

November 12, 2015

RECEIVED
NOV 13 2015
SC Court of Appeals

South Carolina Court of Appeals,

This entire case from the Plaintiff never should have gotten off the ground, as there is no legal proof. It is a rip off of time, money, and mind. They must show a jury what the judge witnessed as legal contracts.

The four affirmative defenses that I asserted to the courts earlier should have been very noticeable, but not as serious as me letting you know now that there are no original documents of any kind, promissory or contractual, seen by any Richland County Judge pertaining to the property at 1510 Carousel Circle, Columbia SC 29203. As we all know, copies are not permitted (invalid), especially incomplete copies. I would like one of two things: original contract checked by my government official or to be left alone with property and monies lost.

I am getting tired and feeling very uneasy when we're in times where we go to court for justice and sometimes just get made to be afraid. So please, I ask you until U.S. Bank National Association or should I say Sean M. Foerster & SPS produces original notes or contracts, binding them to where my family has been paying taxes and insurances since 1968 please don't allow them to harass me any further. Be prepared to show the Supreme Court your original documents.

South Carolina Court of Appeals, please recognize from the evidence, including the transcripts that the judge trusted that Mr. Foerster had everything together but he did not. I think that he entered at the end of a bad situation. I say now that on April 22, 2015, a hearing was held without my knowledge. At the hearing, my attorney failed to mention that there were no original contracts and several other things pertaining to this matter. For these reasons, he has been relieved as counsel, Thank God.

So please, let us go before a jury and display the legal documents that the Plaintiff has in their possession giving them the right to foreclose on 1510 Carousel Circle, Columbia SC 29203 (Originals Only). If the Plaintiff still

wants 1510 Carousel Circle, Columbia SC 29203, then we can negotiate somewhere between 1 and 212 times the value of the property.

RECEIVED

Violations

NOV 12 2015

S.C. Code AM 37-5-108 (Unconscionable Debt Collection)

SC Court of Appeals

15 USC 1692e (Fair Debt Collection Practices Act) Rules of Evidence 1003

The South Carolina Court of Appeals

U.S. Bank of National Association as Trustee, as successor-in-interest to Bank of America, N.A., Respondent

Lydia E. Haggwood (a minor), Felicia Wells as Personal Representative of the estate of Essie L. Morgan, Daniel K. F., Defendants, of whom Felicia Wells is the Appellant.

Appellant Case NO. 2015-001273 Columbia, South Carolina

Sincerely,

Mrs. Felicia Wells



CC:

S.C Court of Appeals

Sean Matthew Foerster, Esquire

Zack E. Townsend, Esquire

United States Postmaster General

Honorable Judge Joseph M. Strickland

SPS | SELECT
Portfolio
SERVICING, inc.

November 3, 2015



ESTATE OF ESSIE L MORGAN
7435 INNISFREE PLACE
CHARLOTTE, NC 28226-0000

RECEIVED

NOV 12 2015

SC Court of Appeals

Re: Account Number: 2039780792
Property Address: 1510 CAROUSEL CIR
COLUMBIA, SC 29203

Dear Customer(s),

Select Portfolio Servicing, Inc. (SPS), the mortgage servicer on the above referenced account, identified that you are in default under the terms of your mortgage or deed of trust (security instrument). We realize that you may be experiencing a temporary or permanent hardship that has led to the default and we encourage you to contact us.

We want to work with you to find a mutually agreeable way to resolve the delinquency and avoid foreclosure. Depending on your circumstances, we have several mortgage assistance programs available that may help you. SPS is a proud participant in the Federal Government's Making Home Affordable Program (MHA), which includes several mortgage assistance options depending on eligibility.

We may also have other options available to help you. These additional options, which may not be available to everyone, include:

- Repayment Plans and Special Forbearances: With this program, you could receive payment options for a limited number of months to give you time to resolve your financial difficulties, or give us time to work together on a more permanent solution.
- Loan Modifications: With this program, you could receive permanent changes to certain terms on the account, depending on your circumstances and available program options.
- Short Sales: With this program, the property is listed for sale at fair market value, even if that value is lower than the account balance. If a buyer is identified and the property is sold, the proceeds from the sale are applied toward the account, even if the proceeds are less than the account balance.
- Deeds in Lieu of Foreclosure: With a Deed in Lieu, the title is voluntarily transferred to the owner or servicer of your account in order to avoid a foreclosure sale and satisfy all or a portion of the mortgage account.
- Short Payoffs: With this program, you provide an approved amount to the owner or servicer of your account to satisfy the account, even if that amount is less than the account balance.

The enclosed brochure describes each of these programs in further detail. As a reminder, you are still obligated to make all future account payments as they come due, even while we are evaluating the types of assistance that may be available to you. Please be advised that there is no guarantee that you will be eligible to receive any (or a particular type of) assistance through one of these programs.

