

62

APPELLANT'S RECORD ON APPEAL

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002373

H & R Block Bank, FSB,

Respondent

v.

Ziraili M Elbey, a/k/a/ Ziraili Mohassan El Bey, WKFC Living
Trust Under Trust Agreement dated June 4, 2010 by and
through its Trustee Wellesley K. Clayton, American Home
Mortgage Servicing, Inc. :

Appellant

s/b/m to Option One Mortgage Corporation,
Defendants,

Of Whom Ziraili M. Elbey is the Appellant.

APPELLANT'S RECORD ON APPEAL

November 12, 2014

By: Ziraili M Elbey

Chad W. Burgess

Ziraili M Elbey, 'In Propria Persona'
9789 Charlotte Highway, #400-191
Ft. Mill, South Carolina, 29707
(803) 233-2665

Brock & Scott, PLLC
3800 Fernandina Rd., Ste 110
Columbia, South Carolina, 29210
Counsel for Respondent
803-454-3340

Trent M. Grissom, Esquire
201 North Tryon Street, Suite 3000
Charlotte, NC 28202

RECEIVED

NOV 14 2014

SC Court of Appeals

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IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

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H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Defendants.

Case No. 2011-CP-29-35

ORDER OF REFERENCE

FILED
CLERK OF COURT
2011 MAY 32 A 8:47
LANCASTER, SC

Upon motion of the undersigned Defendant, not an attorney is requesting a jury trial; take special notation that the above request was made initially months ago, and it is further appearing, pursuant to the revised Rule 53 (b) South Carolina Rules of Civil Procedure, that this is a proper matter to refer to a presiding JUDGE for Lancaster County.

Now therefore, IT IS ORDERED that the above entitled cause be, and the same is hereby, referred to Lancaster County Clerk of Court for a Jury trial pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

Jeff Hammons
Clerk of Court

Indian Land, South Carolina

Date: 21st May, 2012

Jury Demand Filing, We so move:

"without prejudice" UCC 1-308, UCC1-207

By: Ziraili M Elbey

Ziraili M Elbey, Alleged Defendant

In Propria Persona

①

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

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H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Defendants.

Case No. 2011-CP-29-35

ORDER

IT IS HEREBY ORDERED that the above captioned case 2011-CP-29-35,
and the Complaint of the Plaintiff be dismissed with prejudice and any Notice(s)
of Lis Pendens be removed from record.

Dated: 21st May, 2012

Indian Land, South Carolina

Date: 21st 2012

WE SO MOVE:

"without prejudice" UCC 1-308, UCC1-207

By: Ziraili M Elbey
Ziraili M ElBey, Alleged Defendant
In Propria Persona

JUDGE

2

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Defendants.

Case No. 2011-CP-29-35

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**CERTIFICATE OF SERVICE
BY MAIL.**

The undersigned hereby certifies that she is Ziraili M El Bey, alleged Defendant is of such age and discretion as to be competent to serve papers.

That on the May 21st, 2012 she served a copy of Motion to Dismiss, Notice of Default, Notice of Reference, other documents by placing said copy in a Certified with Return Receipt postage paid envelope addressed to the following person at the address stated below, which is the last known address, and by depositing said envelop and contents in the U.S. Mail.

Party(ies) Served:

Ms. Samantha Lewis
Brock & Scott, PLLC
Columbia Office – WestPark Center
3800 Fernandina Road – Suite 110
Columbia, SC 29210

Mr. Jeff Hammond
Lancaster County Clerk of Court
104 North Main Street
P.O. 1809
Lancaster, SC 29721

FILED
CLERK OF COURT
LANCASTER, SC
MAY 22 A 8:47

(3)

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank, FSB

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

**SPECIAL REFEREE'S REPORT AND JUDGMENT OF
FORECLOSURE AND SALE**

**DEFICIENCY DEMANDED AS TO DEFENDANT(S)
ZIRAILI M. ELBEY (A/K/A ZIRAILI MOHASSAN EL
BEY)**

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directed to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on January 14, 2011.
2. The Summons and Complaint were filed on January 14, 2011.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) WKFC Living Trust under trust agreement dated June 4, 2010, by and through its Trustee Wellesley K. Clayton; and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corp. are in default as shown by Affidavit filed herein.

PEW
④

5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. The Defendant Ziraili M. Elbey a/k/a Ziraili M. El Bey answered in this action and has been notified of the time and date of this hearing.

7. The Defendant(s) were notified of the time, date and place of hearing in this matter.

8. For value received, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) made, executed and delivered a note, dated March 29, 2006, promising thereby to pay to the order of Option One Mortgage Corporation the sum of \$197,186.00 with interest at the rate of 7.999% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

9. To better secure the payment of the Note described above, the said Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) made, executed and delivered a mortgage to Option One Mortgage Corporation, in writing, dated March 29, 2006, covering real property in Lancaster County, which is the same as that described in the Complaint. The Mortgage was recorded on April 7, 2006, and is of record in the Lancaster County Registry in Book 1486 at page 1.

10. This mortgage constitutes a valid purchase money, first lien on the subject property.

11. Thereafter the Mortgage and the Note were assigned to the Plaintiff herein by assignment recorded on August 5, 2010 in Book 2265 at Page 129. By virtue of said assignment, the Plaintiff in this action is the holder of the note and mortgage.

12. 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, the loan does not qualify for a modification under the above foreclosure prevention program because the loan investor has declined to allow a HMP modification.

13. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

14. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton.

15. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

16. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice), the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$2,985.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

17. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	08/22/12	\$189,911.32
Accrued interest from:	02/01/10 to: 07/16/12	\$37,335.97
Accruing at:	7.999% per annum	
Advancements to Escrow		\$803.19
Corporate Advances		\$54.90
Costs of collection prior to hearing:		\$2,222.50
Attorney's fees:		\$2,985.00

Total Debt secured by Note and Mortgage, including interest to date is \$233,312.88. Interest for the period from the date shown above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein, and interest after the date of Judgment at the rate of 7.999% per annum, the Note's current rate, pursuant to the terms of the Note and Mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Demanded the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCF.

19. The Defendant, below listed, claims or may claim a lien upon or interest in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendant and such claim or lien are as follows:

The Defendant, American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, has or may claim to have some interest in the Property by virtue of mortgage given by Ziraili M. Elbey to Option One Mortgage Corporation in the original principal amount of \$49,296.00, which mortgage was recorded in the Lancaster County Registry on April 7, 2006 in Mortgage Book 1486 at Page 9. According to testimony, American Home Mortgage Servicing, Inc. is the successor in interest to Option One Mortgage Corporation. Said mortgage is junior and subordinate to the Plaintiff's mortgage and is hereby ordered removed from title to the Property.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.

2. That there is due to the Plaintiff on its Note and Mortgage the sum of \$233,312.88, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the Note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 7.999% per annum, the current interest rate of the Note.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County Courthouse, Courtroom B, City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.999% per annum, which is the Note's current interest rate.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.

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8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.
9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Lancaster County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Lancaster County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

REV 9

3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.
4. That a personal or deficiency Judgment being Demanded, the bidding will remain open for thirty (30) days after the date of sale (pursuant to S.C. Code Ann. § 15-39-760(1976) but compliance with the bid may be made immediately.
5. That the undersigned Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the Property for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.
6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
7. That the undersigned Special Referee shall apply the proceeds of the sale as follows:
- FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and
- NEXT: To the payment of the amount to the Plaintiff, or the Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and
- NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H&R Block Bank,

Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CASE NO.: 2011-CP-29-00035

MOTION AND ORDER TO RESTORE

Chad W. Burgess, of Brock & Scott, PLLC, Attorneys for the Plaintiff, has moved before this Court to restore the above-captioned case. Based upon the record in this case, I make the following findings of salient fact and conclusion of law.

1. In the above-captioned action, at the request of the Plaintiff, the case was stricken from the file book by an Order of Stay filed previously with the Lancaster County Clerk of Court due to the Defendant, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) filing under Chapter 13 of the United States Bankruptcy Code.

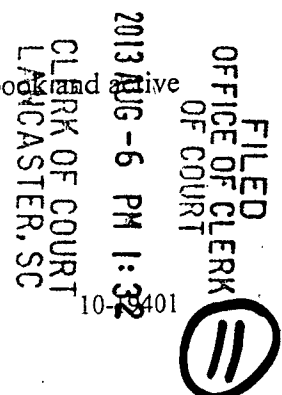
2. The said Defendant has been discharged by order of the Bankruptcy Court dated January 14, 2013 (a copy attached hereto as Exhibit "A").

3. In the interest of judicial economy, justice and equity and for good cause shown, this case shall be restored pursuant to the Chief Justices' Administrative Order issued June 5, 1992.

4. This case has been referred to Mr. Phillip E. Wright, Special Referee for Lancaster County for final disposition, and a final hearing shall be held at such date and time as may hereinafter be set.

THEREFORE, based upon the motion of Chad W. Burgess, of Brock & Scott, PLLC, Attorney for the Plaintiff, and upon my review of the record in this case,

IT IS ORDERED that the above-captioned action shall be restored to the file book and active case roster.



AND IT IS SO ORDERED.

Date: _____

Presiding Judge/Clerk of Court
Lancaster County, South Carolina

I SO MOVE:



Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad W. Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Brook Dangerfield, SC Bar No. 77912
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79144
Mark A. Pearson, SC Bar No. 15926
Brock & Scott, PLLC
3800 Fernandina Road, Suite 100
Columbia, SC 29210
Phone: 803-454-3540
Attorneys for Plaintiff

**I REFUSE TO ACCEPT YOUR OFFER
TO CONTRACT**

United States Bankruptcy Court – District of South Carolina
J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number: 12-05229-jw

Chapter: 7

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Ziraili Samara Mohassan El Bey
aka Ziraili M. Elbey, aka Ziraili M. El Bey, aka Ziraili
Mohassan E Bey
9789 Charlotte Highway
#400-191
Fort Mill, SC 29707

Last four digits of Social Security or other Individual Taxpayer
No(s)(if any): xxx-xx-8385

Entered By The Court
01/14/13

**ORDER
DISCHARGE OF DEBTOR
ORDER DISCHARGING TRUSTEE
ORDER CLOSING CASE**

Filed By The Court

01/14/13
L. Jefferson Davis IV
(Acting)
Clerk of Court
US Bankruptcy Court

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:**

1. The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).
2. The trustee has certified that the estate of the above-named debtor(s) has been fully administered, therefore, the case trustee, is discharged as the trustee of the above named debtors(s) and the bond is canceled.
3. The Chapter 7 case of the above-named debtor(s) is closed.

Columbia, South Carolina
January 14, 2013
Document 47 - 22



Chief United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION

2006-02-27-02

The Supreme Court of South Carolina

RE: FAMILY COURT FORMS

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. Const. Art. V, § 4,

IT IS ORDERED that the Administrative Order for the Family Courts, dated June 5, 1992, and signed by Chief Justice David Harwell, is hereby rescinded, effective immediately.

There shall no longer be a requirement for the Clerks of Court to strike family court actions from the active docket. All cases shall remain pending until they are dismissed or a final order is issued.

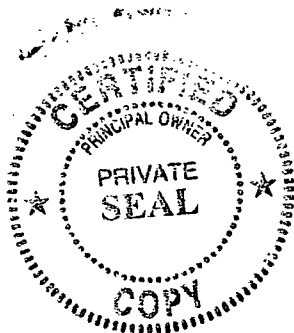
This Order is effective as of the date of its signing.

IT IS SO ORDERED.

s/Jean Hoefer Toal

Jean Hoefer Toal, Chief Justice

February 27, 2006
Columbia , South Carolina



CERTIFICATION OF MAILING

The undersigned hereby certifies that she is Ziraili-Mohassan: Elbey, Secured Party/Principal is of such age and discretion as to be competent to serve papers. That on the August 2013 she served a copy of **RETURNING PLAINTIFF'S MOTION AND ORDER & A REFUSAL TO ACCEPT PLAINTIFF'S OFFER TO CONTRACT** by placing said copy in a postage paid envelope addressed to the following person(s) at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Party(ies) Served:

Chad W. Burgess, Esquire
Brock & Scott, PLLC
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721

Dated: 06 August, 2013
9789 Charlotte Highway, Suite 400-191
Ft. Mill, South Carolina

FILED
OFFICE OF CLERK
OF COURT
2013 AUG -6 PM 1:32
CLERK OF COURT
LANCASTER, SC

Ziraili M Elbey, *In Propria Persona*
"All Rights Reserved"

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-29-00035

H&R Block Bank

PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC
Living Trust Under Trust Agreement Dated June 4, 2010
by and through its Trustee Wellesley K. Clayton and
American Home Mortgage Servicing, Inc. s/b/m to Option
One Mortgage Corporation

DEFENDANT(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Motion and Order to Restore

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
H&R Block Bank	Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey)	\$233,312.88

If applicable, describe the property, including tax map information and address, referenced in the order:
All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

FILED
OFFICE OF CLERK
OF COURT
2013 AUG -1 PM 4:03
LANCASTER, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

C/A NO.: 2011-CP-29-00035

H&R Block Bank,
Plaintiff

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,
Defendant(s).

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

Plaintiff(s) Attorney:

Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Brook Dangerfield, SC Bar No. 77912
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79144
Mark A. Pearson, SC Bar No. 15926

Defendant(s) Attorney:

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

FILED
OFFICE OF CLERK
OF COURT
2013 AUG - 1 PM 4:03
CLERK OF COURT
LANCASTER, SC

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

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion Type

- () Written motion attached
(X) Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

7/24/13
Date Submitted

SECTION III: Motion Fee

- (X) Paid - Amount: \$25.00

- () Exempt:
- ☐ Motion for Stay in Bankruptcy
 - ☐ Rule to Show Cause in Child or Spousal Support
 - ☐ Domestic Abuse or Abuse and Neglect
 - ☐ Indigent Status
 - ☐ State Agency v. Indigent Party
 - ☐ Sexually Violent Predator Act
 - ☐ Post-Conviction Relief
 - ☐ Motion for Publication
 - ☐ Motion for Execution (Rule 69, SCRPC)
 - ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE _____

Code: _____

Date: _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

C/A NO.: 2011-CP-29-00035

H&R Block Bank,
Plaintiff

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,
Defendant(s).

MOTION AND ORDER INFORMATION FORM
AND COVER SHEET

Plaintiff(s) Attorney:

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Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
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J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Brook Dangerfield, SC Bar No. 77912
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79144
Mark A. Pearson, SC Bar No. 15926

Defendant(s) Attorney:

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

CLERK OF COURT
LANCASTER, SC

2013 AUG -6 PM 1:31

FILED
OFFICE OF CLERK
OF COURT

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

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion Type

- () Written motion attached
(X) Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

7/24/13
Date Submitted

SECTION III: Motion Fee

- (X) Paid - Amount: \$25.00
() Exempt

- ☐ Motion for Stay in Bankruptcy
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status
☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act
☐ Post-Conviction Relief
☐ Motion for Publication
☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court reporter: _____

☐ Other: _____

JUDGE'S SECTION

- ☐ Motion fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE

Code:

Date:

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H&R Block Bank, FSB,

PLAINTIFF,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
 WKFC Living Trust Under Trust Agreement
 Dated June 4, 2010 by and through its Trustee
 Wellesley K. Clayton and American Home
 Mortgage Servicing, Inc. s/b/m to Option One
 Mortgage Corporation,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-29-00035

(NON-JURY MORTGAGE FORECLOSURE)

**ORDER FOR WRIT OF ASSISTANCE
 AND WRIT OF ASSISTANCE**

FILED
 OFFICE OF CLERK
 OF COURT
 2014 JAN 28 AM 9:49
 CLERK OF COURT
 LANCASTER, SC

This matter came before me upon Motion of the Plaintiff seeking a Writ of Assistance to be issued by this Court to the Sheriff of Lancaster County, South Carolina, ordering and directing him to remove, peaceably or forcibly, the Defendant Ziraili M. Elbey a/k/a Ziraili M. El Bey, together with any and all persons claiming under the said Defendant and all her personal property located within or on the subject premises.

All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc., dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006 and recorded in Plat Doc 2006 at Page 198.

Property Address: 13132 Wilburn Park Lane, Fort Mill, South Carolina 29715

TMS# 0006M-0A-261.00

It appears that the Plaintiff was the successful bidder at the public sale of the subject premises on December 2, 2013.

NOW, THEREFORE, IT IS ORDERED that the Defendant, Ziraili M. Elbey a/k/a Ziraili M. El Bey, together with any and all occupant(s) shall vacate the premises on or before February 12, 2014, and that the Plaintiff is entitled to recover possession of the premises on said date.

Exhibit #4

3pgs

Entered March 5, 2014 at 10am

19

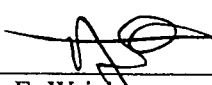
IT IS FURTHER ORDERED that if the premises is not vacant on said date, then upon receipt of a copy of this Order, the Sheriff of Lancaster County, South Carolina or his authorized deputies, be and hereby directed and authorized to enter upon the aforescribed premises, by force if the same be necessary, and seize the said premises and to remove therefrom any and all such persons who may be occupying the same, together with all possessions therein, including the Defendant, Ziraili M. Elbey a/k/a Ziraili M. El Bey, and to put the Plaintiff in full, peaceful and quiet possession of the premises without delay, and thereafter, and within ten (10) days, make due return to the Clerk of Court for Lancaster County, South Carolina, showing how this Order has been executed.

IT IS FURTHER ORDERED that should personal service not be effected by the Sheriff of Lancaster County, that copies of the Writ of Assistance be posted in a conspicuous place at or near the front entrance of the subject premises.

IT IS FURTHER ORDERED that if the occupants have voluntarily vacated the premises or have been ejected from the premises leaving personal property, automobiles, boats, furnishings, fixtures, or other items, the Plaintiff is authorized to remove therefrom all personal property, automobiles, boats, furnishings, fixtures and items, which personal property, being deemed abandoned, shall be removed by the Plaintiff or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

IT IS FURTHER ORDERED that this Order shall constitute a final judgment and Writ of Assistance pursuant to Rule 53(b), SCRPC; and,

AND IT IS SO ORDERED.



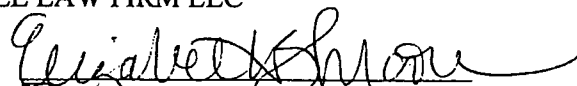
Phillip E. Wright
Special Referee, Lancaster County

Lancaster, South Carolina

January 24, 2014

WE SO MOVE:
FINKEL LAW FIRM LLC

By:



- ☐ Thomas A. Shook, SC Bar # 68340
 - ☐ Susan S. White, SC Bar # 5453
 - ☐ Andrew M. Wilson, SC Bar # 72553
 - ☒ Elizabeth S. Moore, SC Bar # 69236
 - ☐ Teresa D. Van Vlakte, SC Bar # 11118
- Attorneys for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

☒ H&R Block Bank, FSB,

PLAINTIFF,

vs.

Ziraili M. Elbey a/k/a Ziraili M. El Bey, *et al.*,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO: 2011-CP-29-00035

(NON-JURY MORTGAGE FORECLOSURE)

Checkbox above indicating submitting party

Name, S.C. Bar Number and Address of Plaintiff's Attorney ☐ Thomas A. Shook SC Bar #: 68340 ☐ Susan S. White SC Bar #: 5453 ☐ Andrew M. Wilson SC Bar #: 72553 ☒ Elizabeth S. Moore SC Bar #: 69236 ☐ Teresa D. Van Vlake SC Bar #: 11118 FINKEL LAW FIRM LLC PO Box 71727 N. Charleston, SC 29415 Telephone #: (843) 577-5460 Fax #: (843) 725-0015 Email: Ashook@finkellaw.com	Name, S.C. Bar Number and Address of Defendant's Attorney Telephone #: Fax #: Email:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete Sections II and III)	
SECTION I: Hearing Information Nature of Motion: Order of Writ of Assistance and Writ of Assistance Estimated Time Needed: _____ Court Reported Needed: ☐ YES ☒ NO	
SECTION II: Motion Type ☐ Written Motion Attached ☒ Form Motion: I hereby move for relief or action by the Court as set forth in the attached proposed order.	
SECTION III: Motion Type ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (Check Reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed Order submitted at request of the Court; or, reduced to writing from motion made in open Court per Judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached Order. ☐ Other: _____ JUDGE _____ CODE: _____ DATE: _____	
CLERK'S VERIFICATION Collected by: _____ (Print Name) DATE FILED: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED AMOUNT DUE: _____	

 CLERK OF COURT
 LANCASTER, SC

2011 JAN 28 AM 9:49

 FILED
 OFFICE OF CLERK
 OF COURT

21

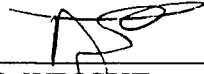
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF LANCASTER	)	CASE NO. 2011-CP-29-00035
H&R Block Bank, FSB,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Ziraili M. Elbey a/k/a Ziraili	)	
Mohassen El Bey WKFC Living	)	
Trust Under Trust Agreement	)	
Dated June 4, 2010 by and through	)	
its Trustee Wellesley K. Clayton	)	
and American Home Mortgage	)	
Servicing, Inc. s/b/m to Option One	)	
Mortgage Corporation,	)	
	)	
Defendants.	)	
	)	

This matter came before the Court on the Motion to Dismiss Order for Writ of Assistance and Writ of Assistance filed by the Defendant Ziraili M. Elbey. The collateral in this foreclosure action was sold at public sale on December 2, 2013, and the Plaintiff was the successful bidder. The Special Referee's deed was executed and has been recorded. The Plaintiff applied for a Writ of Assistance to require the Defendant Ziraili M. Elbey to vacate the property. The pro se Defendant Ziraili M. Elbey has now filed with the Court a Motion based on the State and Federal statutes related to protection of tenants.

