

The Supreme Court of South Carolina

Bank of North Carolina, Respondent,

v

Amy Breunig, Appellant

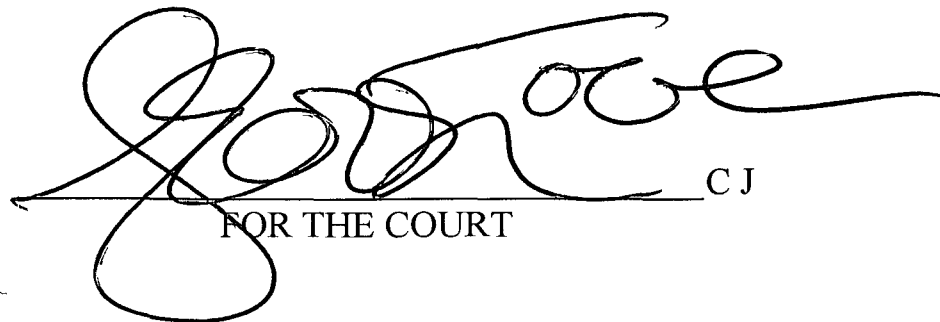
Appellate Case No 2011-200106

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules, this appeal is hereby certified for review by the South Carolina Supreme Court

Upon receipt of this order, the Court of Appeals is hereby directed to forward the case file, all records and briefs and any exhibits on file to this Court

IT IS SO ORDERED



C J
FOR THE COURT

Columbia, South Carolina

August 29, 2012

cc

William Isaac Diggs

Vonda Denise Hamilton

Stacy L Stanley

The Honorable Jenny Kitchings



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

April 20, 2012

Elizabeth Carter
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Carter

Per your conversation with Barbara Daniels enclosed please find the original Certificate of Counsel on the Final Brief in the above matter If you have any questions, please advise With kind regards, I am

Sincerely yours,

William Isaac Diggs

WID\

CC Stacy L Stanley, Esquire

SC Court of Appeals
APR 24 2012
Q... ..



3303 HIGHWAY 9 EAST LITTLE RIVER SC 29566 7825
PHONE 843 390 9111 LITIGATION FAX 843 390 9187 REAL ESTATE FAX 843 390 9188

April 23, 2012

VIA U S Mail

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
ATTN Elizabeth Carter
Post Office Box 11629
Columbia, South Carolina 29211

Re Bank of North Carolina, Respondent v Amy Breunig, Appellant
Case No 2009-CP-26-12374

Case Tracking # 2011200106

Dear Elizabeth

Pursuant to your conversation with my paralegal, please find enclosed the original and one copy of the Proof of Service in regard to the above-referenced case. This is a replacement of the Proof of Service mailed with the Final Brief of Respondent on April 13, 2012. If you have any questions, please feel free to contact me.

Sincerely,

V Denise Hamilton
Stacy L Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390-9111 – Tel
(843) 390-9187 – Fax
Attorneys for Respondent

Enclosure

RECEIVED
APR 24 2012
SC COURT OF APPEALS

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

For good cause having been shown, the time for serving and filing the Respondent's Final Brief in the above entitled matter is hereby extended until April 26, 2012

IT IS SO ORDERED

JOHN CANNON FEW, CHIEF JUDGE
For the Court

BY

Jenny A. Kitchings
CLERK

Columbia, South Carolina

cc William I Diggs, Esquire
V Denise Hamilton, Esquire
Stacy L Stanley, Esquire

FILED

4/11/12



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

March 26, 2012

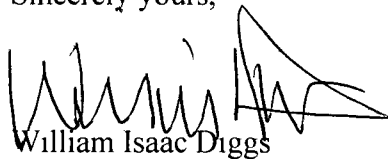
The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

Enclosed for filing please find sixteen (16) copies of the final Brief in the above matter along with our certificate of service showing service of same on opposing counsel. If you have any questions, please let me know. With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID\

CC Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire

RECEIVED

MAR 27 2012

SC Court of Appeals



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

March 7, 2012

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

RECEIVED

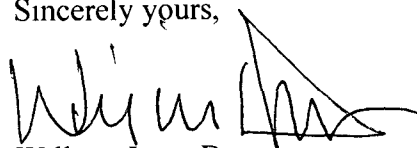
MAR 09 2012

SC Court of Appeals

Dear Ms Gee

Enclosed for filing please find sixteen (16) copies of the Record on Appeal in the above matter along with our certificate of service showing service of same on opposing counsel If you have any questions, please let me know With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID\

CC Stacy L Stanley, Esquire
V Denise Hamilton, Esquire



3303 HIGHWAY 9 EAST LITTLE RIVER SC 29566 7825
PHONE 843 390 9111 LITIGATION FAX 843 390 9187 REAL ESTATE FAX 843 390 9188

March 26, 2012

VIA U S Mail

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Bank of North Carolina, Respondent v Amy Breunig, Appellant
Case No 2009-CP 26-12374

Case Tracking # 2011200106

Dear Ms Gee

The Final Brief of Respondent is due to be filed and served on March 27, 2012. However, due to a heavier than anticipated case load for March I have not been able to complete the Final Brief. I am respectfully requesting a thirty (30) day extension in which to file the Final Brief. I have enclosed my firm check in the amount of \$25.00 representing the filing fee for this request.

By copy of this letter, I am notifying opposing counsel of this correspondence. If you have any questions please do not hesitate to contact me.

Sincerely,

V Denise Hamilton
Stacy L. Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390 9111 – Tel
(843) 390 9187 – Fax
Attorneys for Respondent

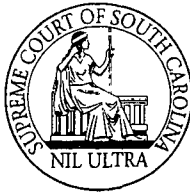
/vdh

Enclosures

cc William I. Diggs, Esquire (w/enclosure)

RECEIVED
MAR 27 2012
SC COURT OF APPEALS

3-27-12
4-26-12



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

March 2, 2012

William I Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Re Bank of NC v Breunig

Dear Mr Diggs

The following Order has been endorsed on your Petition for Writ of Supersedeas and Stay of Foreclosure Sale in the above entitled case matter

"Petition denied

s/ Jean H Toal C J
For the Court

March 02, 2012 "

Very truly yours,

Daniel E Shearouse
CLERK

DES/bfs

cc Stacy L Stanley, Esquire
~~Tanya~~ Amber Gee, Esquire

RECEIVED
MAR 05 2012
SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

INITIAL BRIEF OF RESPONDENT

Stacy L Stanley, Esquire
V Denise Hamilton, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

RECEIVED
FEB 17 2012
SC Court of Appeals

TABLE OF CONTENTS

Table of Authorities	3
Statement of Issue on Appeal	4
Statement of the Case	5-7
Facts	8-10
Standard of Review	11-12
Argument	
THE SPECIAL REFEREE DID NOT ERR IN DENYING APPELLANT’S MOTION FOR RELIEF FROM DEFAULT JUDGMENT AND STAY OF FORECLOSURE SALE AND ALLOWING THE FORECLOSURE PROCESS TO PROCEED	13-18
Conclusion	19

TABLE OF AUTHORITIES

CASES

<u>Bryson v Bryson</u> , 378 S C 502, 662 S E 2d 611 (Ct App 2008)	11
<u>Harbor Island Owners' Ass'n v Preferred Island Props., Inc.</u> , 369 S C 540, 633 S E 2d 497 (2006)	12
<u>ITC Commercial Funding, LLC v Crerar</u> , 393 S C 487, 713 S E 2d 335 (Ct App 2011)	12, 17-18
<u>In re Estate of Weeks</u> , 329 S C 251, 495 S E 2d 454 (Ct App 1997))	12
<u>Jones v Daley</u> , 363 S C 310, 609 S E 2d 597 (Ct App 2005)	11
<u>Mellen v Lane</u> , 377 S C 261, 659 S E 2d 236 (Ct App 2008)	11
<u>Mitchell Supply Co. v Gaffney</u> , 297 S C 160, 375 S E 2d 321 (Ct App 1988)	12
<u>Richardson v P V, Inc.</u> , 383 S C 610, 682 S E 2d 263 (2009)	12
<u>Roberson v Southern Finance of South Carolina, Inc.</u> , 365 S C 6, 615 S E 2d 112 (2005)	11, 12
<u>Rodriguez v Gutierrez</u> , 391 S C 323, 705 S E 2d 94 (Ct App 2011)	17
<u>Sundown Operating Co v Intedge Indus., Inc.</u> , 383 S C 601, 681 S E 2d 885 (2009)	11-12, 18
<u>White Oak Manor, Inc v Lexington Ins Co</u> , 394 S C 375, 715 S E 2d 383 (Ct App 2011)	12

OTHER AUTHORITIES

Administrative Order No 2011-05-02-01 re Mortgage Foreclosure Actions	6,7,13,14,16,17
Rule 220(c), SCACR	19
Rule 53(c), SCRCP	11

STATEMENT OF ISSUE ON APPEAL

DID THE SPECIAL REFEREE ERR IN DENYING APPELLANT'S
MOTION FOR RELIEF FROM DEFAULT JUDGMENT AND STAY OF
FORECLOSURE SALE AND ALLOWING THE FORECLOSURE
PROCESS TO PROCEED?

STATEMENT OF THE CASE

On December 23, 2009, Respondent Beach First National Bank n/k/a Bank of North Carolina filed a Lis Pendens, Summons and Foreclosure Complaint against Appellant Amy Breunig. Service of the Lis Pendens, Summons and Complaint of Respondent was made on Appellant on January 7, 2010, as evidenced by the Affidavit of Service. Appellant did not file an Answer. On March 8, 2010, an Affidavit of Default was filed by Respondent.

A right to cure was sent to Appellant by Respondent but to no avail. A foreclosure hearing was held on June 11, 2010 before the Honorable Cynthia Graham Howe, at which the Appellant and the Respondent both appeared. Finding in the Respondent's favor, the court issued its Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010. Pursuant to the Notice of Sale signed by Judge Howe, the property was to be sold on August 2, 2010. On August 3, 2010, an Order substituting Bank of North Carolina as Plaintiff was entered.

Prior to the sale, the parties verbally agreed Appellant would be allowed to make up delinquent payments. Subsequently, the parties memorialized the agreement and entered into a Forbearance Agreement dated December 13, 2010 and an amended Forbearance Agreement on January 31, 2011 wherein Appellant agreed to make monthly payments of \$1,607.28.

Due to Appellant's default on the Forbearance Agreement and Note which matured on May 1, 2011, Respondent proceeded with the foreclosure in this action, as well as three other foreclosures against Appellant. On June 7, 2011, Respondent mailed a letter to the Master in Equity advising that the parties had previously entered into a Forbearance Agreement, Appellant had defaulted under the terms of the agreement, enclosing a

Supplemental Master's Report and Judgment of Foreclosure and Sale, Amended Notice of Sale, Amended Affidavit of Attorney's Fees, and Certificate of Mailing and asking the Master to sign the Report and Notice of Sale. Because it had been over a year since the previous foreclosure hearing in front of Judge Howe, the Master in Equity required Respondent to schedule another hearing.

The second foreclosure hearing was held on June 30, 2011 before the Honorable Ralph Stroman, Special Referee. Appellant appeared at the hearing with her attorney, William I. Diggs, who had filed a Motion for Relief from Default and Stay of Proposed Foreclosure Sale.

At the hearing, Appellant argued that one of the four properties being foreclosed was her residence and that, with regard to her residence, Respondent had not complied with the Supreme Court's Administrative Order dated May 2, 2011, Order No. 2011-05-02-01. Although Respondent initially wanted the property to be sold at the August 1, 2011 foreclosure sale, the parties agreed to extend the sale of the property until October 3, 2011.

Special Referee Stroman memorialized this agreement in his Supplemental Master's Report and Judgment of Foreclosure and Sale dated July 13, 2011, which stated: "Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011." Judge Stroman denied Appellant's motion for relief from default and stay of foreclosure sale and ordered the property be sold at the October 3 foreclosure sale. In the Order, Judge Stroman stated: "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010. The parties further agreed that the foreclosure sale would be scheduled

for October 3, 2011 ” Thereafter, Judge Stroman denied Appellant’s motion for reconsideration and ordered “that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011 ” Appellant served the Notice of Appeal on September 27, 2011

Appellant filed a Petition for Supersedeas and Stay of Foreclosure Sale of Appellant’s Residence Scheduled for October 3, 2011 Chief Judge John Cannon Few issued an Order on September 30, 2011 temporarily granting Appellant’s Petition for Supersedeas and staying the foreclosure sale pending the filing of a Return by Respondent On October 13, 2011, Respondent filed a Return and, thereafter, Appellant filed a Reply On October 24, 2011, Chief Judge Few issued an Order on behalf of the Court denying Appellant’s Petition for Supersedeas and concluding

We note this foreclosure action began before the Administrative Order was signed Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant’s rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights

Appellant’s petition for panel review of the Order denying Appellant’s Petition for Supersedeas issued by Chief Judge Few was denied by a full panel on November 16, 2011

FACTS

Appellant Amy Breunig, made, executed and delivered unto Respondent Beach First National Bank n/k/a Bank of North Carolina, a certain Promissory Note in writing, dated April 18, 2005 by which Appellant promised to pay to Respondent the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Additionally, on April 18, 2005, in order to secure the above-referenced Promissory Note, Appellant delivered to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486 [Compl , p 1-2, Exh A,B, Suppl Master's Report,p 2]

Appellant also made, executed and delivered unto Respondent a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which Appellant promised to pay to Respondent the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum. On that same date, in order to secure the above-referenced Home Equity Variable Draw Agreement, Appellant did deliver to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889. Thereafter, Appellant made, executed and delivered unto Respondent a certain Mortgage and Note Modification Agreement in writing dated January

28, 2008 by which the interest rate of the Home Equity Variable Rate Agreement was modified [Compl , p 2, Exh D-F, Suppl Master's Rpt, p 3]

On May 1, 2008, Appellant made, executed and delivered unto Respondent a certain renewal Note in writing by which Appellant promised to pay to Respondent the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum This loan matured on May 1, 2011 [Compl , p 2, Exh C, Suppl Master's Rpt , p 2]

Appellant defaulted on the loan in 2009 [Compl , p 3, Forbearance Agree , p 1] Although a notice of default and right to cure was sent to Appellant by Respondent, Appellant failed to cure the default [Compl , p 3, Suppl Master's Rpt , p 3] Thereafter, Respondent filed this foreclosure action against Appellant When Appellant did not answer, Respondent filed an Affidavit of Default [Aff Of Default]

After the foreclosure hearing on June 11, 2010, but before the proposed sale on August 2, 2010, the parties verbally agreed Appellant would be allowed to make up delinquent payments The parties thereafter memorialized this verbal agreement by entering into a Forbearance Agreement dated December 13, 2010 and an amended Forbearance Agreement on January 31, 2011 wherein Appellant agreed to make monthly payments of \$1,607 28 [Forbearance Agreement, p 2, Transcript, p 11, l 17-22, p 13, l 8-22, p 24, l 6-17, App Second Pet for Supersedeas, p 2,3]

In her Brief, Appellant contends she signed a "global" Forbearance Agreement involving four different foreclosure cases [App Br 9] However, contrary to Appellant's

assertion, she signed four separate Forbearance Agreements. Thus, a separate Forbearance Agreement was executed for each loan [Forbearance Agreement, p 1]

Appellant did not make payments in accordance with the Forbearance Agreement.¹[Suppl. Testimony, p 1] As a result, Appellant was in default of the Forbearance Agreement [Suppl. Testimony, p 1]. The Forbearance Agreement provided that, if Appellant defaulted under the Forbearance Agreement, the Respondent could resume the foreclosure proceeding at the point at which it was stopped prior to the Forbearance Agreement [Forbearance Agreement, p 2].

Due to Appellant's default on the Forbearance Agreement and Note which matured on May 1, 2011, Respondent proceeded with the foreclosure in this action, as well as three other foreclosures against Appellant. This appeal emanates from Special Referee Stroman's Order Denying Defendants' Motion for Relief from Default and Stay of Foreclosure Sale.

¹ In her brief Appellant states Defendant has since denied that she was delinquent. [App Br 9] Respondent disagrees with this contention. Moreover, at the hearing Appellant did not present any

STANDARD OF REVIEW

Appellant appeals from the Order of a Special Referee denying Appellant's Motion for Relief from Default Judgment Pursuant to Rule 53(c), SCRCP, a special referee "shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter " Rule 53(c), SCRCP, see also Mellen v Lane, 377 S C 261, 659 S E 2d 236 (Ct App 2008) (quoting Rule 53(c), SCRCP) Review of a Special Referee's decision by the Court of Appeals is limited to the correction of errors of law, and the appellate court will not disturb the referee's factual findings that have some evidentiary support See Bryson v Bryson, 378 S C 502, 662 S E 2d 611 (Ct App 2008), Jones v Daley, 363 S C 310, 609 S E 2d 597 (Ct App 2005), see also Roberson v Southern Finance of South Carolina, Inc., 365 S C 6, 615 S E 2d 112 (2005) (noting that findings of special referee are binding on appellate court unless wholly unsupported by evidence or controlled by error of law)

"The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c) " Sundown Operating Co v Intedge Industries, Inc., 383 S C 601, 608, 681 S E 2d 885, 888 (2009), see also Roberson, 365 S C at 9-10, 615 S E 2d at 114 (stating standard for granting relief from entry of default is good cause under Rule 55(c), while standard is more rigorous for granting relief from default judgment under Rule 60(b)) Relief from default judgment under Rule 60(b), SCRCP, "requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party '" Sundown Operating Co, 383 S C at 608, 681 S E 2d at 888 (quoting

evidence that she was current and not in default of the forbearance agreement

Rule 60(b), SCRCP) “The party seeking to set aside the judgment has the burden of presenting evidence proving the facts essential to entitle him to relief” ITC Commercial Funding, LLC v Crerar, 393 S C 487, 495, 713 S E 2d 335, 339 (Ct App 2011) (internal quotation marks omitted)

The decision whether to set aside a default judgment lies solely within the sound discretion of the trial judge Harbor Island Owners’ Ass’n v Preferred Island Props , Inc , 369 S C 540, 633 S E 2d 497 (2006), White Oak Manor, Inc v Lexington Ins Co, 394 S C 375, 715 S E 2d 383 (Ct App 2011) The trial court’s decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion Richardson v P V , Inc , 383 S C 610, 682 S E 2d 263 (2009), Mitchell Supply Co, v Gaffney, 297 S C 160, 375 S E 2d 321 (Ct App 1988) An abuse of discretion occurs when the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support Roberson, 365 S C at 9, 615 S E 2d at 114, In re Estate of Weeks, 329 S C 251, 495 S E 2d 454 (Ct App 1997)

ARGUMENT

THE SPECIAL REFEREE DID NOT ERR IN DENYING APPELLANT'S MOTION FOR RELIEF FROM DEFAULT JUDGMENT AND STAY OF FORECLOSURE SALE AND ALLOWING THE FORECLOSURE PROCESS TO PROCEED

Appellant claims the Special Referee erred when he “allowed the foreclosure process to proceed when the Respondent had not followed the Court’s Administrative Order of May 2, 2011 ”[App Br 7] This assertion has no merit

First, it is important to note that the Appellant conceded in her Petition to the Full Panel for Supersedeas and Stay of Foreclosure Sale that, “unless a stay is granted during the pendency of this appeal, the appeal itself will become moot ”[Second Pet for Super , p 5] Because, as Appellant concedes, the issue raised in this appeal is moot, this Court should dismiss the appeal

Second, the Administrative Order dated May 2, 2011 is not applicable to the instant case The Master in Equity issued the Master’s Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010, almost one year prior to the date the Administrative Order was issued on May 2, 2011 In addition, the first mortgage loan matured on May 1, 2011, eight days prior to the effective date of the Administrative Order [Compl , Exhibit C] Thus, Respondent was not required to serve Appellant with a Notice of Foreclosure Intervention

The second foreclosure hearing held on June 30, 2011 occurred at the Master in Equity’s direction because the previous hearing had been held over a year earlier Judge Stroman issued a Supplemental Master’s Report and Judgment of Foreclosure and Sale on

August 1, 2011 In his Order Denying Defendant's Motion for Relief from Default, he stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 "[Order, p 1] Accordingly, the default date as determined by the Special Referee was almost one year prior to the May 2, 2011 Administrative Order

Third, Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance on May 2, 2011 Respondent entered into a Forbearance Agreement with Appellant in an effort to assist Appellant in keeping her property Respondent gave Appellant an opportunity to maintain the payments on her loan pursuant to the Forbearance Agreement However, Appellant violated the Forbearance Agreement by defaulting on her payments [Suppl Test , p 1] Appellant was under the terms of the Forbearance Agreement at the time the Administrative Order was issued The Forbearance Agreement provided

Upon and after the occurrence of an event of default all amounts then remaining unpaid under the loan documents and this Agreement shall be immediately due and payable and Lender shall be free to exercise any or all rights and remedies provided for under the loan documents, including, but not limited to continuance of the foreclosure action By entering into this agreement, Lender shall in no way be considered to have waived or have been estopped from exercising any or all of its rights and remedies under the loan documents Nothing contained herein shall constitute a waiver of any or all of the Lender's rights or remedies including the right to proceed with the

foreclosure action This Agreement shall not be construed as a discontinuance of the foreclosure action and any forbearance by the Lender and acceptance of monies hereunder shall not be deemed an estoppel, prejudice or waiver of Lender's right to proceed with the foreclosure action

It is also agreed that the Lender may, without further notice to the Borrower, proceed ex parte with all further proceedings in the foreclosure action, inclusive of the Order of Reference, preparation of Master's Report and entering final Judgment of Foreclosure and Sale, except that the Lender agrees to forbear in scheduling the foreclosure sale as long as an event of default does not exist In the event there is an event of default, the premise will be sold at a foreclosure sale for the unpaid balance of the monies due to Lender In such event, notice of sale and notice of surplus monies shall be given to the Borrower [Forbearance Agree , p 2]

Thus, upon execution of the Forbearance Agreement, which was a "foreclosure intervention," Appellant agreed that upon default, Respondent could continue the foreclosure action from the point where the foreclosure action stopped just prior to the execution of the Forbearance Agreement Significantly, in her second Petition for Supersedeas and Stay of Foreclosure Sale, Appellant refers to the forbearance agreement as an "intervention "[Second Petition, p 2,9]

Prior to the second foreclosure hearing on June 30, 2011, the first mortgage loan matured on May 1, 2011 Therefore, Appellant was further in default for failure to pay off the loan as required in the Note

Finally, at the June 30, 2011 hearing, although Respondent initially wanted the property to be sold at the August 1, 2011 foreclosure sale, the parties agreed to extend the sale of the property until October 3, 2011. Judge Stroman memorialized this agreement in his Supplemental Master's Report and Judgment of Foreclosure and Sale dated July 13, 2011, which declared "Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011." (Emphasis added) Furthermore, in Judge Stroman's Order denying Appellant's motion for relief from default and stay of foreclosure sale, he stated "The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011." (Emphasis added) [Order, p 1]

Appellant made no payments within the sixty-day period prior to the scheduled October 3 foreclosure sale. This sixty-day extension was essentially a second "foreclosure intervention." Since Respondent had already provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time, Respondent contends it was not required to offer a third foreclosure intervention to Appellant. Respondent satisfied the spirit and intent of the Administrative Order through the Forbearance Agreements and subsequent sixty-day extension before the specific sale date agreed to by Appellant.

