
9 jury docket. And so I'd say, you know, there's not
10 been any waiver here of the right to a jury trial.

11 MR. WESTON: Your Honor, the court would mail the order of
12 reference to the parties. Mr. Andy Aun was a party
13 at the time; they would have mailed him a copy of
14 that order.

15 THE COURT: Mr. Aun was a party or was counsel?

16 MR. WESTON: Counsel to a party.

17 THE COURT: Yeah. Mr. Radeker, I -- maybe I misunderstood
18 you. You seem to be saying that because the
19 counterclaims contain legal issues that it couldn't
20 be referred to the Master-in-Equity. Or shouldn't
21 have been referred to the Master-in-Equity. The
22 truth is, as you know, we can hear any matter,
23 whether it be law or equity. And the issue of what
24 to do with legal counterclaims, on occasion we've
25 bifurcated a case. Then the issue becomes, well, do

1 you hear the legal claims first by jury, or do you
2 do the equity claims first. But I think, if I heard
3 you correctly, you're arguing that I couldn't hear
4 it because, and they couldn't refer it to me,
5 because it was legal. I'm not sure that's accurate
6 as a matter of law.

7 MR. RADEKER: Let me clarify it, Your Honor.

8 THE COURT: Okay, please.

9 MR. RADEKER: The clerk of court could not refer this
10 case, which had claims other than for mortgage
11 foreclosure in it, to Your Honor.

12 THE COURT: All right. Cite me a rule or a statute.

13 MR. RADEKER: Right. Rule 53, Your Honor, I point to it.
14 It says, In an action where the parties consent; we
15 don't have that here.

16 THE COURT: Okay.

17 MR. RADEKER: In a default case. We don't have that here.
18 Or in an action for foreclosure, some or all of the
19 causes of action in a case may be referred to a
20 Master or special referee by order of a circuit
21 judge or the clerk of court. In all other actions,
22 the circuit court, that is, a circuit judge, can
23 make that determination. Here, at most, I mean, I
24 think under the interpretation of that that's the
25 most favorable to the plaintiff, the only thing that

1 the clerk of court could have referred to this Court
2 would have been the foreclosure claim. But
3 purported to refer the entire case to this Court.
4 I'm not saying that a circuit judge can't refer the
5 entirety of the whole case to the Master-in-Equity.
6 What I am saying is that when there's something
7 other than a default case or consent or a
8 foreclosure claim, that the clerk of court can't.
9 And that's our position on that.

10 THE COURT: Okay. Mr. Weston?

11 MR. WESTON: The way I read that rule is, Your Honor, in a
12 foreclosure action, in a foreclosure action -- not
13 talking about a mechanic's lien action, not talking
14 about anything else, in a foreclosure action, which
15 this is, the clerk of court may refer any and all
16 causes of actions to the Master-in-Equity, and I
17 think that's what the rule says.

18 THE COURT: All right. Ms. Moody, anything to add?

19 MS. MOODY: I don't know if I have a dog in this fight.

20 THE COURT: Okay. Well, take your chances anyway.

21 MS. MOODY: May it please the Court, Your Honor. Looking
22 at Rule 53, the rule reads exactly, Rule 53(b)
23 provides that the clerk of court or the circuit
24 judge may refer some or all of the causes of action
25 to the Master in three situations: when the parties

1 consent, when there is a default, or when there is
2 an action for foreclosure. And I think that that
3 goes to Mr. Weston's point. And from my standpoint,
4 from my client's standpoint, even though we don't
5 have a dog in the fight in terms of like where we
6 fall in terms of priority, and out of an abundance
7 of caution, not knowing what he's going to amend
8 exactly -- and I only say that, Drew, because I'm
9 just getting some of these documents -- I would say
10 that we have been at this for a long time, and it's
11 properly before the Master.

12 THE COURT: All right. Anything else on this motion?

13 MR. WESTON: No, sir, Your Honor.

14 THE COURT: Then, Mr. Radeker, your motion ---

15 MR. RADEKER: Judge, very briefly I'd just say that
16 regardless of whether it's proper for the clerk of
17 court to be the person who signed such an order, per
18 the terms of Rule 53 it'd have to be returned to the
19 general docket now.

20 THE COURT: Okay. Mr. Radeker, your motion's denied. Mr.
21 Weston, if you'll write a brief non-argumentative
22 order memorializing that, and we have it on the
23 record.

24 MR. WESTON: Okay.

25 THE COURT: All right. Now, logically, what should we

1 hear now?

2 MR. WESTON: Well, Your Honor, I guess Mr. Radeker has his
3 motion to amend. I have my motion to dismiss and my
4 motion to appoint a receiver. I would think the
5 receiver would come last, so I guess your motion to
6 amend ought to come next because I'm not sure, if
7 you amend it, I'm not sure what I'm asking to ---

8 THE COURT: Okay. Mr. Radeker?

9 MR. RADEKER: I'd agree with that because I think the
10 motion to dismiss was directed at the old claim, not
11 the new claim. He may move to dismiss the new
12 claim, I don't know, he might. But, in any event,
13 we made a motion to amend. Motions to amend are
14 liberally granted. Once a motion to amend is made,
15 the burden shifts to the party who's opposing it to
16 establish prejudice, to establish why the amendment
17 should not be granted. And the prejudice that's
18 envisioned by Rule 15 is lack of notice that a new
19 issue is to be tried and the lack of opportunity to
20 refute it. Here the same underlying set of facts is
21 present with respect to the counterclaims and
22 defenses that were originally pled and the
23 counterclaims and defenses that are pled. And so
24 I'd note that nobody's really saying different
25 things happened, you know, in the amended pleadings.

1 It's just clarifying what the legal issues are. In
2 the original answer and counterclaim, Salon Proz
3 asserted a defense of failure to state facts
4 sufficient to constitute cause of action; something
5 called Lack of Notice; failure to provide sufficient
6 right to cure; failure to properly serve the
7 defendant, which we've gotten rid of that in the
8 proposed amendment; insufficiency of process, and
9 we've gotten rid of that; breach of contract through
10 a breach of the covenant of good faith and fair
11 dealing; slander of title; usury law; and predatory
12 lending, as we said before. And unclean hands,
13 which was captioned as a counterclaim, and I have
14 re- -- that's not a counterclaim, that's a defense,
15 so. If there's nothing else that Mr. Weston and I
16 agree on, it's that. In our proposed amended answer
17 and counterclaim we've asserted the defenses of
18 waiver; unclean hands; estoppel; settlement through
19 an agreement to modify the loan; failure to state
20 facts sufficient to constitute cause of action; the
21 Statute of Frauds; violation of Unfair Trade
22 Practices Act; breach of contract, including but not
23 limited to through breach of the covenant of good
24 faith and fair dealing; breach of contract
25 accompanied by fraudulent act; slander of title;

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1 libel; and negligent misrepresentation. Now, what's
2 common to both the original answer and counterclaim
3 in ours, in addition to what I've just stated, is a
4 denial that any note was executed in this case. The
5 note that the plaintiffs claim was executed, was
6 executed in this case. Attached to the complaint is
7 an unsigned document that the plaintiff claims is
8 the note. There's an affidavit from Ms. Jones that
9 says I never signed it. It was -- they recently
10 asked me to sign it for the first time. But, in any
11 event, to the extent that there really are any new
12 issues presented by that, I'm not really sure
13 factually much that there are, the plaintiff's going
14 to have an opportunity to explore that and to
15 prepare to try them. You know, we're not where we
16 were when we originally made this motion, which is
17 where there'd been a foreclosure hearing scheduled
18 in this case. So it's not like trial is tomorrow,
19 or even next month. They'll have time to face these
20 issues, so we'd ask that you grant the motion.