To help us determine whether you qualify for assistance under MHA or an alternative workout program, you will need to complete an application. Please contact us at one of the numbers below or logon to our website at www.spservicing.com to start the application process. You may also contact us by mail at:

Select Portfolio Servicing, Inc.
PO Box 65250 Salt Lake City, UT 84165-0250



Select Portfolio Servicing, Inc. (SPS) knows that home ownership can be one of the most valuable and rewarding investments an individual or family can make. We also understand that the ongoing costs of monthly mortgage payments, home maintenance, property taxes, and homeowner's insurance may become an overwhelming financial burden. At SPS we seek to provide solutions to our customers to assist them in resolving delinquency and avoiding foreclosure. Based upon your current situation, SPS may be able to provide you a customized solution to help you stay in your home or, if appropriate, guide you through the sale or transfer of your property, allowing you to relocate to more affordable housing and avoid foreclosure.

MAKING HOME AFFORDABLE PROGRAM

SPS participates in the US Treasury Department's Home Affordable Modification Program (HAMP) and Home Affordable Foreclosure Alternatives Program (HAFA). These programs are designed to help preserve home ownership or prevent foreclosure through modification, short sale, and deed-in-lieu options. Please contact us to discuss your eligibility under these programs.

LOAN MODIFICATION

SPS's loan modification program aims to preserve home ownership and prevent foreclosure. A modification is designed to bring your loan current and provide you with an affordable monthly payment by modifying the terms of your note.

Changes may include a lower monthly payment, a lower interest rate, a partial deferral or reduction of principal owed on your note, or an extension of your maturity date.

If you request a modification and provide us the necessary financial information, we may be able to offer you a "trial modification." A trial modification is a period where you make the proposed modification payment to ensure that the payment is affordable. If you make all of your trial payments and satisfy all modification criteria, you may qualify for a permanent modification of your note. You will then need to sign a modification agreement, which will permanently change certain terms of your note.

REPAYMENT PLANS

Repayment plans either help you bring your mortgage current over a period of time, or allow you to resume regular monthly payments while you seek to sell the property, liquidate other assets, or improve your financial condition. While you are current in making the scheduled payments on a repayment plan, we will not proceed with foreclosure.

SHORT SALE

If you can no longer afford your property and have tried to sell it only to find that you owe more than the property is currently worth, the owner of your mortgage loan may accept an amount from the sale of your property that is less than the full amount you owe on your loan. In a short sale, you would list and sell the property, in an arm's length transaction, at an approved price with the understanding that the net proceeds from the sale may be less than the total amount due on your loan.

You must document the circumstances of your hardship and allow access to the property to assess its condition and value. Upon the successful completion of a short sale, you may also be eligible to receive financial relocation assistance.

BEWARE OF FORECLOSURE RESCUE FRAUD

You should never:

- Be charged a fee by a third party in exchange for housing counseling services
- Be charged an upfront fee by a third party for services related to the modification of a delinquent loan
- Be pressured by a third party into signing paperwork you do not understand


For more information visit: www.loanscamalert.org.

**Remember SPS never charges a fee for
loan resolution assistance.**





July 31, 2015

 ESTATE OF ESSIE L MORGAN
1331 ELMWOOD AVE
SUITE 210
COLUMBIA, SC 29201-0000

Account Number: 2039780792
Property Address: 1510 CAROUSEL CIR
COLUMBIA, SC 29203

Dear Customer(s):

Select Portfolio Servicing, Inc. (SPS), the mortgage servicer on the above referenced account, has received correspondence from you or your authorized agent regarding this account. We thank you for this opportunity to assist you and have forwarded this correspondence to the appropriate department for handling.

SPS is committed to home retention and offers many assistance options designed for customers who are experiencing temporary or permanent hardship. If you are experiencing a financial hardship, please call us as soon as possible to discuss your situation and the options that may be available to you.

If you are sending a payment, please note that the correct mailing address for payments is:

Select Portfolio Servicing, Inc.
Attention: Remittance Processing
PO Box 65450 Salt Lake City, UT 84165-0450

Also, for your convenience. SPS offers the following payment options:

- **Automated Clearing House:** You pre-authorize SPS to withdraw funds equal to your monthly payment from your account on a specific date each month. There is no cost for this service.
- **EZ Pay By Phone:** For each payment, you authorize SPS to draft from your checking account a specific amount on a date that you specify. A fee of up to \$15.00 may be charged for each EZ Pay payment you authorize.
- **EZ Pay By Web (www.spsservicing.com):** For each payment, you authorize SPS to draft from your checking account a specific amount on a date that you specify. A fee of up to \$15.00 may be charged for each EZ Pay payment you authorize.
- **Western Union Quick Collect:** To make a Western Union Quick Collect payment to SPS, you need to use the Code City "OSWALD" and the Code State "UT." If you want to transmit the payment to SPS on the same day, you must use the blue and white Quick Collect form, check the Urgent box, and advise the Western Union agent that you want the Urgent deliver option. There is a Western Union charge for this service.