In her Brief, Appellant claims she "neither requested a delay of sixty days nor did she ever agree to a sale of her residence." Appellant further states "We believe Respondent's counsel is referring to a conference between counsel and Judge Stroman in Chambers before the matter had concluded" and at which "neither party was present." [App Br 14] However, contrary to Appellant's assertion and as articulated in Judge Stroman's orders, Appellant

specifically agreed that the foreclosure sale would be scheduled for October 3, 2011. In her Motion for Reconsideration, Appellant does not dispute or contest this finding by Judge Stroman [Motion for Recon , p 1]. Thus, this issue is not preserved. See Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998) (stating an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review). Moreover, in her brief, Appellant admits “there was an offer made by Respondent’s counsel to delay the sale[]” [App Br 14].

Although the Administrative Order was not in effect at the time the foreclosure proceeding was initiated, Respondent nonetheless provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time. Respondent asserts it was not required to offer a third foreclosure intervention to Appellant.

In the instant case, Appellant failed to demonstrate a particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation or other misconduct sufficient to entitle her to relief from default judgment. At the hearing in front of Judge Stroman, Appellant’s counsel argued “we’ve got justification of good cause because of [Appellant’s] injury” [Record, p 22, l 5-6]. Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.2d 94 (Ct. App. 2011). The standard for granting relief from a default judgment under Rule 60(b), which is the applicable standard in this case, is more rigorous than the “good cause” standard established in Rule 55(c). See ITC Commercial Funding, LLC v. Crerar, 393 S.C. 487, 713 S.E.2d 335 (Ct.

App 2011) “The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality” than an entry of default Sundown Operating Co v Intedge Industries, Inc., 383 S C 601, 608, 681 S E 2d 885, 888-89 (2009)

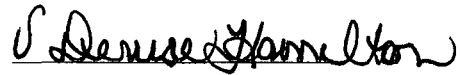
Accordingly, the Special Referee did not err in denying Appellant’s Motion for Relief from Default and Stay of Foreclosure Sale and allowing the foreclosure process to proceed

CONCLUSION

Because the Special Referee committed no errors of law and there is ample support in the record for the Special Referee's factual findings in favor of Respondent, this Court should affirm the decision of the Special Referee. Moreover, an appellate court may affirm any ruling, order, or judgment upon any ground appearing in the Record on Appeal. Rule 220(c), SCACR. Accordingly, for the reasons argued above, this Court should affirm the decision of the Special Referee.

February 16, 2012

Respectfully submitted,



Stacy L. Stanley
V. Denise Hamilton
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

Other Counsel of Record

William Isaac Diggs
Law Offices of William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
(843) 626-4243
Attorney for the Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

RECEIVED
FEB 17 2012
SC Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

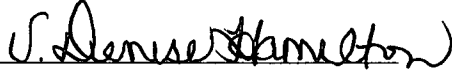
Respondent proposes the following be included in the Record on Appeal

- 1 Lis Pendens, Summons and Complaint with attached Exhibits,
- 2 Affidavit of Default,
- 3 Master's Report and Judgment of Foreclosure and Sale and Notice of Sale dated
July 7, 2010,
- 4 Testimony of Johnny Brown, Vice-President/Litigation Manager of Respondent,
from foreclosure hearing before Judge Howe on June 11, 2010,
- 5 Form 4 Judgment in a Civil Case dated July 7, 2010
- 6 Certification of Mortgagor Non-Compliance,
- 7 Letter to Master in Equity dated June 7, 2011,
- 8 Appellant's Motion for Relief from Default, along with attached Affidavit,
- 9 Transcript of Hearing held June 30, 2011 in front of Special Referee Ralph
Stroman, pages 4-37,
- 10 Supplemental Testimony of Johnny Brown with attached Forbearance Agreement
(Exhibit A),
- 11 Supplemental Master's Report and Judgment of Foreclosure and Sale dated July
13, 2011,

12 Form 4 Judgment in a Civil Case dated July 13, 2011,
13 Amended Notice of Sale dated August 1, 2011,
14 Order Denying Defendant's Motion for Relief from Default and Stay of
Foreclosure Sale entered August 1, 2011,
15 Appellant's Motion for Reconsideration of Order Entered August 1, 2011,
16 Order Denying Defendant's Motion for Reconsideration of Judge Stroman's
August 1, 2011 Order,
17 Temporary Order granting Supersedeas,
18 Appellant's Petition for Supersedeas and Stay of Foreclosure Sale filed with the
Court of Appeals,
19 Respondent's Return to Petition for Supersedeas and Stay,
20 Order of Judge Few denying Supersedeas
21 Appellant's Petition for Full Panel Review of Order Denying Supersedeas
22 Respondent's Return to Petition for Full Panel Review of Order Denying
Supersedeas,
23 Order of Full Panel affirming Judge Few's denial of Supersedeas

I certify that this designation contains no matter which is irrelevant to this appeal

February 16, 2012


Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

RECEIVED
FEB 17 2012
SC Court of Appeals

Bank of North Carolina,

Respondent,

v

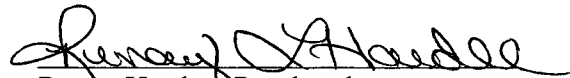
Amy Breunig,

Appellant

PROOF OF SERVICE

I, Renay Hardee, Paralegal with Stanley Law Firm, hereby certify that I have served the Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal on Appellant Amy Breunig by depositing a copy of it in the United States Mail, postage prepaid, on February 16, 2012, addressed to her attorney of record, William I Diggs, 1700 Oak Street, Suite D, Myrtle Beach, South Carolina 29577

Dated February 16, 2012



Renay Hardee, Paralegal
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390-9111 – Tel
(843) 390-9187 – Fax



3303 HIGHWAY 9 EAST LITTLE RIVER SC 29566 7825
PHONE 843 390 9111 LITIGATION FAX 843 390 9187 RFAL ESTATE FAX 843 390 9188

February 16, 2012

VIA U S Mail

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Bank of North Carolina, Respondent v Amy Breunig, Appellant
Case No 2009-CP-26-12374

Case Tracking # 2011200106

Dear Ms Gee

Enclosed for filing please find the original Initial Brief of Respondent with regard to the above-referenced matter Also included is the Proof of Service and Designation of Matter to be Included in the Record on Appeal

Please file the original and return a filed copy to me in the self-addressed, stamped envelope provided

By copy of this letter, I am serving the same upon opposing counsel

Sincerely,

Stacy L. Stanley
V Denise Hamilton
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390 9111 – Tel
(843) 390-9187 – Fax
Attorneys for Respondent

/vdh

Enclosures

cc William Isaac Diggs, Esquire (w/enclosure)
Johnny Brown (w/enclosure)

RECEIVED
FEB 17 2012
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

INITIAL BRIEF OF APPELLANT

William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR APPELLANT AMY
BREUNIG**

RECEIVED

JAN 19 2012

SC Court of Appeals

TABLE OF CONTENTS

Table of Contents	2
Table of Authorities	3
Statement of Issues on Appeal	4
Statement of the Case	5
Standard of Review	6
 Argument I	 7
Did the trial court commit error when it allowed the foreclosure process to proceed when the Respondent had not followed the Court's Administrative Order of May 2, 2011, in this residential foreclosure case?	
 Conclusion	 15

TABLE OF AUTHORITIES

Cases	Pages
<i>Hayne Fed Credit Union v Bailey</i> , 327 S C 242, 248, 489 S E 2d 472, 475 (1997)	6
<i>Lewis v Lewis</i> , 392 S C 381, 388-89, 709 S E 2d 650, 653-54 (2011)	6
<i>Pinckney v Warren</i> , 344 S C 382, 387, 544 S E 2d 620, 623 (2001)	7
<i>Regions Bank v Wingard Properties Inc</i> , 394 S C 241, 248-49, 715 S E 2d 348 (Ct App 2011	7
 Other Authorities	
Administrative Order dated May 2, 2011	passim
 SCRCP 43	 14

STATEMENT OF ISSUE ON APPEAL

- I Did the trial court commit error when it allowed the foreclosure process to proceed when the Respondent had not followed the Court's Administrative Order of May 2, 2011, in this residential foreclosure case?

STATEMENT OF THE CASE

On December 23, 2009, plaintiff filed a Notice of Lis Pendens along with civil action 09-CP-26-12374, seeking to foreclose on Appellant's residence. Service was effectuated on January 7, 2010. On March 8, 2010, an Affidavit of Default was filed by plaintiff's attorney. On July 13, 2010, Testimony of one, Johnny Brown, was filed with the trial court along with a Notice of Sale of 3307 Palm Street. A Master's Report and Judgment of Foreclosure and Sale, and a Judgment in a Civil Case Form 4 were also filed. On August 4, 2010, an Order substituting Plaintiff was entered. However, a forbearance agreement was entered following the July, 2010, filings.

Thereafter, plaintiff alleged that Appellant had again fallen delinquent on the residential account. Respondent did not re-file its action, but sought a new foreclosure hearing and sales date. Appellant has since denied that she was delinquent. Respondent scheduled a foreclosure hearing with the Master in Equity for June 30, 2011. Prior to the hearing date, on June 27, 2011, Appellant filed a Motion for Relief from Default and Stay of Proposed Sale which was then tentatively scheduled for July 5, 2011. A hearing was held before the Honorable Ralph P. Stroman, Special Referee, on June 30, 2011. At the hearing, Defendant argued that one of four (4) properties being foreclosed on by Respondent at that time was her residence and that the Plaintiff had not complied with the Supreme Court's order of May 2, 2011, with regards to that property. An order was entered on August 1, 2011, by Special Referee, Stroman, denying defendant's motion for relief from default.

A motion to reconsider was timely filed on August 16, 2011, by defendant and Judge Stroman denied that motion by order entered September 2, 2011. Written notice of

the entry of the order of denial was received by counsel on September 12, 2011, and Defendant served a notice of appeal on September 27, 2011. An order was entered which temporarily stayed the sale of Appellant's residence by Chief Judge Few but that order was lifted on October 24, 2011. An application for stay was thereafter denied by a full panel on November 16, 2011. Presently, there is no scheduled date of sale to Appellant's knowledge.

STANDARD OF REVIEW

A mortgage foreclosure is an action in equity *Hayne Fed Credit Union v Bailey*, 327 S C 242, 248, 489 S E 2d 472, 475 (1997) The appellate court reviews factual findings and legal conclusions in an equitable action de novo *Lewis v Lewis*, 392 S C 381, 388-89, 709 S E 2d 650, 653-54 (2011) However, the de novo review does not require an appellate court to disregard the findings of the trial court or to ignore the fact that the trial court is in the better position to assess the credibility of the witnesses *Pinckney v Warren*, 344 S C 382, 387, 544 S E 2d 620, 623 (2001) Moreover, the appellant is not relieved of the burden of convincing the appellate court that the trial court committed error in its findings *Id* at 387-38, 544 S E 2d at 623 Consequently, a reviewing court will affirm the findings of the trial court in an equity case unless the appellant satisfies this court that the preponderance of the evidence is against the findings of the trial court *Lewis* at 388-89, 709 S E 2d at 653-54 *Regions Bank v Wingard Properties Inc* 394 S C 241 248-49 715 S E 2d 348 (Ct App 2011

ARGUMENT I

Did the trial court commit error when it allowed the foreclosure process to proceed when the Respondent had not followed the Court's Administrative Order of May 2, 2011, in this residential foreclosure case? (Question I)

Defendant owned several business properties, some of which were financed by plaintiff On May 14, 2008, Defendant was involved in a motor cycle collision She suffered traumatic brain injury While defendant was not hospitalized for an extended period of time, the injury did prohibit her thereafter from effectively running her

businesses She experienced trouble in keeping up with various mortgage payments, primarily as a result of her injury as opposed to problems with cash flow **R 8, line 20 – 10, line 18**

By the time of this hearing, June 30, 2011, Respondent had four (4) foreclosure hearings simultaneously pending against the Appellant Three of those cases, nos 2010-CP-26-318, 2009-CP-26-12375, and 2009-CP-26-12376 involved commercial properties, and case 2009-CP-26-12374 involved Appellant's residence All four cases were set for hearing at the same time, although the cases had not been consolidated **R 5, lines 7-19**

Regarding Appellant's residence, on April 18, 2005, Appellant executed a note in the amount of \$255,450 and secured it with a mortgage in favor of plaintiff's predecessor in interest To settle any questions about this being Appellant's residence, (Respondent had initially denied this was a residence) the mortgage identified the property as lots 11 and 12 in the Windy Hill section of North Myrtle Beach, and having a street address of 3307 Palm Street On February 9, 2007, Appellant executed another mortgage on the same property which was given to secure a revolving line of credit This was a Home Equity agreement and it extended a line of credit up to \$135,000 00 with a maturity date of February 9, 2022 On January 28, 2008, Appellant executed a new Mortgage Note and Modification regarding the property On May 1, 2008 Appellant executed a renewal note in the amount of \$246,705 68

On December 23, 2009, plaintiff filed a Notice of Lis Pendens along with civil action 09-CP-26-12374 A hearing was held on July 11, 2010 on the four actions noted above Respondent was given judgment in the cases and permitted to sell all four properties However, following the July, 2010, hearing, a forbearance agreement was

reached by the parties. That global agreement involved all of the four (4) foreclosure cases noted above between these parties and others associated with this Defendant. Defendant paid approximately fifty eight thousand dollars on the various notes as a result of that agreement.¹

However, in 2011, plaintiff alleged that defendant again had fallen delinquent on the residential account and the three (3) commercial accounts, and sought a foreclosure hearing and sales date for the four (4) properties. Defendant has since denied that she was delinquent. Plaintiff scheduled a foreclosure hearing on the four pending actions for June 30, 2011. On June 27, 2011, Defendant filed a Motion for Relief from Default and requested a Stay of Proposed Sale then tentatively scheduled for July 5, 2011. A hearing was held before the Honorable Ralph P. Stroman, Special Referee, on June 30, 2011. At the hearing Defendant argued that one of the four (4) properties being foreclosed was her residence and that the Plaintiff had not complied with the Supreme Court's order of May 2, 2011, with regards to that property. **R 21, lines 3-18**. Notwithstanding that fact, an order was entered on August 1, 2011, by Special Referee, Stroman, denying defendant's motion for relief from default.

A motion to reconsider was timely filed on August 16, 2011, by defendant and Judge Stroman denied that motion by order entered September 2, 2011. Written notice of the entry of the order of denial was received by counsel on September 12, 2011, and Defendant served a notice of appeal on September 27, 2011.

¹ Respondent acknowledges there was a forbearance agreement but counsel asserts the agreement was entered into on January 31, 2011. **R 24, lines 8-17**. Appellant asserts that the agreement was entered into in principle at the June 11, 2010 hearing and went into effect immediately thereafter.

Discussion

On June 14, 2011, plaintiff's counsel executed what is entitled a "Certification of Mortgagor Non-Compliance (Administrative Order 2011-05-02-01)" The certificate states the following

The Plaintiff by and through its undersigned attorney does hereby certify as follows

- 1) That this is an action for the foreclosure of owner occupied real property
- 2) That pursuant to Supreme Court Administrative Order 2011-05-02-01

- a The Mortgagor entered into a Forbearance Agreement with the Plaintiff or [sic] about January 31, 2011 as a part of a mortgage intervention plan to assist the Mortgagor in keeping her property
- b The Mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention

This Certification does not comply with the Court's Administrative Order, we submit The particular intervention process referenced by plaintiff's counsel predated the Court's Administrative Order of May 2, 2011

Respondent's Non-Compliance with the Administrative Order

Enumerated Factors a – e

The Mortgagor must be provided with a notice of the Mortgagor's right to foreclosure intervention This was not done in this instance Further, all proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention This Order does not exempt cases in which prior intervention efforts have been undertaken in the past The Order provides

that, “No foreclosure hearing or foreclosure sale may be held in the foreclosure action, *inter alia*, until the Mortgagee’s attorney certifies

- a) that the Mortgagor has been served with a notice of the Mortgagor’s right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation,

The plaintiff has not complied with this section of the Order. As noted above, plaintiff’s counsel has apparently relied on the negotiation process that plaintiff admits was conducted *prior* to the Court’s Order of May 2, 2011. Further the Order requires

- b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention,

Counsel’s *certification* provided in this instance fails to allege that all of the documents submitted by the mortgagor have been evaluated in order to determine her eligibility for intervention. Further the Order requires plaintiff to show the Court

- (c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor’s loan or personal circumstances for consideration by the Mortgagee,

Defendant (mortgagor) has not been provided with such an opportunity, and she was never given notice of such a right subsequent to the Court’s Administrative Order. The plaintiff did not comply with this requirement. Further, the Order requires particular standards to be applied to the individual case. The Order states

- (d) [mortgagee must show] that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process,

The plaintiff has not shown the Court that the defendant does not qualify for a loan modification or other means of loss mitigation in accordance with any standards applicable to the mortgage

loan. The defendant was not given the opportunity to reach any other agreement on this residential property foreclosure. The certification by plaintiff's counsel states only that the mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention."

Lastly, the Administrative Order deals with the intervention denial process. The order states,

- (e) [mortgagee must show] that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor, provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file *and serve an answer or other response to the Mortgagee's summons and complaint*

Emphasis added. This requirement was wholly omitted by the plaintiff.

Defendant was never provided with an opportunity to file an answer after the alleged denial. Moreover, in a motion seeking relief from an alleged default, defendant submitted an answer that showed she had meritorious claims against the plaintiff which warranted being litigated on the merits.

General Provisions

Additionally, the Administrative Order has general provisions which related to all cases pending regardless of when filed. The order states, "A Mortgagee's attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order." We respectfully submit that counsel has overlooked this provision of the Administrative Order and has failed to correctly or accurately represent to the Court the status of this proceeding.

Respondent has suggested that Appellant agreed to this particular sale. See Respondent's **Return to Petition for Supersedeas at pages 8-9**. Respondent argues that

because of a prior forbearance agreement, “ Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance of May 2, 2011 ” We submit respondent’s argument is without merit and overlooks the breadth of the Administrative Order’s applicability In the Administrative Order, the Court stated that it was attempting to deal with the increasing number of foreclosures notwithstanding the prior order of the Court dated May 22, 2011 Specifically the Administrative Order stated in part

Since imposition of my prior order,^[2] the number of foreclosure actions filed in this State have continued to increase The trial courts having jurisdiction over such actions have reported to this Court difficulty in making final disposition of these actions *as a result of failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors* As a result, the number of unresolved foreclosure actions has increased, with a resulting burden on the resources of the Court before which the action is pending

Emphasis and footnote added Thus, the Administrative Order anticipates that intervention measures might have been undertaken in foreclosure actions but that those measures had failed or had been ineffectual Respondent argues that such was attempted in this case However, even if Respondent’s historical recounting is accurate, the Administrative Order anticipated that such may have occurred and failed Even so, the Order states that it would have application to any pending case as of May 2, 2011, if the sale had not been had

² Order No 2009-05-22-01 made applicable to mortgage foreclosure actions subject to the Home Affordable Modification Program (“HMP”) instituted by the United States Treasury Department

In Respondent's recitation of facts in the section of the Return (to Appellant's Petition for Supersedeas and Stay) entitled *FACTUAL/PROCEDURAL BACKGROUND*, at page 5, Respondent states,

Respondent requested that the property be sold on August 2, 2011. However, *Appellant requested an additional sixty days before sale of the property such that the foreclosure sale would occur on October 3, 2011*. Thus, at the June 30 hearing, Respondent, Respondent's counsel, Appellant and Appellant's attorney agreed to extend the sale of the property until October 3, 2011.

