THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Court Judge

Appellate Case No. 2014-001384

FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC.....Respondent,

vs.

Byron J. Dolan; Lisa S. Dolan; First Citizens Bank and Trust Company, Inc.; Wells Fargo Bank, N.A.; Branch Banking and Trust Company .....Defendants,

Of whom

Byron J. Dolan and Lisa S. Dolan, are..... Appellants.

FINAL BRIEF OF RESPONDENT

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July 1, 2015

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II. DID THE TRIAL COURT ERR IN ADMITTING INTO EVIDENCE THE BUSINESS RECORDS OF THE PLAINTIFF'S LOAN SERVICERS AND ALLOWING THE WITNESS FOR THE CURRENT LOAN SERVICER TO TESTIFY ABOUT THE BUSINESS RECORDS?

III. DID THE TRIAL COURT ERR IN GRANTING A DIRECTED VERDICT IN FAVOR OF THE RESPONDENT ON THE APPELLANTS' CAUSE OF ACTION FOR VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT CLAIM?

STATEMENT OF THE CASE

This lawsuit arises out of the foreclosure of a residential real estate mortgage. Respondent, FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC, filed its Lis Pendens, Summons, and Complaint on July 9, 2012. (R. pp. 28-34). Appellants, Bryon J. Dolan and Lisa S. Dolan, filed an Answer and Counterclaim on August 10, 2012. Appellants asserted an equitable counterclaim for Accounting, and legal counterclaims for Breach of Contract and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). (R. pp. 36-43).

By Order filed May 1, 2014, Appellants and Respondent agreed and stipulated to bifurcate the action pursuant to Rule 42(b), SCRCP, thereby severing Appellants' legal counterclaims for Breach of Contract and SCUTPA from Respondent's foreclosure claim and Appellants' equitable counterclaim for Accounting. As part of the May 1, 2014 Order, the equitable foreclosure claim and equitable counterclaim for Accounting were referred to the Lexington County Master-in-Equity. (R. pp. 10-11).

On April 17, 2014, the legal counterclaims were heard before a jury with the Honorable R. Keith Kelly presiding. A directed verdict was granted in favor of Respondent on the SCUTPA claim, and a jury verdict was returned in favor of Respondent on the Breach of Contract counterclaim. (R. p. 237, line 16 - p. 240, line 17; p. 1). Subsequently, Judge Kelly denied Appellants' motion for a new trial and motion to reconsider the order. (R. pp. 2-3).

On June 25, 2014, Appellants' filed a Notice of Appeal to the South Carolina Court of Appeals indicating that they intend to appeal the orders of the Honorable R. Keith Kelly.

On July 14, 2014, Respondent filed a Motion to Dismiss Appellants' Appeal due to the fact that there has not been a final judgment on the equitable claims. (R. pp. 71-74). On August 25, 2014, the Court of Appeals issued an Order denying Respondent's Motion to Dismiss but did not address the underlying merits of the motion. The Court of Appeal's Order allowed the parties to address the appealability of the legal counterclaims in their briefs to the court. (R. pp. 25-26).

On March 16, 2015, Appellants' filed their Initial Brief and Designation of Matter to be Included in the Record on appeal.

STATEMENT OF THE FACTS

This appeal involves the outcome of the jury trial held on April 17, 2014 on the Appellants' two legal counterclaims for Breach of Contract and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA").

The main issue at trial was the interpretation of a letter dated September 22, 2011 ("Letter"). (R. pp. 395-96). Appellants' argument at trial was that the Letter created a contract whereby the Plaintiff's loan Servicer at the time, Saxon Mortgage Services ("Saxon"), agreed to accept the sum of $65,250 to bring the loan current and Respondent breached that agreement. (R. p. 113, line 17 – p. 114, line 4; p. 187, line 22 – p. 188, line 4). Respondent's position at trial was that the clear reading of the Letter created an agreement between the parties that 1) in exchange for $65,250, Plaintiff would release its lien as to a 1,043 square foot section of the property to help facilitate the sale of the adjoining property and the $65,250 would be applied to the loan per the terms of the loan documents; 2) the Appellants were required to attempt to sell their property and had until

December 31, 2011 in order to do so; if the Appellants were unable to sell the property, the time period could be extended for 2 months at Saxon's sole discretion in exchange for the Appellants making two monthly payments of $3,000; and 3) the Appellants were given the option to submit a loan modification packet. (R. p. 119, line 20 – p. 121, line 23; p. 265, line 11 – p. 266, line 16; p. 267, lines 2-24).