The Defendant Ziraili M. Elbey was the owner of the subject property and is not a tenant subject to the terms of the statutes cited in her Motion. The Motion filed by the Defendant Ziraili M. Elbey constitutes another attempt to delay the orderly process of the Court in giving the successful purchaser at the public sale possession of the property. I find that the Motion has no basis in fact and law and is frivolous. The law on which the Motion is based is not applicable to this fact setting.

WHEREFORE, the Defendant Ziraili M. Elbey's Motion is denied. The Sheriff of Lancaster County is directed to execute the Writ of Assistance as previously ordered.

AND IT SO ORDERED.



PHILIP E. WRIGHT
SPECIAL REFEREE

February 25, 2014
Lancaster, South Carolina.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-29-00035

H&R Block Bank, FSB

Ziraili M. Elbey, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Philip E. Wright, Special Referee

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

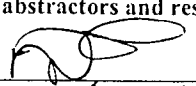
INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge 

SPECIAL REFEREE

Judge Code

February 25, 2014

Date

24

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Chad W. Burgess

Brock & Scott, PLLC

3800 Fernandina Road, Suite 110, Columbia, SC 29210

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ziraili M. Elbey

9789 Charlotte Highway, #400-191

Fort Mill, SC 29707-9998

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank,

Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 2011-CP-29-35

SUMMONS AND NOTICES

(Non-Jury)

**FORECLOSURE
OF REAL ESTATE
MORTGAGE**

RECORDED
LANCASTER SC

2011 JAN 14 AM 10:41

FILED
OFFICE OF THE
CLERK OF COURT

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 3800 Fernandina Road, Suite 110, Columbia, SC 29210, within thirty (30) days after the service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

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

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by Attorney for Plaintiff.

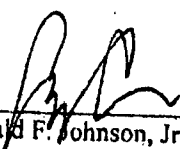
YOU WILL ALSO TAKE NOTICE that Plaintiff will move for an Order of Reference or the Court may issue a general Order of Reference of this action to a Master-in-Equity/Special Referee, pursuant to Rule 53, of the South Carolina Rules of Civil Procedure.

YOU WILL ALSO TAKE NOTICE that under the provisions of South Carolina Code 29-3-100, effective June 16, 1993, any collateral assignment of rents contained in the attached mortgage is perfected and Attorney for Plaintiff hereby gives notice that all rents shall be payable directly to it by delivery to its

B&S No.: 10-19401

26

undersigned attorneys from the date of default. In the alternative, Plaintiff will move before a judge of this Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order enforcing the assignment of rents, if any, and compelling payment of all rents covered by such assignment directly to the Plaintiff, which motion is to be based upon the original note and mortgage and the Complaint attached hereto.



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
Adam J. Russo, SC Bar #78676
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 1 / 17 / 11

Wilmington, North Carolina



STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H&R Block Bank,
Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley
K. Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: _____

**CERTIFICATE OF
EXEMPTION/WITHDRAWAL FROM
ARBITRATION AND MEDIATION**

(Deficiency Judgment Demanded as to Defendant
Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey))

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION AND
MEDIATION BECAUSE:

- ☐ This is a special proceeding or action seeking extraordinary relief such as mandamus,
habeas, corpus or prohibition;
☐ This action is appellate in nature;
☐ This is a post-conviction relief matter;
☐ This is a contempt of court proceeding;
☐ This is forfeiture proceeding brought by the State; or,
☒ This is a mortgage or HOA lien foreclosure action.

Date: January 13, 2011


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
Adam J. Russo, SC Bar #78676
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 1 / 13 / 11
Wilmington, North Carolina

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or
withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d),
Rules of Circuit Court Arbitration.

B&S No.: 10-19401

28

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank,

Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: 11-Lp-29-17

LIS PENDENS

CLERK OF COURT
LANCASTER COUNTY
SOUTH CAROLINA

2011 JAN 14 AM 10:41

FILED
OFFICE OF THE CLERK
LANCASTER COUNTY
SOUTH CAROLINA

NOTICE IS HEREBY GIVEN THAT an action has been or will be commenced in this Court upon complaint of the above-named Plaintiff against the above-named Defendant(s) for the foreclosure of a certain mortgage of real estate given by Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) to Option One Mortgage Corporation dated March 29, 2006 and recorded on April 7, 2006 in Book 1486 at Page 1, in the Lancaster County Registry, hereinafter Mortgage. Thereafter the Mortgage and its accompanying Promissory Note were transferred to the Plaintiff herein by assignment and/or corporate merger.

The premises covered and affected by the said Mortgage and by the foreclosure thereof were, at the time of the making thereof and at the time of the filing of this notice, more particularly described in the said Mortgage and are more commonly described as:

All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

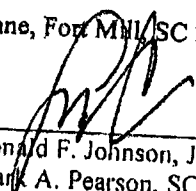
B&S No.: 10-19401

29

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

TMS No. 0006M-0A-261.00

Property Address: 13132 Wilburn Park Lane, Fort Mill, SC 29715



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
Adam J. Russo, SC Bar #78676

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 1 / 13 / 11
Wilmington, North Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER.

H&R Block Bank,

Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley
K. Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation,

Defendant(s).

IN THE COURT OF COMMON PLEAS

C/A NO.: _____

COMPLAINT

(Non-Jury)

FORECLOSURE
OF REAL ESTATE
MORTGAGE

(Deficiency Judgment Demanded as to Defendant
Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey))

FILED
CLERK OF COURT
2010 APR 14 AM 10:41
LANCASTER, SC

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

1. Plaintiff, H&R Block Bank, is a business entity duly authorized to conduct business in the State of South Carolina.
2. Upon information and belief, the Defendant Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey is a resident and citizen of the County of Lancaster, State of South Carolina; Defendant WKFC Living Trust Under Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton is a trust organized under the laws of the State of South Carolina which owns real property in the State of South Carolina; and, Defendant American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation is a business entity and is duly authorized to conduct business in the State of South Carolina.
3. The real property hereinafter described, that is the subject of this action, is situated and located in the County of Lancaster, State of South Carolina, and this Court has proper jurisdiction over the subject matter and the parties of this action.
4. Heretofore, on March 29, 2006, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) (hereinafter "Borrower(s)") made, executed, and delivered to Option One Mortgage Corporation (hereinafter "Lender") a certain Fixed Rate Note in writing (hereinafter "Note"), wherein and whereby Ziraili

B&S No.: 10-19401

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M. Elbey (a/k/a Ziraili Mohassan El Bey) promised to pay to Option One Mortgage Corporation, the principal sum of \$197,186.00, together with interest at the rate of 7.999% per annum on the unpaid balance; said principal and interest being payable in monthly installments thereafter until the said Note is fully paid.

5. In order to secure the payment of said Note, the said Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) (hereinafter "Mortgagor(s)"), did on the same date, to wit, March 29, 2006, make, execute, and deliver to Option One Mortgage Corporation, 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 located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

Parcel Number: 0006M-0A-261.00

Property Address: 13132 Wilburn Park Lane, Fort Mill, SC 29715

6. Said Mortgage was dated March 29, 2006 and recorded on April 7, 2006 in Book 1486 at Page 1, in the Lancaster County Registry.
7. Thereafter the Mortgage and the Note were assigned to the Plaintiff herein by assignment recorded on August 5, 2010 in Book 2265 at Page 129.



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 purchase money, 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 loan investor has declined to allow a HMP modification.
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, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey). 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 February 1, 2010, 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 \$189,911.32, together with interest at the rate of 7.999% 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. The Defendant, American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, has or may claim to have some interest in the Property by virtue of mortgage given by Ziraili M. Elbey to Option One Mortgage Corporation in the original principal amount of \$49,296.00, which mortgage was recorded in the Lancaster County Registry on April 7, 2006 in Mortgage Book 1486 at Page 9. Upon information and belief, American Home Mortgage Servicing, Inc. is the successor in interest to Option One Mortgage Corporation. Said mortgage is junior and subordinate to the Plaintiff's mortgage and should be removed from title to the Property upon the completion of a properly held foreclosure sale of the Property.

WHEREFORE, Plaintiff prays judgment that:

1. The amount due upon the said Note and Mortgage held by the Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and costs of this action.
2. 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.

3. Plaintiff's Mortgage be declared a valid purchase money, 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.

4. 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;

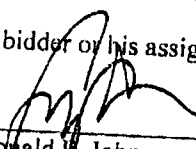
Second, to the payment and discharge of the amount due on Plaintiff's Note and Mortgage, together with attorney's fees as aforesaid; and

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

Fourth, that the Plaintiff be awarded a deficiency judgment against the Defendant(s), Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey), in the event that the proceeds of the sale of the Property are insufficient to pay in full the indebtedness, including costs of collection.

5. 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 W. 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
Adam J. Russo, SC Bar #78676
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for Plaintiff

Dated: 1 / 12 / 11
Wilmington, North Carolina

COUNTY OF LANCASTER

C/A NO.: _____

H&R Block Bank,
Plaintiff,

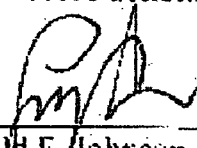
vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley
K. Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation,

Defendant(s).

**CERTIFICATE OF
EXEMPTION/WITHDRAWAL FROM
ARBITRATION AND MEDIATION**(Deficiency Judgment Demanded as to Defendant
Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey))**I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION AND
MEDIATION BECAUSE:**☐ This is a special proceeding or action seeking extraordinary relief such as mandamus,
habeas, corpus or prohibition;☐ This action is appellate in nature;☐ This is a post-conviction relief matter;☐ This is a contempt of court proceeding;☐ This is forfeiture proceeding brought by the State; or,☒ This is a mortgage or HOA lien foreclosure action.

Date: January 13, 2011



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
Adam J. Russo, SC Bar #78676
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 888-726-9953 Fax 866-676-7658
Attorneys for PlaintiffDated: 1 / 13 / 11

Wilmington, North Carolina

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or
withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d),
Rules of Circuit Court Arbitration.

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

- The amount of the debt as of February 1, 2010, is the principal sum of \$189,911.32, 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 *****

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Ms. Ziraili M. Elbey
13132 Wilburn Park Lane
Ft. Mill, SC 29715
803-233-2665

February 4, 2011

Lancaster County Clerk of Court
Post Office Box 1809
Lancaster, SC 29721

Re: H&R Block Bank vs. Ziraili M. Elbey et al.
Case No. 2011-CP-29-36

Dear Clerk of Court:

Enclosed please find the original and one copy of my Motion to Dismiss in this case under Rule 12-b-5 of the Rules of Civil Procedure. Please file the original and return the copy to me in the return envelope. We certify that we are sending copies of this Motion to Plaintiff's Attorney:

Brock & Scott, PLLC
Ronald Johnson, Esq.
3800 Fernandina Rd., Ste. 110
Columbia, SC 29210

Also enclosed please find my check to you for \$25.00 for this Motion. If you have any questions, please advise. Thank you for your attention to this matter. With kind regards,
we are

Sincerely yours,

Ziraili M. Elbey

STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

COURT OF COMMON PLEAS

H.R. Black Bank, FSB
~~WELLS FARGO BANK, NA~~
Plaintiff,)

CASE NO. 2011-CP-29-36
MOTION TO DISMISS *35*
RULE 12-B-5-

Ziraili M. Elbey aka Ziraili Mohassan)
El Bey, WKFC Living Trust Under)
Trust Agreement Dated June 4, 2010, by)
and through its Trustee, Wellesley K.)
Clayton and American Home Mortgage)
Servicing, Inc. sbm to Option One)
Mortgage Corporation, Defendants.)

MOTION FEE PAID

2011 FEB 3 PM 3:21
OFFICE OF THE
CLERK OF COURT

Comes now, Defendants, through the undersigned, to move to dismiss this case pursuant to Rule 12-b-5, SCRPC, based on the following:

1. This is an action for foreclosure.
2. Defendant was never validly served with the case documents. This case was apparently filed on January 14, 2011. However, I was not served with the papers. They were left on my front door when I returned to my house.
3. This is insufficiency of service of process according to Rule 4 (d) (1), South Carolina Rules of Civil Procedure. This entitles me to have the case dismissed under Rule 12 (b) (5), Rules of Civil Procedure.

WHEREFORE, Defendants move before this Court that:

- A. This case be dismissed without prejudice according to Rules 12 (b) (5), SCRPC for lack of sufficiency of service of process and
- B. Any other relief that this Court deem prudent, just and proper.

[Signature]
Ziraili M. Elbey, aka Ziraili Mohassan El Bey, Defendant
13132 Wilburn Park Lane
Ft. Mill, SC 29707

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H&R Block Bank,
Plaintiff

v.

Ziraili M. Elbey aka Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010, by and through its Trustee, Wellesley
K. Clayton and American Home Mortgage Servicing,
Inc. sbm to Option One Mortgage Corporation
X Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-29-36

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Defendant Ziraili M. Elbey, Pro-Se
13132 Wilburn Park Lane
Fort Mill, SC 29715
Phone No. 803-233-2665

Plaintiff's Attorney:
Ronald Johnson, Brock and Scott, PLLC
Address: 3800 Fernandina Rd., Suite 110
Columbia, SC 29210
phone: 803-454-3540 fax: 803-454-3541
e-mail: other:

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

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss, Rule 12-b-5, South Carolina Rules of Civil Procedure
Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☒ Defendant

February 7, 2011
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached
order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

- Collected by: _____
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-29-00035

H&R Block Bank, FSB

PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC
Living Trust Under Trust Agreement Dated June 4, 2010
by and through its Trustee Wellesley K. Clayton and
American Home Mortgage Servicing, Inc. s/b/m to Option
One Mortgage Corporation

DEFENDANT(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(l), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Special Referee's Order for Foreclosure and Judgment for Sale

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
H&R Block Bank, FSB	WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton	Deficiency Demanded: Exact deficiency judgment amount to be determined after sale



If applicable, describe the property, including tax map information and address, referenced in the order:
All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WFKC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

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

Circuit Court Judge 52

Judge Code

Date 8/22/12

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Brook Dangerfield, SC Bar No. 77912
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79144
Mark A. Pearson, SC Bar No. 15926

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley K.
Clayton and American Home Mortgage Servicing,
Inc. s/b/m to Option One Mortgage Corporation

DEFENDANT(S)

Jeff Hannum
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank, FSB

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

**SPECIAL REFEREE'S REPORT AND JUDGMENT OF
FORECLOSURE AND SALE**

**DEFICIENCY DEMANDED AS TO DEFENDANT(S)
ZIRAILI M. ELBEY (A/K/A ZIRAILI MOHASSAN EL
BEY)**

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be direct to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on January 14, 2011.
2. The Summons and Complaint were filed on January 14, 2011.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) WKFC Living Trust under trust agreement dated June 4, 2010, by and through its Trustee Wellesley K. Clayton; and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation are in default as shown by Affidavit filed herein.

DEW
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5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. The Defendant Ziraili M. Elbey a/k/a Ziraili M. El Bey answered in this action and has been notified of the time and date of this hearing.

7. The Defendant(s) were notified of the time, date and place of hearing in this matter.

8. For value received, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) made, executed and delivered a note, dated March 29, 2006, promising thereby to pay to the order of Option One Mortgage Corporation the sum of \$197,186.00 with interest at the rate of 7.999% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

9. To better secure the payment of the Note described above, the said Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) made, executed and delivered a mortgage to Option One Mortgage Corporation, in writing, dated March 29, 2006, covering real property in Lancaster County, which is the same as that described in the Complaint. The Mortgage was recorded on April 7, 2006, and is of record in the Lancaster County Registry in Book 1486 at page 1.

10. This mortgage constitutes a valid purchase money, first lien on the subject property.

11. Thereafter the Mortgage and the Note were assigned to the Plaintiff herein by assignment recorded on August 5, 2010 in Book 2365 at Page 129. By virtue of said assignment, the Plaintiff in this action is the holder of the note and mortgage.

12. 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 FHLMO, or the Servicer has signed an agreement to participate in the Home Affordable Modification Program ("HMP"); however, the loan does not qualify for a modification under the above foreclosure prevention program because the loan investor has declined to allow a HMP modification.

13. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

14. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton.

15. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

16. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$2,985.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

17. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	08/22/12	\$189,911.32
Accrued interest from:	02/01/10 to: 07/16/12	\$37,335.97
Accruing at:	7.999% per annum	
Advancements to Escrow		\$803.19
Corporate Advances		\$54.90
Costs of collection prior to hearing:		\$2,222.50
Attorney's fees:		\$2,985.00

DEW
45

Total Debt secured by Note and Mortgage, including interest to date is \$233,312.88. Interest for the period from the date shown above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein, and interest after the date of Judgment at the rate of 7.999% per annum, the Note's current rate, pursuant to the terms of the Note and Mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Demanded the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCP.

19. The Defendant, below listed, claims or may claim a lien upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCP. The said Defendant and such claim or lien are as follows:

The Defendant, American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, has or may claim to have some interest in the Property by virtue of mortgage given by Ziraili M. Elbey to Option One Mortgage Corporation in the original principal amount of \$49,296.00, which mortgage was recorded in the Lancaster County Registry on April 7, 2006 in Mortgage Book 1486 at Page 9. According to testimony, American Home Mortgage Servicing, Inc. is the successor in interest to Option One Mortgage Corporation. Said mortgage is junior and subordinate to the Plaintiff's mortgage and is hereby ordered removed from title to the Property.

CONCLUSIONS OF LAW: I therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.

2. That there is due to the Plaintiff on its Note and Mortgage the sum of \$233,312.88, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the Note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 7.999% per annum, the current interest rate of the Note.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County Courthouse, Courtroom B, City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.999% per annum, which is the Note's current interest rate.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.
9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Lancaster County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Lancaster County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.
4. That a personal or deficiency Judgment being Demanded, the bidding will remain open for thirty (30) days after the date of sale (pursuant to S.C. Code Ann. § 15-39-760(1976) but compliance with the bid may be made immediately.
5. That the undersigned Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof, and that he will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the Property for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.
6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
7. That the undersigned Special Referee shall apply the proceeds of the sale as follows:
- FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and
- NEXT: To the payment of the amount to the Plaintiff, or the Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and
- NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 0047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

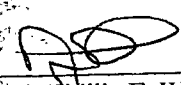
THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 7, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WFKC LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715

TMS: 0006M-0A-261.00

AND IT IS SO ORDERED.

Date: August 22, 2012
Lancaster, South Carolina


The Honorable Phillip E. Wright
Special Referee for Lancaster County

REFUSED OFFER

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-29-00035

H&R Block Bank

PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC
Living Trust Under Trust Agreement Dated June 4, 2010
by and through its Trustee Wellesley K. Clayton and
American Home Mortgage Servicing, Inc. s/b/m to Option
One Mortgage Corporation

DEFENDANT(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Motion and Order to Restore

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
H&R Block Bank	Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey)	\$233,312.88

If applicable, describe the property, including tax map information and address, referenced in the order:
All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF LANCASTER

C/A NO.: 2011-CP-29-00035

H&R Block Bank,
Plaintiff

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,
Defendant(s).