Customer Service : (800) 258-8602
Monday - Thursday 8:00AM - 11:00PM ET
Friday 8:00AM - 9:00PM ET
Saturday 8:00AM - 2:00PM ET

For other important information, see reverse side

Account Number	2039780792
Property Address	1510 CAROUSEL CIR COLUMBIA SC 29203

14969

Estate Of Essie L Morgan
7435 Innisfree PI
Charlotte, NC 28226-4436



Explanation of Amount Due

This is an attempt to collect a debt. All information obtained will be used for that purpose.

Your loan is past due because a balance remains unpaid past your Maturity Date of April 2012. Prior to the Maturity Date your Monthly Payment was \$546.39. If you continue to send this payment we will forbear from foreclosure.

Please call us at (800) 258-8602 to discuss this option or any questions you may have.

Account Information	
Interest Bearing Principal	\$51,644.63
Deferred Principal	\$0.00
Outstanding Principal ¹	\$51,644.63
Interest Rate (Fixed)	10.050%
Prepayment Penalty	No

Transaction Activity (09/16/2015 to 10/15/2015)

Date	Description	Prin Bal	Interest	Total
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Past Payments Breakdown		
	Paid Last Month	Paid Year To Date
Principal	\$0.00	\$0.00
Interest	\$0.00	\$0.00
Escrow (Taxes and Insurance)	\$0.00	\$0.00
Fees and Other Charges	\$0.00	\$0.00
Partial Payment (Unapplied)	\$0.00	
Total	\$0.00	\$0.00
Total Unapplied Balance		\$0.00

Important Messages

¹ This amount is not a payoff quote. If you want a payoff quote, please see instructions on reverse side.

Any transactions that occurred after the statement date noted above will be reflected on your next statement.

This is an attempt to collect a debt. All information obtained will be used for that purpose.

We have paid Taxes and/ or Insurance on your behalf and you are responsible to reimburse us for these amounts plus interest which may be billed at the note rate.

If there is a balance under Expenses Paid by Servicer, it means we have paid certain expenses on your behalf due to the delinquent status of your account. You are responsible to reimburse us for these amounts plus interest, which may be billed at the note rate.

Under the Servicemembers Civil Relief Act if you or a family member has been deployed to active duty, you may be eligible for certain protections regarding your mortgage loan. Please contact us at (800) 258-8602 to discuss these protections.

Please detach bottom portion and return with your payment. Allow 7 - 10 days for postal delivery. Please do not send cash.

MONTHLY PAYMENT COUPON

IMPORTANT INFORMATION

Important Mailing Addresses (Please include your account number on all correspondence)

Regular Payments Select Portfolio Servicing, Inc. Attn: Remittance Processing P.O. Box 65450 Salt Lake City, UT 84165	Overnight/Express Payments Select Portfolio Servicing, Inc. Attn: Cashiering Dept. 3815 South West Temple Salt Lake City, UT 84115	Notice of Error or Information Request or Qualified Written Request Select Portfolio Servicing, Inc. P.O. Box 65277 Salt Lake City, UT 84165 Fax: (801) 270-7856	General Correspondence Select Portfolio Servicing, Inc. P.O. Box 65250 Salt Lake City, UT 84165	Check by Phone (800) 258-8602 Option 1	Bankruptcy Correspondence & Notices must be sent to: Select Portfolio Servicing, Inc. Attn: Bankruptcy Dept. P.O. Box 65250 Salt Lake City, UT 84165
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PAYMENT INSTRUCTIONS Paying your mortgage on time is an important obligation, so please pay on or before the payment due date. Payments are not considered paid until received and posted to your account. Please include the late charge in any payment made after the late payment due date noted on your statement. Postal delays do not result in a waiver of late charges, so please allow adequate time for mail service. If you don't pay on or before 3 p.m. MT on the payment due date, your loan will be considered delinquent. (NOTE: If you are currently sending all or part of your payment to the bankruptcy trustee, please disregard the Select Portfolio Servicing, Inc. payment address for that portion you are sending to the trustee.) We do not accept payments in cash.

APPLICATION OF PAYMENTS If you are current in making your payments, we will apply payments according to your Note. If you are delinquent, we apply payments to the oldest outstanding payments that are due under your Note.

LOAN REPRESENTATIVES If you would like to speak to someone about making a payment or payment arrangements, please call one of our loan representatives at (800) 258-8602 (Monday - Thursday, 8 a.m. - 11 p.m. ET; Friday, 8 a.m. - 9 p.m., ET; Saturday, 8 a.m. - 2 p.m. ET).

AUTOMATED CONVERSION OF YOUR CHECKS TO ACH DEBIT ENTRIES AND RETURNED CHECKS OR DEBITS When you provide us a check, you authorize us to use the information from your check to make a one time Electronic Funds Transfer from your bank account. When we use your check to make an Electronic Funds Transfer, funds may be withdrawn from your account quickly, as soon as the day we receive your check. You will not receive your check back from your financial institution. If there are insufficient funds in your account we will reverse the amount of any such returned payment that we had credited to your mortgage. You authorize us to charge you a fee of up to twenty-five dollars (\$25.00) as allowable by state law, and collect that amount from an Electronic Funds Transfer from your bank account.