In 1999, Mr. Dolan purchased a tract of land on Lake Murray in Lexington County. (R. p. 161, line 24 – p. 162, line 3). Around 2003, the tract was subdivided into two parcels: 540 Windward Point Court (the property that is the subject of this action) and 544 Windward Point Court (the adjacent property). (R. p. 163, line 7 – p. 164, line 12). Mr. Dolan built houses on each parcel and each parcel was secured by a separate note and mortgage. (R. p. 164, line 16 – p. 165, line 15). By 2009, both properties were in foreclosure. (R. p. 167, line 11 – p. 168, line 15). The foreclosure related to 544 Windward Point Court was completed in May 2011, and Branch Banking and Trust Company ("BB&T") was the successful purchaser at the judicial sale. (R. p .168, line 16-21; pp. 349-352).

In 2011, BB&T planned to sell 544 Windward Point Court. However, 544 Windward Point Court lacked a front yard, which made it very difficult to sell. Mr. Dolan learned of the potential purchase and thought the proposed sales price was too low and feared that the sale would negatively affect his property value. (R. p. 173, line 11 – p. 177, line 2).

Mr. Dolan contacted the Respondent's then loan servicer, Saxon, and proposed that he convey a strip of his property at 540 Windward Point Court to the purchaser of 544 Windward Point Court. (R. p. 173, line 7-10). Due to Respondent's Mortgage,

Saxon needed to consent to the partial release. (R. p. 178, lines 2-11). In exchange for Saxon releasing the strip of land from its mortgage, it would receive a portion of the proceeds from the proposed sale. The proceeds would be applied towards the Dolan's arrearage. (R. p. 181, line 22 – p. 183, line 22; pp. 395-96). In addition, Mr. Dolan was given time to secure a buyer for 540 Windward Point Court. (R. p. 189, line 13 – p. 190, line 14; pp. 395-96).

Saxon received the $65,250 in September 2011 and applied the proceeds to the loan. (R. p. 264 lines 10-23). However, the proceeds were not sufficient to bring the loan current. (R. p. 266, lines 13-16; pp. 372-85). After applying the proceeds from the September 2011 transaction, the loan remained in default and due for the March 2011 payment. (R. p. 266, lines 13-16). Since it would be difficult for the Dolans to sell their property with a pending judgment of foreclosure and sale attached, Saxon vacated its foreclosure judgment. (R. p. 171, line 15 – p. 172, line 2; p. 284, line 22 – p. 285, line 9).

Due to the uncured default, the subject foreclosure action related to 540 Windward Point Court was filed on July 9, 2012. (R. pp. 28-34).

On or about January 24, 2012, Specialized Loan Servicing ("SLS") became the loan server for the Appellants' loan. (R. p. 233, lines 9-11). In accordance with industry standard procedures, the Appellant's loan information, including the payment history, was transferred from Saxon to SLS. (R. p. 233, line 19 – p. 234, line 18; p. 250, line 18 – p. 251, line 13). It is customary in the mortgage industry for lenders to contract with loan servicers to handle the day to day managing of a loan and perform such duties as collecting payments, paying escrow expenditures and engaging is loss mitigation efforts with borrowers. (R. p. 246, lines 2-18).

At the trial on April 17, 2014, the witness for the Respondent was Loretta Poch. At the trial, Ms. Poch testify about the Appellants' account payment history and specifically testified about the application of the $65,250 in proceeds from the partial release and how that amount was not sufficient to bring the loan current. (R. p. 264, lines 10-23; p. 266, lines 13-16). Ms. Poch also testified that SLS and the prior loan servicer fully complied with the agreement. (R. p. 269, lines 7-17).

STANDARD OF REVIEW

The Court may affirm for any ground appearing in the record. Rule 220(c), SCAR; see also I'On v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000)).

"The admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion. Conner v. City of Forest Acres, 363 S.C. 460, 467, 611 S.E.2d 905, 908 (2005). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." Id. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." Id.