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

Plaintiff(s) Attorney:

Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Brook Dangerfield, SC Bar No. 77912
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79144
Mark A. Pearson, SC Bar No. 15926

Defendant(s) Attorney:

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

FILED
OFFICE OF CLERK
OF COURT
2013 AUG - 1 PM 4:03
CLERK OF COURT
LANCASTER, SC

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

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion Type

() Written motion attached

(X) Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

7/24/13
Date Submitted

SECTION III: Motion Fee

(X) Paid - Amount: \$25.00

() Exempt:

☐ Motion for Stay in Bankruptcy

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

Name of Court reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE

Code:

Date:

United States Bankruptcy Court – District of South Carolina
J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number: 12-05229-jw

Chapter: 7

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Ziraili Samara Mohassan El Bey
aka Ziraili M. Elbey, aka Ziraili M. El Bey, aka Ziraili
Mohassan E Bey
9789 Charlotte Highway
#400-191
Fort Mill, SC 29707

Last four digits of Social Security or other Individual Taxpayer
No(s)(if any): xxx-xx-8385

Entered By The Court
01/14/13

**ORDER
DISCHARGE OF DEBTOR
ORDER DISCHARGING TRUSTEE
ORDER CLOSING CASE**

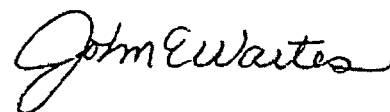
Filed By The Court

01/14/13
L. Jefferson Davis IV
(Acting)
Clerk of Court
US Bankruptcy Court

It appearing that the debtor is entitled to a discharge, **IT IS ORDERED:**

1. The debtor is granted a discharge under section 727 of title 11, United States Code, (the Bankruptcy Code).
2. The trustee has certified that the estate of the above-named debtor(s) has been fully administered, therefore, the case trustee, is discharged as the trustee of the above named debtors(s) and the bond is canceled.
3. The Chapter 7 case of the above-named debtor(s) is closed.

Columbia, South Carolina
January 14, 2013
Document 47 – 22



Chief United States Bankruptcy Judge

SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION

EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a discharged debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property: There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.]* A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the discharged debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

Debts that are Not Discharged.

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts.
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.

COPY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-29-00035

H&R Block Bank, FSB

PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC
Living Trust Under Trust Agreement Dated June 4, 2010
by and through its Trustee Wellesley K. Clayton and
American Home Mortgage Servicing, Inc. s/b/m to Option
One Mortgage Corporation

DEFENDANT(S)

Submitted by: Brock & Scott, PLLC

Westpark Center

3800 Fernandina Road Suite 110

Columbia, SC 29210

Attorney for : ☒ Plaintiff ☐ Defendant

or

☐ Self-Represented Litigant

FILED
OFFICE OF CLERK
OF COURT
2013 NOV 14 PM 3:57
CLERK OF COURT
LANCASTER, SC

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

If applicable, describe the property, including tax map information and address, referenced in the order:
All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated

March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WFKC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

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


Circuit Court Judge 50

Judge Code

11/13/13
Date

For Clerk of Court Office Use Only

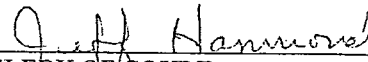
This judgment was entered on the 14 day of Nov, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of Nov, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Brian L. Campbell, SC Bar No. 074521
Suzanne E. Brown, SC Bar No. 076440
Jason L. Branham, SC Bar No. 072902
Chad W. Burgess, SC Bar No. 072520
J. Marshall Swails, SC Bar No. 079067
Sarah O. Leonard, SC Bar No. 080165
J. Martin Page, SC Bar No. 100200
Brook D. Dangerfield, SC Bar No. 077912
Travis E. Menk, SC Bar No. 079144
Richard G. Duerinckx, SC Bar No. 070143
Caroline R. Glenn, SC Bar No. 077157

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley K.
Clayton and American Home Mortgage Servicing,
Inc. s/b/m to Option One Mortgage Corporation

ATTORNEY(S) FOR THE DEFENDANT(S)



CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank, FSB

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

**SUPPLEMENTAL SPECIAL REFEREE'S
REPORT
AND JUDGMENT OF FORECLOSURE AND
SALE**

DEFICIENCY WAIVED

FILED
OFFICE OF CLERK
OF COURT
NOV 14 PM 3:57
CLERK OF COURT
LANCASTER, SC

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directly to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held on August 22, 2012, attended by Brock & Scott PLLC, attorney for the Plaintiff, and a *Special Referee's Order and Judgment of Foreclosure and Sale* was entered on August 22, 2012 (hereinafter: "Original Judgment"). Subsequent to said hearing, the Defendant filed bankruptcy causing the foreclosure sale to be canceled. Said bankruptcy was discharged and Plaintiff now wishes to proceed to foreclosure sale.

A supplemental hearing was held on October 24, 2013, for the purpose of updating the debt due to the Plaintiff and setting a foreclosure sale date, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

At the call of the case, counsel for the Plaintiff appeared. The Defendant appeared pro se. Wellesley K. Clayton also appeared. While he indicated he was not a party, I find that he is one and the same

Wellesley K. Clayton named in the caption as the Trustee on an instrument filed by the Defendant during this proceeding. He did not participate in the proceedings.

The Defendant has filed numerous documents with the Clerk of Court and with the Special Referee. The documents filed by the Defendant proclaim that the Defendant is a natural person, that she is not subject to the jurisdiction of the Court, that she has assigned her interest and the note and mortgage to another entity, to wit a Trust named in the Complaint as a party and that her mortgage has been satisfied by the holder of the Trust.

The documents filed by the Defendant are not proper pleadings under the laws of this State. The Answer of the Defendant was an avoidance of the action, not a legal Answer. Her Answer and subsequent filings raised no legal challenge to the right of the Plaintiff to foreclose the mortgage signed by the Defendant. The Defendant's filings purport to place the Defendant in some protected category of persons that are not subject to the jurisdiction of the Court. The Defendant challenges the power of the Court over her and the Plaintiff's standing to sue her and her alleged inherent right to maintain possession and ownership of the subject real property despite the fact that she has not paid the Plaintiff under the terms of the agreement.

I find that the documents filed by the Defendant constitute sham pleadings and are intended only to delay and unreasonably dispute the legal process of the Court. The Defendant is governed by the same rules of law and evidence as all other persons who enjoy the benefits of liberty and justice under the system of law that governs the United States of America. The Defendant's attempts to declare herself above the law are a mockery of the system and the Courts.

I heard evidence from both the Plaintiff and the Defendant. The Plaintiff established its right to obtain an Order from this Court requiring that the lien on the property owned by the Defendant be foreclosed. I find that the efforts of the Defendant to divest herself of title or to transfer the property to other entities in an effort to make her in some way immune from the power of the Court to be of no effect and void. The Defendant is still the record owner of the subject property and as such is the only proper Defendant in this action.

The arguments made by the Defendant at the hearing were primarily aimed at standing and jurisdiction. I determined that none of those arguments were of sufficient legal meaning to delay this proceeding from its legal final result, the foreclosure of the mortgage on the Defendant's home.

FINDINGS OF FACT:

1. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice); the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$4,200.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

2. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	10/24/13		\$189,911.32
Accrued interest from:	01/02/10	to: 10/24/13	\$ 55,350.18
Accruing at:	7.999% per annum		
Advancements to Escrow			\$ 5,646.55
<u>Corporate Advances</u>			\$ 367.45
Late charges:			\$ 1,953.18
Other charges:			\$ 0.00
Costs of collection prior to hearing:			\$ 2,506.85
Attorney's fees:			\$ 4,200.00

Total Debt secured by note and mortgage, including interest to date is \$259,935.53.

Interest for the period from the date shown in (b) above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt

entered herein, and interest after the date of Judgment at the rate of 7.999% per annum, pursuant to the terms of the note and mortgage on the judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

3. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint or subsequently thereto in writing, expressly Waived the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCP.

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.
2. That there is due to the Plaintiff on its note and mortgage the sum of \$259,935.53. representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 7.999% per annum.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendants liable for the aforesaid mortgage debt shall, prior to the date and time of the sale of the subject property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

2. That on default of payment prior to the date and time of the sale, the mortgaged premises, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County Courthouse, in the City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:

A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon

compliance with the bid, but in case of non-compliance within thirty (30) the same to be forfeited and applied to the costs and then to the Plaintiffs debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.999% per annum.

C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.

D. Purchaser to pay for the deed and the cost of recording the deed.

3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiff's indebtedness.

4. That a personal or deficiency Judgment being Waived, the bidding will not remain open for thirty (30) days and bidding will be final on the date of the sale, and compliance with the bid may be made immediately.

5. That the undersigned Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the premises for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

7. That the undersigned Special Referee shall apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and

NEXT: To the payment of the amount to the Plaintiff, or the Plaintiff's Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and

NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRCP.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Lancaster County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Lancaster County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.

12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the premises herein ordered to be sold:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 0047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

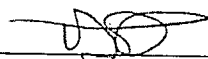
ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 7, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WFKC LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715

TMS: 0006M-0A-261.00

AND IT IS SO ORDERED.


The Honorable Phillip E. Wright
Special Referee for Lancaster County

Date: Nov. 17, 2010

Lancaster, South Carolina

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IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,
Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Defendants.

Case No. 2011-CP-29-35

Page | 1

MOTION TO DISMISS

FILED
CLERK OF COURT
OF COURT
2011 MAY 32 A 8:17
LANCASTER, SC

MOTION TO DISMISS

USC Title 28, Judiciary and Judicial Procedures, Section 1652 requires the Courts and the Agents to follow Acts of Congress and all Statues; regulations and Statues at Large are Acts of Congress. The maker of this Motion, **Ziraili M El Bey**, Alleged Defendant, In Propria Persona requests that any imperfections in spelling, or grammar , be overlooked, since she is not an Attorney, nor does she hold herself to be one.

Wherefore the undersigned hereby moves the Court to Dismiss the Compliant in its entirety. The undersigned is not a lawyer.

The undersigned does hereby certify as follows:

Defendant, HOMEOWNER ("Defendant"), move to dismiss this action and states:

- 1) Defendant, homeowner encumbered by a mortgage and promissory note made to and first held by OPTION ONE MORTGAGE CORPORATION, LENDER, and mortgage ORIGINATOR on March 29, 2006, here after named "OOMC" is the property at issue in this foreclosure action
- 2) That Plaintiff H & R Block Bank, Inc., ("BANK") and not LENDER, nor any intervening assignee of LENDER, filed this foreclosure action allegedly as owner and holder of note on July 2, 2010, , and served on January 15, 2011.
- 3) That Plaintiff relying on bogus, fictitious Assignment to obtain ownership and deficiency judgment on Defendant

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- 4) This motion is timely since a party may 'plead or otherwise defend at any time before default is entered.' In accordance with Rule 12(a), South Carolina Rules of Civil Procedure.
- 5) That Plaintiff must prove they are **"Real Party of Interest"** to request Foreclosure action to Defendant property in this Court
- 6) That Plaintiff's must prove **"Chain of Title"** is broken leading to a defective instrument
- 7) That Plaintiff is assigned servicer¹ for administrative convenience or prove "Real Party of Interest" of the obligation.

Page | 2

a) That Defendant, ZIRAILI M ELBEY previously submitted to this Court a certified **LOAN SECURITIZATION AUDIT REPORT** as evidence "showing the "Real Party of Interest":

1. That Plaintiff put Defendant's loan into a Pooling and Servicing Agreement
2. That Defendant's loan was registered on the SEC as a REMIC² Trust
3. That the REMIC converted Defendant's loan into a Security³ and is now traded on **Wall Street**.
4. That Defendant's loan⁴ once a [*negotiable instrument*] does not exist.
5. That Defendant's loan is now a STOCK.
6. That Defendant's loan lost it's security (i.e. the Deed of Trust, or the ability for the Bank to foreclose on Defendant's property once it became a **STOCK**.
7. That Plaintiff sold Defendant's loan to REMIC, therefore, Plaintiff no longer Has the ability to enforce, control or otherwise foreclose on Defendant's property
8. That Plaintiff is not the "Real Party of Interest"
9. That Plaintiff securitized Defendant's loan and converted it into a STOCK.
[This is a permanent conversion. Deed of Trust, Mortgage Notes, loan/note no longer exist.] See TILA
10. That Plaintiff conversion of Defendant's loan to STOCK renders Defendant's loan no longer a loan [non-existent].
11. That if Plaintiff admits that Defendant's loan exist, plus that Defendant's loan was securitized and is now traded on Wall Street as a STOCK this is known as double dipping.
12. That if Plaintiff continues with this foreclosure action, this double dipping will be, a form of securities fraud
13. That Defendant's Mortgage Note got converted into a STOCK, now that Mortgage Note no longer exist. [Therefore, if a Trust was created to secure a

¹ Servicer/ "pretender lender"

² REMIC = *Real Estate Mortgage Investment Conduit*. This is known as a Special Purpose Vehicle for the purpose of tax exemption purposes.

³ Security [Securitized Loan] = Defendant's loan got securitized and made into a security sold on Wall Street now owned by thousands of shareholders all over the world. **Status or state of the loan changed into a tradable Stock**

⁴ Defendant's Loan: That once was called a *negotiable instrument*. It is now and forever a **STOCK**. The Defendant's loan does not exist. It is now and forever a **STOCK** being traded on **Wall Street**.

promissory note or mortgage note, and that note is destroyed...then that Trust is invalid]. The Trust secures nothing.

14. That Defendant's Deed of Trust/Note is invalid.

15. That Plaintiff's use of Defendant's Deed of Trust/Note to foreclose which no longer exist is invalid.

16. That Plaintiff sold Defendant's loan to REMIC

Page | 3

a. The Defendant's Note and Mortgage was securitized and converted into STOCK

(1) has been paid in full since 2006

(2) has been separated (bifurcated)

b. The documents submitted as the basis of this foreclosure are fictitious and faulty,

c. The chain of ownership is deceitful and faulty,

d. The evidence reveals "robo-signing" has also taken place.

(1). Documentation asserting claims without knowledge of the facts, or confirming their accuracy.

(2). Employees of foreclosure trustees are signing documents posing as the corporate officer of multiple banks and Mortgage servicers.

(3). Reverse-engineering the chain of title in the Assignment to make it appear as though the loan was passed from company to company when in fact it was not.

e. The documentation has been reverse engineered,

f. Federal loan modification requirements had not been met, and

g. Consumer protection requirements have not been followed.

h. A chain of ownership for the loan or the security interest that has been falsely manipulated and reverse engineered to appear lawful when in fact it is not;

i. Loan Originator has 90 day to deliver note to REMIC using language "pay to the order of" to a **NAMED PARTY**.

ii Loan Originator has to physically deliver Defendant's note to REMIC

iii SC State law requires record of this delivery to be filed with County Recorder's office

iv That 99% of the time, all three things above are never done. This leads to a defect in the Chain of Title, or Chain of Progression

v. That "LENDER" /BANK servicer cannot repurchase Defendant's loan out of the REMIC.

b) That Defendant, ZIRAILI M ELBEY previously submitted to this Court evidence through a FORENSIC ANALYSIS AUDIT REPORT indicating first and second mortgage loan of the defendant following the chain of progression on the mortgage and the disposition concluded that the notes attached to the property located at 13132 Wilburn Park Lane, Indian Land, SC 29707 had be paid off a number of times and that the alleged loan/indebtedness to the Plaintiff no longer exists because the loan has been securitized as STOCK and trading on Wall Street.

c) That Defendant, ZIRAILI M ELBEY, Motions this Court take mandatory judicial notice of the Massachusetts Supreme Court ruling in US Bank v Ibenetz.

In this ruling, it was decided that there must be a perfection of chain of title and that blank assignments were not acceptable.

- d) That Defendant, ZIRAILI M ELBEY, Motions this Court take mandatory judicial notice of the Florida Supreme Court case Roman Pino v. Bank of New York Mellon, "This is a case where intentionally fraudulent document fabricated to use in a foreclosure court proceeding". Page | 4
- 8) That Certificate of Compliance with South Carolina Supreme Court Order No. 2011-05-02-01 and a **JUDICIAL NOTICE NOTIFICATION OF ADMINISTRATIVE VIOLATIONS, ADMINISTRATIVE PROCEDURES TITLE 5 U.S.C., SECTION 552, FOIA; CFR TITLE 28** was returned to this Court and Plaintiff's attorney in compliance. **Defendant is not in DEFAULT.**
- a) That the Defendant served this Court with a certified SECURITIZATION AUDIT REPORT indicating Mortgage Note, Deed of Trust and or Loans first and second has been monetized, securitized and now a Stock being traded on Wall Street.
- b) That the Defendant served this Court with a certified FORSENIC ANALYSIS AUDIT REPORT of securitized portfolio by the original lender and a list of CUSIP numbers relative to bond issues connected to portfolio indicating that Deed of Trust, Mortgage Notes no longer exists.
- c) That the Defendant, ZIRAILI M ELBEY is the "Real Property Homeowner". And, moves this Court to Dismiss foreclosure action by Plaintiff with prejudice.

NOTICE OF DEFAULT

- 9) In the Definitions of the subject mortgage, defines:
- a. "Borrower" as HOMEOWNER, ZIRAILI M ELBEY, AND
- b. "Lender" as LENDER.
- c. "BANK" as PLAINTIFF
- 10) The original Supreme Court proposed Certificate of Compliance with Order No. 2011-05-02-01 was completed voluntarily, signed and returned to comply with the SC foreclosure intervention process.
- 11) The law is well settled in South Carolina (and the mortgage contains a provision requiring the Lender must give the "Borrowers: notice of loan default and an opportunity to cure the default before the loan can be accelerated.
- 12) BANK fails to allege it as Lender gave proper written notice of default and acceleration to Defendant as required by the mortgage and law and fails to allege sufficiently how BANK could have given required thirty (30) days notice
- 18

prior to filing the action, which it did on July 02, 2010, but effective March 29th 2006 (4 years post dated) when by it own filing of Assignment, did not own the Promissory Note or Mortgage even when BANK filed the assignment date was August 5, 2011 since the mortgage note is securitized within the first 90 days of Defendant's closing date, March 29th, 2006 and is now traded as Stock on Wall Street.

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STANDING

- 13) BANK has not proven in any respect how it has standing to foreclose on the LENDER'S note and mortgage see Exhibits A page 8 [2011012242 BK:MORT 2419 PG: 309-321], and Exhibit A page 13, [2011005635 BK:DEED 616, PG: 152-174. This allegation BANK made is based on assignment recorded August 5, 2010 in BK 2265 at PG 129. BANK is not the LENDER and has no standing in this Court.
- BANK is suing in foreclosure
 - On a note and mortgage made to LENDER; and
 - The Assignment giving BANK alleged title to the note and mortgage filed after the LENDER securitized the mortgage and note, the first 90 days after Defendant closed. There is no mortgage note.
- 14) Plaintiff cannot maintain this action. A BANK suing to foreclose must have the right to foreclose when it files the lawsuit. Post lawsuit assignments establish the LENDER did not own the note and mortgage at time of filing August 5, 2010 because mortgage and note had been put in REMIC and now trading on as STOCK on Wall Street. [see Exhibit A pg 8, [2011012242 BK:MORT, PG: 309-321].

CONCLUSION

- 15) BANK cannot establish it gave notice, has the right to foreclose, or has the right to enforce the Deed of Trust or Mortgage note because this action would serve as security fraud since BANK knows the Defendant's mortgage has been securitized over and over again.
- 16) BANK is not the original LENDER.

17) **BANK has clearly failed to plead necessary facts to this Court relative to the the alleged assignment and alleged ownership; alleged ownership by Fannie Mae, alleged ownership by FHLMC, or Plaintiff failed to offer Defendant participation in the Home Affordable Modification Program ("HMP"), which hide the actual fact the BANK has no standing to bring this action.**

Page | 6

18) This foreclosure action must be dismissed.

WHEREFORE, the Defendant, the undersigned hereby moves this Court to dismiss the Plaintiff's complaint of January 14, 2011. The undersigned is not an lawyer.

Dated this 27 day of May, 2012.

"without prejudice" UCC 1-308, UCC1-207

By: _____

ZIRAILI M EL BEY, alleged defendant.