CREDIT REPORTING SPS furnishes information to consumer reporting agencies. You are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your Note and Mortgage. If you believe such information is inaccurate, you may call Customer Service at (800) 258-8602, submit a written Notice of Error to the P.O. Box listed above, or submit a dispute with the consumer reporting agency.

NOTICE OF ERROR OR INFORMATION REQUEST OR QUALIFIED WRITTEN REQUEST If you believe there has been an error with the account or you require additional information, you may send a written Notice of Error or Information Request. All Notices of Error or Information Requests must be sent to the address listed above in the important mailing addresses section, as this is our exclusive address under Federal Law for these matters. If you send your correspondence to any other address, it may not be processed in accordance with Federal Law.

HUD APPROVED HOUSING COUNSELORS The US Department of Housing and Urban Development (HUD) sponsors approved housing counseling agencies that provide free counseling services to citizens. Counselors can help you assess your financial situation and determine what options are available to you. To find a HUD approved counselor near you, call (800) 569-4287 or visit the HUD website at www.hud.gov/local/index.cfm. You may also be eligible for assistance from the Homeownership Preservation Foundation, which you may reach at (888) 995-HOPE (4673). SPS also works with housing counselors through Hope LoanPort® (www.hopeloanportal.org), and with customers through Homeowner Connect™ (www.homeownerconnect.org).

SPECIAL REQUEST AND ADDITIONAL FEES

Check by Phone (EZPay)	\$15.00
Returned Check Fee	Up to \$25.00
Express Mail Fee	Actual Charge Incurred

This fee schedule does not contain all fees that may be charged for services rendered. The actual fee charged to a particular customer may be different based upon certain requirements under state law, agency guidelines (e.g., FHA, VA) or other relevant criteria.

LOAN PAYOFFS Payoff information may be requested verbally by calling the Customer Service toll free number printed on this statement, by faxing your requests to (801) 269-4269 or by mailing your request to: P.O. Box 65250, Salt Lake City, UT 84165-0250. If you do not receive your payoff quote within 5 business days of placing your request, please call our Customer Service Department.

HOME OWNER INSURANCE You are required to maintain Homeowners Insurance (and if required, Flood Insurance), at all times during the term of your Mortgage and provide or ask your insurance agent each year to provide us copies of all renewal policies and invoices to the address shown below at least (30) days before the date your existing policy expires. It is important for you to remember that if we do not receive a copy of your renewal or replacement policy, SPS may obtain coverage to protect its interest in the property. The coverage provided for this insurance may be different and more expensive than your expired coverage. We will only do this after we have notified you of your failure to maintain coverage. It is possible we may obtain certain benefits from this insurance placement coverage.

All insurance information (including your account number) should be mailed or faxed to:

Insurance Service Center: PO Box 7277, Springfield, OH 45501 Fax (866) 801-8177.

REAL ESTATE TAX If you have established an escrow account with us for taxes, you should keep copies of any tax bills you receive for your personal records. We have engaged a Tax Service to receive your tax bills, and we will pay taxes out of your escrow account to the extent there are sufficient balances in your escrow account. If you receive any special assessment bills, you should send them to our Tax Service Center address shown below. Special bills include:

- An area defined as a "Homeowner Area" where your local tax office will not send us the tax bill
- Any special assessments on your property in addition to your regular Real-Estate tax bills
- Any adjustments to your tax bills

Tax Service Center: PO Box 3541, Covina, CA 91722

SPS CONSUMER OMBUDSMAN SERVICES If you have an unresolved issue with SPS, and you have exhausted other customer service options, please contact our Consumer Ombudsman Department at (866) 662-0035 or through other methods found on www.spservicing.com.

COMMON ABBREVIATIONS	
INT	Interest
FC or F/C	Foreclosure
BK	Bankruptcy
BPO	Broker Price Opinion
MISC DISB	Disbursement from escrow account for other than escrow item (E.g.: Analysis Refund, Payoff Refund)

This common abbreviations table does not contain all abbreviations that may appear in the "Activity this Period" section. For more information please refer to the Fee Schedule and Description document located at www.spservicing.com

23. Waivers. Borrower waives all rights of homestead exemption in the Property.

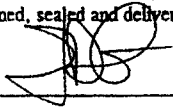
24. Future Advances. The lien of this Security Instrument shall secure the existing indebtedness under the Note and any future advances made under this Security Instrument up to one hundred fifty percent (150 %) of the original principal amount of the Note plus interest thereon, attorneys' fees and court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

25. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)]

- | | | |
|--|---|---|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> Graduated Payment Rider | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Rate Improvement Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Other(s) [specify] | |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.
Signed, sealed and delivered in the presence of:


 _____ (Seal)
 KESSIE L. MORGAN -Borrower

Witness _____ (Seal)
 _____ -Borrower

Witness _____ (Seal)
 _____ -Borrower

STATE OF SOUTH CAROLINA,

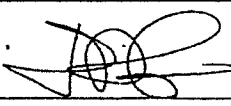
Personally appeared before me DTB WYCKE
HTO saw the within named Borrower sign, seal, and as
Mortgage, and that SAC with DTB WYCKE
witnessed the execution thereof.