Emphasis added. Appellant neither requested a delay of sixty days nor did she ever agree to a sale of her residence. We believe Respondent's counsel is referring to a conference between counsel and Judge Stroman in Chambers before the matter had concluded. At that time, neither party was present.

Four different foreclosure actions involving four (4) different properties were at issue at that time and the sales were discussed generally in aggregate.³ While there was an offer made by Respondent's counsel to delay the sales (made at the Court's suggestion) it was not counsel's intent to waive Appellant's rights under the Administrative Order dated May 2, 2011.⁴ The other three properties at issue that day

³ The other three actions being combined into the hearing of June 30, 2011, with that of Appellant's residence were *Beach First National Bank v Amy Breunig*, case No. 10-CP-26-318; *Beach First National Bank v Atlantique Cabanas LLC and Amy Breunig*, case No. 09-CP-26-12375, and *Beach First National Bank v Amy Breunig, David O Connell and Bridget Breunig*, case No. 09-CP-26-12376. They were all commercial properties.

⁴ S C R C P 43 (k) states that, "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRC P."

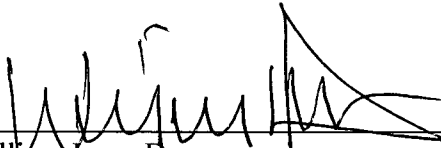
between these parties or their privies were commercial properties and Appellant has not appealed any of the three orders allowing for the sale of those three properties

CONCLUSION

For the foregoing reasons the defendant asks this Court to reverse the lower court's order allowing for the sale of Appellant's residence based on Respondent's compliance with the Court's Administrative Order of May 2, 2011, and remand the case in order to allow the parties to comply with the provisions of said order

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE DEFENDANT, AMY
BREUNIG**

This 17th day of January, 2012
Myrtle Beach, South Carolina

Other Counsel of Record

Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

ATTORNEY FOR THE RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

**APPELLANT'S DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR APPELLANT AMY
BREUNIG**

Other Counsel of Record Stacy L Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

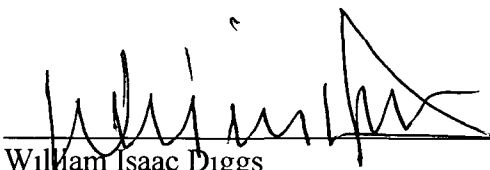
ATTORNEY FOR THE RESPONDENT

COMES NOW THE APPELLANT, by and through her undersigned counsel,
who would propose that the following material be included in the Record on Appeal

- 1 Order Denying Defendant's Motion for Relief From Default and Stay of
Foreclosure Sale entered August 1, 2011,
- 2 Order Denying Defendant's Motion for Reconsideration of Order Entered August
1, 2011 entered September 2, 2011,
- 3 Form 4 Judgment in a Civil Case entered August 1, 2011,
- 4 Amended Notice of Sale entered August 1, 2011,
- 5 Supplemental Master's Report and Judgment of Foreclosure and Sale entered on
August 1, 2011,
- 6 Transcript of hearing held June 30, 2011, pages 4 – 37,
- 7 Certification by counsel Stacy Stanley dated June 11, 2011
- 8 Appellant's Petition for Supersedeas and Stay filed with the Court of Appeals,
- 9 Respondent's Response to Petition for Supersedeas and Stay Request filed with
the Court of Appeals
- 10 Respondent's Complaint,
- 11 Affidavit of Default,
- 12 Appellant's Motion for Relief from default
- 13 Appellant's Motion to Reconsider

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS

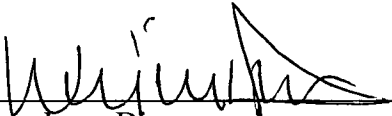


William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE APPELLANT, AMY
BREUNIG**

This 17th day of January, 2012
Myrtle Beach, South Carolina

I certify that this designation of the matter contains no matter which is irrelevant
to this appeal



William Isaac Diggs

This 17th day of January, 2012
Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

CERTIFICATE OF SERVICE

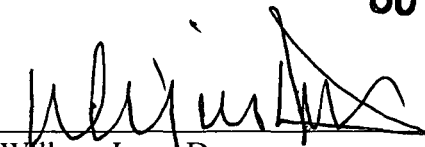
This is to certify that I have this 17th day of January, 2012 deposited one copy of the Initial Brief of Appellant and a copy of the Designation of Matter to be Included in the Record of Appeal with postage prepaid and addressed to opposing counsel as follows

Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825

RECEIVED

JAN 19 2012

SC COURT OF APPEALS



William Isaac Diggs

Myrtle Beach, South Carolina



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

January 17, 2012

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

Enclosed for filing please find the original Initial Brief of Appellant and the Designation of Matter to be included in the Record on Appeal in the above matter along with our certificate of service showing service of same on opposing counsel. If you have any questions, please let me know. With kind regards, I am

Sincerely yours,

William Isaac Diggs

WID\

CC Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire

RECEIVED

JAN 19 2012

SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

January 6, 2012

William I. Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Re Bank of North Carolina v. Breunig, Amy
2011200106

Dear Mr. Diggs:

The following Order has been endorsed on your Request for an Extension to Serve and File the Initial Brief of Appellant and Designation of Matter in the above entitled case on appeal.

"Granted

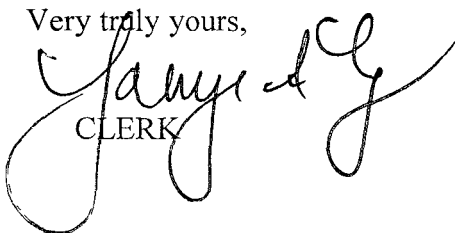
John Cannon Few C.J.
For the Court

By s/ V. Claire Allen
Clerk

January 06, 2012 "

Please be advised the Initial Brief of Appellant and Designation of Matter are to be served and filed on or before January 16, 2012.

Very truly yours,


CLERK

TAG/ma
cc Stacy L. Stanley, Esquire



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243

843 626 5123 Fax

www.MyrtleBeachLaw.com

December 16, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

The Initial Brief of Appellant along with the Designation of Matter to be Included in the Record on Appeal is due to be filed and served today. However, my wife has been ill and was hospitalized the entirety of last week. I have necessarily been out of the office because of this and I have not been able to complete this brief. I have not had an opportunity to discuss this matter with opposing counsel; however, I am respectfully requesting a thirty (30) day extension in which to file this brief. I have enclosed our firm check in the amount of \$25.00 representing the filing fee for this request. By copy of this letter, I am notifying opposing counsel of this correspondence. If you have any questions, please advise. With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID\

CC Stacy L Stanley, Esquire

FILED
1/6/12

GRANTED
JOHN CANNON TEW, CJ
FOR THE COURT

By ✓ Claude Allen
(Clerk) (Deputy Clerk)

RECEIVED
DEC 19 2011
SC Court of Appeals
12-16-11
1-16-12

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

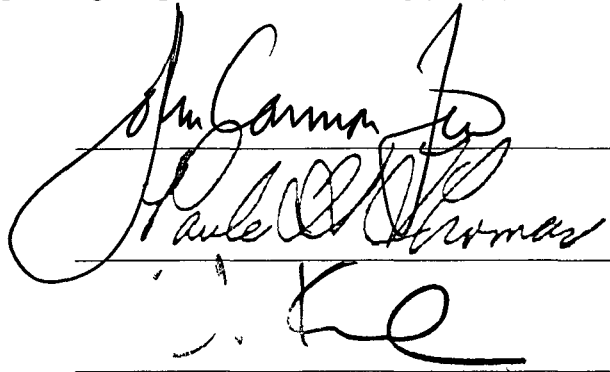
Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant filed a petition for panel review of this Court's order denying Appellant's petition for supersedeas. After a careful consideration of the parties' filings, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting the petition. Accordingly, Appellant's petition is denied.

IT IS SO ORDERED



A handwritten signature, likely of Ralph Stroman, is written over a horizontal line. Below the signature, the name "Ralph Stroman" is printed in a cursive font. Another horizontal line is drawn below the printed name.

Columbia, South Carolina

cc William I Diggs, Esquire
Stacy L Stanley, Esquire

FILED

Walter 11/16/11



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLARE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

November 16, 2011

William I Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak St, Ste D
Myrtle Beach, SC 29577

Re Bank of North Carolina v Breunig, Amy
Case Tracking # 2011200106

Dear Mr Diggs

Enclosed is a copy of an Order of the Court regarding the above case

Please be advised that the Appellant's Initial Brief and Designation of Matter must be served and filed no more than thirty days from the date of this letter

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc Stacy L Stanley, Esquire
The Honorable Melanie Huggins-Ward

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

RETURN TO SECOND PETITION FOR SUPERSEDEAS AND STAY OF
FORECLOSURE SALE OF APPELLANT'S RESIDENCE

Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

RECEIVED
NOV 15 2011
SC Court of Appeals

Pursuant to Rules 240 and 241, SCACR, Respondent files this Return in opposition to the Appellant's Second Petition for Supersedeas and Stay of Foreclosure Sale of Appellant's Residence in the case of Bank of North Carolina v Amy Breunig, Case No 2009-CP-26-12374

FACTUAL/PROCEDURAL BACKGROUND

Appellant Amy Breunig, made, executed and delivered unto Respondent Beach First National Bank n/k/a Bank of North Carolina, a certain Promissory Note in writing, dated April 18, 2005 by which Appellant promised to pay to Respondent the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Additionally, on April 18, 2005, in order to secure the above-referenced Promissory Note, Appellant delivered to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486.

Appellant also made, executed and delivered unto Respondent a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which Appellant promised to pay to Respondent the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum. On that same date, in order to secure the above-referenced Home Equity Variable Draw Agreement, Appellant did deliver to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage

Book 4848 at Page 2889 Thereafter, Appellant made, executed and delivered unto Respondent a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which the interest rate of the Home Equity Variable Rate Agreement was modified

On May 1, 2008, Appellant made, executed and delivered unto Respondent a certain renewal Note in writing by which Appellant promised to pay to Respondent the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum This loan matured on May 1, 2011

Appellant defaulted on the loan in 2009 A right to cure was mailed on September 22, 2009, but Appellant failed to cure the default

The Lis Pendens, Summons and Foreclosure Complaint of Respondent were filed on December 23, 2009 Service of the Lis Pendens, Summons and Complaint of Respondent was made on Appellant on January 7, 2010, as evidenced by the Affidavit of Service Appellant did not file an Answer On March 8, 2010, an Affidavit of Default was filed by Respondent

A notice of default and right to cure was sent to Appellant by Respondent but to no avail A foreclosure hearing was held on June 11, 2010 before the Honorable Cynthia Graham Howe, at which the Appellant and the Respondent both appeared The court issued its Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010 The property was to be sold on August 2, 2010 On August 3, 2010, an Order substituting Bank of North Carolina as Plaintiff was entered

Prior to the sale, the parties verbally agreed Appellant would be allowed to make up delinquent payments. Subsequently, the parties memorialized the agreement and entered into a Forbearance Agreement dated December 13, 2010 and an amended Forbearance Agreement on January 31, 2011 wherein Appellant agreed to make monthly payments of \$1,607.28. In her Petition, Appellant contends she signed a Forbearance Agreement involving four different foreclosure cases. However, contrary to Appellant's assertion, she signed four separate Forbearance Agreements. A separate Forbearance Agreement was executed for each loan.

Appellant did not make payments in accordance with the Forbearance Agreement and, in fact, only paid \$7,770.00 total. As a result, Appellant was in default of the Forbearance Agreement. The Forbearance Agreement provided that, if Appellant defaulted under the Forbearance Agreement, the Respondent could resume the foreclosure proceeding at the point at which it was stopped prior to the Forbearance Agreement.

Due to Appellant's default on the Forbearance Agreement and Note which matured on May 1, 2011, Respondent proceeded with the foreclosure in this action, as well as three other foreclosures against Appellant. On June 7, 2011, Respondent mailed a letter to the Master in Equity advising that the parties had previously entered into a Forbearance Agreement, Appellant had defaulted under the terms of the agreement, enclosing a Supplemental Master's Report and Judgment of Foreclosure and Sale, Amended Notice of Sale, Amended Affidavit of Attorney's Fees, and Certificate of Mailing and asking the Master to sign the Report and Notice of Sale. The Master in Equity called and advised Respondent's attorney that, because it had been over a year since the previous foreclosure

hearing on this case, the Master required the Respondent to have another hearing, although the only material factors to change were the principal and interest amounts

The second foreclosure hearing was held on June 30, 2011 before the Honorable Ralph Stroman, Special Referee. Appellant appeared at the hearing with her attorney, William I. Diggs, who had filed a Motion for Relief from Default and Stay of Proposed Sale

At the hearing, Appellant argued that one of the four properties being foreclosed was her residence and that Respondent had not complied with the Supreme Court's Administrative Order dated May 2, 2011, with regard to her residence. Respondent requested that the property be sold on August 2, 2011. However, Appellant requested an additional sixty days before sale of the property such that the foreclosure sale would occur on October 3, 2011. Thus, at the June 30 hearing, Respondent, Respondent's counsel, Appellant and Appellant's attorney agreed to extend the sale of the property until October 3, 2011.

Special Referee Stroman memorialized this agreement in his Supplemental Master's Report and Judgment of Foreclosure and Sale dated July 13, 2011, which stated "Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011." Judge Stroman denied Appellant's motion for relief from default and stay of foreclosure sale and ordered the property be sold at the October 3 foreclosure sale. In the Order, Judge Stroman stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010. The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011." Thereafter, Judge Stroman denied Appellant's motion for

reconsideration and reiterated that the property “shall be sold at the foreclosure sale on October 3, 2011 ”

Appellant filed a Petition for Supersedeas and Stay of Foreclosure Sale of Appellant’s Residence Scheduled for October 3, 2011 Chief Judge John Cannon Few issued an Order on September 30, 2011 temporarily granting Appellant’s Petition for Supersedeas and staying the foreclosure sale pending the filing of a Return by Respondent On October 13, 2011, Respondent filed a Return and, thereafter, Appellant filed a Reply On October 24, 2011, Chief Judge Few issued an Order on behalf of the Court denying Appellant’s Petition for Supersedeas and concluding

We note this foreclosure action began before the Administrative Order was signed Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant’s rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights

Appellant now petitions for a review of the Order issued by Chief Judge Few and again asks for a supersedeas and stay of the foreclosure sale of Appellant’s residence pending the appeal of this case on the merits

DISCUSSION

In her Petition, Appellant argues the scheduled sale of her residence on October 3, 2011 must be stayed pending appeal because Respondent has failed to comply with the requirements of the Supreme Court of South Carolina’s Administrative Order dated May 2, 2011 regarding mortgage foreclosure actions This assertion has no merit

First, the Administrative Order dated May 2, 2011 is not applicable to the instant case. The Master in Equity issued the Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010, prior to the date the Administrative Order was issued on May 2, 2011. In addition, the first mortgage loan matured on May 1, 2011, eight days prior to the effective date of the Administrative Order. Thus, Respondent was not required to serve Appellant with a Notice of Foreclosure Intervention.

The second foreclosure hearing held on June 30, 2011 occurred at the Master in Equity's direction because the previous hearing had been held over a year earlier. Judge Stroman issued a Supplemental Master's Report and Judgment of Foreclosure and Sale on August 1, 2011. In his Order Denying Defendant's Motion for Relief from Default, he stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010." Accordingly, the default date as determined by the Special Referee was prior to the May 2, 2011 Administrative Order.

Second, Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance on May 2, 2011. Respondent entered into a Forbearance Agreement with Appellant in an effort to assist Appellant in keeping her property. Respondent gave Appellant an opportunity to maintain the payments on her loan pursuant to the Forbearance Agreement. However, Appellant violated the Forbearance Agreement by defaulting on her payments. Appellant was under the terms of the Forbearance Agreement at the time the Administrative Order was issued. The Forbearance Agreement provided

Upon and after the occurrence of an event of default all amounts then remaining unpaid under the loan documents and this Agreement shall be immediately due and payable and Lender shall be free to exercise any or all rights and remedies provided for under the loan documents, including, but not limited to continuance of the foreclosure action. By entering into this agreement, Lender shall in no way be considered to have waived or have been estopped from exercising any or all of its rights and remedies under the loan documents. Nothing contained herein shall constitute a waiver of any or all of the Lender's rights or remedies including the right to proceed with the foreclosure action. This Agreement shall not be construed as a discontinuance of the foreclosure action and any forbearance by the Lender and acceptance of monies hereunder shall not be deemed an estoppel, prejudice or waiver of Lender's right to proceed with the foreclosure action.

It is also agreed that the Lender may, without further notice to the Borrower, proceed ex parte with all further proceedings in the foreclosure action, inclusive of the Order of Reference, preparation of Master's Report and entering final Judgment of Foreclosure and Sale, except that the Lender agrees to forbear in scheduling the foreclosure sale as long as an event of default does not exist. In the event there is an event of default, the premise will be sold at a foreclosure sale for the unpaid balance of the monies due to Lender.

Thus, upon execution of the Forbearance Agreement, which was a “foreclosure intervention,” Appellant agreed that upon default, Respondent could continue the foreclosure action from the point where the foreclosure action stopped just prior to the execution of the Forbearance Agreement

Prior to the second foreclosure hearing on June 30, 2011, the first mortgage loan matured on May 1, 2011. Therefore, Appellant was further in default for failure to pay off the loan as required in the Note

Finally, at the June 30, 2011 hearing while in Judge’s chambers, Appellant asked for an additional sixty days to bring her payments current before the property would be sold at foreclosure sale. Respondent granted Appellant’s request. Appellant specifically agreed that the foreclosure sale would be scheduled for October 3, 2011. Thus, Appellant should be estopped from now claiming the foreclosure sale should be stayed

Although Appellant asked for an additional sixty days within which to bring her payments current before the sale of the property, she made no payments within the sixty day period. This sixty day extension was essentially a second “foreclosure intervention.” Since Respondent had already provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time, was Respondent required to offer a third foreclosure intervention to Appellant? Respondent satisfied the spirit and intent of the Administrative Order through the Forbearance Agreements and subsequent grant of the requested sixty day extension before the specific sale date agreed to by Appellant

In her Affidavit in Support of the Motion for Relief from Default and Stay of

Foreclosure Sale, Appellant asserted she has “sufficient income with which to pay the financial obligations [she has] to the plaintiff bank ” In addition, on page 2 of Appellant’s Second Petition for Supersedeas, Appellant alleged she “is capable of maintaining current payments on her residence ” If this is an accurate assertion, why has Appellant not brought her account current?

It is important to note that Appellant did not bring two of the commercial loans current and those two foreclosures were recently finalized, with deficiency judgment being granted against Appellant Although Appellant alleges Respondent did not work with her, Respondent, in a further attempt to work with Appellant, recently allowed a short sale on one of the commercial properties, which was in foreclosure and was the subject of one of the aforementioned forbearance agreements

On page 9 of her second Petition for Supersedeas, Appellant claims that “during the prior intervention process,” “Appellant was without counsel and no record was developed of which counsel is aware ” Appellant knowingly and voluntarily entered into the forbearance agreement and had numerous opportunities to seek advice of and retain counsel as the foreclosure action was filed on December 23, 2009, almost two years ago Respondent should not be penalized because Appellant chose not to seek counsel until she was in default of the forbearance agreement as a part of the foreclosure intervention process

On Page 9 of her Second Petition for Supersedeas, Appellant states that she was “held in default in the foreclosure proceeding on her residence and such would not have been the case had the Administrative Order been in effect at that time, or it is reasonably unlikely that Appellant would have defaulted on her residence foreclosure proceeding ” This assertion is

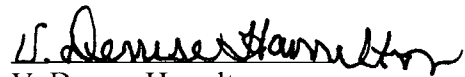
meritless. Although the Administrative Order was not in effect at the time the foreclosure proceeding was initiated, Respondent nonetheless provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time. Respondent was not required to offer a third foreclosure intervention to Appellant.

CONCLUSION

Accordingly, the Order denying Appellant's Petition for Supersedeas should be affirmed and the property at issue should be sold at the next foreclosure sale.

