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FORM 4
STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
2012-CP-16-1021
CASE NO. 2014-CP-14-00034

Ashton Bull, et al.

Vanderbilt Mortgage & Finance, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Jonathan M. Riddle	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), 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:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

FILED
 2012 AUG 26 PM 3:12
 CLERK OF COURT
 SCOTT B. GAGG
 DARLINGTON COUNTY, S.C.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A.	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

JS

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON.)
)
 Vanderbilt Mortgage and Finance, Inc.,)
)
 Plaintiffs,)
)
 Ashton C. Bull, Linda Bull, Park Avenue)
 Homes, South Carolina Department of)
 Motor Vehicles,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO.: ~~2014-CP-14-00034~~
2012-CP 16-1021

ORDER DENYING MOTION
TO ALTER OR AMEND

This matter comes before me as Special Referee for Darlington County on June 8, 2015, upon Motion of the Defendants, Ashton C. Bull and Linda Bull ("Defendants") pursuant to Rules 52, 59, and 60 of the South Carolina Rules of Civil Procedure, seeking a reconsideration of the findings of fact and conclusions of law in my Order granting Summary Judgment as to the issue of whether Plaintiff has an equitable lien on the subject mobile home in this matter. After consideration of the motion, the motion is denied.

Based upon a review of the file and statements of the attorneys at the previous hearing, there is no basis to alter or amend the judgment. In order to alter or amend findings under SCRCP 52, the original findings must be "without evidentiary support or against the clear preponderance of the evidence." *Geddings v. Geddings*, 319 S.C. 213, 460 S.E.2d 376, 378 (1995). "In an action at law tried without a jury, the trial court's findings will be upheld if they are supported by any reasonable evidence." *Palmettonet, Inc. v. S.C. Tax Comm.*, 318 S.C. 102, 456 S.E.2d 385, 387 (1995). A motion to alter or amend under Rule 59 also allows a "trial judge to reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Under Rule 59, a party can preserve issues for appeal and have another opportunity to prove his case. *Vinson v. Jackson*, 377 S.C. 166, 452

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 CLERK OF COURT
 DARLINGTON COUNTY, S.C.

S.E.2d 249, 250 (1997). Finally, Rule 60 allows amendment for mistake or newly discovered evidence. This requires a particularized showing of any mistake or newly discovered evidence. *Tobias v. Rice*, 386 S.C. 306, 688 S.E.2d 552, 554 (2010). The burden is on the moving party, and the motion is in the sound discretion of the judge and will not be disturbed absent an abuse of discretion. *Tri-County Ice and Fuel v. Palmetto Ice*, 303 S.C. 237, 399 S.E.2d 779, 782 (1990). Abuse of discretion "arises where the trial judge was controlled by error of law or where his order is based on factual conclusions that are without evidentiary support. *Id.*

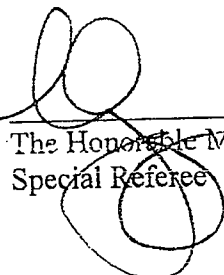
Here, Defendant moved to alter or amend within the proper time frame. However, Defendant has not made a particularized showing of any mistake of law or new evidence. Furthermore, Defendant cannot show that the factual findings of the original Order are without evidentiary support. All the conclusions of law in the Order were based on reasonable evidence presented by the Plaintiff. Defendant cannot show that the clear preponderance of the evidence warrants overturning the previous judgment. Therefore, there is no abuse of discretion as there are no clear errors of law and all factual findings have evidentiary support.

In addition, Defendant argues in its motion that the Court's ruling is improper as it was issued prior to a jury trial, which Defendant demanded. However, Defendant is not entitled to a jury trial. In an equity action, defendants are entitled to a trial by jury on their counterclaims when the counterclaims are both legal and compulsory. *Johnson v. S.C. National Bank*, 292 S.C. 51, 53, 354 S.E.2d 895, 896 (1987). Whether an action is legal or equitable depends on the relief sought. *First Union Nat'l Bank v. Soden*, 333 S.C. 554, 574, 511 S.E.2d 372, 382 (Ct.App 1998). The test used to determine if a counterclaim is compulsory is the logical relationship test. *First Citizens Bank and Trust Co. v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991). In that case, which involved a foreclosure on a note and mortgage and a purported oral agreement,

