

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM OCONEE COUNTY

S.C. Supreme Court

HONORABLE CORDELL MADDOX CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2013002037

BRANCH BANKING AND TRUST COMPANY ... RESPONDENT

VS

SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

APPENDIX

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The South Carolina Court of Appeals

Branch Banking and Trust Company, Respondent,

v.

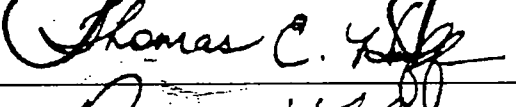
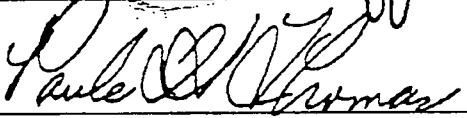
Sarah L. Gray, Jeffery Gray, Suntrust Bank, West Union
Development, LLC, and Bank of Anderson, N.A.,
Defendants,

Of Whom Jeffery Gray is the Appellant.

Appellate Case No. 2013-002037

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.

Columbia, South Carolina

cc:

Charles R. Griffin, Jr., Esquire
William Douglas Gray, Esquire

FILED

October 30, 2015

Weyman C. Carter, Esquire
The Honorable J. Cordell Maddox, Jr.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY

HONORABLE CORDELL MADDOX CIRCUIT COURT JUDGE

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BRANCH BANKING AND TRUST COMPANY ... RESPONDENT

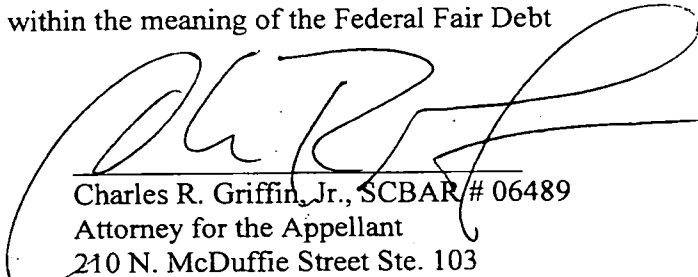
VS

SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

PETITION FOR REHEARING

The undersigned, attorney for the Appellant, pursuant to Rule 221, SCACR, hereby
Petitions the Court for a Rehearing in this matter.

The grounds for this Petition are that there are genuine issues of material fact as to
whether Respondent was an exempted creditor within the meaning of the Federal Fair Debt
Collection Practices Act.



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September 9, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Branch Banking and Trust Company, Respondent,

v.

Sarah L. Gray, Jeffery Gray, Suntrust Bank, West Union
Development, LLC, and Bank of Anderson, N.A.,
Defendants,

Of Whom Jeffery Gray is the Appellant.

Appellate Case No. 2013-002037

Appeal From Oconee County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-439
Submitted June 1, 2015 – Filed August 26, 2015

AFFIRMED

Charles R. Griffin, Jr., of The Griffin Firm, LLC, of
Anderson, for Appellant.

William Douglas Gray and Weyman C. Carter, both of
McNair Law Firm, PA, of Greenville, for Respondent.

PER CURIAM: Jeffery Gray appeals the circuit court's order granting Branch Banking and Trust Company's (BB&T's) motion for summary judgment as to Gray's counterclaims in a foreclosure action. On appeal, Gray argues the circuit court erred in granting BB&T's motion because genuine issues of material fact exist regarding whether BB&T (1) was a holder in due course (HIDC) of the loan; (2) violated the South Carolina Consumer Protection Code (SCCPC) by failing to comply with the attorney-preference provision; and (3) violated the Federal Fair Debt Collection Practices Act (FDCPA) by using deceptive means to collect a debt. We affirm pursuant to Rule 220(b), SCACR, and the following authorities.

First, Gray's argument that BB&T was not a HIDC is unpreserved. *See BMW of N. Am., LLC v. Complete Auto Recon Servs., Inc.*, 399 S.C. 444, 454-55, 731 S.E.2d 902, 908 (Ct. App. 2012) (holding an issue must have been raised to and ruled upon by the circuit court to be preserved for appeal); *id.* at 455, 731 S.E.2d at 908 (holding a party must file a Rule 59(e), SCRCP, motion to preserve an issue for appellate review that was raised to but not ruled on by the circuit court).

Second, the circuit court properly granted summary judgment regarding the SCCPC claims because the statute of limitations bars Gray from asserting a violation of the attorney-preference law. *See McMaster v. Dewitt*, 411 S.C. 138, 143, 767 S.E.2d 451, 453 (Ct. App. 2014) ("In reviewing a decision to grant summary judgment, [the appellate court] appl[ies] the same standard as the circuit court."); Rule 56(c), SCRCP ("[Summary] judgment . . . shall be rendered forthwith if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law."); S.C. Code Ann. § 37-10-105(A) (2015) ("No debtor may bring an action for a violation of [section 37-10-102(a) of the South Carolina Code (2015)] more than three years after the violation occurred, [unless the agreement was unconscionable]."); S.C. Code Ann. § 37-5-108(4) (2015) (listing factors that indicate unconscionability). Gray's argument that the statute of limitations does not apply because BB&T unconscionably secured the loan at an exceptionally high interest rate and concealed material facts related to the loan is unpreserved. *See BMW of N. Am., LLC*, 399 S.C. at 454-55, 731 S.E.2d at 908 ("[A]n issue must have been raised to and ruled upon by the [circuit] court in order to be preserved for appellate review.").

Third, the circuit court properly granted summary judgment regarding the FDCPA claim because BB&T was a creditor in the loan transaction. *See* 15 U.S.C. § 1692a(6) (2009) (defining "debt collector" as "any person who . . . regularly collects or attempts to collect . . . debts owed or due or asserted to be *owed or due*").

another" (emphasis added)); § 1692a(4) (2009) ("'[C]reditor' means any person who offers or extends credit creating a debt or to whom a debt is owed . . .").

AFFIRMED.¹

FEW, C.J., and HUFF and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY

HONORABLE CORDELL MADDOX CIRCUIT COURT JUDGE

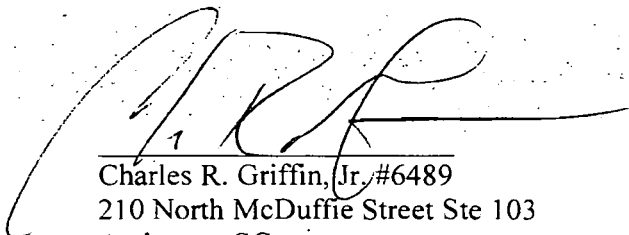
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VS

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DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

FINAL BRIEF OF APPELLANT



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August 28, 2014

TABLE OF CONTENTS

Table of Authorities	03
Statement of Issues on Appeal	04
Statement of the Case	05-08
Arguments	
Did the Trial Court err in granting Respondent's Motion for Summary Judgment?.....	09-14
Conclusion.....	15

TABLE OF AUTHORITIES

STATUTES

Rule 56, SCRCF
 12 USCS § 2605
 S.C. Code Ann. § 37-10-105
 S.C. Code Ann. § 37-10-102(a)
 S.C. Code Ann. § 37-1-301(13)
 S.C. Code Ann. § 37-10-101 et seq
 S.C. Code Ann. § 36-1-201(19)
 S.C. Code Ann. § 36-1-201(25)
 S.C. Code Ann. § 36-3-304(1)(b)
 S.C. Code Ann. § 36-3-3-2(1)
 15 U.S.C. §§ 1692 et seq.
 15 U.S.C. § 1692a(6).
 15 U.S.C. § 1692e(5)
 15 U.S.C. § 1692d
 15 U.S.C. § 1692e(2)(A)
 15 U.S.C. § 1692e(10)

CASES

Plyler v. Elliott, 19 S.C. 257, 264 (S.C. 1883).
Specialty Flooring Co. v. Palmetto Federal Sav. Bank, 302 S.C. 107 (S.C. Ct. App. 1990)
Johnson v. Alexander, 2014 S.C. App. LEXIS 43, 2-3 (S.C. Ct. App. Mar. 19, 2014)
Perry v. Stewart Title Co., 756 F.2d 1197, 1208 (5th Cir. 1985);
Solomon v. HSBC Mortg. Corp., 395 F. App'x 494, 495 (10th Cir. 2010)
Kee v. R-G Crown Bank, 656 F. Supp. 2d 1348, 1355 (D. Utah 2009).
Lewis v. JP Morgan Chase Bank, N.A., 2014 U.S. Dist. LEXIS 38420, 27-28 (D. Colo. Mar. 24, 2014)
Fontell v. Hassett, 870 F. Supp. 2d 395 (D. Md. 2012)
Cooper by Cooper v. County of Florence, 306 S.C. 408 (S.C. 1991)

STATEMENT OF ISSUES ON APPEAL

Did the Trial Court err in granting Respondent's Motion for Summary Judgment?

STATEMENT OF THE CASE

On or about July 29, 2003, Appellant made, executed and delivered a certain Note ("Note") in the principal sum of \$180,00.00, payable in monthly installments. This loan transaction was incurred by Appellant primarily for personal, family or household purposes. Record P. 124.

In order to secure the payment of the Note according to the terms and conditions thereof, Appellant made, executed and delivered unto Mortgage Electronic Registration Systems (MERS) a certain real estate mortgage ("Mortgage"), covering the following described property and any and all improvements to the property;

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305. Thereafter, this being the same property conveyed to West Union Development, LLC by deed from Jeffery A. Gray and Sarah L. Gray dated November 24, 2010 and recorded November 29, 2010 in Book 1805 at Page 289.

TMS NO. 209-08-01-013

Property address: 202 S Summit Drive Seneca, SC 29672

Record PP. 124 – 125.

This action was initiated when Responent filed and served a foreclosure complaint claiming Appellant failed to make payments due from and after May 1, 2011.

Record P. 22 ¶ 13.

Attached to the foreclosure complaint was document titled ASSIGNMENT OF REAL ESTATE MORTGAGE which provided:

“FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, hereby sells, assigns, transfers and sets over unto Branch Banking and Trust Company, that certain Mortgage dated July 29, 2003, executed by Sarah L. Gray and Jeffery Gray, which said mortgage is in the original principal amount of \$180,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, State of South Carolina, recorded on August 13, 2003 in Book 1727 at Page 136, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.”

Record P. 28.

The ASSIGNMENT OF REAL ESTATE MORTGAGE is dated December 9, 2011, well after the date of May 1, 2011 that Respondent claims Appellant failed to make payments. Record P. 28; Record P. 22 ¶ 13.

A person claiming to be Ivan Hobbs, a VP for MERS executed the ASSIGNMENT OF REAL ESTATE MORTGAGE. Record P. 28.

After Appellant was served with the foreclosure complaint Appellant telephoned MERS on or about January 9, 2012, and Appellant asked the person working at MERS if an Ivan Hobbs was employed by MERS. Record P. 125. Appellant was informed by MERS' agent that there was no one employed by MERS by that name. Record P. 125.

To the contrary, a person claiming to be Ivan Hobbs executed an affidavit stating that he was one of Respondent's officers who was “appointed” by MERS as a signing officer by a corporate resolution dated March 27, 2011. Record PP. 105 – 106. L. 9.

Further, according to the foreclosure complaint, the Respondent claimed Appellant was in default on the payments at the time the mortgage was assigned to the Respondent. Record P. 125; Record P. 22 ¶ 13.

According to the Mortgage which is the subject of this action, the Plaintiff was the Lender and MERS, a separate corporation, and was Plaintiff's nominee in the transaction and served as Mortgagee in the transaction. Record P. 125; Record P. 112.

According to Ivan Hobbs, MERS is a separate company that provides a service to mortgage lenders and servicers who, as "members" of MERS, have a contractual relationship whereby MERS serves as the mortgagee of record for home mortgage loans. Record P. 106, L. 6.

At closing Appellant was not provided with any Truth In Lending Disclosure documents by MERS, which, according the mortgage is a distinct and separate corporate entity from the Lender in the transaction. Record P. 127; Record P. 112; Record P. 106, L. 6.

Further, both Respondent and MERS failed to timely furnish Appellant with required servicing disclosures required by 12 USCS § 2605 after the assignment purportedly occurred on December 9, 2011. Record P. 127.

Appellant was unaware that MERS had purportedly assigned the Mortgage to Respondent until Appellant was served with the Summons and Complaint in this action. Record P. 127.

Respondent and MERS obtained a mortgage loan secured by Appellant's residence at an exceptionally high APR and/or failed to comply with applicable disclosure laws and/or concealed material facts from the Appellant that Appellant was entitled to know and understanding prior to executing the note and mortgage which is the subject of this action. Record P. 38, ¶ 15.

MERS failed to timely obtain Appellant's preference as to legal counsel as required by § 37-10-102 S.C. Code of Laws Ann. Record P. 36 ¶ 8.

Appellant has alleged Four causes of action in his Counterclaim:

- (1) Violation of South Carolina Unfair Trade Practices Act. Record PP. 39 – 40, ¶¶ 19 – 25.
- (2) Breach of Contract Accompanied by Fraudulent Act. Record PP. 40 – 41, ¶¶ 26 – 29.
- (3) Violation(s) of the South Carolina Consumer Protection Code. Record PP. 41 – 42, ¶¶ 30 – 32.
- (4) Violation(s) of the Federal Fair Debt Collections Practices Act. Record PP. 42 – 43, ¶¶ 33 – 41.

Appellant claims that Respondent is not a holder in due course. Record P. 36 ¶ 9.

Appellant has alleged that the loan transaction which is the subject of this action was and is unconscionable within the meaning of § 37-10-105 S.C. Code of Laws Ann., and/or was induced by unconscionable conduct in violation of and prohibited by § 37-10-105 S.C. Code of Laws Ann. Record P. 39 ¶ 17.

After a hearing, the Court signed an Order granting Respondent's motion for Record P. 9.

Thereafter, Appellant initiated this Appeal.

ARGUEMENTS

THE TRIAL COURT ERRED IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.

When reviewing an order granting summary judgment, an appellate court employs "the same standard applied by the trial court under Rule 56, SCRCP." Rule 56 provides the trial court shall grant summary judgment if "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." ... "However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." *Johnson v. Alexander*, 2014 S.C. App. LEXIS 43, 2-3 (S.C. Ct. App. Mar. 19, 2014).

Appellant claims that Respondent is not a holder in due course. Record P. 36 ¶ 9.

"Under S.C. Code Ann. § 36-3-3-2(1), a holder in due course is a holder who takes the instrument (a) for value; and (b) in good faith; and (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person. The purchaser has notice of a claim or defense if the purchaser has notice that the obligation of any party is voidable in whole or in part. S.C. Code Ann. § 36-3-304(1)(b). A person has notice of a fact when he has actual knowledge or notice or, from all the facts and circumstances known to him at the time in question, he has reason to know that it exists. S.C. Code Ann § 36-1-201(25). "Good faith" means honesty in fact in the conduct or transaction concerned. S.C. Code Ann. § 36-1-201(19). *Specialty Flooring Co. v. Palmetto Federal Sav. Bank*, 302 S.C. 107 (S.C. Ct. App. 1990)"

It undisputed that at the time the mortgage was assigned to the Respondent, the Respondent claimed Appellant was in default on the payments. Record P. 125; Record P. 22 ¶ 13.

1. Violation(s) of the South Carolina Consumer Protection Code.

Appellant has alleged that Respondent and MERS obtained a mortgage loan secured by Appellant's residence at an exceptionally high APR and/or failed to comply with applicable disclosure laws and/or concealed material facts from the Appellant that Appellant was entitled to know and understanding prior to executing the note and mortgage which is the subject of this action. Record P. 38 ¶ 15.

Appellant has alleged that the aforementioned actions, conduct and/or omissions of Respondent and MERS are in violation of and prohibited by § 37-10-101 et seq S.C. Code of Laws Ann., and further said violations were intentional and deliberate. Record P. 41 ¶ 31.

"Creditor" means the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor's right to payment. S.C. Code Ann. § 37-1-301(13). A mortgage being a mere security, is an evidence of debt, being an instrument the purpose of which is to secure a debt. No other written evidence of the debt than that furnished by the instrument itself is necessary to sustain a mortgage. *Plyler v. Elliott*, 19 S.C. 257, 264 (S.C. 1883).

MERS served as mortgagee of record in the instant transaction. Record P. 106, L. 6.

Clearly MERS is a creditor within the meaning of the South Carolina Consumer Protection Code.

S.C. Code Ann. § 37-10-102(a) provides:

“Whenever the primary purpose of a loan that is secured in whole or in part by a lien on real estate is for a personal, family or household purpose -(a) The creditor must ascertain prior to closing the preference of the borrower as to the legal counsel that is employed to represent the debtor in all matters of the transaction relating to the closing of the transaction and except in the case of a loan on property that is subject to the South Carolina Horizontal Property Act (Section 27-31-10 et seq.) the insurance agent to furnish required hazard and flood property insurance in connection with the mortgage and comply with such preference.”

S.C. Code Ann. § 37-10-105 provides:

(A) If a creditor violates a provision of this chapter, the debtor has a cause of action, other than in a class action, to recover actual damages and also a right in an action, other than in a class action, to recover from the person violating this chapter a penalty in an amount determined by the court of not less than one thousand five hundred dollars and not more than seven thousand five hundred dollars. No debtor may bring a class action for a violation of this chapter. No debtor may bring an action for a violation of this chapter more than three years after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action. (B) No creditor may be held liable in an action brought under this section for a violation of this chapter if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. (C) If the court finds as a matter of law that the agreement or transaction is unconscionable pursuant to Section 37-5-108 at the time it was made, or was induced by unconscionable conduct, the court may, in an action other than a class action: (1) refuse to enforce the agreement, or a term, or part of the agreement or transaction that the court determines to have been unconscionable at the time it was made; (2) enforce the remainder of the agreement without the unconscionable term or part, or limit the application of the unconscionable term or part to avoid an unconscionable result; (3) rewrite or modify the agreement to eliminate an unconscionable term, part, or result and enforce the new agreement; or (4) award: (a) not more than the total amount of the loan finance charge and allow repayment of the unpaid balance of the loan without any finance charge; (b) not more than double the amount of the excess loan finance charge or other charges or fees actually received by the creditor or paid by the debtor to a third party; and (c) attorney's fees and costs.

Clearly it is unconscionable to allow MERS, Respondent's assignor, to obtain a security interest in Appellant's residence with complying with the required disclosures dictated by the South Carolina Consumer Protection Code.

Since Respondent is not a holder in due course, Respondent took the mortgage subject to all claims and defenses that Appellant had or may have had against MERS.

Thus a genuine issue of material fact exists as to whether or not Respondent and MERS violated the South Carolina Consumer Protection Code which claims may be asserted against Respondent as there are issues of fact as to whether Respondent is a holder in due course.

2. Violation(s) of the Federal Fair Debt Collections Practices Act.

Appellant initiated a claim for statutory and actual damages caused by Counter-Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.*, which prohibits a debt collector from engaging in deceptive, unfair and/or unconscionable debt collection practices. Record P. 42 ¶ 34.

Appellant has alleged that the Respondent is a debt collector within the meaning of the FDCPA. Record P. 42 ¶ 35.

The FDCPA defines a debt collector as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects . . . debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Excluded from the definition are those entities who collect or attempt to collect "any debt owed or due or asserted to be owed or due another to the extent such activity . . . concerns a debt which was not in default at the time it was obtained by such person." § 1692a(6)(F). **"The legislative history of section**

1692a(6) indicates conclusively that a debt collector does not include the consumer's creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned." *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985); see also *Solomon v. HSBC Mortg. Corp.*, 395 F. App'x 494, 495 (10th Cir. 2010) (unpublished); *Kee v. R-G Crown Bank*, 656 F. Supp. 2d 1348, 1355 (D. Utah 2009) ("a loan servicer such as Fifth Third is only a 'debt collector' within the meaning of the FDCPA if it acquires the loan after it is in default"). *Lewis v. JP Morgan Chase Bank, N.A.*, 2014 U.S. Dist. LEXIS 38420, 27-28 (D. Colo. Mar. 24, 2014). (Bold Added).

MERS is a distinct and separate corporate entity from the Respondent. Record P. 125; Record P. 112; Record P. 106, L. 6.

Clearly, from the record it is apparent that the mortgage was in default when it was assigned from MERS to Respondent. Record P. 125; Record 22 ¶ 13.

There have been no facts set forth by Respondent that MERS or Respondent have merged into a single corporate entity.

Niether Respondent nor MERS timely furnished Appellant with the required servicing disclosures required by 12 USCS § 2605. Record P. 127.

Appellant was unaware that MERS had purportedly assigned the Mortgage to Respondent until Appellant was served with the Summons and Complaint in this action. Record P. 127.

12 USCS § 2605(c) provides:

(c) Notice by transferee or loan servicing at time of transfer.

(1) Notice requirement. Each transferee servicer to whom the servicing of an federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice.

(A) In general. Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

Respondent is the transferee with regard to the Assignment of the mortgage from MERS to Respondent.

Violations of consumer protection statutes set forth a basis for alleging violations the FDCPA. *Fontell v. Hassett*, 870 F. Supp. 2d 395 (D. Md. 2012).

Appellant has alleged that the Respondent violations of the FDCPA include:

Threatening to take action that cannot legally be taken or that was not intended to be taken as prohibited by 15 U.S.C. § 1692e(5); Engaging in conduct which had the natural consequence of harassing, oppressing, or abusing Appellant in connection with the collection of a debt in violation as prohibited by 15 U.S.C. § 1692d; Falsely representing the character, amount or legal status of the debt as prohibited by 15 U.S.C. § 1692e(2)(A); and Generally using a false representation or deceptive means to collect a debt as prohibited by 15 U.S.C. § 1692e(10).

Generally, whether or not a statutory violation has occurred is a question of fact for the jury. See *Cooper by Cooper v. County of Florence*, 306 S.C. 408 (S.C. 1991).

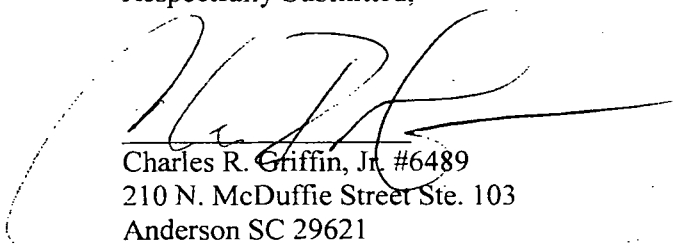
(The determination of whether a motorist statute has been violated is ordinarily a question of fact for the jury.)

CONCLUSION

Clearly, there are genuine issues of material fact as to whether not Respondent's action, conduct and/or omissions were in violation of and prohibited by the South Carolina Consumer Protection Code and the Federal Fair Debt Collection Practices Act.

For the reasons stated above, the Appellant asks that the Order of the Court appealed from be reversed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. R. Griffin, Jr.', is written over a horizontal line.

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August 28, 2014

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JEFFERY GRAY is APPELLANT

FINAL BRIEF OF RESPONDENT

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August 27, 2014

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AUG 29 2014

SC Court of Appeals

Table of Contents

STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
ARGUMENTS.....	5
1. DID THE TRIAL COURT ERR IN FAILING TO SUSTAIN RESPONDENT'S OBJECTIONS TO THE ADMISSIBILITY OF JEFFERY GRAY'S AFFIDAVIT?	5
a) Affidavit was never served.....	6
b) Appellant failed to serve his purported Affidavit not later than two (2) days before the hearing.	7
c) Affidavit contains hearsay and would not be admissible in evidence.....	8
2. THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.	9
a) Appellant's holder in due course assertion is inapplicable due to the facts	10
b) No violation of the Consumer Protection Code.	13
c) The Statute of Limitations bars any claim under the Consumer Protection Code.	14
d) Respondent is not a debt collector under the Federal Fair Debt Collection Practices Act.	15
e) Appellant has abandoned any argument relating to his counterclaims pertaining to violation of the South Carolina Unfair Trade Practices Act and breach of contract accompanied by fraudulent act.	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases

<i>Adams v. Fellers</i> , 88 S.C. 212, 213, 70 S.E. 722, 723 (1911)	12
<i>BAC Loan Home Servicing, L.P. v. Kinder</i> , 398 S.C. 619, 621, 731 S.E.2d 547, 548 (2012)	12, 13
<i>Bank of America, N.A. v. Draper</i> , 405 S.C. 214, 217, 746 S.E.2d 478, 479 (Ct. App. 2013)	13
<i>Bell v. Bennett</i> , 307 S.C. 286, 294, 414 S.E.2d 786, 791 (Ct. App. 1992)	16
<i>Bradford v. HSBC Mortgage Corp. et al.</i> , 829 F. Supp. 2d 340, 348 (E.D. Va. 2011)	15
<i>Cullum Mechanical Const. Inc. v. S.C. Baptist Hospital</i> , 344 S.C. 426, 432, 544 S.E.2d 838, 841 (2001)	10
<i>Deutsche Bank National Trust Co. v. Pietranico</i> , 928 N.Y.S.2d 818, 833 (N.Y. Sup. Ct. 2011)	12
<i>Fields v. Melrose Ltd. Partnership</i> , 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993)	16
<i>Grant v. Mt. Vernon Mills</i> , 370 S.C. 138, 142, 634 S.E.2d 15, 18 (Ct. App. 2006)	9, 10
<i>Grinnell Corp. v. Wood</i> 389 S.C. 350, 355, 698 S.E.2d 796, 798 (2010)	9
<i>Jernigan v. King</i> , 312 S.C. 331, 335 440 S.E.2d 379, 382 (Ct. App. 1983)	7
<i>Kiah v. Aurora Loan Services, LLC</i> , 2011 WL 841282 at *8 (D. Mass. Mar. 4, 2011) ...	12
<i>Plyer v. Elliott</i> , 19 S.C. 257 (1883)	13
<i>Reese v. U.S. Bank National Assn.</i> , 2012 WL 1952819 at *1 (D.S.C. Apr. 30, 2012)	12
<i>Stephens v. Draffin</i> , 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997)	10
<i>Swain v. CACH, LLC</i> , 699 F. Supp. 2d 1109, 1112 (N.D. Cal. 2009)	15
<i>Swindler v. Swindler</i> , 355 S.C. 245, 250, 584 S.E.2d 438, 441 (Ct. App. 2003)	11
<i>Trowell v. SC Dept. of Public Safety</i> , 384 S.C. 232, 237, 681 S.E.2d 893, 896 (Ct. App. 2009)	6

Statutes

15 U.S.C.A. § 1692(a)(4)	15, 16
15 U.S.C.A. § 1692(a)(6)	16
15 U.S.C.A. § 1692(a)(6)(A)&(F)	15
S.C. CODE ANN. § 36-3-102(a) (Supp. 2008)	10
S.C. CODE ANN. § 36-3-104 (Supp. 2008)	10, 11
S.C. CODE ANN. § 37-1-301(13) (1976)	14
S.C. CODE ANN. § 37-10-105(A)(1976)	15

Other Authorities

Affidavit of Gray, R. pg. 125.....	8
Affidavit of Hobbs ¶¶ 3, 6, and 7; Exhibit "A" to the Complaint, R. pgs. 105-106.....	3
Affidavit of Hobbs ¶ 9. (R. pgs. 106-107).....	17
Affidavit of Miller ¶ 5, R. pg. 116.....	2
Affidavit of Miller ¶¶ 6 and 7, R. pg. 116	2
Affidavit of Miller ¶ 7, R. pg. 116.....	14
Affidavit of Miller ¶ 8 and Exhibit "A" to Miller Affidavit, R. pgs. 116, 118.....	3
Affidavit of Miller ¶ 9 and Exhibit "B" to Miller Affidavit, R. pgs. 116, 120.....	4
Affidavit of Miller ¶ 10, R. pgs. 116-117	3
Appellant's Response to Request to Admit No. 6, R. pgs. 63, 88, 97	14
Appellant's Response to Request to Admit No. 7, R. pgs. 63, 97.....	14
Appellant's Response to Respondent's Request to Admit No. 6, Exhibit "A" to Respondent's Motion for Summary Judgment and Memorandum in Support, R. pgs. 63, 97	3
BLACK'S LAW DICTIONARY 1076 (8th ed. 2004).....	12
Exhibit "B" to Motion for Summary Judgment and Memorandum in Support, R. pg. 70 ..3	

Rules

Rule 5(b)(1), SCRCPP	6
Rule 6(d), SCRCPP	7
Rule 56, SCRCPP.....	9
Rule 56(c), SCRCPP	5, 7, 8, 9
Rule 56(e) SCRCPP	5
Rule 801(c), South Carolina Rules of Evidence	9

STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in failing to sustain Respondent's objections to the admissibility of Jeffery Gray's affidavit?
2. Did the trial court err in granting Respondent's Motion for Summary Judgment?

STATEMENT OF THE CASE

On July 29, 2003, Sarah L. Gray¹ and Jeffery Gray (Appellant) executed and delivered to the Respondent a promissory note in the amount of \$180,000.00 requiring monthly payments over 30 years at the fixed interest rate of 5.5%. The interest rate represented a market rate at the time of closing the loan and was not a "subprime loan" or high interest rate loan. (Miller Affidavit ¶¶ 6 and 7, R. pg. 116).

In order to secure the repayment of the loan, Appellant signed a mortgage in which Mortgage Electronic Registration Systems, Inc. (MERS) was the mortgagee as nominee for the Respondent. MERS serves as the mortgagee of record for certain residential loans originated by the Respondent and did not purchase the loan or have any interest in the loan. MERS is used for the purpose of facilitating the sale and transfer of mortgage loans on the secondary market since MERS maintains a register of the ownership of loans for which it serves as mortgagee of record. In this case, however, the Respondent did not sell the loan but kept it in-house and has serviced the loan since its origination. (Miller Affidavit ¶ 5, R. pg. 116).