21 THE COURT: Okay. Mr. Weston?

22 MR. WESTON: Your Honor, again, this case was filed in
23 late 2011. We received the answer and counterclaim
24 by Mr. Aun. It had some counterclaims in there. We
25 filed our motion to dismiss, reply, and the likes of

1 that. This motion adds several other causes of
2 actions to the complaint -- or, to the answer and
3 counterclaim, some of which are based on the fact
4 that they allege there's not a note. I've sent Mr.
5 Radeker a copy of the signed note. I will tell the
6 Court that attached to the complaint is the wrong
7 note. I have advised Mr. Radeker of the note and
8 sent it to him, so if he wants to continue down that
9 path we're welcome too. But, I mean, I've got no
10 problem going down that road. But a lot of these
11 cause of actions I think are done just for the
12 purpose of delay tactics in this case and forcing my
13 client to do additional discovery, which we will
14 have to do if the complaint is amended, to determine
15 whether or not to depose Ms. Jones to find out
16 whether or not these causes of actions have any
17 validity or not. We don't believe they have any
18 validity, and we intend to prove that. But at the
19 same time, it will create another delay, substantial
20 delay, in this case going forward. And we would
21 oppose any amendment to the complaint at this time
22 due to the prejudice to my client.

23 THE COURT: This is a commercial loan, is that ---

24 MR. WESTON: Yes, sir.

25 THE COURT: And there was a closing?

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1 MR. WESTON: Yes, sir.

2 THE COURT: Who was the closing attorney, do you remember?

3 MR. WESTON: I don't recall. It was an SBA closing. It
4 was an SBA-guaranteed closing, and I do not recall
5 who the lawyer was. I could easily find that out.

6 THE COURT: That's fine. How much was the loan for?

7 MR. WESTON: It was -- the loan was originally in the
8 amount of \$864,000.

9 THE COURT: Now, Mr. Radeker, in your amended pleadings
10 are you alleging that no money changed hands and ---

11 MR. RADEKER: No. We couldn't claim that. I don't think
12 we could under Rule 11 claim that. But there is no
13 signed note. And I note this too. If they'd had a
14 signed note, what are they doing trying to get my
15 client to sign one in August of 2012?

16 THE COURT: So what's --

17 MR. RADEKER: So -- yeah.

18 THE COURT: So what relief are you seeking? If money
19 changed hands, and you're alleging that it did, I
20 mean, you're not denying that, what are you trying
21 to say when you say there was no signed note?
22 Because you've conceded there was a wrong note
23 attached to the complaint. Go ahead, sir. I'm
24 sorry.

25 MR. RADEKER: I would disagree with that wrong note thing.

1 The note's the one that they -- the supposed note is
2 the one that they said it was in their complaint,
3 because that's the one that they tried to get her to
4 sign in August of 2012. And they had no reason to
5 do that if they already had a note. Also, and it's
6 not like that's before the Court ---

7 MR. WESTON: Your Honor, now he's alleging that -- you
8 know, I've sent Mr. Radeker this. If he doesn't
9 agree with it, fine. He can raise it at the time.
10 But he's got -- I mean, he knows that, I know that,
11 you know that. But to sit here and tell me that we
12 did something wrong -- I've sent him a copy of that
13 note.

14 THE COURT: Okay, duly noted.

15 MR. RADEKER: He sent me a copy of this document. I'm
16 just saying that the facts of the case don't bear
17 out that that's what they claim the note is.

18 THE COURT: Is your client denying that she owes any
19 money, or the company owes any money?

20 MR. RADEKER: I would say that -- I'm not saying that
21 she's denying that she owes any money. You know,
22 they may have an enforceability problem with this
23 document because it's not signed. But what we're --
24 really what we're seeking to do is for the Court to
25 enforce the agreement that was actually reached

1 between the parties. And that wasn't written down.
2 Ordinarily you'd have a problem under the parole
3 evidence rule with that, but you wouldn't have it
4 here because there is no signed writing that they
5 say is the agreement.

6 **THE COURT:** Now ---

7 **MR. RADEKER:** They're bound by their pleadings. I mean,
8 they attached this document to the pleadings, this
9 is the note. They haven't sought to amend it. If
10 they'd like to amend it, I consent.

11 **THE COURT:** Now, is your position that your client doesn't
12 have to pay the money back then because there was no
13 signed agreement?

14 **MR. RADEKER:** That'd be the first, but if the Court
15 determines that that's -- that we can't prevail on
16 such a defense, it would be to uphold the agreement
17 that was actually reached between the parties, which
18 would provide for a significantly lower interest
19 rate, lower payments; she wouldn't be in default of
20 that. I think they're going to have a very hard
21 time establishing what the terms of the agreement
22 are without a signed writing, when they claim here's
23 the note, there's no signature on it. But that's
24 way down the road. I mean, right now we're seeking
25 to amend these pleadings.

1 THE COURT: No, I understand.

2 MR. WESTON: He's still protected on all those rights.
3 And under the current pleadings before the Court,
4 all those issues can be raised by Mr. Radeker under
5 the current defenses he's raised and the current
6 causes of actions he's raised.

7 THE COURT: Now, Mr. Weston, what additional discovery do
8 you have to do? Have you got to get another ---

9 MR. WESTON: Well, she's alleging all these --
10 potentially, these fraudulent claims against us and
11 seeking damages.

12 THE COURT: Has she already been deposed?

13 MR. WESTON: No, sir, she has not.

14 THE COURT: Okay.

15 MR. WESTON: So I would have to depose her and find out
16 what her damages are and what her position is, as
17 you rightfully stated, does she think she doesn't
18 owe the money or not. I mean, obviously the money
19 was given to Ms. Jones and her company. We're here
20 today because -- and I've got -- and Mr. Radeker,
21 when he says -- Your Honor, if I attached all of the
22 loan documents to this complaint, it'd be that
23 thick. And if I need to put them through testimony,
24 I will. And it'll clearly show that Ms. Jones
25 signed these documents. And to sit here and tell me

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1 otherwise, I mean, I think that's just another delay
2 tactic in this foreclosure that -- and I'll get into
3 more detail in a moment. But again, it's just
4 another delay tactic.

5 THE COURT: Okay.

6 MR. RADEKER: I would say this, Your Honor, that Mr.
7 Weston has now taken the position that all the
8 issues we want to raise through our amendment we can
9 raise under the existing pleadings.

10 MR. WESTON: That's not what I said.

11 THE COURT: Hold on a second.

12 MR. RADEKER: I think that's exactly what he ---

13 THE COURT: No, what he said was that ---

14 MR. RADEKER: Okay.

15 THE COURT: --- you can make the same defenses ---

16 MR. WESTON: Right.

17 THE COURT: --- as, you know, now, as you could do if we
18 granted the amendment. I think that's what ---

19 MR. WESTON: Yeah. I was saying that he could raise these
20 same issues under the current pleadings.

21 MR. RADEKER: Well, then if we can raise the same issues
22 under the current pleadings, how is the amendment
23 making the plaintiff engage in additional discovery?
24 So, how is it causing him to do anything different?

25 THE COURT: All right. Ms. Moody, anything to add in this

1 particular motion?

2 MS. MOODY: No, Your Honor. We don't have anything other
3 than it will -- because I do want to be informed on
4 everything and have opportunity to participate in
5 the deposition of Ms. Jones if that be the case, as
6 well as if there are any other documents that I
7 don't have I'm going to have to serve discovery
8 requests. So I will incur another cost. So I don't
9 really have a position.

10 THE COURT: Okay. Mr. Radeker, your motion's granted.
11 Now, how soon can you serve your amended pleadings?

12 MR. RADEKER: We've attached the proposed amended pleading
13 to our motion to amend, so I can just, you know, do
14 the same one and serve it again. Or if they agree
15 that's not necessary, they can just -- you know, the
16 rule says 15 days. I'm fine with them having 30
17 days to reply to it, you know, whatever everybody
18 agrees would be the most efficient thing.

19 THE COURT: Mr. Weston?

20 MR. WESTON: I would ask the Court to -- the motion to
21 amend my complaint, I think Mr. Radeker consented to
22 that a minute ago. And I'll be happy to amend my
23 complaint to attach the proper note to it, in
24 addition to any other documents that he would have a
25 question about Ms. Jones signing.

1 THE COURT: Okay.

2 MR. WESTON: And I would ask the Court to grant an
3 amendment at this time.

4 THE COURT: Well ---

5 MR. RADEKER: And we can just serve an answer and
6 counterclaim to that.

7 MR. WESTON: Yeah.

8 THE COURT: All right. Mr. Weston, your motion's granted.

9 MR. WESTON: With one caveat. We've got a current case
10 and -- well, that's fine.

11 THE COURT: All right.

12 MR. WESTON: And I will serve Ms. Moody, don't worry.

13 MS. MOODY: In the spirit of amendments, I would like to
14 be allowed to amend my answer with counterclaims.
15 And I don't know if I need to -- when we discussed
16 him amending, I didn't know whether or not I was
17 going to have to file any cross-claims.

