

60

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

21868

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

RECEIVED
APR 06 2015
SC Court of Appeals

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., and
Cargo Development, LLC,
A North Carolina limited liability Company, ... Cross-Defendants.

RECORD ON APPEAL:
VOLUME II

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
(803) 324-8100
Attorney for Appellants

S. Sterling Laney, III Matthew Todd Carroll
Womble Carlyle Sandridge & Rice, LLP
550 South Main Street, Suite 400
Greenville, SC 29601
864 255-5417
Attorneys for Respondent

HUD APPROVED RESCISSION PROCESS

Within thirty (30) days of the date of this letter you must notify Craft's Edgewater Settlement Administrator in writing via certified mail if you would like to rescind your purchase contract.

Within eighty (80) days from the date of this letter Craft Development, LLC ("Craft") will determine the economic feasibility of repurchasing lots based on the number of lot owners that request rescission.

You will be notified by Craft in writing within twenty-one (21) days of its completion of the results of the economic feasibility study as they pertain to your request for rescission.

If Craft determines that it is economically feasible to repurchase your lot and return the entire lot purchase price to you, less any previously paid cash payment Craft escrowed for prepaid interest or previously paid financing incentives paid at closing by Craft, Craft will coordinate the transfer of the property with you. This transfer will occur within thirty (30) days of the completion of the economic feasibility study. This option will require you to execute a General Warranty Deed transferring the property back to Craft as well as pay any outstanding taxes, homeowner's association assessments and loans on the property at the time of the transfer to insure Craft will take fee simple title to the property free and clear of liens or other encumbrances.

If Craft determines that it is NOT economically feasible to repurchase your lot, you will be given immediate notice of such determination and be required to inform Craft, in writing, within fourteen (14) days of which of the following options you elect to utilize:

- a. Craft Development will market the lot at the original purchase price. The lot will be placed for sale for at least three hundred sixty-five (365) days. Upon resale of the lot, the entire resale price, less any previously paid cash payment Craft escrowed for prepaid interest or previously paid financing incentives paid at closing by Craft will be remitted to you, the original purchaser. No real estate commissions, closing costs, or fees of any kind for the resale of the property will be deducted from the refunded amount except in the event that an unaffiliated co-broker brings a purchaser, in which event, a commission of not more than 5% of the purchase price may be deducted from the sale proceeds and paid to the unrelated co-broker; or
- b. Craft will market the lot at a price stipulated or agreed upon by you, the original purchaser. The lot will be placed for sale for up to three hundred sixty-five (365) days. If upon resale of the lot, the resale price is less than the original purchase price minus any previously paid funds held in escrow for prepaid interest or previously paid financing incentives paid at closing by Craft, then you will

receive the entire resale purchase price and the previously paid interest and incentives will not be deducted from the amount you receive. No real estate commissions, closing costs, or fees of any kind for the resale of the property will be deducted except in the event that an unaffiliated co-broker brings a purchaser, in which event, a commission of not more than 5% of the purchase price may be deducted from the sale proceeds and paid to the unrelated co-broker.

If the lot does not sell after three hundred sixty-five (365) days on the market, Craft will buy back the lot upon delivery by the owner of a general warranty deed conveying clear title. This will require all taxes, homeowner's association assessments and loans on the property to be paid in full prior to the delivery of the deed to insure Craft will take title to the property free and clear of liens or other encumbrances. Craft will execute a purchase money promissory note to you in the amount of the original purchase price, less any cash payment from Craft escrowed for prepaid interest or financing incentives paid at closing by Craft. The note will provide that it will be paid in full within twenty-four (24) months from its date and will be secured by a first lien purchase money mortgage.

Purchasers who elect to rescind their purchase contracts, may elect to stay in Edgewater's homeowners association and use the amenities at the Edgewater subdivision until they receive full payment from Craft, provided the purchaser remains in good financial standing with Edgewater's homeowners association. Purchasers who elect to rescind may also elect to withdraw, at no charge, from the homeowners association and stop using subdivision amenities.

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley *
Carey M. Ayer †
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith †
Ryan M. Wingard
A. Jewitte Dooley

*American Board of Trial Advocates
Certified Circuit Court Mediator



DAVIS, FRAWLEY, ANDERSON,
MCCAULEY, AYER,
FISHER & SMITH, LLC

ATTORNEYS AND COUNSELORS AT LAW

Ryan@oldcourthouse.com

February 8, 2011

OF COUNSEL
Robert K. Bouknight
George S. Nicholson, Jr.

Francis C. Jones
(1919 - 1988)

Hubert E. Long
(1921 - 2000)

Since 1961

Mr. & Mrs. Ronald Pappas
P. O. Box 79354
Charlotte, NC 28271

Re: Edgewater Settlement Administrator Package

Dear Mr. & Mrs. Pappas:

I am writing you in regard to a letter and package you received from the Edgewater Settlement Administrator. In that package you were notified of Craft Development, LLC's violation of the Interstate Land Sales Act ("ILSA") and its "Settlement" with the Department of Housing and Urban Development ("HUD").

The Settlement Agreement posted on HUD's website conflicts in some respects with the Administrator's Letter and the process reflected in Exhibit B of the Administrator's package. Our firm contacted HUD and obtained a copy of a "Modified Settlement Agreement", which is enclosed with this letter for your further review and information.

If you are receiving this letter from this firm, you have made some inquiry to our firm about legal services in this matter. Many of you have asked important questions regarding the possible remedies described in the Administrator's letter. Our firm is willing to engage in your representation on this matter as described in this letter and in the enclosed "Legal Services Engagement and Fee Agreement". However, before our firm can represent you, we need a written fee agreement to be sure you understand the scope of our representation and the fee agreement terms.

At this point, we do not know whether Craft, assuming you choose to rescind, has the assets to repurchase your property, nor do we know how long this process may take. By the very terms of Exhibit B of the package, the process to rescind may take up to three (3) years to materialize.

A lot of time will need to be spent on this matter until everyone's lot is repurchased, if that is the ultimate outcome. Much of the time we spend will benefit everyone as a group; however, we will need to spend time on each individual file as well. In the past, our firm has worked on other issues involving Edgewater on a collective basis. This allowed everyone to share the benefits of legal representation, but they only paid for a small portion of the total bill.

Old Courthouse Place | 140 East Main Street | Post Office Box 489 | Lexington, South Carolina 29071-0489 | Telephone: (803) 359-2512 | Facsimile: (803) 359-7478 | www.oldcourthouse.com

Our firm's proposed representation in this matter consists of a two part modified contingency fee for work on your personal situation, with a shared hourly rate based fee for work on group or common issues. In other words, after each similarly situated Client signs our "Legal Services Engagement and Fee Agreement", work we do that benefits the group will be split equally among all members of our group of Clients. This will keep everyone's cost as low as possible and reduce duplicate billing. The "Group" fees will be based upon hourly rates, plus costs and will be billed monthly. In addition to the hourly work for the group, our firm will work on everyone's individual claim based on a contingency fee plus cost. Our firm's modified contingency fee will be 15% of the amount each lot owner recovers from Craft. We believe this fee arrangement will be the most efficient for each individual and for the group because any work that we do that benefits the group will be split among everyone while any individual work will be based on a contingency fee, which means if the owner does not collect, then no additional money is owed for our representation on the individual matters.

Enclosed please find our firm's "Legal Services Engagement and Fee Agreement" and a form to use to document to our firm your decision concerning the election of whether you wish to rescind your purchase of a Lot in Edgewater based on the process set forth in the Administrator's Letter and Package and HUD's Modified Settlement Agreement. If you choose to hire our firm, please elect your remedy and sign each form and then return the signed forms to me as soon as possible. Once we receive your signed fee agreement and form electing your remedy, we will notify Edgewater's Settlement Administrator of your election.

This is a time sensitive matter, so please send the forms back to me by February 16, 2011. Also, if you choose to not hire our firm, please note that the Administrator's Letter and HUD's Modified Settlement Agreement gives you thirty (30) days from the date on the letter (January 28, 2011 - according to the Letters we have seen at this time) to notify Edgewater's Settlement Administrator of your election.

Additionally, when our firm represents a group such as this, a potential for conflicts of interest may arise. One such conflict could be a situation where Craft may repurchase or settle with one lot owner before another lot owner. Furthermore, when our firm represents a group of clients in common representation, everyone needs to know some of the advantages of group representation as well as the risks. Our firm has worked on different issues involving Edgewater for almost 2 years, so we are familiar with the Development. Also, when we represent a group like this another benefit is shared legal cost for work that benefits the group as well as a reduced contingency fee based on the volume of work. If each Client has separate legal representation then they may incur additional cost associated with their representation that cannot be split among a group. One risk of common group representation is that the attorney client privilege is common to the group and does not attach between counsel and an individual client to the exclusion of other clients with common representation. Information obtained that is material to the representation of the group will be disclosed within the group. If any clients in our group become adverse to any other clients in our group, our firm could be required to cease representation of all clients in the group and information obtained during the common representation would not be privileged. By your decision to join our group of clients, you are agreeing to waive any potential conflicts of interest with other clients in our group and you

March 19, 2011

Wells Fargo Bank, N. A.
P.O. Box 4233
Portland, Oregon 97208-4233

Wells Fargo Servicing Center
Home Equity Payment Processing
MAC B6955-01B
P.O. Box 31557
Billings, MT 59107-1557

Re: Loan Number 68037451550001
Ronald and Camine Pappas

To Whom It May Concern:

Enclosed is information pertaining to the above-mentioned loan and property relative to a violation and settlement action involving HUD and the original developer and seller of the property/community. Please review this in its entirety as it affects the current relationship between you and us.

As you can see in the document from the settlement administrator and HUD, the developer/seller of the property violated HUD requirements to provide pertinent information relative to the property and the offering to sell the property. HUD required the developer to disclose this information to all 321 of the buyers in the community in an agreement with the developer in 2008. The developer did not. In December 2010, we received the enclosed information from the settlement administrator and only then did we learn about the violations and the agreements with HUD of 2008 and 2010.

In this transaction, we relied on the Wachovia's/Wells endorsement and due diligence to support the values of this community by their participation as a preferred lender in this community and their support of the developer's program. Wachovia/Wells chose the appraiser and additionally provided special first year financing to entice buyers to close these loans

We requested a copy of the appraisal before and at the closing. We were told that the loan was supported by the appraisal. Your loan officer, and the closing agent also told us, that the appraisal would be forwarded to us after closing. It was not. Not providing this at or before closing is a violation of RESPA.

Wells Fargo Bank, N. A.
P.O. Box 4233
Portland, Oregon 97208-4233

Wells Fargo Servicing Center
Home Equity Payment Processing
MAC B6955-01B
P.O. Box 31557
Billings, MT 59107-1557

March 19, 2011,
Page 2.

By circumstance we have recently been able to review some of the appraisals from some of the other transactions in this community, most of which were Wachovia/Wells providers. Some of the comparables were from properties as much as 40 miles away. These are not supporting comparables.

In recent telephone conversations with some of your solutions team members as a result of letters received by us from you and calls initiated by us, we outlined this issue and were promised that we would receive a return phone call to discuss the matter. No one has called to discuss the matter. The only calls that we have received are calls to demand payment, or calls that leave "empty" voice messages. Our phone records can verify these calls.

We are demanding a resolution of this issue. We are firm in our belief that not only did Wachovia/Wells violate several lending law requirements, but also did not appropriately follow stipulated lending guidelines and requirements.

Please contact us in writing at your earliest opportunity. Our mailing address is P.O. Box 79354, Charlotte, NC 28271.

Ronald P. Pappas

Cc: Gerald Mc Naught, esq.

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Track & Confirm

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- Processed through Sort Facility, March 23, 2011, 11:49 pm, PORTLAND, OR 97238
- Processed through Sort Facility, March 23, 2011, 3:11 pm, SEATTLE, WA 98168
- Acceptance, March 23, 2011, 11:28 am, ISSAQUAH, WA 98027

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Flat Rate ☐ or Weight 9.0 lbs. 0.0 ozs.	Military ☐ 2nd Day ☐ 3rd Day	Insurance Fee \$
	Int'l Alpha Country Code	Total Postage & Fees \$ 18.20
	Acceptance Emp. Initials AR	

FROM: (PLEASE PRINT) PHONE (**704**) **942 7788**

RONALD P. Dappas
P.O. Box 79354
CHARLOTTE, NC 28271

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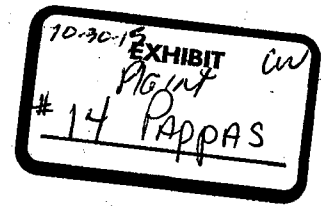
WELLS FARGO BANK, N.A.
P.O. Box 4233
PORTLAND, OREGON

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PIGMAN APPRAISAL GROUP
P.O. BOX 430
FORT MILL, SC 29716
803-396-8787



May 10, 2006

WACHOVIA BANK, NA
300 FIDELITY PLAZA
NORTH BRUNSWICK, NJ
08905

Property - LOT 311 EDGEWATER
LANCASTER, SC 29720
Borrower - RONALD PAPPAS
File No. - 8443229203-1
Case No. -

Dear Wachovia Bank, NA:

In accordance with your request, I have personally inspected, made a Complete Appraisal, and prepared a Summary Appraisal Report of the real property located at LOT 311 EDGEWATER, LANCASTER, SC.

The purpose of the Summary Appraisal is to provide an opinion of the market value of the property described in the body of this report.

Enclosed, please find the Summary Appraisal which describes certain data gathered during our investigation of the property. The methods of approach and reasoning in the valuation of the various physical and economic factors of the subject property are contained in this report.

An inspection of the property and a study of pertinent factors, including valuation trends and an analysis of neighborhood data, led the appraiser to the conclusion that the market value, as of May 10, 2006 is :

\$230,000

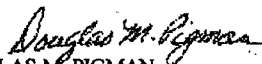
The opinion of value expressed in this report is contingent upon the Limiting Conditions attached to this report.

It has been a pleasure to assist you. If I may be of further service to you in the future, please let me know.