The mortgage created a first lien on the following real property with improvements:

Exhibit "A"

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as

¹ Sarah L. Gray did not appeal the Order Granting the Respondent Summary Judgment. Only Jeffery Gray is the Appellant.

shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane, dated November 1, 2001 recorded December 3, 2001 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1186 at Page 305.

(Exhibit "B" to Motion for Summary Judgment and Memorandum in Support, R. pg. 70).

The instant action began when the Respondent filed its foreclosure Complaint on December 21, 2011 asserting that the Appellant failed to pay as promised after May 1, 2011. (Miller Affidavit ¶ 10, R. pgs. 116-117). Prior to filing the foreclosure Complaint, Ivan Hobbs, a BB&T employee designated as an authorized "signing officer" of MERS, assigned the mortgage to the Respondent so that the Respondent became the mortgagee of record on the loan and the true party in interest. (Hobbs' Affidavit ¶¶ 3, 6, and 7; Exhibit "A" to the Complaint, R. pgs. 105-106).

At the time of the closing of the loan, the Respondent provided to the Appellant written notice of the right to select an attorney to close the loan and the right to select an agent to furnish the required homeowner's insurance coverage. (Miller Affidavit ¶ 8 and Exhibit "A" to Miller Affidavit, R. pgs. 116, 118). The Appellant admitted James A. Belk, Esquire was selected as the attorney to close the transaction. (Appellant's Response to Respondent's Request to Admit No. 6, Exhibit "A" to Respondent's Motion for Summary Judgment and Memorandum in Support, R. pgs. 63, 97).

Additionally, the Respondent provided to the Appellant disclosures as required by law. The disclosures include a Federal-Truth In Lending Disclosure Statement provided

to the closing attorney prior to the closing on July 29, 2003. (Miller Affidavit ¶ 9 and Exhibit "B" to Miller Affidavit, R. pgs. 116, 120).

The Appellant alleges four (4) causes of action in the counterclaim:

- a) Violation of the South Carolina Unfair Trade Practices Act;
- b) Breach of contract and/or breach of contract accompanied by fraudulent act;
- c) Violation(s) of South Carolina Consumer Protection Code;
- d) Violation(s) of Federal Fair Debt Collection Practices Act.

The Respondent filed a Motion for Summary Judgment as to the Appellant's counterclaims and requested an Order referring the foreclosure action to the Master-In-Equity for Oconee County. A hearing on the Motion occurred on July 30, 2013 and the trial court granted the relief sought by an Order dated August 13, 2013 and filed with the Clerk of Court for Oconee County on August 16, 2013.

The within appeal was thereafter initiated.

ARGUMENTS**1. DID THE TRIAL COURT ERR IN FAILING TO SUSTAIN RESPONDENT'S OBJECTIONS TO THE ADMISSIBILITY OF JEFFERY GRAY'S AFFIDAVIT?**

A trial court may properly grant a Motion for Summary Judgment when "the pleadings, depositions, Answers to Interrogatories, and admissions on file, together with the Affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), South Carolina Rules of Civil Procedure (SCRCP).

"When a Motion for Summary Judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e) SCRCP.

"The adverse party may serve opposing affidavits not later than two (2) days before the hearing." Rule 56(c), SCRCP. "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the Affiant is competent to testify to the matter stated therein." Rule 56(e), SCRCP.

The hearing by the trial court on the Respondent's Motion for Summary Judgment was heard on Tuesday, July 30, 2013. On Sunday, July 28, 2013, Appellant faxed his purported Affidavit addressed to a paralegal of one of the attorneys for the Respondent. The fax number utilized was the main fax number of McNair Law Firm,

P.A. at its Greenville, South Carolina office and was not faxed to the paralegal's personal fax number or the personal fax number of any attorney with McNair Law Firm, PA. The paralegal whose name appeared on the facsimile coversheet, was not at work on Sunday, July 28, 2013 and did not receive the faxed document until Monday, July 29, 2013, one (1) day before the hearing relating to the Summary Judgment Motion.

Appellant's purported Affidavit is fatally defective for multiple reasons and the trial court abused its discretion in failing to sustain the Respondent's objections to the admissibility of the Appellant's Affidavit.

a) Affidavit was never served.

"Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney or upon a party shall be made by delivering a copy to him or mailing it to him at his last known address or, if no address is known, by leaving it with the Clerk of Court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original Summons and Complaint." Rule 5(b)(1), SCRPC. "Service cannot be accomplished via facsimile." *Trowell v. SC Dept. of Public Safety*, 384 S.C. 232, 237, 681 S.E.2d 893, 896 (Ct. App. 2009). Appellant's counsel admits he did not personally serve Appellant's

purported Affidavit by leaving a copy personally with counsel for the Respondent or by mail and that he faxed the purported Affidavit on Sunday, July 28, 2013. (R. pg. 145, lines 11-25; R. pg. 146, lines 1-8). The trial court did specifically rule relating to the service by fax and the trial judge stated as follows:

Now, look, as far as the Affidavit, probably serving it on Sunday by fax is not correct.
(R. pg. 9-10).

Accordingly, Appellant's purported Affidavit was never served and should not have been considered in any particular by the trial court.

b) Appellant failed to serve his purported Affidavit not later than two (2) days before the hearing.

"When a Motion is to be supported by affidavit, the affidavit shall be served with the Motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two (2) days before the hearing, unless the Court permits them to be served at some other time." Rule 6(d), SCRCP. "The adverse party may serve opposing Affidavits not later than two (2) days before the hearing." Rule 56(c), SCRCP.

Appellant's counsel admits as set forth hereinabove that his ill-fated attempt to "serve" the Appellant's Affidavit via facsimile was within two (2) days before the Summary Judgment hearing. In *Jernigan v. King*, 312 S.C. 331, 335 440 S.E.2d 379, 382 (Ct. App. 1983), an Affidavit in opposition to a pending Motion for Summary Judgment was served on the date of the hearing. The trial court ruled that the Affidavit in opposition should not be considered because it was not served outside the two (2) day time limit imposed by Rule 56(c), SCRCP. The Court of Appeals concluded that it was within the trial court's discretion to reject the untimely affidavit.

In addition to the Appellant failing to properly serve his purported affidavit, he compounded his error by failing to get the purported affidavit in the hands of counsel for the Respondent "not later than two (2) days before the hearing." Rule 56(c), SCRC. For this reason, the Appellant's purported Affidavit should not have been considered in any particular by the trial court.

c) Affidavit contains hearsay and would not be admissible in evidence.

"Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Rule 56(e), SCRC.

As key element to Appellant's counterclaims is whether Ivan Hobbs was a Vice President of MERS and was authorized to assign the mortgage to the Respondent. The affidavit of Hobbs filed with the Respondent's Supplemental Memorandum in Support of its Motion for Summary Judgment definitively established that he was a signing officer of MERS and was authorized to execute the mortgage assignment on behalf of MERS. Attached as Exhibit "B" to Hobbs' Affidavit is a corporate resolution of MERS listing Hobbs as having authority to sign on behalf of MERS and said corporate resolution was dated prior to the date on which Hobbs signed the mortgage assignment.

The Appellant's purported affidavit recites that after he was served with the foreclosure Complaint, he telephoned MERS and asked the person working at MERS if Ivan Hobbs was employed by MERS and was informed by MERS' agent that there was no one employed by MERS by that name. (Gray Affidavit, R. pg. 125). The Affidavit also recites that the MERS website as of January 9, 2012 did not list Hobbs as an officer. Those recitations are blatant hearsay and would not be admissible in evidence.

“Hearsay” is a statement other than one made by the declarant while testifying at the trial or hearing, offered into evidence to prove the truth of the matter asserted.” Rule 801(c), South Carolina Rules of Evidence. The only purpose the Appellant has in reciting his alleged telephone conversation with an unknown person at MERS and a review of the MERS website is to offer those events in evidence to prove the truth of the matter asserted. There are no exceptions under Rule 803 of the South Carolina Rules of Evidence which are applicable. Since those statements in the purported affidavit would not be admissible in evidence, the Affidavit should not have been considered by the trial court for any purpose and the Respondent’s objections to the admissibility of Appellant’s purported Affidavit should have been sustained.

2. THE TRIAL COURT DID NOT ERR IN GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT.

An appellate court utilizes the same standard applied by the trial court under Rule 56, SCRPC when reviewing an Order granting summary judgment. *Grinnell Corp. v. Wood* 389 S.C. 350, 355, 698 S.E.2d 796, 798 (2010). Rule 56(c) provides that “the judgment sought shall be rendered forthwith if the pleadings, depositions, Answers to Interrogatories, and admissions on file together with the Affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Once the party moving for summary judgment meets the initial burden of showing the absence of a genuine issue as to any material fact, the non-moving party may not simply rest on the mere allegations contained in the pleadings. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder. *Grant v. Mt. Vernon Mills,*

370 S.C. 138, 142, 634 S.E.2d 15,18 (S.C. Ct. App. 2006). In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. *Cullum Mechanical Const. Inc. v. S.C. Baptist Hospital*, 344 S.C. 426, 432, 544 S.E.2d 838, 841 (2001). As set forth in Respondent's argument relating to Appellant's purported affidavit containing facts which are not admissible into evidence, failure to serve the purported Affidavit and not serving the purported affidavit outside of the two (2) days prior to the Summary Judgment Motion hearing, the Appellant has not set forth any evidence which creates a genuine issue of material fact. Appellant has failed to establish any genuine issues of material fact.

a) **Appellant's holder in due course assertion is inapplicable due to the facts of this case.**

Appellant asserts in Paragraph 9 of his Counterclaim that Respondent is not a holder in due course. This allegation is not supported by any evidence and Appellant is confused and does not understand the distinction between a negotiable instrument such as a promissory note and a mortgage. S.C. CODE ANN. § 36-3-102(a) (Supp. 2008) provides that "this chapter applies to negotiable instruments."² S.C. CODE ANN. § 36-3-104 (Supp. 2008) defines what is meant by the term "negotiable instrument" as follows:

a) Except as provided in Subsections (c) and (d), "negotiable instrument" means an unconditional promise or Order to pay a fixed amount of money, with or without interest or other charges described in the promise or Order, if it:

² A significant portion of Article 3 of South Carolina's version of the Uniform Commercial Code has been amended since the Appellant signed and delivered his promissory note and the mortgage which is the subject of the foreclosure action. However, in deciding the case, the Appellate Court must apply "the law in effect at the time the cause of action accrued because it controls the party's legal relationships and rights. *Stephens v. Draffin*, 327 S.C. 1, 5, 488 S.E.2d 307, 309 (1997). The cause of action in the instant case accrued in May 2011 when the Appellant defaulted on the payments as required by the promissory note.

(1) Is payable to bearer or to Order at the time it is issued or first comes into possession of the holder;

(2) Is payable on demand or at a definite time;

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any action in addition to the payment of money but the promise or Order may contain: (i) an undertaking or power to give, maintain or protect collateral to secure payment, (ii) an authorization or power to beholder to confess judgment or realize, own or disposed of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

b) Instrument means a negotiable instrument.

The question of whether a promissory note secured by a real estate mortgage retains its status as a negotiable instrument was presented in *Swindler v. Swindler*, 355 S.C. 245, 250, 584 S.E.2d 438, 441 (Ct. App. 2003). The Court of Appeals held that "the negotiability of a note is not altered by the execution of a related real estate mortgage."

Appellant attempts to connect the granting of the mortgage to MERS as a nominee for the Respondent and the subsequent assignment by MERS of the mortgage to the Respondent prior to the institution of the foreclosure action as a negotiation of the promissory note. Additionally, the Appellant asserts that at the time the mortgage was assigned to the Respondent, the Appellant was in default on the payments and, therefore, somehow, the Respondent is not a holder in due course of the promissory note. It is unclear from the Appellant's argument how that adversely impacts or affects the right of the Respondent to bring the foreclosure action. The best response to the Appellant's argument that Respondent is not the holder in due course is it is of no legal consequence.

Appellant's primary basis for all of his counterclaims is his belief that the mortgage contract is defective in some way because MERS is listed as the mortgagee and Appellant operates under the mistaken belief that the mortgagee must be the lender or note holder. Established South Carolina law and Fourth Circuit precedent reject this theory and provide clarity to eliminate Appellant's misunderstandings about MERS. Initially, a mortgage is a contract. *Adams v. Fellers*, 88 S.C. 212, 213, 70 S.E. 722, 723 (1911). The freedom to contract allows parties to a mortgage to contract for MERS to serve as a mortgagee as the nominee for the lender. (The use of a nominee in real estate transactions, and as a mortgagee in a recorded mortgage, is a longstanding practice.) *Deutsche Bank National Trust Co. v. Pietranico*, 928 N.Y.S.2nd 818, 833 (N.Y. Sup. Ct. 2011). A "nominee" is a person designated to act in place of another, usually in a very limited way. BLACK'S LAW DICTIONARY 1076 (8th ed. 2004). A "nominee" means "a party who holds bare legal title for the benefit of others" or a "person designated to act in the place of another." *Kiah v. Aurora Loan Services, LLC*, 2011 WL 841282 at *8 (D. Mass. Mar. 4, 2011).

South Carolina Federal courts have affirmed MERS designation as the mortgagee of record along with the corollary legal principle that MERS may serve as the mortgagee as nominee for the lender and the lenders successors and assigns. *Reese v. U.S. Bank National Assn.*, 2012 WL 1952819 at *1 (D.S.C. Apr. 30, 2012) ("MERS as [lenders] nominee and the mortgagee under Plaintiff's mortgage have the authority to assign the mortgage to [lender's successor and assigns] through a mortgage assignment.") The South Carolina Supreme Court and the South Carolina Court of Appeals have also affirmed MERS' role as the mortgagee. *BAC Loan Home Servicing, L.P. v. Kinder*, 398

S.C. 619, 621, 731 S.E.2d 547, 548 (2012) (Borrower “secured payment of...[the] note with a mortgage...in favor of Mortgage Electronic Registration Systems, Inc. as nominee for [lender]”); *Bank of America, N.A. v. Draper*, 405 S.C. 214, 217, 746 S.E.2d 478, 479 (Ct. App. 2013) (“To secure the note, [borrower] gave a mortgage to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for [lender]”).

b) No violation of the Consumer Protection Code.

In order to advance his argument relating to alleged violations of the South Carolina Consumer Protection Code, the Appellant summarily concludes that MERS as the mortgagee was Appellant’s creditor. Appellant’s reliance on *Plyer v. Elliott*, 19 S.C. 257 (1883) is misplaced. The *Plyer* case involved an action to recover on a promissory note and to foreclose a mortgage given to secure the same debt. After the promissors (Defendant Elliott and another individual who did not sign the mortgage) executed the promissory note, the payee on the promissory note (Plaintiff Plyer) added the words “bearing interest at 15%” but he erased the language before the note was produced at trial. The Defendant asserted that the promissory note was materially altered without consent of the promissors and a jury in Lancaster County in 1881 rendered a verdict against the Plaintiff due to the alteration of the promissory note which destroyed its validity. Upon appeal to the South Carolina Supreme Court, the Court held in a 2-1 decision that even though the promissory note was invalid due to its material alteration after execution, the debt could be proven because of it being recited in the mortgage. The Court stated that “it must be kept in mind that there is a difference between the debt itself and the security for it.” The *Plyer* case does not stand for the proposition that a mortgagee which is a different entity than the lender becomes a creditor simply by being

listed as the mortgagee. Appellant's reference to S.C. CODE ANN. § 37-1-301(13) (1976) as defining a creditor is inapplicable. MERS did not grant credit to the Appellant and was not an assignee of the creditor's right to payment. The conclusory statement that MERS is a creditor within the meaning of the South Carolina Consumer Protection Code has no factual or legal basis and is without merit.

Additionally, the Appellant's assertion that the mortgage loan secured by the Appellant's residence was at an exceptionally high APR has no factual basis whatsoever. The interest rate on the promissory note in the amount of \$180,000.00 payable over 30 years was 5.5% representing a market rate of interest as of the date of closing and the loan was not a "subprime loan or high interest rate loan." (Miller Affidavit ¶ 7, R. pg. 116). Respondent provided to Appellant at the time of closing the Federal Truth-In-Lending Disclosure Statement showing the APR at 5.560%. Appellant admitted they were provided with a copy of the Federal Truth-In-Lending Disclosure Statement. (Appellant's Response to Request to Admit No. 7, R. pgs. 63, 97).

Appellant also asserts that they were not provided "Borrower's Preference of Legal/Counsel Insurance Agent" form but Appellant admitted that it received the form and selected James S. Belk, Esquire of Anderson, South Carolina to close the loan. (Appellant's Response to Request to Admit No. 6, R. pgs. 63, 88, 97).

c) The Statute of Limitations bars any claim under the Consumer Protection Code.

Appellant's Counterclaim arising out of the alleged failure of the Respondent to comply with the "attorney preference" provision of the South Carolina Consumer Protection Code is barred by the Statute of Limitations. The applicable provision reads as follows:

No debtor may bring an action for a violation of this chapter more than three (3) years after the violation occurred except as set forth in Subsection (c).

S.C. CODE ANN. § 37-10-105(A)(1976).

It should be noted that the provisions of Subsection (c) are not applicable to the within action. The loan in question was closed on July 29, 2003. Appellant filed his Counterclaim in January of 2012, almost nine (9) years later. The Counterclaim relating to alleged violations of the Consumer Protection Code must be dismissed as time barred even if the conclusion is reached that there is some genuine issue of material fact.

d) Respondent is not a debt collector under the Federal Fair Debt Collection Practices Act.

Appellant also asserts that Respondent has violated the Federal Debt Collection Practices Act (FDCPA) and that the Respondent is a debt collector within the meaning of FDCPA. Appellant fails to assert any facts to substantiate the allegation that the Respondent is a debt collector. Merely alleging an entity is a “debt collector” is by itself insufficient. *Swain v. CACH, LLC*, 699 F. Supp. 2d 1109, 1112 (N.D. Cal. 2009). Respondent is not a debt collector because it falls within the creditor exemption of the FDCPA. 15 U.S.C.A. § 1692(a)(6)(A)&(F). The FDCPA defines “creditor” as “any person who offers or extends credit creating a debt or to whom the debt is owed. 15 U.S.C.A. § 1692(a)(4). Because Respondent has only been the entity “to whom a debt is owed” with respect to the promissory note signed by the Appellant, it follows that Respondent is not a debt collector with respect to the promissory note. In *Bradford v. HSBC Mortgage Corp. et al.*, 829 F. Supp. 2d 340, 348 (E.D. Va. 2011), the Court held that a mortgage lender was not a “debt collector.” The FDCPA “generally applies only to

debt collectors” and the statute defines a debt collector as any person who regularly collects or attempts to collect...debts owed or due...another.” 15 U.S.C.A. § 1692(a)(6). The Court also held that “bare allegations of the Complaint or of counsel in briefs and arguments do not raise a genuine issue of material fact as to whether a (bank) is a “debt collector.”

The FDCPA defines “creditor” as any person who offers or extends credit creating a debt to whom the debt is owed. 15 U.S.C.A. § 1692(a)(4). Since the Respondent is the entity “to whom the debt is owed” with respect to the promissory note signed by the Appellant, it naturally follows that Respondent is not a debt collector with respect to the promissory note signed by the Appellant and it also follows that Respondent is not subject to the provisions of the FDCPA.

- e) **Appellant has abandoned any argument relating to his counterclaims pertaining to violation of the South Carolina Unfair Trade Practices Act and breach of contract accompanied by fraudulent act.**

Appellant sets forth in his statement of the case that he alleged four (4) causes of action in his counterclaim including violation of the South Carolina Unfair Trade Practices Act and breach of contract accompanied by a fraudulent act. However, he does not set forth any arguments relating to the South Carolina Unfair Trade Practices Act or breach of contract accompanied by fraudulent act. The Appellant only argues his position on violations of the South Carolina Consumer Protection Code and the Federal Fair Debt Collection Practices Act. “An issue raised on appeal but not argued in the Brief is deemed abandoned and will not be considered by the Appellate Court.” *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993); *Bell v. Bennett*, 307 S.C. 286, 294, 414 S.E.2d 786, 791 (Ct. App. 1992). Accordingly, those

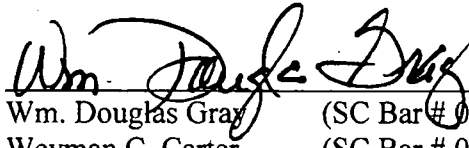
two (2) issues are deemed abandoned and should not be considered by the Appellate Court.

Even if the Appellate Court were to consider the two (2) issues, the alleged violation of the South Carolina Unfair Trade Practices Act and the breach of contract accompanied by fraudulent act are premised on the Appellant's allegation that the assignment of the mortgage by MERS to the Respondent was fraudulent because the Appellant alleges that Ivan Hobbs who signed the assignment on behalf of MERS was not authorized to do so. That allegation is without any merit as evidenced by the Affidavit of Hobbs ¶ 9. (R. pgs. 106-107). Appellant has not provided any evidence which refutes Hobbs' Affidavit.

CONCLUSION

There are no genuine issues of material fact relating to Respondent's actions and conduct and for the reasons stated herein, Respondent respectfully requests that the Order of the lower Court granting summary judgment be affirmed.

MCNAIR LAW FIRM, P.A.



Wm. Douglas Gray (SC Bar # 0002411)

Weyman C. Carter (SC Bar # 0015255)

Poinsett Plaza

104 South Main Street, Suite 700 (29601)

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864-271-4940

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wcarter@mcnair.net

Attorneys for Respondent

August 27, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
HONORABLE CORDELL MADDOX CIRCUIT COURT JUDGE

APPELLATE CASE NO: 2013002037

BRANCH BANKING AND TRUST COMPANY RESPONDENT

VS

SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

CERTIFICATE OF COUNSEL IN FINAL BRIEF

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

August 27, 2014

MCNAIR LAW FIRM, P.A.



Wm. Douglas Gray (SC Bar # 0002411)

Weyman C. Carter (SC Bar # 0015255)

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Attorneys for Respondent

RECEIVED

AUG 29 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY
HONORABLE CORDELL MADDOX CIRCUIT COURT JUDGE

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BRANCH BANKING AND TRUST COMPANY RESPONDENT

VS

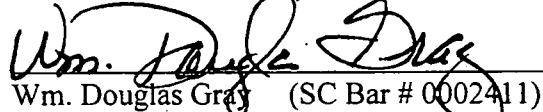
SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

PROOF OF SERVICE

I certify that I have served the Final Brief of Respondent on Appellant Jeffery Gray by depositing a copy of it in the United States Mail, postage prepaid, on August 27, 2014, addressed to his attorney of record, Charles R. Griffin, Jr., 3300 North Main Street, Suite D339, Anderson, South Carolina 29621.

August 27, 2014

MCNAIR LAW FIRM, P.A.


Wm. Douglas Gray (SC Bar # 0002411)

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dgray@mcnair.net wccarter@mcnair.net

Attorneys for Respondent

RECEIVED

AUG 29 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM OCONEE COUNTY

HONORABLE CORDELL MADDOX CIRCUIT COURT JUDGE

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VS

SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

RECORD ON APPEAL

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Attorney for Respondent

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864-271-4940
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS
 APPEAL FROM OCONEE COUNTY
 HON. CORDELL MADDOX, CIRCUIT COURT JUDGE
 APPELLATE CASE NO.: 2013002037
 BRANCH BANKING AND TRUST COMPANY ... RESPONDENT
 VS
 SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
 DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
 JEFFERY GRAY is APPELLANT

INDEX TO RECORD

Order dated August 13, 2013.....	1 - 11
Order dated January 12, 2013.....	12 - 13
Lis Pendens.....	14 - 17
Summons.....	18 - 19
Complaint Foreclosure of Real Estate Mortgage.....	20 - 25
Notice of Right to Foreclosure Intervention	26
Notice Required by the Fair Debt Collection Practice Act	27
Exhibit A to Complaint – Assignment	28
Answer and Counterclaim.....	29 - 46
Certificate of Service.....	47
Reply to the Counterclaim	48-50
Certificate of Service.....	51
Answer of Suntrust Bank	52 - 53
Certificate of Service.....	54
Motion for Summary Judgment and Memo In Support	55 - 60
Exhibit A to Motion for Summary Judgment and Memo In Support	61 - 97
Supplemental Memo In Support of Motion of Motion for Summary Judgment ...	98 - 104
Affidavit of John Hobbs.....	105 - 114
Affidavit of Richard Miller.....	115 - 121
Certificate of Service.....	122 - 123
Affidavit of Jeffery Gray.....	124 - 128
Transcript of Testimony – Motion For Summary Judgment	129 - 158

Branch Banking and Trust Company-sbm, et al

Sarah L. Gray, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ 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 :

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)
		\$
		\$
		\$

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 or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

s/J. Cordell Maddox, Jr.

Circuit Court Judge

2131

Judge Code

08/13/2013

Date

Copies to:

Atty ☒ (P) ☐ (D)

DSS ☐ other ☐

Mailed ☐ Boxed ☐ handed ☐

ENTERED
CLERK
CLERK

This judgment was entered on the 16th day of Aug, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 16th day of Aug, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

William D. Gray
Weyman C. Carter

Charles R. Griffin

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield
CLERK OF COURT

Court Reporter: Renee S. Tollison

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

STATE OF SOUTH CAROLINA

2013 JUN 16

IN THE COURT OF COMMON PLEAS
P 3:03

COUNTY OF OCONEE

CIVIL ACTION NO: 2011-CP-37-1250

Branch Banking and Trust Company,

Plaintiff,

v.

Sarah L. Gray, Jeffery Gray, Suntrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.

Defendants.

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANTS
SARAH L. GRAY'S AND
JEFFERY GRAY'S COUNTERCLAIMS
AND JURY TRIAL DEMAND
AND**

**ORDER REFERRING THE
FORECLOSURE ACTION TO THE
MASTER-IN-EQUITY FOR
OCONEE COUNTY**

This matter comes before the Court upon Motion of Plaintiff Branch Banking and Trust Company ("BB&T")'s for Summary Judgment as to Defendants Sarah L. Gray and Jeffery Gray ("the Grays") Counterclaims and Jury Trial Demand and for an Order referring the foreclosure action to the Master-In-Equity for Oconee County.

A hearing on the Motion occurred on July 30, 2013 at which time Wm. Douglas Gray and Weyman C. Carter appeared on behalf of BB&T. Charles R. Griffin, Jr. appeared on behalf of the Grays. After reviewing BB&T's Memoranda and attached Affidavits in support of its Motion and hearing arguments by counsel on behalf of their respective clients, this Court grants BB&T's Motion and refers the foreclosure action to the Master-In-Equity for Oconee County for the reasons set forth hereinafter.

SUMMARY JUDGMENT STANDARD

Rule 56(c) of the South Carolina Rules of Civil Procedure, SCRCP, provides in pertinent part as follows:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Rule 56(e), SCRPC, also provides in pertinent part as follows:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify as to the matters stated therein....When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

As to when opposing Affidavits must be served, Rule 56(c) SCRPC provides:

The adverse party may serve opposing affidavits not later than two (2) days before the hearing.

In determining whether any triable issues of fact exist, the Court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the non-moving party. *Worsley Companies, Inc. v. The Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 558 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). A court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

PERTINENT FACTS

BB&T filed its Complaint on December 21, 2011 seeking to foreclose a mortgage made, executed, and delivered by the Grays upon certain real estate located in Oconee County, South Carolina. Pursuant to Rule 36, SCRPC, BB&T served upon the Grays certain Requests for Admissions. The Grays admitted the following:

- On July 29, 2003, the Grays made, executed, and delivered to BB&T a promissory note in the amount of \$180,000.00.
- In order to secure the payment of the note, the Grays on July 29, 2003 made, executed, and delivered to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for BB&T a mortgage covering the real property as described therein located in Oconee County, South Carolina.
- Prior to or during the closing of the loan which is the subject of the foreclosure action, the Grays signed the "borrower's preference of legal counsel/insurance agent" in selecting James S. Belk, Esquire as their attorney.
- The Grays acknowledged they were provided with and signed a Federal-Truth-In-Lending Disclosure statement.
- The Grays admitted that they are in default on the terms of the promissory note in that they have not made all payments as they have become due.

The uncontroverted Affidavit of Richard L. Miller, BB&T's Foreclosure Manager, establishes that BB&T was the original lender and creditor and did not purchase or acquire the loan from a third party. The mortgage was executed in favor of MERS as nominee for BB&T. MERS serves as Mortgagee of Record for residential mortgage loans originated by BB&T and this is done to facilitate the sale and transfer of mortgage loans on the secondary market since MERS maintains a register of ownership of loans for which it serves as Mortgagee of Record. In this case, however, BB&T did not sell the loan but continued to hold the loan and service it. According to Miller's Affidavit, at the time the foreclosure action was filed in December of 2011, installments due on and after May 1, 2011 are unpaid and as of July 18, 2013 the total

amount due and owing BB&T exclusive of foreclosure fees and costs was the sum of \$43,357.32.

The uncontroverted Affidavit of John I. Hobbs, Vice President of BB&T, establishes that he was one of several officers of BB&T appointed as "signing officers" of MERS by a corporate resolution dated March 27, 2011. Pursuant that authority, Mr. Hobbs executed an assignment of real estate mortgage on December 1, 2011 for purposes of assigning the mortgage dated July 29, 2003 given by the Grays to MERS as nominee for BB&T and the assignee was BB&T. The assignment was made prior to the institution of the foreclosure action.