November 10, 2011

Respectfully submitted,



V. Denise Hamilton
Stacy L. Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

RECEIVED

NOV 15 2011

SC Court of Appeals

Case No 2009-CP-26-12374

Bank of North Carolina,

Respondent,

v

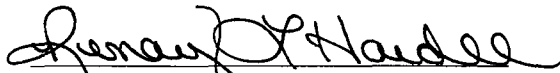
Amy Breunig,

Appellant

PROOF OF SERVICE

I, Renay Hardee, Paralegal with Stanley Law Firm, hereby certify that I have served the Return to Second Petition For Supersedeas and Stay of Foreclosure Sale of Appellant's Residence on Appellant Amy Breunig by depositing a copy of it in the United States Mail, postage prepaid, on November 10, 2011, addressed to her attorney of record, William I Diggs, 1700 Oak Street, Suite D, Myrtle Beach, South Carolina 29577

Dated November 10, 2011



Renay Hardee, Paralegal
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390-9111 – Tel
(843) 390-9187 – Fax



3303 HIGHWAY 9 EAST LITTLE RIVER SC 29566 7825
PHONE 843 390 9111 LITIGATION FAX 843 390 9187 REAL ESTATE FAX 843 390 9188

November 10, 2011

VIA U S Mail

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Bank of North Carolina, Respondent v Amy Breunig, Appellant
Case No 2009 CP-26 12374

Case Tracking # 2011200106

Dear Ms Gee

Enclosed for filing is the original and seven copies of the Return to Second Petition For Supersedeas and Stay of Foreclosure Sale of Appellant's Residence, with regard to the above-referenced matter Also included is the Proof of Service

Please file the original and return a filed copy to me in the self-addressed, stamped envelope provided

By copy of this letter, I am serving the same upon opposing counsel

Sincerely

V Denise Hamilton
Stacy L Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390-9111 - Tel
(843) 390-9187 - Fax
Attorneys for Respondent

/vdh

Enclosures

cc William I Diggs Esquire (w/enclosure)
Johnny Brown (w/enclosure)

RECEIVED

NOV 15 2011

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

RECEIVED
NOV 02 2011
SC Court of Appeals

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

**PETITION FOR SUPERSEDEAS AND STAY OF
FORCLOSURE SALE OF APPELLANT'S RESIDENCE**

SUPERSEDEAS / APPELLATE ISSUE

MUST THE SALE OF APPELLANT'S RESIDENCE BE STAYED PENDING
APPEAL BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH THE
REQUIREMENTS OF THE COURT'S ADMINISTRATIVE ORDER DATED MAY 2,
2011

COMES NOW THE DEFENDANT / PETITIONER, Amy Breunig, by and through her undersigned counsel, pursuant to S C A C R 241(d)(2), who would petition this Court for a review of the Order entered by the Honorable John C Few, Chief Judge, and a supersedeas and stay of the sale of her home in foreclosure pending the appeal of this case on the merits This stay is necessary to preserve jurisdiction of the appeal or to

prevent a contested issue from becoming moot, to wit whether the Respondent should comply with the Court's Administrative Order entered May 2, 2011. Further, this petition is based on the following

SCACR 241(d)(4)

A FACTUAL BACKGROUND

This is a foreclosure proceeding on a residence. On August 1, 2011, the trial Court entered an order of foreclosure regarding defendant's property at 3301 Palm Street, North Myrtle Beach, South Carolina. This is Appellant's residence which she has occupied at all times relevant to this case. The trial Court's order allowed appellant's residence to be sold on October 3, 2011.¹ Appellant's timely motion to reconsider was denied on September 5, 2011 and the property was scheduled to be sold on October 3, 2011. Appellant asked the Court of Appeals to grant a supersedeas pursuant to SCACR 241 and stay the sale of her property until the Administrative Order requirements had been met. This request was based on the plaintiff bank's failure to comply with the Supreme Court's Administrative Order dated May 2, 2011. While there was an agreement entered by and between the parties in the summer/fall of calendar year 2010, that intervention dealt with four different foreclosure proceedings, of which one was Appellant's residence. No intervention process has been had in accordance with the Administrative Order of May 2, 2011, and Appellant is capable of maintaining current payments on her residence. No intervention process was conducted pursuant to the

¹ An Order of Chief Judge Few entered September 30, 2011, stayed that sale temporarily. However, on October 24, 2011, Chief Judge Few lifted that stay with the entry of the Order which is at issue herein.

Administrative Order even though this case was pending as of the date of the Administrative Order on May 2, 2011

Background

On April 18, 2005, defendant executed a note in the amount of \$255,450 secured by a mortgage in favor of plaintiff's predecessor in interest. The mortgage identified the property as lots 11 and 12 in Windy Hill section of North Myrtle beach, with a street address of 3307 Palm Street. On February 9, 2007 defendant executed a mortgage on the same property which was given to secure a revolving line of credit. The Home Equity agreement extended a line of credit up to \$135,000.00 with a maturity date of February 9, 2022. On January 28, 2008, defendant executed a Mortgage Note and Modification regarding the property. On May 1, 2008 defendant executed a renewal note in the amount of \$246,705.68.²

On December 23, 2009, Respondent filed a Notice of Lis Pendens along with civil action 09-CP-26-12374. Service was effectuated on January 7, 2010. On March 8, 2010 an Affidavit of Default filed by plaintiff's attorney. On July 13, 2010, the printed Testimony of one, Johnny Brown, was filed with the Court along with a Notice of Sale of 3307 Palm Street, a Master's Report and Judgment of Foreclosure and Sale, and a Judgment in a Civil Case Form 4. On August 4, 2010, an Order substituting counsel for the Plaintiff was entered. A forbearance agreement was entered following the July, 2010, hearing. That agreement involved four (4) foreclosure cases between these parties and

² Appellant owned several business properties, some of which were financed by Respondent. On May 14, 2008, Appellant was involved in a motor cycle collision. She suffered traumatic brain injury. While she was not hospitalized for an extended period of time, the injury did prohibit her thereafter from effectively running her businesses. She experienced trouble in keeping up with various mortgage payments, primarily as a result of her injury as opposed to problems with cash flow.

others associated with this Appellant Appellant paid approximately thirty eight thousand dollars on the note given in exchange for loan proceeds used to purchase the residence, and approximately thirty thousand (\$30,000 00) more dollars in principal payments to the plaintiff on the three (3) additional foreclosure actions as a result of that agreement

However, Respondent again alleged that Appellant had fallen delinquent on the residential account and the three (3) other accounts and sought a foreclosure hearing and sales date for the four (4) properties Appellant has since denied that she was delinquent Respondent scheduled a foreclosure hearing on the four pending actions for June 30, 2011 On June 27, 2011, Appellant filed a Motion for Relief from Default and Stay of Proposed Sale then tentatively scheduled for July 5, 2011 A hearing was held before the Honorable Ralph P Stroman, Special Referee, on June 30, 2011 At the hearing Appellant argued that one of the four (4) properties being foreclosed was her residence and that the Plaintiff bank had not complied with the Supreme Court's order of May 2, 2011, with regards to that property Notwithstanding, an order was entered on August 1, 2011, by Special Referee, Stroman, denying Appellant's motion for relief from default A motion to reconsider was timely filed on August 16, 2011, by the Appellant and Judge Stroman denied that motion by order entered September 2, 2011 Written notice of the entry of the order of denial was received by counsel on September 12, 2011, and Appellant served a notice of appeal on September 27, 2011

Appellant's property was set to be sold on October 5, 2011 Appellant sought and obtained a stay of that sale from the Court of Appeals on October 2, 2011 Chief Judge John C Few entered that temporary stay on October 2, 2011 However, on October 24,

2011, Chief Judge Few lifted the stay and Appellant's residence may now be sold at foreclosure

**B GROUNDS FOR THE PETITION
(And Legal Arguments with Supporting Points and Authority)**

Appellant submits that the Plaintiff has not complied with the Supreme Court's Administrative Order entered May 2, 2011, and unless a stay is granted during the pendency of this appeal, the appeal itself will become moot

On June 14, 2011, plaintiff's counsel executed what is entitled a "Certification of Mortgagor Non-Compliance (Administrative Order 2011-05-02-01)" The certificate states the following

The Plaintiff by and through its undersigned attorney does hereby certify as follows

- 1) That this is an action for the foreclosure of owner occupied real property
- 2) That pursuant to Supreme Court Administrative Order 2011-05-02-01

- a The Mortgagor entered into a Forbearance Agreement with the Plaintiff or [sic] about January 31, 2011 as a part of a mortgage intervention plan to assist the Mortgagor in keeping her property
- b The Mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention

Notwithstanding this certification, a second hearing was required by the Court to be held on June 30, 2011 Appellant submits that a second foreclosure hearing was required to be held after the first intervention process, a fortiori the Court's Administrative Order of May 2, 2011, was applicable as well Counsel's Certification does not comply with the

Court's Administrative Order, we submit The particular intervention process referenced by plaintiff's counsel predated the Court's Administrative Order of May 2, 2011 The intervention process conducted prior to the Administrative Order was not sufficiently broad as is the Administrative Order

Non-Compliance with the Administrative Order

Enumerated Factors a – e from the Administrative Order were not met Under these factors,

(a) the Mortgagor must be provided with a notice of the Mortgagor's right to foreclosure intervention This was not done in this instance Further, the proceedings in the foreclosure action were never stayed from the time the Administrative Order issued until completion of such foreclosure intervention This Order does not exempt cases in which prior intervention efforts have been undertaken in the past The Administrative Order at issue provides that, "No foreclosure hearing or foreclosure sale may be held in the foreclosure action, inter alia, until the Mortgagee's attorney certifies " that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation This was not done in this case As noted above, plaintiff's counsel has relied wholly on the negotiation process that plaintiff admits was conducted *prior* to the Court's Order of May 2, 2011 Further, this action was not stayed for intervention purposes after the Administrative Order's issuance Further section

b) of the Administrative Order requires a showing, " that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention " This has not been done Appellant has lost four commercial properties since the Administrative Order was entered and no recent evaluation of Appellant's cash flow status has been done Counsel's *certification* provided

in this instance fails to allege that all of the documents submitted by the mortgagor have been evaluated in order to determine Appellant's eligibility for intervention. Further the Administrative Order requires a plaintiff to show the Court,

(c), that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee. This Appellant has not been provided with such an opportunity, and she was never given notice of such a right subsequent to the Court's Administrative Order. The plaintiff did not comply with this requirement. Further, the Order requires particular standards to be applied to the individual case. The Order states

(d) [mortgagee must show] that after completion of the foreclosure intervention process, the Mortgagor *does not qualify for loan modification or other means of loss mitigation*, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process. Emphasis added. The plaintiff did not show the Court that the Appellant does not qualify for a loan modification or other means of loss mitigation in accordance with any standards applicable to the mortgage loan. The defendant/Appellant was not given the opportunity to reach any other agreement on this residential property foreclosure. The certification by plaintiff's counsel states only that the mortgagor, "has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention." Lastly, the Administrative Order deals with the intervention denial process. The order states,

(e) [mortgagee must show] that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor, provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file *and serve an answer or other response to the Mortgagee's summons and complaint*. Emphasis added. This requirement

was omitted by the plaintiff Defendant was never provided with an opportunity to file an answer after the alleged denial Moreover, in a motion seeking relief from an alleged default, defendant submitted an answer that showed she had meritorious claims against the plaintiff which warranted being litigated on the merits

General Provisions

Additionally the Administrative Order has general provisions which related to all cases pending regardless of when filed The order states, “A Mortgagee’s attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order” We respectfully submit that counsel has overlooked this provision of the Administrative Order and has failed to correctly or accurately represent to the Court the status of this proceeding

In its Return to the Petition for Supersedeas filed with the Court of Appeals, Respondent argued at pages 8-9 of its return that because of a prior forbearance agreement, “ Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance of May 2, 2011 ” In deciding to lift the temporary stay pending this appeal, Chief Judge Few’s order essentially agrees with Respondent’s position The Order states,

After careful consideration, Appellant’s petition for supersedeas is denied We note this foreclosure action began before the Administrative Order was signed Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellants’ rights under the Administrative Order were honored in substance and there was nothing the mortgage could have done to further honor those rights

We respectfully submit that the Order errs in adopting Respondent’s position and overlooks the breadth of the Administrative Order’s applicability In the Administrative

Order, the Court stated that it was attempting to deal with the increasing number of foreclosures notwithstanding the prior order of the Court dated May 22, 2011. Specifically the Administrative Order of May 2, 2011, stated in part

Since imposition of my prior order, the number of foreclosure actions filed in this State have continued to increase. The trial courts having jurisdiction over such actions have reported to this Court difficulty in making final disposition of these actions ***as a result of failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors***. As a result, the number of unresolved foreclosure actions has increased, with a resulting burden on the resources of the Court before which the action is pending.

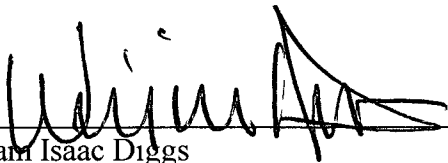
Emphasis added. ***Thus, the Administrative Order anticipates that intervention measures might have been undertaken in foreclosure actions but that those measures had failed or had been ineffectual.*** Moreover, the Order applies to ALL actions presently pending as of the date of the Order, or May 2, 2011, as this case was. Past interventions are not exempted from this Order. Therefore, we respectfully submit that the Administrative Order anticipated that interventions may have occurred and failed. Even so, the Order states that it would have application to any pending case as of May 2, 2011, if the sale had not been had.

We respectfully submit that not all of the rights set out in the Administrative Order of May 9, 2011 were dealt with in the prior intervention process. During that time frame, Appellant was without counsel and no record was developed of which counsel is aware. Appellant's residence was dealt with while three additional commercial properties were being foreclosed on by the Respondent at the same time. Appellant was held in default in the foreclosure proceeding on her residence and such would not have been the

case had the Administrative Order been in effect at that time, or it is reasonably unlikely that Appellant would have defaulted on her residence foreclosure proceeding

C CERTIFICATION BY COUNSEL

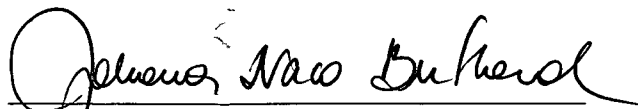
Counsel hereby certifies that he sought supersedeas relief at the local trial level and that counsel's request for supersedeas relief was denied Appellant obtained a temporary stay of sale from the Honorable John C Few, Chief Judge of the South Carolina Court of Appeals which stayed the sale of Appellant's residence previously scheduled for October 3, 2011 However, the stay was lifted, on Monday, October 24, 2011 Appellant now seeks review of that decision from the full Appellate Court pursuant to S C A C R 241(d)(2)



William Isaac Diggs

This 28th day of October, 2011

Sworn to before me this 28th day of
October, 2011



Notary Public for South Carolina
My Commission Expires

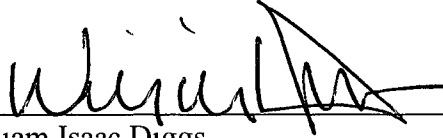
April 7, 2015

CONCLUSION

For the foregoing reasons the Appellant asks this Court review the decision of the Honorable Chief Judge Few and to issue the writ of supersedeas and stay the foreclosure sale of her residence pending the outcome of Appellant's appeal

Respectfully submitted

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE DEFENDANT, AMY
BREUNIG**

This 28th day of October, 2011
Myrtle Beach, South Carolina

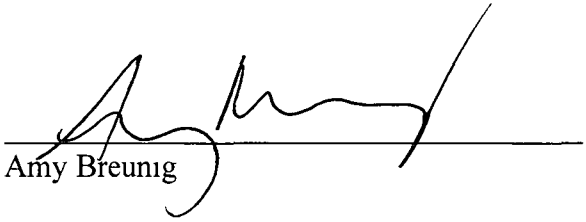
Other Counsel of Record

Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

ATTORNEY FOR THE RESPONDENT

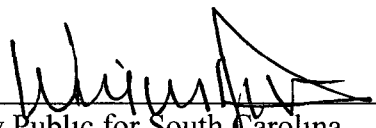
VERIFICATION

PERSONALLY appeared before me, Amy Breunig, being the Appellant within named, who, after being duly sworn, deposes and says that he has read the allegations contained within the Petition for Writ of Supersedeas and Stay and knows same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, she believes same to be true also



Amy Breunig

SWORN to me this 29th day of
October, 2011



Notary Public for South Carolina

William Lee Diles
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 09 - 01

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant.)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
DEFAULT AND STAY OF
FORECLOSURE SALE**

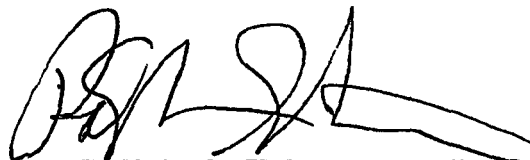
This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale Present at the hearing was Stacy Stanley on behalf of the Plaintiff Also present at the hearing was William I. Diggs on behalf of the Defendant.

Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED



RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant.)

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION
OF ORDER ENTERED
AUGUST 1, 2011

This matter comes before the Court upon Defendant's Motion for Reconsideration of Order Entered August 1, 2011

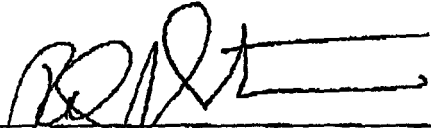
The court has reconsidered its previous ruling from the hearing held on June 30, 2011, and the Court finds that the Defendant's Motion for Reconsideration should be denied.

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Reconsideration of Order Entered August 1, 2011 is denied and it is further

ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

August 30, 2011
Conway, South Carolina

COPY

CLERK OF COURT
2011 SEP -2 AM 9 06
MELANIE HUGGINS WARD

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF HORRY COUNTY
IN THE COURT OF COMMON PLEAS
BANK OF NORTH CAROLINA

JUDGMENT IN A CIVIL CASECASE NO 09 -CP- CP - 12374AMY BREUNIG

PLAINTIFF(S)

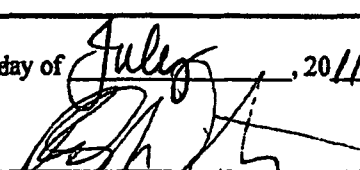
DEFENDANT(S)

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRCP, ☐ Rule 41(a), SCRCP (Vol Nonsuit), ☐ Rule 43(k), SCRCP (Settled), ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j), SCRCP, ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award, ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed, ☐ Reversed, ☐ Remanded, ☐ Other _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED

- ☒ See attached order (Formal order to follow)
☐ Statement of Judgment by the Court

SUPPLEMENTAL MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALEDated at Conway, South Carolina, this 13th day of July, 2011
PRESIDING JUDGE

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

Stacy L. Stanley
Stanley Law Firm, LLC
3303 E Highway 9
Little River, SC 29566
ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy Breunig
3307 Palm Street
Little River, SC 29566
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
)
Plaintiff,)
)
vs)
)
AMY BREUNIG,)
)
Defendant)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
DEFAULT AND STAY OF
FORECLOSURE SALE**

CLERK OF COURT
JUL 11 AUG -1 PM 2:58
COUNTY

This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale Present at the hearing was Stacy Stanley on behalf of the Plaintiff Also present at the hearing was William I Diggs on behalf of the Defendant.

Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

**AMENDED
NOTICE OF SALE**

2011 AUG - 1 PM 2:58
CLANIE HUGGINS-WARD
CLERK OF COURT
-LD
COUNTY

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County,
South Carolina, heretofore issued in the case of Bank of North Carolina v Amy Breunig,
the undersigned, Master in Equity for Horry County, will sell on October 3, 2011, at
11 00 a m , at the Horry County Courthouse in Conway, South Carolina, to the highest
bidder

The following is a description of the premises subject of said mortgage

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with
improvements thereon, situate, lying and being in Little River Township, County
of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11)
and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill
Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947,
and recorded in the Office of the Clerk of Court for Horry County, South Carolina
in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A
Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at
Page 899, Horry County records

TMS # 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON

TERMS OF SALE For cash Interest at the rate of six and three-quarters (6 75) percent to be paid on balance of bid from date of sale to date of compliance The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff herein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five (5%) percent of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court, and in the event the said purchaser or purchasers fail to comply with the terms of sale within thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser Since deficiency judgment has been demanded, bidding will be held open for thirty (30) days

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect. In such event, the sale will be rescheduled for the next available sales day Sold subject to taxes and assessments, existing easements, restrictions of record, and prior judgments


CYNTHIA GRAHAM HOWE
MASTER IN EQUITY

July 15, 2011

Conway, South Carolina

Stacy L Stanley
Stanley Law Firm, LLC
3303 E Highway 9
Little River, SC 29566
(843) 390-9111
ATTORNEY FOR PLAINTIFF

~~3~~
~~2~~
~~1~~

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)
Plaintiff,)
vs)
AMY BREUNIG,)
Defendant)

ED
COUNTY
J11 AUG - 1 PM 2 58
CLANIE HUGGINS-WARD
CLERK OF COURT

SUPPLEMENTAL MASTER'S REPORT
AND JUDGMENT OF FORECLOSURE AND SALE

Pursuant to Rule 53, SCRCP, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case Any appeal from this Order is to the Supreme Court or the South Carolina Court of Appeals

Pursuant to the said Order of Reference, a hearing was held Stacy L Stanley of the Stanley Law Firm appears as attorney for the Plaintiff The Defendant also appeared at the hearing and was represented by William I Diggs The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows

FINDINGS OF FACT

1 I find that by Order dated August 3, 2010, Bank of North Carolina as Successor in Interest to Beach First National Bank was substituted as the Plaintiff in the above entitled case

2 The Lis Pendens, Summons and Complaint of the Plaintiff were filed on December 23 2009

3 Service of the Lis Pendens, Summons and Complaint of the Plaintiff was made on the Defendant on January 7, 2010, as evidenced by the Affidavit of Service on file herein

4 The Defendant did not file an Answer and is therefore in default.

5 For value received, the Defendant, Amy Breunig, made, executed and delivered unto Beach First National Bank a certain Promissory Note in writing, dated April 18, 2005 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

6 That also on April 18, 2005, in order to secure the above-referenced Promissory Note, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486. This mortgage was introduced into evidence without objection.

7 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain renewal Note in writing dated May 1, 2008 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection.

8 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9.25%) per annum Other terms and conditions are stated in the Home Equity Variable Draw Agreement held by the Plaintiff which was introduced into evidence without objection

9 That also on February 9, 2007, in order to secure the above-referenced Home Equity Variable Draw Agreement, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889 This mortgage was introduced into evidence without objection

10 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which according to the terms and conditions as set out herein, the interest rate of the Home Equity Variable Rate Agreement was modified Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection.

11 A notice of default and right to cure was sent to the Defendant by the Plaintiff but to no avail

12 The title holder of record in and to the subject property as of the filing of the Lis Pendens of the Plaintiff in this action is the Defendant.