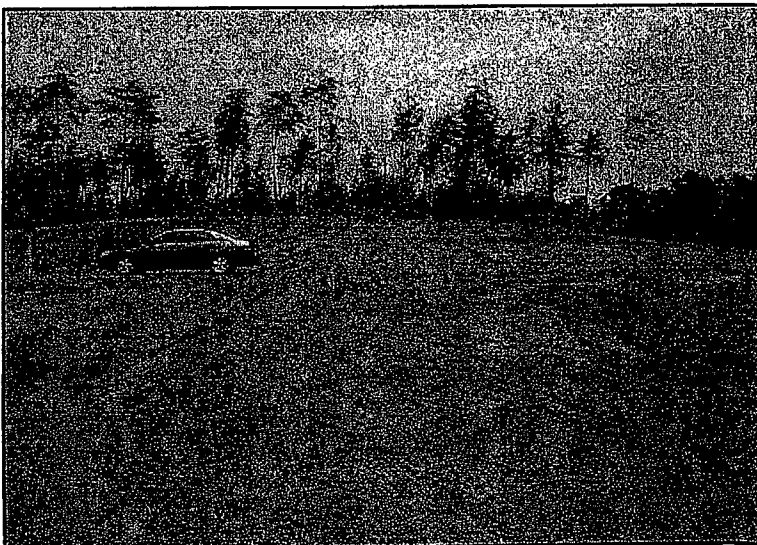
Respectfully submitted,

PIGMAN APPRAISAL GROUP


ERIC J. PIGMAN
SC License #AA 4714


DOUGLAS M. PIGMAN
SC License #L3076

PHOTOGRAPH ADDENDUM

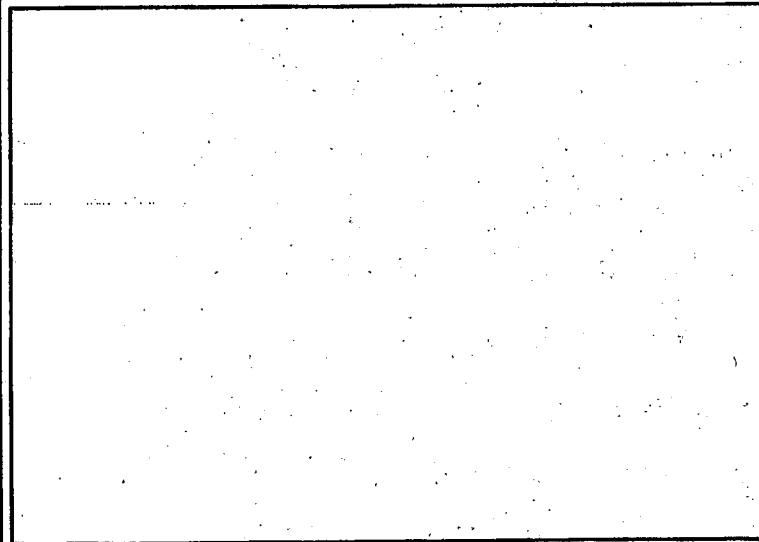
Borrower or Owner **RONALD PAPPAS**Property Address **LOT 311 EDGEWATER**City **LANCASTER**County **LANCASTER**State **SC**Zip Code **29720**Lender or Client **WACHOVIA BANK, NA****FRONT VIEW OF
SUBJECT PROPERTY****REAR VIEW OF
SUBJECT PROPERTY****STREET SCENE OF
SUBJECT PROPERTY**

PHOTOGRAPH ADDENDUM

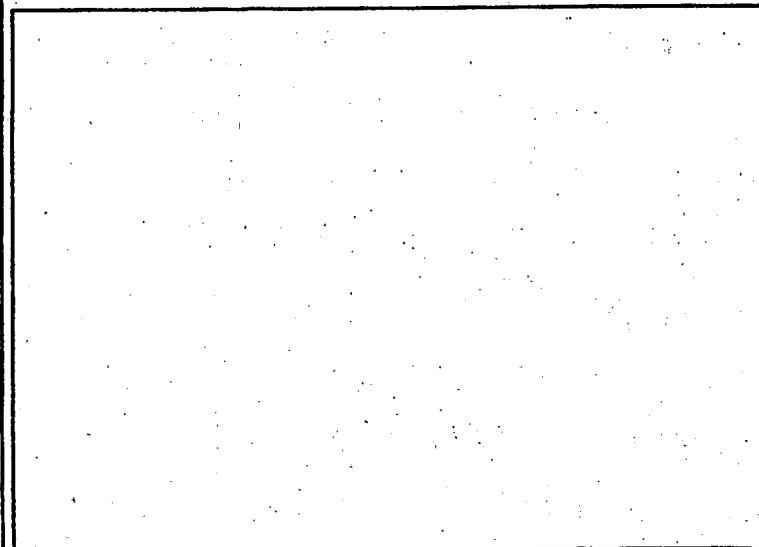
Borrower or Owner	RONALD PAPPAS				
Property Address	LOT 311 EDGEWATER				
City	LANCASTER	County	LANCASTER	State	SC
Zip Code	29720				
Lender or Client	WACHOVIA BANK, NA				



LOT 311 EDGEWATER
WATER VIEW



1047 J.W. WILSON ROAD
WORKSHOP



Complete Appraisal Analysis - Summary Appraisal Report

LAND APPRAISAL REPORT

File No. 8443229203-1

IDENTIFICATION	Owner RONALD PAPPAS		Census Tract 0107.00		Map Reference LOT 311			
	Property Address LOT 311 EDGEWATER							
	City LANCASTER		County LANCASTER		State SC			
	Zip Code 29720							
NEIGHBORHOOD	Legal Description DEED BOOK 259, PAGE 110; PLAT 2004-600							
	Sale Price \$ 229,000		Date of Sale 3/29/2006		Loan Term N/A yrs.			
	Actual Real Estate Taxes \$N/A-NEW		(or) Loan charges to be paid by seller \$N/A		Other sales concessions N/A			
	Lender/Clerk WACHOVIA BANK, NA		Address 300 FIDELITY PLAZA, NORTH BRUNSWICK, NJ, 08905					
	Occupant VACANT		Appraiser E. PIGMAN		Instructions to Appraiser APPRAISE 1 TRACT OF VACANT LAND			
	AT MARKET VALUE							
	Location		☐ Urban ☐ Over 75% ☐ Rapid ☐ Increasing ☐ Shortage ☐ Under 3 Mos. ☐ Present Land Use		☒ Suburban ☐ 25% to 75% ☒ Steady ☒ Stable ☒ In Balance ☒ 4-6 Mos. ☐ % Apts. ☐ % Condo ☐ % Commercial			
	Built Up		☐ Fully Dev. ☐ Growth Rate ☐ Property Values ☐ Demand/Supply ☐ Marketing Time		☐ Rural ☒ Under 25% ☐ Slow ☐ Declining ☐ Over Supply ☐ Over 6 Mos.			
	Change in Present Land Use		☐ Not Likely ☒ Likely (?) ☐ From VACANT To SINGLE FAMILY		Employment Stability Convenience to Employment Convenience to Shopping Convenience to Schools Adequacy of Public Transportation Recreational Facilities Adequacy of Utilities Property Compatibility Protection from Detrimental Conditions Police and Fire Protection General Appearance of Properties Appeal to Market			
	Predominant Occupancy		☐ Owner ☐ Tenant ☐ Single Family Price Range ☐ Single Family Age		☐ Taking Place (?) ☐ 100 % Vacant Predominant Value \$ N/A Predominant Age N/A yrs.			
Comments including these factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, noise) THE EDGEWATER SUBDIVISION IS LOCATED ON 3400 ACRE FISHING CREEK RESERVOIR. NO FACTORS NEGATIVELY AFFECTING THE VALUE OF THE SUBJECT WERE OBSERVED ON THE DATE OF THE INSPECTION.								
SITE	Dimensions SEE PLAT		= 0.576 ACRES +/-		☐ Corner Lot			
	Zoning Classification PDD-PLANNED DEVELOPMENT DISTRICT		Present Improvements ☒ do ☐ do not conform to zoning regulations					
	Highest and best use: ☐ Present use ☒ Other (specify) SINGLE FAMILY HOME							
	Public ☒ Other (Describe) _____		Topo GENTLE SLOPING TOWARD WATER					
	Elec. ☒		Size TYPICAL FOR AREA					
	Gas ☒		Shape IRREGULAR					
	Water ☒		View WATERFRONT					
	San Sewer ☒		Drainage APPEARS ADEQUATE					
	☒ Underground Elec. & Tel.		Is the property located in a HUD Identified Special Flood Hazard Area? ☒ No ☐ Yes					
	Comments (favorable or unfavorable including any apparent adverse easements, encroachments or other adverse conditions) ZONE C, DATED 1/6/1983, MAP 4501200150B. NO APPARENT EASEMENTS, ENCROACHMENTS OR ADVERSE CONDITIONS WERE OBSERVED ON THE DATE OF THE INSPECTION. THE SUBJECT APPEARS TO BE A BUILDABLE LOT.							
MARKET DATA ANALYSIS	The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than, the subject property, a minus (-) adjustment is made, thus reducing the indicated value of subject; if a significant item in the comparable is inferior to, or less favorable than, the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.							
	ITEM	Subject Property	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
	Address	LOT 311 EDGEWATER	LOT 203 EDGEWATER LANCASTER, SC		LOT 209 EDGEWATER LANCASTER, SC		LOT 204 EDGEWATER LANCASTER, SC	
	Proximity to Subj.		SAME SUBDIVISION-0.2 mi		SAME SUBDIVISION-0.2 mi		SAME SUBDIVISION-0.2 mi	
	Sales Price	\$ 229,000	\$ 229,000		\$ 249,900		\$ 209,000	
	Price	\$ 397,569.44	\$379,139.06		\$ 253,448.28		\$311,011.91	
	Data Source	SITE INSPECTION	COURTHOUSE RECORDS		COURTHOUSE RECORDS		COURTHOUSE RECORDS	
	Date of Sale and Time Adjustment	3/29/2006	9/6/2005		9/28/2005		9/4/2005	
	Location	FISHING CREEK	FISHING CREEK		FISHING CREEK		FISHING CREEK	
	Site/View	WATERFT	WATERFT		WATERFT		WATERFT-INF	
	Site Area	0.576 ACRES +/-	0.604 ACRES +/-		0.986 ACRES +/-		0.672 ACRES +/-	
	Sales or Financing Concessions							
	Net Adj. (Total)		☐ Plus ☐ Minus \$		☐ Plus ☒ Minus \$ -15,000		☒ Plus ☐ Minus \$ 20,000	
	Indicated Value of Subject		Gross 0.0% Net 0.0% \$ 229,000		Gross 6.0% Net -6.0% \$ 234,900		Gross 9.6% Net 9.6% \$ 229,000	
	Comments on Market Data: THE COMPARABLES PROVIDED ARE CONSIDERED TO BE THE MOST SIMILAR AND APPROPRIATE CLOSED SALES AVAILABLE AS OF THE DATE OF THIS REPORT.							
*** See Additional Comments ***								
Comments and Conditions of Appraisal: THIS REPORT IS SUBJECT TO THE NORMAL LIMITING CONDITIONS (SEE ATTACHED).								
RECONCILIATION	Final Reconciliation: BASED ON THE QUALITY AND QUANTITY OF THE INFORMATION GATHERED FOR THIS REPORT, THE FINAL OPINION OF MARKET VALUE IS BASED ON THE SALES COMPARISON APPROACH. THE COST AND INCOME APPROACHES TO VALUE ARE INAPPLICABLE AND THEREFORE NOT USED.							
	I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF May 10 2006 to be \$ 230,000							
	Appraiser(s)				Review Appraiser (if applicable)			
	Signature Eric J. Pigman Name ERIC J. PIGMAN Date 05/10/2006 State SC ☒ License ☐ Certification # AA 4714				Signature Douglas M. Pigman Name DOUGLAS M. PIGMAN Date 05/10/2006 State SC ☒ License ☐ Certification # L 3076			

PIGMAN APPRAISAL GROUP

ADDITIONAL COMMENTS

Borrower or Owner	RONALD PAPPAS		
Property Address	LOT 311 EDGEWATER		
City	LANCASTER	County	LANCASTER
		State	SC
		Zip Code	29720
Lender or Client	WACHOVIA BANK, NA		

Scope of the Appraisal

THE PURPOSE OF THIS REPORT IS TO PROVIDE THE REFERENCED CLIENT (IDENTIFIED AS THE INTENDED USER) WITH AN OPINION OF THE MARKET VALUE OF THE PROPERTY BEING APPRAISED. THE INTENDED USE OF THIS REPORT IS TO ASSIST THE INTENDED USER IN EVALUATING THE SUBJECT PROPERTY AS COLLATERAL IN A REAL ESTATE LENDING TRANSACTION.

THIS OPINION IS BASED ON A REASONABLE MARKETING AND EXPOSURE TIME OF 3 - 6 MONTHS. TO DEVELOP THIS OPINION, THE APPRAISER HAS MADE A PERSONAL INSPECTION OF THE INTERIOR AND EXTERIOR OF THE SUBJECT PROPERTY, AS WELL AS AN EXTERIOR INSPECTION OF ALL COMPARABLE SALES USED IN THIS REPORT. THE SUBJECT IMPROVEMENTS WERE MEASURED BY THE APPRAISER, AND SUFFICIENT DIGITAL PHOTOGRAPHS WERE TAKEN TO ADEQUATELY CHARACTERIZE THE PROPERTY BEING APPRAISED, AS WELL AS THE COMPARABLE SALES. THE SUBJECT NEIGHBORHOOD WAS ALSO INSPECTED DURING THE SELECTION OF COMPARABLE SALES.

Legal

LEGAL DATA USED IN THIS REPORT IS TAKEN FROM THE PUBLIC RECORD IN THE CLERK OF COURT (DEED AND PLAT), TAX ASSESSOR (PROPERTY RECORD CARD) AND TAX COLLECTOR (TAXES) OFFICES IN THE COUNTY COURTHOUSE. THESE SOURCES ARE CONSIDERED BY THE APPRAISER TO BE RELIABLE.

Neighborhood

THE EDGEWATER SUBDIVISION IS BEING DEVELOPED BY MONROE, NC BASED COMPANY, CRAFT DEVELOPMENT. THE MASTER PLAN OF THE SUBDIVISION INCLUDES 16,499 HOMES. THE FIRST PHASE OF THE SUBDIVISION IS UNDER WAY WITH WATERFRONT LOTS FRONTING ON FISHING CREEK RESERVOIR, AS WELL AS SMALLER INTERIOR WATERVIEW AND NON WATERVIEW LOTS. WORLD RENOWNED GOLF COURSE DESIGNER PETE DYE HAS SIGNED A LETTER OF INTENT TO DEVELOP AND 18 HOLE GOLF COURSE ON PART OF THE PROPERTY, WITH SOME HOLES OVERLOOKING THE LAKE. THE PLAN ALSO HAS A CLUBHOUSE, COMMUNITY POOL, AND COMMUNITY MARINA SLATED FOR FUTURE DEVELOPMENT.

NO HOME CONSTRUCTION HAS STARTED AS OF THE DATE OF INSPECTION. THE INFORMATION GIVEN IN THE NEIGHBORHOOD SECTION I.E. SGL FAM PRICE RANGE AND SINGLE FAMILY AGE ARE NOT APPLICABLE AT THIS TIME AS NO HOMES HAVE BEEN BUILT OR SOLD YET.

Site

ZONING INFORMATION WAS PROVIDED TO THE APPRAISER BY THE LOCAL PLANNING AND ZONING OFFICE.

THE SITE DIMENSIONS ARE FROM A PLAT OF THE SUBJECT TAKEN FROM THE PUBLIC RECORD.