In Propria Persona

Executrix Office.

Nation "South Carolina".

General-Post Office.

Charlotte Highway-9789 Suite 400-191.

Fort Mill.

United states Minor. Outlying Islands.

Near. [29707-9998]

RECORDING REQUESTED BY

AND WHEN RECORDED, MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name: Ziraili M Elbey

Street Address: 9789 Charlotte Hwy, Ste 400-191

City, State & Zip code: Ft. Mill, South Carolina 29707

TITLE ORDER NO. _____ ESCROW NO. 9723536785

2013002511

DEED NO CHARGE
RECORDING FEES

\$0.00

PRESENTED & RECORDED:

02-19-2013 12:22 PM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK: DEED 715

PG: 233-251

2013002512

SATISFACTION MORTGAGE
RECORDING FEES

\$5.00

PRESENTED & RECORDED:

02-19-2013 12:23 PM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK: MORT 2618

PG: 242-260

SPACE ABOVE THIS LINE FOR RECORDERS USE

SATISFIED

MTG BK 2600 PG 270

DATE 2-19-2013

REGISTER OF DEEDS
LANCASTER COUNTY, SC

DEED OF FULL RECONVEYANCE

Whereas, Ziraili M Elbey, the Trustee is under the Deed of Trust dated March 19, 2008, made and executed by ZIRAILI M ELBEY as Trustor(s) to Ziraili M Elbey as beneficiary and recorded as Instrument No. 2013000846 on 01/14/2013, in Book 2800 at Page 270-280 of the Office Records in the Office of the Recorder of LANCASTER County, State of South Carolina having received from Beneficiary is under said Deed of Trust a written request to reconvey, reciting that all sums secured by said Deed of Trust have been fully paid, and said Deed of Trust and the note or notes secured thereby having been surrendered to the Trustee is for cancellation, do I hereby reconvey, without warranty, to the person or persons legally entitled thereto, all right, title and interest heretofore acquired and now held by said Trustee under said Deed of Trust, in the real property commonly know as 13132 Wilburn Park Lane situated in the County of LANCASTER, State of South Carolina, and more particularly described as follows:
SEE ATTACHED

Date: 2/19/13

First Witness: Keldin Jupp

Second Witness: Quelley D. Klein

Ziraili M Elbey, as Trustee/Trustor

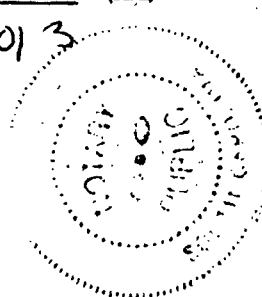
STATE OF South Carolina
COUNTY OF York

On 2/19/13 before me, Kisha White, a Notary Public, personally appeared Ziraili M Elbey who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of South Carolina that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature: Kisha White (SEAL)

Sept. 10, 2013



CAPACITY CLAIMED BY SIGNER(S)

☒ INDIVIDUAL(S) Ziraili M Elbey

☐ CORPORATE

OFFICER(S)

☐ PARTNER(S)

(TITLES)

☐ LIMITED

☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☒ OTHER: Second Party Creditor

SIGNER IS REPRESENTING:

Name of Person(s) or Entity

EXHIBIT "A"

SOUTH CAROLINA

EXHIBIT ^{CH}

PREPARED BY SECURITY
CONNECTIONS, INC.
WHEN RECORDED MAIL TO:
SECURITY CONNECTIONS INC.
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401
PH: (208) 528-9895
ATT: KARLEEN MAUGHAN

COUNTY OF LANCASTER
POOL NO.
LOAN NO. 0021232020



Assignment-Interv.-Recorded

ASSIGNMENT OF REAL ESTATE MORTGAGE

For value received SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

located at 7595 IRVINE CENTER DRIVE, SUITE 100, IRVINE, CA 92618
hereby transfers, assigns and sets over without recourse unto
H & R BLOCK BANK FSB

located at ONE H & R BLOCK WAY, 8TH FLOOR, KANSAS CITY, MO 64105

its successors and assigns forever, that certain mortgage executed by
ZIRAILI M ELBEY
to OPTION ONE MORTGAGE CORPORATION

dated MARCH 29, 2006 and recorded in the Clerk's office LANCASTER
County, South Carolina, on APRIL 7, 2006, in Mortgage Book MORT 1486,
Page 1, together with the note thereby secured conditioned for the
payment of the full and just sum of \$197,186.00 Dollars,
according to the terms as set forth in said note and mortgage.



Loan No.

(NMRI.SC)
C=s.383.0002
P=s.002.00120.21

Page 1 of 2

J=HR8010109AI.s.02249

2010008401

ASSIGNMENT OF MORTGAGE
RECORDING FEES \$7.00

PRESENTED & RECORDED:

08-05-2010 12:11 PM

JOHN LANE

REGISTER OF DEEDS
LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

BK:MORT 2265

PG:129-130

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H&R Block Bank
Plaintiff,

vs.

Ziraili M. Elbey a/k/a Ziraili Mohassan El
Bey, WKFC Living Trust Under Trust
Agreement Dated June 4, 2010 by and
through its Trustee Wellesley K. Clayton and
American Home Mortgage Servicing, Inc.
s/b/m to Option One Mortgage Corporation,

Defendant(s)

SIXTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2011-CP-29-00035

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

I. INTRODUCTION AND FACTS

On or about March 29, 2006, the Defendant, Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey (hereinafter referred to as the "Defendant") made, executed, and delivered Option One Mortgage Corporation a certain Mortgage Note in writing wherein and whereby the Defendant promised to pay to Option One Mortgage Corporation, the principal sum of one hundred ninety-seven thousand one hundred eighty-six and no/100 Dollars (\$197,186.00), together with interest at the rate of seven and 999/1000 (7.999%) per cent per annum on the unpaid balance; said principal and interest being payable in monthly installments of fourteen hundred forty-six and 74/100 Dollars (\$1,446.74), commencing May 1, 2006, and on the 1st day of each month thereafter until the said Note is fully paid.

In order to secure the payment of said Note, the said Ziraili M. Elbey, did on the same date, to wit, March 29, 2006, make, execute, and deliver to Option One Mortgage Corporation, its successors and assigns, a certain real estate Mortgage ("Mortgage") covering real property located in the County and State aforesaid and in said Mortgage described as follows:

All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

TMS No. 0006M-0A-261.00

Property Address: 13132 Wilburn Park Lane, Fort Mill, SC 29715

The Mortgage was recorded on April 7, 2006 in the Lancaster County Registry in Mortgage Book 1486 at page 1. Thereafter, by assignment dated July 2, 2010, and recorded in the said Lancaster County ROD's office on August 5, 2010 in Mortgage Book 2265 at page 129, the said Option One Mortgage Corporation assigned said mortgage to H&R Block Bank, who is now the owner and holder thereof and the debt secured thereby. The Mortgage evidences and secures the repayment of money advanced by the Mortgagee to, or on behalf of, the mortgagor(s) and constitutes a purchase money first lien on the Mortgaged premises. Copies of the Note, Mortgage and recorded assignments are attached hereto and incorporated herein as **Exhibits "A", "B", and "C"** respectively.

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. 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. 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.

The installments of principal and interest falling due from and after February 1, 2010, have not been paid, thereby placing the Defendant in default under the terms of the Note and

Mortgage. Although demand for the payment thereof has been made, the Defendant has failed to cure the default.

On January 14, 2011, the Plaintiff filed its Lis Pendens, Summons, and Complaint for Foreclosure Mortgage pursuant to the Defendants default under the terms of the Note and Mortgage. On March 28, 2011, the Defendant filed an Answer and Counterclaim(s). The Plaintiff filed a Reply on May 18, 2011.

From the commencement of this action to the present, the Defendant, acting pro se, has filed documentation that is frivolous and has amounted in what the South Carolina Supreme Court has alluded to as "sham legal process(es)". The Court also warned the Defendant about the penalties of filing such actions yet the Defendant has continued to do so throughout the life of this lawsuit.

The pleadings and other filings of the Defendant, when she was represented by an attorney and when she was acting pro se, have no merit and in no way constitute a defense to the Defendant's default and breach of contract with the Plaintiff.

Counsel for the Plaintiff filed the instant Motion for Summary Judgment alleging that no material issues of fact remain and that summary judgment is appropriate. When no issue of material fact exists, the appropriate action is summary judgment. Midland Mut. Life Ins. Co. v. Harrell, 331 S.C. 394, 397-98 (Ct. App. 1998). This Memorandum will further reflect that the allegations set forth in the Defendant's Answer and Counterclaim(s) fail as a matter of law to constitute a claim or defense to the Plaintiff's action for foreclosure and, as such, the Plaintiff is entitled to the relief sought in its Complaint.

II. DISCUSSION

1. **The Plaintiff has established all of the facts necessary to recover on its cause of action for foreclosure.**

The Plaintiff includes along with this Memorandum a true and accurate copy of the Note and Mortgage along with copies of the recorded assignment. See Exhibits "A", "B", and "C". The Note and Mortgage are direct evidence of the terms and existence of the agreement entered into by the Defendant and the Assignment evidences the transfer of this indebtedness to the Plaintiff. Further bolstering its motion, the Plaintiff submits an Affidavit of Indebtedness (attached hereto and incorporated herein as **Exhibit "D"**). The Plaintiff's Affidavit of

Indebtedness clearly establishes the breach of the Note and the amount and measures of damages sustained by the Plaintiff as a result of the Defendant's breach.

With the presentation of copies of the Note, recorded Mortgage and recorded Assignment, and the Plaintiff's Affidavit of Indebtedness at the summary judgment hearing, the essential elements and facts of the Plaintiff's cause of action for foreclosure have been established. As such there are no material issues of fact and summary judgment is appropriate. Summary judgment is appropriate when "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), South Carolina Rules of Civil Procedure.

Further, the Plaintiff is entitled to recover from the Defendant reasonable attorney's fees and Court Costs incurred in bringing this action, and as evidence of these costs expended by the Plaintiff in this action, the Plaintiff submits an Affidavit of Attorney's Fees and Affidavit of Court Costs to the Court (attached hereto and incorporated herein as **Exhibit "E"**).

2. **The allegations set forth in the Defendant's Answer and Counterclaim fail as a matter of law to constitute a cognizable claim or defense to the Plaintiff's action for foreclosure.**

The Defendant's Answer sets forth numerous allegations purporting to state defenses to the Plaintiff's action as well as Counterclaims against the Plaintiff. The allegations set forth by the Defendant in her Answer and Counterclaim(s) fail as a matter of law to constitute a cognizable claim against the Plaintiff or defense to the Plaintiff's action for foreclosure. For purposes of brevity, the Defendant's Answer and Counterclaim(s) basically contains one "counterclaim" against the Plaintiff.

- A. **The Defendant's claim that the Plaintiff "must approve any loan modification" fails as a matter of law.**

Paragraph Twenty-eight (28) of the section entitled "COUNTERCLAIM" of the Defendant's Answer and Counterclaim(s) asserts essentially that the Plaintiff failed to provide her with a "loan modification" to which, she claims, she is entitled to under the FDCPA. See Exhibit "B". These claims fail as a matter of law. The section referenced in the FDCPA and HMP dealing with the allegations of the Defendant do not state the Defendant's position as asserted. There are no statutes or laws, neither state nor federal, which require an investor or lien

holder to provide a Defendant with a loan modification. As such, this claim fails as a matter of law.

3. The Plaintiff still made efforts to help the Defendant in efforts to resolve the matter through loss-mitigation but was still met with resistance

In consideration of the May 2, 2011 Administrative Order of the South Carolina Supreme Court, the Defendant was given a Notice of Right to Foreclosure Intervention. However, she did not return the documentation within the term specified by the order and as such, the Plaintiff filed a Certificate of Compliance with the Administrative Order on May 10, 2012.

In the interim, the Defendant continued to serve the Plaintiff with sham pleadings. These documents and those others throughout the course of this action have been filed by the Defendant with the Clerk of Court for Lancaster County and with the Special Referee, amongst others.

The Plaintiff, even after ensuring compliance with the 2011 Administrative Order, still presented the Defendant with a loss-mitigation package. The package was returned to the Plaintiff, uncompleted, and was accompanied by more sham pleadings.

4. The life of the lawsuit was filled with the filing of sham pleadings by the Defendant and behavior that has lead to the need to resolve this matter through a hearing on Summary Judgment.

The Plaintiff believes the Defendant is a member of the Moorish Nation, a group that espouses the belief that its members are 'sovereign citizens' and that they are not bound by the laws of the State of South Carolina or the United States of America.

The Plaintiff believes that this lead the Defendant to create and file numerous sham pleadings throughout the duration of this lawsuit, making claims such as the Note was pre-paid and that the Plaintiff owes her millions of dollars. She was even informed by the South Carolina Supreme Court that filing documents of this type may amount to sham pleadings and the Court laid out, in detail, the penalties for filing such documentation.

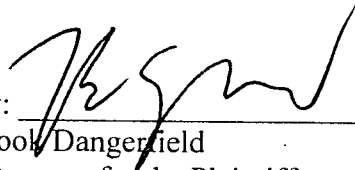
The Plaintiff, in good faith, made efforts to see if the Defendant qualified for some type of loss-mitigation but the Defendant's behavior prevented any such possibility from occurring. As a result, the Plaintiff decided to file the Motion for Summary Judgment to end this matter and conclude the foreclosure of the subject-property.

III. CONCLUSION

By submitting copies of the Note, Mortgage, Assignment and Affidavit of Indebtedness, the Plaintiff has met its burden by proving that it is the real party in interest, that the Defendant is in default with regards to her obligations as defined by the Note and Mortgage, and that the Plaintiff is entitled to its requested relief, foreclosure of the subject-property, due to the aforementioned reasons.

Pursuant to Rule 56(e) of the SCRPC, once the moving party meets this initial burden of showing an absence of evidentiary support for the opponent's case, a party may not rely on mere allegations contained in his pleadings to withstand a Motion for Summary Judgment but must set forth specific facts showing there is a genuine issue for trial. Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999). To date, the Defendant has failed to put forth any evidence to support the allegations made in her Answer and Counterclaim(s). When taken as a whole, no material issue of fact remains to be decided. Thus, when no issue of material fact exists, the appropriate action is Summary Judgment. Spencer v. Miller, 259 S.C. 453, 192 S.E.2d 863 (1972). Accordingly, the Plaintiff prays that the Court award it Summary Judgment as to its cause of action and the relief requested in its Complaint.

Brock & Scott PLLC
3800 Fernandina Road, Suite 110
Columbia, South Carolina 29210
Telephone: (803) 454-3540

By: 
Brook Dangerfield
Attorneys for the Plaintiff

Dated: August 7, 2012
Columbia, South Carolina

Loan Number: [REDACTED]

servicing Number: [REDACTED]

Date: 03/29/06

NOTE

13132 WILBURN PARK LN, FORT MILL, SC 29715-1598

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$197,186.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Option One Mortgage Corporation, a California Corporation. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. Interest will be calculated on the basis of a 12-month year and a 30-day month. I will pay interest at a yearly rate of 7.999%. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments on the first day of each month beginning on May 01, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on April 01, 2036, I still owe amounts under this Note, I will pay these amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Option One Mortgage Corporation, P.O. BOX 92103 LOS ANGELES, CA 90009-2103 or a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$1,446.57.

(C) Application of Payments

Payments received by the Note Holder will be applied in the following order: (i) prepayment charges due under this Note; (ii) amounts payable under paragraph 2 of the Security Instrument (defined below); (iii) interest due under this Note; (iv) principal due under this Note; and (v) late charges due under this Note.

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note. I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use me to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

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

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all interest that I owe on that amount, together with any other charges that I owe under this Note or the Security Instrument.

(C) No Waiver By Note Holder

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

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

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

This is a Security Instrument. It was Securitized. Loan bifurcated.

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Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 03/29/06

7. GIVING OF NOTICES

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

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

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

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

9. WAIVERS

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

10. SECURED NOTE

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

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transfer as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to enter an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and the Security Instrument unless Lender releases Borrower in writing.

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

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

ZYPHRA M BERRY
SSN: [REDACTED]

(Seal)
-Borrower

SSN: ###-##-####

(Seal)
-Borrower

SSN: ###-##-####

(Seal)
-Borrower

SSN: ###-##-####

(Seal)
-Borrower

SSN: ###-##-####

(Seal)
-Borrower

SSN: ###-##-####

(Seal)
-Borrower

(Sign Original Only)

TAG R-11235

WHEN RECORDED MAIL TO:

OPTION ONE MORTGAGE CORPORATION
P.O. BOX 57096
IRVINE, CA 92619-7096

ATTN: RECORDS MANAGEMENT

2006004370

MORTGAGE
RECORDING FEES \$16.00
PRESENTED & RECORDED
04-07-2006 09:46 AM
JORD LANE
CLERK OF COURT
LANCASTER COUNTY, SC
By: CAROLINE KIMBLEY DEPUTY
BK:MORT 1486
PG:1-8

Loan Number [REDACTED]
Servicing Number: 002123202-0

(Space Above This Line For Recording Data)

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on March 29, 2006. The mortgagor is
ZIRAILI M ELBEY

("Borrower"). This Security Instrument is given to
Option One Mortgage Corporation, a California Corporation
which is organized and existing under the laws of CALIFORNIA, and whose address is
3 Ada, Irvine, CA 92618

("Lender"). Borrower owes Lender the principal sum of ONE HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED EIGHT

AND NO/100THs Dollars (U.S.\$197,186.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note") which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on
April 01, 2036.

This Security Instrument secures to Lender: (a) the repayment of the debt
evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment
of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument;
and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note.
For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and
assigns the following described property located in Lancaster County, South Carolina:
00064-0A-261.00

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART THEREOF.

Derivation Clause: Being the same property conveyed to
by Deed of [REDACTED] and recorded Page [REDACTED]
in the RNC Office for [REDACTED] County in Book [REDACTED]

which has the address of 131 WILBURN PARK LN,
[REDACTED]
FORT MILL, South Carolina 29715-1598 ("Property Address");
[REDACTED] (City) [REDACTED] (Zip Code)

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever,
together with all the improvements now or hereafter erected on the property, and all easements, appurtenances,
and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this
Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

SOUTH CAROLINA - Single Family
Page 1 of 7

SCD10011 (04-07-00)

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FOR JUDICIAL NOTICE

According to the Forensic Lender Discovery Report, March 12, 2011, this loan was securitized by Option One Mortgage 2006-2007. Below is evidence that Elbey's loan was paid in full in 2006 at closing with borrower's signature. See paid to the order of.....

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 03/29/06

ALLONGE TO NOTE (INVESTOR)

This allonge makes reference to the following Note:

Borrowers: ZIRATLI M ELBEY

Loan #: [REDACTED]

Property Address: 13132 WILBURN PARK LN, FORT MILL, SC 29716-1598

Loan Amount: \$197,186.00

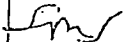
Note Date: 03/29/06

Therefore, in reference to the captioned note, the following applies:

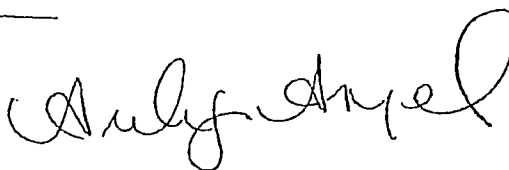
Pay to the order of:

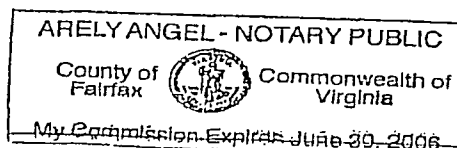
Without Recourse

Option One Mortgage Corporation
A California Corporation

By: 
Sheila Soda

Assistant Secretary





STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank, A Federal Savings Bank

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley
K. Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

AFFIDAVIT OF INDEBTEDNESS



BEFORE ME, personally appeared, the Affiant, being duly sworn, deposes and says, upon personal knowledge that:

1. Affiant has personal knowledge of facts and matters recited herein.
2. Affiant by nature of his position with the Plaintiff or as its agent knows of his/her personal knowledge that the Plaintiff is the holder of the Note and Mortgage described in the Plaintiff's Complaint, and that the information hereinafter given is contained in the original books and records maintained in the office of the Plaintiff's servicing agent. Affiant is competent to testify to all matters stated herein and this Affidavit is made on personal knowledge of Affiant.
3. Defendants failed to pay the installments due on this Mortgage on March 1, 2010 and all subsequent payments. Plaintiff has accelerated the principal balance of said Note and Mortgage in the amount set forth below, plus interest. Plaintiff has agreed to pay its attorney a reasonable Attorney's fee. The nature and amount of all sums due Plaintiff are listed below.
4. Each and every allegation contained in the Complaint to Foreclose Mortgage is true.