13 Payments due on the Notes have not been made as provided therein and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney herein for collection

14 Further, prior to the foreclosure sale date on August 2, 2010, the parties entered into a Forbearance Agreement however, the Defendant has defaulted on the terms of said Forbearance Agreement

15 The sum of Three Thousand Five and 00/100ths (\$3,500 00) Dollars is a reasonable fee to allow as attorney's fees for the Plaintiff's attorney for services performed and anticipated to be performed until a final adjudication of the within matter, under the terms of the note and mortgage held by the Plaintiff for the foreclosure action in Horry County, South Carolina Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time, including any appeal which may be taken from this Order In setting these attorney's fees, I have taken into consideration

- (1) the nature, extent and difficulty of the legal services rendered,
- (2) the time and labor necessarily devoted to the case,
- (3) the professional standing of counsel,
- (4) the contingency of compensation,
- (5) the beneficial results accomplished, and
- (6) the fee customarily charged in this court for similar legal services

16 I further find that the Plaintiff has had to expend funds for property taxes and insurance on the mortgaged property in order to protect its interest in the property

17 The amount due and owing on the note due the Plaintiff, with interest as provided in the note and other costs and expenses of collection, including the attorney's fees awarded, secured by the note and mortgage is as follows

Principal and Interest as of 6/30/11	
1 st Note	\$243,129 16
Home Equity Agreement	\$139,274 31
Attorney's Fees	\$ 3,500 00
Costs Due	\$ 520 50
2009 & 2010 Property Taxes	\$ 2,103 95
Insurance Premium	\$ 2,199 36
TOTAL DEBT SECURED BY THE NOTES AND MORTGAGES INCLUDING INTEREST TO DATE SHOWN	\$390,727.28

Interest for the period from June 30, 2011 through the date of compliance with the highest bid at the foreclosure sale shall comprise the total judgment debt due the Plaintiff Interest after June 30, 2011 in the amount of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan, per day is to be added to the above stated amount to comprise the judgment debt secured by the mortgage held by the Plaintiff

18 Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011

19 The Plaintiff hereby demands deficiency judgment in this matter

20 In the event of any surplus of funds which may be created at a sale of the mortgaged premises ordered herein, an additional hearing will be held at which time evidence may be presented to determine disposition of said surplus

CONCLUSIONS OF LAW

I therefore conclude as follows

The Plaintiff should have judgment of foreclosure of its mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED

(a) That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred Ninety Thousand Seven Hundred Twenty-Seven and 28/100ths (\$390,727 28) Dollars representing the total debt due the Plaintiff as set out in Paragraph 17 supra, together with interest at the rate provided therein on the balance or principal for the period set out in said paragraph

(b) The amount in the precedent paragraph ("Total Debt") as set forth in Paragraph 17, supra, and later accrued interest on the principal, shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan

(c) That the Defendant shall on or before the date of the sale of the property hereinafter described pay to the Plaintiff or to the Plaintiff's attorney the amount of the Plaintiff's debt as aforesaid, together with costs and disbursements of this action

(d) That on default of payment at or before the time indicated, the mortgaged premises described in the Complaint as hereinafter set forth shall be sold by the undersigned Master in Equity at public auction at the Horry County Courthouse in the City of Conway, County and State aforesaid, on some convenient sales day hereafter on the following terms, that is to say

(1) FOR CASH the undersigned Master in Equity will require a deposit of five (5%) per cent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in the case of non-compliance within thirty (30) days, same to be forfeited and applied to the costs and the Plaintiff's debt

(2) Interest on the bid shall be paid to the date of compliance at the legal rate

(3) The sale shall be subject to taxes and assessments, existing easements and restrictions and all matters of record

(4) Purchaser shall pay for deed stamps and the cost of recording of the Deed

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

(f) As the Plaintiff has demanded deficiency judgment, the bidding will be held open for thirty (30) days

(g) That the undersigned Master in Equity will by advertisement according to law, give notice of the time and place of the sale, and the terms thereof, and will execute to the Purchaser or Purchasers a deed to the premises sold. The Plaintiff, or any other party to this action, may become a Purchaser at such sale, and that if, upon such sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within thirty (30) days after the bidding is closed, the undersigned Master in Equity may advertise the said premises for sale on the next, or some subsequent sales day, at the risk of the highest bidder, and from time to time thereafter until a full compliance shall be secured

(h) That the undersigned Master in Equity will apply the proceeds of sale as follows

FIRST to the payment of the amount of the costs and expenses of this action,

NEXT, to the payment to the Plaintiff or its attorney the amount of the Plaintiff's
"Total Debt" or so much thereof as the purchase money will pay on same,

NEXT, any surplus will be held pending further Order of this Court.

(j) It is further ORDERED, ADJUDGED AND DECREED that in the event that the successful bidder is other than the Defendant in possession herein, and a Writ of Assistance is presented, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009

(j) And it is further ORDERED, ADJUDGED AND DECREED that the Defendants and all other persons whomsoever claiming under them, them or it, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the mortgaged premises so sold, or any part thereof

(k) It is further ORDERED, ADJUDGED AND DECREED that pursuant to S C Code Ann §30-9-31 (Supp 1987) the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the ROD in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity, who executes such deed as grantor

(l) The undersigned Master in Equity retains jurisdiction to do all the necessary acts incident to this foreclosure, including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus of funds pursuant to Rule 71(c), SCRPC

(m) The following is a description of the premises ordered to be sold

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate lying and being in Little River Township, County of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11)

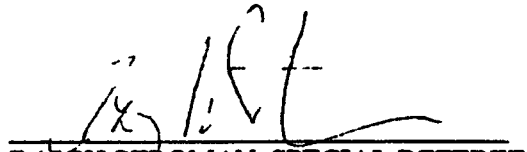
and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A. Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS #: 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON


RALPH STROMAN, SPECIAL REFEREE
ACTING WITH FINALITY

July 13, 2011
Conway, South Carolina

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breung,

Appellant.

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pending appeal because of Respondent's failure to comply with the Supreme Court's May 2, 2011 Administrative Order regarding foreclosure proceedings. The Petition for Supersedeas is temporarily granted pending a return from the Respondent, which must be served and filed within ten days.

IT IS SO ORDERED

Columbia, South Carolina

cc William I Diggs, Esquire
Stacy L Stanley, Esquire



FILED

Heater 9/30/11

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01. This Court temporarily granted the petition for supersedeas pending a return from the Respondent. Respondent has now filed a return, and Appellant has filed a reply.

After careful consideration, Appellant's petition for supersedeas is denied. We note this foreclosure action began before the Administrative Order was signed. Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant's rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights.

IT IS SO ORDERED

Columbia, South Carolina

cc William I Diggs, Esquire
Stacy L Stanley, Esquire

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

FILED

10/24/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

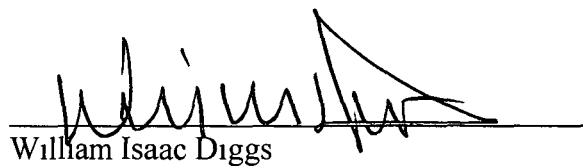
AMY BREUNIG,

 Appellant

CERTIFICATE OF SERVICE

This is to certify that I have this 29 day OF October, 2011 deposited one copy of the APPELLANT'S PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE with postage prepaid and addressed to opposing counsel as follows

Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825


William Isaac Diggs

Myrtle Beach, South Carolina



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

October 28, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

Enclosed is the PETITION FOR SUPERSEDEAS AND STAY OF FORECLOSURE SALE OF APPELLANT'S RESIDENCE in the above referenced case along with our Certificate of Service on opposing counsel. By copy of this letter I am notifying opposing counsel of this correspondence. If you have any questions, please advise. With kind regards, I am

Sincerely yours,

William Isaac Diggs

WID\

CC Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire

RECEIVED
NOV 02 2011
SC Court of Appeals



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

October 28 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

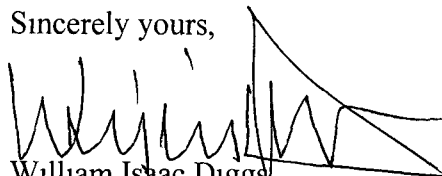
Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

This is to let the Court know that we received the transcript in the above matter in October 26, 2011 I understand that the Appellant's Initial Brief and Designation of Matter will be filed and served with the Court within 30 days from the date that we received the transcript

By copy of this letter, I am notifying opposing counsel of this correspondence If you have any questions, please advise With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID\

CC Stacy L Stanley, Esquire
V Denise Hamilton Esquire

RECEIVED
OCT 31 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A. GFE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 116 9
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

October 24, 2011

William I. Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak St., Ste. D
Myrtle Beach, SC 29577

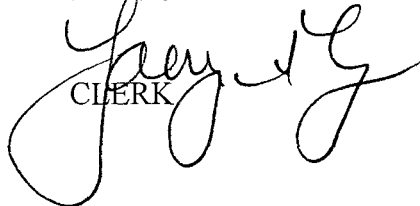
Re: Bank of North Carolina v. Breunig, Amy
2011200106

Dear Mr. Diggs:

Enclosed is a copy of an Order of the Court regarding your Motion in the above case.

Please notify the court when the transcripts have been received.

Very truly yours,


CLERK

TAG/laf

cc: Stacy L. Stanley, Esquire

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pursuant to the South Carolina Supreme Court Administrative Order 2011-05-02-01. This Court temporarily granted the petition for supersedeas pending a return from the Respondent. Respondent has now filed a return, and Appellant has filed a reply.

After careful consideration, Appellant's petition for supersedeas is denied. We note this foreclosure action began before the Administrative Order was signed. Although we find the Administrative Order is applicable because this action was pending on May 9, 2011, Appellant's rights under the Administrative Order were honored in substance and there was nothing the mortgagee could have done to further honor those rights.

IT IS SO ORDERED

Columbia, South Carolina

cc William I Diggs, Esquire
Stacy L Stanley, Esquire

A handwritten signature in black ink, appearing to read "John C. Cannon". The signature is written in a cursive style with a large, sweeping initial "J".

FILED

10/24/11

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

Appellant

APPELLANT'S REPLY
TO RETURN TO PETITION FOR SUPERSEDEAS AND STAY OF
FORCLOSURE SALE OF APPELLANT'S RESIDENCE
SCHEDULED FOR OCTOBER 3 2011

COMES NOW THE APPELLANT, Amy Breunig, by and through her undersigned counsel, who would submit this Reply to Respondent's Return to Petition for Supersedeas and Stay of Foreclosure Sale of Appellant's Residence Scheduled for October 3, 2011

I

Initially Appellant would submit that Respondent's Return is not timely. The Court's supersedeas stay order was entered September 30, 2011. The Order requires a Return to be made within ten days. The Stay order says nothing about the date as to when the hard copy of the Petition was received by Respondent's counsel in the mail. Respondent's counsel was provided a copy of the Petition for Stay via email concurrently.

RECEIVED
OCT 17 2011
SOUTH CAROLINA COURT OF APPEALS

with that provided to this Court by fax. Thus, the response is untimely as being dated October 11, 2011, and mailed on even date therewith.

II

In Respondent's recitation of facts in the section of the Return entitled *FACTUAL/PROCEDURAL BACKGROUND*, at page 5, Respondent states,

Respondent requested that the property be sold on August 2, 2011. However, *Appellant requested an additional sixty days before sale of the property such that the foreclosure sale would occur on October 3, 2011.* Thus, at the June 30 hearing, Respondent, Respondent's counsel, Appellant and Appellant's attorney agreed to extend the sale of the property until October 3, 2011.

Emphasis added. Appellant neither requested a delay of sixty days nor did she ever agree to a sale of her residence.

We believe Respondent's counsel is referring to a meeting between counsel and Judge Stroman in Chambers before the matter had concluded. At that time, neither party was present. Four different foreclosure actions involving four (4) different properties were at issue and the sales were discussed generally in aggregate.¹ While there was an offer made by Respondent's counsel to delay the sales (made at the Court's suggestion) it was not counsel's intent to waive Appellant's rights under the Administrative Order dated May 2, 2011. The other three properties at issue that day between these parties or their privies were commercial properties and Appellant has not appealed any of the three orders allowing for the sale of those three properties.

¹ The other three actions being combined into the hearing of June 30, 2011, with that of Appellant's residence were *Beach First National Bank v Amy Breunig* case No. 10-CP-26-318, *Beach First National Bank v Atlantique Cabanas LLC and Amy Breunig* case No. 09-CP-26-12375 and *Beach First National Bank v Amy Breunig, David O Connell and Bridget Breunig* case No. 09-CP-26-12376. They were all commercial properties.

III

Respondent asserts that the Administrative Order of May 2, 2011 is not applicable to this litigation because the a) judgment of foreclosure, b) the loan maturity date and, c) Appellant's alleged pleading default predated the Administrative Order. Appellant submits respondent's argument is without merit. A foreclosure hearing was necessarily set for June 30, 2011 by Respondent's own counsel. A supplemental order was required. Thus, respondent's argument fails. No such exceptions are enunciated in the Court's Administrative Order. The Administrative Order states in part,

In all mortgage foreclosure actions pending on May 9, 2011, before any merits hearing in the case, or if an order of foreclosure has been entered, ***before any foreclosure sale***, the Mortgagee shall, through its attorney of record, file with the court and serve upon every Mortgagor a notice of the Mortgagor's right to foreclosure intervention. All proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention.

Emphasis added. Thus, the order stays any foreclosure sale even if an order of foreclosure has been entered (which technically had not occurred in this case). Thus, Respondent's argument fails. Appellant submits the date of default is not relevant and the Administrative Order of May 2, 2011 rightfully applied to, and prevented, this foreclosure sale until compliance could be had by plaintiff.

IV

Respondent argues at pages 8-9 of its return that because of a prior forbearance agreement, "Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance of May 2, 2011." We submit respondent's argument is without merit and overlooks the breadth of the Administrative Order's applicability. In the Administrative Order, the Court stated that it

was attempting to deal with the increasing number of foreclosures notwithstanding the prior order of the Court dated May 22, 2011. Specifically the Administrative Order stated in part

Since imposition of my prior order, the number of foreclosure actions filed in this State have continued to increase. The trial courts having jurisdiction over such actions have reported to this Court difficulty in making final disposition of these actions ***as a result of failed or delayed loss mitigation efforts between lender-servicers and mortgagor-debtors***. As a result, the number of unresolved foreclosure actions has increased, with a resulting burden on the resources of the Court before which the action is pending.

Emphasis added. Thus, the Administrative Order anticipates that intervention measures might have been undertaken in foreclosure actions but that those measures had failed or had been ineffectual. Respondent argues that such was attempted in this case. However, even if Respondent's historical recounting is accurate, the Administrative Order anticipated that such may have occurred and failed. Even so, the Order states that it would have application to any pending case as of May 2, 2011, if the sale had not been had.

V

Finally, Respondent argues that, "Appellant asked for an additional sixty days to bring her payments current before the property would be sold at foreclosure sale." And that, "This sixty day extension was essentially a second "foreclosure intervention." Return at pages 8-9. Respondent argues that Appellant should be, "[E]stopped from now claiming the foreclosure sale should be stayed." Return at page 8. Appellant disagrees.

Initially, Appellant should not have been in this position. She would not have been if Respondent had complied with the Administrative Order. Respectfully, Appellant

did not ask for additional time and did not seek to settle this matter in exchange for a delay of the sales' date Respondent may have offered time in hopes of satisfying all of Appellant's claims in the various actions However, Appellant had filed a motion to set aside the default and asserted a counterclaim against the Respondent based on tortuous conduct committed by this bank Appellant had pled Respondent's lack of compliance with the Administrative Order of May 2, 2011 as a defense to the foreclosure action involving her residence Thus, she was entitled to application of the Administrative Order to her residence

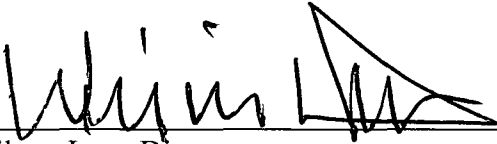
With Judge Stroman's input in chambers, Respondent agreed to give Appellant additional time on the four pending foreclosure actions *by delaying the sales date only* on the four properties There is a disagreement as to the extent of alleged waivers made by Appellant's counsel in chambers However, no effort was made by Respondent to comply with the Administrative Order of May 2, 2011, sections (B) (1)(a-e) either before or after the hearing Additionally, Respondent never filed the required affidavit assuring the Court that the Administrative Order had been complied with prior to the date of the hearing on June 30, 011 Moreover, there are no grounds for estoppel in this instance There was no quid pro quo where the Appellant's rights under the Administrative Order were relinquished in exchange for a sixty day reprieve on the sales date ² The four actions were treated the same in the eyes of the Respondent and Respondent dealt with

² S C R C P (k) states that , "No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel Settlement agreements shall be handled in accordance with Rule 41 1, SCRC P "

Appellant's residence in the same fashion as the other commercial properties were treated. We submit the stay should remain in place until the appeal is resolved on its merits.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS

A handwritten signature in black ink, appearing to read 'William Diggs', is written over a horizontal line.

William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE APPELLANT AMY
BREUNIG**

This 14th day of October, 2011
Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

RECEIVED
OCT 17 2011
SC Court of Appeals

BANK OF NORTH CAROLINA

Respondent,

v

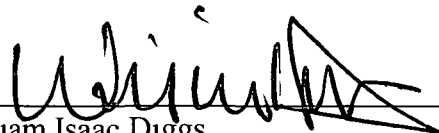
AMY BREUNIG,

Appellant

CERTIFICATE OF SERVICE

This is to certify that I have this day deposited one copy of the APPELLANT'S REPLY TO RESPONDENT'S RETURN TO PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011 with postage prepaid and addressed to opposing counsel as follows

Stacy L Stanley, Esquire
V Denise Hamilton, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825



William Isaac Diggs

This 14th day of October, 2011
Myrtle Beach, South Carolina



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243

843 626 5123 Fax

www.MyrtleBeachLaw.com

October 14, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

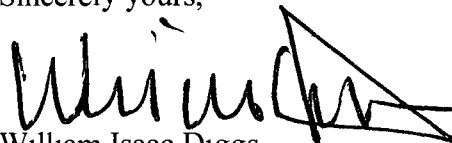
Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

Enclosed is the Appellant's REPLY TO RESPONDENT'S RETURN TO PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011 If you have any questions, please let us know

With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID\

CC The Honorable Melanie Huggins-Ward, Clerk
Stacy L Stanley, Esquire
V Denise Hamilton, Esquire

RECEIVED
OCT 17 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

ORIGINAL

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

RETURN TO PETITION FOR SUPERSEDEAS AND STAY OF FORECLOSURE
SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011

Stacy L. Stanley, Esquire
V Denise Hamilton, Esquire
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

RECEIVED
OCT 13 2011
SC Court of Appeals

Pursuant to Rules 240 and 241, SCACR, Respondent files this Return in opposition to the Appellant's Petition for Supersedeas and Stay of Foreclosure Sale of Appellant's Residence Scheduled for October 3, 2011 in the case of Bank of North Carolina v Amy Breunig, Case No 2009-CP-26-12374

FACTUAL/PROCEDURAL BACKGROUND

Appellant Amy Breunig, made, executed and delivered unto Respondent Beach First National Bank n/k/a Bank of North Carolina, a certain Promissory Note in writing, dated April 18, 2005 by which Appellant promised to pay to Respondent the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum. Additionally, on April 18, 2005, in order to secure the above-referenced Promissory Note, Appellant delivered to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486.

Appellant also made, executed and delivered unto Respondent a certain Home Equity Variable Draw Agreement in writing dated February 9, 2007 by which Appellant promised to pay to Respondent the principal sum of One Hundred Thirty-Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum. On that same date, in order to secure the above-referenced Home Equity Variable Draw Agreement, Appellant did deliver to Respondent a Mortgage for Lots 11 and 12, Block 4, with improvements thereon, in Little River Township. The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage

Book 4848 at Page 2889 Thereafter, Appellant made, executed and delivered unto Respondent a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which the interest rate of the Home Equity Variable Rate Agreement was modified

On May 1, 2008, Appellant made, executed and delivered unto Respondent a certain renewal Note in writing by which Appellant promised to pay to Respondent the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum This loan matured on May 1, 2011

Appellant defaulted on the loan in 2009 A right to cure was mailed on September 22, 2009, but Appellant failed to cure the default

The Lis Pendens, Summons and Foreclosure Complaint of Respondent were filed on December 23, 2009 Service of the Lis Pendens, Summons and Complaint of Respondent was made on Appellant on January 7, 2010, as evidenced by the Affidavit of Service Appellant did not file an Answer On March 8, 2010, an Affidavit of Default was filed by Respondent

A notice of default and right to cure was sent to Appellant by Respondent but to no avail A foreclosure hearing was held on June 11, 2010 before the Honorable Cynthia Graham Howe, at which the Appellant and the Respondent both appeared The court issued its Master's Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010 The property was to be sold on August 2, 2010 On August 3, 2010, an Order substituting Bank of North Carolina as Plaintiff was entered

Prior to the sale, the parties verbally agreed Appellant would be allowed to make up delinquent payments. Subsequently, the parties memorialized the agreement and entered into a Forbearance Agreement dated December 13, 2010 and an amended Forbearance Agreement on January 31, 2011 wherein Appellant agreed to make monthly payments of \$1,607.28. In her Petition, Appellant contends she signed a Forbearance Agreement involving four different foreclosure cases. However, contrary to Appellant's assertion, she signed four separate Forbearance Agreements. A separate Forbearance Agreement was executed for each loan.