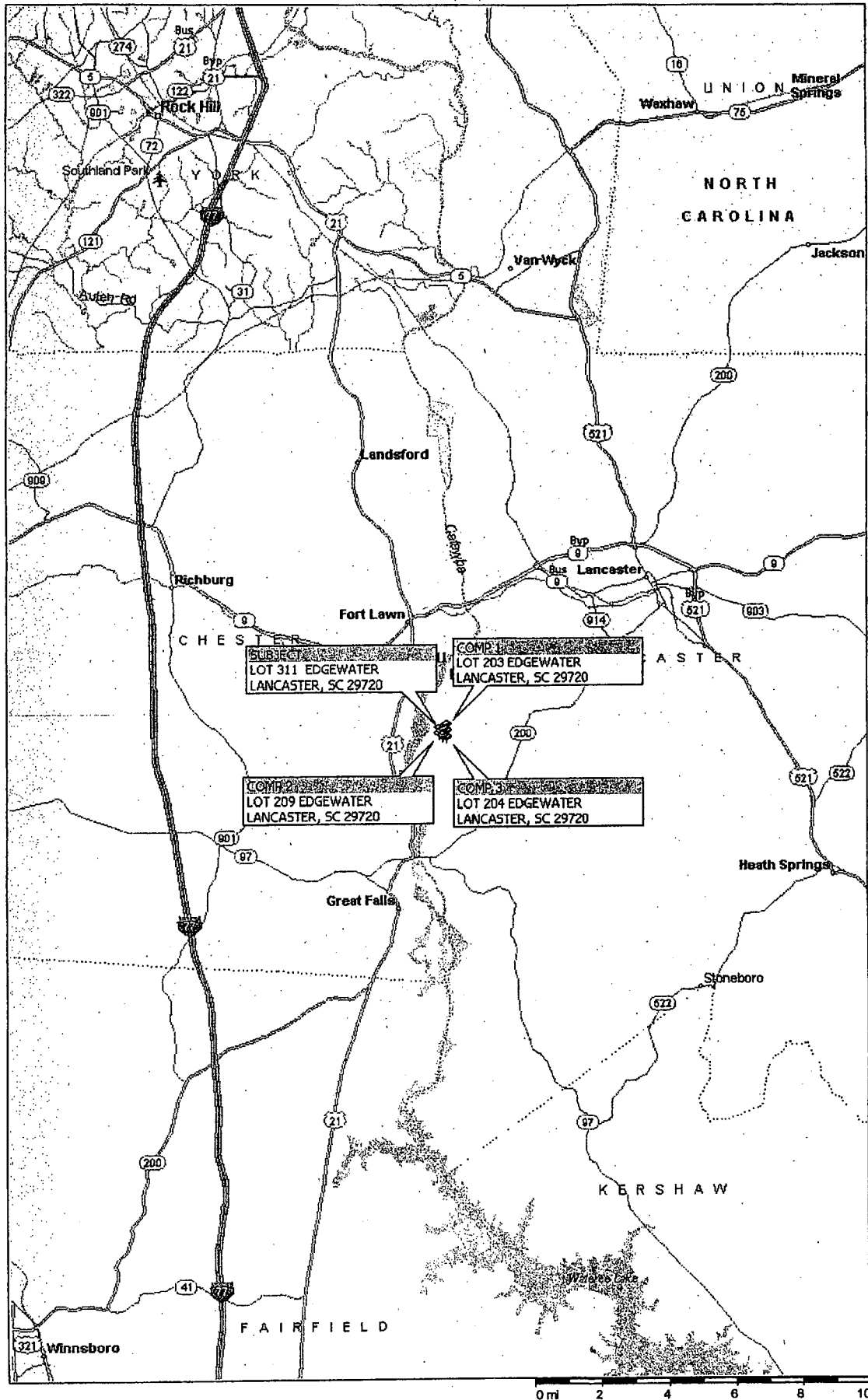
FLOOD MAP DATA WAS TAKEN FROM FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD MAPS ON FILE IN THE APPRAISER'S OFFICE AND INTERFLOOD.COM.

THE INFRASTRUCTURE IS CURRENTLY UNDER CONSTRUCTION IN THE SUBJECT PROPERTIES PHASE OF THE SUBDIVISION. IT WILL ON A PAVED ASPHALT ROAD LIKE THE REST OF THE SUBDIVISION WHEN COMPLETED.

Comments on Market Data

ALL THREE COMPARABLES ARE LOCATED IN THE SAME SUBDIVISION AS THE SUBJECT.

MAP ADDENDUM



DEFINITION OF MARKET VALUE:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concessions but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION**CONTINGENT AND LIMITING CONDITIONS:**

The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. The separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns, the mortgage insurer, consultants, professional appraisal organizations, any state or federally approved financial institution, or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

APPRAISER'S CERTIFICATION:

The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION:

If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED:LOT 311 EDGEWATER LANCASTER SC 29720**APPRAISER:**

Signature: *Eric J. Pigsaw*
 Name: ERIC J. PIGMAN
 Date Signed: May 10, 2006
 State Certification #: _____
 or State License #: AA 4714
 State: SC
 Expiration Date of Certification or License: 6/30/2006

SUPERVISORY APPRAISER

(only if required):

Signature: *Douglas M. Pigsaw*
 Name: DOUGLAS M. PIGMAN
 Date Signed: May 10, 2006
 State Certification #: _____
 or State License #: L3076
 State: SC
 Expiration Date of Certification or License: 06/30/2006
☒ Did ☐ Did Not Inspect Property

5. In order to secure the payment of said Note, the said Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Camine Pappas (hereinafter "Mortgagor(s)"), did on the same date, to wit, July 22, 2009, make, execute, and deliver to Wachovia Bank, National Association, its successors and assigns, a certain mortgage (hereinafter "Mortgage") securing the below described real property, including any and all improvements to the property, located in the County and State aforesaid (hereinafter "Property"):

All that certain piece, parcel or lot of land lying, being and situate in the State of South Carolina, County of Lancaster, being designated as Lot 311 of Edgewater Subdivision, as shown on a plat of property shown in Plat Book 2005 at Page 559 in the Office of the Register of Deeds for Lancaster County, South Carolina, to which plat reference is hereby made for a more particular description.

Derivation: This being the same property conveyed to Ronald P. Pappas by deed from Craft Development, LLC dated May 30, 2006 and recorded July 28, 2006 in Book 346 at Page 342 in the Office of the Register of Deeds of Lancaster County, South Carolina.

Parcel Number: 0127C-0B-016.00

Property Address: Edgewater, Lot 311, Lancaster, SC 29720

6. Said Mortgage was dated July 22, 2009 and recorded on July 23, 2009 in Book 2135 at Page 99, in the Lancaster County Registry.
7. Thereafter the Mortgage and its accompanying Promissory Note were transferred to the Plaintiff herein by assignment and/or corporate merger.
8. The Mortgage evidences and secures the repayment of money advanced by the Lender to, or on behalf of, the Mortgagor(s) and constitutes a valid first lien on the Property.
9. As required by an Administrative Order issued by the South Carolina Supreme Court dated May 22, 2009, the Plaintiff states that this loan is owned or guaranteed by Fannie Mae, or it is owned or guaranteed by FHLMC, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, Plaintiff alleges upon information and belief, that the loan does not qualify for a modification under the above foreclosure prevention program because the subject Property is not the primary residence of

the homeowner (or it is vacant land).

10. Any notice required by the terms of the Mortgage or by State or Federal law has been given to the applicable defendant(s) prior to the commencement of this action.
11. 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 or interest or any portion thereof when due, or if any of the conditions and requirements in the Mortgage securing the same not be 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.
12. In and by the terms of the said Note it is further provided that the maker thereof shall pay all collection costs including reasonable attorneys fees if the said Note be placed in the hands of an attorney for collection after default.
13. The Plaintiff demands a personal or deficiency judgment, and the Plaintiff has the right to seek a deficiency judgment against the maker(s) of its Note, Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Carmine Pappas. That in the event that the net amount realized by the Plaintiff upon the sale of the subject property is insufficient to pay in full the total indebtedness of the Plaintiff, including costs of collection, the Plaintiff demands a personal judgment against said Defendant(s) in the amount of such deficiency.
14. The installments of principal and interest falling due from and after January 21, 2011, have not been paid although demand for the payment thereof has been made. The Plaintiff, as 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 \$207,077.68, together with interest at the rate of 5.5% per annum, the current/modified rate of interest, from the date of the last payment, together with reasonable attorneys fees for the collection thereof and the costs of this action. Plaintiff may be forced to pay sums for taxes, 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.

15. Upon information and belief, said information having been obtained from the records of Lancaster County, South Carolina, the Defendant(s) below named has/have or may claim to have some interest in or lien upon the Property by virtue of the matters and things herein below alleged, to-wit:

A. None known.

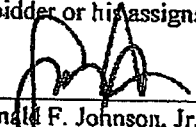
WHEREFORE, Plaintiff prays judgment that:

- A. 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 costs of this action.
- B. Appoint a Receiver to collect the rents, issue, profits or designated sums from the mortgagor(s), and/or the grantee(s) of the mortgagor(s), and/or tenant(s) occupying or exercising control over the mortgaged premises and hold the same subject to the further order of this Court.
- C. Plaintiff's Mortgage be declared a valid first lien 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 which may be due or which may be or have been paid by Plaintiff, together with attorney's fees and for the costs of this action.
- D. The Property be sold according to law and the practice of this Court, the equity of redemption be barred 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;

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Ronald P. Pappas (a/k/a Ronald Peter Pappas) and Camine Pappas, in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

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

FURTHER, in the event the successful bidder (at the time of this foreclosure sale) is other than the Defendant(s) in possession herein, the Sheriff of Lancaster County will be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located therein, and put the successful bidder or his assigns in full, quiet and peaceable possession of said Property without delay, and to keep the successful bidder or his assigns in such peaceable possession.



Ronald F. Johnson, Jr, SC Bar #16931
Mark A. Pearson, SC Bar #15926
Brian L. Campbell, SC Bar #74521
• Suzanne E. Brown, SC Bar #76440
Jason L. Branham, SC Bar #72902
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 6, 17, 11
Wilmington, North Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

Wells Fargo Bank, N.A. s/b/m to Wachovia Bank,
N.A.,

Plaintiff,

vs.

Ronald P. Pappas a/k/a Ronald Peter Pappas, and
Camrine Pappas,

Defendant(s).

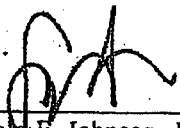
IN THE COURT OF COMMON PLEAS
FILED
C/A NO. 2011-05-02-01
OF COURT

CERTIFICATE OF COMPLIANCE
WITH SOUTH CAROLINA
SUPREME COURT ORDER

NO. 2011-05-02-01
CLERK OF COURT
LANCASTER, SC
(Non-owner occupied property)

The undersigned attorney for the Plaintiff does hereby certify as follows:

1. That this is an action for the foreclosure of real property; and
2. That the Administrative Order of the Supreme Court of South Carolina dated May 2nd, 2011 (2011-05-02-01) does not apply in this case because the real property is not an "owner occupied property/dwelling" as defined in the Order.



Ronald F. Johnson, Jr, SC Bar #16931

Brian L. Campbell, SC Bar #74521

• Suzanne E. Brown, SC Bar #76440

Jason L. Branham, SC Bar #72902

Brock & Scott, PLLC

3800 Fernandina Road Suite 110

Columbia, SC 29210

Phone 803-454-3540 Fax 803-454-3541

Attorneys for Plaintiff

Dated: 6/12/11
Wilmington, North Carolina

B&S No.: 11-11664

NOTICE REQUIRED BY THE FAIR DEBT
COLLECTION PRACTICES ACT
15 U.S.C. Section 1601, As Amended

- The amount of the debt as of June 17, 2011, is the principal sum of \$207,077.68; with, interest from the date that the last payment was made, advances, late charges, and the costs and disbursements of this action, including attorney's fees.
- The plaintiff named in the attached Summons and Complaint is the creditor to whom the debt is owed.
- The debt is described in the Complaint attached hereto and will be assumed to be valid by the creditor's law firm, unless the debtor, within thirty days after the receipt of this notice, disputes the validity of the debt or some portion thereof.
- If the debtor notifies the creditor's law firm within thirty days of the receipt of this notice that the debt or any portion thereof is disputed, the creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to the debtor by the creditor's law firm.
- If the creditor named as plaintiff in the attached Summons and Complaint is not the original creditor, and if the debtor makes a request to the creditor's law firm within thirty days from the receipt of this notice, the name and address of the original creditor will be mailed to the debtor by the creditor's law firm.
- Requests may be made in writing addressed to Brock & Scott, PLLC, 3800 Fernandina Road, Suite 110, Columbia, SC 29210; by telephone at (803) 454-3540; by fax to (803) 454-341; or by email to SCFCLTeam@brockandscott.com.
- This notice should not be construed as a thirty (30) day grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days.

***** THIS IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. IF YOU HAVE BEEN DISCHARGED IN A CHAPTER SEVEN BANKRUPTCY, WE ARE NOT SEEKING PERSONAL LIABILITY AGAINST YOU, BUT ARE PURSUING THE RIGHTS AGAINST THE PROPERTY AS PROVIDED IN THE SECURITY AGREEMENTS*****

B&S No.: 11-11664

NOTICE REGARDING MILITARY SERVICE

If you are currently or have within the last nine (9) months been in the military service AND joined after signing the mortgage (aka Deed of Trust or Security Deed) that is now in foreclosure, please notify this office immediately.

You may be entitled to some protections under the Servicemembers Civil Relief Act. When contacting this office as to your military service, you must provide us with positive proof as to your military status.

B&S No.: 11-11664

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

SIXTH JUDICIAL CIRCUIT

WELLS FARGO BANK, N.A.,
s/b/m to Wachovia Bank, N.A.,

Plaintiff,

vs.

RONALD P. PAPPAS,
a/k/a Ronald Peter Pappas, and
CAMINE PAPPAS,

Defendants.

AMENDED ANSWER

COUNTERCLAIMS AND CROSS-CLAIM

CLERK OF COURT
LANCASTER, SC

SEP 29 10 22

FILED
OFFICE OF CLERK
OF COURT

RONALD P. PAPPAS,
a/k/a Ronald Peter Pappas, and
CAMINE PAPPAS,

Cross-Plaintiffs.

vs.

WELLS FARGO BANK, N.A., and
CRAFT DEVELOPMENT, LLC,
a North Carolina limited liability company,

Cross-Defendants.

JURY TRIAL REQUESTED

C. A. No. 11-CP-²⁹~~46~~-0873

Come now the Defendants RONALD P. PAPPAS, also known as Ronald Peter Pappas, and CAMINE PAPPAS (hereafter, unless other indicated, "the Defendants"), and for their Answer, Counterclaims and Cross-Claim herein would allege as follows:

FACTUAL BACKGROUND:

1. Each and every allegation of the Plaintiff's Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.
2. The Defendants/Cross-Plaintiffs are residents of Lancaster County, South Carolina.

3. The Plaintiff/Cross-Defendant WELLS FARGO BANK, N.A., as successor to Wachovia Bank, N.A., (hereafter also "WELLS FARGO") is a banking corporation authorized to do business in the State of South Carolina.

4. The Cross-Defendant CRAFT DEVELOPMENT, LLC (hereafter also "CRAFT" and "CRAFT DEVELOPMENT") is a North Carolina limited liability company authorized to do business in the State of South Carolina, and having Blackwell, Trimall, LLC located at 201 West Dunlap Street, Lancaster, South Carolina 29720 as its Registered Agent.

5. On knowledge and information, both Cross-Defendants WELLS FARGO and CRAFT DEVELOPMENT, respectively, are developer within the definition set forth in 15 U.S.C. §1701(4), and Edgewater Subdivision, of which the subject real property sought to be foreclosed is a part, is a subdivision within the definition set forth in 15 U.S.C. §1701(3).

FOR A FIRST DEFENSE:

6. Each and every allegation of the Plaintiff's Complaint not admitted, denied or explained herein is denied and strict proof demanded therefor.

7. Defendants admit that they are the owners of the real property which is the subject of this action; the residence of the individual Defendants; the location of the subject real property; and that they are collectively the executing parties on the Notes and Mortgage attached as exhibits to the Complaint herein.

8. As to the remaining allegations of the Complaint herein as to:

corporate identity of any parties,

the terms and validity of the mortgage and notes sought to be foreclosed herein,

the existence of any breach on the part of the Defendants,

the expenditure of monies by the Plaintiff in order to preserve its rights,

the rights of Plaintiff as to recovery of any monies expended or the liability of the Defendants for such monies,

the existence and priority of recorded liens senior and/or junior to that of the said

Defendants, or any other matter alleged or referenced in the Complaint herein, or

the said Defendants' participation in the Home Affordable Modification Program (HMP),

the said Defendants:

admit all matters herein which are of public record, and
allege that they are without sufficient information, knowledge or belief as to the remaining
factual allegations to respond and therefore denies the same and demands strict
proof thereof.