18 MR. RADEKER: I think that may take care of itself because
19 if they're amending the complaint, then we'll all
20 have to answer to that. So, you know, at that
21 point, I mean, I think -- I mean, I consent to the
22 extent that's necessary, but I don't think she
23 really needs to make a motion to that effect, that
24 she can ---

25 MS. MOODY: Well, I just wanted to get the tender on

1 record.

2 THE COURT: Mr. Radeker, your motion's granted. Everybody
3 can amend their pleadings. And I guess, well, I'm
4 concerned about time. And I think your point was
5 well taken, this case has been around a while. So
6 if you amend your complaint, how soon can you get it
7 served on them, Mr. Weston?

8 MR. WESTON: If Mr. Radeker will accept service, I can get
9 it done probably the first of next week, within ten
10 days.

11 MR. RADEKER: I don't think there's need for anything but
12 Rule 5 service, and I won't say that service is
13 improper.

14 MR. WESTON: The only change I'm going to make is I'm
15 going to change the exhibits.

16 THE COURT: Okay. Ms. Moody?

17 MS. MOODY: That's fine.

18 THE COURT: Okay. Now, as far as answering, I know what
19 the rule says. But as a practical matter ---

20 MR. WESTON: Well, can I make a suggestion?

21 THE COURT: Yes, sir.

22 MR. WESTON: All I want to do is change the exhibits. If
23 he is going to use the motion to amend the complaint
24 -- excuse me, counterclaim that he has filed, I'll
25 accept that; I'll have a reply to him within 15

1 days, if he will just agree on the record that the
2 note, that I will substitute it with a new exhibit.
3 MR. RADEKER: With this other document, so.
4 THE COURT: Y'all were talking about the same time.
5 MR. RADEKER: Sorry.
6 THE COURT: What did you say, Mr. Weston?
7 MR. WESTON: All I'm going to do is supplement the current
8 exhibits with my complaint with the attached note
9 which is signed by Ms. Jones to avoid any potential
10 issues with regards to that.
11 THE COURT: Okay. Mr. Radeker?
12 MR. RADEKER: I think that's okay. Probably something,
13 maybe just like a little certificate that this is
14 substituted for the original exhibit probably ought
15 to be filed just to clarify the record for anybody
16 that looks at it later, but that's fine.
17 MR. WESTON: That's fine, I'll be happy to do that.
18 MR. RADEKER: But ---
19 MR. WESTON: And that way I'll just treat this amended
20 counterclaim and answer, and I'll reply to that
21 within 20 days.
22 MR. RADEKER: Sure. Sure. Just the one that's attached
23 to the motion, no need to re-serve that; is that
24 right?
25 MR. WESTON: Right. That's correct.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) CASE #: 2011-CP-40-7187

South Carolina Community)
Bank,)
Plaintiff,)
v.)
Salon Proz, LLC, Columbia)
Empowerment Zone, Inc. d/b/a)
The Columbia Empowerment)
Zone; and Frank Mitchell,)
Defendants.)

COPY

MOTION HEARING

Tuesday, September 17, 2013
3:01 p.m. to 3:40 p.m.

The hearing before the Honorable Joseph M. Strickland, Master in Equity for Richland County, was taken in Courtroom 2D of the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, on the 17th day of September, 2013, before Robin K. Reibold, Court Reporter and Notary Public in and for the State of South Carolina.

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1 THE COURT: This is Civil Action Number 2011-CP-40-7187,
2 South Carolina Community Bank versus Salon Proz, LLC
3 and others. Are we all on the same page?

4 MR. RADEKER: We are, Your Honor. I understand we're here
5 for our motion to reconsider.

6 THE COURT: I think we're on the same page. All right,
7 Mr. Weston?

8 MR. WESTON: Your Honor, I think we also have a couple of
9 things. Nelson Weston on behalf of the plaintiff,
10 South Carolina Community Bank. Your Honor issued an
11 order on March 21st, 2013. At that time, Your Honor
12 ordered that a receiver be appointed, and you issued
13 a separate order for that; that the motion to
14 transfer the case back to a jury trial was denied;
15 and the defendant's motion to amend the answer and
16 counterclaim was granted, and you continued our
17 motion to dismiss. Technically, our motion to
18 dismiss is still pending. Based on the amended
19 answer and counterclaim, I think we're probably
20 appropriate to re-file that or continue that. We've
21 got to do some discovery with Ms. Jones, who is the
22 principal. We've scheduled a deposition for the 1st
23 of October.

24 MR. RADEKER: Second.

25 MR. WESTON: Second of October, first week of October,

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1 Court. But the point is here is they've got an
2 allegation, and they've changed now to say, well, we
3 no longer contend the first thing we said was the
4 note is the note. Now we contend the second thing
5 we say is the note is the note. That's it. An
6 allegation. That's all there is on that point, is
7 an allegation, not evidence. As to putting up Mr.
8 Taylor, Your Honor, they're required to support the
9 motion with affidavits unless the Court directs,
10 pursuant to Rule 43(e), that evidence may be heard
11 wholly or partly on oral testimony or depositions.
12 Your Honor denied to do that with respect to the
13 motion that was heard before. The motion that is
14 before the Court today is not before the Court so
15 the plaintiff can create some evidence that wasn't
16 before the Court when Your Honor ruled before. The
17 question is, was it proper for the Court to rule on
18 the record as it existed at that time. Not on the
19 basis of something that they might come up here and
20 put up now. So I would definitely object to them
21 putting up anything.

22 THE COURT: Okay.

23 MR. RADEKER: You know, the question on a motion to
24 reconsider is, was the Court right to rule on the
25 basis of the record then. Also, Your Honor, this

1 motion to reconsider is also directed at the denial
2 of our motion to transfer this case to the jury
3 docket. We've got compulsory at-law counterclaims
4 here, they relate to the plaintiff's very
5 entitlement to foreclosure in this case because of
6 the facts that overlap in the -- and there's no
7 evidence to support the tacit consent argument that
8 the plaintiff's counsel made before because there's
9 nothing showing that Mr. Aun ever received anything
10 indicating that the order of reference was ever
11 entered. In any event, even if there were, you
12 know, we've got new issues here. In the amended
13 answer and counterclaim, we'd be entitled to a jury
14 trial on those. Because that's what the case law
15 says. And so we'd note that, Your Honor, most
16 respectfully, the orders that this Court made on
17 these issues should not have been the orders that
18 this Court made. And we would ask that Your Honor
19 reconsider that ruling and change it accordingly.

20 THE COURT: All right. Thank you. Yes, sir?

21 MR. WESTON: Your Honor, I guess this is, throughout,
22 there's sort of theme throughout this case; we come
23 to a hearing and we are prepared to do what we want
24 to do, and the other side says, oh, no problem, we
25 agree to that, etcetera, etcetera. That's exactly

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1 way or the other.

2 MR. RADEKER: I don't mean to interrupt here ---

3 MR. WESTON: And I've got the emails, Your Honor.

4 THE COURT: I'll give you a chance to respond.

5 MR. RADEKER: Okay.

6 MR. WESTON: I've got the emails.

7 THE COURT: Okay.

8 MR. WESTON: So, I mean -- I'll leave it at that. If I

9 have to -- and I don't have a problem going through

10 this case and putting everything we need to on the

11 record, one, two, three, four, and if Mr. Radeker --

12 and I know I've got to do that going forward.

13 There's no issue, I understand that, with Mr.

14 Radeker. Number two, with regards to -- his motion

15 to reconsider with regards to the transfer to the

16 jury docket, Andy Aun represented Salon Proz when

17 this case was filed in 2011.