Appellant did not make payments in accordance with the Forbearance Agreement and, in fact, only paid \$7,770.00 total. As a result, Appellant was in default of the Forbearance Agreement. The Forbearance Agreement provided that, if Appellant defaulted under the Forbearance Agreement, the Respondent could resume the foreclosure proceeding at the point at which it was stopped prior to the Forbearance Agreement.

Due to Appellant's default on the Forbearance Agreement and Note which matured on May 1, 2011, Respondent proceeded with the foreclosure in this action, as well as three other foreclosures against Appellant. On June 7, 2011, Respondent mailed a letter to the Master in Equity advising that the parties had previously entered into a Forbearance Agreement, Appellant had defaulted under the terms of the agreement, enclosing a Supplemental Master's Report and Judgment of Foreclosure and Sale, Amended Notice of Sale, Amended Affidavit of Attorney's Fees, and Certificate of Mailing and asking the Master to sign the Report and Notice of Sale. The Master in Equity called and advised Respondent's attorney that, because it had been over a year since the previous foreclosure

hearing on this case, the Master required the Respondent to have another hearing, although the only material factors to change were the principal and interest amounts

The second foreclosure hearing was held on June 30, 2011 before the Honorable Ralph Stroman, Special Referee. Appellant appeared at the hearing with her attorney, William I. Diggs, who had filed a Motion for Relief from Default and Stay of Proposed Sale

At the hearing, Appellant argued that one of the four properties being foreclosed was her residence and that Respondent had not complied with the Supreme Court's Administrative Order dated May 2, 2011, with regard to her residence. Respondent requested that the property be sold on August 2, 2011. However, Appellant requested an additional sixty days before sale of the property such that the foreclosure sale would occur on October 3, 2011. Thus, at the June 30 hearing, Respondent, Respondent's counsel, Appellant and Appellant's attorney agreed to extend the sale of the property until October 3, 2011.

Special Referee Stroman memorialized this agreement in his Supplemental Master's Report and Judgment of Foreclosure and Sale dated July 13, 2011, which stated "Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011." Judge Stroman denied Appellant's motion for relief from default and stay of foreclosure sale and ordered the property be sold at the October 3 foreclosure sale. In the Order, Judge Stroman stated "Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010. The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011." Thereafter, Judge Stroman denied Appellant's motion for

reconsideration and reiterated that the property “shall be sold at the foreclosure sale on October 3, 2011 ”

DISCUSSION

In her Petition, Appellant argues the scheduled sale of her residence on October 3, 2011 must be stayed pending appeal because Respondent has failed to comply with the requirements of the Supreme Court of South Carolina’s Administrative Order dated May 2, 2011 regarding mortgage foreclosure actions. This assertion has no merit.

First, the Administrative Order dated May 2, 2011 is not applicable to the instant case. The Master in Equity issued the Master’s Report and Judgment of Foreclosure and Sale and Notice of Sale on July 7, 2010, prior to the date the Administrative Order was issued on May 2, 2011. In addition, the first mortgage loan matured on May 1, 2011, eight days prior to the effective date of the Administrative Order. Thus, Respondent was not required to serve Appellant with a Notice of Foreclosure Intervention.

The second foreclosure hearing held on June 30, 2011 occurred at the Master in Equity’s direction because the previous hearing had been held over a year earlier. Judge Stroman issued a Supplemental Master’s Report and Judgment of Foreclosure and Sale on August 1, 2011. In his Order Denying Defendant’s Motion for Relief from Default, he stated “Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010.” Accordingly, the default date as determined by the Special Referee was prior to the May 2, 2011 Administrative Order.

Second, Respondent had essentially complied with the terms of the Administrative Order regarding mortgage foreclosure intervention prior to its issuance on May 2, 2011. Respondent entered into a Forbearance Agreement with Appellant in an effort to assist Appellant in keeping her property. Respondent gave Appellant an opportunity to maintain the payments on her loan pursuant to the Forbearance Agreement. However, Appellant violated the Forbearance Agreement by defaulting on her payments. Appellant was under the terms of the Forbearance Agreement at the time the Administrative Order was issued. The Forbearance Agreement provided:

Upon and after the occurrence of an event of default all amounts then remaining unpaid under the loan documents and this Agreement shall be immediately due and payable and Lender shall be free to exercise any or all rights and remedies provided for under the loan documents, including, but not limited to continuance of the foreclosure action. By entering into this agreement, Lender shall in no way be considered to have waived or have been estopped from exercising any or all of its rights and remedies under the loan documents. Nothing contained herein shall constitute a waiver of any or all of the Lender's rights or remedies including the right to proceed with the foreclosure action. This Agreement shall not be construed as a discontinuance of the foreclosure action and any forbearance by the Lender and acceptance of monies hereunder shall not be deemed an estoppel, prejudice or waiver of Lender's right to proceed with the foreclosure action.

It is also agreed that the Lender may, without further notice to the Borrower, proceed ex parte with all further proceedings in the foreclosure action, inclusive of the Order of Reference, preparation of Master's Report and entering final Judgment of Foreclosure and Sale, except that the Lender agrees to forbear in scheduling the foreclosure sale as long as an event of default does not exist. In the event there is an event of default, the premise will be sold at a foreclosure sale for the unpaid balance of the monies due to Lender.

Thus, upon execution of the Forbearance Agreement, which was a "foreclosure intervention," Appellant agreed that upon default, Respondent could continue the foreclosure action from the point where the foreclosure action stopped just prior to the execution of the Forbearance Agreement.

Prior to the second foreclosure hearing on June 30, 2011, the first mortgage loan matured on May 1, 2011. Therefore, Appellant was further in default for failure to pay off the loan as required in the Note.

Finally, at the June 30, 2011 hearing while in Judge's chambers, Appellant asked for an additional sixty days to bring her payments current before the property would be sold at foreclosure sale. Respondent granted Appellant's request. Appellant specifically agreed that the foreclosure sale would be scheduled for October 3, 2011. Thus, Appellant should be estopped from now claiming the foreclosure sale should be stayed.

Although Appellant asked for an additional sixty days within which to bring her payments current before the sale of the property, she made no payments within the sixty day

period This sixty day extension was essentially a second “foreclosure intervention ” Since Respondent had already provided Appellant with foreclosure interventions via the Forbearance Agreements and the subsequent sixty-day extension of time, was Respondent required to offer a third foreclosure intervention to Appellant? Respondent satisfied the spirit and intent of the Administrative Order through the Forbearance Agreements and subsequent grant of the requested sixty day extension before the specific sale date agreed to by Appellant

In her Affidavit in Support of the Motion for Relief from Default and Stay of Foreclosure Sale, Appellant asserted she has “sufficient income with which to pay the financial obligations [she has] to the plaintiff bank ” If this is an accurate assertion, why has Appellant not brought her account current?

Accordingly, the Order temporarily granting Appellant’s Petition for Supersedeas should be reversed, the stay of the foreclosure sale should be lifted, and the property at issue should be sold at the next foreclosure sale

October 11, 2011

Respectfully submitted,



V Denise Hamilton
Stacy L Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, South Carolina 29566
(843) 390-9111
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee

Case No 2009-CP-26-12374

Bank of North Carolina,

Respondent,

v

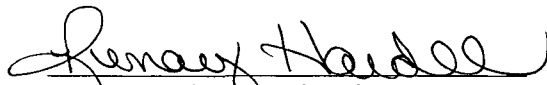
Amy Breunig,

Appellant

PROOF OF SERVICE

I, Renay Hardee, Paralegal with Stanley Law Firm, hereby certify that I have served the Return to Petition For Supersedeas and Stay of Foreclosure Sale of Appellant's Residence Scheduled for October 3, 2011 on Appellant Amy Breunig by depositing a copy of it in the United States Mail, postage prepaid, on October 11, 2011, addressed to her attorney of record, William I Diggs, 1700 Oak Street, Suite D, Myrtle Beach, South Carolina 29577

Dated October 11, 2011



Renay Hardee, Paralegal
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390-9111 – Tel
(843) 390-9187 – Fax



3303 HIGHWAY 9 EAST LITTLE RIVER SC 29566 7825
PHONE 843 390 9111 LITIGATION FAX 843 390 9187 REAL ESTATE FAX 843 390 9188

October 11, 2011

VIA U S Mail

The Honorable Tanya Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re Bank of North Carolina, Respondent v Amy Breunig, Appellant
Case No 2009-CP-26-12374

Case Tracking # 2011200106

Dear Ms Gee

Enclosed for filing is the original and seven copies of the Return to Petition For Supersedeas and Stay of Foreclosure Sale of Appellant's Residence Scheduled for October 3, 2011, with regard to the above-referenced matter Also included is the Proof of Service

Please file the original and return a filed copy to me in the self-addressed, stamped envelope provided

Appellant's counsel mailed the original Petition for Supersedeas on September 30, 2011, which our office received via mail on October 3, 2011 Thus, Respondent's ten day deadline to file a Return was October 10, 2011, however, October 10 was Columbus Day, a federal holiday, and the United States Post Office was closed Accordingly, the deadline to file the Return is October 11, 2011

By copy of this letter, I am serving the same upon opposing counsel

Sincerely,

V Denise Hamilton
Stacy L Stanley
STANLEY LAW FIRM
3303 Highway 9 East
Little River, SC 29566
(843) 390 9111 – Tel
(843) 390 9187 – Fax
Attorneys for Respondent

/vdh

Enclosures

cc William I Diggs, Esquire (w/enclosure)
Johnny Brown (w/enclosure)

RECEIVED

OCT 13 2011

SC Court of Appeals



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

October 5, 2011

Prestige Court Reporting
413 Paul Street
Conway, SC 29527-5823

Re Bank of N C v Amy Breunig Case No 2009-CP-26-12374

To Whom It May Concern

This office has filed an appeal in the above matter On June 30, 2011, a Motion Hearing was held in the above case before the Honorable Ralph P Stroman, Special Referee, Judge, in Horry County and you were the court reporter for this case Please provide the transcript of the hearing to this office upon completion

If you have any questions or need further information, please do not hesitate to contact me With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID/jnb

Cc The Honorable Tanya Gee, Clerk of Court
Stacy L Stanley, Esquire

RECEIVED
OCT 06 2011
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

RECEIVED
OCT 03 2011
SC Court of Appeals

BANK OF NORTH CAROLINA

Respondent,

v

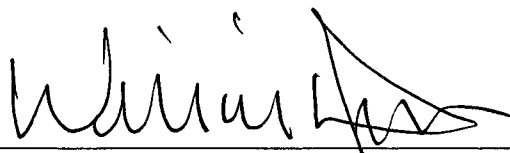
AMY BREUNIG,

Appellant

**PETITION FOR SUPERSEDEAS AND STAY OF
FORCLOSURE SALE OF APPELLANT'S RESIDENCE
SCHEDULED FOR OCTOBER 3, 2011**

CERTIFICATION BY COUNSEL

Counsel hereby certifies that he has sought supersedeas relief at the local trial level and that counsel's request for supersedeas relief has been denied. The attached Exhibit A contains a hand written denial by the office of the Court's chambers in Horry County South Carolina pursuant to the instructions of the Honorable Ralph P. Stroman, Special Referee.



William Isaac Diggs

This 30th day of September, 2011

COMES NOW THE DEFENDANT / PETITIONER, Amy Breunig, by and through her undersigned counsel, pursuant to S C A C R 241, who would petition this Court for a writ of supersedeas. Said petition is based on the following

SUPERSEDEAS / APPELLATE ISSUE

MUST THE SCHEDULED SALE OF APPELLANT'S RESIDENCE ON OCTOBER 3, 2011 BE STAYED PENDING APPEAL BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE COURT'S ADMINISTRATIVE ORDER DATED MAY 2, 2011

INTRODUCTION

This is a foreclosure proceeding. On August 1, 2011, the Court entered an order of foreclosure regarding defendant's property at 3301 Palm Street, North Myrtle Beach, South Carolina. This is Defendant's residence which she occupies. The Court's order allows appellant's residence to be sold on October 3, 2011. Defendant's timely motion to reconsider was denied on September 5, 2011 and defendant's property is scheduled to be sold on October 3, 2011. Defendant now asks this Court to grant a supersedeas pursuant to SCACR 241 and stay the sale of defendant's property until the Administrative Order requirements have been met. This request is based on plaintiff's failure to comply with the Supreme Court's Administrative Order dated May 2, 2011. While there was an agreement entered by and between the parties in the summer/fall of calendar year 2010, that intervention dealt with four different foreclosure proceedings, of which one was defendant's residence. No intervention process has been had since that time, and defendant is capable of maintaining current payments on her residence. No intervention process was conducted even though this case was pending as of the date of the Court's Administrative Order on May 2, 2011.

Background

On April 18, 2005, defendant executed a note in the amount of \$255,450 secured

by a mortgage in favor of plaintiff's predecessor in interest. The mortgage identified the property as lots 11 and 12 in Windy Hill section of North Myrtle beach, with a street address of 3307 Palm Street. On February 9, 2007 defendant executed a mortgage on the same property which was given to secure a revolving line of credit. The Home Equity agreement extended a line of credit up to \$135,000.00 with a maturity date of February 9, 2022. On January 28, 2008, defendant executed a Mortgage Note and Modification regarding the property. On May 1, 2008 defendant executed a renewal note in the amount of \$246,705.68.¹

On December 23, 2009, plaintiff filed a Notice of Lis Pendens along with civil action 09-CP-26-12374. Service was effectuated on January 7, 2010. On March 8, 2010 an Affidavit of Default filed by plaintiff's attorney. On July 13, 2010, Testimony of one, Johnny Brown, was filed with the Court along with a Notice of Sale of 3307 Palm Street, a Master's Report and Judgment of Foreclosure and Sale, and a Judgment in a Civil Case Form 4. On August 4, 2010, an Order substituting counsel for the Plaintiff was entered. A forbearance agreement was entered following the July, 2010, hearing. That agreement involved four (4) foreclosure cases between these parties and others associated with this Defendant. Defendant paid approximately thirty eight thousand dollars on the note given in exchange for loan proceeds used to purchase the residence, and approximately thirty thousand (\$30,000.00) more dollars in principal payments to the plaintiff on the three (3) additional foreclosure actions as a result of that agreement.

¹ Defendant owned several business properties, some of which were financed by plaintiff. On May 14, 2008, Defendant was involved in a motor cycle collision. She suffered traumatic brain injury. While defendant was not hospitalized for an extended period of time, the injury did prohibit her thereafter from effectively running her businesses. She experienced trouble in keeping up with various mortgage payments, primarily as a result of her injury as opposed to problems with cash flow.

However, plaintiff again alleged that defendant fell delinquent on the residential account and the three (3) other accounts and sought a foreclosure hearing and sales date for the four (4) properties. Defendant has since denied that she was delinquent. Plaintiff scheduled a foreclosure hearing on the four pending actions for June 30, 2011. On June 27, 2011, Defendant filed a Motion for Relief from Default and Stay of Proposed Sale then tentatively scheduled for July 5, 2011. A hearing was held before the Honorable Ralph P. Stroman, Special Referee, on June 30, 2011. At the hearing Defendant argued that one of the four (4) properties being foreclosed was her residence and that the Plaintiff had not complied with the Supreme Court's order of May 2, 2011, with regards to that property. Notwithstanding, an order was entered on August 1, 2011, by Special Referee, Stroman, denying defendant's motion for relief from default. A motion to reconsider was timely filed on August 16, 2011, by defendant and Judge Stroman denied that motion by order entered September 2, 2011. Written notice of the entry of the order of denial was received by counsel on September 12, 2011, and Defendant served a notice of appeal on September 27, 2011.

Discussion

Defendant submits that the Plaintiff has not complied with the Supreme Court's Administrative Order entered May 2, 2011

On June 14, 2011, plaintiff's counsel executed what is entitled a "Certification of Mortgagor Non-Compliance (Administrative Order 2011-05-02-01)". The certificate states the following:

The Plaintiff by and through its undersigned attorney does hereby certify as follows:

- 1) That this is an action for the foreclosure of owner occupied real property

2) That pursuant to Supreme Court Administrative Order 2011-05-02-01

- a The Mortgagor entered into a Forbearance Agreement with the Plaintiff or [sic] about January 31, 2011 as a part of a mortgage intervention plan to assist the Mortgagor in keeping her property
- b The Mortgagor has failed, refused, or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention

This Certification does not comply with the Court's Administrative Order, we submit
The particular intervention process referenced by plaintiff's counsel predated the Court's
Administrative Order of May 2, 2011

Non-Compliance with the Administrative Order

Enumerated Factors a – e

The Mortgagor must be provided with a notice of the Mortgagor's right to foreclosure intervention This was not done in this instance Further, all proceedings in the foreclosure action shall be stayed until completion of such foreclosure intervention This Order does not exempt cases in which prior intervention efforts have been undertaken in the past The Order provides that, "No foreclosure hearing or foreclosure sale may be held in the foreclosure action, inter alia, until the Mortgagee's attorney certifies

- a) that the Mortgagor has been served with a notice of the Mortgagor's right to foreclosure intervention for the purpose of seeking a resolution of the foreclosure action by loan modification or other means of loss mitigation,

The plaintiff has not complied with this section of the Order As noted above, plaintiff's counsel has apparently relied on the negotiation process that plaintiff admits was conducted *prior* to the Court's Order of May 2, 2011

Further the Order requires

- b) that the Mortgagee, or its designated agent, has received and examined all documents and records required to be submitted by the Mortgagor to evaluate eligibility for foreclosure intervention,

Counsel's *certification* provided in this instance fails to allege that all of the documents submitted by the mortgagor have been evaluated in order to determine her eligibility for intervention

Further the Order requires plaintiff to show the Court

- (c) that the Mortgagor has been afforded a full and fair opportunity to submit any other information or data pertaining to the Mortgagor's loan or personal circumstances for consideration by the Mortgagee,

Defendant (mortgagor) has not been provided with such an opportunity, and she was never given notice of such a right subsequent to the Court's Administrative Order. The plaintiff did not comply with this requirement.

Further, the Order requires particular standards to be applied to the individual case. The Order states

- (d) [mortgagee must show] that after completion of the foreclosure intervention process, the Mortgagor does not qualify for loan modification or other means of loss mitigation, in accordance with any standards, rules or guidelines applicable to the mortgage loan, and the parties have been unable to reach any other agreement concerning the foreclosure process,

The plaintiff has not shown the Court that the defendant does not qualify for a loan modification or other means of loss mitigation in accordance with any standards applicable to the mortgage loan. The defendant was not given the opportunity to reach any other agreement on this residential property foreclosure. The certification by plaintiff's counsel states only that the mortgagor has failed, refused or voluntarily elected not to comply with the terms of the Forbearance Agreement as a part of a mortgage foreclosure intervention."

Lastly, the Administrative Order deals with the intervention denial process. The order states,

- (e) [mortgagee must show] that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all known addresses of the Mortgagor, provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing of notice of denial of relief to file *and serve an answer or other response to the Mortgagee's summons and complaint*

Emphasis added. This requirement was wholly omitted by the plaintiff. Defendant was never provided with an opportunity to file an answer after the alleged denial. Moreover, in a motion seeking relief from an alleged default, defendant submitted an answer that showed she had meritorious claims against the plaintiff which warranted being litigated on the merits.

General Provisions

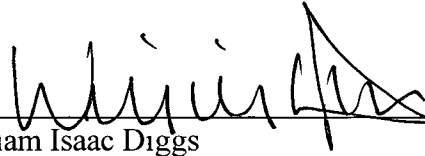
Additionally, the Administrative Order has general provisions which related to all cases pending regardless of when filed. The order states, "A Mortgagee's attorney, by proceeding with a foreclosure, represents to the Court that the Mortgagee has fully complied with all provisions of this Order." We respectfully submit that counsel has overlooked this provision of the Administrative Order and has failed to correctly or accurately represent to the Court the status of this proceeding.

CONCLUSION

For the foregoing reasons, the defendant asks this Court to issue the writ of supersedeas and stay the foreclosure sale of her residence presently scheduled for October 3, 2011.