FOR A SECOND DEFENSE AND COUNTERCLAIM:

9. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.
10. This Second Defense and Counterclaim is brought against Plaintiff for actual and statutory treble damages based on the Plaintiff's violation of Title 39, Chapter 5 of the South Carolina Code of Laws (hereafter the Unfair Trade Practices Act or "UTPA"), in the negligent presale inspection of the subject real property which is the subject of this action.
11. On knowledge and information, the actions of the Plaintiff, by and through its agents, servants, and employees, have an impact, either direct or indirect, upon the public interest as defined by S. C. Code § 39-5-10(b) (West) and by the holding of the South Carolina Court of Appeals in *Noack Enterprises, Inc. v. Country Corner Interiors*, 290 S.C. 475, 351 S.E.2d 347 (Ct.App. 1986).
12. On knowledge and information, the actions and words of the Plaintiff and its agents, servants and employees show a pattern of behavior by the Plaintiff consistent with a deliberate pattern of such actions both in the past and planned in the future.
13. On knowledge and information, the actions of the Plaintiff have the potential for repetition within the meaning of *Noack* and of the Supreme Court of Washington cited in that case, *Anhold v. Daniels*, 94 Wash.2d 40, 614 P.2d 184 (1980).
14. On knowledge and information, the actions of the Plaintiff as set out herein constitute an unfair or deceptive method, act or practice in the conduct of a trade or commerce as defined by S. C. Code § 39-5-20 (West).

15. On knowledge and information, the Real Estate Appraiser used by the Plaintiff in connection with the Defendant's purchase of the subject real property in May, 2006 was licensed by the State of South Carolina or possessed a license recognized by the SC Real Estate Appraisers Board.

16. On knowledge and information, the possession of a Real Estate Appraiser's license by, or recognized by, the SC Real Estate Appraisers Board imposes on the appraiser so used a duty of reasonable care to the Defendants as purchasers to use that knowledge, skill and care that is generally used in similar appraisals and circumstances by appraisers in South Carolina and in states having similar appraisal standards, which duty the said appraiser so used by the Plaintiff breached in one or more of the ways set out or referenced herein, any one of which was a departure from the accepted standard of care for real estate appraisers.

17. On knowledge and information, the actions of the Plaintiff entitle the Defendants to damages in the amount of three times the actual damages sustained by reason of the Plaintiff's unfair or deceptive methods, acts or practices, as defined by S. C. Code § 39-5-140(a) (West).

18. On knowledge and information, the actions of the Plaintiff entitle the Defendants to an award of reasonable attorney's fees and costs under the provisions of S. C. Code § 39-5-140(a) (West).✓

19. In the course of the transaction the Plaintiff has committed or engaged in one or more of the following unfair and/or deceptive acts or practices in violation of Title 39, Chapter 5:

- a. knowingly misrepresenting the value of the subject real estate in the appraisal furnished to the Defendants;
- b. negligently appraising the value of the subject real property when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. using methods of appraisal that included, but did not disclose the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value;

- d. failing to supply the Defendants with a copy of the Real Estate Appraisal; and
- e. failing to supply the Defendants with a copy of the Real Estate Appraisal after their request therefor.

FOR A THIRD DEFENSE, SET-OFF OR COUNTERCLAIM:

- 20. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.
- 21. This Third Defense, Set-off or Counterclaim is brought against Plaintiff for violation of the Real Estate Settlement and Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.* and on the law of contracts.
- 22. On knowledge and information, both the original mortgage loan transaction between Plaintiff and the Defendants in May, 2006 and the refinance in 2009 were "federally related mortgage loans" as that term is defined in RESPA, 12 U.S.C. § 2602(1).
- 23. On knowledge and information, the Plaintiff's funding and origination of these transactions were "settlement services" as that term is defined in RESPA, 12 U.S.C. § 2601(3).
- 24. On knowledge and information, as part both transactions, the Defendants paid the Plaintiff fees for obtaining two respective real estate appraisals, the cost of which increased their mortgage payments without providing them with any real economic benefit. Copies of the respective HUD closing statements are attached hereto and incorporated herein.
- 25. On knowledge and information, 12 U.S.C. § 2605(e) permits a buyer or borrower to obtain information about the servicing of their mortgage account by providing a written inquiry to the servicer.
- 26. The Defendants provided both oral and written inquiries to the Plaintiff, as their servicer under RESPA, with requests to obtain and review the real estate appraisals for which they were charged at closing.
- 27. On knowledge and information, the said written inquiry to the Plaintiff contained all information required under 12 U.S.C. § 2605(e)(1)(B) and Reg. X, 24 C.F.R. § 3500.21(e)(2).
- 28. The Plaintiff as servicer under RESPA has never responded to the qualified written request of the Defendants, in violation of 12 U.S.C. § 2605(e)(2), nor to their oral requests.

29. On knowledge and information, the Plaintiff's violation of RESPA entitle the Defendants to an award of their actual damages and/or for a set-off thereof, and for their attorney's fees, as per 12 U.S.C. § 2605(f)(1) and (3).

30. On knowledge and information, the Plaintiff's violation of its contractual duty under the Mortgage Loan contract and the Mortgage Refinancing contract entitle the Defendants to an award of their actual damages.

FOR A FOURTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM:

31. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.

32. This Fourth Defense, Counterclaim and Cross-Claim is brought against Plaintiff and Cross-Defendant CRAFT DEVELOPMENT to enforce their rescission of the mortgage loan and for breach of contract due to Plaintiff's misrepresentations set out and referenced herein. This action arises under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§1701 1720.

33. In or about May, 2006, the Cross-Plaintiffs, without having been furnished a property report as required by 15 U.S.C. §1703(a), signed an agreement for a deed with Cross-Defendant, CRAFT DEVELOPMENT, for Lot 311 of the Edgewater Subdivision, as shown at Plat Book 2005 at Page 559 in the Office of the Clerk of Court for Lancaster County, South Carolina, that is, the real property which is the subject of this foreclosure action.

34. The Cross Defendant CRAFT DEVELOPMENT is a developer within the definition set forth in 15 U.S.C. §1701(4), and Edgewater Subdivision is a subdivision within the definition set forth in 15 U.S.C. §1701(3).

35. The Cross Defendant WELLS FARGO is a developer within the definition set forth in 15 U.S.C. §1701(4) in that ,

36. On or after January 28, 2011, a printed property report or information pursuant thereto was furnished to the Defendants. A copy of those documents is attached hereto and incorporated herein.

37. As of the date of this Complaint, the Defendants had paid to CRAFT DEVELOPMENT, in accordance with the Agreement to Purchase, the full sum of Two-Hundred Twenty-Nine Thousand and no/100 (\$ 229,000.00) Dollars, financing the sum of Two-Hundred Six Thousand and no/100 (\$ 206,000.00) Dollars through the Plaintiff. To the Plaintiff, as the financing bank, to CRAFT

DEVELOPMENT as a down-payment and to the Edgewater Homeowners Association, the Defendants had paid or repaid approximately One-Hundred Twenty-Five and no/100 (\$125,000.00) Dollars on these transactions.

38. Upon learning of the failure and misrepresentations of CRAFT DEVELOPMENT as the seller of the subject real property, as to its failure to comply with the above-cited Federal Statutes, as to its funding of the amenities which were to be part of the subdivision, and its violation of the HUD requirements as to the development of the subdivision of which the subject real property is part, the Defendants gave notice of their rescission of the purchase contract. A copy of that notice is attached hereto and incorporated herein.

39. Upon being advised of the legal effect of the Plaintiff's violations of RESPA and of the South Carolina UTPA, and upon being advised of the legal effect of CRAFT DEVELOPMENT's violations of the Interstate Land Development Act cited above, and of RESPA and of the South Carolina UTPA, and based upon the material nature of the representations made (or which were allegedly made) by the Plaintiff's agent, servant or employee supplying the real estate appraisal, the Defendants gave oral and written notice of their rescission of the sale and of the mortgage loan agreement.

40. On knowledge and information, the Defendants have completed all actions requested of them by H.U.D. and CRAFT DEVELOPMENT to evidence and effect the said rescission.

41. The Plaintiff has, to date, refused to cancel the sale and mortgage loan contract and return the money paid by or on behalf of the Defendants for the subject real property and on their mortgage loan.

42. On knowledge and information, the said failure and refusal of CRAFT DEVELOPMENT constitute a violation of 15 U.S.C. 1703(a).

43. On knowledge and information, the said failure and refusal of CRAFT DEVELOPMENT entitle the Defendants to a rescission of the said Agreement of sale, pursuant to 15 U.S.C. §1703(c) and to a refund of all sums paid to CRAFT DEVELOPMENT thereunder.

44. On knowledge and information, the said failure and refusal of CRAFT DEVELOPMENT entitle the Defendants to a refund of all sums paid to CRAFT DEVELOPMENT under their agreement, and to an award of interest, court costs, a reasonable amount for attorney's fees, independent appraisers' fees,, and travel to and from the property, pursuant to 15 U.S.C. §§1703(c) and 1709(c).

FOR A FIFTH DEFENSE AND COUNTERCLAIM:

45. All of the allegations herein and consistent with this Motion are restated by this reference, as fully as if set out herein.

46. This Fifth Defense and Counterclaim is brought against Plaintiff for fraud by misrepresentations and concealments of material fact.

47. On knowledge and information, the actions referenced herein constitute misrepresentations or concealment by the Plaintiff of the following facts:

- a. that the value of the subject real estate was not that of the appraisal furnished to the Defendants;
- b. that the value of the subject real property had been negligently appraised when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. that the methods of appraisal used for the subject real property included, but did not disclose, the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value; and
- d. that the Defendants would be supplied with a copy of the said Real Estate Appraisal.

48. The facts referenced in the paragraphs above were material facts.

49. On knowledge and information, the Plaintiff made the misrepresentations and/or concealments of material facts set out and referenced herein with full knowledge of their falsity or with reckless disregard of the truth.

50. The misrepresentations and/or concealments of material fact set out and referenced herein was committed by the Plaintiff willfully, wantonly and with reckless disregard of the rights of the Defendants.

51. On knowledge and information, the Plaintiff intended that the Defendants rely upon the misrepresentations and/or concealments of material fact set out and referenced herein.

52. The Defendants did rely on the misrepresentations and/or concealments of material fact of the Plaintiff set out and referenced herein.

53. On knowledge and information, the Defendants had a right to rely on the truth of the said misrepresentations and/or concealments or material fact in that the premises and the actions of the Plaintiff were under the Plaintiff's control and the Plaintiff could reasonably be expected to know their truth and validity.

54. The Defendants have suffered damages as a proximate result of such misrepresentations, and/or concealments of material fact as are set out and referenced herein.

FOR A SIXTH DEFENSE AND COUNTERCLAIM:

55. All matters, set out elsewhere in this Complaint and consistent herewith, are realleged hereby as fully as if set out herein.

56. This Sixth Defense and Counterclaim is brought against Plaintiff for negligent misrepresentations and concealments of material fact.

57. On knowledge and information, the actions referenced herein constitute misrepresentations by the Plaintiff of the following facts:

- a. that the value of the subject real estate were that of the appraisal furnished to the Defendants;
- b. that the value of the subject real property had been properly appraised when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. that the methods of appraisal used for the subject real property included, and/or disclosed, the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value; and

- d. that the Defendants would be supplied with a copy of the said Real Estate Appraisal.

58. The actions of the Plaintiff referenced herein constitute concealment or omission by the said Plaintiff of the following facts:

- a. that the value of the subject real estate was not that of the appraisal furnished to the Defendants;
- b. that the value of the subject real property had been negligently appraised when the Defendants' reliance thereon and resulting injury (which are alleged hereby) was reasonably foreseeable;
- c. that the methods of appraisal used for the subject real property did not include, and/or disclose, the existence of an "extraordinary" or "hypothetical condition" in that the amenities of the subdivision were not funded and the lots unsold, in that the owner and developer had failed to provide proof that it or they had failed to comply with HUD regulatory requirements, and in the use of comparables to state what was an undisclosed prospective value; and
- d. that the Defendants would be supplied with a copy of the said Real Estate Appraisal.

59. The said representations and/or concealments of material fact were false.

60. The Defendants were ignorant of the falsity of the Plaintiff's representations and/or concealments of material fact referenced above.

61. The Plaintiff had a pecuniary interest in making the representations and or concealing the material facts referenced above.

62. The Plaintiff had a duty of care to see that they communicated truthful information to the Defendants.

63. The Plaintiff breached its duty of care by failing to exercise due care in its said actions and communications.

64. The Defendants justifiably relied on the above representations and concealments of the Plaintiff, in that the premises and the actions of the Plaintiff were under the Plaintiff's control and the said Plaintiff could reasonably be expected to know their truth.

65. The Defendants have suffered the pecuniary losses set out or referenced above as the proximate result of their reliance upon the representations and/or concealments of material fact by the Plaintiff referenced above.

WHEREFORE the said Defendants RONALD P. PAPPAS and CAMINE PAPPAS pray:

AS TO THE PLAINTIFF'S ACTION FOR FORECLOSURE HEREIN:

A. That this Court inquire into and determine all matters set out in the Complaint herein, including, but not limited to, all questions relating to the seniority of recorded liens on the subject real property, and

B. That the orders of the Court herein accord the said Defendant all protections normally accorded to persons in the position of the said Defendant.

AS TO THE SECOND DEFENSE AND COUNTERCLAIM (UTPA):

C. Award the Defendants three times their actual damages sustained pursuant to S.C. Code Ann. § 39-5-140(a) (West) against the Plaintiff;

D. Award the Defendants exemplary and punitive damages against the Plaintiff, by reason of the Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

E. Award the Defendants their reasonable attorney's fees and costs pursuant to S.C. Code Ann. § 39-5-140(a) (West), to be paid by the Plaintiff;

AS TO THE THIRD DEFENSE, SET-OFF OR COUNTERCLAIM (RESPA):

F. Allow the Defendants their actual damages and their attorney's fees, as per 12 U.S.C. § 2605(f)(1) and (3), against the Plaintiff;

AS TO THE FOURTH DEFENSE (RESCISSION UNDER ILSFDA):

G. Declare the rescission of the Defendants' Agreement of Sale with Cross-Defendant CRAFT-DEVELOPMENT and their Mortgage loan contract with the Plaintiff;

H. Award the Defendants their actual damages against the Plaintiff;

I. Award the Defendants a refund of all sums paid to CRAFT DEVELOPMENT under their agreement, and to an award of interest, court costs, a reasonable amount for attorney's fees, independent appraisers' fees,, and travel to and from the property, pursuant to 15 U.S.C. §§1703(c) and 1709(c).

AS TO THE FIFTH DEFENSE AND COUNTERCLAIM (FRAUD):

J. Award the Defendants their actual damages sustained by reason of the Plaintiff's fraudulent actions and concealments as referenced herein;

K. Award the Defendants exemplary and punitive damages against the Plaintiff, by reason of the Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

AS TO THE SIXTH DEFENSE AND COUNTERCLAIM (NEGLIGENT MISREPRESENTATION):

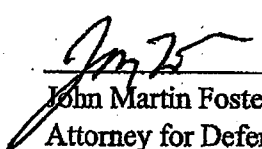
L. Award the Defendants their actual damages sustained by reason of the Plaintiff's negligent misrepresentations and concealments as referenced herein;

M. Award the Defendants exemplary and punitive damages against the Plaintiff, by reason of the Plaintiff's willful, wanton and malicious actions and inaction as referenced herein;

AS TO ALL DEFENSES, COUNTERCLAIMS AND CROSSCLAIMS:

N. Include a prayer for any other relief to the Defendants which may be authorized under other causes of action; and

O. Award or allow the Defendants such other and further relief as this Court may deem just and proper.


John Martin Foster
Attorney for Defendants PAPPAS

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Rock Hill, South Carolina

September 26, 2011

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

WELLS FARGO BANK, N.A., Successor
by Merger to WACHOVIA BANK, N.A.,

Plaintiff,

v.