10-19401

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5. That by the reason of the aforesaid default in the payment of the note and mortgage, Plaintiff has elected to and has accelerated the payment of the entire principal sum now due under the terms of the note and mortgage, together, with accrued interest, all of which is declared to be due and payable to Plaintiff or its agents.

6. AMOUNTS DUE: The following sums are now due and payable under the terms of the note and mortgage:

I. PRINCIPAL BALANCE DUE \$189,911.32

II. INTEREST DUE: From 02/01/2010 to 07/16/2012 \$ 37,335.97
Current Interest Rate 7.999 %

III. LATE CHARGES

A. Late Charges \$ 0.00
B. Other \$ 0.00

IV. ADVANCES BY MORTGAGEE:

A. Escrow Advances:
- Real Estate Taxes \$ 0.00
- Hazard/Property Insurance \$ 803.19
- P.M.I. \$ 0.00
- misc. \$ 0.00

B. Corporate Advances (itemize in detail):
- Property inspections \$ 54.90
- Property maintenance expense \$ 0.00
- Appraisals/BPO \$ 0.00
- Condo maintenance fees paid \$ 0.00
- Payment to superior mortgages \$ 0.00
- Expert Affidavit Fee \$ 0.00

D. Miscellaneous: \$ 0.00
TOTAL ADVANCES \$ 858.09

IV. LESS: CREDITS DUE TO DEFENDANTS

A. Positive escrow balance (\$0.00)
B. Partial Suspense balance (\$0.00)

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

Option One Mortgage Corporation

Plaintiff,

vs.

AFFIDAVIT OF ATTORNEY'S FEES

Ziraili Elbey

Defendant(s)

PERSONALLY APPEARED BEFORE ME, the undersigned attorney for the Plaintiff, who first being sworn, deposes and says as follows:

This case is an action to foreclose a mortgage on real property. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for a flat attorney's fee in the amount set forth below. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees to the full extent set forth in this Affidavit is appropriate. (See *Dedes v. Strickland*, 414 S.E.2d. 134). The reasonable and necessary costs to pursue this action are as follows:

1. Title Search	\$200.00
2. Complaint Filing Fee	\$150.00
3. Service of Process	\$1,545.00
4. Order of Reference filing Fee	\$25.00
5. MIE Referral fee	\$250.00
6. Motion for Summary Judgment	\$25.00
7. Attorney Fee	\$1,515.00

FURTHER THE AFFIANT SAYETH NOT.

Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
Sarah B. Oliver, SC Bar No. 80165
Brook Dangerfield, SC Bar No. 77912
Attorney for the Plaintiff

Sworn to and subscribed before me
this 7th day of August, 2012

Notary Public for the State of South Carolina
Commission Expires: 05/24/2015

** Plaintiff's attorney's fees are based on a flat fee of \$1,050.00 for uncontested matters.

Plaintiff also seeks recovery of 4.9 hours of attorney's fees in connection with the contested nature of this action at the rate of \$94.897 per hour (\$465.00) for a total amount of \$1,515.00 and counsel seeks leave to supplement this affidavit should further fees be incurred for the contested issues associates with this action.



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Option One Mortgage Corporation

Plaintiff,

vs.

AFFIDAVIT OF ATTORNEY'S FEES

Ziraili Elbey

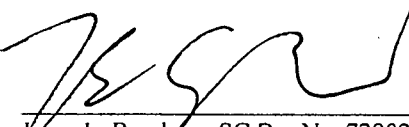
Defendant(s)

PERSONALLY APPEARED BEFORE ME, the undersigned attorney for the Plaintiff, and first being duly sworn, deposes and says as follows:

This case is an action to foreclose a mortgage on real property. I was retained by the Plaintiff to conduct this foreclosure action pursuant to a contractual rate of compensation providing for a flat attorney's fee in the amount of \$1,050.00 below. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees to the full extent set forth in this Affidavit is appropriate. (See *Dedes v. Sprickland*, 2005 S.E.2d 134) The reasonable and necessary costs to pursue this action are as follows:

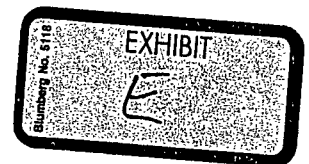
1. Title Search	\$200.00
2. Complaint Filing Fee	\$150.00
3. Service of Process	\$1,547.50
4. Order of Reference filing Fee	\$25.00
5. MIE Referral fee	\$250.00
6. Motion for Summary Judgment	\$25.00
7. Attorney Fee	\$ 1,515.00

FURTHER THE AFFIANT SAYETH NOT.


 Jason L. Branham, SC Bar No. 72902
 Chad Burgess, SC Bar No. 72520
 Sarah B. Oliver, SC Bar No. 80165
 Brook Dangerfield, SC Bar No. 77912
 Attorney for the Plaintiff

Sworn to and subscribed before me
 this 7th day of August, 2012


 Notary Public for the State of South Carolina
 Commission Expires: 05/24/2020



** Plaintiff's attorney's fees are based on a flat fee of \$1,050.00 for uncontested matters.

Plaintiff also seeks recovery of 4.9 hours of attorney's fees in connection with the contested nature of this action at the rate of \$94.897 per hour (\$465.00) for a total amount of \$1,1515.00 and counsel seeks leave to supplement this affidavit should further fees be incurred for the contested issues associates with this action.

New 16721

Total Debt secured by Note and Mortgage, including interest to date is \$233,312.88. Interest for the period from the date shown above through the date of this judgment, at above stated rate, to be added to the above stated "Total Debt" to comprise the amount of the Judgment debt entered herein, and interest after the date of Judgment at the rate of 7.999% per annum, the Note's current rate, pursuant to the terms of the Note and Mortgage on the Judgment debt should be added to such judgment debt to comprise the amount of the Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

18. The Plaintiff is seeking foreclosure of its mortgage and has, in the Complaint, subsequently thereto in writing, expressly Demanded the right to a personal or deficiency Judgment pursuant to Rule 71(b), SCRCF.

19. The Defendant, below listed, claims or may claim a lien upon or interest in the subject property; and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c), SCRCF. The said Defendant and such claim or lien are as follows:

The Defendant, American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, has or may claim to have some interest in the Property by virtue of mortgage given by Ziraili M. Elbey to Option One Mortgage Corporation in the original principal amount of \$49,296.00, which mortgage was recorded in the Lancaster County Registry on April 7, 2006 in Mortgage Book 1486 at Page 9. According to testimony, American Home Mortgage Servicing, Inc. is the successor in interest to Option One Mortgage Corporation. Said mortgage is junior and subordinate to the Plaintiff's mortgage and is hereby ordered removed from title to the Property.

ADD To:
original mortgage
\$49,296.00
BK 1486, PG 9

CONCLUSIONS OF LAW: I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of its Mortgage; and the Property should be ordered sold at public auction after due advertisement.

10-19401

5. That by the reason of the aforesaid default in the payment of the note and mortgage, Plaintiff has elected to and has accelerated the payment of the entire principal sum now due under the terms of the note and mortgage, together, with accrued interest, all of which is declared to be due and payable to Plaintiff or its agents.

6. AMOUNTS DUE: The following sums are now due and payable under the terms of the note and mortgage.

I. PRINCIPAL BALANCE DUE \$189,911.32

II. INTEREST DUE: From 02/01/2010 to 07/16/2012 \$ 37,335.97
Current Interest Rate 7.999 %

III. LATE CHARGES

A. Late Charges \$ 0.00
B. Other \$ 0.00

IV. ADVANCES BY MORTGAGEE:

A. Escrow Advances:
- Real Estate Taxes \$ 0.00
- Hazard/Property Insurance \$ 803.19
- P.M.I. \$ 0.00
- misc. \$ 0.00

B. Corporate Advances (itemize in detail):
- Property inspections \$ 54.90
- Property maintenance expense \$ 0.00
- Appraisals / BPO \$ 0.00
- Condo maintenance fees paid \$ 0.00
- Payment to superior mortgages \$ 0.00
- Expert Affidavit Fee \$ 0.00

D. Miscellaneous: \$ 0.00

TOTAL ADVANCES \$ 858.09

IV. LESS: CREDITS DUE TO DEFENDANTS

A. Positive escrow balance (\$0.00)
B. Partial Suspense balance (\$0.00)

10-19401

87

TOTAL CREDITS:

(\$ 0.00)

V. TOTAL DEBT

\$ 228,105.38

FURTHER THE AFFIANT SAYETH NOT.

Accept and Return for Assessed Value, Closure and Settlement of this Accounting

Nationstar Mortgage, LLC as attorney-in-fact for
JACK Block Bank, A Federal Savings Bank

Affiant Signature: Jerrell B. Menyweather

Affiant Printed Name: Jerrell B. Menyweather

Affiant Title: Assistant Secretary

Sworn to and subscribed before me
this 10 day of July

Notary Public for the State of Texas

Commission Expires: 12-15-15

By: Ziraili M El Bey
Authorized Representative



Accept & Return for Assessed Value	\$233,512.50
Closure and Settlement of this Accounting	3,712.50
Court Case No. 2011-CP-29-35	49,296.88
Exhibit "E" - Attorney Fees	126,984.31
Original Mortgage# 2006004371	\$413,305.69
BK 1486, PG 9	
Federal Tax Lien Serial# 949788413	
Total	



CUT HERE

MONEY ORDER

Amount you due: \$413,305.69

☐ Amount enclosed: \$826,611.00

☐ Correspondence enclosed

Pay to: United States Treasury

Eight hundred twenty-six thousand six hundred eleven dollars \$826,611.00

Lancaster CFO Director of Finance
Lancaster County Court
101 Main Street, Lancaster, SC 29720

ZIRAILI M ELBEY
13132 Wilburn Park Lane
Indian Land, SC 29707

By: _____
Authorized Representative

"without recourse"

10-19401

Please stamp & return envelop enclosed

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Respondents.

Case No. 2011-CP-29-35

NOTICE OF ABSENCE FROM

THE FINAL HEARING

(For the Record written Transcript of Testimony)

FILED
CLERK OF COURT
LANCASTER, SC
2012 JUN 20 PM 12:51

Reference

Original Lender: OPTION ONE MORTGAGE CORPORATION
Original Loan Number: 57007388
Original Servicing Number: 002123202-0
Property Address: 13132 Wilburn Park Lane, Ft. Mill, SC 29707
Legal Description: 0006M-0A-261.00

All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office for the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198. This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170.

Also being shown as Lot 261 of Clairemont on a Plat and Land Patent of Ziraili Elbey prepared by Precision Surveying Incorporated, No. -CO1244 of Lancaster, SC dated April 21, 2010, and recorded in Plat Doc 2010 at Page 180. This being the identical property conveyed to Ziraili M. Elbey by deed from the Ryland Group, Inc being the same property shown on 2006 at Page 198 and recorded in Deed Book 370 at Page 10 in the Office of the Clerk of Court for Lancaster County with current tax map number at 6M-A-261.

FOR THE RECORD FINAL WRITTEN TRANSCRIPT OF TESTIMONY,

RESPONDENT, Ziraili M Elbey has just been released from the hospital and is on bed rest for the next few weeks and will be unable to attend the final hearing scheduled by Mr. Phillip E. Wright, Special Referee for Lancaster County for August 22, 2012 at 11:00AM at 104 North Main Street, Courtroom B, Lancaster, SC 29720. The Respondent is not an attorney. The

Respondent is **not** requesting, at this time, a continuance or a change of date, however, Respondent has previously answered Plaintiff's Motion for Summary Judgment dated on June 21, 2012, and submitted to this Court, 1) Notice of Supplemental Pleading to "Motion to Deny the Motion for Summary Judgment" in addition to 2) Notice of Administrative Breach Order 2011-05-02-01 and further Exhibits attachments.

The Respondent is requesting that the Clerk of Court, Jeff Hammond make available all of the above mentioned previously Court written Transcript of Testimony/answers to Plaintiff for Mr. Phillip E. Wright, Special Referee for Lancaster County on or before the date of this final foreclosure hearing, 22nd August, 2012 to include the Respondent's previously paid, and court stamped filing Motion to Dismiss and paid Orders with prejudice. Clerk of Court Jeff Hammond, Respondent is in gratitude for your assistance in having all of Respondent Motions and Orders available for this final hearing for Mr. Phillip E. Wright, Special Referee for Lancaster County.

The Respondent is aware that Mr. Phillip E. Wright, Special Referee for Lancaster County will enter a final judgment and order to dismiss this case with prejudice which is not subject to foreclosure nor never has been. This mortgage note has been SATISFIED and DEED OF FULL RECONVEYANCE to Respondent dated 2010 with Instrument No. 2009014158, BK 2175 at Page 343-350 of the Office Records in the Office of the Recorder of Lancaster County, State of South Carolina reciting that all sums secured by said Deed of Trust have been fully paid, and said Deed of Trust and the Note or Notes secured thereby having been surrendered to the Trustee for cancellation, is hereby reconvey, without warranty, to Respondent, Ziraili Elbey legally entitled thereto, all right, title and interest heretofore acquired and now held by Ziraili Elbey, Trustee under said Deed of Trust, in the real property commonly known as 13132 Wilburn Park Lane situated in the County of Lancaster, State of South Carolina as more

particularly described see **Exhibits, “A”, “B”, “C”, and “D”** respectively.

The Respondent prays this court reviews all supplemental materials and dismiss this case with prejudice respectfully. Honorable Judge, **PLEASE TAKE NOTICE**, that Respondent previously submitted a motion and order to this court to dismiss Plaintiffs action. Your Honor, it is within your power to sign the Order to Dismiss. Respondent is not an attorney.

May God and your oath rightly guide you.

Respectfully yours,

“without prejudice” UCC 1-308, UCC1-207

By: _____,

Ziraili M Elbey, Authorized Representative

ZIRAILI M ELBEY

In Propria Persona.

Executrix Office.

Nation “South Carolina”.

General-Post Office.

Charlotte Highway-9789, Suite 400-191.

Fort Mill.

United states Minor. Outlying Islands.

Near. [29707-9998]

Enclosures:

Exhibits “A”, “B”, “C” and “D”

Cc: The Honorable Jeff Hammond
The Honorable Phillip E. Wright
Brook Dangerfield, Esquire, Brock & Scott

Ziraili M Elbey

Return Mailing Address: 9789 Charlotte Highway, #400-191, Ft. Mill, South Carolina 29707

August 18, 2012

The Honorable Jeff Hammond
Lancaster County Clerk of Court
Post Office Box 1809
Lancaster, SC 29721-1809

RE: Court of Common Plea Case # 2011-CP-29-35
H & R Block Bank v. Ziraili M Elbey et al & Notice of Absence
from 22nd August Final Hearing and other Supplemental
Materials and other Exhibits attached.

Dear Mr. Hammond:

Enclosed please find Respondent's attached pleading as stated above for the written Transcript Record in case no. 2011-CP-29-35 to the Honorable Phillip Wright, Special Referee, and Plaintiff attorney, Brock & Scott, PLLC, plus a Certificate of Mailing. I would appreciate your filing the original and returning the clocked first page copy to this writer in the envelope provided. I am also aware that even though I will not be available to attend for this final hearing and that Plaintiff is seeking immediate foreclosure, I am sending another stamped envelope for the Special Referee's final decision to be sent instantly to this Respondent. In gratitude.

I am serving the below listed parties a copy of the above documents.

Respectfully yours,

"without prejudice" UCC 1-308, UCC1-207

By: _____
Ziraili M Elbey, Authorized Representative

Enclosures:-Supplemental Materials
Exhibits "A" thru "D"
Certificate of Mailing

In Propria Persona.
Executrix Office.
Nation "South Carolina".
General-Post Office.
Charlotte Highway-9789, Suite 400-191.
Fort Mill.
United states Minor Outlying Islands.
Near. [29707-9998]

Cc: The Honorable Phillip E. Wright
The Honorable Jeff Hammond
Brook Dangerfield, Esquire, Brock & Scott

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Respondents.

Case No. 2011-CP-29-35

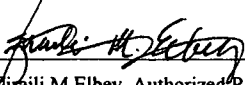
**NOTICE OF UNITED STATES
BANKRUPTCY COURT FILING
DISTRICT OF SOUTH CAROLINA**

COMES NOW THE RESPONDENT, ZIRAILI M ELBEY who files this notice of filing in good faith for the court to redirect any further actions or filing to the United States Bankruptcy Court for the District of South Carolina and in support would state the following:

1. Respondent, now Plaintiff has submitted evidence of good standing with this court in support of this notice. See Exhibit "A"
2. Respondent, now Plaintiff request that this case be remanded to the United States Bankruptcy Court of the District Court for the District of South Carolina, as they will now hold jurisdiction.

WHEREFORE THE RESPONDENT, respectfully moves this court to observe any further Foreclosure Actions to the United States District Court for the District of South Carolina as a matter of law.

Without Recourse UCC 1 308/207

By: 

Ziraili M Elbey, Authorized Representative For:
ZIRAILI M-ELBEY
Secured Party Creditor
Charlotte Highway-9789, Suite 400-191.
Fort Mill.
United states Minor. Outlying Islands.
Near. [29707-9998]

The Honorable Phillip E. Wright
Brook Dangerfield, Esquire, Brock & Scott
The Honorable Jeff Hammond, Clerk of Court

NOTICE OF BANKRUPTCY FILING

FILED
CLERK OF COURT
OF COURT
2012 AUG 30 P 3:16
CLERK OF COURT
LANCASTER, SC

93

United States Bankruptcy Court - District of South Carolina
J. Bratton Davis United States
Bankruptcy Courthouse
1100 Laurel Street
Columbia, SC 29201-2423

Case Number: 12-05229-jw Chapter: 13

In re: (Debtor(s) name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address)

Ziraili Samara Mohassan, El Bey

aka Ziraili M. Elbey, aka Ziraili Mohassan El Bey, aka Ziraili

El Bey, aka Ziraili M. El Bey

9789 Charlotte Highway

#400-191

Fort Mill, SC 29707

SSN: xxx-xx-8385

NOTICE OF FILING(S) DUE

Filed By The Court

08/24/12

L. Jefferson Davis IV
(Acting)
Clerk of Court
US Bankruptcy Court

In the above referenced case, a petition was filed on 08/24/12.

Please take notice that pursuant to Fed. R. Bankr. P., and the SC LBR, the following documents(s) must be filed within the time periods set forth therein, or the case may be dismissed without further notice or hearing.

Missing Documents:

Ch 13 Stmt of Income/Calculati due 09/07/2012

Stmt of Financial Affairs due 09/07/2012

Copies of Payment Advices due 09/07/2012

Chapter 13 Plan due 09/07/2012

Stmt of Increase Income/Exp. due 09/07/2012

Dated: August 27, 2012

L. Jefferson Davis IV (Acting), Clerk

Document 7

By: C Brooks
Deputy Clerk

See page 2 - Explanation of Notices of Filings Due

94

IN THE COURT OF COMMON PLEA OF THE STATE OF SOUTH CAROLINA

FOR THE (2012012226

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Alleged Defendants.



AFFIDAVIT

RECORDING FEES

\$17.00

PRESENTED & RECORDED:

09-17-2012 11:54 AM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK:DEED 687

PG:163-173

FILED
OFFICE OF CLERK
OF COURT
CLERK OF COURT
LANCASTER, SC

2012 SEP 17 AM 11:31

Case No. 2011-CP-29-35

(For the Record written Transcript of Testimony)

Alleged Defendant's Verified Motion to Vacate a Quash Void Judgment under authority
Of South Carolina Statue Title 15, Section 3-530(5) and Writ of Mandamus

Reference

Original Mortgage Originator: OPTION ONE MORTGAGE CORPORATION

Original Loan Number: 571007388

Original Servicing Number: 002123202-0

Property Address: 13132 Wilburn Park Lane, Ft. Mill, SC 29707

Legal Description: 0006M-0A-261.00

All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office for the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198. This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170.