COUNTERCLAIM, LAW, AND ANALYSIS

The Grays allege in their Counterclaim purported causes of action for (1) violation of South Carolina Unfair Trade Practices Act, (2) breach of contract and/or breach of contract accompanied by fraudulent act, (3) violation of the South Carolina Consumer Protection Code, and (4) violation of the Federal Fair Debt Collection Practices Act. Upon review of the allegations, it appears that the only specific factual allegations underlying the Counterclaims are that BB&T failed to comply with the "Attorney Preference" requirement of the South Carolina Consumer Protection Code and that BB&T "acquired" the loan by means of a false or fraudulent assignment from MERS. As noted earlier herein, the Grays admitted they received and signed the "Attorney Preference" form selecting James S. Belk, Esquire as their closing attorney. The Miller Affidavit further establishes that BB&T provided the Grays with written notice of their right to select the closing attorney and the insurance agent. The Hobbs Affidavit refutes the allegation relating to any false or fraudulent assignment of the Mortgage.

At the hearing on July 30, 2013, the attorney for the Grays proffered an Affidavit of Jeffery Gray which was faxed to Weyman C. Carter's legal assistant on Sunday, July 28, 2013.

The fax of the Affidavit does not comply with the service requirement of Rule 5(b)(1), SCRPC, in that it was not delivered to counsel for BB&T or mailed. The Court takes judicial notice that service by electronic means is not recognized in state courts in South Carolina. Additionally, the Affidavit does not comply with Rule 56(c) in that it was not served more than two (2) days before the hearing. BB&T further objects to the content of the Affidavit in that it contains hearsay and does not set forth such facts as would be admissible in evidence. While the Court agrees with BB&T's objections in part, the Court does not find it necessary in granting BB&T's Motion to make any additional rulings on the issues pertaining to service, the manner, and timeliness of the Affidavit and its content.

The Court has reviewed each one of the alleged causes of action in the Counterclaim and finds them without merit. The claim relating to the violation of the South Carolina Fair Trade Practices Act is based upon the factual premise that the assignment by MERs to BB&T was false is refuted by the Hobbs Affidavit.

The claim for breach of contract and/or breach of contract accompanied by fraudulent act fails because the Grays, by their own admissions, failed to comply with the terms of the promissory note by making timely payment. In South Carolina, a party may not insist upon the performance of a contract or a provision thereof where that party is guilty of a material or substantial breach of that contract or provision. *See, Ralph King Anderson, Jr. South Carolina Request to Charge – Civil 2009, § 19-16.*

The claim relating to violations of the South Carolina Consumer Protection Code is based on the allegation that BB&T did not ascertain the preference of the Grays as to legal counsel but as previously shown, the Grays admitted they signed the Attorney Preference form and selected James S. Belk, Esquire as the closing attorney. In addition, the Miller Affidavit establishes that

the notice required by statute was provided. Therefore, there is no issue of material fact regarding this claim.

The Grays also contend in their Counterclaim violations of the Federal Fair Debt Collection Practices Act ("FDCPA"). This cause of action fails because BB&T is not a "debt collector" within the meaning of the FDCPA. The Grays fail to assert in their Counterclaim facts to substantiate their allegation that BB&T is a debt collector and merely alleging an entity is a "debt collector" is, by itself, insufficient. *See*, 15 U.S.C.A. § 1692(a), citing *Swain v. CACH, LLC* M.D. Cal. 2009, 699 F. Supp. 2nd 1109. BB&T is not a "debt collector" because it falls within the creditor exemption of FDCPA. The Act defines "creditor" as "any person who offers or extends credit creating a debt to whom the debt is owed." 15 U.S.C.A. § 1692(a)(4). Because BB&T is the entity "to whom a debt is owed" with respect to the note signed by the Grays, it follows that BB&T is not a debt collector with respect to the promissory note.

CONCLUSION

The Grays have failed to show there is a genuine issue of material fact relating to the Counterclaim and pursuant to Rule 56, SCRCF, BB&T is entitled to an Order granting it Summary Judgment as to the Grays' Counterclaim. Accordingly, the Complaint asserting BB&T's action for foreclosure remains. An action for the foreclosure of a real estate mortgage is one in equity. *Collier v. Green*, 244 S.C. 367, 137 S.E.2d 277 (1964). Since the Grays' Counterclaim has been disposed of, there is no longer any claim triable by jury.

IT IS HEREBY ORDERED, that

1. BB&T's Motion for Summary Judgment as to Defendants Sarah L. Gray's and Jeffery Gray's Counterclaims and Jury Trial Demand is hereby granted.

2. This action is hereby referred to the Honorable Ellis B. Drew, Jr., Master-in-Equity for Oconee County, with authority to enter a final judgment in the action, and to hear and determine any post-judgment motions or proceedings. Any appeal from the judgment entered by the Master-in-Equity shall be to the South Carolina Court of Appeals or to the South Carolina Supreme Court.

3. The Master-in-Equity may hold the hearing(s) in this case in either Oconee County or in Anderson County, in the Master's discretion.

4. The Order of Foreclosure and Sale, if one be entered, may direct that the foreclosure sale be held on a day other than the first Monday of the month.

It is so ORDERED this 13 day of August, 2013.


The Honorable J. Cordell Maddox, Jr.

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 AUG 16 P 3:03

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

FORM 4

JUDGMENT IN CIVIL CASE

Record 10

CASE NO. 2011-CP-37-01250

FILED 000000, 80
BEVERLY H. WILKINS
CLERK OF COURT
Appendix 000057

Branch Banking and Trust Company-sbm

Sarah L. Gray, et al

2013 AUG 1 PM 1 36

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- ☐ **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: taken under advisement

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2131

Judge Code

Date

Copies to:

Atty (P)

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SCRPC Form 4C (03/2013)

ENTERED
7/28/13
COMPUTER

2013 AUG 1 PM 1 36

Page 2

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank, West
Union Development, LLC, and Bank of Anderson,
N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37-1250

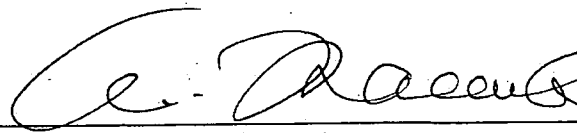
**CONSENT ORDER FOR
SUBSTITUTION OF COUNSEL
FOR PLAINTIFF**

(111008.00067)

Pursuant to Rule 11(b) of the *South Carolina Rules of Civil Procedure*, Plaintiff, Branch Banking & Trust, Co. ("BB&T"), hereby moves this Court for an order substituting Weyman C. Carter, Esquire and Wm. Douglas Gray, Esquire of the McNair Law Firm, P.A. as counsel of record for the Plaintiff, BB&T, and the Scott Law Firm, P.A. to withdraw as counsel for Plaintiff in the above-captioned case. As indicated below, the respective law firms and attorneys consent to this request.

WHEREFORE, it is hereby ordered that Weyman C. Carter, Esquire and Wm. Douglas Gray, Esquire of the McNair Law Firm, P.A., be substituted for the Scott Law Firm as counsel of record for the Plaintiff, BB&T. Accordingly, the Scott Law Firm, P.A. is relieved of further representation in this action and shall be removed from the court docket as counsel of record for the Plaintiff.

AND IT IS SO ORDERED.


The Honorable Presiding Judge2013 JUN 13 PM 3 02
FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

{CONSENT SIGNATURES FOLLOW}

6/12/2013

Copies to:
Atty ☒ (P) ☒ (D) ☒ (C)
DSS ☒ other ☐
Mailed ☒ Boxed ☐ handed ☐

ENTERED
JUN 13 2013
CLERK OF COURT

Respectfully Submitted,

SCOTT LAW FIRM, P.A.

By: 

Andrew M. Sullivan
SC Bar No. 100464
Post Office Box 2065
Columbia, South Carolina 29204
(803) 252-3340

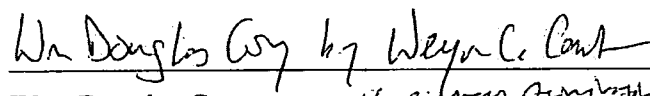
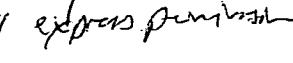
June 6, 2013

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 JUN 13 PM 3 02

McNAIR LAW FIRM, P.A.

By: 

Weyman C. Carter
SC Bar No. 0015255
Post Office Box 447
Greenville, South Carolina 29602
(864) 271-4940

June 7, 2013By:  by 

Wm. Douglas Gray
SC Bar No. 0002411
Post Office Box 4086
Anderson, South Carolina 29622
(864) 226-1688

June 7, 2013

2 of 2


Property address: 202 S Summit Drive
Seneca, SC 29672

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37- 1250

LIS PENDENS

LIS PENDENS # 2011-LP-37-432

2011 DEC 21 P 2:48
CLERK OF COURT
OCONEE COUNTY

(111008.00067)

NOTICE IS HEREBY GIVEN that an action has been commenced by the Plaintiff above named against the Defendants above named for the foreclosure of a certain mortgage given by Sarah L. Gray and Jeffery Gray to Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, dated July 29, 2003, recorded August 13, 2003, in the office of the Clerk of Court/Register of Deeds for Oconee County, in Book 1727, at Page 136; subsequently, the Note and Mortgage were assigned to Branch Banking and Trust Company by assignment instrument executed December 9, 2011 attached hereto as Exhibit "A"

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen(15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305. Thereafter, this being the same property conveyed to West Union Development, LLC by deed from Jeffery A. Gray and Sarah L. Gray dated November 24, 2010 and recorded November 29, 2010 in Book 1805 at Page 289.

TMS No. 209-08-01-013

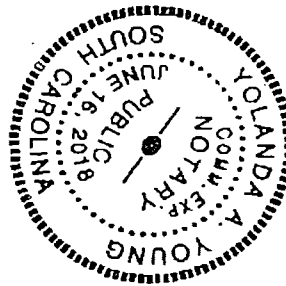
STATE OF South Carolina
COUNTY OF Greenville

ACKNOWLEDGMENT

I, YOLANDA A. YOUNG, a Notary Public for the State of SC, do hereby certify that IVAN HOBBS as VP of Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal
this 09 day of DECEMBER, 2011.

Yolanda A. Young
Notary Public for SC
My Commission Expires: _____



STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, **Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns**, hereby sells, assigns, transfers and sets over unto **Branch Banking and Trust Company**, that certain Mortgage dated July 29, 2003, executed by **Sarah L. Gray and Jeffery Gray**, which said mortgage is in the original principal amount of \$180,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, State of South Carolina, recorded on August 13, 2003 in Book 1727 at Page 136, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.

LEGAL DESCRIPTION:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305.

TMS No. 209-08-01-013

Property address: 202 South Summit Drive, Seneca, SC 29672

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, caused these presents to be executed this 9 day of DEC, 2011.

Mortgage Electronic Registration Systems, Inc.
as nominee for Branch Banking and Trust
Company of South Carolina, its successors and
assigns

Corneelia Jackson
Witness #1

BY:

IVAN Hobbs

TITLE:

VP

Marcin P. Walker
Notary/Witness #2

ASSIGNEE ADDRESS: 6th Floor 301 College Street, Greenville, SC 29601



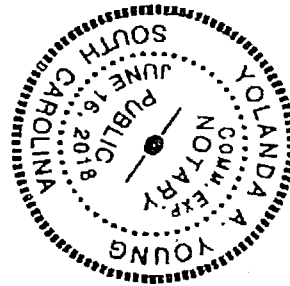
STATE OF South Carolina
COUNTY OF Greenville

ACKNOWLEDGMENT

I, YOLANDA A. YOUNG, a Notary Public for the State of SC, do hereby certify that IVAN HOBBS as VP of Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal
this 09 day of DECEMBER, 2011.

Yolanda A. Young
Notary Public for SC
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.,

DEFENDANT(S).

(111008.00067)

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37- 1250

SUMMONS

Foreclosure - Non-Jury
and

Breach of Due on Transfer Interest Clause

FILED
RECEIVED
CLERK
2011 DEC 21 P 2:44

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2712 Middleburg Drive, Suite 200, Post Office Box 2065, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the Complaint.

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

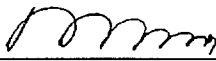
YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Mortgagee immediately and separately and such application will be deemed absolute and total in the absence of your application for such an appointment within thirty (30) days after the service of the Summons and Complaint upon you.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code §29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the mortgage identified in the Complaint is hereby perfected and Plaintiff hereby gives further notice that all

rents shall be payable directly to it by delivery of the same to its undersigned attorneys from the date of default forward. In the alternative, the Plaintiff will move a Judge of this Circuit Court on the tenth (10th) day after service hereof, or as soon as counsel for Plaintiff may be heard, for an Order enforcing the assignment of rents, if any, and/or profits, if any, compelling payments of all such funds covered by the mortgage and/or by status and/or by common law directly to the undersigned attorneys for the Plaintiff, which Motion is based upon the original Note and Mortgage identified in the Complaint therein and attached hereto as well as any applicable laws, statutes or regulations.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Summons, the Plaintiff will move for an Order of Reference of this cause to the Master-In-Equity or Special Referee in/for this County, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master In Equity or Special Referee is authorized and empowered to enter a final judgment in this cause with appeal only to the South Carolina Court of Appeals pursuant to Rule 203(d)(1) of the SCAR, effective June 1, 1999.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996

Elizabeth R. Polk, SC Bar #11673

Brett F. Kline, SC Bar #15661

Angelia J. Grant, SC Bar #78334

Priti M. Patel, SC Bar #79835

Kevin T. Hardy, SC Bar #76015

Erica G. Lybrand, SC Bar #79052

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200

Columbia, SC 29204

(803) 252-3340

December 19, 2011

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37-1250

COMPLAINT

Foreclosure.- Non-Jury

and

Breach of Due on Transfer of Interest Clause
(Deficiency demanded)FILED
CLERK OF COURT
2011 DEC 21 P 2:49

(111008.00067)

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

1. This is an action for foreclosure of a mortgage upon certain real estate in Oconee County, South Carolina.
2. Plaintiff is a corporation or other legal entity doing business in the State of South Carolina and is the current holder of the Note and Mortgage described herein.
3. The subject note and mortgage is not owned, securitized, or guaranteed by Fannie Mae or Freddie Mac; and, the current servicer is not currently participating in the Home Affordable Modification Program (HMP).
4. Some lien on or interest in the real estate, the subject of this action, may be claimed by the Defendant(s) herein.
5. The Defendant(s) herein described as judgment creditors have by filing said judgments designated their attorney entering the judgment as their agent for service of process under the provisions of Section 15-35-840 of the Code of Laws of South Carolina (1976).
6. Heretofore, under date of July 29, 2003, Sarah L. Gray and Jeffery Gray made, executed and delivered to Branch Banking and Trust Company of South Carolina a certain mortgage note ("Note") in writing wherein and whereby Sarah L. Gray and Jeffery Gray promised to pay to Branch Banking and Trust Company of South Carolina the principal sum of \$180,000.00.
7. In order to secure the payment of said note, the said Sarah L. Gray and Jeffery Gray did on the same date, to-wit, July 29, 2003, make execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of

South Carolina, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, on August 13, 2003, in Book 1727, at Page 136; subsequently, the Note and Mortgage were assigned to Branch Banking and Trust Company by assignment instrument executed December 9, 2011 attached hereto as Exhibit "A"

The description of the premises as contained in said mortgage is as follows:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305. Thereafter, this being the same property conveyed to West Union Development, LLC by deed from Jeffery A. Gray and Sarah L. Gray dated November 24, 2010 and recorded November 29, 2010 in Book 1805 at Page 289.

TMS No. 209-08-01-013

Property address: 202 S Summit Drive
Seneca, SC 29672

8. Plaintiff is informed and believes that its mortgage herein described constitutes a first mortgage lien on the subject real estate and improvements thereon, including any mobile/manufactured home located thereon. Plaintiff would further allege and avail itself of the Purchase Money Mortgage Doctrine as may apply to the facts of this action as well as the After Acquired Property Doctrine.

9. That the Plaintiff has complied with its obligation(s) as required under the specific terms of the Note and Mortgage being foreclosed as well as any applicable Federal or State statutes or regulations including but not limited to, the furnishing of any notices required to be given to the obligor(s) which gives to such person(s) the right to cure any default arising under the specific terms of the recited Note and Mortgage herein; the review of this mortgage loan for compliance with the Home Affordability Modification Program (HMP) as defined by and in the Administrative Order of the South Carolina Supreme Court issued by Chief Justice Jean H. Toal on May 22, 2009, if applicable; and that moreover and prior to the filing of this judicial

proceeding, the Defendant(s) had not raised any compliance defenses or objections as to any applicable banking laws by the Plaintiff.

10. In and by the terms of said note and the mortgage securing the same, it is provided, among other things, that on failure to pay any installment of either principal and interest or any portion thereof when due, or if any of the conditions and requirements in the mortgage securing the same be not complied with, then the whole principal sum and accrued interest shall at the option of the legal holder thereof become at once due and payable without notice, and collectible by foreclosure.

11. In and by the terms of the said note it is further provided that the maker thereof shall pay a reasonable attorney's fee if the note be placed in the hands of an attorney for collection after default. Any notice or compliance required by the terms of the Mortgage or by state or federal statutes has been given or complied with prior to the commencement of this action and the Defendants shall be forever barred from raising such notice or compliance.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

12. The Plaintiff incorporates the allegations of Paragraphs 1-11 herein.

13. The installments of principal and interest falling due from and after May 1, 2011 have not been paid although demand for the payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, has and does hereby elect to declare the entire balance of said principal and interest due and payable at once; that there is now due and owing and unpaid upon the said note and mortgage the full and just principal sum of \$157,392.86, together with interest thereon at the rate of 5.5% percent per annum from April 1, 2011, together with reasonable attorney's fees for the collection thereof and the costs of this action. Pursuant thereto, the Plaintiff has employed the undersigned legal counsel to prosecute these actions herein and add the fees and costs of said counsel to the amount of the total debt as provided for in the Note and Mortgage.

FOR A SECOND CAUSE OF ACTION
(Breach of Due on Transfer of Interest Clause)

14. The Plaintiff incorporates the allegations of Paragraphs 1-13 herein.

15. The mortgaged property, subject of this action, was conveyed by the mortgagors/owners Sarah L. Gray and Jeffery Gray, as is evidenced by deed dated November 24, 2010 and recorded November 29, 2010, in the Office of the Register of Deeds/Clerk of Court in Book 1805, at Page 289. The conditions of the Note and Mortgage have been breached and the Plaintiff elects to and does declare the entire balance of said indebtedness due and payable,

and that there is due on the Note and Mortgage as of May 1, 2011, the sum of \$157,392.86 with interest at the rate of 5.5% per annum from April 1, 2011, and also for the costs and disbursements of this action, including attorney's fees, costs, and disbursements.

AS TO BOTH CAUSES OF ACTION

16. Upon information and belief, the Defendants below named claim or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rules 53 and/or 71. The subject Defendant are further made a party due to the similarity in name(s) to the primary defendants against whom they claim or may claim a lien and in order to clear title to this property as follows:

(a) The Defendant, Suntrust Bank, by virtue of a mortgage given by Jeffery A. Gray and Sarah L. Gray dated September 22, 2005 in the original amount of \$200,000.00 and recorded October 6, 2005 in the Office of the Oconee County Register of Deeds in Book 2137 at Page 151. Thereafter modified by that certain loan modification agreement between Jeffery A. Gray, Sarah L. Gray and Suntrust Bank effective June 7, 2007 and recorded June 27, 2008 in Book 2634 at Page 89, thereafter re-recorded July 16, 2008 in Book 2641 at Page 154.

(b) The Defendant, West Union Development, LLC, by virtue of a deed dated November 24, 2010 and recorded November 29, 2010 in the Office of the Oconee County Register of Deeds in Book 1805 at Page 289.

(c) The Defendant, Bank of Anderson, N.A., by virtue of an order of deficiency judgment against Jeffrey A. Gray dated September 16, 2010 in the original amount of \$181,089.94 and filed January 26, 2011 in the Office of the Oconee County Clerk of Court as case number 2009-CP-37-1113.

17. The Plaintiff demands a personal or deficiency judgment against Sarah L. Gray and Jeffery Gray and any right to the same is specifically demanded. If, however, Sarah L. Gray and Jeffery Gray has previously received a discharge in bankruptcy during the life of the mortgage herein referenced, this demand for a deficiency judgment is not applicable.

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

19. In the event the subject property is sold at Judicial Sale and the successful bidder is a third party, neither the Plaintiff nor Plaintiff's counsel make any warranties or representations as to the subject property on behalf of the third party bidder.

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

1. The amount due upon the said note and mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. Plaintiff's mortgage be declared a first lien (and purchase money mortgage first lien as does apply under the specific facts of this action as well as the After Acquired Property Doctrine) and that Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, together with any taxes or insurance premiums and/or costs for inspecting and securing the property which may be due or which may be or have been paid by Plaintiff, with a reasonable attorney's fees, and for the costs of this action.

3. The mortgaged premises be sold according to law and the practice of this Court, the equity of redemption as to all defendants be barred and the lien or interest claimed by any defendant be extinguished and that the proceeds of sale be applied as follows:

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

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

Third, the surplus, if any, be distributed according to law.

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

5. Issue an order directing the Sheriff of Oconee County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property should the same become necessary; and issue an order, if necessary, directing the South Carolina Department of Motor Vehicles to issue a Certificate of Title on any mobile/manufactured home collateralized under the security documents of the Plaintiff.

6. Plaintiff have judgment against the Defendant(s) Sarah L. Gray and Jeffery Gray for the full amount found to be due Plaintiff on the note and mortgage, with the right to enter personal judgment against the Defendant for any deficiency in this action remaining after sale of the mortgaged premises provide, however, that if Sarah L. Gray and Jeffery Gray has previously received a discharge in bankruptcy during the life of the mortgage herein referenced, this demand for a deficiency judgment is not applicable at all.

7. For such other and further equitable and/or legal relief as the Court may deem just and proper.

SCOTT LAW FIRM, P.A.

By: 
Ronald C. Scott, SC Bar #4996 Priti M. Patel, SC Bar #79835
Elizabeth R. Polk, SC Bar #11673 Kevin T. Hardy, SC Bar #76015
Brett F. Kline, SC Bar #15661 Erica G. Lybrand, SC Bar #79052
Angelina J. Grant, SC Bar #78334

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

December 19, 2011

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank, West
Union Development, LLC, and Bank of Anderson,
N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37-1250

NOTICE OF MORTGAGOR'S RIGHT TO
FORECLOSURE INTERVENTION

2011 DEC 21 P 2:49

FILED
CLERK OF COURT
JAN 2 2012

(111008.00067)

TO THE DEFENDANT(S) SARAH L. GRAY AND JEFFERY GRAY:

PLEASE TAKE NOTICE THAT pursuant to the Supreme Court of South Carolina Administrative Order 2011-05-02-01, you may be eligible for foreclosure intervention programs for the purpose of resolving the above-referenced foreclosure action. If you wish to be considered for a foreclosure intervention program, you must contact Scott Law Firm, P.A., 2712 Middleburg Drive, Suite 200, Columbia, South Carolina 29204 or call (803) 252-3340 within **thirty (30) days** from the date of this notice.

Scott Law Firm, P.A. represents the Plaintiff in this action. We do not represent you. The South Carolina Rules of Professional Conduct prohibit our firm from giving you any legal advice.

IF YOU FAIL, REFUSE, OR VOLUNTARILY ELECT NOT TO PARTICIPATE IN THIS FORECLOSURE INTERVENTION PROCESS, THE FORECLOSURE ACTION MAY PROCEED.

NOTICE: THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION YOU PROVIDE WILL BE USED FOR THAT PURPOSE. HOWEVER, IF YOU HAVE PREVIOUSLY RECEIVED A DISCHARGE FROM BANKRUPTCY, THIS MESSAGE IS NOT AND SHOULD NOT BE CONSTRUED AS AN ATTEMPT TO COLLECT A DEBT, BUT ONLY AS A REQUIREMENT PURSUANT TO THE ABOVE-REFERENCED ADMINISTRATIVE ORDER.

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett E. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334

Prili M. Patel, SC Bar #79835
Kevin T. Hardy, SC Bar #76015
Erica G. Lybrand, SC Bar #79052

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

December 19, 2011

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. Section 1692, *et seq.*

1. The amount of the debt as of May 1, 2011, is the principal sum of \$157,392.86, with interest from April 1, 2011, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
2. The Creditor to whom the debt is owed is Branch Banking and Trust Company, who is authorized to receive payment on your loan.
3. The debt described in this notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.
4. If you, the Debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain verification of the debt, and a copy of the verification will be mailed to you, the Debtor, by the Creditor's law firm.
5. If the Creditor named in this notice is different from the original Creditor, and if you, the Debtor, make a written request to the Creditor's law firm within thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. This notice should not be construed as a thirty (30) day grace period. If, in writing, you request proof of the debt or the name and address of the original creditor within the thirty (30) day period that begins with your receipt of this notice, the law requires the Creditor's law firm to suspend its efforts (through litigation or otherwise) to collect the debt until the Creditor's law firm mails the requested information to you.
7. This notice pertains to your dealings with the Creditor's law firm as a debt collector. It does not affect your dealings with the court, and in particular it does not change the time by which you must answer the complaint if we serve one on you. The summons is a command from the court, not from the Creditor's law firm, and you would have to follow its instructions even if you dispute the validity or amount of the debt. The advice in this notice also does not affect the Creditor's law firm's relations with the court. The Creditor's law firm may file papers in any such suit according to the court's rules and the judge's instructions.
8. **THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.** The information provided in paragraphs 1 and 2 above has been provided to us by the Creditor or Servicer. At this point in time, no attorney with this firm has personally reviewed the particular circumstances of your account. If you have previously received a discharge in bankruptcy, this notice is not and should not be construed as an attempt to collect a debt but only as an attempt to enforce a lien.

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, hereby sells, assigns, transfers and sets over unto Branch Banking and Trust Company, that certain Mortgage dated July 29, 2003, executed by Sarah L. Gray and Jeffery Gray, which said mortgage is in the original principal amount of \$180,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, State of South Carolina, recorded on August 13, 2003 in Book 1727 at Page 136, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.

LEGAL DESCRIPTION:

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This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305.

TMS No. 209-08-01-013

Property address: 202 South Summit Drive, Seneca, SC 29672

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, caused these presents to be executed this 9 day of DEC, 2011.

Mortgage Electronic Registration Systems, Inc.
as nominee for Branch Banking and Trust
Company of South Carolina, its successors and
assigns

Cornelia Jackson
Witness #1

BY: Ivan HobbsTITLE: VP

Marcin P. Walczak
Notary/Witness #2

ASSIGNEE ADDRESS: 6th Floor 301 College Street, Greenville, SC 29601



STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
BRANCH BANKING AND TRUST)
COMPANY,)
Plaintiff,)
VS)
SARAH L. GRAY, JEFFERY GRAY,)
SUNTRUST BANK, WEST UNION)
DEVELOPMENT, LLC AND)
BANK OF ANDERSON, N.A.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A.#2011-CP-37-1250

ANSWER AND
COUNTERCLAIM
JURY TRIAL DEMANDED

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JUN 11 PM 4 56

Defendants, Sarah L. Gray and Jeffery Gray (hereinafter referred to as
"Defendant") by and through their undersigned attorney, for their answer to Plaintiff's
Complaint, states as follows:

**Defendant disputes your debt collection-related allegations, denies the
same, and demands strict proof and verification thereof. This dispute, denial, and
demand are made in accordance with federal law.**

Defendant denies each and every allegation of the Plaintiff's Complaint, not
expressly, admitted explained and/or qualified.

1. Defendant does not have sufficient information and belief to admit
or deny the allegations contained in Paragraph 1, thus denies the allegations contained
in Paragraph 1 of Plaintiff's Complaint (thereafter references to paragraphs of Plaintiff's
Complaint will be stated as Paragraph __) and demands strict proof thereof.

2. Defendant does not have sufficient information and belief to admit

ENTERED

COMPUTER

Copies to:
Attorney
DSS
Mailed ☒ Boxed ☐ handed ☐

or deny the allegations contained in Paragraph 2, thus denies the allegations contained in Paragraph 2 and demands strict proof thereof.

3. Defendant does not have sufficient information and belief to admit or deny the allegations contained in Paragraph 3, thus Defendants must deny same and demands strict proof thereof.

4. Defendant admits so much of the allegations contained in Paragraph 4 that allege that this Defendant has an interest in the real estate subject to this action; Defendant denies the remainder of the allegations contained in Paragraph 4 and demands strict proof thereof.

5. Defendant does not have sufficient information and belief to admit or deny the allegations contained in Paragraph 5, thus Defendants must deny same and demands strict proof thereof.

6. With respect to Paragraphs 6, 7, and 8 Defendant admits executing the Note and Mortgage. The terms of the note and mortgage speak for themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof.

8. Defendant admits that demand for payment has been made, but Defendant does not have sufficient information to admit or deny the remaining allegations contained in Paragraph 9, thus must deny same, and demand strict proof thereof.

9. With respect to Paragraphs 10 and 11, Defendant admits executing the Note and Mortgage. The terms of the note and mortgage speak for

themselves, and any allegations contained in these paragraphs not consistent with the terms of the note and mortgage are denied, and Defendant demands strict proof thereof. Further, Defendant admits that demand for payment has been made.

10. Defendant denies the allegations contained in Paragraph 12.

11. With respect to Paragraph 13, Defendant admits that demand for payment has been made, but Defendant does not have sufficient information to admit or deny the remaining allegations contained in Paragraph 13, thus must deny same, and demand strict proof thereof.