18 THE COURT: I'm sorry, who did?

19 MR. WESTON: Andy Aun.

20 THE COURT: How do you spell his last name?

21 MR. WESTON: A-U-N.

22 THE COURT: Okay.

23 MR. WESTON: Andrew Aun.

24 THE COURT: All right.

25 MR. WESTON: He represented the defendant in October --

1 well, he filed the original answer on November 23rd,
2 2011. We subsequently filed a motion to refer on
3 February 17th, 2012. After Mr. Aun files a
4 counterclaim and answer, we filed a reply, we filed
5 the motion to refer. We also filed a motion to
6 appoint a receiver essentially that same time. And
7 a motion to dismiss. Okay? On February 17th, which
8 was -- right in there, the clerk of court, Ms.
9 McBride signed the order referring it to the Master.
10 Mr. Aun never appealed that, never requested it to
11 be reconsidered, never did anything. That is the
12 order of this Court. Mr. Aun was technically still
13 the lawyer in this case because Mr. Aun has never
14 been relieved as the attorney in this case. Mr.
15 Radeker has made an appearance in this case, but Mr.
16 Aun has not been relieved. Mr. Aun never sent me a
17 letter, never did anything other than say that's
18 fine, we're moving forward. At some point Mr.
19 Radeker gets involved in the case in -- I think it
20 was September of 2004 (sic), or sometime around then
21 when we received motions -- August, excuse me.
22 THE COURT: So what you're saying is because the case is
23 almost two years old and ---
24 MR. WESTON: Yes, the case is two years ---
25 THE COURT: --- and you haven't had a chance -- you didn't

1 do any -- you haven't done any discovery or haven't
2 finished your discovery and ---

3 MR. WESTON: Right. Well, we did -- he just amended his
4 complaint -- excuse me, his counterclaim, to add
5 seven new causes of action, which we replied to.
6 Your Honor, those causes of actions could have been
7 brought in 2012 -- excuse me, 2011. They were not.
8 Salon Proz was represented by counsel at that time.
9 As far as I'm concerned, to the extent they were
10 compulsory or permissive, the defendant has waived
11 any right to a jury trial on those claims due to
12 time and going forward. I'm happy to respond to
13 those, go to discovery, but this thing should remain
14 in your court for the purposes of hearing. It
15 should not be transferred back to a jury trial.

16 THE COURT: Has your client, or have y'all submitted
17 requests to admit, any of the other ---

18 MR. WESTON: We ought to be, we're dealing with the
19 motions for so long and -- we were hoping to get it
20 resolved, but unfortunately it does not look like
21 that's the case. We have depositions of Ms. Jones
22 currently scheduled for October 2nd. We'll take the
23 depositions, at which time I will re-file my motion
24 for summary judgment as to allow these causes of
25 action.

1 access to bank accounts of the defendant, books and
2 records in any event. Mr. Aun ceased to be counsel
3 of record in this case when he and I signed and
4 filed a notice of substitution of counsel per Rule
5 11(b). You know, there was no motion to refer this
6 case. Let's be abundantly clear.

7 MR. WESTON: Your Honor, there was a motion filed on
8 February 17th, 2011. I just want to be -- the
9 statements being made, Your Honor, are -- if he said
10 -- he said just a bold statement, no motion to refer
11 was filed. Yes, there was, and it's in your file.

12 THE COURT: Okay. Now, now, what ---

13 MR. RADEKER: What the plaintiff did ---

14 THE COURT: Hold on a second, hold on a second. Let us
15 remember our civility oath.

16 MR. RADEKER: I -- and I ---

17 THE COURT: Hold on a second, please. Let me talk to you.
18 And we'll give everybody a chance to respond, make a
19 record. Mr. Weston, if you'll wait until we finish
20 ---

21 MR. WESTON: I apologize, Your Honor.

22 THE COURT: And, Ms. Moody, again I apologize. You'll get
23 a chance to respond to both lawyers. Go ahead, Mr.
24 Radeker.

25 MR. RADEKER: What the plaintiff did was send a proposed

1 order of reference to the clerk of court. It didn't
2 make a motion to refer the case. That's not the
3 same thing. And so no circuit judge ever
4 determined, you know, these issues were properly
5 referable to Your Honor. Where is it, where is the
6 record, you know, that shows that Mr. Aun got --
7 received written notice of the order of reference?
8 I've never seen any such thing. But in any event,
9 if it does exist, it wasn't here last time. Also,
10 the transcript will reflect that I never said it was
11 all right with me for the plaintiff to put up oral
12 testimony in lieu of affidavits. Why would I have
13 done that? It doesn't make any sense and it's not
14 what I said. And I have the same concerns Your
15 Honor does. But in any event, it's not about
16 personalities or me and Mr. Weston. There's no
17 record here on which these motions could have been
18 granted. Thank you.

19 MR. WESTON: The motion to refer was filed February 17th,
20 2012. A copy of it is filed with the Court. Mr.
21 Andy Aun received notice of that motion by
22 certificate, signed by an employee at my office,
23 Crystal Bilka, dated January 25th, 2012. That
24 should be a part of the court record. And the
25 second thing is, as the Court is well aware, the

25

1 clerk of court is authorized to refer a case to this
2 office under the Rules of Court.

3 THE COURT: Ms. Moody's been waiting patiently. Ms.
4 Moody, you may proceed.

5 MS. MOODY: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Yes, ma'am.

8 MS. MOODY: To the order of reference, it was referred. I
9 do have a copy of it, and it was served on Andrew
10 Aun. As to the motion for the receiver, I would
11 have to join in with Mr. Radeker as to the necessity
12 of a receiver. I know that there are the two steps,
13 the contractual right -- I'm not sure that that was
14 necessarily contested. And I don't think that was
15 agreed to on the record. I think the main issue was
16 can we amend -- well, could he amend his answer, and
17 then Mr. Weston was allowed to amend his complaint
18 to add whatever document that was. And I believe he
19 did that, and then Mr. Radeker replied. As far as
20 the -- I guess everybody knows the position of my
21 client, which is Columbia Empowerment Zone, Inc.,
22 which we take the position that the receiver is not
23 something that is necessary. And the main reason is
24 because for our position, we want to be paid. If
25 Mr. Weston's willing to amend the order for a

26

Official Court Reporter

Master in Equity, Richland County

1701 Main Street - Post Office Box 192 (29202)

Columbia, South Carolina 29201

1 for my client, to protect my client. Based on them
2 proving their case, then we would, you know.
3 THE COURT: Let me ask, what's the amount of your debt,
4 Ms. Moody?
5 MS. MOODY: The outstanding balance as of May 2012, I
6 haven't gotten an updated one, was \$148,926.65.
7 THE COURT: As of a year and a quarter ago I guess?
8 MS. MOODY: Yes, sir.
9 THE COURT: Okay. All right. Anything else before I
10 rule?
11 MS. MOODY: And ---
12 MR. RADEKER: I have a correct ---
13 THE COURT: Oh, I'm sorry. Yes, ma'am?
14 MS. MOODY: Yeah, and I would just say that on the issue
15 of affidavits, presenting witnesses and all of that,
16 I have not received any affidavits, and I think that
17 is appropriate when you're filing a motion to be
18 heard. I think the last time there was a motion to
19 dismiss, and that -- an affidavit would have been
20 appropriate if there wouldn't have been any live
21 testimony. I wouldn't have, I certainly wouldn't
22 have object- -- I wouldn't have agreed to it.
23 MR. RADEKER: I would just say this: I need to correct
24 myself on something.
25 THE COURT: Yes, sir.

1 MR. RADEKER: When they sent up the order of reference,
2 with it, behind it is a motion to refer; that is
3 true. And it looks like it was clocked in at the
4 same minute that the signed order of reference was.
5 Still nothing indicating that Mr. Aun got written
6 notice of the entry of that order. I just wanted to
7 say I wasn't trying to misrepresent that. I just
8 didn't remember I guess that there was a motion to
9 refer behind it, that's all.

10 THE COURT: All right. Anything further? Okay, Mr.
11 Radeker, your motion is denied in full. And, Mr.
12 Weston, the receiver, how soon -- do you need
13 anything else from me to get him started, or?

14 MR. WESTON: No, sir, you've already signed the order.
15 We've just delayed until today in getting him
16 started on it. And I'll be happy, if Mr. Radeker
17 wants to make some suggestions to the order, I'll be
18 happy to consider those.