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Brief in support of Verified Motion to Quash Vacate Final Judgment

Pursuant to Rule 12 (b), of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), Ziraili Elbey, an aggrieved party, moves this court under authority of "SCRCP" and SC Title 15, § 3-530(5) for vacation of a void judgment attached. Brock and Scott, PLLC, practicing subterfuge and acting in a purely fraudulent criminal mode by using fictitious and faulty, and unlawful documents for this foreclosure, evidence of national renowned, identified fabricated "robo-signers", reverse engineering has taken place, employees of foreclosure trustees

Exhibit C

95

signing documents posing as corporate officer of multiple banks and Mortgage servicers, reverse-engineering the chain of title in the Assignment of Mortgage, witness Sand Canyon Corporation fka Option One Mortgage Corporation by Melissa Hively VP and Melanie Hanson AVP on July 2, 2010, but effective on July 2, 2010, but effective March 29th, 2006 (4 years post dated). Notary was in **IDAHO** County of **BONNEVILLE**, July 2, 2010 before Notary Krystal Hall. The signature spelling appears to be misspell Hall "HULL". The signature is illegible. **TAKE JUDICIAL NOTICE** that Krystal, Notary Public, State of IDAHO (Commission Expired 11/15/2011). It' appearing personally: Melissa Hively VP and Melanie Hanson VP typed. See EXHIBIT "A" This, to makes it appear as though the loan was passed from company to company when in fact it was not, consumer protection requirements have not been followed, loan has been securitized, chain of ownership for the loan or the security interest that has been falsely manipulated and reverse engineered to appear lawful when in fact it is not to obtained judgment in this instant case based on SC Title 32 §3-10

TAKE JUDICIAL NOTICE that such deceptive processes violate South Carolina state laws, and the South Carolina Attorney General Mark Hammond, who is a member of the National Attorney General Deed of Trust Foreclosure Multistate Group¹, has requested suspension of questionable foreclosures and investigation into any underlying cases in which judges, appointed special referees and courts have not yet confirmed the following:

- that all foreclosure-related documents were lawfully signed.
- that the chain of ownership is clear and has been revealed to alleged Defendant in full
- that state and federal consumer protection requirements have been followed and have been processed according to South Carolina state law.

Ziraili Elbey, the aggrieved party was deceived in the **initial Complaint dated January 14, 2011** by Brock and Scott, PLLC law firm for H & R Block Bank, FSB, Plaintiff 1) that both Plaintiff and Brock and Scott, PLLC law had a contract² with the alleged Defendant, whereas lack of **contractual status** existed. 2) that both Brock and Scott, PLLC law firm for H & R

¹ <http://www.naag.org/joint-statement-of-the-Deed-of-Trust-foreclosure-multistate-group.php>. If not available on the NAAG website, please find printout attached. _Ex_20101013_joint-statement-of-the-Deed-of-Trust-foreclosure.pdf.

² Contract- A lawful contract has; (1) Offer; (2) Consideration; (3) Acceptance by all parties for/of the Contract; (4) Signatures by all parties involved with the Contract. *Only the parties signing the Contract can participate in the discussion of the Contract. Full disclosure about the Contract is imperative (meeting of the minds.)

Block Bank, FSB were third party debt collector, servicer trying to collect on non-existent contract, 3) further that Plaintiff was registered to do business in South Carolina with the SC Secretary of State in the state of South Carolina, whereas lack of registration with the SC Secretary of State existed, 3) and, that there was lack of evidence in the initial complaint indicating that Brock & Scott, PLLC as Registered Agent for Plaintiff which again deceptive and fraudulent as no contract exist between the Plaintiff and the alleged Defendant.

Memorandum of law in support of judicial notice

A *void judgment* is one that, from its inception, is a complete nullity and is without legal effect." *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. & Guar. Co.*, S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Tyron Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *S.C. Dep't of Soc. Servs. v. Holden*, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

AFFIDAVIT

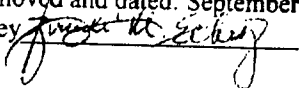
I, Ziraili Mohassan Elbey, of lawful age and competent to testify state as follows based on her own personal knowledge and declare Nationality, Treaty and Writ of Mandamus as a Matter of Law: (see EXHIBIT "B")

1. I am not in receipt of any lawful documents which verifies that H & R Block Bank, FSB has Standing to sue in South Carolina courts.
2. I am not in receipt of any document which verifies that I have a contract with H & R Block Bank, FSB.
3. I am not in receipt of any document which verifies that I owe to H & R Block Bank, FSB money.
4. I am not in receipt of any document/s which verifies the claim of interest and or ownership that H & R Block Bank, FSB besides the transfer of a recorded bogus falsified Assignment for an alleged loan that is non-existent as the original lender was paid at the time of mortgage closing March 29, 2006. (see EXHIBIT "A")
5. I am not in receipt of any document which verifies absolutely no evidence, no proof of a claim, no contract, no nothing, absolutely no evidence entered on the record in support of the claim, the judgment is void, a nullity, conveying no interest, and grounding no rights.
6. I am not in receipt of any document which verifies that the Lancaster Court of Common Plea has jurisdiction to rule of this matter before this Court.
7. I am in receipt of a recorded Assignment to Plaintiff which verifies a bogus falsified document signed by nationally identified (robo-signers) which Brock and Scott, PLLC received from Plaintiff, to prosecute an action in the name of the original maker of the loan thus engaging in criminal activity Brock and Scott, PLLC prepared, had knowledge false recorded documents that were presented to the court both entities are committing felonies.(see EXHIBIT "A")
8. I am in receipt a copy of Special Referee's, Mr. Phillip E. Wright's final decision and on August 22, 2012 rendering Foreclosure SALE which verifies that Brock and Scott, PLLC who prepare the action and had knowledge false document submitted to the court are committing felonies and act as co-conspirators'.

Whereby opposing counsel has twenty (20) days to stipulate to Vacate the Foreclosure Judgment and to entry of Order Vacating Foreclosure Judgment, Cancelling the Foreclosure Sale, and Quashing Service, approving Quiet Title to alleged Defendant – all Brock and Scott, PLLC has to do is cancel the hearing in writing and accept service.

Verified Motion moved and dated: September 17, 2012

by: Ziraili M Elbey



AFFIDAVIT (cont'd)

JURAT

Ziraili Elbey
Ziraili Elbey, "All Rights Reserved"

Cheryl Brown
First Witness

Roblye L. L. L.
Second Witness

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

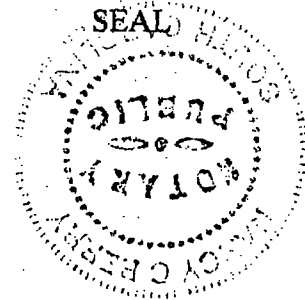
INDIVIDUAL ACKNOWLEDGMENT

Before me, the undersigned, a Notary Public in and for said County and State on this 17
Day of September, 2012, personally appeared Ziraili Elbey
to me known to be the identical person who executed the within and foregoing instrument and
acknowledged to me that she executed the same as her free and voluntary act. Given under my
hand and seal the day and year last above written.

Nancy C. Perry

Notary Public

My Commission Expires July 23, 2017



IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Alleged Defendants.

Case No. 2011-CP-29-35

**CERTIFICATE OF SERVICE
BY MAIL.**

FILED
OFFICE OF CLERK
OF COURT
CLERK OF COURT
LANCASTER, SC

2012 SEP 17 AM 11:31

The undersigned hereby certifies that she is Ziraili M Elbey, alleged Defendant is of such age and discretion as to be competent to serve papers.

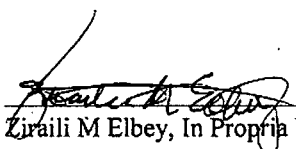
That on the 17th September 2012 she served a copy of Verified Motion to Vacate Judgment with EXHIBITS ("A") AND ("B") by placing said copy in a postage paid envelope addressed to the following person(s) at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Party(ies) Served:

Brook Dangerfield, Esquire
Brock & Scott, PLLC
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721


Ziraili M Elbey, In Propria Persona
Alleged Defendant,
"All Rights Reserved"

Dated: 17th September 2012, 2012
Indian Land/ Ft. Mill, South Carolina

SOUTH CAROLINA

EXHIBIT "A"

PREPARED BY SECURITY
CONNECTIONS, INC.
WHEN RECORDED MAIL TO:
SECURITY CONNECTIONS INC.
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401
PH: (208) 528-9895
ATT: KARLEEN MAUGHAN

COUNTY OF LANCASTER
POOL NO.
LOAN NO. 0021232020



Assignment-Interv.-Recorded

ASSIGNMENT OF REAL ESTATE MORTGAGE

For value received SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

located at 7595 IRVINE CENTER DRIVE, SUITE 100, IRVINE, CA 92618
hereby transfers, assigns and sets over without recourse unto
H & R BLOCK BANK FSB

located at ONE H & R BLOCK WAY, 8TH FLOOR, KANSAS CITY, MO 64105

its successors and assigns forever, that certain mortgage executed by
ZIRAILI M ELBEY
to OPTION ONE MORTGAGE CORPORATION

dated MARCH 29, 2006 and recorded in the Clerk's office LANCASTER
County, South Carolina, on APRIL 7, 2006, in Mortgage Book MORT 1486,
Page 1, together with the note thereby secured conditioned for the
payment of the full and just sum of \$197,186.00 Dollars,
according to the terms as set forth in said note and mortgage.

1-1111 111111 1111 111111 1111 1111 1111 1111 1111 1111
Loan No.

(NMRI.SC)
C=s.383.0002
P=S.002.00120.21

Page 1 of 2

J-HR8010109AI.s.02249

2010008401

ASSIGNMENT OF MORTGAGE
RECORDING FEES

\$7.00

PRESENTED & RECORDED:

08-05-2010 12:11 PM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

BK:MORT 2265

PG:129-130

101

LOAN NO. 0021232020

In Witness Whereof, SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

caused these presents to be signed by MELISSA HIVELY
its VICE PRESIDENT and MELANIE HANSON
its ASSISTANT VICE PRESIDENT this 2nd day of JULY
2010, but effective the 29th day of MARCH, 2006

SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

Carmen Rivera
Witness CARMEN RIVERA

BY Melissa Hively
MELISSA HIVELY
VICE PRESIDENT

Mistylin Hansen
Witness MISTYLIN HANSEN

BY Melanie Hanson
MELANIE HANSON
ASSISTANT VICE PRESIDENT

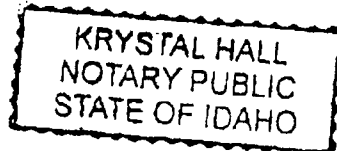
STATE OF IDAHO

COUNTY OF BONNEVILLE

) SS

On JULY 2, 2010 before me, KRYSTAL HALL
personally appeared MELISSA HIVELY
and MELANIE HANSON personally known to me
(or proved to me on the basis of satisfactory evidence) to be the persons
who executed the within instrument as VICE PRESIDENT
and ASSISTANT VICE PRESIDENT or on behalf of the Corporation
therein named and acknowledged to me that the Corporation executed it.

Krystal Hall
KRYSTAL HALL (COMMISSION EXP. 11-14-11)
NOTARY PUBLIC



(NMRI.SC.2)
C=s.383.0002
P=S.002.00120.21

Page 2 of 2

J=HR8010109AI.s.02249

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Return Document :
Ziraili Mohassan El Bey
13132 Wilburn Park Lane
Indian Land, SC 29707

2012012191
AFFIDAVIT
RECORDING FEES \$10.00
PRESENTED & RECORDED
09-17-2012 10:47 AM
JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE PHILLIPS DEPUTY
BK: DEED 687
PG: 128-130

TO WHOM IT MAY CONCERN, please find this Declaration, Nationality, Treaty and Writ of Mandamus for Ziraili M El Bey, in her natural person, woman of the land described below with a two (2) page declaration this instant:

Property Address: 13132 Wilburn Park Lane, Ft. Mill, SC 29707
Legal Description: 0006M-0A-261.00

All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office for the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198. This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryland Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170.

Also being shown as Lot 261 of Clairemont on a Plat and Land Patent of Ziraili Elbey prepared by Precision Surveying Incorporated, No. -CO1244 of Lancaster, SC dated April 21, 2010, and recorded in Plat Doc 2010 at Page 180. This being the identical property conveyed to Ziraili M. Elbey by deed from the Ryland Group, Inc. being the same property shown on 2006 at Page 198 and recorded in Deed Book 370 at Page 10 in the Office of the Clerk of Court for Lancaster County with current tax map number at 6M-A-261.

See Writ of Mandamus attached.

EXHIBIT "B"

**CERTIFIED TO BE A TRUE COPY
REGISTER OF DEEDS
COUNTY OF LANCASTER, SC**

THE TREATY OF PEACE AND FRIENDSHIP OF 1836 A.D.

Between Morocco and the United States

Article 20 and Article 21

"If any of the Citizens of the United States, or any Persons under the Protection, shall have any disputes with each other, the Consul shall decide between the Parties, and whenever the Consul shall require any Aid or Assistance from our Government, to enforce his decisions, it shall be immediately granted to him.

"If any Citizen of the United States should kill or wound a Moor, or, on the contrary, if a Moor shall kill or wound a Citizen of the United States, the Law of the Country shall take place, and equal Justice shall be rendered, the Consul assisting at the Trial; and if any Delinquent shall make his escape, the Consul shall not be answerable for him in any manner whatever."

THE UNITED STATES CONSTITUTION

Article III-Section 2-Trial by Jury. Original Jurisdiction

"The Judicial Power shall extend to All cases in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to All cases affecting Ambassadors, other Public Ministers and Consuls; to All cases of admiralty and maritime Jurisdiction; to controversies to which the United States shall be a Party; controversies between two or more States; between a State and Citizens of another State; between Citizens of different States; between Citizens of the same State claiming Lands and Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or subjects.

Article VI-Debts, Supremacy, Oaths

"All Debts contracted and Engagements entered into, before the adopting of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation. This Constitution, and the Laws of the United States which shall be made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution, or Laws of any State to the contrary notwithstanding.

"The Senators and Representatives before mentioned, and the Members of the several State Legislatures and all executive and judicial Officers both of the United States and the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious test shall be required as a Qualification to any Office or public Trust under the United States.

Amendment V-Trial & Punishment

"No Person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the Land or Naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of, life, liberty, or property, without due process of law, nor shall private property be taken for public use, without compensation.

Amendment IX-Un-enumerated Rights

"Certain Rights shall not be construed to deny or disparage others retain by the People."

Amendment X-

"The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively or to the People."

THE DECLARATION OF INDIGENOUS RIGHTS

UN 61/295

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Article 15

"Everyone has the Right to a Nationality". "No one shall be arbitrarily deprived of his Nationality nor deprived the right to change his Nationality"

THE UNITED STATES CODES-Titles

18 Section 112-Protections of Internationally Protected Persons

- (a) "Prohibits assaults against foreign officials, official guests, and international protected persons (IPPs), and attacks upon the official premises, private accommodations, or means of transport of such persons. The provisions also embraces attempts to commit such offenses. By its terms, 112(a) neither requires proof of injury nor intent to injure a protected person.
- (b) "Prohibits acts of intimidation, threats, coercion and harassment against foreign officials and official guests, and obstruction of foreign officials in the performance of their duties."

18 Section 241-Conspiracy Against Rights

"If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same;...

"They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death."

18 Section 242-Deprivation of Rights

"Whoever, under color of Law, Statute, Ordinance, regulation, or Custom, wilfully, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or Laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; or if bodily injury results from the acts committed in violations of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years; or both and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

28 USC Section 1331-Federal Question

"The district courts shall have 'original jurisdiction' of all civil actions arising under the Constitution, laws, or treaties of the United States."

28 USC Section 1361-Action to Compel an Officer of the United States to perform his duty

"The district courts shall have 'original jurisdiction' of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

28 USC Section 1391(e)-Venue

"As amended, Provides that in a civil action in which each defendant is an officer or employee of the United States or any agency thereof acting in his official capacity, or under color of legal authority, or any agency of the United States the action may be brought in any judicial district in which a defendant in the action resides.

28 USC Section 1746-Unsworn Declaration

"Wherever, under any Law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified other than a Notary Public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated in substantially the following form:

1. If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the Laws of the United States of America that the foregoing is true and correct. Executed on (date)
2. If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury under the Laws of the United States of America that the foregoing is true and correct. Executed on (date)

28 USC Section 2201-Creation of Remedy-5 USC-702

"Relief other than monetary damages "against the United States."

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Alleged Defendants.

Case No. 2011-CP-29-35

**CERTIFICATE OF SERVICE
BY MAIL.**

FILED
OFFICE OF CLERK
OF COURT
CLERK OF COURT
LANCASTER, SC

2012 SEP 17 AM 11:31

The undersigned hereby certifies that she is Ziraili M Elbey, alleged Defendant is of such age and discretion as to be competent to serve papers.

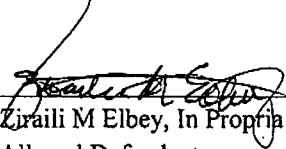
That on the 17th September 2012 she served a copy of Verified Motion to Vacate Judgment with EXHIBITS ("A") AND ("B") by placing said copy in a postage paid envelope addressed to the following person(s) at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Party(ies) Served:

Brook Dangerfield, Esquire
Brock & Scott, PLLC
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721


Ziraili M Elbey, In Propria Persona
Alleged Defendant,
"All Rights Reserved"

Dated: 17th September 2012, 2012
Indian Land/ Ft. Mill, South Carolina

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,
Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement, dated June 4,
2010 by and through its Trustee Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Mortgage Corporation,

Respondent(s)

Case No. 2011-CP-29-35

**ANSWER TO PLAINTIFF'S
MOTION & ORDER TO RESTORE**

FILED
CLERK OF COURT
LANCASTER, SC
JUN 5 AM 11:45

State of SOUTH CAROLINA)
County of LANCASTER) ss
)

**ANSWER TO PLAINTIFF'S MOTION &
ORDER TO RESTORE**

**"Equality is Paramount and Mandatory
by Law"**

Come now Respondent, **Ziraili-Mohassan: Elbey**, indigenous, natural born woman, and spiritual being living a human experience on the land, *In Propria Persona* (not "Pro Se" [sic]) of South Carolina in its dejure capacity as a republic and as one of the several states of the union created by the Constitution for the united States of America 1777/1789. This incidentally makes this writer an American aboriginal and a common woman of the UN Rights of Indigenous People, does swear and affirm that Respondent has scribed and read the foregoing facts, and in accordance with the best of Plaintiff's firsthand knowledge and conviction, such are true, correct, complete, and not misleading, the truth, the whole truth, and nothing but the truth.

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Respondent, Ziraili Elbey Answers Plaintiff's Motion pleading as follows:

1. That this Court lacks both subject matter and personal jurisdiction over Respondent pursuant to SCRPC 12(b)(1) and 12(b)(2). The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.

2. That Plaintiff's pleading fails to state a claim upon which relief can be granted against Respondent. The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.

3. That in accordance with Rule 8(a) SCRPC Plaintiff's pleading fails to provide a short, plain statement of the claim or that Plaintiff is entitled to any alleged relief sought therein. The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.

4. That those portions of Plaintiff's pleading styled "Motion", "Order to Restore", filing Chapter 13 of the United States Bankruptcy Code....case be restored pursuant to "Chief Justices' Administrative Order issued June 5, 1992 fail to states facts which require an admission or denial. There allegations simply state conclusions of law to which no response is required. However, to the extent a response is required, those previous pleadings of Plaintiff are expressly denied. "Unclear Chain of Title" as to the right of the Plaintiff to enforce the mortgage and mortgage NOTE. The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.

5. That Plaintiff fail to include in its pleading that the "SATISFACTION" of mortgage lien in question, regarding Respondent, Ziraili M Elbey as it relates Plaintiff's initial Complaint #2011-CP-29-35, mortgage foreclosure. This honorable Clerk of Court as a matter of record and duty of office on Respondent's mortgage lien. Registered of Deeds office posted mortgage lien "Satisfied" by this Court, Lancaster, South Carolina Court of Common Pleas and filed with the Lancaster Register of Deeds Office, as of February 19, 2013. [See Exhibit "A" to include Instrument No.# 2013002511, BK: DEED 715, PG: 233-251, and Instrument No: 2013002512, BK: MORT 2618, pg: 242-260] Accordingly, this action should be dismissed with prejudice. The mortgage lien is "SATISFIED".