12. Defendant denies the allegations contained in Paragraph 14.

13. With respect to Paragraph 15, the allegation that "The conditions of the Note and Mortgage have been breached" is a legal conclusion to which not response is required. Defendant does not have sufficient information and belief to admit or deny the remaining allegations contained in Paragraph 15, thus Defendant must deny same and demand strict proof thereof.

14. Defendant does not have sufficient information and belief to admit or deny the allegations contained in Paragraph 16, thus Defendant must deny same and demands strict proof thereof.

15. Defendant denies the allegations contained in Paragraphs 17, 18 and 19 and demands strict proof thereof.

16. Defendant denies the allegations contained in the Paragraphs following the word Wherefore, and demands strict proof thereof.

AFFIRMATIVE DEFENSES



14. Defendant incorporates therein by reference the above allegations.

15. Defendant thereby incorporates Defendant's Counterclaim in its entirety as and for his First, Second and Third Affirmative Defenses as if fully set forth therein.

FOURTH AFFIRMATIVE DEFENSE

16. Defendant incorporates therein by reference the above allegations.

17. Plaintiff is barred from recovery by the equitable doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

18. Defendant incorporates therein by reference the above allegations.

19. Plaintiff is barred from recovery pursuant to the equitable doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

20. Defendant incorporates therein by reference the above allegations.

21. Plaintiff is barred from recovery pursuant to the equitable doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

22. Defendant incorporates therein by reference the above allegations.

23. Plaintiff is barred from recovery pursuant to the doctrine of illegality.

EIGHTH AFFIRMATIVE DEFENSE

24. Defendant incorporates therein by reference the above allegations.

25. Plaintiff is barred from recovery pursuant to the doctrine of

economic duress.

NINTH AFFIRMATIVE DEFENSE

26. Defendant incorporates therein by reference the above allegations.

27. Plaintiff is not the real party in interest and does have standing to prosecute this action, thus this action must be dismissed.

TENTH AFFIRMATIVE DEFENSE

28. Defendant incorporates therein by reference the above allegations.

29. Plaintiff's complaint fails to state facts sufficient to constitute a cause of action, thus must be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant expressly denies that Plaintiff is entitled to any relief requested in the Complaint, demands judgment be entered in favor of Defendant on all matters claimed in the Complaint, including an award of her costs therein, and for all other relief that this Court deems just and appropriate.

COUNTERCLAIM

Defendants/Counter-Plaintiffs, Sarah L. Gray and Jeffery Gray (hereinafter referred to as Defendants or Counter-Plaintiffs), complain of the Plaintiff/Counter-Defendant (thereafter referred to as Plaintiff or Counter-Defendant and alleges as follows:

PRELIMINARY STATEMENT

Counter-Plaintiffs at all times mentioned herein were South Carolina Consumers who were victimized by the wrongful conduct (the Conduct) described

herein in a number of ways. Additionally, the acts underlying the Actions, Conduct and/or Omissions are unfair and deceptive acts and practices in violation of the South Carolina Unfair Trade Practices Act and the South Carolina Consumer Protection Code, and further constitute a breach of contract accompanied by fraudulent act and/or with fraudulent intent.

PARTIES

1. Counter-Plaintiffs are natural persons and are citizens and residents of the County of Oconee, State of South Carolina.
2. Counter-Defendant, on information and belief is a corporation, and which is engaged in trade or commerce in Oconee County, South Carolina as defined by SC Code Ann., § 39-5-10(b). Further, Counter-Defendant, by and through its agents, servants, and/or employees is a financial institution. Further, Counter-Defendant transacts business in the state of South Carolina through the use of the United States mails, telephone or other instrumentalities of interstate commerce. Additionally, Counter-Defendant, on information and belief purportedly acquires consumer debts in default and regularly collects or attempts to collect defaulted consumer debts which were owed or due or asserted to be owed or due another.

FACTS

3. Heretofore, on or about July 29, 2003, Counter-Plaintiffs made, executed and delivered a certain Note ("Note") in the principal sum of \$180,00.00, payable in monthly installments. This loan transaction was incurred by Counter-Plaintiffs primarily for personal, family or household purposes.

4. In order to secure the payment of the Note according to the terms and conditions thereof, Counter-Plaintiffs made, executed and delivered unto Mortgage Electronic Registration Systems a certain real estate mortgage ("Mortgage"), covering the following described property and any and all improvements to the property;

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305. Thereafter, this being the same property conveyed to West Union Development, LLC by deed from Jeffery A. Gray and Sarah L. Gray dated November 24, 2010 and recorded November 29, 2010 in Book 1805 at Page 289.

TMSNo. 209-08-01-013

Property address: 202 S Summit Drive Seneca, SC 29672

5. At all times therein mentioned, Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees were creditors and/or lenders within the meaning of the South Carolina Consumer Protection Code. Further, Counter-Defendant is a Loan Originator, Loan Servicer, Loan Subservicer, Loan Interim Funder, Investor, Document Custodian, Warehouse/Gestation Lender.

6. At all times mentioned therein, Counter-Plaintiffs were and are consumers and/or borrowers within the meaning of the South Carolina Consumer Protection Code.

7. At all times mentioned therein, the transaction which is the subject of this action was and is a loan transaction within the meaning of § 37-10-101 et seq of



the South Carolina Consumer Protection Code.

8. Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees failed to ascertain Counter-Plaintiff's preference as to legal counsel as required by § 37-10-102 S.C. Code of Laws Ann. regarding the mortgage loan which is the subject of this action and/or Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees failed to timely ascertain Counter-Plaintiffs' preference as to legal counsel as required by § 37-10-102 S.C. Code of Laws Ann. regarding the mortgage loan which is the subject of this action.

9. Assuming Counter Defendant is a holder of the Note and Mortgage which is the subject of this action, Counter-Defendant is not a holder in due course. Counter-Defendant has alleged at Paragraph 12 of Counter-Defendant's complaint that the subject is loan was in default as of May 1, 2011. Counter-Defendant purportedly acquired the subject loan and mortgage on or about December 9, 2011 as evidenced by an Assignment of Mortgage, a copy of which is attached hereto marked Exhibit A.

10. The purported assignment to Counter-Defendant was executed by a Ivan Hobbs, who, on information and belief, falsely claimed to be Vice President of Mortgage Electronic Registration Systems, Inc (MERS).

11. According to the Assignment of Mortgage, the impression is that it was executed in the County of Greenville, State of South Carolina.

12. On information and belief, Ivan Hobbs has never been employed by MERS and/or has never held the position of Vice President of MERS.

13. According to MERS Website as of January 9, 2012, the Officers of

MERS are:

Bill Beckmann
President and CEO

Bill Beckmann is President and CEO of MERSCORP, Inc. and its subsidiary, Mortgage Electronic Registration Systems, Inc.

Dan McLaughlin
Executive Vice President

Dan McLaughlin serves as Executive Vice President of MERSCORP, Inc.

Bryan Kanefield

Senior Vice President and Chief Risk Officer

Bryan Kanefield serves as MERSCORP's Senior Vice President and Chief Risk Officer.

Sharon Horstkamp

Vice President, Secretary and General Counsel

Sharon McGann Horstkamp serves as Vice President, Secretary and General Counsel for MERSCORP, Inc.

Juanita Russell

Treasurer and Chief Financial Officer

Juanita Russell serves as Treasurer and Chief Financial Officer for MERSCORP, Inc.

Helina Dancer

Vice President, Human Resources

Helina Dancer serves as Vice President of Human Resources for MERSCORP, Inc.

Doug Danko

Vice President, Customer Group

Doug Danko serves as Vice President and Customer Group Manager for MERSCORP, Inc.

Janis L. Smith

Vice President, Corporate Communications

Janis Smith serves as Vice President for Corporate Communications for MERSCORP, Inc.

Gretchen Strub

Vice President, Internal Audit

Gretchen Strub serves as Vice President of Internal Audit for MERSCORP, Inc.

Gary Vandeventer
Vice President, Product Division
Gary Vandeventer serves as Vice President of the Product Division for MERSCORP, Inc.

Avi Marcus
Associate Secretary and Counsel
Avi Marcus serves as Associate Secretary and corporate counsel for MERSCORP, Inc.

14. Further, the violations were and/or are evident from the face of the documents purportedly assigned to Counter-Defendant.

15. Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees obtained a mortgage loan secured by Counter-Plaintiffs' residence at an exceptionally high APR and/or failed to comply with applicable disclosure laws and/or concealed material facts from the Counter-Plaintiffs that Counter-Plaintiffs were entitled to know and understanding prior to executing the note and mortgage which is the subject of this action.

16. At all times mentioned therein, Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees, expressly or by implication, held themselves out to the public and to Counter-Plaintiffs to be an expert in their respective fields, and further, at all times mentioned therein, Counter-Plaintiff reposed great trust and confidence in Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees, who at all times were acting within the course and scope of their agency and/or employment with Counter-Defendant

and/or Counter-Defendant's assignors.

17. The aforementioned loan transaction which is the subject of this action was and is unconscionable within the meaning of § 37-10-105 S.C. Code of Laws Ann., and/or was induced by unconscionable conduct in violation of and prohibited by § 37-10-105 S.C. Code of Laws Ann.

18. As a direct result of the actions, conduct and/or omissions of Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees, Counter-Plaintiffs have suffered embarrassment, humiliation, loss of sleep and emotional distress, their property has become encumbered by excessive finance charges and/or their creditworthiness has been damaged, among other things.

**FOR A FIRST CAUSE OF ACTION
VIOLATION OF THE SOUTH CAROLINA
UNFAIR TRADE PRACTICES ACT**

19. Counter-Plaintiffs incorporate by reference all allegations set forth above.

20. It was and is Counter-Defendant's business practice to acquired, purchase and/or service mortgage loans secured by South Carolina consumers' principal residences knowing that said mortgage loans were not in compliance with § 37-10-102 S.C. Code of Laws Ann., and/or were the product of fraudulent assignments.

21. By its conduct as alleged therein, Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees have engaged in acts or practices that are unfair, deceptive or misleading in the conduct of trade or commerce in a material way in violation of the South Carolina Unfair Trade Practices

Act.

22. As a result of the actions, omissions and/or conduct of Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees, as set forth therein, Counter-Plaintiff has suffered financial loss.

23. Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees actions and practices as alleged therein are capable of repetition.

24. Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees and practices as set forth therein were willful and intentional violations of the rights Counter-Plaintiff. Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employee's practices are also intentional and willful violations of the South Carolina Unfair Trade Practices Act.

25. As a direct and proximate result the aforementioned violations of the South Carolina Unfair Trade Practices Act, Counter-Plaintiffs have been damaged and have incurred attorney fees and costs, for which damages, attorney fees and costs Counter-Defendant is liable, and further such damages should be trebled according to law.

**FOR A SECOND CAUSE OF ACTION
BREACH OF CONTRACT AND/OR
BREACH OF CONTRACT ACCOMPANIED BY FRAUDULENT ACT**

26. Counter-Plaintiffs incorporate by reference all allegations set forth above.

27. The aforementioned actions, conduct and/or omissions of Counter-

Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees constitute a breach of contract, and further Counter-Plaintiff is informed and believes that said breach was accompanied by fraudulent act(s) and/or with fraudulent intent.

28. Further, Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees has breached the covenant of good faith and fair dealing which is implied in all South Carolina contracts and/or as prescribed by § 36-1-203 S.C. Code of Laws Ann.

29. As a direct and proximate result of the breach of contract and/or breach of contract accompanied by fraudulent act and/or with fraudulent intent, Counter-Plaintiffs have been damaged and has incurred attorney fees and costs for which damages, costs and attorney fees Counter-Defendant is liable.

**FOR A THIRD CAUSE OF ACTION
VIOLATION(S) OF SOUTH CAROLINA CONSUMER
PROTECTION CODE**

30. Counter-Plaintiffs incorporate by reference all allegations set forth above.

31. The aforementioned actions, conduct and/or omissions of Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees are in violation of and prohibited by § 37-10-101 et seq S.C. Code of Laws Ann., and further said violations were intentional and deliberate.

32. As a direct and proximate result of the violation(s) of § 37-10-101 et seq S.C. Code of Laws Ann. by Counter-Defendant, Counter-Defendant's assignors, their agents, servants, and/or employees, Counter-Plaintiffs have been damaged, both

actually and punitively, for which damages, Counter-Defendant is liable.

**FOR A FOURTH CAUSE OF ACTION
VIOLATION(S) OF FEDERAL FAIR DEBT COLLECTIONS
PRACTICES ACT**

33. Counter-Plaintiffs incorporate by reference all allegations set forth above.

34. This is a claim for statutory and actual damages caused by Counter-Defendant's violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.*, which prohibits a debt collector from engaging in deceptive, unfair and/or unconscionable debt collection practices.

35. Counter-Defendant regularly collects or attempts to collect debts owed or due or asserted to be owed or due another and is a debt collector as defined in the Act at 15 U.S.C. § 1692a(6).

36. Said Note and Mortgage (hereinafter the debt), if incurred by the Counter-Plaintiffs, was incurred primarily for personal, family or household purposes.

37. At all times mentioned herein, Counter-Defendant was acting by and through its agents, servants, and/or employees, who at all times mentioned herein were acting within the scope of their employment and/or agency with the Counter-Defendant.

38. Without limiting the scope and extent of the violations which Counter-Defendant may have committed, it has violated the Fair Debt Collection Practices Act by engaging in the following unfair, deceptive or unconscionable debt collection practices:

(a) by threatening to take action that cannot legally be taken or that was

not intended to be taken as prohibited by 15 U.S.C. § 1692e(5);

(b) by engaging in conduct which had the natural consequence of harassing, oppressing, or abusing Counter-Plaintiffs in connection with the collection of a debt in violation as prohibited by 15 U.S.C. § 1692d;

(c) by falsely representing the character, amount or legal status of the debt as prohibited by 15 U.S.C. § 1692e(2)(A); and

(d) by generally using a false representation or deceptive means to collect a debt as prohibited by 15 U.S.C. § 1692e(10).

39. As a direct and proximate result of Counter-Defendant's actions, conduct and/or omissions, Counter-Plaintiffs have suffered unnecessarily anxiety, stress and other mental discomfort.

40. As such, Counter-Plaintiffs are entitled to both statutory damages and actual damages under the Act.

41. Counter-Plaintiffs are also entitled to an award of punitive damages.

WHEREFORE, Counter-Plaintiffs pray that Counter-Defendant's complaint be dismissed with costs and Counter-Plaintiff demands judgment against Counter-Defendant for actual damages, punitive damages, treble damages, statutory damages attorney fees and costs and for such other and further relief that this Court deems just and proper under the circumstances.

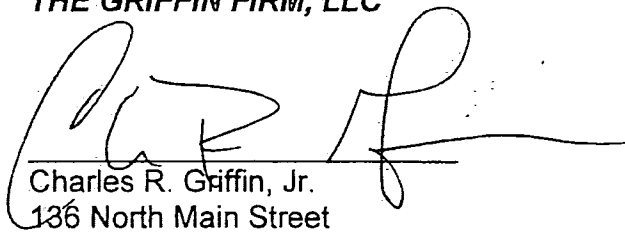
JURY DEMAND

Counter-Plaintiffs demand a jury trial of all issues so justiciable.

THE GRIFFIN FIRM, LLC

DATED: January 9, 2012

BY:



Charles R. Griffin, Jr.
136 North Main Street
Anderson, South Carolina 29621
(864) 231-8870
(864) 231-7797 fax

Attorney for Defendants Sarah L. Gray
and Jeffery Gray/Counter- Plaintiffs

Exhibit "A"

Record 45
Exhibit A
Appendix 000092

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, hereby sells, assigns, transfers and sets over unto Branch Banking and Trust Company, that certain Mortgage dated July 29, 2003, executed by Sarah L. Gray and Jeffery Gray, which said mortgage is in the original principal amount of \$180,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, State of South Carolina, recorded on August 13, 2003 in Book 1727 at Page 136, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.

LEGAL DESCRIPTION:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305.

TMS No. 209-08-01-013

Property address: 202 South Summit Drive, Seneca, SC 29672

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, caused these presents to be executed this 9 day of DEC, 2011.

Mortgage Electronic Registration Systems, Inc.
as nominee for Branch Banking and Trust
Company of South Carolina, its successors and
assigns

Cornelia Jackson
Witness #1

Ivan Hobbs
BY:

Marcin P. Walley
Notary/Witness #2

TITLE: VP

ASSIGNEE ADDRESS: 6th Floor 301 College Street, Greenville, SC 29601



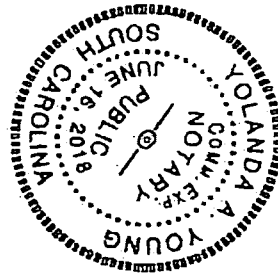
STATE OF South Carolina
COUNTY OF Greenville

ACKNOWLEDGMENT

I, YOLANDA A. YOUNG, a Notary Public for the State of SC, do hereby certify that IVAN HOBBS as VP of Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal
this 09 day of DECEMBER, 2011.

Yolanda A. Young
Notary Public for SC
My Commission Expires: _____



DEFENDANTS.

CERTIFICATE OF SERVICE

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 11 PM 4 56


Felicia Y. Gilreath

ORIGINAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	C.A. #2011-CP-37-1250
	)	
BRANCH BANKING AND TRUST	)	
COMPANY,	)	REPLY TO COUNTERCLAIMS
	)	OF DEFENDANTS SARAH AND
Plaintiff,	)	JEFFERY GRAY
	)	
vs.	)	
	)	
SARAH L. GRAY, JEFFERY GRAY,	)	
SUNTRUST BANK, WEST UNION	)	
DEVELOPMENT, LLC AND BANK	)	
OF ANDERSON, N.A.,	)	
	)	
Defendants.	)	
	)	

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2012 FEB 21 AM 10 25

The Plaintiff, Bank Branching and Trust Company ("BB&T"), replying to the counterclaims of the Defendants Sarah and Jeffrey Gray ("Gray"), replies as follows:

FOR A FIRST REPLY

1. Any allegation in the counterclaims not specifically admitted herein is denied and strict proof demanded thereof.
2. BB&T expressly denies the preliminary statement of the counterclaim.
3. The allegations of paragraph 1 (all future reference to paragraph numbers are to Defendant Sarah and Jeffrey Gray's counterclaim unless otherwise specified) are admitted.
4. The allegations of paragraph 2 are admitted in so much as it alleges BB&T transacts business in South Carolina and in Oconee County. The last sentence of paragraph 2 is denied.

ENTERED
Jla
3/1/12

Copies to:
Atty ☒ (P) ☐ (D) _____
other _____
Mailed ☒ Boxed ☐ handed ☐

5. The allegations of paragraph 3 and 4 are admitted that the Counter-Plaintiffs executed and delivered a note and mortgage. Reference is craved to the original note and mortgage for the terms and conditions.
6. BB&T admits the allegations of paragraphs 5 and 6 upon information and belief.
7. The allegation of paragraph 7, that transaction subject to this proceeding was a loan transaction is admitted.
8. The allegations of paragraph 8 are denied and BB&T asserts that as part of its document production is a signed attorney preference form naming James Belk, Esquire as preferred counsel. Reference is also made to this selection in the Contact Log.
9. The allegations of paragraphs 9-12 are denied.
10. Answering the allegations of paragraphs 13, reference is craved to MERS records and not just its website.
11. The allegations of paragraphs 14-18 are denied.
12. The allegations of paragraphs 19, 26, 30, and 33 are procedural and incorporate other paragraphs by reference. To extent this reply addresses those paragraphs, the responses are hereby incorporated. If there is no specific response, the allegations are denied.
13. The allegations of paragraphs 20-25 are denied.
14. The allegations of paragraphs 27-29 are denied.
15. The allegations of paragraphs 31-32 are denied.
16. The allegations of paragraphs 34-41 are denied.
17. The allegations in the Defendants prayer for relief and jury trial demand are denied.

FOR A SECOND REPLY

18. The closing on this loan transaction took place in 2003. BB&T asserts that the Defendants have waited an unreasonable length of time to assert these counterclaims to

the prejudice of BB&T such that the counterclaims are barred by the applicable statutes of limitations and laches.

FOR A THIRD REPLY

19. The Defendants executed loan transaction documents which clearly set forth in the note and mortgage that BB&T was the lender. To the extent they are making allegations contrary to the written loan documents they signed, BB&T asserts estoppel, waiver, the parol evidence rule, and the statute of frauds.

FOR A FOURTH REPLY

20. The Defendants have not suffered any actual damages as a result of the conduct alleged in the counterclaims; therefore the counterclaims should be dismissed.

FOR A FIFTH REPLY

21. To the extent the Defendants have suffered any actual damages or recover any damages on the counterclaims, which is expressly denied, then any such damages should serve merely as an offset to the debt due BB&T under the note and mortgage.

FOR A SIXTH REPLY

22. To the extent the Defendants claim the assignment by MERS is an Unfair Trade Practice, the claim should be dismissed since the assignment was not the conduct of trade or commerce.

FOR A SEVENTH REPLY

23. The Defendants cannot claim breach of contract or breach of contract accompanied by fraudulent act or breach of implied duty of good faith because they failed to comply with the contract by making timely payments.

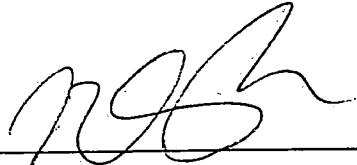
FOR AN EIGHTH REPLY

24. The Defendants counterclaim under the Fair Debt Collections Act should be dismissed as BB&T is not a "Debt Collector" within the meaning of the Act.

CERTIFICATE OF SERVICE

I, J. Derrick Jackson Attorney of the law firm of TOBIAS G. WARD, JR., PA, attorneys for the Plaintiff(s), do hereby certify that I served a copy of the Reply to Defendants Gray Counterclaims on the Defendants Gray, by United States Mail, post prepaid, on February 16, 2012, addressed as follows:

Charles R Griffin, Jr.
THE GRIFFIN FIRM, LLC
36 North Main Street
Anderson, South Carolina 29621



J. Derrick Jackson

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 FEB 21 AM 10 25

ENTERED

COMPUTER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS Appendix 000099

COUNTY OF OCONEE

FILED OCONEE, SC
BEVERLY H. WHITFIELD

CASE NO.: 2011-CP-37-1250

Branch Banking and Trust Company, CLERK OF COURT

Plaintiff, 2012 MAR 30 AM 10 25

vs.

**ANSWER OF DEFENDANT
SUNTRUST BANK
AND CONSENT TO
ORDER OF REFERENCE**Sarah L. Gray, Jeffery Gray, Suntrust Bank, West
Union Development, LLC, and Bank of Anderson,
N.A.,Defendant(s).

The Defendant, SunTrust Bank (hereinafter "Defendant"), does hereby answer the Complaint ("Complaint") served by the plaintiff ("Plaintiff") in this action as follows:

1. Each and every allegation contained in the Complaint that is not hereinafter specifically admitted or otherwise qualified is denied, and strict proof is demanded hereof.

2. Defendant admits the allegations in paragraph 4, insofar as pertains to the allegations herein.

3. Answering paragraph 16. (a), Defendant admits that it has an interest in the real property which is the subject of this action and has such interest by virtue of a certain mortgage given to SunTrust Bank by Jeffery A. Gray and Sarah L. Gray in the amount of \$200,000.00, which mortgage is dated September 22, 2005, and was recorded in the Registry for Oconee County on October 6, 2005, where it appears in Mortgage Book 2137 at Page 151. Said mortgage was modified by that certain Modification of Mortgage dated June 7, 2007 and recorded on June 27, 2008 in Book 2634 at Page 89, thereafter re-recorded July 16, 2008 in Book 2641 at Page 154. SunTrust Bank is the owner and holder thereof. To the extent any allegation of the Complaint contradicts or varies this Answer, it is denied.

4. This defendant consents to reference to a Master-In-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate.

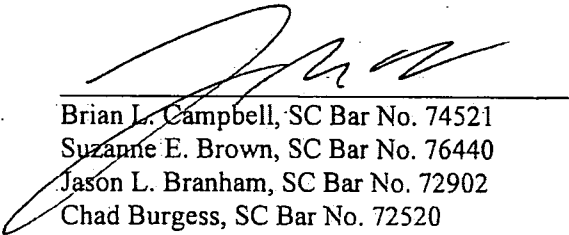
WHEREFORE, having fully answered the Complaint, Defendant prays that this Honorable Court inquire into the matters at issue:

1. Protect the interests of Defendant and the validity and priority of its mortgage;
2. Award to Defendant a reasonable attorney's fee and its costs incurred in the defense of this action;

Copies to:
Atty ☒ (P) ☐ (D)
DSS ☐ other ☐
Mailed ☒ Boxed ☐ handed ☐

ENTERED
10
COMPUTER

3. Notify the undersigned attorney for Defendant of any scheduled judicial sale of the subject property;
4. Notify the undersigned attorney for Defendant of any surplus funds resulting from a judicial sale herein pursuant to Rule 71, SCRPC; and,
5. For such other and further relief as the Court may deem just and proper.



Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Mark A. Pearson, SC Bar No. 15926
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorney for Defendant SunTrust Bank

3,28112

Wilmington, North Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

Appendix 000101

COUNTY OF OCONEE

FILED OCONEE, SC

CASE NO.: 2011-CP-37-1250

BEVERLY H. WHITFIELD
Branch Banking and Trust Company, CLERK OF COURT

Plaintiff,

2012 MAR 30 AM 10 25

vs.

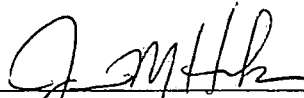
CERTIFICATE OF SERVICE BY MAIL

Sarah L. Gray, Jeffery Gray, Suntrust Bank, West
Union Development, LLC, and Bank of Anderson,
N.A.,Defendant(s).

The undersigned hereby certifies that she is an employee in the office Brock & Scott, PLLC and is a person of such age and discretion as to be competent to serve papers.

The undersigned also does hereby certify that service of the Answer in the above captioned matter was made upon the following, by placing one regular copy of same in a postage paid envelope addressed to the person hereinafter named, return address clearly indicated, at the place and address stated below, which is the last known address, and by depositing said envelope in the United States Mail at the office of Brock & Scott, PLLC., on this 28th day of March, 2012.

Addressee:

Brett F. Kline
Scott Law Firm, P.A.
2712 Middleburg Drive, Suite 200
Columbia, SC 29204Jessica M. Hawks
Legal Assistant
Brock & Scott, PLLCENTERED
102
COMPUTER

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37-1250

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank,
West Union Development, LLC and Bank of
Anderson, N.A.

DEFENDANT(S).

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AS TO DEFENDANT SARAH
AND JEFFERY GRAY'S COUNTERCLAIMS
AND JURY TRIAL DEMAND AND
MEMORANDUM OF LAW IN SUPPORT**

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 JAN 3 PM 10:40

TO: CHARLES R. GRIFFIN, JR., ESQUIRE, ATTORNEY FOR DEFENDANTS SARAH
AND JEFFERY GRAY:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Branch Banking and Trust Company ("BB&T") by and through its undersigned attorneys, will move as soon as practicable pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure* for an order granting it summary judgment as to Defendant Sarah Gray and Defendant Jeffery Gray (hereinafter collectively "Defendants") counterclaims on the grounds that no genuine issue of material fact exists and BB&T is entitled to judgment as a matter of law. This motion is based upon discovery, the Pleadings on file, supporting affidavits to be filed with the Court and incorporated herein, and the legal authorities set forth in the memorandum of law that follows.

FACTUAL BACKGROUND

1. Plaintiff, in its Complaint, seeks to foreclose a mortgage upon certain real Estate located in Oconee County, South Carolina (Complaint, filed December 21, 2011).
2. On July 29, 2003, Sarah L. Gray and Jeffery Gray made, executed and delivered to BB&T a certain mortgage note ("Note") in writing wherein and whereby Sarah L. Gray and Jeffery Gray promised to pay BB&T the principal sum of \$180,000.00. (Admitted. Plaintiffs Requests for Admissions and Defendants Responses are attached hereto as Exhibit "A").
3. In order to secure payment of said Note, Defendants did on the same date, to-wit, July 29, 2003, make execute and deliver to Mortgage Electronic Registration Systems, Inc. as nominee for BB&T, its successors and assigns, a certain mortgage ("Mortgage") covering real property located in the County and State aforesaid, which said mortgage was recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, on August 13, 2003, in Book 1727, at Page 136. (Admitted. Exhibit "A.").
4. Prior to or during the course of the real estate closing, Defendants were presented with a document entitled "Borrower's Preference of Legal Counsel/ Insurance Agent – South Carolina Properties Only." This document was signed by Defendants acknowledging that they were informed by the originating lender that they had a right to select legal counsel to represent them pertaining to the real estate closing transaction. Additionally, the document bearing Defendants signature further acknowledges that they selected James A. Belk, Esquire as their attorney. (A "Borrower's Preference Form" is attached as an Exhibit to Exhibit A. Both the document and the true and accurate signature of Defendants are admitted in Exhibit A.)
5. On December 9, 2011, the Note and Mortgage were assigned to BB&T by

assignment instrument executed December 9, 2011 and recorded December 20, 2011 in Book 3034 at Page 145. A copy of this assignment is attached as an Exhibit to Exhibit A.

6. The assignment was executed by Ivan Hobbs, an officer of MERS. A copy of the Corporate Resolution giving Ivan Hobbs the authority to execute said assignment on behalf of MERS is attached hereto as Exhibit "B." This was provided to Defendant in the course of discovery.