19 THE COURT: Ms. Moody, you want to make some suggestions
20 as well. If you'll submit an order denying his
21 motion, a non-argumentative order, a brief non-
22 argumentative order ---

23 MR. WESTON: Yes, sir.

24 THE COURT: --- I'll sign it. Now, are there any
25 objections as to the qualifications of the receiver?

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

AFFIDAVIT OF YVONNE JONES

CHARLIE W. HEDRIDGE
C.C.P. & G.S.

2012 SEP 21 AM 11:08

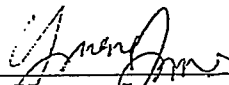
Personally appeared before me Yvonne Jones, who, first being duly sworn, deposes and says as follows:

1. My name is Yvonne Jones. I am a member of and the operator of Salon Proz, LLC. I have personal knowledge of the facts set forth in this affidavit and am competent to testify about them.
2. I never signed the note document that South Carolina Community Bank claims is the note involved in this case. A copy of that document is attached to this affidavit as Exhibit A. I am the only person who would have had the power or authority to sign that document for Salon Proz. It was never presented to me for my signature at closing. The first time this document was presented to me and I was asked to sign it was in August of 2012, when I met with people from South Carolina Community Bank and they requested that I sign it. They acknowledged at that meeting that the document had never been signed.
3. As the time for me to purchase the building involved in this case grew closer, I was in discussions with South Carolina Community Bank, usually through a loan officer, Chester Leaks, who worked there. At first, South Carolina Community Bank told me that it would make Salon Proz a loan at a 5.75% interest rate. Later, not long before the closing, they told me that the interest rate on the loan would be 7.75%. At that time, I had already invested about \$50,000.00 in this business venture, which I would have lost if Salon Proz did not get the loan and close the purchase of the building. I

was, however, upset at this change in the terms that I was initially promised, and I brought this up to Mr. Leaks. He told me that if Salon Proz got the loan with South Carolina Community Bank, the bank would then change the loan terms to reduce the interest rate to 5.75%. Based on that representation, I decided for Salon Proz that Salon Proz would get the loan.

4. Per what South Carolina Community Bank told me, the monthly payments under the loan were deferred for several months. The bank then extended the deferment further because of construction and renovation delays. Starting January of 2011, Salon Proz made the monthly payments of approximately \$8,000.00 a month.
5. Per instruction Mr. Leaks gave me, starting in the spring of 2011, Salon Proz made partial payments of approximately \$4,000.00 a month.
6. In the fall of 2011, South Carolina Community Bank refused to accept Salon Proz's partial payment of about \$4,000.00.
7. Not long after that, South Carolina Community Bank brought this lawsuit.
8. In March of 2012, South Carolina Community Bank's president, Mr. Felder, told me that the bank would enter into a modification of the loan that would change the interest rate to 3.25% and would put the payments at approximately \$4,000.00 a month. That promise was quite clear. The bank then reneged on that promise.
9. The Small Business Administration, which backs the loan, has told me that they are all right with such a modification.
10. The mortgage and assignment of rents documents attached to the complaint do not mention a receiver or receivership.
11. There is no danger that the property involved in this case or the rents from the tenants are in any danger of being lost, injured, or impaired. The property has not been injured and is not being injured now; and I do not intend to do anything to injure it or allow someone else to do so.

FURTHER AFFLIANT SAYETH NOT.



Yvonne Jones

SWORN to before me this
18th day of September, 2012

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 5/21/2017

COMMERCIAL LINE OF CREDIT AGREEMENT AND NOTE

NAME(S)/ADDRESS(ES) OF BORROWER(S) ("Borrower, I, My, or Me")
SALON PROZ, LLC

NAME/ADDRESS OF LENDER (CREDITOR) ("Lender, You or Your")
S C COMMUNITY BANK
PO BOX 425
COLUMBIA, SC 29202

11 TWO NOTCH ROAD
COLUMBIA SC 29240

NOTE NUMBER	DATE OF TRANSACTION	MATURITY DATE	OFFICE	OFFICER	INTEREST RATE
101287	7/16/09	8/16/29	1	002	7.75

For value received, on or before the Maturity Date, the undersigned Borrower promises to pay the principal amount or such lesser sum as shall have been advanced by Lender to Borrower under the line of credit hereinafter described, together with interest; and any other charges, including service charges, to the order of Lender at its address noted above or holder, all in lawful money of the United States of America. The undersigned further agrees to the terms below and on page two of this Note. Words, numbers or phrases preceded by a box are applicable only if the box is checked.

PRINCIPAL AMOUNT

Eight hundred sixty four thousand & no/100

\$ 864,000.00

PAYMENT SCHEDULE:

Payments on this Line of Credit will be due as follows:

- ☒ interest only starting _____ and payable ☐ monthly. ☐ quarterly.
- ☐ interest, principal and other charges due on Maturity Date.
- ☒ other payment schedule: ONE (1) INTEREST ONLY PAYMENT DUE ON MAY 15, 2010; THEREAFTER 228 PAYMENTS OF PRINCIPAL AND INTEREST IN THE AMOUNT OF \$7,154.36 AND A FINAL PAYMENT OF ALL PRINCIPAL, INTEREST, FEES AND OTHER CHARGES DUE AT MATURITY.

INTEREST RATE:

This Line of Credit is subject to ☒ a fixed interest rate of 7.75 % per annum. ☐ a variable simple interest rate, which is _____ % greater than: _____ equal to: _____ % less than: the following Index:

Initial Simple Interest Rate	Present Variable Index Rate	Minimum Interest Rate	Maximum Interest Rate	Interest Rate Changes May Occur Every
%	%	%	%	%

☐ may be calculated on the unpaid balance for the actual days outstanding on a ☐ 365/365 Day Basis ☒ 365 /360 Day Basis

DEFAULT RATE: If in default the interest rate shall be: _____ % per annum. ☐ % in excess of the Index.

LATE CHARGE: If Borrower is more than 10 days late in making any payment, in addition to such payment, Borrower will pay a late charge of: ☐ the lesser of ☐ the greater of ☐ an amount equal to ☐ \$ _____ or ☒ 5.00 % of the payment in default.

PAYABLE ON DEMAND: ☐ Payment is due upon demand. ☐ Payment is due upon demand, but in any event, not later than Maturity Date.

TERMS/ADVANCES: This Line of Credit is:

☒ Obligatory: Lender will continue to make advances under this Line of Credit unless: (a) the maximum amount on this Line of Credit is outstanding; (b) the undersigned has breached any of the promises contained in this Agreement or any other agreement noted below; (c) the undersigned makes a request for an advance after the Maturity Date noted above; (d) other:

☐ Discretionary: Lender may refuse to make additional advances under this Line of Credit for the following reasons: (a) the aggregated advances under this Line of Credit exceeds \$ _____; (b) other:

☐ ANNUAL MEMBERSHIP FEE. Lender will assess an Annual Membership Fee of (\$ _____) Dollars, which will be due when Borrower's Line of Credit is first opened and on the yearly anniversary of the opening date. This fee will be charged to this Line of Credit as an advance. This fee is not refundable under any circumstance and does not assure Borrower that this Line of Credit will not be terminated, credit suspended or credit limit reduced as permitted under this Line of Credit Agreement and Note.

☐ ADDITIONAL NOTE PROVISIONS:



By initialing, I acknowledge this is page 1 of 2 of the Commercial Line of Credit Agreement and Note.

Initials

Initials

Record on Appeal 129

Security for this Line of Credit Agreement and Note, if any, (the "Collateral") is granted pursuant to the following document(s) executed on the date(s) indicated below:

- ☒ Security agreement dated 7/16/09
☒ Mortgage, deed of trust, trust deed or security deed dated 7/16/09
☐ other

The Borrower expressly agrees to all the provisions hereof and signifies assent thereto by the signature below.

IN WITNESS WHEREOF, the Borrower has executed this Agreement on the date and year shown below.