'In an action at law, on appeal of a case tried by a jury, the jurisdiction of the appellate court extends merely to the correction of errors of law, and a factual finding by the jury will not be disturbed unless a review of the record discloses no evidence that reasonably supports the jury's findings.' Solanki v. Wal–Mart Store # 2806, 410 S.C.

229, 235, 763 S.E.2d 615, 618 (Ct.App.2014) (citing Wright v. Craft, 372 S.C. 1, 18, 640 S.E.2d 486, 495 (Ct.App.2006).

"In ruling on a motion for a directed verdict, the trial court must view the evidence in the light most favorable to the nonmoving party. Hartfield V. The Getaway Lounge & Grill, Inc., 388 S.C. 407, 415, 697 S.E.2d 558, 562 (2010). "A motion for a directed verdict goes to the entire case and may be granted only when the evidence raises no issue for the jury as to liability." Id. "This Court will reverse the trial court's rulings on directed verdict motions only where there is no evidence to support the rulings or where the rulings are controlled by an error of law." Id.

ARGUMENTS

I. THE APPELLANTS ARE NOT ENTITLED TO IMMEDIATELY APPEAL THE JURY VERDICT AND DIRECTED VERDICT OF THE LEGAL COUNTERCLAIMS BECAUSE THERE HAS NOT BEEN A FULL TRIAL ON THE REMAINING EQUITABLE CLAIMS IN THE CASE

The equitable foreclosure claim and equitable counterclaim for Accounting have yet to be heard or decided by the Master-in-Equity, and thus, a final judgment in the case has yet to be rendered.

Barring some statutory exceptions not applicable here, South Carolina courts have repeatedly held that as a general rule, appeal may only be taken after a final judgment has been rendered. Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing Culbertson v. Clemens, 332 S.C. 20, 23, 471 S.E.2d 163, 164 (1996). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." Id. (citing Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)).

An order denying a motion to reconsider a verdict on the at-law counterclaims is interlocutory and not immediately appealable, when a judgment has not been rendered in the equitable foreclosure and accounting claims. There has not been a final order because the ruling on the at-law claims left some further act to be done by the court before the rights of the parties can be determined. In the present case, the Master-in-Equity must still decide whether the Respondents are entitled to foreclosure before the rights of the parties are determined. Thus, there has not been a final judgment and the order is interlocutory.

Appellants are seeking to stay the foreclosure claim and Accounting counterclaim before the Master-in-Equity until this appeal is decided. Appellants will argue that if the foreclosure action were to go forward before the Master-in-Equity, there is a substantial risk of inconsistent rulings, whereby one court renders a judgment of foreclosure, and the other determines that a new trial must be heard on the legal counterclaims, which could eventually, lead to a finding that the foreclosure must not be granted. However, Appellants are merely restating the rationale as to why an interlocutory appeal is improper at this time in the present case. It is for this very reason that Appellants, should they wish to appeal, must wait until the Master has rendered a judgment on the foreclosure claim and accounting counterclaim before an appeal may properly be taken.

Appellants wish to treat the legal and equitable claims in this case as one case when it suits their needs and separate when it does not. Appellants and Respondent agree that the legal counterclaims must be tried first. Now that the Appellants are dissatisfied with the portion of the case dealing with their legal counterclaims they want to argue that they are somehow allowed to treat the legal counterclaims as a distinct final judgment and continue to delay the equitable claims being heard. Based on the present procedural posture of the case, the Respondent's equitable foreclosure claim is subject to an indefinite stay. Even if the Appellants are successful in their appeal, the equitable claims would not be heard at the retrial of the jury claims and Appellants could appeal another unfavorable jury verdict. Respondent may never have its equitable foreclosure claims heard and never have its day in court, while the Appellants may file potentially endless appeals of their jury claims

The parties consented to bifurcate the claims in the interest of expediency and judicial economy. The Parties recognized that the Master-in-Equity was best suited to handle the foreclosure action and equitable counterclaim. As such, Respondent respectfully requests this Court dismiss the appeal and order that the Notice of Appeal filed by Appellants be canceled until such time as the Respondent's foreclosure claim and Appellants' accounting counterclaim are tried before the Master-in-Equity.