7. Defendants admit that they are in default under the terms of the Note in that they have not made all payments as they have become due. (Exhibit "A").

8. By way of Answer to Plaintiff's Complaint, Defendants have alleged violation of South Carolina Unfair Trade Practices Act, Breach of Contract, Violations of South Carolina Consumer Protection Code, and Violations of Federal Fair Debt Collections Practices Act. Defendants also seek a jury trial. This motion is in response to Defendants counterclaims and jury trial demand.

LAW/ANALYSIS

The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). A trial court may properly grant a motion for summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), *SCRCP*. In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the non-moving party. *Worsley Companies, Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). When triable issues exist, those issues

must go to the jury. *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine. *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). A court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

First, Defendants allege Violation of South Carolina Unfair Trade Practices Act ("SC UPTA"); however, to the extent that Defendants claim the assignment by Mortgage Electronic Registration Systems, Inc. ("MERS") is an Unfair Trade Practice, the claim should be dismissed due to the fact that the assignment was not in the conduct of trade or commerce. See *Connolly v. People's Life Insurance Co.*, 294 S.C. 355, 364 S.E.2d 475 (Ct.App.1988), *rev'd on other grounds*, 299 S.C. 348, 384 S.E.2d 738 (1989) (South Carolina Court of Appeals held that being unconnected with transaction constituting either trade or commerce, conversion of note and mortgage by assignee of note and mortgage did not constitute unfair trade practice). Furthermore, the only factual basis in Defendants' Counterclaim is the allegation that Ivan Hobbs falsely claimed to be a vice president of MERS. However, as clearly evidenced by Exhibit B, Ivan Hobbs was in fact the vice president and had the authority to execute the assignment. As such, the counterclaim is entirely without merit and should be dismissed.

Second, Defendants allege Breach of Contract and/or Breach of contract accompanied by fraudulent act; however, by their own admissions, Defendants have failed to comply with the terms of the contract by making timely payments (Exhibit A). The law in South Carolina is clear

that "a party may not insist upon the performance of a contract or a provision thereof where he himself is guilty of a material or substantial breach of that contract or provision." § 19-16 CONTRACT - PERFORMANCE BY NON-BREACHING PARTY, Anderson, S.C. Requests to Charge - Civil, § 19-16 (2009). Thus, this counterclaim should also be dismissed.

Third, Defendants claim violations of the South Carolina Consumer Protection Code ("SC CPC") based on the allegation that Plaintiff did not ascertain the preference of the borrower as to the legal counsel that is employed to represent the debtor as required by S.C. Code § 37-10-101. However, an attorney preference form was provided to and signed by Defendants, which is undisputed as evidenced by Exhibit A. Thus, there is no issue of material fact regarding this claim.

Finally, Defendants counterclaim under the Federal Fair Debt Collections Practices Act ("FDCP"); however, this cause of action should be dismissed as BB&T is not a "Debt Collector" within the meaning of the Act. In their counterclaims, Defendants have failed to assert facts to substantiate their claim that BB&T is a debt collector, and the law is clear that merely alleging an entity is a "debt collector" is by itself insufficient. See 15 U.S.C.A. § 1692a (West) (citing *Swain v. CACH, LLC*, N.D.Cal.2009, 699 F.Supp.2d 1109) ("Debtor's allegation that defendants were 'debt collectors' within meaning of Fair Debt Collection Practices Act (FDCPA) was by itself insufficient to state a claim for relief under the Fair Debt Collection Practices Act (FDCPA); debtor had merely alleged the legal conclusion that all defendants were debt collectors without providing any supporting facts demonstrating that they each engaged in a business the principal purpose of which was the collection of debts"). In the case at hand, BB&T is not a "debt collector" because it falls within the creditor exemption of the FDCPA. See 15 U.S.C. §§ 1692a(6)(A) & (F). The FDCPA defines "creditor" as "any person who offers or

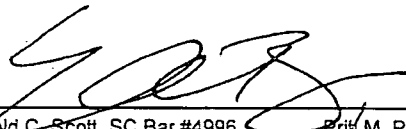
extends credit creating a debt or to whom a debt is owed. 15 U.S.C. § 1692a(4). Because BB&T has only ever been an entity "to whom a debt is owed" with respect to the Note, it follows that absent an exception (for which there is none), BB&T is not a debt collector with respect to the Note. See *Bradford v. HSBC Mortg. Corp.*, 829 F. Supp. 2d 340 (E.D. Va. 2011). For these reasons, Defendants counterclaims against BB&T alleging violations of the FDCPA should be dismissed.

CONCLUSION

For the reasons stated above, there are no issues of material fact, no issues triable by jury, and Defendants are therefore entitled to summary judgment as a matter of law.

Respectfully submitted,

SCOTT LAW FIRM, P.A.



Ronald C. Scott, SC Bar #4996	Priya M. Patel, SC Bar #79835
Elizabeth R. Polk, SC Bar #11673	Elizabeth A. Blackwell, SC Bar #78756
Brett F. Kline, SC Bar #15661	J. Harrison Rushton, SC Bar #100406
Angelia J. Grant, SC Bar #78334	Meredith M. Robertson, SC Bar #68322

ATTORNEYS FOR THE PLAINTIFF
2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

PLAINTIFF,

VS.

Sarah L. Gray, Jeffery Gray, Suntrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.,

DEFENDANT(S).

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-37-1250

**PLAINTIFF'S REQUESTS
FOR ADMISSION**

(111008.00067)

**TO: CHARLES R. GRIFFIN, JR., ESQUIRE, ATTORNEY FOR DEFENDANTS SARAH
L. GRAY AND JEFFERY GRAY:**

You are hereby requested pursuant to Rule 36, *South Carolina Rules of Civil Procedure*, to admit for the purposes of this pending action only the truth of the following statements or opinions of fact or the application of law or fact, your answers being stated separately under oath within thirty (30) days after service of these requests. The matter is admitted unless, within thirty (30) days after service of the request, you serve upon the undersigned a written answer or objection. If an objection is made, the reasons therefore shall be stated.

1. Sarah L. Gray and Jeffery Gray executed a Note to Branch Banking and Trust Company of South Carolina on July 29, 2003 in the amount of \$180,000.00, a true copy of which is attached hereto and incorporated herein as Exhibit "A."

2. Sarah L. Gray and Jeffery Gray executed a Mortgage to Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina on July 29, 2003 in the amount of \$180,000.00, a true copy of which is attached hereto and incorporated herein as Exhibit "B."

3. Sarah L. Gray and Jeffery Gray are in default pursuant to the terms of said Note and Mortgage in that they have not made all payments as they have become due since the date of origination.

4. Sarah L. Gray and Jeffery Gray are in default under the terms of said Note in that Sarah L. Gray and Jeffery Gray have not paid principal and interest by making a payment every month.

5. Sarah L. Gray and Jeffery Gray are in default under the terms of said Note in that Sarah L. Gray and Jeffery Gray have not paid a monthly payment every month until all principal, interest, and other charges allowed in the Note or by law have been paid.

6. Prior to or during the closing of the loan which is the subject of this action, Sarah L. Gray and Jeffery Gray signed the "Borrower's Preference of Legal/Counsel Insurance Agent" Form, a copy of which is attached hereto as Exhibit "C."

7. On or about July 29, 2003, Sarah L. Gray and Jeffery Gray acknowledged that they were provided with and signed a Federal Truth-In-Lending Disclosure statement, a copy of which is attached hereto as Exhibit "D."

8. The signature of Sarah L. Gray and Jeffery Gray on Exhibit "D" is true and correct.

9. Sarah L. Gray and Jeffery Gray signed the "Borrower Certification," a copy of which is attached hereto as Exhibit "E."

10. By signing the "Borrower Certification," Sarah L. Gray and Jeffery Gray acknowledged they 1) had received a truth in lending disclosure and 2) understood that said disclosure showed "the 'APR' and 'finance charge' prior to execution of the Note.

11. Sarah L. Gray and Jeffery Gray signed the "Mortgagor Certification for Title Insurance and Financial Interest Disclosure Form," a copy of which is attached hereto as Exhibit "F."

SCOTT LAW FIRM, P.A.

By: 

Ronald C. Scott, SC Bar #4996
Elizabeth R. Polk, SC Bar #11673
Brett F. Kline, SC Bar #15661
Angelia J. Grant, SC Bar #78334

Priti M. Patel, SC Bar #79835
Erica G. Lybrand, SC Bar #79052
✓ Elizabeth A. Blackwell, SC Bar #78756
J. Harrison Ruston, SC Bar #100406

ATTORNEYS FOR THE PLAINTIFF

2712 Middleburg Drive, Suite 200
Columbia, SC 29204
(803) 252-3340

August 3, 2012

NOTE

MIN #

JUL 29 2003

[Date]

Anderson

[City]

South Carolina

[State]

202 S Summit Drive, Seneca, SC 29672

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 180,000 00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is Branch Banking and Trust Company of South Carolina.

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2 INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.500 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3 PAYMENTS**(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on September 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on August 1, 2033, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 301 College Street, Greenville, SC 29601

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 1,022 02.

4 BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

DOC # 516691

APPL # 700039990

LOAN #

8028

MULTISTATE FIXED RATE NOTE-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

UN50 0005

Form 3200 1/01

VMP MORTGAGE FORMS (800)521 7291

Page 1 of 3

Lentia

Exhibit "A"

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charge for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of Fifteen calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

DOC # 516692

APPL # 7000339990

LOAN #

8028

Page 2 of 3

Form 3200 1/01

hmtls

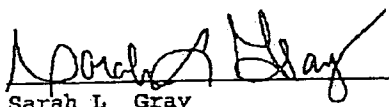
10. UNIFORM SECURED NOTE

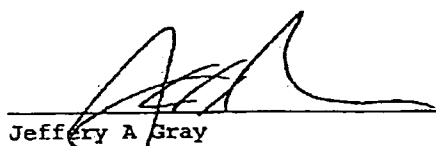
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

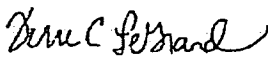
WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED


 Sarah L. Gray (Seal)
 -Borrower


 Jeffery A. Gray (Seal)
 -Borrower

PAY TO THE ORDER OF
 BRANCH BANKING AND TRUST COMPANY
 WITHOUT RECOURSE

BRANCH BANKING AND TRUST OF SC (Seal)
 -Borrower

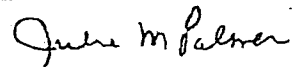
BY 
 TERRIC LeGRAND, VP

(Seal)
 -Borrower

WITHOUT RECOURSE (Seal)
 PAY TO THE ORDER OF -Borrower

(Seal)
 -Borrower

BRANCH BANKING AND TRUST COMPANY

BY 
 JULIE M. PALMER, VP (Seal)
 -Borrower

(Seal)
 -Borrower

[Sign Original Only]

Record 68

BOOK 1727 PAGE 136

Appendix 000115

Return To

Prepared By

Get
line
25.00
James Beck
1202 N. Main St.
Anderson SC 29621

(Space Above This Line For Recording Data)

MORTGAGE

MIN

80288

FILED FOR RECORD
OCHEE COUNTY, S.C.
REGISTER OF DEEDS
2003 AUG 13 P 2.10

014429

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated together with all Riders to this document.

July 29, 2003

(B) "Borrower" is Sarah L. Gray, Jeffery A. Gray

Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2026, Flint, MI 48501-2026, tel (888) 679-MERS.

DOC # 524481 APPL # 7000339990 LOAN # 8028
SOUTH CAROLINA - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS

6A(SC) (0005) 01 Form 3041 1/01
Page 1 of 15 UNEN 0005 06

VMP MORTGAGE FORMS (800) 521 7259

Exhibit "B"

(D) "Lender" is Branch Banking and Trust Company of South Carolina

Lender is a Corporation
organized and existing under the laws of South Carolina
Lender's address is 301 College Street, Greenville, SC 29601

(E) "Note" means the promissory note signed by Borrower and dated as of the date hereof
The Note states that Borrower owes Lender One Hundred Eighty Thousand and No/100
Dollars

(U.S. \$ 180,000 00) plus interest Borrower has promised to pay this debt in regular Periodic
Payments and to pay the debt in full not later than August 1, 2033

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the
Property"

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges
due under the Note, and all sums due under this Security Instrument, plus interest

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower The following
Riders are to be executed by Borrower [check box as applicable]

☐ Adjustable Rate Rider	☐ Condominium Rider	☐ Second Home Rider
☐ Balloon Rider	☒ Planned Unit Development Rider	☐ 1-4 Family Rider
☐ VA Rider	☐ Biweekly Payment Rider	☐ Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations,
ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final,
non-appealable judicial opinions

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other
charges that are imposed on Borrower or the Property by a condominium association, homeowners
association or similar organization

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check,
draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument,
computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an
account Such term includes, but is not limited to, point-of-sale transfers, automated teller machine
transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers

(L) "Escrow Items" means those items that are described in Section 3

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by
any third party (other than insurance proceeds paid under the coverages described in Section 5) for (i)
damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property,
(iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or
condition of the Property

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the
Loan

(O) "Periodic Payment" means the regularly scheduled amount due for (a) principal and interest under the
Note, plus (ii) any amounts under Section 3 of this Security Instrument

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its
implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time,
or any additional or successor legislation or regulation that governs the same subject matter As used in this

DOC # 524482

APPL # 7000339990

LOAN # 8028

6A(SC) (0025) 01

Page 2 of 13

Initials

Form 3041 1/01

Exhibit "A"

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5 The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto Reference being invited to said plat for a fuller more accurate description of the above described property

This being the same property conveyed unto Jeffery A Gray and Sarah L Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane, dated November 1, 2001 recorded December 3, 2001 of record in the Office of the Clerk of Court for Oconee County, South Carolina in Book 1186 at Page 305

FILED FOR RECORD
OCONEE COUNTY, SC
REGISTER OF DEEDS
2003 AUG 13 P 2 10

Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note, and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, the following described property located in the County of Oconee

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

Parcel ID Number
202 S Summit Drive
Seneca
("Property Address")

which currently has the address of

[Street]
[City], South Carolina 29672 [Zip Code]

TO HAVE AND TO HOLD this property unto MERS (solely as nominee for Lender and Lender's successors and assigns), and to the successors and assigns of MERS, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

DOC # 524483

APPL # 7000339990

LOAN # 8028

6A(SC) (0000) 01

Page 3 of 15

Form 3041 1/01

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note, (b) principal due under the Note, (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property, (b) leasehold payments or ground rents on the Property, if any, (c) premiums for any and all insurance required by Lender under Section 5, and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower

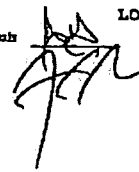
DOC # 524484

APPL # 7000339990

LOAN # 8028

 6A(SC) (0005) 01

Page 4 of 13



Form 3041 1/01

shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. **Charges, Liens.** Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement, (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded, or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

DOC # 524485

APPL # 7000339990

LOAN # 8028

6A(SC) (000) 01

Page 5 of 15

Form 3041 1/01

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan

5 Property Insurance Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

DOC # 524486

APPL # 7000339990

LOAN # .028

②-6A(SC) (000) 01

Page 6 of 15

Initials

Form 3041 1/01

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6 Occupancy Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.

7. Preservation, Maintenance and Protection of the Property, Inspections Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property if it has reasonable cause. Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8 Borrower's Loan Application Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9 Protection of Lender's Interest in the Property and Rights Under this Security Instrument If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to (a) paying any sums secured by a lien which has priority over this Security Instrument, (b) appearing in court, and (c) paying reasonable

DOC # 524487

APPL # 7000339990

LOAN # 8028

6A(SC) (0000) 01

Page 7 of 15

Form 3041 1/01

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

DOC # 524488

APPL # 7000339990

LOAN #

8028

① 6A(SC) (0000) 01

Page 8 of 15

Initials

Form 3041 1/01

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were unearned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied to restoration or repair of the Property shall be applied in the order provided for in Section 2.

DOC # 524489

APPL # 7000339990

LOAN # .8028

6A(SC) (0009) 01

Page 9 of 15

Form 3041 1/01

12. Borrower Not Released, Forbearance By Lender Not a Waiver Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13 Joint and Several Liability; Co-signers, Successors and Assigns Bound Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer") (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument, (b) is not personally obligated to pay the sums secured by this Security Instrument, and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14 Loan Charges Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit, and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. Notices All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

DOC # 524490

APPL # 7000339990

LOAN # 8028

②-6A(SC) (0000) 01

Page 10 of 15

Initials

Form 3041 1/01

BOOK 1727 PAGE 147

16 Governing Law, Severability, Rules of Construction This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender, (b) words in the singular shall mean and include the plural and vice versa, and (c) the word "may" gives sole discretion without any obligation to take any action.

17 Borrower's Copy Borrower shall be given one copy of the Note and of this Security Instrument.

18 Transfer of the Property or a Beneficial Interest in Borrower As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19 Borrower's Right to Reinstate After Acceleration. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of (a) five days before sale of the Property pursuant to Section 22 of this Security Instrument, (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate, or (c) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred, (b) cures any default of any other covenants or agreements, (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality or entity, or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20 Sale of Note; Change of Loan Servicer, Notice of Grievance The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a

DOC # 524491

APPL # 7000339990

LOAN # 8028

②-6A(SC) (0005) 01

Page 11 of 15

Form 3041 1/01

BOOK 1727 PAGE 148

notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21 Hazardous Substances. As used in this Section 21 (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials, (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection, (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law, and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

DOC # 524492

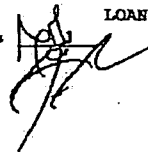
APPL # 7000339990

LOAN # .8028

 -6A(SC) (0005) 01

Page 12 of 15

Initials



Form 3041 1/01

BOOK 1727 PAGE 149

NON-UNIFORM COVENANTS Borrower and Lender further covenant and agree as follows

22 Acceleration, Remedies Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise) The notice shall specify (a) the default, (b) the action required to cure the default, (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured, and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property The notice shall further inform Borrower of the right to restate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence, all of which shall be additional sums secured by this Security Instrument

23 Release Upon Payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void Lender shall release this Security Instrument Borrower shall by any recordation costs Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law

24. Homestead Waiver Borrower waives all rights of homestead exemption in the Property to the extent allowed by Applicable Law

25. Waiver of Appraisal Rights The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY This waiver shall not apply so long as the Property is used as a dwelling place as defined in Section 12-37-250 of the South Carolina Code of Laws

26 Future Advances The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to 150% of the original principal amount of the Note plus interest thereon, attorneys' fees and court costs

DOC # 524493

APPL # 7000339990

LOAN # 8028

-6A(SC) (mm) 01

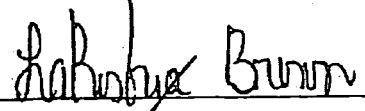
Page 13 of 15

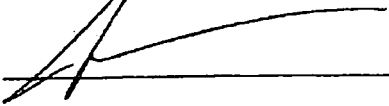
Form 3041 1/01

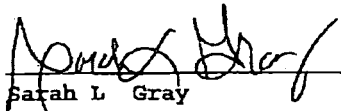
BOOK 1727 PAGE 150

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it

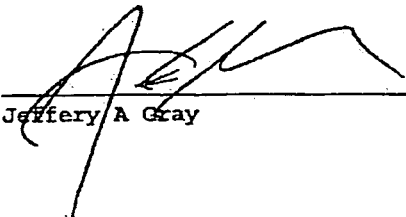
Signed, sealed and delivered in the presence of







Sarah L Gray (Seal)
-Borrower



Jeffery A Gray (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

DOC # 524494

APPL # 7000339990

LOAN # .8028

 6A(SC) (0005) 01

Page 14 of 15

Form 3041 1/01

BOOK 1727 PAGE 152

PLANNED UNIT DEVELOPMENT RIDER

THIS PLANNED UNIT DEVELOPMENT RIDER is made this _____ day of _____, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") of the same date, given by the undersigned (the "Borrower") to secure Borrower's Note to Branch Banking and Trust Company of South Carolina

(the "Lender") of the same date and covering the Property described in the Security Instrument and located at 202 S Summit Drive, Seneca, SC 29672

[Property Address]

The Property includes, but is not limited to, a parcel of land improved with a dwelling, together with other such parcels and certain common areas and facilities, as described in The Deed, The Declaration of Covenants, Conditions and Restrictions

(the "Declaration") The Property is a part of a planned unit development known as The Summit

[Name of Planned Unit Development]

(the "PUD") The Property also includes Borrower's interest in the homeowners association or equivalent entity owning or managing the common areas and facilities of the PUD (the "Owners Association") and the uses, benefits and proceeds of Borrower's interest

PUD COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows

A PUD Obligations Borrower shall perform all of Borrower's obligations under the PUD's Constituent Documents. The "Constituent Documents" are the (i) Declaration, (ii) articles of incorporation, trust instrument or any equivalent document which creates the Owners Association, and (iii) any by-laws or other rules or regulations of the Owners Association. Borrower shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents

DOC # 519821

APPL # 7000339990

LOAN # 028

MULTISTATE PUD RIDER - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Page 1 of 3

Initials

7R (0008)

UM50 0008

VMP MORTGAGE FORMS - (800)521-7291

Form 6150 1/01

BOOK 1727 PAGE 153

B Property Insurance So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy insuring the Property which is satisfactory to Lender and which provides insurance coverage in the amounts (including deductible levels), for the periods, and against loss by fire, hazards included within the term "extended coverage," and any other hazards, including, but not limited to, earthquakes and floods, for which Lender requires insurance, then (i) Lender waives the provision in Section 3 for the Periodic Payment to Lender of the yearly premium installments for property insurance on the Property, and (ii) Borrower's obligation under Section 5 to maintain property insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy.

What Lender requires as a condition of this waiver can change during the term of the loan.

Borrower shall give Lender prompt notice of any lapse in required property insurance coverage provided by the master or blanket policy.

In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, or to common areas and facilities of the PUD, any proceeds payable to Borrower are hereby assigned and shall be paid to Lender. Lender shall apply the proceeds to the sums secured by the Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

C Public Liability Insurance. Borrower shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount, and extent of coverage to Lender.

D Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Borrower in connection with any condemnation or other taking of all or any part of the Property or the common areas and facilities of the PUD, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. Such proceeds shall be applied by Lender to the sums secured by the Security Instrument as provided in Section 11.

E Lender's Prior Consent. Borrower shall not, except after notice to Lender and with Lender's prior written consent, either partition or subdivide the Property or consent to (i) the abandonment or termination of the PUD, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain, (ii) any amendment to any provision of the "Constituent Documents" if the provision is for the express benefit of Lender, (iii) termination of professional management and assumption of self-management of the Owners Association, or (iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Lender.

F Remedies. If Borrower does not pay PUD dues and assessments when due, then Lender may pay them. Any amounts disbursed by Lender under this paragraph F shall become additional debt of Borrower secured by the Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

DOC # 519822

APPL # 7000339990

LOAN #

1028

7R (0008)

Page 2 of 3

Initials

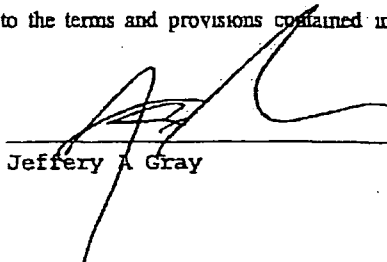
Form 3150 1/01

BOOK 1727 PAGE 154

BY SIGNING BELOW, Borrower accepts and agrees to the terms and provisions contained in this PUD Rider


Sarah L Gray

(Seal)
-Borrower


Jeffery A Gray

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

DOC # 519823

APPL # 7000339990

LOAN # 3028

 7R (0008)

Page 3 of 3

Form 3150 1/01

STATE OF SOUTH CAROLINA)
)
COUNTY OF OCONEE)

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, hereby sells, assigns, transfers and sets over unto Branch Banking and Trust Company, that certain Mortgage dated July 29, 2003, executed by Sarah L. Gray and Jeffery Gray, which said mortgage is in the original principal amount of \$180,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, State of South Carolina, recorded on August 13, 2003 in Book 1727 at Page 136, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.

LEGAL DESCRIPTION:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305.

TMS No. 209-08-01-013

Property address: 202 South Summit Drive, Seneca, SC 29672

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, caused these presents to be executed this 9 day of DEC, 2011.

Mortgage Electronic Registration Systems, Inc.
as nominee for Branch Banking and Trust
Company of South Carolina, its successors and
assigns

Cornelia Jackson
Witness #1

BY: Ivan Hobbs

TITLE: VP

Marcin P. Walczak
Notary/Witness #2

ASSIGNEE ADDRESS: 6th Floor 301 College Street, Greenville, SC 29601



STATE OF

South Carolina

COUNTY OF

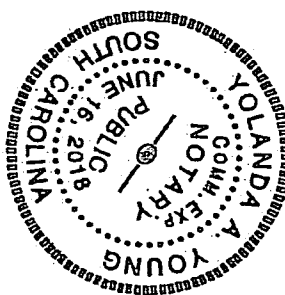
Greenville

ACKNOWLEDGMENT

I, YOLANDA A. YOUNG, a Notary Public for the State of SC, do hereby certify that IVAN HOBBS as VP of Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal
this 09 day of DECEMBER, 2011.

Yolanda A. Young
Notary Public for SC
My Commission Expires: _____



JUL 2 2003 11 30AM
FROM: BDT GREENVILLE

BB&T SENECA
684 242 9302

2003 7-31 NO 185 #4-P 2p 02/02

BB&T

Borrower's Preference of Legal Counsel/Insurance Agent
South Carolina Properly Only

Date Delivered/Mailed May 14, 2003

PREFERENCE OF LEGAL COUNSEL

I (we) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of a loan.

I select JAMES A. BELL
Attorney's Name

[Signature]
Borrower's Signature
X [Signature]
Borrower's Signature

PREFERENCE OF INSURANCE AGENT

I (we) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required homeowner's insurance in connection with this mortgage transaction.

I select Donna Draper
Agent's Name

[Signature]
Borrower's Signature
[Signature]
Borrower's Signature

DOC # 555901 APP # 7000335990 LOAN # 1020
887509 (8885)

C----- Exhibit "C"

07/03/03 11 52 33 AM

Creditor: BRANCH BANKING AND TRUST COMPANY OF SOUTH CAROLINA

Mortgage Loan Administration INTERIM INTEREST \$ 461.10
P O Box 408, Greenville, SC 29602

Federal TRUTH-IN-LENDING DISCLOSURE STATEMENT

DATE 07/10/03	LOAN NUMBER 6611918028	DATE OF DISBURSEMENT 07/15/03
TYPE OF LOAN Jumbo 30 Year Fixed		☐ ADVANCE DISCLOSURE ☒ DISCLOSURE AT CLOSING
Borrower(S) Sarah L. Gray and Jeffery A. Gray		

ADDRESS 202 S Summit Drive, Seneca, South Carolina 29672

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid after you have made all payments as scheduled
5.560 %	\$ 189,114.53	\$ 178,812.40	\$ 367,926.93

You have a right to receive at this time an itemization of the Amount Financed

☐ I want an itemization ☐ I do not want an itemization

Your payment schedule will be

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE FIRST OF EACH MONTH BEGINNING
359	\$1,022.02	September 1, 2003
1	\$1,021.75	August 1, 2033

Security

You are giving a security interest in

☐ The goods or property being purchased☒ Other 202 S Summit Drive, Seneca, SC 29672

Filing Fee \$ 26.00

Late Charge If a payment is received more than 15 days after the due date, you will be charged 5.000 % of the amount of the payment past due

Prepayment If you pay off early, you will not have to pay a penalty and you ☐ may, ☒ will not, be entitled to a refund of part of the prepaid finance charges

Insurance Property - You may obtain property insurance from anyone you want that is acceptable to BB&T of S.C. Branch Banking and Trust Company of South Carolina does not offer property insurance in connection with this loan

Credit and Disability - Credit life insurance and disability insurance are not required to obtain credit and will not be provided unless you sign below and agree to pay the additional cost

TYPE	PRIMUM	SIGNATURE
CREDIT LIFE for the Stated Term of the Credit	I want Credit Life Insurance	SIGNATURE
CREDIT DISABILITY for the Stated Term of the Credit	I want Credit Disability Insurance	SIGNATURE

Assumption

Someone buying your home ☐ may, subject to conditions, be allowed to ☒ cannot assume the remainder of the mortgage on the original terms

Demand Feature

☐ If checked here, this obligation has a demand feature

Variable Rate

☐ If checked here, your loan contains a variable rate feature and is secured by your principal dwelling☐ Disclosures about the variable rate feature have been provided to you earlier

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties, and assumption policy

NOTE: Except for late charges, all numerical disclosures given in advance of closing are estimates

ACKNOWLEDGMENT

By signing below you acknowledge that you have received a completed copy of this Federal Truth-in-Lending Disclosure Statement prior to the execution of any closing documents

Date of Acknowledgment

7/29/03

Borrower

Date of Acknowledgment

7/29/03

Borrower

BBT103 (2/99) DOC 8502491 APPL# 7000339990 LOAN # 6611918028

D

Exhibit "D"

REFINANCE

NOTICE OF RIGHT TO CANCEL

Branch Banking and Trust Company of South Carolina
 LENDER 301 College Street
 Greenville, SC 29601
 BORROWERS/OWNERS Sarah L Gray, Jeffery A Gray

DATE _____
 LOAN NO 6611918028
 TYPE Jumbo 30 Year F1

ADDRESS 516 Hartwell Dr , #1
 CITY/STATE/ZIP Seneca, SC 29678
 PROPERTY 202 S Summit Drive
 Seneca, SC 29672

YOUR RIGHT TO CANCEL

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within THREE BUSINESS DAYS from whichever of the following events occurs last:

- (1) The date of this new transaction, which is _____, or
- (2) The date you received your new Truth In Lending disclosures, or
- (3) The date you received this notice of your right to cancel

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within TWENTY CALENDAR DAYS of your offer, you may keep it without further obligation.