SALON PROZ, LLC

By ☒ YVONNE JONES
Its MEMBER

Date

By ☒
Its

Date

By ☒
Its

Date

By ☒
Its

Date

Additional Provisions

Advances of principal, repayment, and readvances may be made under this Line of Credit Agreement and Note from time to time, but Lender, in its sole discretion and subject to provisions related to obligatory and discretionary advances, may refuse to make advances or readvances hereunder during any period(s) this Agreement and Note is in default. All advances made hereunder shall be charged to a loan account in Borrower's name on Lender's books, and Lender shall debit to such account the amount of each advance made, and credit to such account the amount of each repayment made by Borrower. If the Lender furnishes the Borrower with a statement of Borrower's loan account, such statement shall be deemed to be correct, accepted by, and binding upon Borrower, unless Lender receives a written statement exception from Borrower within ten (10) days after such statement has been furnished.

This Agreement and Note may be paid in full or in part at any time subject to the repayment provisions spelled out on page one hereof, without payment of any prepayment fee or penalty. All payments received shall, at the option of Lender, first be applied against accrued and unpaid interest and the balance against principal. Borrower expressly assumes all risks of loss or delay in delivery of any payment made by mail, and no course of conduct or dealing shall affect Borrower's assumption of these risks. If Lender shall determine that the effective interest rate of this Note is, or may be, usurious or otherwise limited by law, the unpaid balance of this Note, with accrued interest at the highest rate then permitted by law shall, at the Lender's option, become immediately due and payable.

Unless this Note is due upon demand, in which case the provisions of this paragraph shall not apply, upon the occurrence of any of the following events of default, Lender, at its option and without notice to Borrower, may declare the entire unpaid balance of this Note and all accrued interest, together with all other indebtedness of Borrower to Lender, to be immediately due and payable: (a) Borrower's failure to pay any installment of principal or interest when due; (b) any default by Borrower under any loan agreement, security agreement, mortgage or other agreement executed in connection with this Line of Credit Agreement and Note; (c) the death, dissolution or termination of existence of Borrower; (d) if Borrower is generally not paying his debts as such debts become due; (e) the commencement of any proceeding under the bankruptcy or insolvency laws by or against Borrower; (f) if any other indebtedness of Borrower to Lender or to any other creditor shall become due and remains unpaid after acceleration of the maturity or after maturity; (g) if any writ of attachment, garnishment, execution, tax lien or similar proceeding shall be issued against any property of

Borrower; (h) Borrower's business shall be sold to, or merged with, any other business, individual or entity; (i) Lender, in good faith, believes the Borrower's ability to repay its indebtedness under this Line of Credit Agreement and Note, any Collateral, or Lender's ability to resort to any Collateral, is or soon will be impaired, time being of the very essence. If there is a Default Rate shown on page one, it may be applied to all periods of time in which a default exists.

If this Line of Credit Agreement and Note is secured by a security agreement, mortgage, deed of trust, trust deed, security deed or loan agreement of even or previous date, as set forth on page one hereof, it is subject to all the terms thereof. Additionally, the Lender may, upon deeming itself insecure or upon Borrower's default in payment or in the terms of this or any other agreement Borrower may have with Lender, declare the entire principal amount due and payable. The Borrower severally waives demand, notice, and protest and to any defense due to extensions of time or other indulgence by Lender or to any substitution or release of collateral.

If the interest rate on this Line of Credit Agreement and Note is tied to an Index stated on page one, that Index is used solely to establish a base from which the actual rate of interest payable under this Line of Credit Agreement and Note will be figured, and is not a reference to any actual rate of interest charged by any lender to any particular borrower. If the interest rate varies in accordance with a selected Index, if that Index ceases to exist, Lender may substitute a similar index which will become the Index.

If this Line of Credit Agreement and Note is payable in installments, each installment payment will be due on the same day of the installment period as the day upon which payments commence, unless otherwise specified. Failure to pay this Line of Credit Agreement and Note according to specified terms shall constitute a default. If permitted by law and at Lender's option, interest up to the highest rate permitted by law may be assessed on any interest which is past due as the result of any payment not being paid when due.

The Lender shall have the right to hold or apply its own indebtedness or liability to Borrower in payment of, or to provide collateral security for the payment of this Line of Credit Agreement and Note either prior to or after Maturity Date. If legal proceedings are instituted to enforce the terms of this Line of Credit Agreement and Note, Borrower agrees to pay all costs of the Lender in connection therewith, including reasonable attorney fees, to the extent permitted by law. If this Line of Credit Agreement and Note is secured, then upon default in payment or in the terms of this Agreement, the Lender shall have all rights of a secured party under the Uniform Commercial Code and/or other law(s) governing secured transactions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

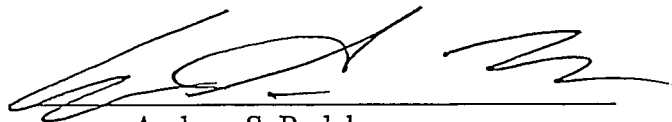
Defendants.

CERTIFICATE OF SERVICE

FILED
2012 SEP 21 AM 11:08
JEANETTE W. McBRIDE
C.P. & G.S.

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., attorneys for Defendant Salon Proz, LLC, do hereby certify that I have, on this the 21st day of September, 2012, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows, to wit:

S. Nelson Weston, Jr., Esq.
Charles J. Webb, Esq.
Richardson, Plowden & Robinson, P.A.
P.O. Box 7788
Columbia, SC 29202


Andrew S. Radeker

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
 Empowerment Zone, Inc. d/b/a The
 Columbia Empowerment Zone, and
 Frank Mitchell,

Defendants.

DEFENDANT'S MEMORANDUM
 AS TO MOTIONS PENDING ON
 NOVEMBER 1, 2012

2012 OCT 31 PM 2:19
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

RICHLAND COUNTY
 FILED

Defendant Salon Proz, LLC (hereinafter "the Defendant") hereby respectfully submits this memorandum concerning the pending motions in the above-captioned action.

The presently pending motions in this case are 1) the Plaintiff's motion for the appointment of a receiver, 2) the Plaintiff's motion to dismiss the Defendant's counterclaims, 3) the Defendant's motion to return this case to the general docket for jury cases, 4) the Defendant's motion to amend its answer and counterclaim, 5) the Defendant's motion to compel the Plaintiff to provide discovery responses, and 6) the Defendant's motion for a continuance of any bench trial set in this case.

THERE IS NO NOTE IN THIS CASE

The Plaintiff in this case is seeking mortgage foreclosure. The Plaintiff has attached to its complaint an unsigned note document, which it alleges is the note subject of this action. In the complaint, the Plaintiff claims the Defendant signed the note.

The Defendant did not sign the note, as the filed affidavit of Yvonne Jones shows. The Plaintiff has presented no affidavit or other matter to contradict this. Indeed, if there were a

signed note, the Plaintiff surely would have attached a copy of that signed note, not an unsigned document, to the complaint.

“A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 36-3-402.” S.C. Code Ann. § 36-3-401(a). Here, the claimed note was not signed at all. Accordingly, the Defendant is not liable on it. Id.

PLAINTIFF’S MOTION FOR RECEIVERSHIP SHOULD BE DENIED

The Plaintiff’s motion for the appointment of a receiver presupposes the existence of the claimed note and presupposes that the Defendant is in default of it. The Plaintiff has not shown either one of these things.

For a foreclosure plaintiff to get past the first step of the analysis of a motion for pre-judgment receivership, the plaintiff “must prove to the court that it has a contractual right to the court’s protection of the mortgaged property and/or its rents and profits.” Stanley H. McGuffin, “State Court Receivers” 2010 Master-in-Equity Bench/Bar CLE materials 105, 107 (S.C. Bar 2010). The rights of a mortgagee with respect to mortgaged property are “limited by the terms of the contract as found in the mortgage[.]” Hardin v. Hardin, 34 S.C. 77, 80, 12 S.E. 936, 937 (1891).