II. THE TRIAL COURT DID NOT ERR IN ADMITTING INTO EVIDENCE THE BUSINESS RECORDS OF THE PLAINTIFF'S LOAN SERVICERS AND ALLOWING THE WITNESS FOR THE CURRENT LOAN SERVICER TO TESTIFY ABOUT THE BUSINESS RECORDS.

i. The trial court did not err in admitting into evidence the exhibits at trial that contain records from the prior loan servicer, Saxon, because the Respondent's exhibits at trial fall within the business records exception to hearsay.

The trial court did not err in admitting the Plaintiff's business records into evidence and did not err in allowing the Plaintiff's records custodian to testify about the contents of those records. (R. p. 252, lines 3-19; p. 255, line 11 – p. 262, line 22).

"The business records exception is found in both the South Carolina Code at § 19-5-510 (1985) and Rule 803(6) of the South Carolina Rules of Evidence. Both exceptions require that the evidence be given by a 'custodian or other qualified witness.'" Twelfth RMA Partners, L.P. v. National Safe Corp., 335 S.C. 635, 642, 518 S.E.2d 44, 48 (Ct.App.1999)

"A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity,

and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness" is not excluded from evidence by the hearsay rule. Rule 803(6), SCRE. Further, "[a] record of an act, condition or event shall, insofar as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission." S.C. Code Ann. § 19-5-510 ("Uniform Business Records as Evidence Act").

In construing the business records exception under the comparable Federal Rules of Evidence, our federal court has found that "[b]usiness records of an entity are admissible even though another entity made the records, and the rule does not require an employee of the entity that prepared the record to lay the foundation." Midfirst Bank, SSB v. C.W. Haynes & Co., Inc., 893 F. Supp. 1304, 1310 (D.S.C. 1994). "Moreover, Rule 803(6) does not require the testifying witness to have personally participated in the creation of the document or to know who actually recorded the information." Id. at 1311. 'Obviously, such a requirement would eviscerate the business records exception, since no document could be admitted unless the preparer (and possibly others involved in the information-gathering process) personally testified as to its creation.' Id. (quoting United States v. Keplinger, 776 F.2d 678, 694 (7th Cir.1985)). "Rather, the business records exception requires the witness to be familiar with the record keeping system." Id.

In this case, Ms. Poch testified to lay the foundation for all the exhibits at issue and, as a record custodian for SLS, she meets Rule 803(6)'s authentication requirement.

Q. And are you authorized to testify on behalf of your company in today's trial?
A. Yes, I am.
Q. In the ordinary course of its business, does SLS maintain record for the loans that it services, including the Dolans' loan?
A. Yes, we do.
Q. As part of your job duties, are you familiar with those records?
A. Yes, I am.
Q. And have you reviewed the Dolans' record maintained by your company for today's trial?
A. Yes, I have.
Q. And do you have personal knowledge of this loan based on your review of those records?
A. Yes, I do.
(R. p .246, line 19 – p. 247, line 9).

Q. When a loan is service transferred, can you explain typically what happens? I know you talked a little bit about it before, but do you have anything to add?
A. Basically that -- when it goes through this rigorous testing that I was talking about, they're looking at all the financial data to ensure that it matches all the written loan documents. And the quality control process is to ensure that nothing is missing or nothing is added that's inappropriate into the loan records.
Q. So do you know if in this particular case what you described about service transfer, did it occur?
A. Yes, it did, and there were no errors found in the servicing transfer. Everything matched.
(R. p. 250, line 18 – p. 251, line 5).

Q. So when SLS started servicing this loan, did it receive Saxon's and BB&T payment history?
A. Yes.
Q. Did it receive Saxon and BB&T's communication that would have been sent out?