HOW TO CANCEL

If you decide to cancel this new transaction, you may do so by notifying us in writing, at
 Attn: Mortgage Lending Closing Department
 301 College Street, SC Clsg Center
 Greenville, SC 29601

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than _____ MIDNIGHT of _____
 (or MIDNIGHT of the THIRD BUSINESS DAY following the latest of the three events

listed above)

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

CONSUMER'S SIGNATURE _____

DATE _____

Each borrower/owner in this transaction has the right to cancel. The exercise of this right by one borrower/owner shall be effective as to all borrowers/owners.

The undersigned each acknowledge receipt of two copies of

NOTICE of RIGHT TO CANCEL

Sarah L Gray 7/29/03
 BORROWER/OWNER Sarah L Gray DATE

Jeffery A Gray 7-28-2003
 BORROWER/OWNER Jeffery A Gray DATE

BORROWER/OWNER

DATE

BORROWER/OWNER

DATE

DOC # 046451

APPL # 7000339990

LOAN # 6611918028

2/00

62 (0002)

UK50 0002

VMP MORTGAGE FORMS (600)521 7291

BORROWER CERTIFICATION

BORROWER(S) Sarah L Gray and Jeffery A Gray

LOAN/CASE NUMBER 6611918028

PROPERTY ADDRESS 202 S Summit Drive, Seneca, SC 29672

MAILING ADDRESS _____

Please provide your mailing address for all correspondence. This will enable us to send you information regarding your loan

- ☒ 1 OCCUPANCY STATEMENT I (We) intend to occupy said property as my (our) primary residence within 60 days of loan closing or completion of construction if a construction permanent loan. Failure to comply with occupancy shall constitute default under the terms of the loan and in case of default I must, upon recall of the loan by Lender, immediately pay in full the balance of the loan and any other amounts to which Lender is entitled upon default. Upon failure to occupy, I acknowledge that the interest rate may be accelerated to the non-owner occupied rate in effect at the date of original application.
- ☐ 2 SALES CONTRACT I (We) certify that all of the terms and conditions of the Sales Contract and any counter offers have been met. There have been no changes to the Sales Contract which was submitted as a part of my (our) loan application.
- ☒ 3 EMPLOYMENT CERTIFICATION I (We) am (are) currently working and my (our) income has not changed from that which was disclosed on the loan application. I (We) have received no notice of layoff and do not have any knowledge of pending layoff. My outstanding obligations are substantially the same as reported on the application.
- ☐ 4 TERMITE CERTIFICATION I (We) have received a copy of the Termite Report (Existing Property) or Termite Soil Treatment Guaranty (New Construction), and have read, understand and accepted it.
- ☐ 5 WELL/SPRING WATER ANALYSIS CERTIFICATION I (We) have received a copy of the Well/Spring Water Analysis Report and have read, understand and accepted it.
- ☐ 6 NAME CERTIFICATIONS With reference to the subject loan application, the following names appearing in the loan file are one and the same person _____
- ☒ 7 COMPLIANCE AGREEMENT I (We) have been advised by the settlement agent that the loan documents being executed this date do not have final approval of or acceptance by the investor or guarantor which has issued its commitment to purchase or guarantee the loan. As a condition of lender proceeding with the closing and disbursement of loan proceeds, I will fully cooperate and adjust for clerical errors on my loan documents and will execute whatever additional documents may be required in order to make this loan eligible for purchase or guaranteed by the investor, insuring agency, or guarantors.
- ☐ 8 MANUFACTURED HOUSING The home on the subject property securing the debt is a manufactured housing unit. The home has been attached to and made a part of the real estate and will be taxed as real estate. The home is on a permanent foundation that was installed below the frost line, and the wheels, axle and towing tongue have been removed.
- ☒ 9 ESCROW WAIVER STATEMENT As part of the consideration for the above loan, the Lender has agreed to waive certain escrow deposits. This consideration is granted to us with the provision that we will pay all taxes and/or assessments applicable to the security property on or before the dates such taxes and/or assessments are due, and that we will at all times maintain fire and hazard insurance (and, if applicable, flood insurance) coverage satisfactory to the Lender, its successors and/or assigns. The Lender, its successors and/or assigns reserves the right, at its sole option, to require escrow of any or all applicable items at a future date.
- ☒ 10 RECEIPT OF FEDERAL TRUTH-IN-LENDING DISCLOSURE The undersigned acknowledge receipt of a final federal "Truth in Lending" disclosure (showing the "APR" and "Finance Charge") prior to execution of the Note.
- ☐ 11 OTHER _____

ACCURACY OF CREDIT INFORMATION

BB&T/Liberty Mortgage Corporation/Liberty Mortgage Corporation (Georgia)/Liberty Mortgage Corporation DBA BB&T Mortgage Wholesale Corporation regularly and in the normal course of business reports its credit experience with its customers to the major credit bureau repositories. Should you believe that information we have reported about the credit history of your account(s) is inaccurate, please notify us at the following address: Branch Banking and Trust Company, Attn: Reporting Department, P O Box 2027, Greenville, SC 29602. Please include your name, address, social security number, account number, and a specific explanation of what information you believe to be inaccurate.

Page 1 of 2

ELECTRONIC LASER FORMS INC (800) 777-0540

DOC # 502531 APPL # 7000339950 LOAN # 6611918028

E

Exhibit "E"

I certify that the above applicable representations are true and correct as of this

day of

[Signature]
(Borrower) Sarah L Gray

(SEAL)

[Signature]
(Borrower) Jeffery A Gray

(SEAL)

STATE OF South Carolina

COUNTY OF Anderson

Sworn to and subscribed before me this 29th day of July, 2003

[Signature]

(SEAL/STAMP)

My Commission Expires

10/17/11

BB&T Mortgage

MORTGAGOR CERTIFICATION FOR TITLE INSURANCE AND FINANCIAL INTEREST DISCLOSURE FORM

NAME Sarah L Gray PROPERTY 202 S Summit Drive
Jeffery A Gray Seneca, SC 29672
 TITLE INSURANCE COMPANY Chicago Title Insurance Company, Lawyers Title Insurance Corporation, First American
Title Insurance Company or Ticor Title Insurance Company
 INSURANCE AGENT BB&T Insurance Services, Inc.

In accordance with SC Code §38-75-960 (a) (1976), as amended, the undersigned BB&T Officer/Associate hereby advises that BB&T has a financial interest in the following title insurer(s) or title agent(s)

NAME OF AGENT	ADDRESS	NATURE OF INTEREST
Branch Banking and Trust Insurance Services, Inc	770 Pelham Rd, Greenville, SC 29615-3200	Corporate Affiliate

Officer/Associate's Name Diane Morris
 Signature _____

ACKNOWLEDGMENT

The undersigned applicant is a buyer, seller, or lender who has been referred by the above officer/associate to one or more of the title insurers or title agents identified herein above. The undersigned expressly recognizes and acknowledges the financial interest of BB&T as disclosed herein above, and further certifies that:

- I understand that the application for a mortgage loan submitted to Branch Banking and Trust Company of South Carolina in no way constitutes a commitment to make a loan.
- I understand that a mortgage title insurance policy is required on my loan and will be issued in favor of Branch Banking and Trust of South Carolina and that this policy does not provide title insurance for my separate ownership interest.
- I have voluntarily selected the ABOVE-NAMED INSURANCE COMPANY AND AGENT to issue a mortgage title insurance policy on my loan and I have not been required to select the above-named insurer by any party connected with this loan.
- I have been given the opportunity to purchase an Owner's Title Insurance Policy with the insurer of my choice to protect my separate ownership interest. I have also been informed that if I choose not to obtain a new survey, I will not be given survey coverage in my owner's policy and neither the Bank or the title company can be held responsible for any matters which a current survey would reveal.
- I understand that when a licensed agent issues title insurance, a commission will be paid to the licensed agent for issuing the title insurance. BB&T Insurance Services, Inc. (a wholly-owned subsidiary of Branch Banking and Trust Company) is a licensed issuing agent for CHICAGO TITLE INSURANCE COMPANY, LAWYERS TITLE INSURANCE CORPORATION, FIRST AMERICAN TITLE INSURANCE COMPANY and TICOR TITLE INSURANCE COMPANY.
- I have voluntarily selected James A. Bilk 864-224-8123
 (Attorney/Phone No.) to perform the title examination for my proposed loan.

DATED THIS 19 DAY OF May, 2003

Diane Morris
 Loan Officer (Witness)

Applicant/Mortgagor

Applicant/Mortgagor

Address

1 Appleton Dr
516 Westview Dr #1
Seneca, SC 29670

Doc # 550821 APPL # 7000339990 LOAN # 6611918028
 M508SC (0203)

Copy to - Permanent Loan File
 - Loan Applicant

F

Exhibit "F"

**BB&T MORTGAGE LOANS
APPLICATION RATE AGREEMENT**

NOTHING ON THIS PAGE IS A COMMITMENT TO APPROVE A LOAN "I" means the applicant(s)

DATE June 13, 2003
 APPLICANT(S) Sarah L Gray, Jeffery A Gray
 LOAN TYPE Jumbo 30 Year Fixed

Requested Loan Amount \$180,000.00 Term (months) 360
 Tentative Closing Date June 13, 2003
 Property 202 S Summit Drive, Seneca, SC 29672

Applicant(s)' Election to Lock or Float Rate and Points (Applies to all Applications)

I understand that I may lock in the interest rate and discount points on my application today, the application date, or I may elect to float with the market (not lock in the interest rate and discount points at this time)

If I elect to lock my rate and points, my loan must be closed and funded by the rate/point expiration date or the locked rate and points will expire

If I elect to float with the market, I must lock the interest rate and discount points at least five days prior to my scheduled loan closing. I must lock on a BB&T business day between the time rates become available for that day and 5:00 pm Eastern Time. I understand that my credit documentation is valid only for a certain length of time (generally 90 days) and my application cannot be approved or closed if the credit documentation has expired

If for any reason the loan has not closed and been funded by the rate and point lock-in expiration date, the locked-in rate and points will expire. I may then re-lock at the higher of the rate and points originally locked in or the current market rate and points

☒ I elect to lock in my interest rate of 5.500 % and 125 % discount points and 0.00 % loan origination fee today, the date of application. This rate and points will expire on August 12, 2003
☐ I elect to float the market (not lock in the interest rate and discount points) as outlined above

Confirmation by BB&T Branch Office of Change from Float to Locked Status

Today, (date), our office was instructed by (name of applicant) to lock in the rate of 5.500 % with 125 % points and 0.00 % loan origination fee for 360 days. Our office has made the requested lock-in which expires on (date) subject to credit documentation expiration policy and BB&T's lock-in policy at the time of lock-in and the current availability of the loan program or loan type requested at initial application

☐ Construction-Permanent Lock-In Only

Modification Rate Cap % Modification Rate Cap Expiration Date

The limiting conditions applicable to my exercise of the Modification Rate Cap are explained in the disclosures provided earlier, receipt of which is hereby acknowledged and the terms of which are incorporated by reference into this Application Rate Agreement.

☐ Extended Rate Lock with Float Down

I have locked in the interest rate and discount points on my mortgage loan application for days from today. This rate and discount point(s) lock will expire on . In return for this extended lock-in period, I agree to pay an upfront deposit of \$. I understand it is the explicit policy of BB&T that the upfront deposit cannot be waived and must be paid by me at the time of the interest rate lock-in. When this loan request closes, this deposit will be applied first to discount point(s), or the origination fee if rate selected has no discount point(s). In the event I select a Float Down Rate without discount point(s) or an origination fee or the loan request is withdrawn by me, the deposit will be forfeited and retained by BB&T. If the loan request is denied, the deposit will be refunded to me.

Prior to the expiration of this extended lock-in period, I may FLOAT DOWN the interest rate I locked in subject to the then current interest rate for the same loan product, using the same or fewer discount points, plus an adjustment to the rate not to exceed 1/4 of 1% (0.25%). I may exercise the float down ONE TIME ONLY. Once I have exercised the float down option, the loan must close and fund within fifteen days or by the mutual extended lock-in expiration date, WHICHEVER OCCURS FIRST.

This lock-in agreement will terminate and new loan terms must be negotiated (based on the higher of the current adjusted rate/discount points or the expired rate/discount points) upon occurrence of any of the following: Loan closing and funding does not occur by the expiration date, OR credit is denied on the terms requested.

Confirmation by BB&T Branch Office of Exercise of Float Down Option on Extended Rate Lock

Today, (date), our office was instructed by (name of applicant) to exercise the float-down option for which the applicant, at lock-in, paid an upfront deposit. Our office has locked in a revised rate of % with % discount points which expires on (date) subject to credit documentation expiration policy, BB&T's lock-in policy, and all terms shown in the "Extended Rate Lock with Float Down" section of this Application Rate Agreement.

ACKNOWLEDGEMENT

We understand and agree to be bound by the terms in this Application Rate Agreement.

BB&T [Signature] 6/13/03 Applicant(s) [Signature] 6/13/03
 Lender's Signature/Date Signature/Date

[Signature] 6-13-2003

BBT301R (mm)
 Doc# 502171 LTR6611918028 App#7000339990

**BB&T MORTGAGE LOANS
APPLICATION RATE AGREEMENT**

NOTHING ON THIS PAGE IS A COMMITMENT TO APPROVE A LOAN "I" means the applicant(s)

DATE May 16, 2003
 APPLICANT(S) Sarah L Gray, Jeffery A Gray
 LOAN TYPE Jumbo 30 Year Fixed

Requested Loan Amount \$200,000.00 Term (months) 360
 Tentative Closing Date June 13, 2003
 Property 202 S Summit Drive, Seneca, SC 29672

Applicant(s)' Election to Lock or Float Rate and Points (Applies to all Applications)

I understand that I may lock in the interest rate and discount points on my application today, the application date, or I may elect to float with the market (not lock in the interest rate and discount points at this time)

If I elect to lock my rate and points, my loan must be closed and funded by the rate/point expiration date or the locked rate and points will expire

If I elect to float with the market, I must lock the interest rate and discount points at least five days prior to my scheduled loan closing. I must lock on a BB&T business day between the time rates become available for that day and 5:00 pm Eastern Time. I understand that my credit documentation is valid only for a certain length of time (generally 90 days) and my application cannot be approved or closed if the credit documentation has expired

If for any reason the loan has not closed and been funded by the rate and point lock-in expiration date, the locked-in rate and points will expire. I may then re-lock at the higher of the rate and points originally locked in or the current market rate and points

 I elect to lock in my interest rate of % and % discount points and % loan origination fee today, the date of application. This rate and points will expire on
 X I elect to float the market (not lock in the interest rate and discount points) as outlined above

Confirmation by BB&T Branch Office of Change from Float to Locked Status

Today, (date), our office was instructed by (name of applicant) to lock in the rate of % with % points and % loan origination fee for days. Our office has made the requested lock-in which expires on subject to credit documentation expiration policy and BB&T's lock-in policy at the time of lock-in and the current availability of the loan program or loan type requested at initial application.

[] Construction-Permanent Lock-Ins Only

Modification Rate Cap % Modification Rate Cap Expiration Date

The loaning conditions applicable to my exercise of the Modification Rate Cap are explained in the disclosures provided earlier, receipt of which is hereby acknowledged and the terms of which are incorporated by reference into this Application Rate Agreement.

[] Extended Rate Lock with Float Down

I have locked in the interest rate and discount points on my mortgage loan application for days from today. This rate and discount point(s) lock will expire on . In return for this extended lock-in period, I agree to pay an upfront deposit of \$. I understand it is the explicit policy of BB&T that the upfront deposit cannot be waived and must be paid by me at the time of the interest rate lock-in. When the loan request closes, this deposit will be applied first to discount point(s), or the origination fee if rate selected has no discount point(s). In the event I select a Float Down Rate without discount point(s) or an origination fee or the loan request is withdrawn by me, the deposit will be forfeited and retained by BB&T. If the loan request is denied, the deposit will be refunded to me.

Prior to the expiration of this extended lock-in period, I may FLOAT DOWN the interest rate I locked in subject to the then current interest rate for the same loan product, using the same or fewer discount points, plus an adjustment to the rate not to exceed 1/4 of 1% (0.25%). I may exercise the float down ONE TIME ONLY. Once I have exercised the float down option, the loan must close and fund within fifteen days or by the initial extended lock-in expiration date, WHICHEVER OCCURS FIRST.

This lock-in agreement will terminate and new loan terms must be negotiated (based on the higher of the current adjusted rate/discount points or the expired rate/discount points) upon occurrence of any of the following: Loan closing and funding does not occur by the expiration date, OR credit is denied on the terms requested.

Confirmation by BB&T Branch Office of Exercise of Float Down Option on Extended Rate Lock

Today, (date), our office was instructed by (name of applicant) to exercise the float-down option for which the applicant, at lock-in, paid an upfront deposit. Our office has locked in a revised rate of % with % discount points which expires on (date) subject to credit documentation expiration policy, BB&T's lock-in policy, and all terms shown in the "Extended Rate Lock with Float Down" section of this Application Rate Agreement.

ACKNOWLEDGEMENT

We understand and agree to be bound by the terms in this Application Rate Agreement.

BB&T (Signature) Applicant(s) Sarah L Gray 5/19/03
 (Interpret & Signature Date) (Signature Date)

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
BRANCH BANKING AND TRUST)
COMPANY,)
Plaintiff,)
VS)
SARAH L. GRAY, JEFFERY GRAY,)
SUNTRUST BANK, WEST UNION)
DEVELOPMENT, LLC AND)
BANK OF ANDERSON, N.A.,)
Defendants.)

IN THE COURT OF COMMON PLEAS

C.A.#2011-CP-37-1250

RESPONSES TO REQUESTS
FOR ADMISSION

Response to # 1.

Admitted.

Response to #2.

Admitted.

Response to #3.

Admitted.

Response to #4.

Admitted.

Response to #5.

Admitted.

Response to #6.

Admitted.

Response to #7.

Admitted.

Response to #8.

Admitted.

Response to #9.

Admitted.

Response to #10.

Denied.

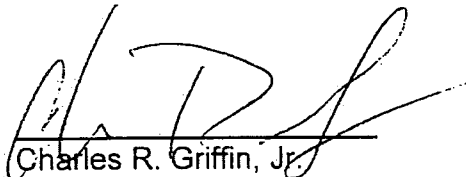
Response to #8.

Admitted.

THE GRIFFIN FIRM, LLC

DATED: September 7, 2012

BY:



Charles R. Griffin, Jr.
3300 N. Main Street Ste. D #339
Anderson, South Carolina 29621
(864) 231-8870

Attorney for Defendants Sarah L. Gray
and Jeffery Gray/Counter- Plaintiffs

2013 JUL 19 AM 11 35

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

Plaintiff,

v.

Sarah L. Gray, Jeffery Gray, SunTrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-37-1250

**SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

The Plaintiff Branch Banking and Trust Company ("BB&T"), by and through its undersigned counsel, respectfully submits this Supplemental Memorandum in Support of Plaintiff's Motion for Summary Judgment as to Defendant Sarah and Jeffery Gray's Counterclaims and Jury Trial Demand filed on January 3, 2013. BB&T also seeks to amplify the relief sought in its Motion to request that the Court grant Summary Judgment to BB&T on the counterclaims asserted by Sarah L. Gray and Jeffery Gray, and that the Court order a reference of the remaining issues in this case to the Master in Equity.

I. INTRODUCTION

This is a mortgage foreclosure action filed by BB&T against its borrowers Sarah L. Gray and Jeffery Gray after a payment default on the loan. SunTrust Bank was named as a defendant by virtue of its second mortgage on the subject property; SunTrust filed a timely Answer but does not dispute BB&T's right to foreclose. Prior to the commencement of the action, the Grays conveyed the property to West Union Development, LLC which is the current owner of record of

Copies to:

Atty ☒ (P) _____ (D) _____

DSS _____ other _____

Mailed ☒ Boxed _____ handed _____

the property and a proper party defendant. The Bank of Anderson, N.A. was named as a junior lienholder defendant by virtue of a judgment it holds that may constitute a lien on the subject property. West Union Development, LLC and Bank of Anderson have not filed any response to the Summons and Complaint; BB&T has filed an Affidavit of Default as to those defendants.

The borrower defendants Sarah L. Gray and Jeffery Gray (collectively the "Grays") filed an Answer admitting the execution of the loan documents but asserting that the Grays lacked sufficient information to admit or deny that they were in default in the payments. The Grays also asserted a "laundry list" of affirmative defenses, largely unsupported by allegations of fact; the Answer also asserted counterclaims alleging (1) violation of the South Carolina Unfair Trade Practices Act, (2) breach of contract and/or breach of contract accompanied by a fraudulent act, (3) violation of the South Carolina Consumer Protection Code, and (4) violation of the federal Fair Debt Collection Practices Act. The Grays' Answer demanded a trial by jury "of all issues so justiciable". The only specific factual allegations underlying the counterclaims are, first, that BB&T failed to comply with the "Attorney Preference" requirement of Section 37-10-102 of the South Carolina Consumer Protection Code (§8 of the Counterclaim), and second, that BB&T "acquired" the loan by means of a false or fraudulent assignment from Mortgage Electronic Registration Systems, Inc. ("MERS") (§10 of Counterclaim). BB&T filed a Reply to Counterclaims denying the Gray's allegations, asserting affirmative defenses to the counterclaims (including laches and statute of limitations), seeking dismissal of the counterclaims, that the Gray's demand for jury trial be stricken, and requesting that the case be referred to a Master in Equity or Special Referee. BB&T did not request a jury trial on the counterclaims.

BB&T filed its Motion for Summary Judgment on January 3, 2013 based upon the discovery, the pleadings on file, supporting affidavits to be filed with the court, and legal authorities set forth in the Memorandum of Law incorporated into the Motion. BB&T specifically based its Motion on the Grays' responses to Requests for Admissions in which the Grays admitted ten of the eleven Requests propounded by BB&T. In summary, the Grays admitted the execution of the Note and Mortgage, admitted that they had failed to make the payments required under the Note, and admitted their execution of receipts for the following consumer lending and mortgage disclosures:

- Borrower's Preference of Legal Counsel/Insurance Agent;
- Federal Truth-in-Lending Disclosure;
- Borrower Certification¹; and
- Mortgagor Certification for Title Insurance and Financial Interest Disclosure Form.

In further support of its Motion, BB&T attached a copy of a Corporate Resolution from MERS appointing BB&T employee John I. (Ivan) Hobbs as a "signing officer" authorized to execute documents on behalf of MERS, specifically including mortgage assignments. As such, BB&T has shown that the factual allegations underlying the Grays' counterclaims are wholly without merit.

II. SUPPORTING AFFIDAVITS

In further support of its Motion, BB&T submits two affidavits filed contemporaneously

¹ The only Request for Admission denied by the Grays is Request No. 10, which requested that the borrowers admit that "By signing the "Borrower Certification", Sarah L. Gray and Jeffery Gray acknowledged they 1) had received a truth in lending disclosure and 2) understood that said disclosure showed "the 'APR' and 'finance charge' prior to execution of the Note." The Grays admitted they signed the Borrower Certification by admitting Request No. 9.

herewith. The first affidavit is made by Richard L. Miller (the "Miller Affidavit"), BB&T's Assistant Vice President and Foreclosure Manager. The Miller Affidavit establishes that BB&T originated, serviced, and continues to own and hold the Grays' mortgage loan. Mr. Miller further states that the loan was made at a market rate of interest with all applicable disclosures, including the attorney preference and truth-in-lending disclosures. Finally, the Miller Affidavit states that the loan is, and has been for some time, in payment default. Although the Grays have admitted most of the matters covered by the Miller Affidavit, BB&T presents this affidavit from a supervisory account officer to further establish its entitlement to relief.

The second affidavit is made by John I. Hobbs (the "Hobbs Affidavit"), who executed the mortgage assignment referenced in the Grays's Answer and Counterclaims using his middle name, Ivan Hobbs. The Hobbs Affidavit is presented to more fully explain the relationship between BB&T and MERS, and to refute the unfounded allegation in the Answer that Mr. Hobbs' execution of the mortgage assignment on behalf of MERS was somehow false or fraudulent.

Between the Grays' responses to BB&T's Requests for Admissions and the MERS corporate resolution attached to the Motion, and the Miller and Hobbs Affidavits, BB&T has established that there is no factual basis for the counterclaims.

III. ADDITIONAL LEGAL GROUNDS FOR RELIEF

The Grays' counterclaims arising out of the alleged failure of BB&T to comply with the "Attorney Preference" provision of the South Carolina Consumer Protection Code is barred by the statute of limitations. The applicable provision reads as follows:

No debtor may bring an action for a violation of this chapter more than three years

after the violation occurred, except as set forth in subsection (C). The three-year statute of limitations applies to actions commenced after May 2, 1997. No inference should be drawn as to the applicable statute of limitations for any pending actions. This subsection does not bar a debtor from asserting a violation of this chapter in an action to collect a debt which was brought more than three years from the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action.

S.C. Code Ann. §37-10-105 (1976). The loan in question was closed on July 29, 2003. The Grays filed their counterclaims in January of 2012, almost nine years later. At most, the Grays are limited to asserting an affirmative defense for the alleged violation. Their counterclaim must be dismissed as time barred even if the court finds that some genuine issue of material fact exists.

By way of an additional legal argument in support of summary judgment on the counterclaim based on the South Carolina Unfair Trade Practices Act, the Grays have not alleged sufficient facts to state a claim against BB&T. At best, they have alleged a breach of contract. In order to be actionable under the SCUTPA, the alleged unfair or deceptive act must have an impact on the public interest. Noack Enterprises, Inc. v. Country Corner Interiors, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986). The Gray's conclusory allegation that the actions "are capable of repetition" is insufficient. The Answer wholly fails to allege any facts that would tend to show how the alleged acts or omissions impacted the public. An allegation that BB&T breached a contract is not enough. Otherwise, every breach of contract in a commercial setting would constitute an unfair trade practice. This is not the law in South Carolina. Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267, 271 (Ct. App. 1993). The Gray's counterclaim for unfair trade practices fails.

IV. REQUEST FOR ORDER OF REFERENCE TO MASTER IN EQUITY

BB&T's Reply to Counterclaim sought to have all issues referred to the Master in Equity or Special Referee. BB&T's Motion was captioned as "Motion for Summary Judgment as to

Defendant Sarah and Jeffery Gray's Counterclaims and Jury Trial Demand and Memorandum of Law in Support". Although a defendant in a foreclosure action is entitled to trial by jury on a compulsory counterclaim that is legal in nature, once those counterclaims are disposed of by means of summary judgment, the remaining claims will consist of BB&T's cause of action for mortgage foreclosure, and the affirmative defenses asserted by the Grays. It is abundantly clear that there is no right to a jury trial in a mortgage foreclosure action, even a contested action in which defenses are asserted. Collier v. Green, 244 S.C. 367, 137 S.E.2d 277 (1964).

This case has been placed on the jury trial roster for the term beginning August 12, 2013. BB&T requests that the court enter an order granting summary judgment to BB&T on the counterclaims, and that the order immediately refer the case to the Honorable Ellis B. Drew, Jr., Master in Equity for Oconee County.

V. CONCLUSION

For the reasons set forth in the Motion, as supplemented herein, BB&T prays that the court enter its order granting summary judgment to BB&T on the counterclaims, and referring all remaining issues in this case to the Master in Equity.

Dated: July 18, 2013

McNAIR LAW FIRM, P.A.



Wm. Douglas Gray (SC Bar # 2411)
132 East Benson Street, Suite 200 (29624)
Post Office Box 4086
Anderson, SC 29622
(864) 226-1688
(864) 225-6456 (Fax)
dgray@mcnair.net

Weyman C. Carter (SC Bar # 15255)
Poinsett Plaza, Suite 700
104 South Main Street (29601)
PO Box 447
Greenville, SC 29602
(864) 271-4940
(864) 271-4015 (Fax)
wcarter@mcnair.net

Attorneys for Plaintiff
Branch Banking and Trust Company

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

Plaintiff,

v.

Sarah L. Gray, Jeffery Gray, SunTrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-37-1250

**AFFIDAVIT OF JOHN I. HOBBS
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

PERSONALLY APPEARED before me, John I. Hobbs, who on oath says:

1. I am employed by Branch Banking and Trust Company, successor to Branch Banking and Trust Company of South Carolina ("BB&T") and hold the position of Vice President. I was employed in that capacity in December of 2011. I am personally familiar with matters set forth in this affidavit.

2. I make this Affidavit in support of BB&T's Motion for Summary Judgment in this action.

3. I signed an Assignment of Real Estate Mortgage on December 9, 2011 for the purpose of assigning a Mortgage dated July 29, 2003 given by Sarah L. Gray and Jeffrey Gray to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Branch Banking and Trust Company of South Carolina, it's successors and assigns, to Branch Banking and Trust Company. A copy of this document (the "Mortgage Assignment"), as recorded with the Office of Register of Deeds for Oconee County, South Carolina, is attached to this affidavit as Exhibit A. An unrecorded copy of the Mortgage Assignment was also attached as Exhibit A to the Complaint filed in this

action. I executed the Assignment as "Ivan Hobbs"; my full name is John Ivan Hobbs.