County ss: _____ and made oath that
act and deed, deliver the within written

Sworn to before me this 26th day of March, 1997

My Commission Expires: 2/21/00

(Seal)



 Notary Public for South Carolina

Produced Pursuant to Protective Order in Case No. 2012-CP-40-00138

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 U.S. Bank National Association, as Trustee,)
 as successor-in-interest to Bank of America,)
 N.A., as Trustee, as successor by merger to)
 LaSalle Bank N.A., as trustee for the)
 holders of the Credit Suisse Seasoned Loan)
 Trust 2006-1 Home Equity Pass-Through)
 Certificates, Series 2006-1,)
)
 Plaintiff,)
)
 vs.)
)
 Lydia Elanie Haggwood (a minor), Felicia)
 Wells as Personal Representative of the)
 Estate of Essie L. Morgan, Daniel K.)
 Felkner, First Financial Corporation; Susan)
 M. Brown,)
)
 Defendant(s).)
)

IN THE COURT OF COMMON PLEAS

C/A # 2012-CP-40-00138

RECEIVED
 NOV 12 2012
 SC Court of Appeals

**DEFENDANT FELICIA WELLS AS
 PERSONAL REPRESENTATIVE OF
 THE ESTATE OF ESSIE L.
 MORGAN'S RESPONSES TO
 PLAINTIFF'S REQUESTS FOR
 PRODUCTION**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant Felicia Wells as Personal Representative of the Estate of Essie L. Morgan ("Defendant" hereinafter) responds to Plaintiff U.S. Bank National Association, as Trustee, as successor-in-interest to Bank of America, NA, as Trustee, as successor by merger to LaSalle Bank NA, as trustee for the holders of the Credit Suisse Seasoned Loan Trust 2006-1 Home Equity Pass-Through Certificates, Series 2006-1's ("Plaintiff" hereinafter) Requests For Production as follows:

REQUESTS FOR PRODUCTION

1. All documents that tend to support or disprove the allegations of the pleadings.

RESPONSE:

2. All documents that you contend were written or prepared by Plaintiff and which are

relevant to the allegations of the pleadings.

RESPONSE:

3. All documents constituting records of telephone conferences related to the allegations of the pleadings, including without limitation notes, billing statements, and tape recordings.

RESPONSE:

4. Any correspondence between you and Plaintiff or any person known to be serving as an agent of Plaintiff.

RESPONSE:

5. All documents relating to the loan provided to you by Plaintiff prior to the closing.

RESPONSE:

6. All emails or other correspondence relating to the loan closing to or from you or Plaintiff.

RESPONSE:

7. All notes, memos, and other documents that evidence any meeting whose subject was the loan.

RESPONSE:

8. Copies of any and all documents used or referenced in or identified by you, or anyone on behalf of you, in preparing your answers to Plaintiff's Interrogatories to Defendant Felicia Wells as Personal Representative of the Estate of Essie L. Morgan.

RESPONSE:

9. All documents received by you as part of your application for the loan and all documents you signed as part of the application process or of the closing of the loan.

RESPONSE:

10. All documents which you intend to offer into evidence at the trial of this case or to use to

question any witness at trial or during any deposition.

RESPONSE:

11. All documents containing statements of any witnesses to the facts of this case, whether in the hands of you or your agents or assigns.

RESPONSE:

12. All documents showing Essie L. Morgan's total annual income from all sources for each of the five (5) years preceding her death including, but not limited to, income from employment of any kind, income from any rental properties, and returns on investments of any kind.

RESPONSE:

13. All documents showing the total income and all assets in Ms. Essie L. Morgan's estate at the time such estate was open, and specify what, if any, assets are currently in Ms. Essie L. Morgan's estate and whether and how such assets have been disbursed in any manner.

RESPONSE:

14. All probate documents relating to the estate of Ms. Essie L. Morgan.

RESPONSE:

15. Any documents evidencing Plaintiff knew or should have known of your inability to make your monthly payments under the loan.

RESPONSE:

16. All records of any civil or criminal actions pending against you or any corporation, partnership, or other entity in which you have a vested or contingent interest.

RESPONSE:

17. All documents you provided to the Plaintiff prior to the loan closing.

RESPONSE:

18. All correspondence and reports to or from any person identified as an expert witness in this case.

RESPONSE:

19. All documents showing the false representations you allege Plaintiff or any other person made to you.

RESPONSE:

20. All documents showing the unfair or deceptive acts or practices in which you allege Plaintiff or any other person has engaged.

RESPONSE:

21. All documents showing the promises you allege Plaintiff made to you in connection with its modification program and your mortgage and workout agreement.