RONALD P. PAPPAS, a/k/a
Ronald Peter Pappas, and
CAMINE PAPPAS,

Defendants.

RONALD P. PAPPAS, a/k/a
Ronald Peter Pappas, and
CAMINE PAPPAS,

Cross-Plaintiffs,

v.

WELLS FARGO BANK, N.A., and
CRAFT DEVELOPMENT, LLC,
a North Carolina limited liability company,

Cross-Defendants.

FILED
OFFICE OF CLERK
IN THE COURT OF COMMON PLEAS

C.A. NO. 2011-CP-29-873
FILED 12-11-14

CLERK OF COURT
LANCASTER, SC

**PLAINTIFF WELLS FARGO'S
AMENDED REPLY TO DEFENDANT
PAPPAS' AMENDED ANSWER
COUNTERCLAIMS AND CROSS-CLAIM**

Plaintiff Wells Fargo Bank, N.A. s/b/m to Wachovia Bank, N.A. ("Wells Fargo"), by and through the undersigned counsel, and for an Amended Reply to Defendants Ronald P. Pappas and Camine Pappas' (collectively, the "Borrowers") Amended Answer, Counterclaim and Cross-Claim (the "Counterclaim"), states as follows:

FOR A FIRST DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

The Counterclaim fails to state facts sufficient to constitute a cause of action upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE

(General Denial)

Wells Fargo denies all allegations not hereinafter specifically admitted. As to the correspondingly numbered Paragraphs to the Counterclaim, Wells Fargo responds as follows:

AS TO THE DEFENDANTS' FACTUAL BACKGROUND

1. No response is required as to Paragraph 1 of the Counterclaim. To the extent a response is required, denied.
2. Wells Fargo admits the allegations contained in Paragraph 2.
3. Wells Fargo admits the allegations contained in Paragraph 3.
4. Paragraph 4 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.
5. Wells Fargo specifically denies that it is a "developer" as defined under 15 U.S.C. §1701(4) and demands strict proof thereof.

AS TO THE DEFENDANTS' FIRST DEFENSE

6-8. Paragraphs 6-8 of Defendants' Counterclaims consist of the Defendants' Defenses to the Complaint and therefore require no response from Wells Fargo. To the extent that Wells Fargo is required to respond to the allegations contained in Paragraphs 6-8, those allegations are denied and the allegations of the Complaint are re-alleged as if set forth fully herein.

AS TO THE DEFENDANTS' SECOND DEFENSE AND COUNTERCLAIM

9. As to Paragraph 9 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 8 of the Counterclaim as if fully restated herein.

10. The allegations of Paragraph 10 of the Defendants' Counterclaim state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

11. Wells Fargo denies the allegations contained in Paragraph 11.

12. Wells Fargo denies the allegations contained in Paragraph 12.

13. Wells Fargo denies the allegations contained in Paragraph 13.

14. Wells Fargo denies the allegations contained in Paragraph 14.

15. Responding to the allegations of Paragraph 15, Wells Fargo admits only that the appraiser used in connection with the Defendants purchase of the subject real property was licensed by the State of South Carolina. Wells Fargo denies the remaining allegations of Paragraph 15.

16. The allegations of Paragraph 16 of the Defendants' Counterclaim state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

17. The allegations of Paragraph 17 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

18. The allegations of Paragraph 18 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

19. Wells Fargo denies the allegations contained in Paragraph 19 and specifically listed in subparts a-e.

AS TO THE DEFENDANTS' THIRD DEFENSE, SET-OFF OR COUNTERCLAIM

20. As to Paragraph 20 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 19 of the Counterclaim as if fully restated herein.

21. The allegations of Paragraph 21 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

22. The allegations of Paragraph 22 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

23. The allegations of Paragraph 23 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

24. Responding to the allegations of Paragraph 24, Wells Fargo admits only that the Defendants paid a fee for appraisal associated with the loan which is the subject of this foreclosure. Wells Fargo denies the remaining allegations of Paragraph 24.

25. The allegations of Paragraph 25 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same and demands strict proof thereof.

26. Wells Fargo denies the allegations contained in Paragraph 26 and demands strict proof thereof.

27. Answering the allegations of Paragraph 27 of the Defendants' Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief as to the sufficiency of any alleged "written inquiry" and therefore denies the same. To the extent a response is required, Wells Fargo denies that 12 U.S.C. §2605(e) applies to the loan which is the subject of this foreclosure and therefore, denies that the alleged written inquiry was sufficient under 12 U.S.C. §2605(e)(1)(B) or Reg. X, 24 C.F.R. §3500.21(e)(2).

28. In response to the allegations contained in Paragraph 28, Wells Fargo lacks knowledge sufficient to form an opinion or belief as to Wells Fargo's response to the alleged written inquiry and therefore denies the same. To the extent a response is required, Wells Fargo denies that 12 U.S.C. §2605(e) applies to the loan which is the subject of this foreclosure and therefore, denies that the alleged written inquiry was required under 12 U.S.C. §2605(e)(1)(B) or Reg. X, 24 C.F.R. §3500.21(e)(2).

29. The allegations of Paragraph 29 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

30. Wells Fargo denies the allegations contained in Paragraph 30.

AS TO THE DEFENDANTS' FOURTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM

31. As to Paragraph 31 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 30 of the Counterclaim as if fully restated herein.

32. The allegations of Paragraph 32 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

33. Paragraph 33 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.

34. The allegations of Paragraph 34 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

35. Wells Fargo denies the allegations contained in Paragraph 35.

36. Paragraph 36 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.

37. Responding to the allegations of Paragraph 37, Wells Fargo admits only Defendants applied for financing with Wells Fargo's predecessor Wachovia Bank, N.A., which was approved and the funds were utilized in purchasing the real property which is the subject of this foreclosure. Wells Fargo denies the remaining allegations of Paragraph 37.

38. Paragraph 38 makes no allegations against Wells Fargo, thus no response is required. To the extent a response is required, denied.

39. Wells Fargo denies the allegations contained in Paragraph 39.

40. Answering the allegations of Paragraph 40 of the Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief, and therefore denies the same.

41. Responding to the allegations of Paragraph 41, Wells Fargo denies that it has any obligation to cancel its mortgage loan as a result of the Defendants' agreement with Craft Development, LLC.

42. The allegations of Paragraph 42 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

43. The allegations of Paragraph 43 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

44. The allegations of Paragraph 44 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

AS TO THE DEFENDANTS' FIFTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM

45. As to Paragraph 45 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 44 of the Counterclaim as if fully restated herein.

46. The allegations of Paragraph 46 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

47. Wells Fargo denies the allegations contained in Paragraph 47.

48. The allegations of Paragraph 48 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

49. Wells Fargo denies the allegations contained in Paragraph 49.

50. Wells Fargo denies the allegations contained in Paragraph 50.

51. Wells Fargo denies the allegations contained in Paragraph 51.

52. Answering the allegations of Paragraph 52 of the Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief, and therefore denies the same.

53. Wells Fargo denies the allegations contained in Paragraph 53.

54. Wells Fargo denies the allegations contained in Paragraph 54.

AS TO THE DEFENDANTS' FIFTH DEFENSE, COUNTERCLAIM AND CROSS-CLAIM

55. As to Paragraph 55 of the Counterclaim, Wells Fargo incorporates herein by reference its responses to Paragraphs 1 through 54 of the Counterclaim as if fully restated herein.

56. The allegations of Paragraph 56 of the Defendants' Counterclaims state a legal conclusion to which no response is required. To the extent a response is required, Wells Fargo denies the same.

57. Wells Fargo denies the allegations contained in Paragraph 57 and specifically listed in subparts a-d.

58. Wells Fargo denies the allegations contained in Paragraph 58 and specifically listed in subparts a-d.

59. Wells Fargo denies the allegations contained in Paragraph 59.

60. Wells Fargo denies the allegations contained in Paragraph 60.

61. Wells Fargo denies the allegations contained in Paragraph 61.

62. In response to the allegations contained in Paragraph 62, Wells Fargo admits so much which alleges that it has a duty to communicate truthfully. The remaining allegations contained in Paragraph 62 are denied.

63. Wells Fargo denies the allegations contained in Paragraph 63.

64. Wells Fargo denies the allegations contained in Paragraph 64.

65. Answering the allegations of Paragraph 65 of the Counterclaim, Wells Fargo lacks knowledge sufficient to form an opinion or belief, and therefore denies the same.

AS TO THE PRAYER FOR RELIEF

Wells Fargo denies that the Defendants are entitled to any of the relief prayed for in Paragraphs A through O on pages 11-13 of the Counterclaim.

FOR A THIRD DEFENSE

(Waiver)

Wells Fargo states that the Defendants have waived their claims against Wells Fargo through their conduct.

FOR A FOURTH DEFENSE

(Assumption of the Risk)

The Defendants' claims against Wells Fargo are barred because the Defendants knew and understood the cost, risk, and potential rewards of purchasing the property and therefore assumed the risk associated with purchasing the property.

FOR A FIFTH DEFENSE

(Compliance with Applicable Law)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that any actions taken and/or procedures followed by Wells Fargo concerning the Defendants were reasonable, done in good faith and authorized by contract or law, and therefore the Defendants are precluded from recovering against Wells Fargo.

FOR A SIXTH DEFENSE

(Good Faith)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo has at all times acted in good faith and in compliance with any laws and contracts.

FOR A SEVENTH DEFENSE

(Prior Breach)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that some or all of the Defendants' claims are barred by the Defendants' prior breach of the parties' contract.

FOR AN EIGHTH DEFENSE

(Regulated Industry)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that it operates within a regulated industry and therefore, is exempt from liability under the South Carolina Unfair Trade Practices Act.

FOR A NINTH DEFENSE
(Public Interest Not Affected)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the acts alleged by Defendants in their Counterclaim, which are expressly denied, to not affect the public interest but are essentially private in nature, and therefore the South Carolina Unfair Trade Practices Act is inapplicable.

FOR A TENTH DEFENSE
(Failure to Perform)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants failed to perform under the Promissory Note and Mortgage, and therefore, Defendants' claims must be dismissed.

FOR AN ELEVENTH DEFENSE
(Compliance with the Note and Mortgage)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that it performed all of its obligations under any alleged loan contract and/or in procuring any alleged loan contract. Wells Fargo pleads the terms and conditions of any alleged loan contract as a complete defense and bar to this action.

FOR A TWELFTH DEFENSE
(Bona Fide Error)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that if and to the extent any of its purported acts or omissions violated federal or state laws, which is expressly denied, such acts were unintentional and resulted from bona fide

error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error. Accordingly, Wells Fargo is not liable to Defendants for any such purported acts or omissions.

FOR A THIRTEENTH DEFENSE
(Consent)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that Defendants' claims are barred, in whole or in part, by the doctrine of consent.

FOR A FOURTEENTH DEFENSE
(Constructive Trust)

Further answering the Counterclaim and without waiving any other defenses, if and to the extent Wells Fargo's claims are barred by the doctrine of unclean hands, which is expressly denied, Wells Fargo is entitled to a constructive trust for all amounts owed on the Note and Mortgage.

FOR A FIFTEENTH DEFENSE
(Unclean Hands)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants' claims against Wells Fargo are barred because of the Defendants' own conduct and/or the equitable doctrine of unclean hands.

FOR A SIXTEENTH DEFENSE
(Laches)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants' claims against Wells Fargo are barred, in whole or in part, under the doctrine of laches.

FOR A SEVENTEENTH DEFENSE

(Waiver and/or Estoppel)

Further answering the Counterclaim and without waiving any other defense, Wells Fargo states that the Defendants' claims against Wells Fargo are barred in whole or in part, under the doctrines of waiver and/or estoppel.

FOR AN EIGHTEENTH DEFENSE

(Offset)

Further answering the Counterclaim and without waiving any other defense, Wells Fargo states that to the extent the Defendants are entitled to recover damages against Wells Fargo, which is expressly denied, Wells Fargo is entitled to set off the damages caused by the Defendants' breach of the promissory note against any amount Wells Fargo is required to pay on the claims asserted by the Defendants.

FOR A NINETEENTH DEFENSE

(Speculative Damages)

Further answering the Counterclaim and without waiving any other defense, Wells Fargo states that the Defendants' claim for damages is speculative and therefore disallowed under South Carolina law.

FOR A TWENTIETH DEFENSE

(Failure to Mitigate)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Defendants are legally obligated to mitigate their damages. Upon information and belief, Wells Fargo can show that the Defendants have failed to mitigate their damages and are therefore barred from recovery based on this failure.

FOR A TWENTY-FIRST DEFENSE
(Economic Loss Rule)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo is informed and believes that the Defendants' claims, to the extent they may seek to recover only economic losses in tort, are barred by the economic loss doctrine.

FOR A TWENTY-SECOND DEFENSE
(Punitive Damages Improper)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that the Counterclaim fails to set forth a claim for punitive damages upon which relief may be granted.

FOR A TWENTY-THIRD DEFENSE
(Punitive Damages Improper)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that to the extent the Defendants' Counterclaim asserts a demand for punitive damages, Wells Fargo specifically incorporates by reference any and all standards of limitations regarding the determination and/or enforceability of punitive damage awards that arose in the decisions of *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S.Ct. 1589 (1996); *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678 (2001); and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 123 S.Ct. 1513 (2003).

FOR A TWENTY-FOURTH DEFENSE
(Punitive Damages Improper)

Further answering the Counterclaim and without waiving any other defenses, Wells Fargo states that to the extent that the Defendants' Counterclaim seeks punitive damages, Wells Fargo affirmatively pleads the following in regard to punitive damages:

- (a) An award of punitive damages in this civil action would amount to a deprivation of property without due process of law in violation of the Fifth and Fourteenth

Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution;

- (b) An award of punitive damages in this civil action would violate the due process provisions of the Fifth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution;
- (c) The criteria used for determining whether and in what amount punitive damages may be awarded are impermissible, vague, imprecise and inconsistent and, therefore, violate the due process provisions of the Fifth and Fourteenth Amendments of the United States Constitution and the corresponding provisions of the South Carolina Constitution;
- (d) An award of punitive damages in this civil action would amount to an excessive fine in violation of the Eighth Amendment to the United States Constitution and the corresponding provisions of the South Carolina Constitution; and
- (e) The Defendants' claim for punitive damages is barred by the "double jeopardy" clause of the Fifth Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment.

FOR A TWENTY-FIFTH DEFENSE
(Statute of Frauds)

Further answering the Counterclaims and without waiving any other defenses, Wells Fargo states that the Defendants' claims are barred, in whole or in part, by the Statute of Frauds.

FOR A TWENTY-SIXTH DEFENSE
(Statute of Limitations)

Further answering the Counterclaims and without waiving any other defenses, Wells Fargo states that the Defendants' claims are barred, in whole or in part, by the applicable statutes of limitations of such claims.

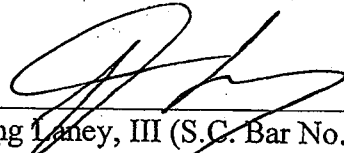
FOR A TWENTY-SEVENTH DEFENSE
(Reservation and Non-Waiver)

Wells Fargo reserves the right to assert any and all other defenses to Defendants' Counterclaims, both factual and legal, as may be justified by information subsequently obtained.

WHEREFORE, Wells Fargo prays as follows:

- 1) That the Court enter judgment in favor of Wells Fargo on its Complaint;
- 2) That the Defendants have and recover nothing of Wells Fargo, and that the Counterclaim be dismissed with prejudice;
- 3) That the costs of this action be taxed to the Defendants;
- 4) That the Court award Wells Fargo's attorneys' fees as permitted by law; and
- 5) That the Court order such other and further relief as it deems just and proper.