4. The information in the Mortgage Assignment is true and accurate. The Acknowledgement on the second page of the Mortgage Assignment correctly recites that the document was executed, acknowledged and notarized in Greenville, South Carolina where my office is located.

5. MERS is a separate company that provides a service to mortgage lenders and servicers who, as "members" of MERS, have a contractual relationship whereby MERS serves as the mortgagee of record for home mortgage loans, either as the nominee for the lender on the initial mortgage instrument or by way of a subsequent assignment of the mortgage by the lender to MERS.

6. BB&T is a member of MERS. BB&T originated the loan secured by the mortgage that is the subject of the Mortgage Assignment. Pursuant to its agreement with MERS, BB&T prepared the mortgage nominating MERS as the mortgagee. The mortgage was recorded, making MERS the "mortgagee of record", however, BB&T remained the owner and holder of the loan and has serviced the loan since its inception.

7. BB&T does not bring foreclosure actions in the name of MERS. When it is necessary to commence an action to foreclose a loan for which MERS serves as mortgagee of record, it is BB&T's procedure to first cause MERS to assign the mortgage to BB&T so that BB&T becomes the "mortgagee of record" on the loan.

8. To facilitate the execution of documents to transfer mortgages to BB&T for the purpose of foreclosure, MERS appoints, from time to time, individual employees of BB&T as officers of MERS.

9. I was one of several officers of BB&T appointed as "Signing Officers" of MERS by a

corporate resolution dated March 27, 2011. A copy of the corporate resolution is attached to this Affidavit as Exhibit B.

10. The MERS corporate resolution was in effect when I signed the Mortgage Assignment on December 9, 2011. I impressed a corporate seal provided by MERS on the document.



John I. Hobbs

SWORN TO before me this 18th
day of July, 2013.

Alicia Brooks (SEAL)
Notary Public for South Carolina
My Commission Expires: May 29, 2023

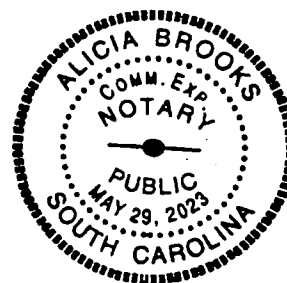


Exhibit A

Recorded this 20 day of Dec 2011 Appendix 000156

Vol. _____ Pg. _____

and Certified

Register of Deeds, Oconee County

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

ASSIGNMENT OF REAL ESTATE MORTGAGE

FOR VALUE RECEIVED, the sufficiency of which is hereby acknowledged, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, hereby sells, assigns, transfers and sets over unto Branch Banking and Trust Company, that certain Mortgage dated July 29, 2003, executed by Sarah L. Gray and Jeffery Gray, which said mortgage is in the original principal amount of \$180,000.00 and is recorded in the Office of the Clerk of Court/Register of Deeds for Oconee County, State of South Carolina, recorded on August 13, 2003 in Book 1727 at Page 136, together with the certain note(s) described therein, with all interest, all liens, and any rights due or to become due thereon.

LEGAL DESCRIPTION:

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305.

TMS No. 209-08-01-013

Property address: 202 South Summit Drive, Seneca, SC 29672

IN WITNESS WHEREOF, Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns, caused these presents to be executed this 9 day of DEC, 2011.

Mortgage Electronic Registration Systems, Inc.
as nominee for Branch Banking and Trust
Company of South Carolina, its successors and
assigns

Corroelia Jackson
Witness #1

Marcin F. Walczak
Notary/Witness #2

BY: Ivan HobbsTITLE: VP

ASSIGNEE ADDRESS: 6th Floor 301 College Street, Greenville, SC 29601



- 1 -

81 11 P 02 330 1102

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

COPY

STATE OF South Carolina
COUNTY OF Greenville

ACKNOWLEDGMENT

I, YOLANDA A. YOUNG, a Notary Public for the State of SC, do hereby certify that IVAN HOBBS as VP of Mortgage Electronic Registration Systems, Inc. as nominee for Branch Banking and Trust Company of South Carolina, its successors and assigns personally appeared before me this day and acknowledged the due execution of the foregoing Assignment.

WITNESS my hand and official seal
this 09 day of DECEMBER, 2011.

Yolanda A. Young
Notary Public for SC
My Commission Expires: _____

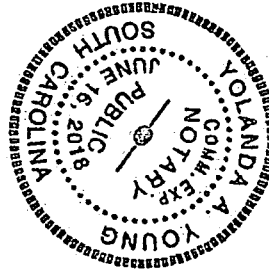


Exhibit B



DATE: Sunday, March 27, 2011

TO: Branch Banking & Trust Company ORG ID 1001599

ATTN: Margaret Edwards

RE: MERS Corporate Resolution Appointing MERS Signing Officers

Dear Sir or Madam:

Enclosed is a MERS Corporate Resolution appointing MERS Signing Officers for your company. The list attached to the Resolution is the official list of MERS Signing Officers approved by MERS. The MERS Corporate Secretary may revise this list of officers from time to time as new Signing Officers are appointed by the Corporate Secretary and others are removed. Please review the list to make sure that it is accurate.

A MERS signing officer should use the title of Assistant Secretary of Mortgage Electronic Registration Systems, Inc. on all documents that are signed for MERS by a signing officer. If there is a legal requirement that the document be executed by an individual that holds the office of vice president or above, then it is acceptable for the signing officer to use the title of Vice President of Mortgage Electronic Registration Systems, Inc. in those states.

If you have any questions please contact MERS via email at merssigningofficer@mersinc.org.

CORPORATE RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, that the individuals (the "Signing Officers") set forth on the attached list of candidates, as amended from time to time by Mortgage Electronic Registration Systems, Inc. ("MERS") at the request of Branch Banking & Trust Company Org ID:1001599 (the "Member"), are officers of the Member, which is a member of MERS, and that each such individual be, and he or she, as the case may be, hereby is, appointed as an assistant secretary and vice president of MERS; and be it further

RESOLVED, that the authority granted to such Signing Officers as assistant secretary and vice president of MERS shall be specifically limited to undertaking only the actions set forth below on behalf of MERS and that any action taken by an Signing Officer that is not specifically enumerated below is beyond the scope of the authority granted to such Signing Officer, is ultra vires, and shall be null and void; and be it further

RESOLVED, that each of the Signing Officers be, and hereby is, authorized to perform only the following on behalf of and in the name of MERS:

- (1) release the lien of any mortgage loan registered on the MERS System that is shown to be registered to the Member;
- (2) assign the lien of any mortgage loan naming MERS as the mortgagee when the Member is also the current promissory note-holder, or if the mortgage loan is registered on the MERS System, is shown to be registered to the Member;
- (3) execute any and all documents necessary to foreclose upon the property securing any mortgage loan registered on the MERS System that is shown to be registered to the Member, including but not limited to (a) substitution of trustee on Deeds of Trust, (b) Trustee's Deeds upon sale on behalf of MERS, (c) Affidavits of Non-military Status, (d) Affidavits of Judgment, (e) Affidavits of Debt, (f) quitclaim deeds, (g) Affidavits regarding lost promissory notes, and (h) endorsements of promissory notes to VA or HUD on behalf of MERS as a required part of the claims process;
- (4) take any and all actions and execute all documents necessary to protect the interest of the Member, the beneficial owner of such mortgage loan, or MERS in any bankruptcy proceeding regarding a loan registered on the MERS System that is shown to be registered to the Member, including but not limited to: (a) executing Proofs of Claim and Affidavits of Movement under 11 U.S.C. Sec. 501-502, Bankruptcy Rule 3001-3003, and applicable local bankruptcy rules, (b) entering a Notice of Appearance, (c) vote for a trustee of the estate of the debtor, (d) vote for a committee of creditors, (e) attend the meeting of creditors of the debtor, or any adjournment thereof, and vote on behalf of the Member, the beneficial owner of such mortgage loan, or MERS, on any question that may be lawfully submitted before creditors in such a meeting, (f) complete, execute, and return a ballot accepting or rejecting a plan, and (g) execute reaffirmation agreements;
- (5) take any and all actions and execute all documents necessary to refinance, subordinate, amend or modify any mortgage loan registered on the MERS System that is shown to be registered to the Member;
- (6) endorse checks made payable to Mortgage Electronic Registration Systems, Inc. to the Member that are received by the Member for payment on any mortgage loan registered on the MERS System that is shown to be registered to the Member;
- (7) take any such actions and execute such documents as may be necessary to fulfill the Member's servicing obligations to the beneficial owner of such mortgage loan (including mortgage loans that are removed from the MERS System as a result of the transfer thereof to a non-member of MERS).

I, Sharon Horstkamp, being the Corporate Secretary of Mortgage Electronic Registration Systems, Inc., hereby certify that the foregoing is a true copy of a Resolution duly adopted by me pursuant to authority granted by the Board of Directors of said corporation and that it is effective as of Sunday, March 27, 2011, and that the Resolution is in full force and effect on this date and that it does not conflict with the Certificate of Incorporation or By-Laws of said corporation.

Sharon Horstkamp

Sharon Horstkamp, Secretary



Branch Banking & Trust Company

ORG ID 1001599

Master List as of Sunday, March 27, 2011

Mortgage Electronic Registration Systems, Inc.

Signing Officers

Daniel W. Gordon
Katherine S. Jernigan
John P. Harmon
Richard L. Miller
April J. Myers
Julie M. Palmer
Cheryl M. Peavyhouse
Marcia L. Pridgeon
Patricia P. Wilder
Joseph A. Bonaventura
~~John E. Gibbs~~
William J Long
Byron M. Potter
Michael G. Pocisk
Tiffani H. Whitmire
Chilton E. Morris
Margie L. Fletcher

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

Plaintiff,

v.

Sarah L. Gray, Jeffery Gray, SunTrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-37-1250

**AFFIDAVIT OF RICHARD L. MILLER
IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

2013 JUL 19 AM 11 35

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

PERSONALLY APPEARED before me, Richard L. Miller, who on oath says:

1. I am employed by Branch Banking and Trust Company, successor to Branch Banking and Trust Company of South Carolina ("BB&T") and hold the position of Assistant Vice President of BB&T and Foreclosure Manager. I am personally familiar with matters set forth in this affidavit.

2. I make this Affidavit in support of BB&T's Motion for Summary Judgment in this action.

3. The documentation relating to the mortgage loan that is the subject of this action is in my possession. In my position as Foreclosure Manager for BB&T, I am familiar with the loan and with the allegations asserted in the Answer and Counterclaims filed by Sarah L. Gray and Jeffery Gray (collectively herein the "Borrowers").

4. Branch Banking and Trust Company of South Carolina was the original lender and creditor; BB&T did not purchase or acquire the loan from a third party. Branch Banking and Trust Company is the successor by merger to Branch Banking and Trust Company of South Carolina. BB&T has never sold or assigned the loan, and has serviced the loan since the loan was made.

ENTERED
2/18
COMPUTER

5. The Mortgage was executed in favor of Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for BB&T. This does not indicate that MERS purchased the loan or had any interest in the loan. MERS serves as mortgagee of record for residential mortgage loans originated by BB&T. This is done to facilitate the sale and transfer of mortgage loans on the secondary market, since MERS maintains a register of the ownership of loans for which it serves as mortgagee of record. In this instance, however, BB&T did not sell the loan but continued to hold the loan and service it.

6. The original principal amount of BB&T's loan was \$180,000.00. The loan is secured by a first mortgage on the real property that is the subject of this action.

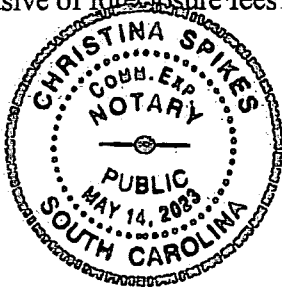
7. The date of the loan was July 29, 2003. This is a thirty year mortgage loan at a fixed interest rate of 5.5% with discount points of \$225.00 paid at closing. The finance charges represent a market rate of interest as of the date of closing. The loan was not a "subprime" loan or high interest rate loan.

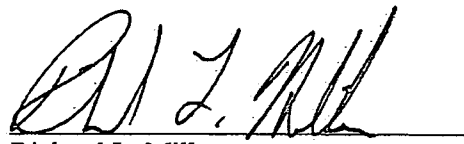
8. BB&T provided the Borrowers with a written notice of their right to select an attorney to close the loan, and of their right to select an insurance agent to furnish the required homeowner's insurance coverage. The means of notice, and the evidence of the Borrowers' preference of attorney and insurance agent is the form entitled "Borrower's Preference of Legal Counsel/Insurance Agent" dated May 14, 2003, a copy of which is attached as Exhibit A.

9. BB&T provided disclosures to the Borrowers in connection with the loan as required by law. The disclosures include a Federal Truth-in-Lending Disclosure Statement provided to the closing attorney prior to closing on July 29, 2003, a copy of which is attached as Exhibit B.

10. BB&T declared an event of default, and accelerated the Note, as a result of the

Borrowers' failure to make the required monthly payments. At the time the foreclosure action was filed in December of 2011, the installments due on and after May 1, 2011 were unpaid. As of the date of this Affidavit, the loan remains delinquent for the May 1, 2011 installment and subsequent monthly payments totaling \$44,856.12, a total of 27 monthly payments in arrears, \$204.40 in pre-acceleration late charges and \$296.80 in accrued property inspection fees for a total amount owing, exclusive of foreclosure fees and costs of \$43,357.32.




Richard L. Miller

SWORN TO before me this 18th
day of July, 2013.

Christina Spikes (SEAL)
Notary Public for South Carolina
My Commission Expires: 5/14/23

Exhibit A

JUL 2 2003 11 30AM
FROM BB&T GREENVILLE

BB&T SENECA
884 242 9522

2003 07-21 NO 185 #4 P 02/02

BB&T

Borrower's Preference of Legal Counsel/Insurance Agent
South Carolina Properties Only

Date Delivered/Mailed May 16, 2003

PREFERENCE OF LEGAL COUNSEL

I (we) have been informed by the lender that I (we) have a right to select legal counsel to represent me (us) in all matters of this transaction relating to the closing of a loan.

I select JAMES A. BELL
Attorney's Name

[Signature]
Borrower's Signature
* [Signature]
Borrower's Signature

PREFERENCE OF INSURANCE AGENT

I (we) have been informed by the lender that I (we) have a right to select an insurance agent to furnish required homeowner's insurance in connection with this mortgage transaction.

I select Donna Davenport
Agent's Name

[Signature]
Borrower's Signature
[Signature]
Borrower's Signature

Doc # 550901 APPL # 7000319990 LOAN # 6611910028
BBTS09 (0805)

Exhibit B

07/03/03 11 52 33 AM

Creditor: BRANCH BANKING AND TRUST COMPANY OF SOUTH CAROLINA

Mortgage Loan Administration INTERIM INTEREST \$ 461 10
P O Box 408, Greenville, S C 29602

Federal TRUTH-IN-LENDING DISCLOSURE STATEMENT

DATE 07/10/03	LOAN NUMBER 6611918028	DATE OF DISBURSEMENT 07/15/03
TYPE OF LOAN Jumbo 30 Year Fixed		☐ ADVANCE DISCLOSURE ☒ DISCLOSURE AT CLOSING
Borrower(s) Sarah L Gray and Jeffery A Gray		

ADDRESS 202 S Summit Drive, Seneca, South Carolina 29672

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf	Total of Payments The amount you will have paid after you have made all payments as scheduled
5.560 %	\$ 189,114 53	\$ 178,812 40	\$ 367,926 93

You have a right to receive at this time an itemization of the Amount Financed

☐ I want an itemization ☐ I do not want an itemization

Your payment schedule will be

NUMBER OF PAYMENTS	AMOUNT OF PAYMENTS	PAYMENTS ARE DUE FIRST OF EACH MONTH BEGINNING
359	\$1,022.02	September 1, 2003
1	\$1,021.75	August 1, 2033

Security

You are giving a security interest in

☐ The goods or property being purchased☒ Other 202 S Summit Drive, Seneca, SC 29672

Filing Fees \$ 26 00

Late Charge If a payment is received more than 15 days after the due date, you will be charged 5.000 % of the amount of the payment past due

Prepayment If you pay off early, you will not have to pay a penalty and you ☐ may, ☒ will not, be entitled to a refund of part of the prepaid finance chargesInsurance Property - You may obtain property insurance from anyone you want that is acceptable to BB&T of SC Branch Banking and Trust Company of South Carolina does not offer property insurance in connection with this loanCredit and Disability - Credit life insurance and disability insurance are not required to obtain credit and will not be provided unless you sign below and agree to pay the additional cost

TYPE	PREMIUM	SIGNATURE
CREDIT LIFE for the Stated Term of the Credit		☐ I want Credit Life Insurance _____ SIGNATURE _____ SIGNATURE
CREDIT DISABILITY for the Stated Term of the Credit		☐ I want Credit Disability Insurance _____ SIGNATURE

Assumption

Someone buying your home

☐ may, subject to conditions, be allowed to☒ cannot assume the remainder

of the mortgage on the original terms

Demand Feature

☐ If checked here, this obligation has a demand feature

Variable Rate

☐ If checked here, your loan contains a variable rate feature and is secured by your principal dwelling☐ Disclosures about the variable rate feature have been provided to you earlier

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, prepayment refunds and penalties, and assumption policy

NOTE: Except for late charges, all numerical disclosures given in advance of closing are estimates

ACKNOWLEDGMENT

By signing below you acknowledge that you have received a completed copy of this Federal Truth-in-Lending Disclosure Statement prior to the execution of any closing documents

Date of Acknowledgment 7/29/03 Borrower [Signature]

Date of Acknowledgment 7/29/03 Borrower [Signature]

BBT103 (02/99) DOC #502491 APPL # 7000339990 LOAN # 6611918028

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Branch Banking and Trust Company,

Plaintiff,

v.

Sarah L. Gray, Jeffery Gray, SunTrust Bank,
West Union Development, LLC, and Bank of
Anderson, N.A.

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO: 2011-CP-37-1250

CERTIFICATE OF SERVICE

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 JUL 19 AM 11 35

I, Dana Hayes, an employee of McNair Law Firm, P.A., do hereby certify that I have this 18th day of July, 2013, served a copy of the *Supplemental Memorandum in Support of Plaintiff's Motion for Summary Judgment; Affidavit of Richard L. Miller in Support of Plaintiff's Motion for Summary Judgment* and *Affidavit of John I. Hobbs in Support of Plaintiff's Motion for Summary Judgment* on the Defendants, by mailing copies of same by United States Mail, postage prepaid, to the following addresses:

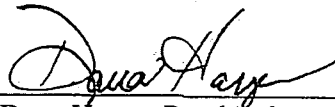
Charles R. Griffin, Jr., Esquire
3300 North Main Street, Suite D339
Anderson, SC 29621

Brock & Scott, PLLC
Attn: Jessica Hawks
5431 Oleander Drive, Suite 200
Wilmington, NC 28403

James S. Belk as Registered Agent for
West Union Development, LLC
1202 North Main Street
Anderson, SC 29621



Bank of Anderson, N.A.
Attn. Leo Smith, Executive Vice President
201 E. Greenville Street
Anderson, SC 29621



Dana Hayes, Paralegal
McNAIR LAW FIRM, P.A.
Post Office Box 447
Greenville, SC 29602

Greenville, South Carolina
July 18, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE)

C.A.#2011-CP-37-1250

BRANCH BANKING AND TRUST)
COMPANY,)

Plaintiff,)

VS)

AFFIDAVIT

SARAH L. GRAY, JEFFERY GRAY,)
SUNTRUST BANK, WEST UNION)
DEVELOPMENT, LLC AND)
BANK OF ANDERSON, N.A.,)

Defendants.)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 AUG 1 PM 1 36

PERSONALLY appeared before me the undersigned deponent, who being first duly sworn, deposes and states based upon personal knowledge and belief:

My name is Jeffery Gray and I am one of the Defendants in the above styled action.

On or about July 29, 2003, I made, executed and delivered a certain Note ("Note") in the principal sum of \$180,00.00, payable in monthly installments. This loan transaction was incurred by me primarily for personal, family or household purposes.

In order to secure the payment of the Note according to the terms and conditions thereof, I made, executed and delivered unto Mortgage Electronic Registration Systems a certain real estate mortgage ("Mortgage"), covering the following described property and any and all improvements to the property;

All that certain piece, parcel or lot of land, lying and being situate in the State of South Carolina, County of Oconee, being shown and designated as Lot Number Fifteen (15) of the Summit Phase I, as shown and more fully described on a plat thereof prepared by R. Jay



Cooper, PE & LS #4682 of Clemson Engineering Services, dated June 23, 1997 and recorded in the Office of the Clerk of Court for Oconee County, South Carolina in Plat Book A508 at Page 5. The metes, bounds, courses and distances as shown upon said plat are incorporated herein by reference thereto. Reference being invited to said plat for a fuller more accurate description of the above described property.

This being the same property conveyed unto Jeffery A. Gray and Sarah L. Gray herein by deed of Laura Leigh Zane, Trustee of the Revocable Living Trust of Laura Leigh Zane dated November 1, 2001 and recorded on December 3, 2001 in the Office of the Oconee County Register of Deeds in Book 1186 at Page 305. Thereafter, this being the same property conveyed to West Union Development, LLC by deed from Jeffery A. Gray and Sarah L. Gray dated November 24, 2010 and recorded November 29, 2010 in Book 1805 at Page 289.

TMSNo. 209-08-01-013

Property address: 202 S Summit Drive Seneca, SC 29672

After I was served with this foreclosure complaint which was filed December 21, 2011, on or about January 9, 2012, I telephoned Mortgage Electronic Registration Systems (MERS), and I asked the person working at MERS if an Ivan Hobbs was employed by MERS.

I was informed by MERS' agent that there was no one employed by MERS by that name.

According to the Mortgage which is the subject of this action, the Plaintiff was the Lender and MERS, a separate corporation, and was Plaintiff's nominee in the transaction and served as Mortgagee in the transaction.

According to the assignment of real estate mortgage, an Ivan Hobbs, signed the assignment claiming to be a VP of MERS.

According to MERS Website as of January 9, 2012, the Officers of MERS were:

Bill Beckmann
President and CEO

Bill Beckmann is President and CEO of MERSCORP, Inc. and its subsidiary, Mortgage Electronic Registration Systems, Inc.

Dan McLaughlin
Executive Vice President
Dan McLaughlin serves as Executive Vice President of MERSCORP, Inc.

Bryan Kanefield
Senior Vice President and Chief Risk Officer
Bryan Kanefield serves as MERSCORP's Senior Vice President and Chief Risk Officer.

Sharon Horstkamp
Vice President, Secretary and General Counsel
Sharon McGann Horstkamp serves as Vice President, Secretary and General Counsel for MERSCORP, Inc.

Juanita Russell
Treasurer and Chief Financial Officer
Juanita Russell serves as Treasurer and Chief Financial Officer for MERSCORP, Inc.

Helina Dancer
Vice President, Human Resources
Helina Dancer serves as Vice President of Human Resources for MERSCORP, Inc.

Doug Danko
Vice President, Customer Group
Doug Danko serves as Vice President and Customer Group Manager for MERSCORP, Inc.

Janis L. Smith
Vice President, Corporate Communications
Janis Smith serves as Vice President for Corporate Communications for

MERSCORP, Inc.
Gretchen Strub
Vice President, Internal Audit
Gretchen Strub serves as Vice President of Internal Audit for MERSCORP, Inc.

Gary Vandeventer
Vice President, Product Division
Gary Vandeventer serves as Vice President of the Product Division for

MERSCORP, Inc.

Avi Marcus
Associate Secretary and Counsel
Avi Marcus serves as Associate Secretary and corporate counsel for
MERSCORP, Inc.

Further the lender in the transaction and/or MERS failed to timely obtain my preference as to legal counsel as required by § 37-10-102 S.C. Code of Laws Ann.

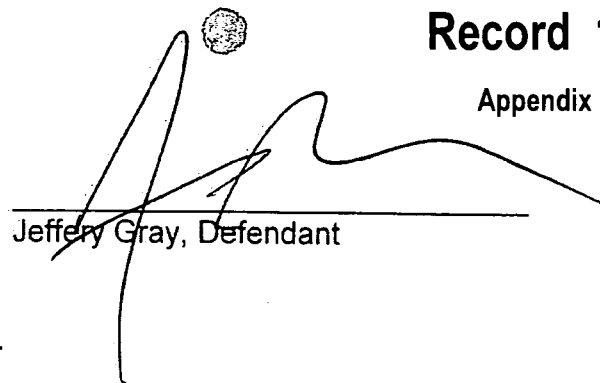
Further, according to the foreclosure complaint, the Plaintiff claims I was in default on the payments at the time the mortgage was assigned to the Plaintiff.

Also, at the closing I was not provided with any Truth In Lending Disclosure documents by MERS, which, according the mortgage is a distinct and separate corporate entity from the Lender in the transaction.

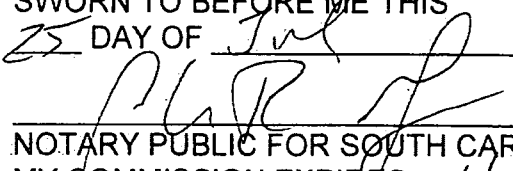
Further, Plaintiff or its purported assignor (MERS) failed to timely furnish me with required servicing disclosures required by 12 USCS § 2605. I was unaware that MERS had purportedly assigned the Mortgage to Plaintiff until I was served with the Summons and Complaint in this action.

Plaintiff claims that MERS assigned the mortgage to Plaintiff, but Plaintiff's complaint is devoid of any allegations as to how and when Plaintiff acquired the Note, if in fact Plaintiff is now the Holder of the Note.

Also a mortgage payment was made withing three (3) years prior to the filing of the answer and counterclaim in this action.


Jeffery Gray, Defendant

SWORN TO BEFORE ME THIS
25 DAY OF Jul, 2013.


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11/05/2017

State of South Carolina

County of Oconee

In the Court of Common Pleas

Branch Banking and Trust
Company,

Plaintiff,

-VS-

Jeffrey Gray, and Sarah L. Gray,

Defendant.

2011-CP-04-1250

July 30, 2013

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Wm. Douglas Gray, Esquire
Weyman C. Carter, Esquire
Attorney for the Plaintiff

Charles R. Griffin, Jr., Esquire
Attorney for Defendants

Renee Tollison
Circuit Court Reporter

INDEX

	PAGE
Motion for Summary Judgement	3
Certificate of Reporter	30

EXHIBITS

No	DESCRIPTION	ID	EV
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No exhibits were presented during the hearing

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:52 a.m.)

4 THE COURT: Okay. Again, sorry y'all have had
5 to wait. This is Branch Banking and Trust versus Gray;
6 is that correct?

7 MR. GRAY: Yes, sir, Your Honor.

8 THE COURT: All right. Looks like a motion for
9 summary judgment as to counterclaims and a jury trial
10 demand?

11 MR. GRAY: Yes, sir. We are moving for summary
12 judgment as to the Defendants Sarah and Jeff Gray's
13 counterclaim.

14 THE COURT: Okay. All right.

15 MR. GRAY: We're going to ask the Court also,
16 if the Court would grant our motion, that the foreclosure
17 action which is a matter in equity, if the Court grants
18 the summary judgment motion, then to defer the
19 foreclosure matter to Judge Drew, the Master in Equity,
20 because it is an equitable action.

21 THE COURT: I got you.

22 MR. GRAY: This is overall a foreclosure
23 action.

24 THE COURT: I got you. Okay. All right. Yes,
25 sir?

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 MR. GRAY: My name is Doug Gray and Weyman
2 Cater, my partner in the Greenville office of McNair.
3 And Weyman and I represent BB&T in this foreclosure
4 action.

5 And Mr. Griffin, in addition to filing responsive
6 pleadings asserting some affirmative defenses, he has
7 alleged a number of causes of action in his counterclaim
8 which are legal causes and, therefore, would involve a
9 jury. And as I said a moment ago, if the Court agrees
10 with our position on the summary judgment motion, then we
11 think that the case should proceed as foreclosures
12 normally proceed, and that is a matter of equity and it
13 goes to the Master in Equity.

14 Your Honor, I'd like to give the Court just a little
15 bit of background before I get into my argument. Mr. and
16 Mrs. Gray -- and I've not met them, and I don't know
17 whether they're here or not next to Mr. Griffin ---

18 THE COURT: Okay.

19 MR. GRAY: But they borrowed some money from
20 BB&T back July 29, 2003, then -- as of yesterday, ten
21 years ago. And the amount of the loan was a hundred and
22 fifty thousand dollars. And they own some property. I
23 think it's on Lake Keowee here in Oconee County. And the
24 amount of the interest rate was five point five percent.
25 This is not a sub-prime loan. It's not a high interest

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

5

1 rate loan. It's a market rate, five point five percent.

2 They defaulted on the payments beginning in May of
3 2011. And since that time, the payments that have not
4 been paid with some processing fees, the total amount
5 currently due is forty-three thousand three hundred and
6 fifty-seven dollars and change.

7 A law firm out of Columbia, South Carolina, the
8 Scott Law Firm, initially filed the foreclosure action on
9 behalf of BB&T in December of 2011. And at the time the
10 loan was made, Your Honor, the mortgage that was signed
11 by Mr. & Mrs. Gray named as the mortgagee -- it's an
12 acronym -- it's called M.E.R.S. And I'm telling you that
13 because there's some issues on some pleadings by Mr.
14 Griffin about that particular entity.

15 M.E.R.S. stands for Mortgage Electronic Registration
16 System. And it is a residential loan servicing agency.
17 It has a register of all residential loans. And in the
18 event BB&T, which originated this loan, wanted to sell
19 this loan or have it serviced by another entity, then
20 MERS is the facility that facilitates that type of
21 process.