The Plaintiff’s motion makes the bare assertion that “Plaintiff’s mortgage on the Property (the “Mortgage) provides that it may seek appointment of a receiver upon any events of default under said Mortgage, which Mortgage is at this time in default.” For one thing, the mortgage document attached to the Plaintiff’s complaint does *not* say that it provides for the appointment of a receiver. For another, there is no valid mortgage here anyway, as there is no note (and, thus,

no debt) that the purported mortgage exists to secure. S.C. Code Ann. § 36-3-401(a); Union Natl. Bank of Columbia v. Cook, 110 S.C. 99, 108, 96 S.E. 484, 486 (1918) (“[t]he note is the principal and the mortgage is the incident”); Blackwell v. Blackwell, 289 S.C. 470, 472, 346 S.E.2d 731, 732 (Ct. App. 1986) (without a valid underlying debt, there is no valid mortgage). Further, the only purported default of the mortgage and assignment of rents documents (neither of which even mentions receivership) that the Plaintiff claims in support of its motion is default in payments under the (nonexistent) note. There is not even an affidavit about such a default in payments, or even an affidavit at all, that was served with the motion for receivership. See Rule 6(d), SCRCP (“[w]hen a motion is to be supported by affidavit, the affidavit shall be served with the motion”).

Since there is no note, the Plaintiff cannot establish what the terms of the purported loan are, much less that the Defendant is in default of those terms. The Plaintiff has made no factual showing that the Defendant is even in default of any agreement, nor has the Plaintiff shown the existence of an agreement that provides for a receiver to be appointed.

The Plaintiff has failed to satisfy the initial prong of the analysis on its motion.

Nor can the Plaintiff satisfy the second prong of the analysis. That analysis is as follows:

Once the court is satisfied that the mortgagee has a contractual right to have a receiver appointed for the mortgaged property, the mortgagee must prove that there is an “apparent necessity to appoint a receiver.” Greenwood Loan and Guarantee Assn. v. Childs, 67 S.C. 251, 254, 45 S.E. 167, 168 (1903). A South Carolina court should not appoint a receiver “[i]f the mortgagor is doing no injury or waste to the property and is threatening none” Seignious v. Pate, 32 S.C. 134, 138, 10 S.E. 880, 882 (1890). In a foreclosure action, the appointment of a receiver is given with great caution, and only when the mortgagee has no other adequate remedy.” Id.

McGuffin, supra at 107.

Here, the Plaintiff has not supported its motion with any factual material that tends to show that the Defendant is committing waste or doing injury to the property. In fact, the only factual material in the record about this is that the property is in no such danger. Even if the Plaintiff could satisfy the first prong of the analysis, which it cannot, it would still have failed to satisfy the second prong.

South Carolina law is replete with cases stating the principle that “[r]eceivership is a drastic course, allowed only under pressing circumstances and granted only with reluctance and caution.” Vasiliades v. Vasiliades, 231 S.C. 366, 376, 98 S.E.2d 810 (1957). It is settled law that “receivership is a drastic remedy.” Id. Whether to appoint a receiver is a decision “to be exercised with great circumspection.” Truesdell v. Johnson, 144 S.C. 188, 197, 142 S.E. 343 (1928) (quoting Pelzer v. Hughes, 27 S.C. 408, 3 S.E. 781, 785 (1887)). “The power to appoint a receiver should be exercised with great caution[.]” Kirven v. Lawrence, 244 S.C. 572, 579, 137 S.E.2d 764 (1964).

That a receiver should only be appointed upon an unusually strong showing of need is especially true with regard to requests for receivership prior to judgment in an action. In Pelzer v. Hughes, our Supreme Court noted that rule that “a receiver will not be appointed during the progress of a cause, unless there is the strongest reason to believe that the plaintiff is entitled to the relief demanded in his complaint, and there is danger that the property will be materially injured before the case can be determined.” 3. S.E. at 785. “A remote or past danger will not suffice as a ground for relief, but there must be a well grounded apprehension of immediate injury.” Brookshire v. Farmer’s Alliance Exch., 73 S.C. 131, 135 (1905).

The Plaintiff has not shown that its motion for the appointment of a receiver should be granted.

DEFENDANT SALON PROZ'S MOTION TO AMEND SHOULD BE GRANTED

Pursuant to Rule 15, SCRCP, leave to amend pleadings shall be liberally granted and freely given when justice so requires and the grant of the amendment would not work sufficient prejudice to the other party to deny the motion. E.g., Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct. App. 2005). The prejudice envisioned by the Rule is a lack of notice that the issues presented by the amended pleading are to be tried and lack of opportunity to refute those issues. Id.

The Defendant originally asserted the following defenses and counterclaims (in addition to denial of allegations by the Plaintiff):

1. Failure to state facts sufficient to constitute a cause of action;
2. Lack of notice;
3. Failure to provide sufficient right to cure;
4. Failure to properly serve the Defendant;
5. Insufficiency of process;
6. Breach of contract through breach of the covenant of good faith and fair dealing;
7. Slander of title;
8. Usury law;
9. Predatory lending; and
10. Unclean hands.

The Defendant seeks to assert the following defenses and counterclaims (in addition to denial of allegations by the Plaintiff) in its amended answer and counterclaim:

1. Waiver;
2. Unclean hands;

3. Estoppel;
4. Settlement through agreement to modify loan;
5. Failure to state facts sufficient to constitute a cause of action;
6. Statute of frauds;
7. Violation of the South Carolina Unfair Trade Practices Act;
8. Breach of contract (including, but not limited to, through breach of the covenant of good faith and fair dealing);
9. Breach of contract accompanied by fraudulent act;
10. Slander of title;
11. Libel; and
12. Negligent misrepresentation.

The Defendant's denial that a note was executed is common to both the original answer and counterclaim and the amended answer and counterclaim. Accordingly, the Plaintiff will suffer no prejudice in this regard.

If the Defendant's motion to amend is granted, it can be done in such a way that the Plaintiff will have the opportunity to prepare to face the issues presented by the Defendant's amended answer and counterclaim. Rule 15, SCRCP, requires that this be done even if that means a continuance delay of the trial of the case. The Rule provides that a continuance should be granted even when a motion to amend is made at trial to conform to the evidence if "reasonably necessary to enable the objecting party to meet such evidence." Certainly, a mere delay of trial does not warrant the denial of a pre-trial motion to amend. The Plaintiff will have an opportunity to explore and prepare for any new issues presented by the amended answer and counterclaim. The motion to amend should be granted.

THIS CASE MUST BE RETURNED TO THE GENERAL JURY DOCKET

The Defendant answered and counterclaimed in this foreclosure case, making a timely jury demand on at-law counterclaims. Later, the Plaintiff in this case simply sent the Clerk of Court a proposed Order of Reference, along with a motion to refer the case. Rather than calendaring the motion to be heard and letting a Circuit Judge determine whether this action is properly referable, the Clerk of Court signed and filed the Plaintiff's proposed Order of Reference.

The Clerk of Court has no power or authority to refer this action to the Master-in-Equity. Absent the Defendant's consent to reference, which is not present here, the Clerk of Court has no ability to refer an action in which claims other than for mortgage foreclosure are pled to the Master-in-Equity. Rule 53(b), SCRCP: As discussed above, claims other than for foreclosure were pending in this action at the time of Clerk's filing of the Order of Reference.

The Order of Reference was not issued by a judge, nor was there any hearing conducted to determine whether this action should be referred. This violated the guarantee of Due Process. The Order of Reference is void. Accordingly, it is of no effect and must be vacated.

This action is not and was not properly referable. The Master-in-Equity cannot conduct the mandatory, binding jury trial of the at-law claims in this action. "[A] defendant in an equity action, such as a mortgage foreclosure, has a right to a jury trial on a counterclaim that is legal and compulsory in character. . . . A counterclaim is compulsory if the counterclaim arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim. Two tests a court may use in determining whether a claim arises out of the same transaction or occurrence are whether the issues of fact and law raised by the claim and counterclaim are largely the same and whether there is any logical relation between the claim and the

counterclaim. A counterclaim is compulsory if the question posed by either test is answered affirmatively.” N.C. Fed. Sav. & Loan Assn. v. DAV Corp., 294 S.C. 27, 30-31, 362 S.E.2d 308, 310 (Ct. App. 1987) (internal citations and quotation marks omitted). Under Rule 53(b), SCRCF, the return of this action to the circuit court’s general docket for jury cases is required, as a jury demand has been made in the Defendant’s amended answer and counterclaim. The “return to the circuit court” described in Rule 53(b) is automatic, per the language of the Rule. It is not discretionary. If a decision is to be made concerning whether the Defendant’s legal counterclaims are compulsory (thus entitling the Defendant to a jury trial on them), that decision will need to be made by the circuit court after this action is returned to the circuit court’s general docket for jury cases per the mandatory language of Rule 53(b).