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to Wachovia Bank, N.A.*

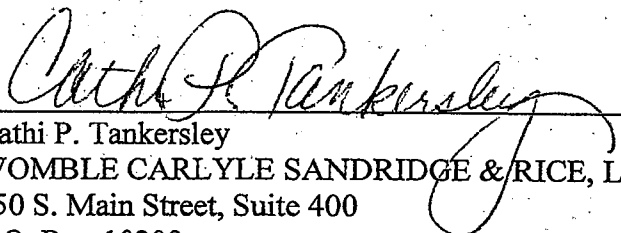
This 30 day of November, 2011
Greenville, South Carolina

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that on this 30th day of November, 2011, a copy of the attached **WELLS FARGO'S AMENDED REPLY TO DEFENDANT PAPPAS' ANSWER COUNTERCLAIM AND CROSS-CLAIM** was served by causing to be deposited a copy of the same via United States Certified Mail, postage prepaid, addressed to the following:

John Martin Foster
The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Attorney for Defendants Ronald P. Pappas and Camine Pappas


Cathi P. Tankersley
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1 THE COURT - 2011-CP-29-00873, Wells Fargo vs.
2 Pappas. Pappas, Pappas. Let's see, this is Mr. Foster.
3 Is that right? Am I right?

4 MR. FOSTER - Yes, sir, and Mr. Laney.

5 MS. HUNT - Ms. Hunt, Your Honor, here on behalf
6 of Greg Shelton.

7 THE COURT - All right and say that name again.
8 I'm sorry, ma'am.

9 MS. HUNT - Amy Hunt.

10 THE COURT - And, yes, sir, your name again?

11 MR. LANEY - It is Sterling Laney. I'm
12 representing Wells Fargo in this matter.

13 THE COURT - All right, and this is Wells Fargo's
14 motion for summary judgment. Is that correct?

15 MR. LANEY - Yes, sir, Your Honor. I think I -- I
16 don't know if you ---

17 THE COURT - Motions for supplemental proceeding
18 and response to Motion of C. I don't know what that means.

19 MR. LANEY - I think Mr. Foster also has a motion
20 to supplement his pleadings ---

21 THE COURT - Okay. All right.

22 MR. LANEY - --- in addition to our motion for
23 summary judgment.

24 THE COURT - I see it. All right. Thank you.
25 Which was filed first?

1 MR. FOSTER - The summary judgment I believe, sir.

2 MR. LANEY - I believe the summary judgment was
3 filed first.

4 THE COURT - All right, I'll be glad to hear from
5 you. Yes, sir.

6 MR. LANEY - Okay. Thank you, Your Honor. Again,
7 Sterling Laney with the firm of Womble, Carlyle, Sandridge
8 and Rice representing Wells Fargo Bank in this mortgage
9 foreclosure matter, Your Honor. We are here to hear our
10 motion for summary judgment this morning and I do want to
11 make it clear this is a mortgage foreclosure matter, but
12 just to give you a little background on context which I
13 think is important, for purposes of our motion today, this
14 is not a mortgage foreclosure action that involves
15 somebody's residence or a premises. This involves a vacant
16 lot, lot 311 in the Edgewater Subdivision which is a
17 partially completed lot here in Lancaster County I believe;
18 we took deposition of the Defendant, Ronald Pappas, at the
19 end of October, 2013 and he testified there were
20 approximately 50 or so houses built; the golf course was in
21 -- so is a partially completed subdivision.

22 THE COURT - Most of them I hear about up here are
23 partially completed it seems like.

24 MR. LANEY - Yes, there's a -- it is not a unique
25 situation, Your Honor ---

1 THE COURT - They're very different in Lexington.
2 Most of them in Lexington though are mobile as opposed to
3 not being partially completed. Be that as it may, Mr.
4 Laney, go right ahead.

5 MR. LANEY - Okay. I understand exactly what
6 you're saying, Your Honor. The other -- I do want to make
7 sure that the -- Your Honor understands that point, because
8 significant because some of the defendant's counterclaims
9 relate to whether or not Wells Fargo provided -- and at
10 that time it was Wachovia, Your Honor, so if I use those
11 terms interchangeably, I'm referring to the same -- the
12 same institution -- but the defendant's counterclaims are
13 that Wachovia at the time and now Wells Fargo did not
14 provide him with a copy of the appraisal, and there were
15 two different loans. We're foreclosing upon the 2009
16 refinance of the initial purchase loan which was done in
17 2006, and there was an appraisal done in May of 2006, and
18 then there was another valuation of property done in 2009
19 when the refinance was done. And Mr. Pappas has complained
20 that he has not -- he was not provided the 2006 appraisal
21 until a couple of months before his deposition, October,
22 2013, and has not yet been provided a copy of the valuation
23 that was used for 2009. And we cited in our memorandum --
24 I hope Your Honor had an opportunity to see it; I have
25 another copy if you need it, Your Honor.

1 THE COURT - Yes, sir. Would you hand it up,
2 please.

3 MR. LANEY - I will. Bear with me, Your Honor.
4 If I may, Your Honor, I'm also handing up a copy of
5 24CFR3500.5 which is a portion of The Equal Credit
6 Opportunity Act Reg. B which provides that RESPA -- that
7 there are certain exemptions to RESPA which is the code
8 section of the Real Estate Settlement Procedures Act which
9 is what Mr. Pappas is complaining about, and states under
10 Exemption B number 4, Vacant Land, any loans secured by
11 vacant or unimproved property is exempt from RESPA. And we
12 also attached as Exhibits and handed up as part of our
13 memorandum 12CFR202.14 which states that a person's
14 entitled to a copy in the appraisal on a loan that is to be
15 secured by a lien on a dwelling, and dwelling means a
16 residential structure that contains one to four units
17 whether or not that structure is attached to real property,
18 so the whole point of saying that, Your Honor, is Mr.
19 Pappas was not entitled to receive a copy of the appraisal
20 even though he was not a party to the appraisal either.
21 The appraisal was ordered Wachovia. He admitted that in
22 his deposition; it was provided to Wachovia by Pigman ---

23 THE COURT - And he wasn't entitled to see a copy.

24 MR. LANEY - He was not entitled to see a copy
25 because he was -- he used all of his loan proceeds to buy

1 lot 311, Your Honor, so with it being vacant land, it's an
2 exemption to the RESPA requirements to provide a copy of an
3 appraisal upon a request.

4 THE COURT - Can the borrower ask for a copy and
5 receive it?

6 MR. LANEY - He can, Your Honor, but it's at the
7 discretion of the creditor whether or not to provide that.
8 It's not -- there is no duty and therefore there can be no
9 liability that flows from refusing or just not providing
10 it.

11 THE COURT - I was just curious, what is the
12 custom within the banking industry for providing or giving
13 a copy of an appraisal to a party?

14 MR. LANEY - I would be hesitant to speak on
15 behalf of the entire banking industry, but I think it
16 depends on the particular financial institution. I think
17 some ---

18 THE COURT - Well, then perhaps -- I mean Wells
19 Fargo or Wachovia.

20 MR. LANEY - I think it depends also on the loan
21 officer and -- but I think it's not -- it would not be
22 uncommon to provide it if it is requested, Your Honor, but
23 sometimes they choose not too or if it's missing or
24 whatever. You certainly don't have a duty to find it and
25 provide it in these kind of cases. The second context, in

1 addition to this being a vacant piece of property we're
2 foreclosing upon and not somebody's home or residence is
3 that Mr. Pappas is a sophisticated purchaser and borrower.
4 This is not an uneducated person who was conned into buying
5 a piece of property that he had never seen or did not
6 understand what he was purchasing. He makes his livelihood
7 as a real estate developer. He testified that he has
8 worked for many of the largest homebuilders throughout the
9 country, including D-R Horton, Jim Walters Homes. He was
10 the Atlantic Region President for Jim Walter Homes
11 supervising over 250 employees at one time. He also worked
12 as a real estate broker, Your Honor, and also when he was
13 in California, worked for Butterfield Savings & Loan as the
14 construction vice-president in that financial institution.
15 This is a man that understands the lending process, buys
16 property on a frequent basis and develops that property as
17 well, Your Honor. He has stated at the time that he
18 purchased lot 311 in March -- or he entered in a contract
19 March, 2006, he had bought 20 other properties, five of
20 which were investment properties, vacant properties, two of
21 which were in this area in the Waxhaw area. He paid cash
22 for those. He did not finance those, and he did not get an
23 appraisal for either one of those properties in entering
24 into the contract and entering into the purchase. I think
25 that -- I think all that's significant when he hear what

1 his claims are against Wachovia. Your Honor, as I said,
2 this involves lot 311 Edgewater Subdivision. The seller,
3 Ms. Hunt, represents Craft Development LLC. They were the
4 developer and the seller of this subdivision. Mr. Pappas
5 testified to that on page 11 of his deposition; he also
6 testified that he went to several events; they were put on
7 by Craft Development, marketing it; he went to at least two
8 of those events, one in Ballantyne up in Charlotte, another
9 one at the property, and he testified that he visited the
10 property at least four times before he entered into the
11 contract, so he was familiar with the property; he has his
12 background as a real estate developer. He sees this; he's
13 gone to the sales events put on by Craft Development, and
14 in March 29th, 2006 he executes a purchase agreement to buy
15 and sell which is attached as an exhibit to the memorandum,
16 Your Honor, and agrees to buy lot 311 for two hundred and
17 twenty-nine thousand dollars. Now, significantly, Wachovia
18 is not a party to that agreement. Wachovia is not
19 mentioned in that agreement. There is no contingency that
20 the property appraised for the purchase price or appraised
21 for a certain amount that can be found in the four corners
22 of that document, and also significantly, especially when I
23 bring the case law up in just a little bit, Your Honor, he
24 did not -- he testified very candidly that he did not
25 negotiate the purchase price with anyone at Wachovia. He

1 dealt only with Craft Development to come up with that
2 purchase price of two hundred and twenty-nine thousand
3 dollars. He did not speak. He admits that in his request
4 to admit number 11. He did not speak with a Wachovia
5 employee prior to executing that agreement, and he did not
6 apply for the Wachovia loan until after he had entered into
7 this agreement, so he negotiates a purchase price with
8 Craft Development to buy lot 311 for two hundred and
9 twenty-nine thousand dollars, then after he signs that
10 agreement, signs that contract, he then approaches Wachovia
11 and asks to be approved for a loan in order to buy lot 311.
12 He was approved for that loan, and as part of that process,
13 Wachovia ordered an appraisal from Pigman Real Estate
14 Appraisals, a local appraisal group here in Lancaster
15 County, and they provided an appraisal date of May 10th,
16 2006. So that's over a month after he executed this
17 contract and negotiated the purchase price they received an
18 appraisal from Mr. Pigman's appraisal group saying that the
19 lot's worth two hundred and thirty thousand dollars, and
20 they approved Mr. Pappas for a loan of two hundred and six
21 thousand one hundred dollars, and on May 30th, 2006 he
22 entered into a loan closing; he received the deed for lot
23 311. He executed a promissory note and a mortgage in favor
24 of Wachovia for two hundred and six thousand one hundred
25 dollars. Now, the terms were a three year note paying

1 6.75% interest, going to pay interest only for three years
2 and had a balloon payment at the end of three years.
3 Basically, is an uneventful three year between 2006 and
4 2009 except as we know, the real estate economy is
5 collapsing and things are happening and values of
6 properties are going down and that affects many developers;
7 that affects many borrowers, affects lots of folks related
8 in the real estate industry, also affects a lot of
9 homeowners. The development as it is today was not
10 completed; roads and certain infrastructure all is
11 completed. He testified that there's roads; there's
12 utilities; there's sewer. There is a golf course; there's
13 50 houses; however, this is a very large piece of property.
14 They were contemplating, you know, over a thousand homes
15 being built there, and so the rest of the homes have not
16 been built by purchases of those lots. Mr. Pappas has not
17 tried to build anything; he has not tried to develop this
18 lot, but he realize that his maturity date's coming, and so
19 he calls -- he testified on page 57 of his deposition that
20 he called Wachovia and asked them to extend his loan, and
21 Wachovia agreed to do that. So in July of 2009 a new note
22 and a new mortgage was executed by Mr. Pappas and his wife.
23 This was in the amount of two hundred and ten thousand,
24 nine hundred and fifty-four dollars and seventy-five cents,
25 Your Honor, and Mr. Pappas quite candidly in his deposition

1 at page 59 and 60 admits that he and his wife executed that
2 note. He admits that they executed the mortgage; he admits
3 they received the loan proceeds from Wachovia, and he
4 admits that in early 2011, January or February of 2011 he
5 stopped making payments on that note and mortgage, and he
6 stated that since that time he has not attempted to make a
7 payment on that note and mortgage. So, Your Honor, our
8 first ground -- we're moving for summary judgment as to all
9 the counterclaims against us, but we're also asking for
10 summary judgment as to our foreclosure action, at least as
11 to liability, and we would submit that there is absolutely
12 zero question of fact, and so under the standards of Rule
13 56 there's no question of material fact in this case, that
14 quite candidly Mr. Pappas has admitted and acknowledged the
15 debt; he's admitted and acknowledged he executed the loan
16 documents and he has admitted and acknowledged that he
17 voluntarily just ceased to make payments on the loan and
18 that he has no intention of making the payments on the
19 loan. He also stated that he did not have the money --
20 enough money at this time to repay the loan in full, and so
21 we would ask Your Honor to grant summary judgment as to
22 liability on our foreclosure action, because there simply
23 is no dispute at all about our right to foreclosure on our
24 mortgage and seek a deficiency judgment after the, you
25 know, the judicial sale of the property. Now, Mr. Pappas -

1 - this lawsuit was filed in June, 2011, and in September,
2 2011, Mr. Pappas filed an amended answer and counterclaims,
3 and in those counterclaims he alleged five counterclaims.
4 He alleged unfair trade practices; he alleged violation of
5 Interstate Land Sales Act, also known as ILSA. He alleged
6 violations of the Real Estate Settlement Procedures Act,
7 RESPA, which we discussed a little bit previously, and he
8 also alleged fraud and negligent misrepresentation. Your
9 Honor, the testimony and the facts I've laid out to you
10 show that there is absolutely zero question of fact that
11 Mr. Pappas cannot prevail on any of these counterclaims due
12 to his own testimony at his deposition and due to the
13 documents that are in the record and attached to the
14 memorandum that you have before you. In addition to RESPA,
15 which we've talked about, which this type of loan is exempt
16 from and therefore does not apply and thus there can be no
17 liability for failure to provide the appraisal to Mr.
18 Pappas in this case, Wachovia is also not liable under the
19 Interstate Land Sales Act, because in order to be liable
20 under that Act, you have to show that the party being
21 charged with violation is either a developer or an agent
22 for the developer. Mr. Pappas candidly acknowledged in his
23 deposition that Craft Development was the developer; on
24 page 11 and on page 44 he states they're the developer,
25 they were the seller and they are the ones who were