22 In this particular case, BB&T never sold the loan.
23 They kept it in-house. They serviced the loan. So after
24 the Gray's defaulted, then in order to eliminate any
25 issue about the proper party plaintiff, MERS assigned the

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 mortgage to BB&T.

2 The person who signed the assignment from MERS to
3 BB&T was a gentleman by the name Ivan Hobbs, H-O-B-B-S.

4 THE COURT: Right.

5 MR. GRAY: Mr. Hobbs was designated by MERS as
6 one of it's vice presidents with authority to assign
7 mortgages on behalf of MERS. Mr. Griffin claims in his
8 pleadings that that is a falsehood, that Mr. Hobbs, in
9 fact, didn't have authority to do that. And he lists in
10 his counterclaim people that he said were employees of
11 MERS that he got off of their website back in January
12 2012.

13 THE COURT: Right. I'm looking at that right
14 now.

15 MR. GRAY: Right. But we have an affidavit
16 that we have filed with the Court as part of our
17 supplemental memorandum from Mr. Hobbs which clearly
18 says, I was vice president. I had authority to and I did
19 sign the mortgage. So I wanted to give the Court that by
20 way of a background.

21 Other than the allegation in the responsive
22 pleadings, there is no evidence that Mr. Griffin has
23 provided to the Court that contradicts Mr. Hobbs'
24 affidavit. And as I said, the counterclaim is what we're
25 seeking summary judgment.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

7

1 In the counterclaim, Mr. Griffin asserts the
2 following causes. He says that there was an unfair trade
3 practice act violation. And I'm going to come back to
4 those in just a moment and give the Court my position on
5 why those causes do not have any merit. He also says
6 that there was a breach of contract and/or breach of
7 contract accompanied by a fraudulent act. He also said
8 that BB&T violated the Consumer Protection Code and that
9 also BB&T violated the Federal Fair Debt Collection
10 Practices Act. Those are his causes in his counterclaim.

11 As this Court is well aware, under Rule 56 of the
12 South Carolina Rules of Civil Procedure, any party is
13 entitled to move for summary judgment if it can be
14 established that there is no genuine issue of material
15 fact and the party is entitled to judgment as a matter of
16 law.

17 Under Rule 56(e), it provides clearly that when a
18 motion for summary judgment is made and supported as
19 provided in this rule, i.e. affidavits, excerpts from
20 depositions, discovery -- in this case, we sent a number
21 of requests to admit that I'm going to address in a
22 moment. And with the exception of one, they admitted to
23 all of our requests to admit.

24 But in any event, when we support the motion with
25 those pleadings, the adverse party may not rest upon the

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 mere allegations or denials of his pleading, but his
2 response by affidavits or as otherwise provided with this
3 rule must set forth specific facts showing that there is
4 a genuine issue for trial. If he does not so respond,
5 summary judgment, if appropriate, shall be entered
6 against the adverse party.

7 We have received nothing from Mr. Griffin that
8 creates a genuine issue of material fact. We have
9 received nothing from Mr. Griffin other than his response
10 to our requests to admit and his answer and counterclaim.

11 I will say to the Court, because I know Mr.
12 Griffin's going to bring this up, on Sunday, this past
13 Sunday which was the 28th, at 11:57 during regular church
14 time, Mr. Griffin faxed to Mr. Weyman Carter's legal
15 assistant in the Greenville office what he calls an
16 affidavit signed by Mr. Gray. There was no certificate
17 of service. And under Rule 56, it clearly provides that
18 an affidavit must be served no later than two days prior
19 to the hearing.

20 Well, we didn't get it. It was not served on us.
21 And again, there's no affidavit, no certificate of
22 service. And I have, for the benefit of the Court -- I'm
23 going to pass this up. And I'll give Mr. Griffin a copy.

24 May I approach, Your Honor?

25 THE COURT: Yes, sir.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 (WHEREUPON, Mr. Gray handed up document to the
2 Court.)

3 MR. GRAY: I have handed the Court a Court of
4 Appeals case, and it's entitled Jernigan versus King.
5 And it is in 440 S.E.2d 379. And on the last page of
6 that case is the following as announced by the Court of
7 Appeals. It's actually in a footnote, but it's part of
8 the whole holding of the Court.

9 THE COURT: Okay.

10 MR. GRAY: Jernigan refers to an affidavit by
11 his expert, Dr. Benjamin Carson, as evidence that -- this
12 was a med mal case -- should recognize that the
13 treatment, somebody by the name of Perry, was substandard
14 so that he was negligent, et cetera. However, the trial
15 court ruled that Carson's affidavit should not be
16 considered because Jernigan did not serve it upon
17 opposing parties until the date of the hearing and not
18 outside the two-day time limit as required by rule 56(c)
19 of the South Carolina Rules of Civil Procedure. And
20 according to the case, they say that the affidavit must
21 be served not later than two days before the hearing,
22 Rule 56(c). Hence, it was within the trial court's
23 discretion to reject the untimely affidavit.

24 I don't know whether Mr. Griffin has tried to file
25 the affidavit with the Court. Under Rule 5, we are to be

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

10

1 served as attorneys for BB&T. Service is by mail or
2 personal delivery. My office is about a block and a half
3 from Mr. Griffin's office in Anderson. But rather than
4 serve it on my office to me, he faxes it to Mr. Carter's
5 legal assistant, as I said, Sunday morning at 11:57. We
6 don't think that the Court should consider Mr. Gray's
7 affidavit for the reasons that I have recited.

8 Going back to the causes of action in the
9 counterclaim, I want to state our position on those. And
10 before I do, for the convenience of the Court -- if I may
11 approach again?

12 THE COURT: Yes, sir.

13 (WHEREUPON, Mr. Gray handed up document to the
14 Court.)

15 MR. GRAY: The Scott firm -- thank you -- that
16 filed the memo in support of the motion for summary
17 judgment has as exhibits the requests to admit and the
18 answers by Mr. Griffin to the requests to admit. They
19 are somewhat varied in that document though I've handed
20 up to the Court the requests to admit, which I would like
21 to publish at this point to be sure that we clarify the
22 fact that there are no genuine issues of material fact.

23 Request number one, Sarah L. Gray and Jeffrey Gray
24 executed a note to Branch Banking and Trust, a company of
25 South Carolina, on July 29, 2003, in the amount of a

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

11

1 hundred and eighty thousand dollars, a true copy of which
2 is attached hereto and incorporated herein as exhibit A.
3 The response -- and it's a separate sheet. Mr. Griffin
4 didn't duplicate the request. He just says request to
5 admit number one admitted. So they admit that they
6 signed the note for a hundred and eighty thousand back in
7 July of 2003.

8 Number two request, they executed -- the Grays
9 executed a mortgage to Mortgage Electronic Registration
10 System, Inc -- the acronym of that is MERS, M-E-R-S -- as
11 nominee for Branch Banking and Trust Company of South
12 Carolina, July 29, 2003, in the amount of a hundred and
13 eighty thousand dollars, a true copy which is attached
14 hereto and incorporated herein as exhibit A. Response to
15 request number two, admitted.

16 Request number three, Sarah L. Gray and Jeffrey Gray
17 are in default pursuant to the terms of said note and
18 mortgage in that they have not made all the payments as
19 they have come due since the date of origination.
20 Response to number three, admitted.

21 Number four, Sarah L. Gray and Jeffrey Gray are in
22 default on the terms of said note, and that Sarah L. Gray
23 and Jeffrey Gray have not paid principal and interest by
24 making a payment every month. Response to number four,
25 admitted.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 Number five, Sarah L. Gray and Jeffrey Gray are in
2 default on the terms of said note in that Sarah L. Gray
3 and Jeffrey Gray have not paid a monthly payment every
4 month until all principal and interest and other charges
5 allowed through the note or by law have been paid.

6 Response to number five, admitted.

7 Number six, prior to or during the closing of the
8 loan, which is the subject of this action, Sarah L. Gray
9 and Jeffrey Gray signed the borrower's preference of
10 legal counsel slash insurance agent form, a copy of which
11 is attached hereto as exhibit C. And then the response
12 to number six, admitted.

13 Number seven, on or about July 29, 2003, Sarah L.
14 Gray and Jeffrey Gray acknowledge that they were provided
15 with and signed a Federal Truth in Lending Disclosure
16 Statement, a copy of which is attached hereto as exhibit
17 B. And response to number seven, admitted.

18 Number eight, the signature of Sarah L. Gray and
19 Jeffrey Gray on exhibit D is true and correct. Response
20 to request number eight, admitted.

21 Number nine, Sarah L. Gray and Jeffrey Gray signed
22 the borrower certification, a copy of which is attached
23 hereto as exhibit E. And response to number nine,
24 admitted.

25 Number ten, by signing the borrower certification,

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 Sarah L. Gray and Jeffrey Gray acknowledge that, one,
2 they have received the Truth in Lending Disclosure and,
3 two, understood said disclosure shall meet A.P.R. and
4 finance charge prior to the execution of the note.
5 Response to number ten, denied.

6 I'm going to stop at this point if I may.

7 THE COURT: Okay.

8 MR. GRAY: By admitting number nine, that they
9 signed the borrower's certification, they have admitted
10 the genuineness of the document, and it speaks for
11 itself. And the document does show that they received
12 the Truth in Lending and they understood the disclosure
13 showed the A.P.R. and the finance charge prior to the
14 execution of the note. The basis on which they have
15 denied that escapes me because they admitted that it's a
16 genuine document.

17 The final request, Sarah L. Gray and Jeffrey Gray
18 signed the Mortgage Certification for Title Insurance and
19 Financial Interest Disclosure form, a copy of which is
20 attached hereto as exhibit F. And there is a typo
21 because it says, response to number eight, when it should
22 be number eleven is admitted.

23 So they have admitted the signing of the note, the
24 amount of the loan, that they're in default, that they
25 received the preference of borrower's counsel. They got

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 the A.P.R. They knew what the interest rate was. They
2 have admitted all of those matters.

3 Going back to the causes of action for just a
4 moment, in the claim about the Unfair Trade Practice Act
5 violation, it appears from reading the pleadings that the
6 factual basis for that is their claim that Ivan Hobbs
7 assigned the mortgage on behalf of M.E.R.S., MERS, to
8 BB&T is a falsehood, that it's a lie. And we have
9 established through his affidavit that was not
10 controverted that he was a vice president of MERS, had
11 the authority to, and did, in fact, sign the mortgage.
12 So that factual basis goes out the window. And as a
13 result, there is no Unfair Trade Practice Act violation.

14 Now, they allege summarily that what BB&T did here
15 is capable of repetition which is an essential
16 requirement of an Unfair Trade Practice Act violation
17 because it's to protect the public interests and the
18 public good. But other than that conclusory allegation,
19 there's no evidence at all as to that fact. So we think
20 that that claim doesn't have any merit.

21 The next claim is breach of contract and/or breach
22 of contract with a fraudulent act. And they say that
23 because BB&T did these things that they breached the
24 contract. Well, Your Honor, they breached the contract
25 by failing to pay the note as promised.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 And in the memorandum that was submitted initially
2 in support of the motion for summary judgment on page
3 five, there is authority for the fact that the law in
4 South Carolina is clear that a party may not insist upon
5 the performance of a contract or a provision thereof when
6 that party himself is guilty of a material or substantial
7 breach of the contract. And cited a section entitled
8 performance by non-breaching party from Judge Ralph King
9 Anderson, section 19-16 of his request to charge. So
10 that counterclaim should be dismissed.

11 The next is a violation of the Consumer Protection
12 Code. That claim is that they didn't get the attorney
13 preference opportunity to select who they wanted to close
14 the loan. They did. They selected Jim Belk of the
15 Anderson Bar who closed the loan for them. They admitted
16 in their response to the request to admit that they
17 received it. And attached to the memorandum that's part
18 of the court file is a copy of their signature on the
19 Attorney Preferential Form. So there's no violation of
20 the Consumer Protection Code.

21 The last is, they claim that BB&T violated the Fair
22 Debt Collection Practices Act because BB&T was trying to
23 collect a debt and was a debt collector. And in that
24 memo that we have attached to the motion for summary
25 judgment, it should be dismissed because BB&T is not a

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 debt collector as it's defined by the Federal Credit
2 Protection Act.

3 In Section 15, U.S.C.A. Section -- I'm sorry -- 15
4 U.S.C.A. Section 1692, the fact -- there's a case out of
5 the Northern District of California, but that was an
6 allegation that the defendants were debt collectors
7 within the meaning of the act was by itself insufficient
8 to state a claim for relief. And that's all they've done
9 is just summarily make that allegation.

10 In our case, BB&T was not a debt collector because
11 it falls under the creditor exemption of the act. See 15
12 U.S.C. Section 1692(a)(6)(a) and (f). The act defines
13 creditor as any person who offers or extends credit
14 creating a debt to whom a debt is owed. Because BB&T has
15 been the only entity to whom a debt is owed with respect
16 to the note, it follows that absolute exception, and
17 there are none. BB&T is not a debt collector. So there
18 is no violation of that particular act that they allege
19 in the complaint.

20 As I stated at the outset, Your Honor, a foreclosure
21 action is a matter in equity. And we have cited in our
22 supplemental memorandum a case entitled Collier versus
23 Green, and that clearly is the law in South Carolina that
24 a foreclosure action is an equity. And if the Court
25 believes that we have established our position, we

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 respectfully request that you grant the motion for
2 summary judgement and then refer the foreclosure action
3 to Judge Drew as the Master in Equity for Oconee County.

4 Thank you.

5 THE COURT: Okay. Thank you. Now, this loan
6 was never assigned or sold in any way?

7 MR. GRAY: No, sir, it was never sold.

8 THE COURT: It was always in-house?

9 MR. GRAY: Yes, sir. Yes, sir.

10 THE COURT: Yes, sir?

11 MR. GRIFFIN: On the Plaintiff's affidavit,
12 Your Honor, I tried to fax it to Mr. Gray on Sunday. We
13 had it earlier, late last week. Due to time constraints,
14 I was able to get it to him by fax. He acknowledged to
15 me yesterday that he had it. They got it. I faxed it to
16 the Greenville office because I received a letter from
17 Navina Hayes (phonic) dated July 19th, 2013, Dear Mr.
18 Griffin, enclosed please find a copy of Plaintiff's
19 supplemental responses to Defendant's interrogatories and
20 certificate of service with regard the above entitled
21 case. The fax number's on the letterhead, 271-4015.
22 That's where I sent it. The statute says personal
23 delivery. I personally delivered it through electronic
24 communication to Mr. Gray. They got it. They admitted
25 they had it. We can serve things on Sunday. You know, I

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 don't think the statute excludes service on Sunday. It's
2 in the Court's discretion whether or not to admit the
3 affidavit, but they had notice of it. I believe if we'd
4 showed up up here today without giving it to them
5 whatsoever, I believe it would be proper to exclude the
6 affidavit. But they admitted they had notice of it.

7 They got it. I personally delivered it to the McNair Law
8 Firm via electronic communication. I faxed it myself.

9 Back in January when Mr. Gray came to my office, we
10 couldn't figure out who Ivan Hobbs was. We tried to look
11 it up. And Mr. Gray called MERS, and MERS said they
12 didn't have anybody -- they didn't -- no one was employed
13 there by that name. I believe if the truth be known, Mr.
14 Hobbs is employed by BB&T in Greenville.

15 The assignment was executed in December of 2011, I
16 believe. Let me look at my dates, get my dates right.
17 Yes, in December. The complaint was filed in December of
18 2011. Apparently this Mr. Hobbs claimed they assigned
19 the mortgage from MERS to the Plaintiff. And that was
20 the first we'd ever heard of any transfer of servicing
21 rights to -- from MERS to BB&T.

22 I believe the mortgage itself states MERS is a
23 separate corporate entity. And basically at the time the
24 Grays conveyed the mortgage, it said they conveyed their
25 property rights to MERS. So we're dealing with two

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

19

1 separate corporate entities in this case. And why they
2 do that, I guess they've got some, whatever reason they
3 do it. But the mortgage is evidence of a debt. So MERS
4 transferred the mortgage to BB&T, the Plaintiff, when
5 they claimed it was in default at that time. And I
6 believe we state that in our complaint.

7 And regarding the attorney preference matters, the
8 exhibit attached to the -- that they claim qualifies as a
9 attorney preference of the clients, I believe that thing
10 only states that they chose -- that stated BB&T Mortgage.
11 I don't know who that is, but that's who it was assigned.
12 I'm not sure who BB&T Mortgage was, but that's not BB&T -
13 - Branch Banking and Trust Company of South Carolina.
14 Apparently, that's some separate entity or separate
15 corporation. It's not the named plaintiff in the case
16 who's claiming they complied with it.

17 And also, if the Court looks at that exhibit, it
18 states that they chose Jim Belk for title -- for the
19 purposes of that document for title examination only.
20 And the statute clearly says that a creditor must
21 ascertain prior to closing the preference of borrowers to
22 legal counsel to represent the debtor in all matters of
23 the transaction. That document just states for title
24 search.

25 THE COURT: All right. Well, hold on a minute.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 What about that, Mr. Gray, because that's something
2 that always comes up in these attorney preference issues?

3 MR. GRAY: All right, sir. And I'm looking for
4 the exhibit right this minute, Your Honor. So if I may
5 have a second.

6 THE COURT: Sure.

7 MR. GRIFFIN: Exhibit F, I believe.

8 MR. GRAY: I'm still looking, Your Honor. I
9 should have it here.

10 Charlie, if you've got a copy of it, to save some
11 time, I'd appreciate it.

12 I can't put my hand on it right this second, Your
13 Honor.

14 MR. GRIFFIN: Let me see ...

15 MR. CARTER: Exhibit C is what ---

16 MR. GRAY: It's exhibit C?

17 MR. CARTER: Oh, I'm sorry. Wrong form.

18 MR. GRAY: Is that the attorney preference?

19 MR. CARTER: That's the -- here it is.

20 MR. GRAY: Your Honor, it is exhibit C as part
21 of the initial memorandum in support of motion for
22 summary judgment.

23 MR. CARTER: No, it's C.

24 MR. GRAY: No, C is it. That is not the
25 preference of legal counsel.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 If I may approach?

2 THE COURT: Sure.

3 MR. GRAY: It's exhibit C that's attached to
4 that memorandum.

5 THE COURT: All right.

6 MR. GRAY: That is not what Mr. Griffin is
7 talking about. He's talking about exhibit F which is
8 different. This clearly says borrower's preference of
9 legal counsel slash insurance agent. It's dated -- it
10 was mailed May of 2003, signed by the Grays, and they
11 select James A. Belk, and they select the agent, Donna
12 somebody, as the insurance agent. I don't think it could
13 be clearer.

14 THE COURT: All right. Okay. I just wanted to
15 make sure.

16 MR. GRAY: Yes, sir.

17 MR. GRIFFIN: Well, granted there were two of
18 those. One is, I believe it said, apparently there had
19 been no confusion since there were two of them.
20 Apparently it was something done by BB&T Mortgage. Also,
21 MERS never obtained their preference. I believe under
22 the statute MERS qualifies as a creditor. There's
23 nothing from MERS stating that -- I mean, MERS ended up
24 with the mortgage. And MERS would be the one that should
25 have given the attorney preference disclosure rather than

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 BB&T since BB&T only had the note. MERS ended up with
2 the security interest. And the statute itself, basically
3 that if a security interest is taken in real estate, then
4 they've got to make a disclosure. MERS never made any
5 disclosure period on anything. BB&T's the only one that
6 did.

7 And also, as I stated earlier, my client never
8 received any servicing notice, notices provided by RESPA
9 (phonic), Real Estate Servicing. My client never
10 received any disclosures required by RESPA that notified
11 them that the transfer of servicing rights had been
12 transferred from MERS to BB&T until they received the
13 summons and complaint in the foreclosure.

14 MR. GRAY: Your Honor, I object to this line of
15 argument because it is not in his counterclaim. There is
16 nothing in his answer or counterclaim about what he just
17 recited. That comes from the recitation by Mr. Jeffrey
18 Gray in the affidavit that was never served on counsel
19 for BB&T. We don't have electronic service in South
20 Carolina state courts. You serve, according to Rule 5,
21 by mail or by delivery to the attorney's office. He
22 faxed it at 11:57 on Sunday morning to Mr. Carter's legal
23 assistant. If he were going to do it within the required
24 time period of two days before today's hearing, he would
25 have been required to serve it at least personally. I

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 know you can serve a summons now under the rules on
2 Sunday if somebody's not, I think, on the way to church.
3 There may be an exception about that. But he didn't do
4 that. What he's doing now is grossly unfair to begin
5 this argument. He's bootstrapping it based upon a void
6 affidavit, which I think is improper and is grossly
7 unfair to my client.

8 THE COURT: All right. And I understand your
9 objection. I'll give him a little bit of leeway. I
10 mean, basically, the affidavit just repeats some of the
11 information and includes the same web page information.

12 MR. GRAY: Your Honor ---

13 MR. GRIFFIN: Your Honor, in paragraph fifteen
14 we allege they failed to comply with applicable
15 disclosure laws.

16 MR. GRAY: And I understand the Court's going
17 to give him some leeway there, but if I am required to
18 address the affidavit -- which I don't think I should be
19 -- but if I am, the fact that he has recited that he made
20 a phone call to someone -- he doesn't identify who -- at
21 MERS and got information that Mr. Hobbs was not an
22 employee is hearsay. That's not admissible. In the
23 affidavit, under the rule, as the Court knows, you have
24 to put in the affidavit information based on your
25 personal knowledge that would be admissible at trial.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

24

1 Well, that's hearsay. He's making a statement for the
2 truth of the matter asserted. A telephone call to a
3 unknown person. He doesn't even identify who it is.
4 That's hearsay. And then to say, well, I looked at a web
5 site now a year and a half ago, and it recited (a)
6 through whatever, is also hearsay. There's nothing to
7 support those -- and they're nothing more than just rank
8 allegations. That's not admissible if we went to trial
9 on this case.

10 THE COURT: Yeah, I think he's right. I mean,
11 let me ask you this. Is the bottom line to your case
12 that this Ivan -- what was his last name?

13 MR. GRAY: Hobbs.

14 THE COURT: --- Hobbs was not an employee? I
15 mean, after reading through the counterclaim, it looks
16 like that seems to be the main issue, that it may have
17 been transferred by someone who had no authority.

18 MR. GRIFFIN: Well, the initial feeling we had
19 when we tried to find out who this Ivan Hobbs was, we
20 couldn't find him anywhere. My client called MERS, and
21 they claim that somebody there's supposed to be some type
22 of nominee, whatever that means. But we called them and
23 we couldn't -- I mean, my client called MERS and couldn't
24 find out who this Ivan Hobbs was, and they said they
25 didn't have anybody that worked there.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

25

1 And then we get a corporate resolution or something
2 claiming he got some type of paperwork done back in
3 December. He was a V.P., vice president or something
4 like that back in December. We got that recently. And I
5 think there's an issue of fact whether the man is
6 actually employed by them or what's going on with him.

7 Assignment business, I believe the truth of the
8 matter is Mr. Hobbs works for BB&T in Greenville.

9 MR. GRAY: He does.

10 MR. CARTER: His affidavit says he does.

11 MR. GRAY: His affidavit says he does. He's a
12 V.P. at BB&T.

13 THE COURT: And this is always in-house, so it
14 doesn't ---

15 MR. GRAY: Correct. And in order to make the
16 matter flow appropriately, Your Honor, MERS designates by
17 corporate resolution certain people who have signatory
18 authority. His name is on there. He is one of those
19 people that's in-house. So he signed it as the
20 assignment of the mortgage. It has nothing to do with
21 servicing the loan. It was always serviced and kept in-
22 house by BB&T.

23 What the lawyers in Columbia who brought the
24 foreclosure action wanted to do was to eliminate any
25 question that Mr. Griffin may raise about who is the real

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

26

1 party in interest. Rather than bringing it in the name
2 of MERS, they assign the mortgage to BB&T. It then is
3 the plaintiff in the foreclosure action, and it has legal
4 standing to pursue the foreclosure claims.

5 THE COURT: So this is not one of the normal
6 cases that you've had where you've got these assignments?
7 I mean, this was in-house the whole time?

8 MR. GRAY: Yes, sir.

9 MR. GRIFFIN: Judge, we just recently learned
10 that Mr. Hobbs claimed to be working for -- claimed to be
11 some type of V.P. for MERS recently when we got all this
12 stuff in this summer. At that time, we were kind of
13 blind as to who this man was. And we tried to call
14 around and find out who he was when they first served the
15 summons and complaint. And that's why I put it in the
16 answer and counterclaim because we weren't sure who this
17 man was or whether or not he even existed or what was
18 going on.

19 Also, MERS -- according to the mortgage, MERS is a
20 separate entity holding the mortgage. And they assigned
21 the mortgage to BB&T. And we didn't receive any -- my
22 client never received any kind of disclosure form,
23 anything in the mail that the mortgage had been assigned
24 to anybody. And basically, that's a violation of RESPA.
25 And South Carolina law, the prohibitive consumer

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 protection code and the mortgage lending section
2 basically states that it's a violation of -- prohibited
3 activity to violate a state or federal law applicable to
4 a business covered by this chapter. Basically, the
5 assignment itself said it was a -- basically, they
6 claimed that the mortgage was in default at the time they
7 assigned it. We received no disclosure law that -- we
8 received no disclosure notices. But according to RESPA
9 that the mortgage had been assigned to Plaintiff to
10 facilitate the foreclosure. And I think at that point
11 it's a violation of RESPA.

12 But normally a creditor is not a debt collector
13 under the definition of the statute, but if -- under the
14 Fair Debt Collection Practices Act. But if a debt
15 collector obtains a -- if a mortgage servicer obtains a
16 debt in default or instrument in default at the time to
17 facilitate collection, that basically takes them out of
18 that exemption of debt collector and puts them in debt
19 collector status under the Federal Fair Debt Collection
20 Practices Act. And under Fourth Circuit law, a violation
21 of the State Consumer Protection Law can constitute a
22 violation of a -- can constitute a violation of the
23 Federal Fair Debt Collection Practices Act. It's kind of
24 convoluted there, but I've got case law to support it.

25 THE COURT: Well, let me ask this since this is

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 a summary judgment motion. They admit in their request
2 to admit that they haven't paid this mortgage?

3 MR. GRIFFIN: That's true, Your Honor. They
4 got caught up in the bubble in 2008 and had some
5 financial difficulties.

6 THE COURT: Yeah. I've seen a lot of that this
7 week.

8 Okay. Anything else?

9 MR. GRAY: No, sir.

10 THE COURT: Well, like I said, I made the
11 mistake of going by the Anderson Courthouse this morning.
12 And I want an hour to look through this. I'll let y'all
13 know something today. I'm going to take it under
14 advisement. You'll hear from my law clerk by twelve-
15 thirty.

16 Now, let's just, for the purposes of making
17 assumptions, assume that I rule in your favor, Mr. Gray.

18 MR. GRAY: Yes, sir.

19 THE COURT: And the case would -- the
20 foreclosure would continue in Judge Drew's?

21 MR. GRAY: Yes, sir, that's correct.

22 THE COURT: All right. And if I deny it, it's
23 going to float along up here.

24 MR. GRAY: Then we've got matters at law that
25 require jury participation.

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 THE COURT: A jury.

2 MR. GRAY: Yes, sir.

3 THE COURT: Okay. I got you.

4 MR. GRAY: Yes, sir.

5 THE COURT: Okay. I'll let y'all know
6 something. Give me about an hour because I've got a
7 little bit of a break here, and I'm going to go read
8 through everything.

9 Now, look, as far as the affidavit, probably serving
10 it on Sunday by fax is not correct.

11 MR. GRAY: Thank you, sir.

12 THE COURT: It is non-jury. In the words of
13 the illustrious Judge Frank Eppes, I will take it for
14 what it's worth.

15 MR. GRAY: All right, sir.

16 THE COURT: That's one of my favorite phrases.
17 It means nothing but it sounds good.

18 MR. GRAY: Thank you.

19 THE COURT: Yes, sir. Thank y'all.

20 (WHEREUPON, the hearing ended at approximately 11:51
21 a.m.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

Branch Banking and Trust Company v. Sarah L. Gray 2011-CP-04-01250
Motion for Summary Judgement July 30, 2013

1 Certificate of Reporter

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of a
6 portion of the proceedings had and evidence introduced in
7 the trial of the captioned case, relative to appeal, in
8 the Circuit Court for Oconee County, South Carolina, on
9 the 30th day of July 2013.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 January 13, 2014

15

16

17

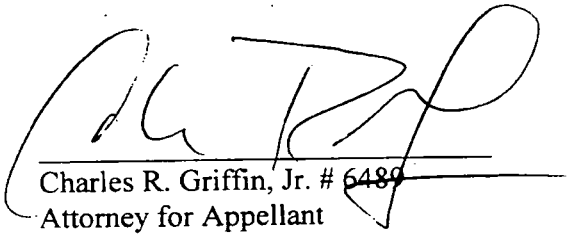

Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM OCONEE COUNTY
HON. CORDELL MADDOX, CIRCUIT COURT JUDGE
APPELLATE CASE NO.: 2013002037
BRANCH BANKING AND TRUST COMPANY ... RESPONDENT
VS

SARAH L. GRAY, JEFFERY GRAY, SUNTRUST BANK, WEST UNION
DEVELOPMENT, LLC AND BANK OF ANDERSON, N.A., ... of whom
JEFFERY GRAY is APPELLANT

CERTIFICATION

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



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August 8, 2014