A. Yes.
Q. Would it have received its servicing notes?
A. Yes.
(R. p. 251, lines 6-13).

Q. All right. Ma'am, where does any information that Specialized Loan Servicing has about this loan before it took over servicing of it come from?
A. All the records are transferred electronically for servicer to servicer. We go through a lengthy process that spans 30 days before a loan goes live on our system where we receive data transfer of all the records, the payment history, the note history, and the loan documents. And it goes through a rigorous process to ensure accuracy in one group and then a second -- another entire group of people re-review all of that information to ensure accuracy again. Then -- this is 30 days prior. Then 15 days prior, we get updated financial figures, and then three days prior, we get updated financial figures again, and it goes through the same rigorous process through these two groups. Once it's passed all these reviews, then it's boarded -- we call it boarded, meaning loaded into our system and it goes into live data on the date we begin servicing transfer the loan. But it can't get to that point until we've ensured all the accuracy. Once it's boarded into our system, then the prior service records become our servicing records.
Q. So you said they become your servicing records?
A. That's correct.
(R. p. 233, line 19 – p. 234, line 18).

Q. So if there's something that's just not in the records, Specialized Loan Servicing, would they know about that?
A. If everything didn't match these business rules, this rigorous testing, then it would become apparent something was missing.
(R. p. 235, lines 1-6).

At trial the Appellants did not contest that the records were kept in the course of SLS's regularly conducted business activity. The Appellant's did not present any reason

why the Court should question the trustworthiness of the documents other than Appellants' counsel's unsupported accusation.

The Appellants entire argument at trial was to attack Ms. Poch's ability to testify to the records of the prior servicer and mortgagees. The reasoning in the Midfirst Bank case makes clear that for documents to be admissible under the business records exception, they do not have to be actually created by the witness testifying to authenticate them, nor do they even have to be created by the entity by which the witness is employed. Rather, Rule 803(6) merely requires that documents be "made at or near the time by, *or from information transmitted by*, a person with knowledge." Rule 803(6), SCRE (emphasis added). Further, the witness does not have to have met the person who created the records or even know their existence or identity. Rule 803(6) merely requires, for records to be admissible as business records, the witness must be familiar with the company's record keeping system. Ms. Poch, as an employee of SLS, clearly meets that test. Her testimony established that she is familiar with how these records were obtained and reviewed for accuracy before becoming part of SLS's business records. Therefore, the Court did not err in allowing the exhibits offered by Respondent at the trial as admissible evidence under the business records exception to hearsay and S.C. Code Ann. § 19-5-510.

ii. Respondent's witness at trial was qualified to testify about the contents of properly admitted business records of the Respondent.

The best evidence rule, "in the law of evidence applies only to oral testimony tending to vary the terms of a Written Instrument..." W. R. Grace & Co. (Davison

Chemical Co. Division) v. Lamunion, 245 S.C. 1, 8, 138 S.E.2d 337, 340 (1964).

As a records custodian, the Respondent's witness can properly testify about the contents of the business records. In their initial brief, the Appellants argue that the Respondent's witness, Ms. Poch, improperly testified about the "substantive status" of the loan history, thereby violating the best evidence rule. Appellants' argument misconstrues the meaning of the best evidence rule and leaves out an important part of how the rule functions. The best evidence rule only applies when the proffered testimony varies the terms of a written instrument. Here, to the contrary, Ms. Poch's testimony was based solely on the written instrument. Ms. Poch's testimony simply conveyed information contained in the business records to the jury. This type of testimony is certainly necessary and helpful to a jury when examining an exhibit such as a loan payment history and explaining the various entries.

In their initial brief, the Appellants also make the blanket argument that any witness at trial can only ever testify about what she observed first hand is without merit. Such a requirement would defeat the purpose of having a business records exception and would require a party to bring countless witnesses to trial to testify about every single entry or notation on a business record. (See Midfirst Bank, SSB v. C.W. Haynes & Co., Inc., 893 F. Supp. 1304, 1310 (D.S.C. 1994)).

III. THE TRIAL COURT DID NOT ERR IN GRANTING A DIRECTED VERDICT IN FAVOR OF THE RESPONDENT ON THE APPELLANTS' CAUSE OF ACTION FOR VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT CLAIM.

The trial court did not err in granting Respondent a directed verdict on the Appellants' Unfair Trade Practices Claim at the close of the Appellants' case. The

Appellants failed to produce any evidence that the alleged conduct of the Plaintiff had any effected on the public interest or had the potential for repetition.