Respectfully submitted,

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE DEFENDANT, AMY
BREUNIG**

This 30th day of September, 2011
Myrtle Beach, South Carolina

Other Counsel of Record

Stacy L Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

ATTORNEY FOR THE RESPONDENT

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Beach First National Bank n/k/a)
Bank of North Carolina)
Plaintiff)
v)
Amy Breunig,)
Defendant)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No 2009-CP-26-12374

DEFENDANT'S
PETITION FOR WRIT OF SUPERSEDEAS
SCACR 241(b)

*Denied 9/30/11
By Ralph Herman
by Susan F. Stone with permission*

COMES NOW THE DEFENDANT / PETITIONER, Amy Breunig, by and through her undersigned counsel pursuant to S C A C R 241(b) who would petition this Court for a writ of supersedeas ¹ Said petition is based on the following

SUPERSEDEAS / APPELLATE ISSUE

MUST THE SCHEDULED SALE OF APPELLANT'S RESIDENCE ON OCTOBER 3, 2011 BE STAYED PENDING APPEAL BECAUSE OF PLAINTIFF'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE COURT'S ADMINISTRATIVE ORDER DATED MAY 2 2011

INTRODUCTION

This is a foreclosure proceeding On August 1 2011 the Court entered an order of foreclosure regarding defendant's property at 3301 Palm Street North Myrtle Beach, South Carolina This is Defendant's residence which she occupies The Court's order allows appellant's residence to be sold on October 3 2011 Defendant's timely motion to

¹ SCACR 241 (d) entitled, "Procedure for Obtaining Lift of Stay or Supersedeas," states in part (1) Except where extraordinary circumstances make it impracticable an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

15th JUDICIAL CIRCUIT

COUNTY OF Horry)

CASE NO 2010-CP-26-12374

Beach First National Bank n/k/a Bank of
North Carolina)

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs)

Amy Breunig)

Defendant)

FILED
JUN 27 PM 1:42
CLERK OF COURT
JUDY

Plaintiff's Attorney
Stacy L. Stanley, Bar No 13410
Address
3303 East Highway 9
Little River, SC 29566
Phone 843 390 9111 Fax 843 390 9187
E-mail sstanley@stanleylawfirm.com Other

Defendant's Attorney
William Isaac Diggs, Bar No 1689
Address
1700 Oak Street, Suite D
Myrtle Beach, SC 29577
Phone 843 626 4243 Fax 843 626 5123
E-mail william.diggs@myrtlebeachlaw.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 for relief from default and stay of Proposed sale

Estimated Time Needed 45 minutes

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

06/27/2011
Date submitted

SECTION III Motion Fee

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

JUDGE'S SECTION

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

JUDGE CODE _____

Date _____

CLERK'S VERIFICATION

Collected by _____ Date Filed _____

- ☐ MOTION FEE COLLECTED \$ _____
☐ CONTESTED - AMOUNT DUE \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No 2010-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)

Plaintiff,)

v)

Amy Breunig,)

Defendant)

MOTION FOR RELIEF FROM DEFAULT
(Pursuant to Rule 60(b))
AND STAY OF PROPOSED SALE

HORRY COUNTY
11 JUN 27 PM 1 42
CLERK OF COURT

TO THE PLAINTIFF AND ITS ATTORNEY OF RECORD, STACY L STANLEY, ESQUIRE

YOU WILL PLEASE TAKE NOTICE THAT THE DEFENDANT, Amy Breunig, hereby gives notice of her intent to request of the Master in Equity, the Court's proper Order granting relief from default in the above reference case pursuant to S C R C P 60(b), and, if applicable, a stay of the foreclosure sale requested by plaintiff to be scheduled for July 5, 2011 Said motion is based on the grounds that a forbearance agreement had been reached between the parties allowing for reinstatement of defendant's loan and the acceptance of a renewal note which agreement was wrongfully breached by plaintiff without just cause or excuse and for constitutionally prohibited considerations and (b) the property at issue is defendant's principal residence and the Court's Administrative Order dated May 2, 2011 has not been complied with by plaintiff

BE SO NOTIFIED'

LAW OFFICES OF WILLIAM ISAAC DIGGS



William Isaac Diggs
1700 Oak Street, Suite D

Myrtle Beach, SC 25977
843-626-4243 Tel
843-626-5123 Fax

**ATTORNEY FOR THE DEFENDANT AMY
BREUNIG**

This 27 day of June, 2011
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
Case No 2010-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)

Plaintiff,)

v)

Amy Breunig,)

Defendant)

AFFIDAVIT IN SUPPORT OF
MOTION FOR RELIEF FROM DEFAULT
AND STAY OF FORECLOSURE SALE
(Pursuant to Rule 60(b))
OF DEFENDANT AMY BREUNIG

FILED
JUN 27 PM 1 42
CLERK OF COURT
HORRY COUNTY

COMES NOW THE UNDERSIGNED, who being duly sworn, deposes and
says as follows

1 My name is Amy Breunig and I am the defendant in the above captioned
action I am over the age of 18 years and I am qualified to make this affidavit

2 On May 14, 2008, I was involved in a motorcycle accident and received
head trauma and other physical bodily injury My treatment has been on-going and I am
still under a doctor's care

3 Shortly after this accident I began to miss my regular payments on the
notes and mortgages I had with Beach First National Bank However, I always had
sufficient incomes with which to pay these financial obligations I was just unable to
manage my own business affairs during that time frame and fell behind on my
obligations

4 In July, 2010, I met with plaintiff's attorneys and Danny Broach of the
plaintiff bank at the side room located off the courtroom used by the Master in Equity in
Horry County, South Carolina An agreement was reached between me and the bank and
I began making the payments required of me In addition to that, and as part of that

agreement, I was required to pay principal only payments of over \$53,000 00 to the bank to convince the bank to agree to allow me to make my regular payments

5 On or about October 12, 2010, I was arrested by the police at Atlantic Beach, South Carolina for charges which I assert are bogus. The charges all stem from a dispute I have had with the City officials at Atlantic Beach, regarding business license taxes and fees, and, to some extent, race considerations. Thereafter, I was arrested three additional times all related to similar allegations. All of the charges are bogus in my opinion and I have not been convicted of any offense.

6 Even though I have not yet been convicted even as of the date of this writing, at the time of my last arrest, I received an email from Danny Broach which said, inter alia, they were foreclosing after taking into consideration the arrests referenced above. This was so even though I had complied with the forbearance agreement we reached earlier. Additionally, the bank had stated to me in writing that a renewal note would be accepted in my case. I relied on this representation. Nevertheless, the bank thereafter refused to do so. I have endured this foreclosure process as a direct result thereof.

7 It appears to me that the plaintiff bank is working with the City of Atlantic Beach in order to deprive me of my ownership rights in my property.

8 Additionally, the properties plaintiff desires to be sold (lots 11 & 12 in the Windy Hill Section of North Myrtle Beach, South Carolina) contain my principal residence. I believe my home is covered by the Supreme Court's Administrative Order of May 2, 2011.

9 I have sufficient income with which to pay the financial obligations I have

to the plaintiff bank and there is no reason the bank has to foreclose on the mortgages at issue in my cases

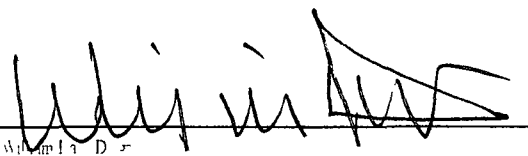
10 The last time my attorney checked the Court file in this matter, a signed order allowing for the sale of my property had not been filed. Even so, I am asking for a stay of foreclosure sale since plaintiff has requested a sale date of July 5, 2011

FURTHER I SAITH NOT'



Amy Breunig

Sworn to before me this 27th day of
June, 2011



Notary Public for South Carolina
My Commission Expires 09-01-12

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
) FOR THE 15TH JUDICIAL CIRCUIT
) Case No 2009-CP-26-12374

Beach First National Bank n/k/a)
Bank of North Carolina)
)
Plaintiff,)
v)
Amy Breunig,)
Defendant)

ANSWER AND COUNTERCLAIM

HURRY COUNTY
11 JUN 27 PM 1:42
CLERK OF COURT

COMES NOW THE DEFENDANT, Amy Breunig, who would responding to
the plaintiff's complaint, show unto this Court as follows

FOR A FIRST DEFENSE

Waiver, Estoppel, Laches and/or Unclean Hands

The parties had a course of dealing in this matter Plaintiff entered into conduct which amounts to a false representation or concealment of material facts regarding renewal notes, plaintiff did so with the intention that such conduct shall be acted upon by the defendant, and plaintiff had knowledge, actual or constructive, of the true facts Simultaneously therewith defendant, (1) lacked knowledge regarding plaintiff's intention to embark upon a new course of dealing to refuse to offer a renewal note, and defendant lacked the means or knowledge of the truth as to the facts in question, (2) there was justifiable reliance upon the plaintiff's conduct by the defendant, and (3) a prejudicial change in position by defendant Defendant was lulled into a false sense of security and therefore pleads equitable estoppel as a defense to the foreclosure

FOR A SECOND DEFENSE

Intervening Circumstances New Agreement

After the plaintiff filed this action the parties entered into a forbearance

agreement and plaintiff has breached this agreement

FOR A THIRD DEFENSE

Intervening Circumstances

(False Sense of Security Change of Course of Dealing by New Plaintiff)

Subsequent to the forbearance agreement entered into by and between the parties, the plaintiff Beach First National Bank was acquired by the plaintiff Bank of North Carolina. The present bank embarked on a different course of action without giving defendant reasonable and sufficient warning. Defendant pleads that she was lulled into a false sense of security regarding the acceptance of a renewal note and pleads such as an affirmative defense in this action.

FOR A FOURTH DEFENSE

The Plaintiff has failed to comply with the Supreme Court's Administrative Order dated May 2, 2011 and therefore affirmatively pleads the same as a defense to foreclosure.

FOR A FIFTH DEFENSE

Modification

1 Defendant admits that plaintiff is organized under the law of the State of South Carolina.

2 Defendant admits paragraph two of plaintiff's complaint wherein it alleges that she is a citizen and resident of the State of South Carolina and the owner of real property located in Horry County, South Carolina which is the subject of this action.

3 Defendant admits paragraph three of plaintiff's complaint regarding the location of the property at issue and the Court's jurisdiction.

4 Paragraph four of the complaint is admitted regarding the execution of the note referenced therein in the amount of \$255,450.00.

5 Paragraph five of the complaint is likewise admitted regarding the execution of a mortgage. However, defendant would show the Court that the mortgage was on Lots 11 & 12 in the Windy Hill Section of North Myrtle Beach. Defendant would show that and said property constitutes defendant's principal place of residency and is her residence as contemplated by the Court's Administrative Order dated May 2, 2011.

6 Paragraph six of the complaint is admitted regarding the execution of a Mortgage and Note Modification agreement.

7 Defendant admits paragraph 7 of plaintiff's complaint regarding the execution of a note of an amount up to \$135,000.00. However, Defendant would show that plaintiff's exhibit D is a home equity line of credit secured by a mortgage on her principal place of residence.

8 The allegations of paragraph eight are admitted regarding the execution of a Mortgage and Note Modification Agreement on February 9, 2007.

9 The allegations contained within paragraph nine of plaintiff's complaint are admitted regarding the execution of a Mortgage and Note Modification Agreement. Additionally, defendant would show that the following constitutes a listing of transactions regarding the specific property being foreclosed upon by plaintiff in this action:

- On April 18, 2005, defendant executed a note in the amount of \$255,450.00 with monthly payments in the amount of \$1,663.96 and a balloon payment due in 35 months in the amount of \$248,132.99.
- On May 1, 2008, defendant executed a new note which again called for monthly payments for 35 months in the amount of \$1,607.28 and a balloon payment of \$239,588.88 on May 1, 2011,

- On April 19, 2005 defendant Amy Breunig executed a mortgage on her lots 11 and 12 of Windy Hill Section of North Myrtle Beach, her principal place of residency,
- On February 9, 2007, defendant executed a Home Equity line of credit in the amount of \$135,000 00 and a cross collateralized mortgage on her principal place of residency,
- On January 28, 2008 defendant executed a Mortgage and Note Modification agreement modifying the interest rate on the home equity line of credit note establishing a 5% floor,
- In the spring of 2011, plaintiff refused to accept a renewal note without notice and after indicating to defendant in writing that a renewal note would be accepted

10 Paragraph ten of plaintiff's complaint is admitted regarding the fact that plaintiff is the holder of the note(s) referenced above

11 Paragraph eleven is admitted however, defendant would assert that the note(s) and / or mortgages at issue in this matter speak for themselves and contain the terms and conditions set out therein

12 Defendant admits that the allegations contained within paragraph "12" of the complaint were true at the time of the writing of said complaint, but that subsequent thereto, the parties' entered into a new agreement Pursuant to the new agreement, defendant paid to the plaintiff total payments in the amount of approximately \$53,000 00 in principal only payments and made regular monthly payments thereafter Defendant faithfully made the payments required of her thereafter until without just cause or excuse the plaintiff unilaterally began to refuse to accept defendant's tendered payments and refused to accept a renewal note even though it had previously stated in writing that it would do so

13 Paragraph 13 was true as of the date of the writing of plaintiff's complaint and as of the date of the filing of same However, defendant would show that the parties

entered into an agreement during July, 2010 as a result of which defendant paid to the plaintiff approximately \$53,000 00 in principal only payments and thereafter began to make regular payments on all obligations to plaintiff Defendant would show that plaintiff wrongfully breached the agreement and began to move forward on foreclosure efforts against plaintiff's property even though defendant was still willing and able to make timely payments on her obligations to the plaintiff

14 Defendant would assert that the documents referenced in this paragraph of the plaintiff's complaint speak for themselves The remaining portions of paragraph "14" are denied

15 Paragraph fifteen is denied Defendant would show that this plaintiff has wrongfully proceeded against the defendant in this matter and is not entitled to any deficiency judgment against the defendant and plaintiff has failed to comply with the Supreme Court's Order of May 2, 2011

16 Paragraph sixteen is denied and defendant would show that plaintiff is not entitled to foreclosure or any monetary judgment in this matter Defendant would further show that plaintiff has breached its agreement as set forth and described above in this responsive pleading

17 This paragraph seventeen is denied Defendant would show that the Court's Administrative Order of May 2, 2011 is applicable in this action because the property at issue is defendant's residence

18 Defendant denies paragraph 18 Defendant would show that the paragraph is misleading in that the parties negotiated a settlement of this litigation in which defendant paid over \$53,000 00 to plaintiff in total principal only payments and her

regular monthly payments thereafter until plaintiff unilaterally decided to stop accepting defendant's payments

FOR A SIXTH DEFENSE
BY WAY OF COUNTERCLAIM
Breach of Contract

19 Defendant incorporates the foregoing paragraphs and reasserts the same as if set out herein verbatim

20 On or about July 13, 2010, defendant met with plaintiff's attorney for a hearing scheduled before the Master in Equity During that meeting, defendant and plaintiff entered into a new agreement wherein and whereby defendant would pay the plaintiff a total of over \$53,000 00 in principal only payments and to pay regular monthly payments thereafter

21 Defendant made the necessary payments and in all respects complied with the terms of the agreement

22 During the month of April, 2011, in breach of the parties' agreement, plaintiff unilaterally decided not to accept defendant's payments any longer and proceeded with its attempt to foreclose on defendant's mortgage and seek a deficiency judgment against defendant Plaintiff refused to accept a renewal note from defendant even though it had indicated in writing that it would do so

23 As a direct and proximate result of plaintiff's breach of contract defendant has suffered damages and has been forced into foreclosure

WHEREFORE, defendant would request the following relief

a That the plaintiff's complaint be dismissed in its entirety and the plaintiff take nothing on its claim,

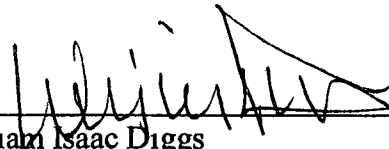
b the defendant be granted a stay of foreclosure in this matter and plaintiff ordered to reinstate the loan(s) secured by the property referenced in the plaintiff's mortgage as attached as an exhibit to the complaint filed in this action,

c an award of attorney's fees to the defendants as the prevailing party in this action as such is contemplated in the note and mortgage at issue in this litigation, and

d for any other and further relief deemed just and proper in this matter

Respectfully submitted,

**LAW OFFICES OF WILLIAM ISAAC
DIGGS**



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, South Carolina
843-626-4243 Tel
843-626-5123 Fax

**ATTORNEYS FOR DEFENDANT AMY
BREUNIG**

This 27th day of June, 2011
Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

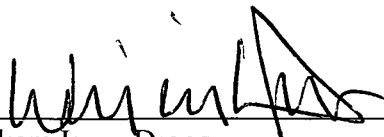
AMY BREUNIG,

Appellant

CERTIFICATE OF SERVICE

This is to certify that I have deposited one copy of the PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011 with postage prepaid and addressed to opposing counsel as follows

Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825



William Isaac Diggs

This 30th day of September, 2011
Myrtle Beach, South Carolina

RECEIVED

OCT 03 2011

SC Court of Appeals



WILLIAM ISAAC DIGGS

ATTORNEY AT LAW
1700 Oak Street, Suite D
Myrtle Beach, SC 29577

Fax 843-626-5123

Tel 843-626-4243

WILLIAM ISAAC DIGGS

FAX COVER SHEET

DATE 09/30/2011

To The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Fax 803-734-1839

Stacy L. Stanley, Esquire
Via Email sstanley@stanleylawfirm.com
Fax 843-390-9187

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

From William Isaac Diggs

RECEIVED

OCT 03 2011

Total Number of Pages 21

SC Court of Appeals

=====

CONFIDENTIAL

The statements or representations made in this communication or its attachments are intended for the named recipient identified above and are made solely within the privileged context of either (1) attorney client communications or (2) reasonably necessary business communications not intended for general public dissemination. Anyone other than the recipient has received this communication in error. You should destroy this correspondence and avoid any further dissemination of the contents hereof.



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

www.MyrtleBeachLaw.com

September 30, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

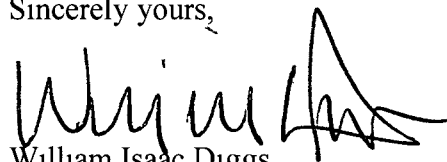
Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

Enclosed is the Appellant's PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011. We have also enclosed our firm's check in the amount of \$25.00 representing the filing fee for this motion. We are also enclosing our Certificate of Service showing service on opposing counsel. We are asking that the Court accept this fax as our filing of the supersedeas request pursuant to SCACR 241. We are this day mailing the original and the filing fee to the Court. If you have any questions, please let us know.

With kind regards, I am

Sincerely yours,



William Isaac Diggs

WID\

CC The Honorable Melanie Huggins-Ward, Clerk
Stacy L Stanley, Esquire

RECEIVED

OCT 03 2011

SC Court of Appeals

The South Carolina Court of Appeals

Bank of North Carolina,

Respondent,

v

Amy Breunig,

Appellant

The Honorable Ralph Stroman
Horry County
Trial Court Case No 2009-CP-26-12374

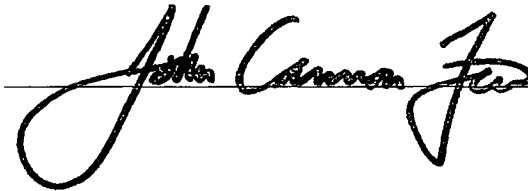
ORDER

Appellant petitions this Court to supersede Judge Stroman's order denying Appellant's motion for relief from default and stay of the foreclosure sale. Appellant requests the scheduled sale of Appellant's residence be stayed pending appeal because of Respondent's failure to comply with the Supreme Court's May 2, 2011 Administrative Order regarding foreclosure proceedings. The Petition for Supersedeas is temporarily granted pending a return from the Respondent, which must be served and filed within ten days.

IT IS SO ORDERED

Columbia, South Carolina

cc William I Diggs, Esquire
Stacy L Stanley, Esquire

A handwritten signature in black ink, appearing to read "John Cannon", written over a horizontal line.

FILED

Walter 9/30/11



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29 01
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

September 30, 2011

William I Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak St , Ste D
Myrtle Beach, SC 29577

Re Bank of North Carolina v Breunig, Amy
Case Tracking # 2011200106

Dear Mr Diggs

Enclosed is a copy of an Order of the Court regarding the above case

The Court understands that you, Mr Diggs, are faxing a copy of the order to Judge Stroman

Very truly yours,

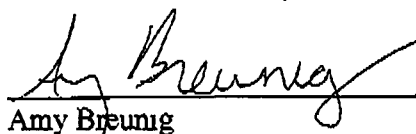
V. Claire Allen
CLERK

TAG/ec

cc Stacy L Stanley, Esquire
The Honorable Melanie Huggins

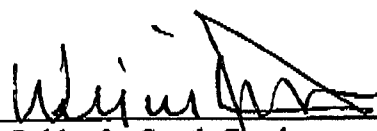
VERIFICATION

COMES NOW the undersigned petitioner who, upon duly sworn, deposes and states that she has read the foregoing PETITION FOR SUPERSEDEAS AND STAY OF FORCLOSURE SALE OF APPELLANT'S RESIDENCE SCHEDULED FOR OCTOBER 3, 2011 and that the allegations contained therein are true of my own knowledge I am over the age of 18 years and I am qualified to make this verification



Amy Breunig

Sworn to before me this 30 day of
September, 2011



Notary Public for South Carolina

William Isaac Diggs
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 09-15-2015

RECEIVED

SEP 30 2011

SC Court of Appeals

**WILLIAM ISAAC DIGGS**

ATTORNEY AT LAW

1700 Oak Street, Suite D

Myrtle Beach, SC 29577

Fax: 843-626-5123**Tel: 843-626-4243**

WILLIAM ISAAC DIGGS*

FAX COVER SHEET

DATE 09/30/2011

To

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
Fax 803-734-1839

Stacy L. Stanley, Esquire
Via Email sstanley@stanleylawfirm.com
Fax 843-390-9187

Re

Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

From

William Isaac Diggs

Total Number of Pages 2

CONFIDENTIAL

The statements or representations made in this communication or its attachments are intended for the named recipient identified above and are made solely within the privileged context of either (1) attorney client communications or (2) reasonably necessary business communications not intended for general public dissemination. Anyone other than the recipient has received this communication in error. You should destroy this correspondence and avoid any further dissemination of the contents hereof.

Ms Gee This is the Verification which goes with the Appellant's stay /
supersedeas request previously faxed to the Court today. Thank you.