1 supposed to put the amenities into the subdivision, not
2 Wachovia. In order for an agent to be liable, they have to
3 either sell or lease lots in the subdivision or use efforts
4 to sell or lease lots in a subdivision. Also, we cited the
5 case of Thompson vs. Bank of America which on the subject
6 it says, that banks can only be held liable if they go
7 beyond the ordinary course of dealing and participating in
8 the actual development, marketing or sale of the property.
9 Mr. Pappas acknowledged he has no evidence that Wachovia
10 engaged in any selling or any leasing of any lots in the
11 Edgewater Subdivision. In this case he also stated that
12 the mark -- any marketing was put on by Craft Development
13 and he acknowledged that they are the developer of this
14 property. For those reasons, there is simply -- can be no
15 liability flow to Wachovia or Wells Fargo for alleged
16 violation of the Interstate Land Sales Act, so they're
17 exempt from the RESPA. That doesn't apply to them, and
18 also ILSA simply does not apply to the bank in the
19 circumstance. It is not a situation -- there's zero
20 evidence, no testimony, no documents, nothing that would
21 show that Wachovia engaged in any -- took it out of the
22 ordinary course of banking in this matter. Your Honor,
23 that just leaves us with fraud and negligent
24 misrepresentation, and both of them -- failure to prove any
25 element of -- of fraud is -- or negligent misrepresentation

1 is fatal to a -- to a party's case. In order to prove
2 fraud, you've got to show a representation, its falsity,
3 its materiality, knowledge of its falsity or reckless
4 disregard of its truth, intent, that the representation be
5 acted upon, the hearer's ignorance of its falsity, the
6 hearer's reliance on its truth, the hearer's right to rely
7 on their own, and the hearer's consequent and proximate
8 injury. Failure to prove of any of these elements is
9 fatal. That's O'Shields vs. Southern Fountain Mobile Homes
10 which is a seminal case on that, Your Honor, but I was
11 citing out of King v. Oxford, which is a 1984 Court of
12 Appeals decision from Oconee County. And it's significant
13 in King v. Oxford and in West v. Gladney which we cited in
14 our memorandum, as well as Carolina Chloride v. Richland
15 County, they all state that one cannot relate -- rely,
16 excuse me -- upon a misstatement of facts of the truth as
17 easily within your reach, and the Courts do not set for the
18 purpose of relieving parties who refuse to exercise
19 reasonable diligence or discretion to protect their own
20 interest. A party must avail himself of the knowledge or
21 means of knowledge open to him. The Court will not protect
22 a person who with full opportunity to do so will not
23 protect himself. And, Your Honor, I stated -- everything
24 I've stated about Mr. Pappas to say this is a
25 sophisticated, knowledgeable purchaser and borrower in this

1 case. He visited this property four to six times before
2 executing the purchase contract and before applying for the
3 initial loan. In answer to Ms. Hunt's questions in the
4 deposition, he acknowledged that he had traveled to this
5 property at least a hundred times by the time he was
6 deposed, which if you back that out and cut it maybe in
7 half to when he refinanced the property, he had been down
8 there at least 40 or 50 times. He only lives 45 miles away
9 from this property in Waxhaw, so this is somebody who's
10 very familiar with the state of this subdivision, the
11 physical condition of the subdivision and is not just able
12 to look at it, he's able to understand what that means
13 because of his occupation as being a real estate developer
14 and all the other occupations that he held prior to buying
15 this property and also being a sophisticated purchaser and
16 investor in real estate. He also acknowledged in his
17 request to admit, which we've handed up and attached to our
18 memorandum that they were not prevented from independently
19 ascertaining the value and they did not use any efforts to
20 independently ascertain the value of the property. As I
21 stated before, Mr. Pappas did not receive the 2006
22 appraisal til a couple of months before his deposition in
23 October, 2013, therefore, over seven years after he
24 executed this contract, over seven years after he entered
25 into the initial loan and over four years after the re-

1 finance he saw the 2006 appraisal for the first time. The
2 case -- the case that's really on all fours and squares
3 with this case we have is Robertson v. First Union National
4 Bank which is 350 South Carolina 339, and Your Honor, I'm
5 happy to hand up a copy of this decision.

6 THE COURT - Please do.

7 MR. LANEY - I'm also happy to hand up any of the
8 other decisions that I've cited, Your Honor, King vs.
9 Oxford, West vs. Gladney and Carolina Chloride vs. Richland
10 County. I believe all of those -- those four cases when
11 taken together pretty much leave us here with the zero
12 doubt that there's any question of fact in this matter.
13 But, Your Honor, in the Robertson case you had something
14 very, very similar. You had a borrower, a purchaser, who
15 entered into a contract for some commercial property down
16 in the lower part of the state. I believe it was in
17 Charleston County. And they negotiated the purchase price
18 with the seller, and then they go to the bank, First Union,
19 and they apply for a loan. They get the loan; they don't
20 see the appraisal, and then there's a downturn in the
21 economy, the building -- the commercial building falls into
22 disrepair, they go to try to refinance the loan and a new
23 appraisal's done and it comes in significantly lower than
24 the original appraisal.

25 THE COURT - Is this the case you're referring to?

1 MR. LANEY - Robertson? Yes, sir, Your Honor.

2 THE COURT - Anderson vs. Citizen's Bank.

3 MR. LANEY - Oh, I apologize, Your Honor.

4 THE COURT - I was just noticing ---

5 MR. LANEY - I've got two -- that's the unfair
6 trade practices. I apologize.

7 THE COURT - Right. That's what I -- I noticed --
8 now Charlie Smith, Jr., one of the defendants in this case
9 was I believe either a homicide victim or the victim of
10 murder. Bill Prince was either a homicide victim or a
11 victim of murder down in Florence County, kind of a
12 fascinating criminal case, and I also note the Honorable
13 Judge Edward B. Cottingham tried this case, so it's got to
14 be some great law in this, no doubt about that.

15 MR. LANEY - Yes, you ---

16 THE COURT - Very succinct I might add.

17 MR. LANEY - I'm glad I could bring up some good
18 memories for you. I apologize -- I read -- I read the s-o-
19 n too quick at the end when I was looking through my cases
20 and I apologize.

21 MR. FOSTER - I'm not quite sure the Judge is
22 saying these are pleasant memories.

23 MR. LANEY - Okay, Your Honor, I'm going to bring
24 up with your permission the Robertson case, the King vs.
25 Oxford and the Carolina Chloride ---

1 THE COURT - Sure.

2 MR. LANEY - --- matter and also will bring up a
3 West vs. Gladney case. Those are the four cases that we're
4 relying on extensively in this matter. And I apologize for
5 the delay in getting ---

6 THE COURT - Oh, no, that's all right. I just
7 wanted to make sure I was tracking ---

8 MR. LANEY - Yes, sir. You know, it's very
9 important. It's some great language in there, so I
10 certainly want you to be familiar with it.

11 THE COURT - Thank you, Mr. Laney.

12 MR. LANEY - Yes, sir. In the Robertson case
13 which is a Justice Hearn decision and a appeal from Judge
14 Dennis of West Charleston County, and is a First Union
15 National Bank, within this case as I've stated, Your Honor,
16 they entered into a purchase and sale agreement and then
17 went to the bank and approached the bank for a loan; the
18 bank gets an appraisal, approves the loan for 80% of the
19 appraised value and provides that to them; some years go
20 by, the property declines in value and they ask for a
21 refinancing and the bank offers it to them, but based on
22 the new appraisal, which has a much significantly lower
23 amount which means they would have to bring some money to
24 the table in order to refinance and they can't do that, and
25 so they -- they and I guess kind of in a pre-emptive

1 strike, before the bank can file an action for foreclosure,
2 file an action for civil conspiracy, unfair trade
3 practices, fraud and negligent misrepresentation, so we
4 have unfair trade practices, fraud and negligence
5 misrepresentation along very similar lines that we have in
6 this case which Mr. Pappas is bringing here. And as we've
7 already stated, if you fail to prove just one element of
8 fraud or no to (sic) misrepresentation, that's fatal to the
9 claim, and again, the Robertson -- and when -- talking
10 about summary judgment in the subparagraph (a) cites that
11 again and cites to the Foxfire Village case as holding
12 that, --- but they say, you know, here in this case it's
13 clear the appellants have not established a requisite
14 element for fraud, appellants lack of reliance is glaringly
15 absent; the purchase price for the commercial property was
16 already agreed upon before appellants approached the bank
17 for a loan -- exactly like the situation of Mr. Pappas --
18 significantly appellants did not receive a copy of the 1993
19 appraisal until 1998 -- five years difference there --
20 we've got seven and four, depending on which loan you're
21 looking at here, and therefore, appellants could not have
22 relied upon the appraisal in purchasing the property. And
23 that goes to the heart of what Mr. Pappas is complaining
24 about. He's complaining that we had a negligently
25 performed, either using negligent methods or providing him

1 with negligent value through the appraisal, and that is
2 what his damages flow from, and Your Honor, under the
3 holding of Robertson we have the same problem here.
4 Reliance is just glaringly absent, because Mr. Pappas could
5 not have relied upon the 2006 appraisal or the 2009
6 valuation of the property which -- which is the subject of
7 his, you know, affidavit and response to our motion for
8 summary judgment. He states he still hadn't been provided
9 that and he may be able to get an expert now who would say
10 that the appraisal method, you know, was not proper or that
11 it could only lead to a conclusion that the value of the
12 property was less than what he refinanced the property for.
13 And in response we would say that's completely irrelevant;
14 it doesn't matter. First of all, when served him with
15 discovery back in the summer of 2012, asked if he had an
16 expert -- he was asked in his deposition if he had hired an
17 independent appraiser or anybody to produce anything that
18 showed that the appraisal by Mr. Pigman was inaccurate or
19 that the value -- and he said, -- candidly again -- Mr.
20 Pappas very candidly in his deposition said, I'm not
21 questioning the value of this; I just think that the was
22 saying that it was going to be a lot -- the value was going
23 to be when it was completed. And we walked through the
24 appraisal which is attached to the copy to the memorandum
25 and showed that actually the appraiser stated that he had

1 been out there just like Mr. Pappas, knew that the
2 subdivision was not yet completed and the amenities had to
3 be performed and that he did not have a pecuniary interest
4 in providing the appraisal and Mr. Pappas acknowledged all
5 that. So I would state in anticipation that other counsel
6 adversary will rely on that affidavit that he filed with
7 the Court a couple days ago, we would state that it's --
8 this Court looks at it, the expert -- even if the expert
9 testified, can't contradict (sic) the facts which have
10 been testified to by Mr. Pappas. He can only testify as to
11 opinions. Counsel can only advocate on behalf of the
12 party. The party and fact witnesses testified about the
13 facts in this case. Mr. Pappas has testified about the
14 facts in this case. The facts are not in dispute, and
15 under those, you simply cannot show -- there's zero
16 evidence -- there's not a shred of paper from this Court,
17 there is not any testimony that can be referenced in Mr.
18 Pappas's deposition that says there was a false statement -
19 - there was a statement, that it was false at the time it
20 was made, that he was ignorant of the veracity of that
21 statement and/or that he relied upon it in deciding to
22 purchase lot 311 or that he relied upon it in refinancing
23 the lot in 2009. There just simply is nothing in front of
24 this Court that can dispute the facts that we've set forth
25 here today. Therefore, under Rule 56, summary judgment's

1 entirely proper under all the causes of action. The final
2 element, unfair trade practices is also addressed by the
3 appellant court here. First, our position is it doesn't
4 apply to national charter banks and we've handed up under
5 the Anderson case, which I handed up to you a little
6 earlier, the footnote holds that they follow the Federal
7 Trade Commission and the Federal Trade Commission, the --
8 the South Carolina Unfair Trade Practices Act follows the
9 Federal Trade Commission's guidance. Federal Trade
10 Commission states that they do not regulate nationally
11 chartered banks. While Anderson has been overruled, Your
12 Honor, that secondary finding in that footnote has not been
13 overturned, and I handed and attached to the memorandum at
14 least three different Circuit Court Judges in the State who
15 have held and followed that, Judge Russo, Judge Burch,
16 Judge Dukes, have all acknowledged that that secondary
17 holding in Anderson has not been disturbed, and therefore,
18 unfair trade practices does not apply to Wachovia or Wells
19 Fargo, but even more-so as the Robertson Court held where
20 you simply just have conduct which only affects the parties
21 to the transaction, that's not a basis for a unfair trade
22 practices claim, that's exactly what we have here. Any of
23 the complaint of conduct would only affect Wachovia and Mr.
24 Pappas, and therefore, none arrised (sic) with unfair trade
25 practices, and moreover, there's simply no evidence in

1 front of this Court that there has been an unfair or
2 deceptive act and is set forth by -- or promulgated by
3 Wachovia or Wells Fargo so ---

4 THE COURT - Thank you. Thank you, Mr. Laney.
5 Anything from Ms. Hunt?

6 MS. HUNT - Your Honor, with respect to the
7 summary judgment motion we don't have a position, don't
8 really have ---

9 THE COURT - Thank you. Mr. Foster?

10 MR. FOSTER - Thank you, Your Honor. Your Honor,
11 first of all, in these longer motions I always like to ask
12 the Court, does the Court wish to take a break before we
13 get into this? I know we've been at this for a while. I
14 expect to take a while also.

15 THE COURT - If you need a break I don't mind
16 taking one.

17 MR. FOSTER - I do not need one, sir. I am asking
18 the Court.

19 THE COURT - I don't need one. Thank you. How
20 about our court reporter? You all right, Mrs. Broom?

21 COURT REPORTER - I'm fine, Judge. Thank you.

22 THE COURT - All right, we'll press on.

23 MR. FOSTER - Sir, procedurally, counsel has
24 referred several times to Mr. Pappas's deposition. Has the
25 Court possessed a copy of that deposition?

1 THE COURT - I believe I do, yes, sir.

2 MR. LANEY - I have the original transcript, Your
3 Honor, if you'd like me to hand that up.

4 THE COURT - Yes, deposition transcript of Ronald
5 Pappas.

6 MR. LANEY - Okay.

7 MR. FOSTER - Sir, let me simplify matters
8 somewhat. We are not going to dispute any of the arguments
9 that are advanced on behalf of RESPA or on behalf of the
10 Interstate Land Sales Act. We have I'm afraid plenty of
11 the arguments on the other matter -- matters I should say.
12 Your Honor, if I could approach and hand to the Court some
13 items. I presume the Court has a copy of my affidavit. If
14 not, I have the original.

15 (Documents handed up to the Court.)

16 THE COURT - Thank you. All right.

17 (Discussion is held between counsel which was not
18 reporter.)

19 MR. FOSTER - Counsel has requested to clarify and
20 I don't want to play those games.

21 (Discussion is held between counsel which was not
22 reported.)