To recover under the SCUTPA, the Appellants need to prove: "1) a violation of the Act [by the commission of an unfair or deceptive act in trade or commerce], 2) proximate cause, and 3) damages." Schnellmann v. Roettger, 368 S.C. 17, 23, 627 S.E.2d 742, 745-46 (Ct. App. 2006), modified and affirmed, 373 S.C. 379, 645 S.E.2d 239 (2007). "To be associated with trade or commerce, a defendant's acts must impact the public interest." Id. "An impact on the public interest may be shown if the acts or practices have the potential for repetition." Id. "The potential for repetition may be shown by proving that the same kind of actions occurred in the past or by showing that the procedures employed by the defendant create a potential for repetition of the deceptive practices." Id.

A plaintiff bringing a private cause of action under the UTPA must allege and prove the defendant's actions adversely affected the public interest. Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). "Therefore, conduct which only affects the parties to the transaction provides no basis for a UTPA claim." Jefferies v. Phillips, 316 S.C. 523, 527, 451 S.E.2d 21, 23 (Ct.App.1994).

Appellants argue in their initial brief that to survive a directed verdict motion on the SCUTPA claim the Appellants only needed to show the conduct of the Respondent had an impact on the public interest and it was not required that the Appellants show the conduct had the potential for repetition. In support of this position, the Appellants cite the case of Crary v. Djebelli, 329 S.C. 385, 496 S.E.2d 21 (1998). The Crary case not only does not stand for this position it directly contradicts this position.

In the Crary case, the South Carolina Supreme Court held that the potential for repetition element for a violation of the SCUTPA can be shown in multiple ways and it is not necessary for the Plaintiff to "[show] the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or ...by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." Id. at 388. However, the Supreme Court still required the Plaintiff to prove the Defendant's action had the potential for repetition, it could just be proven in a different way, the Crary case does not eliminate the repetition requirement.

Appellants' argue in their initial brief that Respondent's only alleged unfair or deceptive act was misrepresenting to the Appellants the amount of money required to bring their loan current. Appellants' claim "the public has an interest in mortgage servicers not deceiving borrowers about the status of their loans." (Appellants Initial Brief, page 24). During the trial the Appellants offered no evidence to satisfy the public interest element by showing the conduct of the Respondent had the potential for repetition. Appellants produced no evidence that the alleged improper conduct by the Respondent occurred in the past or there is anything with regards to the company's procedures that create a potential for repetition. This case involves a unique one of a kind private contract between the parties involving releasing 1,043 square feet of land to assist in the sale of a foreclosed property next door. The sale of the 1,043 square feet of land resulted from poor planning by the Appellant Bryon Dolan in the construction on both lots. Additionally, Appellant Bryon Dolan initiated the steps to create the agreement and fully participated in developing the terms and parameters of the agreement.

Appellants' argument for repetition is based on nothing more than a hypothetical argument that the Respondent could commit the same allegedly wrongful conduct towards another borrower. This argument however, is not in accordance with the law. The facts of this case are so unique that if the Appellants were to be successful in their argument any contract between any parties would be subject to a violation of the SCUTPA. Even if true, the alleged unfair or deceptive acts by the Respondent in this case only affected the Appellants personally, and no one else.

CONCLUSION

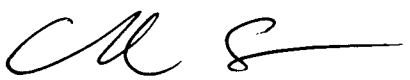
Respondent respectfully requests this Court dismiss the appeal and order that the Notice of Appeal filed by Appellants be canceled until such time as the Respondent's foreclosure claim and Appellant's Accounting counterclaim are tried before the Master-in-Equity.

In the alternative, based on the forgoing and any additional sustaining grounds appearing in the record, Respondent would respectfully submit that the trial court's directed verdict ruling in favor of the Respondent on the SCUTPA claim should be

affirmed and the jury verdict in favor of Respondent on the Breach of Contract counterclaim should be affirmed.

Respectfully submitted,

July 1, 2015



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CERTIFICATE OF COUNSEL

The undersigned counsel for Respondent FV-I, Inc., in trust for Morgan Stanley Mortgage Capital Holdings LLC certifies that the foregoing Respondent's Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I HEREBY CERTIFY that I have served the **FINAL BRIEF OF RESPONDENT** on Appellants Bryon J. Dolan and Lisa S. Dolan and other Defendants by depositing copies of it in the United States Mail, postage prepaid, on July 1, 2015, addressed to its attorneys of record shown on the attachment listing Other Counsel of Record.

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