That said, under either its original answer and counterclaim or amended answer and counterclaim, the Defendant has plainly asserted at-law counterclaims that are compulsory. Here, even a cursory examination of the counterclaims subject of the answer and counterclaim and the proposed amended answer and counterclaim shows that they mostly involve whether the facts are as the Plaintiff claims they are, whether the Plaintiff is entitled to prevail in this action, and the events concerning the Plaintiff’s representations to the Defendant about the terms of the loan. The counterclaims bear a logical relation to the Plaintiff’s foreclosure claim and arise out of the same note and mortgage the Plaintiff seeks foreclosure of in this action. They concern whether the Plaintiff has any note and mortgage to enforce.

In an action in which there are both legal and equitable claims, South Carolina law requires that the legal issues subject to jury trial be determined by a jury before the Court can decide the equitable issues. The Court cannot conduct a trial of the foreclosure claim prior to the

final determination by a jury of the at-law claims in this action. Johnson v. S.C. Natl. Bank, 292 S.C. 51, 54-56, 354 S.E.2d 895, 897 (1987).

The Defendant's motion to return this case to the general docket for jury cases should be granted.

DEFENDANT SALON PROZ'S COUNTERCLAIMS SHOULD NOT BE DISMISSED

The ruling on a motion to dismiss under Rule 12(b)(6), SCRPC, for failure to state facts sufficient to constitute a cause of action must be based solely upon the allegations set forth in the pleading. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601 (1995). "The motion cannot be sustained if facts alleged and inferences reasonably deducible therefrom would entitle the [pleading party] to relief on any theory of the case. The question is whether in the light most favorable to [the pleading party], and with every doubt resolved in her behalf, the [pleading] states any valid claim for relief." Dye v. Gainey, 320 S.C. 65, 67-68, 463 S.E.2d 97, 98-99 (Ct. App. 1995).

The Plaintiff seeks dismissal of the Defendant's counterclaims because "[t]here is no fiduciary relationship between Plaintiff and Defendant"; however, the Defendant has not pled a claim for breach of fiduciary duty.

The second ground for dismissal the Plaintiff advances is that "Defendant's claim for Slander of Title, Usury Law and Predatory Lending are barred by the express terms of the agreements between the parties[.]" As discussed above, however, not only are these terms not admitted, the Plaintiff cannot even establish what the terms are. In any event, a bar on such grounds would be an affirmative defense of the Plaintiff's and not a proper ground for dismissal of a counterclaim.

The Plaintiff advances as a ground for dismissal that "Defendant's claim for Predatory Lending fails because all actions taken by Plaintiff were lawful and because the acts complained of are of private matters not affecting public interest[.]" That is not what the Defendant's pleadings allege, and whether this statement by the Plaintiff is true is a matter of fact to be determined by the evidence shown at trial, not a proper subject of a motion to dismiss.

(The Defendant does agree that unclean hands is a defense and not a counterclaim. That is why the Defendant has pled it as a defense in the amended answer and counterclaim.)

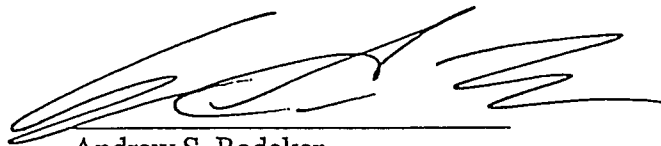
The Plaintiff's motion to dismiss the Defendant's counterclaims should be denied.

**THE MOTION TO COMPEL IS NOW MOOT,
AND THE MOTION FOR CONTINUANCE IS COVERED
IN THE WRITTEN MOTION**

After the Defendant moved to compel the Plaintiff to respond to interrogatories and requests to produce, the Plaintiff did so. Accordingly, this motion appears to be moot.

The Defendant's written motion for a continuance of any bench trial in this case addresses the issues subject of that motion. That motion is conditional, but, if any of the conditions occur, it should be granted.

Respectfully submitted,



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drew@harrisonfirm.com (email)
ATTORNEY FOR DEFENDANT
SALON PROZ, LLC

Columbia, South Carolina
October 30, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-40-7187

South Carolina Community Bank,

Plaintiff,

vs.

Salon Proz, LLC, Columbia
Empowerment Zone, Inc. d/b/a The
Columbia Empowerment Zone, and
Frank Mitchell,

Defendants.

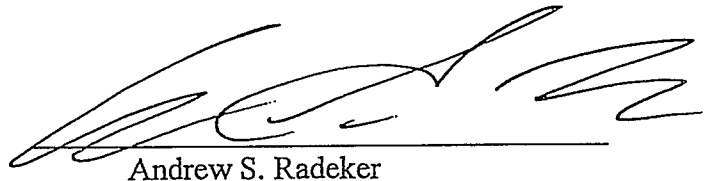
CERTIFICATE OF SERVICE

2012 OCT 31 PM 2:19
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

I, Andrew S. Radeker, an attorney with the law firm of Harrison & Radeker, P.A., attorneys for Defendant Salon Proz, LLC, do hereby certify that I have, on this the 30th day of October, 2012, served the foregoing document in the above-captioned action by depositing the same in the United States Mail, first class, postage prepaid, with the return address clearly noted, addressed as follows, to wit:

S. Nelson Weston, Jr., Esq.
Charles J. Webb, Esq.
Richardson, Plowden & Robinson, P.A.
P.O. Box 7788
Columbia, SC 29202



Andrew S. Radeker

January 23, 2012

RECEIVED
JAN 26 2012
MASTER-IN-EQUITY
RICHLAND COUNTY

The Honorable Jeanette McBride
Richland County Clerk of Court
P.O. Box 2766
Columbia, South Carolina 29202

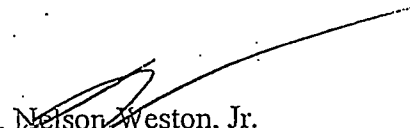
Re: South Carolina Community Bank v. Salon Proz, LLC et al
Civil Action No.: 2011-CP-40-7187
RPR File No.: 4286-147

Dear Ms. McBride:

Please find enclosed the original and one copy of the Motion to Refer and Order of Reference along with two checks in the amount of \$25.00 for filing in the above matter. Please file the original and return the clocked copy to me in the envelope provided.

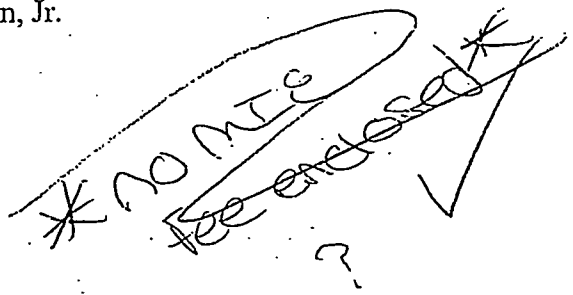
Thank you for your assistance in this regard. If you have any questions or comments, please call.

Yours very truly,


S. Nelson Weston, Jr.

SNW/clb
Enclosure
cc: Walter Taylor
Andrew A. Aun, Esq.

RECEIVED
JAN 31 2012
MASTER-IN-EQUITY
RICHLAND COUNTY


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FEB 13 2012
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RICHLAND COUNTY

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OCT 13 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Joseph M. Strickland, Master-in-Equity

Appellate Case No. 2014-002627
Common Pleas Case No. 2011-CP-40-7187

South Carolina Community Bank,.....Respondent,

v.

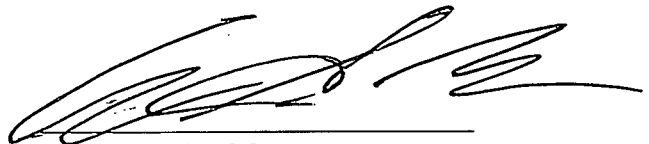
Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia
Empowerment Zone, and Frank Mitchell, Defendants,

Of which Salon Proz, LLC is the.....Appellant.

CERTIFICATE OF COUNSEL

I certify that the Record on Appeal contains all material proposed to be included
by any of the parties and not any other material.

Respectfully submitted,



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Attorney for Appellant