the Court held "there is a logical relationship between the enforceability of the note which is the subject of the foreclosure and the validity of the purported oral agreement." *Id.* In essence, the "logical relationship" determination is made by asking whether the counterclaim would affect the lender's right to enforce the note and foreclose the mortgage. *Advance Intern., Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 269-70, 449 S.E.2d 580, 582 (Ct.App.1994). In one foreclosure, the Court ruled that a defense was permissive because it bore no logical relationship to the enforcement of the note. *Wells Fargo v. Smith*, 398 S.C. 487 (Ct.App 2012). In this case, Defendant's only counterclaim alleges negligence on the part of Vanderbilt in failing to retire the title. Defendant argues that this prevented them from refinancing the loan or having it modified. While this is a legal counterclaim, under the logical relationship, this counterclaim does not go to the enforceability of the note. Therefore, there is no compulsory counterclaim as stated by the court, and Defendants are not entitled to a jury trial.

Due to the foregoing, it is therefore, **ORDERED, ADJUDGED, AND DECREED**, that the Defendants Motion to Alter is denied;

AND IT IS SO ORDERED.


The Honorable Martin S. Driggers, Sr.
Special Referee

Darlington, South Carolina
8/20, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS

2012-CP-16-1021

Vanderbilt Mortgage and Finance,)
Inc.)

CERTIFICATE OF SERVICE

Plaintiff,)

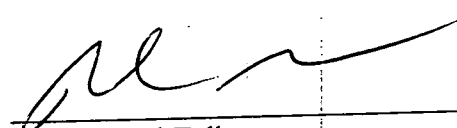
vs.)

Ashton C. Bull, et al.)

Defendant(s).)

I, Paul Talbot, an employee of Crawford & von Keller, LLC, do hereby certify that on this date, I served a copy of the **Order Denying Motion to Alter or Amend** on the counsel listed below, by causing the same to be placed in a sealed envelope, via first class mail, addressed as follows:

Marcus Woodson
P.O. Box 1657
Marion, SC 29571



Paul Talbot

Columbia, South Carolina

September 2, 2015

FORM 4
 STATE OF SOUTH CAROLINA
 COUNTY OF DARLINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

RECEIVED

CASE NO. 2014 CP-14-00034

Ashton Bull, et al.

Vanderbilt Mortgage & Finance, Inc.

OCT 07 2015

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

2015 MAY 11 AM 11:49

FILED

Submitted by: Jonathan M. Riddle	Attorney for : <input checked="" type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

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 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Vanderbilt Mortgage and Finance, Inc.,)
)
 Plaintiffs,)
)
 Ashton C. Bull, Linda Bull, Park Avenue)
 Homes, South Carolina Department of)
 Motor Vehicles,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 CASE NO. ~~2014-CP-14-00034~~
 2012CP1601071
 ORDER GRANTING
 SUMMARY JUDGMENT

FILED
 2015 MAY 11 AM 11:50
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.
 DARLINGTON COUNTY, S.C.

This matter comes before me as Special Referee for Darlington County on April 20, 2015, upon Motion of the Plaintiff, Vanderbilt Mortgage and Finance, Inc. ("Vanderbilt") pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, seeking an Order granting Summary Judgment as to the issue of whether Plaintiff has an equitable lien on the subject mobile home in this matter. After consideration of the motion, submissions of the parties, and testimony at the hearing, the Court finds as follows:

FINDINGS OF FACT

1. July 14, 2003, Defendant Ashton Bull ("Mr. Bull") purchased a Champion Model Manufactured Home from CIT Homes.
2. In connection with his purchase of the home, Mr. Bull executed and delivered to CIT Group/Consumer Finance Inc. a Promissory Note ("Note") promising to pay back the sum of \$85,600.00, with interest at a rate of 9.35% per annum.
3. Mr. Bull further executed a Rider to Promissory Note in which he gave CIT a security interest in the Manufactured Home which was identified as a 2003 Champion Model Manufactured Home, Serial No. 23-03-79805296ABC.

4. CIT advanced the funds necessary for Mr. Bull to purchase the mobile home as provided for in the Note.

5. Mr. Bull executed and delivered a Real Estate Mortgage ("Mortgage"), over the land located at 1108 Farmhouse Lane, Darlington, SC.