RECEIVED
SEP 30 2011
S. C. Court of Appeals



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

September 30, 2011

William I. Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak St., Ste. D
Myrtle Beach, SC 29577

Re: Bank of North Carolina v. Breunig, Amy
Case Tracking # 2011200106

Dear Mr. Diggs:

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address: 1205 Pendleton Street, Columbia, S.C. 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the

notification requirements of Rule 207(a)(5) SCACR also please advise the Court in writing upon receipt of the transcript

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,
Tanya A Gee
CLERK


TAG/ec

cc Stacy L Stanley, Esquire
The Honorable Melanie Huggins-Ward



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29701
TELEPHONE (803) 734 1890
FAX (803) 734 1839
WWW.SCCOURTS.ORG

September 30, 2011

William I. Diggs, Esquire
Law Office of William Isaac Diggs
1700 Oak St., Ste. D
Myrtle Beach, SC 29577

Re Bank of North Carolina v. Breunig, Amy
Case Tracking # 2011200106

Dear Mr. Diggs:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/ec

cc Stacy L. Stanley, Esquire
The Honorable Melanie Huggins-Ward

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

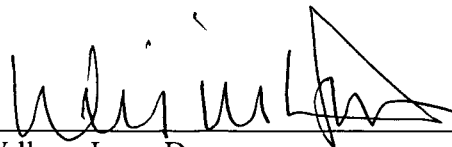
AMY BREUNIG,

Appellant

NOTICE OF APPEAL

COMES NOW THE APPELLANT, Amy Breunig, who would give notice of her intent to appeal the *Order Denying Defendant's Motion for Reconsideration of Order Entered August 1, 2011* (actually dated July 13, 2011) and the *Order Denying Defendant's Motion for Relief from Default and Stay of Foreclosure Sale* entered by the Honorable Ralph Stroman, Special Referee on September 2, 2011 and August 1, 2011 respectively, written notice of the entry of the latest order was received by counsel on September 12, 2011

This 27 day of September, 2011



William Isaac Diggs

RECEIVED
SEP 28 2011
SC Court of Appeals

**LAW OFFICES OF WILLIAM ISAAC
DIGGS**

1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE APPELLANT,
AMY BREUNIG**

Other Counsel of Record

Stacy L Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825
843-390-9187

ATTORNEY FOR THE RESPONDENT

/

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Ralph Stroman, Special Referee
Case No 2009-CP-26-12374

BANK OF NORTH CAROLINA

Respondent,

v

AMY BREUNIG,

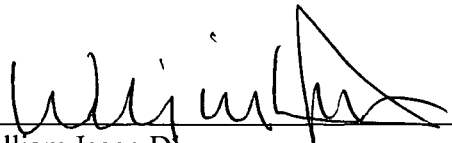
Appellant

CERTIFICATE OF SERVICE

This is to certify that I have this day deposited a copy of the Notice of Appeal in the above captioned matter with postage prepaid and addressed to opposing counsel at the following address

Stacy L. Stanley, Esquire
Stanley Law Firm
3303 Highway 9 East
Little River, SC 29566-7825

RECEIVED
SEP 28 2011
SC Court of Appeals



William Isaac Diggs
1700 Oak Street, Suite D
Myrtle Beach, SC 25977
843-626-4243

**ATTORNEY FOR THE APPELLANT,
AMY BREUNIG**

This 27th day of September, 2011



Law Offices of

WILLIAM ISAAC DIGGS

Licen. ed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243
843 626 5123 Fax

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

September 27, 2011

The Honorable Melanie Huggins, Clerk
1301 Second Avenue
Conway, SC 29526

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Huggins

Enclosed please find for filing one copy of the Notice of Appeal in the above
matter With kind regards, I am

Sincerely yours,

William Isaac Diggs

WID/

Cc Stacy L Stanley, Esquire



Law Offices of

WILLIAM ISAAC DIGGS

Licensed in NC & SC

1700 Oak Street Suite D
Myrtle Beach SC 29577

843 626 4243

843 626 5123 Fax

www.MyrtleBeachLaw.com

September 27, 2011

The Honorable Tanya Gee
Clerk of Court
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED

SEP 28 2011

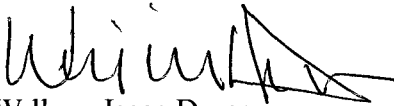
SC Court of Appeals

Re Bank of North Carolina v Amy Breunig
Case No 2010-CP-26-12374

Dear Ms Gee

Enclosed is the Notice of Appeal in the above referenced case along with our Certificate of Service on opposing counsel. We have also enclosed our check in the amount of \$100.00 representing the filing fee for this appeal. By copy of this letter, I am notifying opposing counsel of this correspondence. If you have any questions, please advise. With kind regards, I am

Sincerely yours,


William Isaac Diggs

WID\

CC The Honorable Melanie Huggins-Ward, Clerk
Stacy L Stanley, Esquire



Law Offices of

WILLIAM ISAAC DIGGS

1700 Oak Street Suite D
Myrtle Beach SC 29577

The Honorable Tanya Gee, Clerk
South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

COLUMBIA SC 292

WED 28 SEP 2011 11 AM



U.S. POSTAGE
MYRTLE BEACH
SEP 27
AMOUNT
\$1.60
0003952

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO 09-CP-26-12374
BANK OF NORTH CAROLINA,	)	
Plaintiff,	)	
vs	)	ORDER DENYING DEFENDANT'S
AMY BREUNIG,	)	MOTION FOR RECONSIDERATION
Defendant	)	OF ORDER ENTERED
	)	AUGUST 1, 2011

This matter comes before the Court upon Defendant's Motion for Reconsideration of Order Entered August 1, 2011

The court has reconsidered its previous ruling from the hearing held on June 30, 2011, and the Court finds that the Defendant's Motion for Reconsideration should be denied

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Reconsideration of Order Entered August 1, 2011 is denied and it is further

ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

August 30, 2011
Conway, South Carolina

COPY

2011 SEP -2 AM 9 06
CLARE HUGGINS HARRIS
CLERK OF COURT
JUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO 09-CP-26-12374
BANK OF NORTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
vs	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR RELIEF FROM
AMY BREUNIG,	)	DEFAULT AND STAY OF
	)	FORECLOSURE SALE
Defendant	)	

This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale Present at the hearing was Stacy Stanley on behalf of the Plaintiff Also present at the hearing was William I Diggs on behalf of the Defendant

Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010 The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011

IT IS SO ORDERED



 RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF HORRY COUNTY

IN THE COURT OF COMMON PLEAS

BANK OF NORTH CAROLINA

JUDGMENT IN A CIVIL CASE

CASE NO 09 -CP- CP - 12374

AMY BREUNIG

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

☐

JURY VERDICT This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒

DECISION BY THE COURT This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐

ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC ☐ Rule 41(a), SCRPC (Vol Nonsuit), ☐ Rule 43(k), SCRPC (Settled), ☐ Other _____

☐

ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j), SCRPC, ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award ☐ Other _____

☐

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)

☐ Affirmed ☐ Reversed, ☐ Remanded, ☐ Other _____

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

IT IS ORDERED AND ADJUDGED

- ☒ See attached order (Formal order to follow)
☐ Statement of Judgment by the Court

SUPPLEMENTAL MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE

Dated at Conway, South Carolina, this 13th day of July, 2011

[Signature]
PRESIDING JUDGE

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

Stacy L. Stanley

Stanley Law Firm, LLC

3303 E Highway 9

Little River, SC 29566

ATTORNEY(S) FOR THE PLAINTIFF(S)

Amy Breunig

3307 Palm Street

Little River, SC 29566

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,)

Plaintiff,)

vs)

AMY BREUNIG,)

Defendant)

**ORDER DENYING DEFENDANT'S
MOTION FOR RELIEF FROM
DEFAULT AND STAY OF
FORECLOSURE SALE**

CLERK OF COURT
JULY - 1 PM 2 58
COUNTY

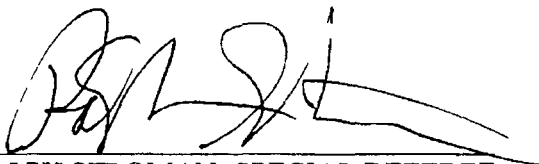
This matter comes before the Court on June 30, 2011, upon Motion of Defendant for Relief from Default and Stay of Foreclosure Sale. Present at the hearing was Stacy Stanley on behalf of the Plaintiff. Also present at the hearing was William I Diggs on behalf of the Defendant.

Based on the information presented to this Court, it appears that this Court has previously held the Defendant in default by Order dated July 7, 2010. The parties further agreed that the foreclosure sale would be scheduled for October 3, 2011.

THEREFORE, IT IS ORDERED

That the Defendant's Motion for Relief from Default is denied and it is further ORDERED, that the property which is the subject of this action shall be sold at the foreclosure sale on October 3, 2011.

IT IS SO ORDERED


RALPH STROMAN, SPECIAL REFEREE

July 13, 2011

Conway, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA,

Plaintiff,

vs

AMY BREUNIG,

Defendant

**AMENDED
NOTICE OF SALE**

LD
COUNTY
2011 AUG -1 PM 2 58
CLANIE HUGGINS WARD
CLERK OF COURT

BY VIRTUE OF A DECREE of the Court of Common Pleas for Horry County,
South Carolina, heretofore issued in the case of Bank of North Carolina v Amy Breunig,
the undersigned, Master in Equity for Horry County, will sell on October 3, 2011, at
11 00 a m , at the Horry County Courthouse in Conway, South Carolina, to the highest
bidder

The following is a description of the premises subject of said mortgage

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with
improvements thereon, situate, lying and being in Little River Township, County
of Horry, State of South Carolina, and being represented as LOTS ELEVEN (11)
and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill
Beach, a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947,
and recorded in the Office of the Clerk of Court for Horry County South Carolina
in Plat Book 5-A at Page 111, reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A
Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at
Page 899, Horry County records

TMS # 156-03 13 005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON

TERMS OF SALE For cash Interest at the rate of six and three-quarters (6 75) percent to be paid on balance of bid from date of sale to date of compliance The purchaser to pay for papers and stamps, and that the successful bidder or bidders, other than the Plaintiff herein, do, upon the acceptance of his or her bid, deposit with the Master in Equity for Horry County a certified check or cash in the amount equal to five (5%) percent of the amount of bid on said premises at the sale as evidence of good faith in bidding, and subject to any resale of said premises under Order of this Court, and in the event the said purchaser or purchasers fail to comply with the terms of sale within thirty (30) days, the Master in Equity shall forthwith resell the said property, after the due notice and advertisement, and shall continue to sell the same each subsequent sales day until a purchaser, who shall comply with the terms of sale, shall be obtained, such sales to be made at the risk of the former purchaser Since deficiency judgment has been demanded bidding will be held open for thirty (30) days

If the Plaintiff or the Plaintiff's representative does not appear at the above-described sale, then the sale of the property will be null, void, and of no force and effect In such event, the sale will be rescheduled for the next available sales day Sold subject to taxes and assessments, existing easements, restrictions of record, and prior judgments


CYNTHIA GRAHAM HOWE
MASTER IN EQUITY

July 15, 2011

Conway, South Carolina

Stacy L. Stanley
Stanley Law Firm, LLC
3303 E Highway 9
Little River, SC 29566
(843) 390-9111
ATTORNEY FOR PLAINTIFF

~~2~~
~~1/11~~

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO 09-CP-26-12374

BANK OF NORTH CAROLINA)
)
) Plaintiff)
)
) vs)
)
) AMY BREUNIG)
)
) Defendant)
)

ED
COUNTY
11 AUG - 1 PM 2 58
CLANIE HUGGINS WARD
CLERK OF COURT

SUPPLEMENTAL MASTER'S REPORT
AND JUDGMENT OF FORECLOSURE AND SALE

Pursuant to Rule 53, SCRCP, the above entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the case Any appeal from this Order is to the Supreme Court or the South Carolina Court of Appeals

Pursuant to the said Order of Reference, a hearing was held Stacy L Stanley of the Stanley Law Firm appears as attorney for the Plaintiff The Defendant also appeared at the hearing and was represented by William I Diggs The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows

FINDINGS OF FACT

1 I find that by Order dated August 3, 2010, Bank of North Carolina as Successor in Interest to Beach First National Bank was substituted as the Plaintiff in the above entitled case

2 The Lis Pendens Summons and Complaint of the Plaintiff were filed on December 23 2009

3 Service of the Lis Pendens, Summons and Complaint of the Plaintiff was made on the Defendant on January 7, 2010, as evidenced by the Affidavit of Service on file herein

4 The Defendant did not file an Answer and is therefore in default

5 For value received, the Defendant, Amy Breunig, made executed and delivered unto Beach First National Bank a certain Promissory Note in writing, dated April 18, 2005 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Fifty-Five Thousand Four Hundred Fifty and 00/100ths (\$255,450 00) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

6 That also on April 18, 2005, in order to secure the above-referenced Promissory Note, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4009 at Page 1486 This mortgage was introduced into evidence without objection

7 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain renewal Note in writing dated May 1 2008 by which according to the terms and conditions as set out herein, Defendant promised to pay to the Plaintiff the principal sum of Two Hundred Forty-Six Thousand Seven Hundred Five and 68/100ths (\$246,705 68) Dollars, along with interest at the rate of six and three quarters percent (6 75%) per annum Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

8 That also for value received, the Defendant also made, executed and delivered unto Beach First National Bank a certain Home Equity Variable Draw Agreement in writing dated February 9 2007 by which according to the terms and conditions as set out herein Defendant promised to pay to the Plaintiff the principal sum of One Hundred Thirty Five Thousand and 00/100ths (\$135,000 00) Dollars, along with interest at a variable rate with an initial rate of nine and one quarter percent (9 25%) per annum Other terms and conditions are stated in the Home Equity Variable Draw Agreement held by the Plaintiff which was introduced into evidence without objection

9 That also on February 9, 2007, in order to secure the above-referenced Home Equity Variable Draw Agreement, the Defendant did deliver to the Plaintiff a Mortgage for said real property with improvements thereon The Mortgage was thereafter recorded in the Office of the Register of Deeds for Horry County in Mortgage Book 4848 at Page 2889 This mortgage was introduced into evidence without objection

10 That also for value received, the Defendant also made executed and delivered unto Beach First National Bank a certain Mortgage and Note Modification Agreement in writing dated January 28, 2008 by which according to the terms and conditions as set out herein, the interest rate of the Home Equity Variable Rate Agreement was modified Other terms and conditions are stated in the Promissory Note held by the Plaintiff which was introduced into evidence without objection

11 A notice of default and right to cure was sent to the Defendant by the Plaintiff but to no avail

12 The title holder of record in and to the subject property as of the filing of the Lis Pendens of the Plaintiff in this action is the Defendant

13 Payments due on the Notes have not been made as provided therein and the Plaintiff has elected to accelerate payment of the entire indebtedness and has placed the note and mortgage in the hands of its attorney herein for collection

14 Further, prior to the foreclosure sale date on August 2, 2010, the parties entered into a Forbearance Agreement however, the Defendant has defaulted on the terms of said Forbearance Agreement

15 The sum of Three Thousand Five and 00/100ths (\$3,500 00) Dollars is a reasonable fee to allow as attorney s fees for the Plaintiff's attorney for services performed and anticipated to be performed until a final adjudication of the within matter, under the terms of the note and mortgage held by the Plaintiff for the foreclosure action in Horry Ccauty, South Carolina Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time, including any appeal which may be taken from this Order In setting these attorney s fees, I have taken into consideration

- (1) the nature extent and difficulty of the legal services rendered,
- (2) the time and labor necessarily devoted to the case,
- (3) the professional standing of counsel,
- (4) the contingency of compensation,
- (5) the beneficial results accomplished and
- (6) the fee customarily charged in this court for similar legal services

16 I further find that the Plaintiff has had to expend funds for property taxes and insurance on the mortgaged property in order to protect its interest in the property

17 The amount due and owing on the note due the Plaintiff, with interest as provided in the note and other costs and expenses of collection, including the attorney's fees awarded, secured by the note and mortgage is as follows

Principal and Interest as of 6/30/11	
1 st Note	\$243,129 16
Home Equity Agreement	\$139,274 31
Attorney's Fees	\$ 3,500 00
Costs Due	\$ 520 50
2009 & 2010 Property Taxes	\$ 2,103 95
Insurance Premium	\$ 2,199 36
TOTAL DEBT SECURED BY THE NOTES AND MORTGAGES INCLUDING INTEREST TO DATE SHOWN	\$390 727 28

Interest for the period from June 30, 2011 through the date of compliance with the highest bid at the foreclosure sale shall comprise the total judgment debt due the Plaintiff Interest after June 30, 2011 in the amount of Forty Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan, per day is to be added to the above stated amount to comprise the judgment debt secured by the mortgage held by the Plaintiff

18 Upon agreement between counsel for the Plaintiff and Defendant, this property shall be sold at the foreclosure sale on October 3, 2011

19 The Plaintiff hereby demands deficiency judgment in this matter

20 In the event of any surplus of funds which may be created at a sale of the mortgaged premises ordered herein, an additional hearing will be held at which time evidence may be presented to determine disposition of said surplus

CONCLUSIONS OF LAW

I therefore conclude as follows

The Plaintiff should have judgment of foreclosure of its mortgage and the mortgaged property should be ordered sold at public auction after due advertisement

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED

(a) That there is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred Ninety Thousand Seven Hundred Twenty-Seven and 28/100ths (\$390,727 28) Dollars representing the total debt due the Plaintiff as set out in Paragraph 17 supra, together with interest at the rate provided therein on the balance or principal for the period set out in said paragraph

(b) The amount in the precedent paragraph ("Total Debt") as set forth in Paragraph 17 supra, and later accrued interest on the principal, shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of Forty-Three and 47/100ths (\$43 47) Dollars on the first Note and Eighteen and 46/100ths (\$18 46) Dollars on the home equity loan

(c) That the Defendant shall on or before the date of the sale of the property hereinafter described pay to the Plaintiff or to the Plaintiff's attorney the amount of the Plaintiff's debt as aforesaid together with costs and disbursements of this action

(d) That on default of payment at or before the time indicated, the mortgaged premises described in the Complaint as hereinafter set forth shall be sold by the undersigned Master in Equity at public auction at the Horry County Courthouse in the City of Conway, County and State aforesaid on some convenient sales day hereafter on the following terms, that is to say

(1) FOR CASH the undersigned Master in Equity will require a deposit of five (5%) per cent on the amount of the bid (in cash or equivalent) same to be applied on the purchase price only upon compliance with the bid, but in the case of non compliance within thirty (30) days same to be forfeited and applied to the costs and the Plaintiff's debt

(2) Interest on the bid shall be paid to the date of compliance at the legal rate

(3) The sale shall be subject to taxes and assessments, existing easements and restrictions and all matters of record

(4) Purchaser shall pay for deed stamps and the cost of recording of the Deed

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

(f) As the Plaintiff has demanded deficiency judgment, the bidding will be held open for thirty (30) days

(g) That the undersigned Master in Equity will by advertisement according to law give notice of the time and place of the sale, and the terms thereof, and will execute to the Purchaser or Purchasers a deed to the premises sold. The Plaintiff, or any other party to this action, may become a Purchaser at such sale, and that if, upon such sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within thirty (30) days after the bidding is closed, the undersigned Master in Equity may advertise the said premises for sale on the next, or some subsequent sales day, at the risk of the highest bidder, and from time to time thereafter until a full compliance shall be secured

(h) That the undersigned Master in Equity will apply the proceeds of sale as follows

FIRST to the payment of the amount of the costs and expenses of this action

NEXT, to the payment to the Plaintiff or its attorney the amount of the Plaintiff's "Total Debt" or so much thereof as the purchase money will pay on same,

NEXT any surplus will be held pending further Order of this Court

(i) It is further ORDERED, ADJUDGED AND DECREED that in the event that the successful bidder is other than the Defendant in possession herein, and a Writ of Assistance is presented, the Sheriff of Horry County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and to put the successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected pursuant to the Protecting Tenants at Foreclosure Act of 2009

(j) And it is further ORDERED, ADJUDGED AND DECREED that the Defendants and all other persons whomsoever claiming under them, them or it be forever barred and foreclosed of all right, title, interest, and equity of redemption in the mortgaged premises so sold or any part thereof

(k) It is further ORDERED, ADJUDGED AND DECREED that pursuant to S C Code Ann §30-9-31 (Supp 1987) the deed of conveyance made pursuant to this sale shall be indexed in the grantor index by the ROD in the name of the owner of record of the subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity, who executes such deed as grantor

(l) The undersigned Master in Equity retains jurisdiction to do all the necessary acts incident to this foreclosure including, but not limited to the issuance of a Writ of Assistance and disposing of any surplus of funds pursuant to Rule 71(c), SCRC

(m) The following is a description of the premises ordered to be sold

ALL AND SINGULAR, all those certain pieces, parcels or lots of land, with improvements thereon, situate, lying and being in Little River Township, County of Horry State of South Carolina, and being represented as LOTS ELEVEN (11)

and TWELVE (12), BLOCK FOUR (4), on a plat or map made for Windy Hill Beach a Corporation, by N C Hughes, Jr , Engineer, revised March 25, 1947, and recorded in the Office of the Clerk of Court for Horry County, South Carolina in Plat Book 5-A at Page 111 reference to which is made a part and parcel hereof

This being the identical property conveyed to Amy Breunig by Deed of Jeffrey A Finkley dated April 18, 2005 and recorded April 20, 2005 in Deed Book 2896 at Page 899, Horry County records

TMS , 156-03-13-005

STREET ADDRESS 3307 Palm Street, North Myrtle Beach, SC 29582

THIS PROPERTY ALSO INCLUDES ANY IMPROVEMENTS THEREON


RALPH STROMAN, SPECIAL REFEREE
ACTING WITH FINALITY

July 13, 2011
Conway, South Carolina