RESPONSE:

22. The complete loan file related to the original loan closing.

RESPONSE:

23. All loan commitment letters issued in connection with this case.

RESPONSE:

24. All notices of any kind received by you from Plaintiff or any other person relating to the Note and the Mortgage.

RESPONSE:

25. All documents showing any payments you or anyone else made on the Note.

RESPONSE:

LAW OFFICES OF BRIAN L. BOGER

Brian L. Boger
Attorney for Defendant Wells
1331 Elmwood Ave., Suite 210
PO Box 65
Columbia, South Carolina 29202
(803) 252-2880

November __, 2012
Columbia, SC

EXCUSE ME EVERYONE. Applies to Plaintiff

1. S.C. Code Ann. § 37-5-108 is inapplicable to the subject mortgage loan.

The Court grants summary judgment in favor of Plaintiff on Wells's counterclaim for violation of S.C. Code Ann. § 37-5-108 ("unconscionable debt collection") because that statute only applies to "consumer credit transactions," and the subject mortgage loan was not a consumer credit transaction.

"With respect to a *consumer credit transaction*, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction." S.C. Code Ann. § 37-5-108(2)(emphasis added).

"Consumer credit transaction" includes "a consumer credit sale (Section 37-2-104) or consumer loan (Section 37-3-104) or a refinancing or consolidation thereof, a consumer lease (Section 37-2-106), or a consumer rental-purchase agreement (Section 37-2-701)." S.C. Code Ann. § 37-1-301(11).

Because it is undisputed that the loan at issue in this case is secured by a first lien real estate mortgage, it does not fall within any of these types of transactions. S.C. Code Ann. § 37-3-105(1) ("consumer loan" does not include a loan secured by a first lien or equivalent security interest in real estate."); S.C. Code Ann. § 37-2-104(2)(b) ("consumer credit sale" does not include... a sale of an interest in land if the debt is secured by a first lien or equivalent security interest in real estate."); S.C. Code Ann. § 37-2-106(1) ("consumer lease" means a lease of goods...); S.C. Code Ann. § 37-2-701(6) ("Consumer rental-purchase agreement" means an agreement for the use of personal property...).

Therefore, this counterclaim fails as a matter of law.

2. The FDCPA is inapplicable to Plaintiff under these facts.

Plaintiff is entitled to summary judgment on Wells's counterclaim for violation of the FDCPA because Plaintiff is not a "debt collector" regulated by the FDCPA.

A "debt collector" only includes "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6)(emphasis added).

Because Plaintiff is the holder of the Note and is attempting to collect the subject debt for itself, it is a "creditor"² rather than a debt collector with respect to this loan.

"Creditors" are not subject to liability under the FDCPA. See *Maguire v. Citicorp Retail Services, Inc.*, 147 F.3d 232, 235 (2nd Cir. 1998) ("As a general matter, creditors are not subject to the FDCPA");

² "Creditor" means "any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another." 15 U.S.C. § 1692a(4)(emphasis added).

No violations
family
3
THANKS YOU
Plaintiff

Wells's defense of lack of standing, counterclaim for violation of S.C. Code Ann. § 37-5-108 ("unconscionable debt collection"), and counterclaim for violation of 15 U.S.C. § 1692e ("Fair Debt Collection Practices Act" or "FDCPA") are all based on allegations that the assignment of the Mortgage into the Plaintiff is invalid because it occurred after the trust's alleged closing date of February 28, 2006. (Ans. and Countercl. ¶ 32.) She argues that, as a result, the trust "could not legally acquire possession of any asset including the subject Mortgage" after that closing date, and that, without a valid assignment, Plaintiff has no right to collect the mortgage debt. *Id.*

However, there is no dispute that Plaintiff holds the original Note from the borrower, which contains a blank endorsement.¹ Plaintiff seeks summary judgment on both counterclaims and the defense of lack of standing.

STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56, SCRCPC(e). "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56, SCRCPC(e).

"If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted." Rule 56(d), SCRCPC. "It may thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just." *Id.*

CONCLUSIONS OF LAW

For the following reasons, the Court grants Plaintiff summary judgment on both of Wells's counterclaims and her defense of lack of standing:

¹ Plaintiff's counsel presented the original note, containing the necessary endorsements, to the Court at the hearing on this motion.

Heintz v. Jenkins (94-367), 514 U.S. 291 (1995).

Syllabus	Opinion [Breyer]
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SUPREME COURT OF THE UNITED STATES**No. 94-367****GEORGE W. HEINTZ, et al., PETITIONERS v. DARLENE JENKINS**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[April 18, 1995]

Justice Breyer delivered the opinion of the Court.

The Fair Debt Collection Practices Act prohibits "debt collector[s]" from making false or misleading representations and from engaging in various abusive and unfair practices. The Act says, for example, that a "debt collector" may not use violence, obscenity, or repeated annoying phone calls, 15 U.S.C. § 1692d; may not falsely represent "the character, amount, or legal status of any debt," §1692e(2)(A); and may not use various "unfair or unconscionable means to collect or attempt to collect" a consumer debt, §1692f. Among other things, the Act sets out rules that a debt collector must follow for "acquiring location information" about the debtor, §1692b; communicating about the debtor (and the debt) with third parties, §1692c(b); and bringing "[l]egal actions," §1692i. The Act imposes upon "debt collector[s]" who violate its provisions (specifically described) "[c]ivil liability" to those whom they, e.g., harass, mislead, or treat unfairly. §1692k. The Act also authorizes the Federal Trade Commission to enforce its provisions. §1692l(a). The Act's definition of the term "debt collector" includes a person "who regularly collects or attempts to collect, directly or indirectly, debts owed [to] . . . another." §1692a(6). And, it limits "debt" to consumer debt, i.e., debts "arising out of . . . transaction[s]" that "are primarily for personal, family, or household purposes." §1692a(5).