6. The property description to the Mortgage included the 2003 Champion mobile home, Serial #23-03-798-05296ABC.

7. In August, 2003, Mr. Bull received a mobile home that was not identified on the mortgage but instead was a 2004 Champion mobile home, VIN#23-04-79805602ABC.

8. In his deposition, Mr. Bull testified that he knew upon delivery that the mobile home that was delivered was not the one identified on the Rider and the Mortgage.

9. Despite the misidentification of the home being delivered, Mr. Bull continued to live in the home and make payments on the loan from July 14, 2003 until the day of default on April 15, 2012.

10. That CIT assigned the Note and Mortgage to the Plaintiff Vanderbilt on September 9, 2008.

11. Mr. Bull has admitted that he intended to take out a loan for the mobile home and understood that if he did not make payments, Vanderbilt would be entitled to repossession or foreclosure. (deposition of Ashton Bull, p. 68-70);(deposition of Linda Bull, p. 29, 31)

12. Mr. Bull signed numerous documents stating that Vanderbilt would have a security interest in a mobile home on his property and testified in his deposition that he understood he was giving the lender a security interest in the home. (deposition of Ashton Bull, p. 68-70)

13. Mr. Bull has not disputed signing these documents, including the Note and Mortgage. (deposition of Ashton Bull, p. 20, 23-24, 32,36); (deposition of Linda Bull, p. 27, 31)

14. The Court finds as a matter of fact that there is a debt owed by Mr. Bull to Vanderbilt.

15. The Court finds as a matter of fact that there is a specific property to which the aforementioned debt attaches and it can be described to more than a reasonable certainty as the 2004 Champion mobile home, VIN#23-04-79805602ABC located at at 1108 Farmhouse Lane, Darlington, SC.

16. The Court finds as a matter of law that the testimony of the witnesses shows that there was an express intent of both parties that the mobile home and land would serve as security for payment of the debt.

CONCLUSIONS OF LAW

17. In order for an equitable lien to arise on a specific piece of property, the person claiming the lien must show three things. "There must be a debt, a duty or obligation owing from one person to another, a res to which the obligation attaches, which can be described with *reasonable certainty*, and an intent, expressed or implied that the property serve as security for the payment or obligation." *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 145, 337 S.E.2d 140 (1985) (emphasis added). See 51 Am.Jur.2d *Liens* Section 24 (1970); *California Bank v. Leahy*, 129 Cal.App. 243, 18 P.2d 709, 711 (1933).

18. A lien will relate back to the time of its creation, even if it is not recognized until a judicial determination is entered. *Regions Bank v. Wingard Properties*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct.App. 2011)(quoting *Horry Cnty. V. Ray*, 382 S.C. 76, 83-84, 674 S.E.2d 519, 524 (Ct.App. 2009)).

19. Equitable liens will always rest on an express or implied contract. *Id.*


It appears from the pleadings and motions filed herein, that the Plaintiff is entitled to Summary Judgment against the Defendants as to its first and second cause of action. Plaintiff is further entitled to a declaration that it is entitled to a equitable lien on the subject property located at 1108 Farmhouse Lane, Darlington, South Carolina, and the 2004 Champion mobile home, VIN#23-04-79805602ABC. This equitable lien shall be a first priority lien.

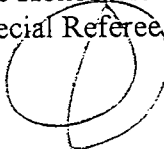
Plaintiff is also entitled to Summary Judgment granting a reformation of the mortgage to reflect the correct VIN of the mobile home as VIN #23-04-79805602ABC

Finally, Plaintiff is entitled to an Order correcting the legal description on the aforementioned mortgage.

Due to the foregoing, it is therefore, ORDERED, ADJUDGED, AND DECREED, that the Plaintiff's Motion for Summary Judgment against the Defendants is granted;

AND IT IS SO ORDERED.



The Honorable Martin S. Driggers, Sr.
Special Referee


Darlington, South Carolina
5/6, 2015

STATE OF SOUTH CAROLINA
 COUNTY OF DARLINGTON

COPY

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-16-1021

Vanderbilt Mortgage and Finance, Inc,
 Plaintiff,

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

vs.