23 MR. FOSTER - Your Honor, let me go to the
24 question - the second -- the second refinancing, because I
25 think we're getting to heart of this matter and that's

1 where I believe we have a problem. As I've stated in my
2 affidavit, which the Court has been sent and which I've
3 handed up, we have alleged the failure to give us this
4 document. We have requested it by way of deposition, by
5 way of discovery. We have been assured by counsel that if
6 it was available, it would be turned over. As of this date
7 it has not been turned over. The argument made is, it
8 doesn't matter, you're already into it. Our comeback to
9 that is, if there was vital information that we had the
10 right to receive -- and I don't think there's any question
11 of that -- we paid for that appraisal; we went to the
12 appraiser they picked. That appraisal had to say in 2009,
13 as counsel has adequately stated, after the great debacle
14 of 2008 and the real estate failure, it had to say one of
15 two things; either it had to reflect the old value and
16 therefore was prima facie incorrect or had to reflect a new
17 value which we maintain would be less than that which was
18 refinanced. Therefore, a piece of information necessary to
19 my client's decision over whether to enforce his rights at
20 that time of whether to refinance was not turned over, has
21 not to this day been turned over, and in spite of that fact
22 we stand here arguing about a motion of summary judgment.
23 Now, I've handed up some documents to the Court. I wanted
24 to go through those, and I hope I do not spend too much
25 time on this, but it is a matter that I think needs to be

1 emphasized. We have conceded the points about RESPA, the
2 procedures involved in the land sale. We have conceded the
3 point about the Interstate Land Sales contract -- Sales Act
4 insofar as it refers to Wells Fargo. Wells Fargo is here
5 today to say, we are not subject to South Carolina Unfair
6 Trade Practices Act because we are a national bank; because
7 we are a national bank we do not have to answer to the fact
8 that today, as counsel said, what is it six years after the
9 original transaction, four years after the refinance -- if
10 my dates are wrong, the Court has them -- we don't have to
11 answer to the fact that we have not turned over something
12 that we required you to get and we required you to pay for
13 them. We do not have to give you that appraisal or if we
14 didn't do it, nothing matters. Well, as I understand it --
15 and I've turned these over to the Court, but I'll try to go
16 through them I hope cogently -- there is indeed a provision
17 in the South Carolina Unfair Trade Practices Act refers to
18 decisions of the Federal Trade Practice -- the Federal
19 Trade Commission. I have indeed handed up the language
20 from the Federal Trade Commission, 15, Section 45, that
21 says that it does not cover banks, savings and loan
22 institutions described in Section 57-A-F3 which is national
23 banks. That's what this document says. If the Court will
24 look at the next item however, it will find that evidence
25 to the fact that that portion of the federal bureaucracy,

1 the comptroller of the currency in department of the
2 treasurer, which is in charge of regulating national banks
3 has, in fact, made those banks subject to the Federal Trade
4 Commission Act. I cited to you and have handed up 12,
5 Section 34.3, (c) in that Act, the national banks are not
6 engaged in unfair, deceptive practices within the meaning
7 of Section 5 of the Federal Trade Commission Act. So as so
8 often with federal law, as so often perhaps I should say
9 with the Internal Revenue Code, if you can't get to there
10 next door, you go around the block. There is indeed an act
11 that says we don't cover banks, but the entity that covers
12 banks says, we're going to make you subject to that act;
13 we're going to make you subject to that commission. We've
14 handed up Your Honor two cases, and I assure you not by
15 means of my looking at them, they both happen to be against
16 Wells Fargo National Bank. To summarize, both the --
17 pardon me for pausing -- both the United States Court of
18 Appeals for the Ninth Circuit and for the as I recall
19 Seventh Circuit, in recent cases have held pursuant to a
20 federal -- pardon me -- to the Supreme Court decision in --
21 I beg your pardon for pausing here, but I want to cite it
22 properly -- I believe I may have handed counsel my one copy
23 of the document, but I will try to sound semi-intelligent.
24 Thank you. Counsel is a gentleman. I'm sure it will come
25 back -- no, that's not the one. Thank you. Your Honor,

1 the Supreme Court in this decision specifically address the
2 question of what is and is not exempt or precluded under
3 the designation of a national bank. It specifically stated
4 there are things that are not precluded. What we've handed
5 up -- what is not precluded specifically is the State
6 coverage of contracts and torts. In both the Seventh
7 Circuit and the Ninth Circuit -- and I wish to be clear,
8 these are west coast cases -- I know of no contrary
9 precedent. In both these case, the Federal Circuit Courts
10 have said in effect -- I'm quoting here from Gutierrez --
11 we've tried to mark it -- I beg pardon -- as the Supreme
12 Court explained -- I'm skipping within the case a regime
13 exclusive administrative oversight by the comptroller while
14 honoring the fact rather merely in theory, congress's
15 decision not to preempt substantive state law, and of
16 course in this case in Gutierrez it goes on to state that
17 it does not preclude unfair trade practices. In Wigod --
18 hoping I'm pronouncing it correctly --- the Seventh Circuit
19 in that case stated, Ocwen, the case they're citing --
20 stands for the principle that HOLA, the national banks,
21 preempts generally applicable to the state law only when
22 they, quote, could interfere with federal regulation. I --
23 that is, those that actually conflict with the regulatory
24 program. Again, I refer the Court to language which we've
25 handed up which states in effect -- not in effect -- just

1 flatly states, that certain things are not precluded. The
2 state laws about contracts, about torts, what else are we
3 talking about, are not precluded. Counsel cites a decision
4 of the State in 1986. He cites various decisions that have
5 been decided in various Circuit Courts since that time the
6 same proposition, in amongst great many other things. I
7 commend him, but I would suggest that I do not believe he
8 can cite any appellant cases. If I am incorrect, I stand
9 to be corrected. He cannot in my opinion cite any federal
10 cases; he cannot cite any state cases on the appellant
11 level that have confirmed that opinion in light of the
12 later regulations of the federal courts, in light of the
13 later statements of federal courts, -- pardon me -- later
14 precedents. The decision in Anderson was based on
15 proposition as existed at that time, that national banks
16 were excluded under the first federal law -- and I'm
17 quoting to Your Honor -- and therefore, they were precluded
18 from SCUTPA. Later decisions have held -- and I believe I
19 am capable of saying have held unanimously -- that they are
20 not so precluded. What do we allege in this case? We
21 allege that we entered into two transactions with this
22 bank. On both occasions we have stated we asked for the
23 appraisal. On both occasions we were not given the
24 appraisal. In this case the bank seeks to foreclosure a
25 refinancing from 2009, if I remember correctly. Their

1 argument is, we cannot claim fraud, because you cannot rely
2 upon what you can't see. That I believe mischaracterizes
3 what we're saying. We have the right to assume that if we
4 went to an appraisal they required, that that appraisal
5 would be taking place in proper universally recognized
6 methods and that it would be as far as such things can be
7 accurate. I go back to my argument. One of two facts had
8 to occur with that appraisal in 2009. Either it stated the
9 original value and was prima facie inaccurate, or it stated
10 a lesser value and that lesser value was not disclosed to
11 us. We relied upon the bank's honesty; we relied upon its
12 proper procedures in getting an appraisal and getting a
13 proper appraisal. The argument we have is, based upon the
14 information we now have and based upon the bank's refusal
15 to turn over that document or failure, is that that
16 document could not have been those items, could not have
17 fulfilled those purposes. It was either inaccurate or it
18 was accurate and it was concealed. I argue to this court,
19 that is a prima facie case for an unfair and deceptive
20 trade practice. It is the basis for a claim of negligent
21 misrepresentation and fraud, not of what was in the
22 appraisal, but that the appraisal would be accurate and
23 would be done according to the proper methods. And we have
24 no way to confirm or deny that fact because we still do not
25 have the appraisal. Counsel argues that my client was

1 already bound. That I believe will not quite serve. In
2 2009, yes, as counsel states, he applied to refinance the
3 loan. Had he been given an accurate information at the
4 time, had the appraisal come in and had either been
5 obviously incorrect or a lesser figure, he would've had the
6 ability to act at that time and to enforce his legal rights
7 at that time. The appraisal was not turned over; an
8 appraisal was not given, and of course at this point we
9 still do not have it. We believe we have prima facie cases
10 for unfair trade practice not precluded for fraud and
11 negligent misrepresentation. That is our position, sir.

12 THE COURT - Thank you. Thank you very much, Mr.
13 Foster. Mr. Laney?

14 MR. LANEY - Yes, sir. Thank you, Your Honor.
15 I'll try to be brief. Your Honor, Robertson,
16 notwithstanding counsel's able argument to the contrary
17 very much controls the situation we have here today. Mr.
18 Pappas negotiated to purchase lot 311 on March 29th, 2006,
19 perhaps -- negotiated the purchase price, enters into the
20 purchase price. In the contract which the Court has in
21 front of it, Your Honor, has nothing in it -- and I was
22 listening very carefully -- there's absolutely nothing
23 there to state that there's a contingency upon lot 311
24 appraising for the purchase price. That was the -- that
25 was done. He then applies for financing and is granted,

1 and Mr. Pappas candidly in response to my questions and Ms.
2 Hunt's questions in his deposition states that the
3 appraisal was ordered by Wachovia. The contract, the
4 relationship -- anything that exists was solely between
5 Wachovia and the appraiser. It was not between Mr. Pappas
6 and the appraiser. I would state that that's a
7 mischaracterization to say that they went through the
8 appraisal we chose. Mr. Pappas didn't even know the
9 man's name until his memory was refreshed at his deposition
10 when he saw the appraisal. Again he did not see it until
11 two months prior to his deposition at the earliest, Your
12 Honor. So simply put, there cannot have been any reliance
13 on the appraisal, all the methods of the appraisal which he
14 then tries to, you know, kind of circumvent, says it's not
15 the actual value, it must have been the methods of the
16 appraiser which we haven't had a chance to review. Well,
17 he's had the 2006 appraisal since a few months before his
18 deposition and there is absolutely nothing in the record,
19 Your Honor, challenging the methods of that appraisal or
20 anything that would suggest that Mr. Pigman did not give an
21 accurate appraisal at the time. So, Your Honor, there has
22 been no false statement provided; there has been no
23 reliance on a false statement to the detriment of the party
24 and the, quote, West vs. Gladney and King vs. Oxford. If
25 the truth is easily within one's reach, one cannot rely

1 upon a misstatement of fact. Even if there was a
2 misstatement of fact, King vs. Oxford and West vs. Gladney
3 hold that if you can find that out on your own -- and Mr.
4 Pappas candidly admitted he could've done independent
5 valuation to determine the value of lot 311 or determine
6 the value of the lot at the time he refinanced the loan --
7 he was traveling down there. He's a sophisticated real
8 estate developer and buyer. He understands, and he says, I
9 didn't hire my own appraiser; I didn't make any efforts to
10 independently ascertain the value of that property. And,
11 Your Honor, Robertson also doesn't rely upon the arguments
12 that the unfair trade practice does not apply to national
13 banks; instead they go on the premise that it was not an
14 unfair or deceptive act because nothing deceptive was
15 provided to the borrower before he agreed to buy the
16 property and accept the loan which was offered to him and
17 it can only in fact -- it did not affect the public
18 interest, because it only affected the transaction between
19 the parties, and I would submit to you that this case is
20 exactly under the four corners of Robertson and under the
21 holding of Robertson that summary judgment should be
22 granted on behalf of Wells Fargo for unfair trade
23 practices, fraud and negligent misrepresentation in this
24 matter. And, Your Honor, quite honestly I don't understand
25 the argument that somehow he had already entered into a

1 loan contract with a balloon payment and maturity date
2 being due on June 1st, 2009 and somehow our not providing
3 him an appraisal which he's now conceded RESPA -- he says
4 he has no claims under RESPA, so us not providing an
5 appraisal we had no duty to provide to him somehow kept him
6 from exercising his legal rights in 2009 instead of now.
7 There's not a statute of limitations issue here, and I
8 guess he was going to bring his lawsuit in 2009 versus
9 2011, which again, there could not have been any reliance
10 on the 2006 appraisal, but I really don't see where that
11 argument advances anything on its behalf, Your Honor. I'm
12 missing the argument in total there as to how -- somehow
13 not seeing any valuation of the property from the 2009
14 refinance that's hindered Mr. Pappas from advancing any
15 legal rights for making a decision. He either was going to
16 have to pay off the loan, fight the foreclosure action that
17 came in 2009 or refinance, and he chose to refinance and he
18 got an additional three years to try to be able to pay off
19 his property. Unfortunately, you know, that didn't work
20 out, and he is now coming up with very creative ways to try
21 to keep from repaying Wachovia the money that was due on
22 the loan. And he -- he, -- again, just to point out very
23 candidly, he said -- Wachovia has honored everything it
24 stated it would do with regard to the loan. There is no
25 question about the loan terms being adhered to and then he

1 had got the benefit of his bargain as far as the loan goes,
2 so now it's time for Mr. Pappas to honor his part of the
3 agreement and repay Wachovia or allow them to take judicial
4 process here and foreclosure upon this lot, sell it and be
5 allowed to pursue any deficiency judgment that remains
6 under the sale of the property. Thank you, Your Honor.

7 THE COURT - Thank you. Thank you very much.
8 Anything, Mr. Foster?

9 MR. FOSTER - We believe we've stated our
10 position, Your Honor. If there's anything the Court had,
11 I'd be happy to answer it.

12 THE COURT - Thank you. Thank you very much. All
13 right, as to the two federal regulations, those have been
14 abandoned by the defendant in that regard. As to the
15 unfair trade practices and looking the language from the
16 Robertson irre -- not irrespective -- I don't mean it like
17 that -- with the background of Gutierrez and the other,
18 whose name I cannot pronounce right now or recall, that Mr.
19 Foster has presented to the Court, I'm not even ruling on
20 that issue, because I find that under the South Carolina
21 Uniform Trade Practices Act, unfair methods of competition
22 and unfair deceptive acts or practices and the conduct of
23 any trade or commerce are deemed unlawful. A plaintiff
24 bringing a private cause of action under UTPA must allege
25 and prove the defendant's action adversely affected the

1 public interest, citing Daisy Outdoor Advertising vs.
2 Abbot. Therefore, conduct which only affects the parties
3 to the transaction provides no basis for a unfair trade
4 practices claim, citing Jeffries vs. Phillips. I find no
5 evidence of any act the practice that is unfair or one that
6 affects the public interest, so I'm granting the summary
7 judgment on the Unfair Trade Practices Act. Also as to the
8 others, I'm also granting motion for summary judgment as to
9 fraud, which of course as we all know requires clear and
10 convincing evidence. That's not the standard I'm using.
11 I'm obviously using the standard of Rule 56 whether or not
12 there's any genuine issue of any material fact is
13 appropriate. There is no genuine issue of material fact
14 and the moving party is entitled to judgment as a matter of
15 law. I find that the moving party, Wachovia, is entitled
16 to judgment as a matter of law both as to the fraud and the
17 negligent misrepresentation. They're also entitled to
18 foreclosure. I would ask you, is there a Master in
19 Lancaster County?

20 MR. FOSTER - No, sir.

21 MR. LANEY - I think we have to refer to a Special
22 Referee.

23 THE COURT - All right. Well, they should have a
24 Master, but be that as it may, that's just my comment. If
25 y'all -- well, I'm referring it to a Special Referee. If

1 y'all would agree on whoever that may be, or if there is
2 any other motions that may come up. If you'll prepare the
3 Order, please, ---

4 MR. LANEY - Yes, sir.

5 THE COURT - --- Mr. Laney, e-mail it
6 simultaneously to Mr. Foster, to Ms. Hunt, to my law clerk,
7 not to me, to my law clerk.

8 MR. LANEY - Yes, sir. I got that the second time
9 --- I'm sorry, Your Honor.

10 THE COURT - Thank you so much. Thank you. Thank
11 you, Mr. Foster. It's always -- I always enjoy your
12 presentations.

13 MR. LANEY - Thank you, Your Honor.

14 (End of transcript)

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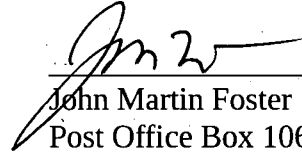
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CRTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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April 2, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon

Case No. 11-CP-29-00873

Appellate Case No. 2014-001505

RECEIVED

APR 06 2015

SC Court of Appeals

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Respondent,

v.

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Appellants,

And

Ronald P. Pappas, a/k/a Ronald Peter Pappas, and
Camine Pappas, ... Cross-Plaintiffs,

v.

Wells Fargo Bank, N.A.,
Successor by merger to Wachovia Bank, N.A., ... Cross-Defendant.

PROOF OF SERVICE

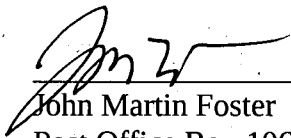
I certify that I have served one (1) copy of the Record on Appeal, on the following party
of record:

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by depositing the same with the United States mail, with sufficient first class postage

attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, all pursuant to Rule 233(b), S.C.A.C.R.



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April 3, 2015