The plaintiff in this case, Darlene Jenkins, borrowed money from the Gainer Bank in order to buy a car. She defaulted on her loan. The bank's law firm then sued Jenkins in state court to recover the balance due. As part of an effort to settle the suit, a lawyer with that law firm, George Heintz, wrote to Jenkins. His letter, in listing the amount she owed under the loan agreement, included \$4,173 owed for insurance, bought by the bank because she had not kept the car insured as she had promised to do.

Jenkins then brought this Fair Debt Collection Practices Act suit against Heintz and his firm. She claimed that Heintz's letter violated the Act's prohibitions against trying to collect an amount not "authorized by the agreement creating the debt," §1692f(1), and against making a "false representation of . . . the . . . amount . . . of any debt," §1692e(2) (A). The loan agreement, she conceded, required her to keep the car insured "against loss or damage" and permitted the bank to buy such insurance to protect the car should she fail to do so. App. to Pet. for Cert. 17. But, she said, the \$4,137 substitute policy was not the kind of policy the loan agreement had in mind, for it insured the bank not only against "loss or damage" but also against her failure to repay the bank's car loan. Hence, Heintz's "representation" about the "amount" of her "debt" was "false"; amounted to an effort to collect an "amount" not "authorized" by the loan agreement; and thus violated the Act.

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the District Court dismissed Jenkins's Fair Debt Collection lawsuit for failure to state a claim. The court held the Act does not apply to lawyers engaging in litigation. However, the Court of Appeals for the Seventh Circuit reversed the District Court's judgment, interpreting the Act to apply to litigating lawyers. *Jenkins v. Heintz*, 25 F. 3d 536 (1994). The Seventh Circuit's view in this respect conflicts with that of the Sixth Circuit. See *Green v. Hocking*, 9 F. 3d 18 (1993) (*per curiam*). We granted certiorari to resolve this conflict. 513 U. S. ____ (1994). And, as we have said, we conclude that the Seventh Circuit is correct. The Act does apply to lawyers engaged in litigation.

There are two rather strong reasons for believing that the Act applies to the litigating activities of lawyers. *First*, the Act defines the "debt collector[s]" to whom it applies as including those who "regularly collec[t] or attemp[t] to collect, directly or indirectly, [consumer] debts owed or due or asserted to be owed or due another." §1692a(6). In ordinary English, a lawyer who regularly tries to obtain payment of consumer debts through legal proceedings is a lawyer who regularly "attempts" to "collect" those consumer debts. See, e.g., Black's Law Dictionary 263 (6th ed. 1990) ("To collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings").

Second, in 1977, Congress enacted an earlier version of this statute, which contained an express exemption for lawyers. That exemption said that the term "debt collector" did not include "any attorney at law collecting a debt as an attorney on behalf of and in the name of a client." Pub. L. 95-109, §803(6)(F), 91 Stat. 874, 875. In 1986, however, Congress repealed this exemption in its entirety, Pub. L. 99-361, 100 Stat. 768, without creating a

narrower, litigation related, exemption to fill the void. Without more, then, one would think that Congress intended that lawyers be subject to the Act whenever they meet the general "debt collector" definition.

Heintz argues that we should nonetheless read the statute as containing an implied exemption for those debt collecting activities of lawyers that consist of litigating (including, he assumes, settlement efforts). He relies primarily on three arguments.

First, Heintz argues that many of the Act's requirements, if applied directly to litigating activities, will create harmfully anomalous results that Congress simply could not have intended. We address this argument in light of the fact that, when Congress first wrote the Act's substantive provisions, it had for the most part exempted litigating attorneys from the Act's coverage; that, when Congress later repealed the attorney exemption, it did not revisit the wording of these substantive provisions; and that, for these reasons, some awkwardness is understandable. Particularly when read in this light, we find Heintz's argument unconvincing.

Many of Heintz's "anomalies" are not particularly anomalous. For example, the Sixth Circuit pointed to §1692e(5), which forbids a "debt collector" to make any "threat to take action that cannot legally be taken." The court reasoned that, were the Act to apply to litigating activities, this provision automatically would make liable any litigating lawyer who brought, and then lost, a claim against a debtor. *Green, supra*, at 21. But, the Act says explicitly that a "debt collector" may not be held liable if he "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." §1692k(c). Thus, even if we were to assume that the suggested reading of §1692e(5) is correct, we would not find the result so absurd as to warrant implying an exemption for litigating lawyers. In any event, the assumption would seem unnecessary, for we do not see how the fact that a lawsuit turns out ultimately to be unsuccessful could, by itself, make the bringing of it an "action that cannot legally be taken."