6. That Plaintiff fail to include in its Motion to Restore Complaint #2011-CP-29-35 that South Carolina Code of Laws, Title 36 – Commercial Codes defines the entity having the right to enforce and make demands upon this Respondent regarding the mortgage, and mortgage NOTE. It is the Uniform Commercial Code laws of South Carolina, in force, at all times relevant to this initial Complaint#2011-CP-29-35 to foreclose on Respondent's property, filed January of 2011. Respondent, Ziraili M Elbey according to [UCC 36 § 3-104] is not dishonored or in default under the NOTE. Respondent's NOTE is a negotiable instrument pursuant to Article 3 of the UCC. [See Exhibit "B" , a copy of the NOTE previously submitted in this case by Plaintiff last year August 2012] Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

7. That Plaintiff fail to include in its Motion to Restore Compliant #2011-CP-29-35 that its copy of the Respondent's NOTE shows no indorsements, directly on it or attached [ALLONGE] to it, and therefore does not indicate that it was ever transferred, sold, exchanged or delivered by the lender to anyone else. Further, Exhibit "B", the copy of the "NOTE in the Complaint #2011-CP-29-35 does not indicate that the NOTE was ever negotiated [UCC 36 § 3-201 (a)] or that it was ever transferred or deliver to another entity [or mortgage servicer] , [UCC 36 § 3-203] and [UCC 36§ 1-201(15)]. Other Respondent, Option One Mortgage Corporation, the original lender told this writer, that it sold the note [see Allonge attached to Exhibit "B"] shortly after it was originated, thereby disclaimed any right in the NOTE. Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

8. That Plaintiff fails to include in its Motion to Restore Compliant #2011-CP-29-35 that Plaintiff, H & R Block Bank, NA cannot enforce foreclosure because it has no right to make any demands for payment than the question is "who does." Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

9. That Plaintiff fails to include in its Motion to Restore Compliant #2011-CP-29-35 that South Carolina's UCC laws help protect the interests of the Respondent, Ziraili Elbey with genuine interests in enforcement of her NOTE. The intended protections of the UCC are recognized across America. See, for example, *In re Kemp*, No. 08-18700-JHW (Bankr. D. NJ 2010) ("From the maker's standpoint, therefore, it becomes essential to establish that the Plaintiff who demands foreclosure preceding or demands payment of a negotiable Note, or to whom payment is made, is the duly qualified holder. Otherwise, the obligor [the Respondent] is exposed to the risk of double payment or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument."; *Well Fargo Bank v. Sessley*, 2010-Ohio-2902 (OH Ct.App. 2010)(Noting an underlying concern about multiple judgments on the same debt."); *In re Kang Jin Hwang*, 396 B.R. 757 (Bankr. C.D. CA 2008)(Weighing whether failure to join another party to the suit might leave the Respondent, the borrower subject to a substantial risk of incurring multiple obligations under the same NOTE.); Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

10. That Plaintiff fails to include in its Motion to Restore Compliant#2011-CP-29-35 In the Matter of Foreclosure of a Deed of Trust Executed by Woodard, 185 N.C.App. 159 (NC CtApp. 2007)("[T]he [Respondent], payor of a note exposes herself to double liability, if she makes payments to someone other than the holder of the instrument, unless the other entity to whom payment is made is an agent of the owner of the NOTE.") **Special Note: The right to enforce a NOTE requires strict adherence to the UCC in South Carolina in order to achieve its protective policies.** See, for example, *Adams Madison Realty & Development, In.*, 853 F.2d 163 (3rd Cir. 1988)(Holding that strict compliance with the South Carolina UCC protects each intended owner of the note as it gets passed about); *Cogswell v. Citifinancial Mortgage*, 624 F.3d. 395 (US Cir. 7th 2010)(Ruling against the foreclosure machine because of its failure to prove compliance with the South Carolina UCC laws created reasonable concern about whether the "Note" was actually held by another. Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

11. That Respondent, Ziraili Elbey includes the following documents to support Respondent's ownership and further NOTICES this honorable court accordingly Plaintiff's pleading should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED". Further, the documents include:

- (a) UCC 1 – Correction made to the terms with the "NOTE" [16 CFR 433]
- (b) 1099-A Form

VERIFICATION

I, Ziraili M Elbey, Respondent in the above entitled action, hereby verify under penalty of perjury, under the laws of the **United States of America**, without the "**United States**" (federal government), that the above statement of facts and laws is true and correct, according to the best of My current information, knowledge, and belief, so help me God, pursuant to 28 U.S.C.

1746(1).

, 2013 *A.D.*

Dated: August

"All Rights Reserved"

Printed: Ziraili Mohassan Elbey, Respondent, *In Propria Persona* (not "*Pro Se*" [sic])

UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] Greg Macfarlane, CFO, H&R BK		8168543000
B. SEND ACKNOWLEDGMENT TO: (Name and Address)		
KMJ TRUST [IRREVOCABLE] 1 H&R Block Way Kansas City, MO 64105		

 Certified True and Correct
 SC Secretary of State's Office

 SC SECRETARY OF STATE
 130730-2334016 NS
 Lapse Date: 07/30/2043
 Date: 7/30/2013
 Time: 11:34 PM
 Page Count: 3 Pg
 Debtor Count: 4
 Filing Fees: \$20.00
 Electronic Records Access: \$8.00
 Total: \$28.00
 Order ID# 23645982

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b - do not abbreviate or combine names)

1a. ORGANIZATION'S NAME (SAND CANON MORTGAGE CORPORATION) FKA OPTION ONE MORTGAGE CORPORATION			
OR			
1b. INDIVIDUAL'S LAST NAME			
1c. MAILING ADDRESS 7595 Irvine Center Drive, Suite 100		CITY Irvine	STATE CA
1d. TAX ID# (Organizations) DO NOT USE		ADD'L INFO RE ORGANIZATION DEBTOR	1e. TYPE OF ORGANIZATION CORP
1f. JURISDICTION OF ORGANIZATION CA		1g. ORGANIZATIONAL ID #, if any 33-0727357	☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME H & R BLOCK BANK, FSB			
OR			
2b. INDIVIDUAL'S LAST NAME			
2c. MAILING ADDRESS ONE H&R BLOCK WAY 8TH FLR		CITY KANSAS	STATE MO
2d. TAX ID# (Organizations) DO NOT USE		ADD'L INFO RE ORGANIZATION DEBTOR	2e. TYPE OF ORGANIZATION CORP
2f. JURISDICTION OF ORGANIZATION MO		2g. ORGANIZATIONAL ID #, if any 44-0607856	☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR IF) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME ZIRAILI M ELBEY, (Entitlement Holder/Registered Owner)			
OR			
3b. INDIVIDUAL'S LAST NAME			
3c. MAILING ADDRESS 13132 WILBURN PARK LANE		CITY FT. MILL	STATE SC
		POSTAL CODE 29707	COUNTRY US

4. This FINANCING STATEMENT covers the following collateral:

Know all men that property once belonging to Ziraili M Elbey, now belongs to the KMJ Trust [Irrevocable Trust] giving full benefits and collateral.

1) NOTE (Original) "Purchase Money Promissory Note" Principle Sum Amount \$246,482.00 USD

2) ACCOUNT No: 10019012648 and ACCOUNT No: 571007388, all interest therein. [WITH TRUST] NOTICE: All Collateral listed is the property of Entitlement Holder/Registered Owner.

(a) REGISTERED OWNER: evidenced by the Title Registered No: 2006004368, Recorded in ROD's Office in Lancaster Cty.

(b) REGISTERED OWNER: has established full rights, beneficial interest, and title of ownership in & lien on all properties.

(c) TRUSTEES: is/are Security Intermediaries with respect to financial assets "NOTE" held in trust as Special Deposit.

(d) REGISTERED OWNER: is not subject to any adverse claims protected under applicable law & UCC Article 8

(e) THIS [Act] takes effect 11/13/07-hereinafter, AS AMENDED ORDER OF NUNC PRO TUNC.

See additional.

5. ALTERNATIVE DESIGNATION (if applicable):	LESSEE/LESSOR	CONSIGNEE/CONSIGNOR	☒ BAILEE/BAILOR	SELLER/BUYER	AG. LIEN	NON-UCC FILING
6. ☒ THIS FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum if applicable.						
7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) NOT USED						
8. OPTIONAL FILER REFERENCE DATA						

[Under UCC-Art-8] Secured Party Signature - Recorded as a Real Estate Filing

SOUTH CAROLINA SECRETARY OF STATE'S OFFICE, 1205 Pendleton Street Suite 525 Columbia, SC 29201

(03/01/2011)

110

UCC FINANCING STATEMENT ADDENDUM (UCC-1Ad)

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

(SAND CANON MORTGAGE CORPORATION) FKA OPTION ONE MORTGAGE

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

Certified True and Correct Copy
SC Secretary of State's Office

SC SECRETARY OF STATE

130730-2334016

NS

Date: 7/30/2013

Time: 11:34 PM

Page Count: 3 Pg

Debtor Count: 4

Filing Fees: \$20.00

Electronic Records Access: \$8.00

Total: \$28.00

Order ID# 23645982

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

NATIONSTAR MORTGAGE LLC

OR

11b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c. MAILING ADDRESS

350 HIGHLAND DRIVE

CITY
LEWISVILLE

STATE
TX

POSTAL CODE
75067

COUNTRY
US

11d. TAX ID # SSN OR EIN
DO NOT PROVIDE

ADDL INFO RE
ORGANIZATION
DEBTOR

11e. TYPE OF ORGANIZATION
LLC

11f. JURISDICTION OF ORGANIZATION
DE

11g. ORGANIZATIONAL ID #, if any
45-2156869

☒ NONE

12. ADDITIONAL SECURED PARTY'S or ☒ ASSIGNOR S/P'S NAME - Insert only one name (12a or 12b)

12a. ORGANIZATION'S NAME

KMJ TRUST [An Irrevocable Business Trust Org] Lancaster, SC ROD #2013002846 BK:DEED 716;PG:249-253

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

8508 PARK RD #182 | #182

CITY
CHARLOTTE

STATE
NC

POSTAL CODE
28210

COUNTRY
US

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ se-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

[Real Property] All that Tract or Parcel of land and according to the plat recorded in Book 2005 of Maps and Plats, page 0047, Lot # 261 and Block 2. Lancaster County, South Carolina, records, and being more particularly described as follows:
Parcel ID #: 0006M-0A-281.00
Location: 13132 Wilburn Park Lane
Indian Land, South Carolina 29707

16. Additional collateral description:

NOTICE TO ALL: AGENTS, SUCCESSORS, ASSIGNS, OR HOLDERS
Correction is herein made to the terms within the "NOTE" [16 CFR 433]
Lender: ZIRAILI M ELBEY TRUST/ESTATE, maker, owner, & creditor of
Purchase Money "NOTE" and financier to the transaction
Borrower(s): are servicing Agents ONLY! servicers of transaction &
NOTE, lenders of Purchasers Money with respect to Financial Assets
"NOTE" [AS AMENDED ORDER OF NUNC PRO TUNC]
[WITH TRUST] All collateral listed is private property of Entitlement
Holder/Registered Owner and all derivatives therefrom. Any person
gaining said property without consent or valuable consideration given in
return is subject to penalties in Sum Amount of \$246,482.00 USD
AND IT IS SO ORDERED!

KMJ TRUST [IRREVOCABLE] TRUST, Entitlement Holder/Beneficial
Owner, 8508 Park Road #182, Charlotte, North Carolina 28210

15. Name and address of a RECORD OWNER of above-described real estate
(if Debtor does not have a record interest):

KMJ TRUST [IRREVOCABLE BUS TRUST]
ORGANIZATIONAL

8508 PARK RD #182

#182

CHARLOTTE, NC 28210

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☒ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☒ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

UCC FINANCING STATEMENT ADDENDUM (UCC-1Ad)

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME (SAND CANON MORTGAGE CORPORATION) FKA OPTION ONE MORTGAGE		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

Certified True and Correct Copy
SC Secretary of State's Office

SC SECRETARY OF STATE

130730-2334016

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11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME (insert only one name (11a or 11b) - do not abbreviate or combine names)

11a. ORGANIZATION'S NAME SPECIALIZED LOAN SERVICING LLC		
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME
		SUFFIX
11c. MAILING ADDRESS 8742 Lucent Blvd Suite 300 HIGHLANDS RANCH		
11d. TAX ID # SSN OR EIN DO NOT PROVIDE	ADDL INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION LLC
11f. JURISDICTION OF ORGANIZATION CO		11g. ORGANIZATIONAL ID #, if any 33-1050584

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME (insert only one name (12a or 12b))

12a. ORGANIZATION'S NAME		
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME
		MIDDLE NAME
		SUFFIX
12c. MAILING ADDRESS		
CITY		STATE
		POSTAL CODE
		COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

16. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☒ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☒ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

2006-02-27-02

The Supreme Court of South Carolina

RE: FAMILY COURT FORMS

ADMINISTRATIVE ORDER

Pursuant to the provisions of S.C. Const. Art. V, § 4,

IT IS ORDERED that the Administrative Order for the Family Courts, dated June 5, 1992, and signed by Chief Justice David Harwell, is hereby rescinded, effective immediately.

There shall no longer be a requirement for the Clerks of Court to strike family court actions from the active docket. All cases shall remain pending until they are dismissed or a final order is issued.

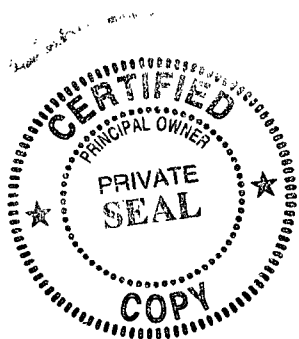
This Order is effective as of the date of its signing.

IT IS SO ORDERED.

s/Jean Hofer Toal

Jean Hofer Toal, Chief Justice

February 27, 2006
Columbia, South Carolina



IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation

Respondents.

Case No. 2011-CP-29-35

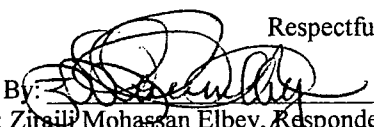
**NOTICE IN THE NATURE OF
EQUITABLE INTEREST AS
BENEFICIAL LAND OWNER &
REAL PARTY AS COUNTER
CLAIMANT**

Come now Respondent, Ziraili M Elbey, woman of the land, beneficial land owner, Entitlement Holder is protected under South Carolina real property statues for land owners. Respondent as a matter of "Recorded" record is the beneficial land owner as defined by Lancaster County Tax Assessor and Lancaster County Register of Deeds. Respondent is the 'only' tax payer for land identified on Map No. 0006--0A.261.00 in Lancaster County. Let it be further known, that Respondent is the payer of county taxes since 2006. [see Exhibit "A"] Respondent pursuant to SCRCF rule 13(a), (c), (e), and (g) as a counter claimant out of this same transaction or occurrence that is the subject matter of the opposing party's claim notices this court in the nature of a equitable interest of the real party as counter claimant, is the 1) Principal, 2) Entitlement Holder on the original "purchaser Money Note", principle sum in the amount of \$246,482.00USD as indicated before this court in previous pleading filed 5th August, 2013 in an AFFIDAVIT OF NOTICE OF COUNTER CLAIM continues to seeks valuable consideration.

THEREFORE, pursuant to SCRCF rule 43 (k) Respondent, moves this Court to dismiss with prejudice Plaintiff's Motion and Order to Restore case#2011-CP-29-35 because the Mortgage lien and Note is satisfied as a matter of law. [see Exhibit B & see Exhibit C]. The Respondent, Ziraili Elbey, prays and notices this honorable court as a counter claimant, the Principal's for her valuable consideration, equitable interest in the principal sum amount of \$246,482.00USD.

Dated: August 13, 2013 A.D.

Respectfully,

By: 

Printed: Ziraili Mohassan Elbey, Respondent

In Propria Persona (not "Pro Se" [sic])

"All Rights Reserved"

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CERTIFICATION OF MAILING

The undersigned hereby certifies that she is Ziraili-Mohassan: Elbey, Secured Party/Principal is of such age and discretion as to be competent to serve papers. That on the 13th August 2013 she served a copy **NOTICE IN THE NATURE OF EQUITABLE INTEREST AS BENEFICIAL LAND OWNER & REAL PARTY AS COUNTER CLAIMANT, - NOTICE OF NON-RESPONSE TO AFFIDAVIT OF COMMERCIAL OBLIGATION & NOTICE OF FAULT & OPPORTUNITY TO CURE, - REFERS COURT TO PREVIOUSLY SUBMITTED SCRCP RULE 43(K) MOTION & ORDER PER SCRCP RULE 60(b),(5) BY RESPONDENT AUGUST 6, 2013** by placing said copy in a postage paid envelope addressed to the following person(s) at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

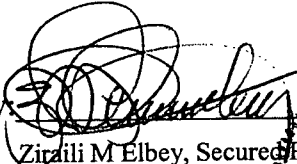
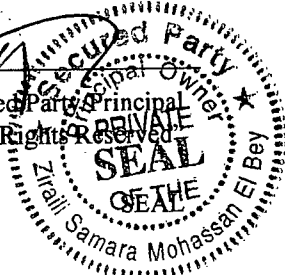
Party(ies) Served:

Chad W. Burgess, Esquire
Brock & Scott, PLLC
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721

Dated: 13th August, 2013
9789 Charlotte Highway, Suite 400-191
Ft. Mill, South Carolina

By: 
Ziraili M Elbey, Secured Party/Principal
"All Rights Reserved"


LANCASTER COUNTY ASSESSORS OFFICE

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Owner and Parcel Information

Owner Name	ELBEY ZIRAILI M ETAL, TRUSTEES	Today's Date	August 12, 2013
Mailing Address	13132 WILBURN PARK LANE INDIAN LAND, SC 29707	Parcel Number	0006M-0A-261.00 (Account#:81232)
Location Address	13132 WILBURN PARK LANE	Millage Group	County (01)
Property Usage	Qualified Residential (QR)	Plat Book/Page	2005 / 0047
Homestead	No	Lot # / Block #	261 / 2
Legal Description	70X130.06	Land Size	1 LOT
		Parcel Map	Show Parcel Map

Value Information

Year	Land Value	Building Value	Yard Item Value	Total Market Value	Aq Credit	Taxable Land Value	Total Taxable Value	Capped Taxable Value	Total Assessment
2013	\$ 30,000	\$ 206,200	\$ 0	\$ 236,200	\$ 0	\$ 30,000	\$ 236,200	NA	\$ 236,200
2012	\$ 30,000	\$ 206,200	\$ 0	\$ 236,200	\$ 0	\$ 30,000	\$ 236,200	NA	\$ 9,448
2011	\$ 30,000	\$ 206,200	\$ 0	\$ 236,200	\$ 0	\$ 30,000	\$ 236,200	NA	\$ 9,448

Land Information

Land Use	Number Units	Unit Type	Frontage	Depth	Notes
Qualified Residential (QR)	1	1 P			70x130

Building Information

Style	Gross Sq Ft	Finished Sq Ft	Stories	Interior Walls	Exterior Walls	Year Built	Effective Year Built	Photo
Single Family Dwelling	3,575	2,777	2 Story	NULL	Alum/Vinyl	2006	2006	NA
Foundation	Roof Type	Roof Coverage	Flooring Type	Heating Type	Bathrooms	Grade	Number Fire Pl	Sketch
Perim Foot	Gable	Composition	Carpet with 25% Vinyl	Reverse Cycle Pump	2.5	B	0	Sketch Building 1

Miscellaneous Information

Building Type

Quantity

Units

Year Built

No miscellaneous information available for this parcel.