Ashton C. Bull, Linda Bull, Park Avenue
 Homes, South Carolina Department of Motor
 Vehicles,

Defendant.

FILED
 2015 JUN - 8 AM 11:24
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.D.
 DARLINGTON COUNTY, S.C.

Plaintiff's Attorney: Theodore von Keller, Bar No. _____ Address: PO Box 4216, Columbia, SC 29240 Phone: (803)790-2626 Fax (803)790-1277 E-mail: _____ Other: _____	Defendant's Attorney: Marcus Woodson, Bar No. 14038 Address: PO Box 1657, Marion, SC 29571 Phone: (843)423-1977 Fax(843)423-9608 E-mail: _____ Other: _____
--	--

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

SECTION I: Hearing Information

Nature of Motion: To Reconsider
 Estimated Time Needed: 15 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
 Date submitted: June 8, 2015

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, SCRCP)
 - Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 - Other: _____

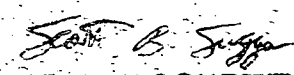
JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____
 JUDGE CODE: _____
 Date: _____

CLERK'S VERIFICATION
 TRUE CERTIFIED COPY

Collected by: _____ Date Filed: _____

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


 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Vanderbilt Mortgage and Finance)
 Inc.,)
)
 PLAINTIFF,)
)
 Vs.)
)
 Ashton C. Bull, Linda Bull, Park)
 Avenue Homes, South Carolina)
 Department of Motor Vehicles,)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 2012-CP-16-1021

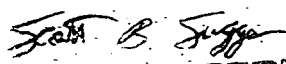
**NOTICE OF MOTION TO ALTER, AMEND
 AND RECONSIDER JUDGMENT**

FILED
 2015 JUN -8 AM 11:24
 SCOTT B. SUGGS
 CLERK OF COURT/R/O D.
 DARLINGTON COUNTY, S.C.

TO: THEODORE VON KELLER, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendants, Ashton C. Bull and Linda Bull, will move before the Honorable Martin S. Driggers, Special Referee for Darlington County, Fourth Judicial Circuit, at the Darlington County Court located at 1 Public Square, Darlington, South Carolina, for an Order pursuant to Rules 52, 59 and 60 of the South Carolina rules of Civil Procedure altering, amending, reconsidering, clarifying, modifying or granting relief from the Court's Order dated May 6, and filed May 11, 2015, the particulars being:

1. The Order grants a mortgage on a mobile home that does not have a Certificate of Title in violation of South Carolina Code Section 56-19-210. Upon information and belief, the Order is void under the law.
2. The Defendants request that the Special Referee reconsider findings of fact numbers 11, 12, 13, 14, 15 and 16.
3. The Defendants request that the Special Referee reconsider the conclusion of law that the Plaintiff has an equitable lien.

TRUE CERTIFIED COPY.

 CLERK OF COURT/RMC
 DARLINGTON COUNTY, SC

4. The Defendants request that the Special Referee reconsider the conclusion of law that the equitable lien relates back to the time of its creation.

5. The Defendants request that the Special Referee reconsider granting Summary Judgment in favor of the Plaintiff.

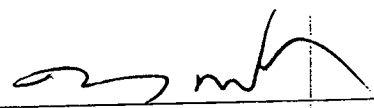
6. The Defendants object to a ruling by the Special Referee prior to the hearing on their Counterclaims.

FILED
2015 JUN -8 AM 11:26
SCOTT B. SUGGS
CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, S.C.

Pursuant to Rule 11(a) of the South Carolina Rules of Civil Procedure, Defendant's counsel in this matter certifies that consultation with opposing counsel concerning this motion would serve no useful purpose or could not be timely held.

This motion is further based upon the pleadings herein, applicable South Carolina statutory and case law, federal statutes, the motion and orders, and testimony as may be attached hereto or presented at the hearing on this motion.

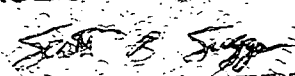
Respectfully submitted,



Marcus Woodson
Attorney for Defendants Bull
Post Office Box 1657
Marion, SC 29571
(843)423-1977 telephone

Marion, South Carolina

June 8, 2015

TRUE CERTIFIED COPY,

CLERK OF COURT/R.M.C.
DARLINGTON COUNTY, SC