The remaining significant "anomalies" similarly depend for their persuasive force upon readings that courts seem unlikely to endorse. For example, Heintz's strongest "anomaly" argument focuses upon the Act's provisions governing "[c]ommunication in connection with debt collection." §1692c. One of those provisions requires a "debt collector" not to "communicate further" with a consumer who "notifies" the "debt collector" that he or she "refuses to pay" or wishes the debt collector to "cease further communication."

§1692c(c). In light of this provision, asks Heintz, how can an attorney file a lawsuit against (and thereby communicate with) a nonconsenting consumer or file a motion for summary judgment against that consumer?

We agree with Heintz that it would be odd if the Act empowered a debt owing consumer to stop the "communications" inherent in an ordinary lawsuit and thereby cause an ordinary debt collecting lawsuit to grind to a halt. But, it is not necessary to read §1692c(c) in that way--if only because that provision has exceptions that permit

communications "to notify the consumer that the debt collector or creditor may invoke" or "intends to invoke" a "specified remedy" (of a kind "ordinarily invoked by [the] debt collector or creditor"). §§1692c(c)(2), (3). Courts can read these exceptions, plausibly, to imply that they authorize the actual invocation of the remedy that the collector "intends to invoke." The language permits such a reading, for an ordinary court related document does, in fact, "notify" its recipient that the creditor may "invoke" a judicial remedy. Moreover, the interpretation is consistent with the statute's apparent objective of preserving creditors' judicial remedies. We need not authoritatively interpret the Act's conduct regulating provisions now, however. Rather, we rest our conclusions upon the fact that it is easier to read §1692c(c) as containing some such additional, implicit, exception than to believe that Congress intended, silently and implicitly, to create a far broader exception, for all litigating attorneys, from the Act itself.

Second, Heintz points to a statement of Congressman Frank Annunzio, one of the sponsors of the 1986 amendment that removed from the Act the language creating a blanket exemption for lawyers. Representative Annunzio stated that, despite the exemption's removal, the Act still would not apply to lawyers' litigating activities. Representative Annunzio said that the Act

"regulates debt collection, not the practice of law. Congress repealed the attorney exemption to the act, not because of attorney[s] conduct in the courtroom, but because of their conduct in the backroom. Only collection activities, not legal activities, are covered by the act. . . . The act applies to attorneys when they are collecting debts, not when they are performing tasks of a legal nature. . . . The act only regulates the conduct of debt collectors, it does not prevent creditors, through their attorneys, from pursuing any legal remedies available to them." 132 Cong. Rec. 30842 (1986).

This statement, however, does not persuade us.

For one thing, the plain language of the Act itself says nothing about retaining the exemption in respect to litigation. The line the statement seeks to draw between "legal" activities and "debt collection" activities was not necessarily apparent to those who debated the legislation, for litigating, at first blush, seems simply one way of collecting a debt. For another thing, when Congress considered the Act, other Congressmen expressed fear that repeal would limit lawyers' "ability to contact third parties in order to facilitate settlements" and "could very easily interfere with a client's right to pursue judicial remedies." H. R. Rep. No. 99-405, p. 11 (1985) (dissenting views of Rep. Hiler). They proposed alternative language designed to keep litigation activities outside the Act's scope, but that language was not enacted. *Ibid*. Further, Congressman Annunzio made his statement not during the legislative process, but *after* the statute became law. It therefore is not a statement upon which other legislators might have relied in voting for or against the Act, but it simply represents the views of one informed person on an issue about which others may (or may not) have thought differently.

Finally, Heintz points to a "Commentary" on the Act by the Federal Trade Commission's

staff. It says:

"Attorneys or law firms that engage in traditional debt collection activities (sending dunning letters, making collection calls to consumers) are covered by the [Act], but *those whose practice is limited to legal activities are not covered.*" Federal Trade Commission--Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50100 (1988) (emphasis added; footnote omitted).

We cannot give conclusive weight to this statement. The Commentary of which this statement is a part says that it "is not binding on the Commission or the public." *Id.*, at 50101. More importantly, we find nothing either in the Act or elsewhere indicating that Congress intended to authorize the FTC to create this exception from the Act's coverage--an exception that, for the reasons we have set forth above, falls outside the range of reasonable interpretations of the Act's express language. See, e.g., *Brown v. Gardner*, 513 U. S. ____, ____ (1994) (slip op., at 6-8); see also *Fox v. Citicorp Credit Servs., Inc.*, 15 F. 3d 1507, 1513 (CA9 1994) (FTC staff's statement conflicts with Act's plain language and is therefore not entitled to deference); *Scott v. Jones*, 964 F. 2d 314, 317 (CA4 1992) (same).

For these reasons, we agree with the Seventh Circuit that the Act applies to attorneys who "regularly" engage in consumer debt collection activity, even when that activity consists of litigation. Its judgment is therefore

Affirmed.