Sales Information

OR Book/Page	Sale Date	Sale Price	Instrument	Qualification	Vacant/Improved	Grantor	Grantee
716/249	2013-02-25	\$ 0	DEED (DEED)	NON ATI (1A)	Improved	ELBEY, ZIRAILI MOHASSAN	ELBEY ZIRAILI MOHASSAN ETAL, TRUSTEES
610/92	2011-04-07	\$ 2,500	DEED (DEED)	SOLD DOES NOT MATCH APPRAISAL RECORD (1)	Improved	CLAYTON, WELLESLEY K, TRUSTEE	ELBEY ZIRAILI MOHASSAN
569/85	2010-05-26	\$ 2,500	DEED (DEED)	SOLD DOES NOT MATCH APPRAISAL RECORD (1)	Improved	ELBEY, ZIRAILI M ETAL TRUSTEES	CLAYTON WELLESLEY K, TRUSTEE
555/265	2010-03-16	\$ 0	DEED (DEED)	SOLD DOES NOT MATCH APPRAISAL RECORD (1)	Improved	ELBEY, ZIRAILI M ETAL TRUSTEES	
370/10	2007-01-19	\$ 10	DEED (DEED)	LOVE AND AFFECTION (9K)	Improved	ELBEY ZIRAILI M,	ELBEY ZIRAILI M ETAL TRUSTEES
329/170	2006-03-29	\$ 246,482	DEED (DEED)	TRUE SALE (0)	Improved	RYLAND GROUP INC,	
0307/0200	2005-11-01	\$ 75,490		SOLD DOES NOT MATCH APPRAISAL RECORD (1)	Vacant	RHEIN INTERESTS OF CHARLOTTE LLC	

EXHIBIT 1B

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 03/29/06

NOTE

PCF

13132 WILBURN PARK LN, FORT MILL, SC 29715-1598

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$197,186.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Option One Mortgage Corporation, a California Corporation. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. Interest will be calculated on the basis of a 12-month year and a 30-day month. I will pay interest at a yearly rate of 7.999%. The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments on the first day of each month beginning on May 01, 2006. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on April 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Option One Mortgage Corporation, P.O. BOX 92103 LOS ANGELES, CA 90009-2103 or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$1,446.74

(C) Application of Payments

Payments received by the Note Holder will be applied in the following order: (i) prepayment charges due under this Note; (ii) amounts payable under paragraph 2 of the Security Instrument (defined below); (iii) interest due under this Note; (iv) principal due under this Note; and (v) late charges due under this Note.

4. BORROWER'S RIGHT TO PREPAY

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

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

5. LOAN CHARGES

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

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all interest that I owe on that amount, together with any other charges that I owe under this Note or the Security Instrument.

(C) No Waiver By Note Holder

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

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

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

Loan Number: [REDACTED] Servicing Number: [REDACTED]

7. **GIVING OF NOTICES**

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

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

8. **OBLIGATIONS OF PERSONS UNDER THIS NOTE**

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

9. **WAIVERS**

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

10. **SECURED NOTE**

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

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

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

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


ZERRILLI M EBBEY (Seal)
SSN: [REDACTED] -Borrower

(Seal)
SSN: ###-##-#### -Borrower

(Seal)
SSN: ###-##-#### -Borrower

(Seal)
SSN: ###-##-#### -Borrower

(Seal)
SSN: ###-##-#### -Borrower

(Seal)
SSN: ###-##-#### -Borrower

(Sign Original Only)

EXHIBIT "B"

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 03/29/06

ALLONGE TO NOTE (INVESTOR)

This allonge makes reference to the following Note:

Borrowers: ZIRAYLI M ELBEY

Loan #:

Property Address: 13132 WILBURN PARK LN, FORT MILL, SC 29715-1598

Loan Amount: \$197,186.00

Note Date: 03/29/06

Therefore, in reference to the captioned note, the following applies:

Pay to the order of:

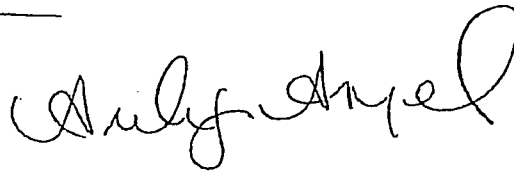
Without Recourse

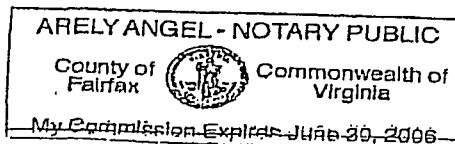
Option One Mortgage Corporation
A California Corporation

By: 

Sheila Soda

Assistant Secretary





RECORDING REQUESTED BY

AND WHEN RECORDED, MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name: Ziraili M Elbey

Street Address: 9789 Charlotte Hwy, Ste 400-191

City, State & Zip code: Ft. Mill, South Carolina 29707

TITLE ORDER NO. _____ ESCROW NO. 9723536795

2013002511

DEED NO CHARGE
RECORDING FEES

\$0.00

PRESENTED & RECORDED:

02-19-2013 12:22 PM

JOHN LANE

REGISTER OF DEEDS
LANCASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK: DEED 715

PG: 233-251

2013002512

SATISFACTION MORTGAGE
RECORDING FEES

\$5.00

PRESENTED & RECORDED:

02-19-2013 12:23 PM

JOHN LANE

REGISTER OF DEEDS
LANCASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK: MORT 2618

PG: 242-260

SATISFIED

MTG BK 2600 PG 270

DATE 2-19-2013

REGISTER OF DEEDS

LANCASTER COUNTY, SC

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF FULL RECONVEYANCE

Whereas, Ziraili M Elbey, the Trustee is under the Deed of Trust dated March 19, 2006, made and executed by ZIRAILI M ELBEY as Trustor(s) to Ziraili M Elbey as beneficiary and recorded as Instrument No. 2013000645 on 01/14/2013, in Book 2800 at Page 270-280 of the Office Records in the Office of the Recorder of LANCASTER County, State of South Carolina having received from Beneficiary is under said Deed of Trust a written request to reconvey, reciting that all sums secured by said Deed of Trust have been fully paid, and said Deed of Trust and the note or notes secured thereby having been surrendered to the Trustee is for cancellation, do I hereby reconvey, without warranty, to the person or persons legally entitled thereto, all right, title and interest heretofore acquired and now held by said Trustee under said Deed of Trust, in the real property commonly know as 13132 Wilburn Park Lane situated in the County of LANCASTER, State of South Carolina, and more particularly described as follows:
SEE ATTACHED

Date: 2/19/13

First Witness: Keldin [Signature]
Second Witness: [Signature]
[Signature] as Trustee/Trustor

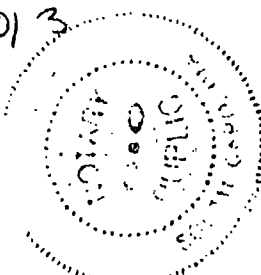
STATE OF South Carolina
COUNTY OF York

On 2/19/13 before me, Kisha White, a Notary Public, personally appeared Ziraili M Elbey who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of South Carolina that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Signature] (SEAL)

Shirley Sept 10, 2013



RIGHT THUMB PRINT (Optional)



CAPACITY CLAIMED BY SIGNER(S)

☒ INDIVIDUAL(S) Ziraili M Elbey

☐ CORPORATE

OFFICER(S)

☐ PARTNER(S) ☐ LIMITED

☐ ATTORNEY IN FACT ☐ GENERAL

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☒ OTHER: Decedent's Family Member

SIGNER IS REPRESENTING:

Name of Person(s) Represented

EP, SC

Aug 11:45

FILED

CLERK

LANCASTER COUNTY, SC

UCC - LAND
RECORDING FEES \$10.00

PRESENTED & RECORDED:

08-05-2013 11:09 AM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE PHILLIPS DEPUTY

UCC FINANCING STATEMENT

BK:MORT 2706

PG:101-104

FOLLOW INSTRUCTIONS (front and back)

A. NAME & PHONE OF CONTACT AT FILER (optional)

Greg Macfarlane, CFO, H&R BK

8168543000

B. DEBTOR ACKNOWLEDGMENT TO: (Name and Address)

KMJ TRUST [IRREVOCABLE]

1 H&R Block Way

Kansas City, MO 64105

Certified True and Correct
SC Secretary of State's Office

SC SECRETARY OF STATE

130730-2334016 NS

Lapse Date: 07/30/2043

Date: 7/30/2013

Time: 11:34 PM

Page Count: 3 Pg

Debtor Count: 4

Filing Fees: \$20.00

Electronic Records Access: \$8.00

Total: \$28.00

Order ID# 23645982

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

(SAND CANON MORTGAGE CORPORATION) FKA OPTION ONE MORTGAGE CORPORATION

OR

1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

7595 Irvine Center Drive, Suite 100

CITY

Irvine

STATE

CA

POSTAL CODE

92618

COUNTRY

US

1d. TAX ID# (Organizations)

DO NOT USE

ADD'L INFO RE
ORGANIZATION
DEBTOR

1e. TYPE OF ORGANIZATION

CORP

1f. JURISDICTION OF ORGANIZATION

CA

1g. ORGANIZATIONAL ID #, if any

33-0727357

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

H & R BLOCK BANK, FSB

OR

2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

ONE H&R BLOCK WAY | 8TH FLR

CITY

KANSAS

STATE

MO

POSTAL CODE

64105

COUNTRY

US

2d. TAX ID# (Organizations)

DO NOT USE

ADD'L INFO RE
ORGANIZATION
DEBTOR

2e. TYPE OF ORGANIZATION

CORP

2f. JURISDICTION OF ORGANIZATION

MO

2g. ORGANIZATIONAL ID #, if any

44-0607856

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR SP) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

ZIRAILI M ELBEY, (Entitlement Holder/Registered Owner)

OR

3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

13132 WILBURN PARK LANE

CITY

FT. MILL

STATE

SC

POSTAL CODE

29707

COUNTRY

US

4. This FINANCING STATEMENT covers the following collateral:

Know all men that property once belonging to Ziraili M Elbey, now belongs to the KMJ Trust [Irrevocable Trust] giving full benefit of collateral.

1) NOTE (Original) "Purchase Money Promissory Note" Principle Sum Amount \$246,482.00 USD

2) ACCOUNT No: 10019012648 and ACCOUNT No: 571007388, all interest therein. [WITH TRUST] NOTICE: All Collateral listed property of Entitlement Holder/Registered Owner.

(a) REGISTERED OWNER: evidenced by the Title Registered No: 2006004368, Recorded in ROD's Office in Lancaster Cty.

(b) REGISTERED OWNER: has established full rights, beneficial interest, and title of ownership in & lien on all properties.

(c) TRUSTEES: is/are Security Intermediaries with respect to financial assets "NOTE" held in trust as Special Deposit.

(d) REGISTERED OWNER: is not subject to any adverse claims protected under applicable law & UCC Article 8

(e) THIS [Act] takes effect 11/13/07-hereinafter, AS AMENDED ORDER OF NUNC PRO TUNC.

See additional.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☒ BAILEE/BAIOL ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☒ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS. Attach Addendum if applicable.

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)

NOT USED

8. OPTIONAL FILER REFERENCE DATA

[Under UCC-Art-8] Secured Party Signature - Recorded as a Real Estate Filing

SOUTH CAROLINA SECRETARY OF STATE'S OFFICE, 1205 Pendleton Street Suite 525 Columbia, SC 29201

(03/01/2011)

EXHIBIT "C"

CERTIFIED TO BE A TRUE COPY
REGISTERED OWNER
COUNTY OF LANCASTER, SC

121

EXHIBIT

FILED
OFFICE OF CLERK
OF COURT

2013000645

UCC - LAND
RECORDING FEES \$17.00

PRESENTED & RECORDED
01-14-2013 03:22 PM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE PHILLIPS DEPUTY
BK:MORT 2600
PG:270-280

Case# 2011-CP-29-35

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

Ziraili Samara- Mohassan: EL-Bey

CLERK OF COURT
LANCASTER, SC

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Nationstar Mortgage LLC, Attn: Payoff Department
350 Highland Drive
Lewisville, Texas 75067

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

2012005278: Book: Mort 2484 Pg: 311-312

1b. This FINANCING STATEMENT AMENDMENT is
to be filed (for record) (or recorded) in the
☒ REAL ESTATE RECORDS.

2. **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☒ **ASSIGNMENT** (full or partial): Give name of assignee in Item 7a or 7b and address of assignee in Item 7c; and also give name of assignor in Item 8.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in Items 6 and/or 7.

☐ **CHANGE** name under address: Give current record name in Item 6a or 6b; also give new name (if name change) in Item 7a or 7b and/or new address (if address change) in Item 7c. ☐ **DELETE** name: Give record name to be deleted in Item 6a or 6b. ☐ **ADD** name: Complete Item 7a or 7b, and also Item 7c; also complete Item 7d-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME

NATIONSTAR MORTGAGE LLC, PAYOFF DEPARTMENT: DEBTOR

OR 6b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

NATIONSTAR MORTGAGE LLC, PAYOFF DEPARTMENT: DEBTOR

OR 7b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

7c. MAILING ADDRESS

350 HIGHLAND DRIVE

CITY

LEWISVILLE

STATE

TX

POSTAL CODE

75067

COUNTRY

USA

7d. TAX ID #: SSN OR EIN

ADDITIONAL INFO RE

ORGANIZATION

DEBTOR

7e. TYPE OF ORGANIZATION

LLC

7f. JURISDICTION OF ORGANIZATION

USA

7g. ORGANIZATIONAL ID #, if any

☒ NONE

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☒ assigned.

This is a partial release and partial assignment of the Debtor's Pledge property described and secured in the initial Financing Statement, No: 2012005278, Book: Mort 2484, Page: 311-312. This Setoff-Adjustment-Equal Exchange of this attached account, under Public Policy HJR-192, UCC Sections 1-104 and 10-104, and Financial Accounting Standards, FASB 39, 95 and 140 in the amount of \$241,940.00, in Collateral and Credit (off balance sheet), due on account is hereby released and assigned to: Payoff Department, for NATIONSTAR MORTGAGE LLC or their successor/assign (or Bank/Mortgage Company) for complete settlement and post settlement closure of escrow in accordance with 28 USC Sec. 2041 (or FASB 39, 95 and 140 if assign to Bank/Mortgage Company) PAY TO THE ORDER: NATIONSTAR MORTGAGE LLC.. Account/Loan No: 597002327/#-9723536795--\$241,940.00. Liability Discharged pursuant to Financial Accounting Standards, FASB 39, 95 and 140; UCC, Sections 3-415, 3-501, 3-601, 3-605 as known in SOUTH CAROLINA CODE OF COMMERCE (SCCC): HJR-192, 28 USC Sec. 2041; and of the Constitution of South Carolina.

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor, which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR 9b. INDIVIDUAL'S LAST NAME

El-Bey: Secured Party

FIRST NAME

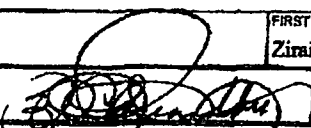
Ziraili

MIDDLE NAME

Samara Mohassan

SUFFIX

10. **OPTIONAL FILER REFERENCE DATA**

Authorized Representative: 

FILING OFFICE COPY—NATIONAL UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 07/29/83)

CERTIFIED TO BE A TRUE COPY
REGISTER OF DEEDS
COUNTY OF LANCASTER, SC

EXHIBIT "C"

UCC FINANCING STATEMENT AMENDMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

2012005278:Book:Mort 2484 Pg:311-312

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

El-Bey: Secured Party

Ziraili

Samara M

13. Use this space for additional information

SECURED PARTY ACCEPTS MORTGAGE, LOAN ACCOUNT NO. 597002327 AND ALL RELATED COLLATERAL AND CREDIT (OFF BALANCE SHEET) DUE ON ACCOUNT, ORDERS BONDS, INSURANCE, RE-INSURANCE, SECURITIES, INSTRUMENTS, TRANSFER ORDERS, PRODUCTS, OBLIGATIONS AND other hypothecated real or personal property. Debtor herein consents and pledges this related property, to Secured Party. Said property is accepted for value and is Levy, and is herewith registered in the Commercial Chamber under necessity in order to protect a security interest in the collateral described herein is the private property of the Secured Party as Authorized Representative of the Debtor and is herein Liened at a sum certain One Million. Three Hundred Thousand Dollars and Zero Cents (\$1,300,000.00) Property further described as Home Mortgage, Loan Account No. 597002327, issued on July 31, 2009 by NATIONSTAR MORTGAGE, LLC; Real Property (Home & Land) and Private Property ((Home & Land) located near Non-Domestic, Foreign geographical location 13132 Wilburn Park Lane, city of Fort Mill, South Carolina republic— Without the US (District of Columbia). Real Property Parcel Assessor Description— MAP NUMBER #0006M-OA-261.00 and Real Property Assessor Description: DB61092 (See annexed Meets & Bounds and Assessor printout included with this filing) Before ANY of the above property can be disbursed, exchanges, sold, forfeited, gifted, transferred, surrendered, conveyed, destroyed, disposed of, or otherwise removed from the Debtor's possession, Secured Party must be satisfied in full dishonor via Certified Bank Check/Money Order in the sum certain amount of \$1,300,000.00. Money of Account.

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

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Statement Date: November 15, 2012

Mortgagor(s) ZIRAILI ELBEY
Property Addr: 13132 WILBURN PARK LN
FORT MILL, SC 29707

The following statement reflects the estimated payoff amount required to prepay the above referenced mortgage in full. Interest will be collected up to the date payoff funds are received.

Interest Paid to Date: 2/01/10 Next Payment Due Date: 3/01/10

Unpaid Principal	189,911.32
Interest Due	42,982.32
(From 2/01/10 to 11/30/12 at 7.999%)	
Late Charges of	858.08
Deferred Late Charges	723.40
Corporate Advance	4,306.85
Escrow Advance	1,589.11

Prin and Interest	1,446.74
Monthly Escrow Pymt	.01

COUNTY RECORDING FEE	5.00
APPRAISAL FEE	425.00
TITLE FEE	125.00
LEGAL FEES	1,000.00

Balance Due	241,936.08	Mortgage Payment	1,446.75
By 11/30/12			

If payoff funds are submitted after 1/30/12, the applicable per diem interest of \$ 41.62 must be added for each day thereafter. Continue to make your scheduled mortgage payments. DO NOT PLACE A STOP PAYMENT ON ANY CHECK PREVIOUSLY REMITTED. If any scheduled payment is received after the Late Charge grace period as set forth in the applicable Note, a Late Charge of \$ 72.34 will be assessed.

Estimated Disbursements:	Due Date	Amount
HAZARD SFR	11/29/12	196.48
COUNTY TAX	1/15/13	1,178.79

PAYOFF FUNDS MUST BE REMITTED USING CERTIFIED FUNDS OR BY WIRE TRANSFER ONLY. If using wire transfer, forward to: Wells Fargo Bank, N.A., Routing # 121000248, for credit to Nationstar Mortgage LLC Payment Clearing Account # 40590000597002327. If mailing certified funds, make payable to Nationstar Mortgage LLC and forward to the address listed at the top of page. Funds received after 3:00pm Central Time may be posted on the following business day. Please include the Mortgagor's Loan Number on all correspondence.

*****IMPORTANT NOTICE***** We reserve the right to adjust any portion of this statement at any time for one or more of the following reasons, but not limited to: recent advances, returned items, additional fees or charges, disbursements made on your behalf, scheduled payment(s) from an escrow account, transfer of servicing and/or inadvertant clerical errors.

This mortgage contains no provision for rights to collect fees from a third party. Any
Trustee and/or County Recorder's Office to release our lien. Any such fee
will be refunded to the mortgagor(s) within 30 Business Days after payment in
full.

Full.
This is an attempt to collect a debt, and any information obtained will be used for that purpose. 11/15/2012 2:21PM

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Respondent(s).

Case No. 2011-CP-29-00035

**MOTION TO VACATE JUDGMENT
OF FORECLOSURE AND SALE
FILED ON AUGUST 22, 2012**

FILED
OFFICE OF CLERK
OF COURT
2013 AUG - 6 PM 1:31
CLERK OF COURT
LANCASTER, SC

Respondent, Ziraili M Elbey respectfully under SCRCF 43(k) moves the court for an order vacating the Judgment of Foreclosure and Sale on August 22, 2012 as per Plaintiff's Agreement in writing. May this court find the attached South Carolina Civil Court Form 4 which shows all of the particularities to include the payoff Agreement, the Settlement of Accounts and the UCC Financing Statement Amendment dated January 14, 2013, according to (SCCC) Sections 36 § 3-415, 36 § 3-501-3-601, 36 § 3-605 for discharge pursuant to Financial Accounting Standards, FASB 39,95 and 140 to satisfy Case # 2011-CP-29-00035, in this matter.

"without recourse"



Ziraili M Elbey, *In Propria Persona*

"All Rights Reserved"

Printed: Ziraili Mohassan Elbey, Respondent (not "ProSe" [sic])

Mailing Address: 9789 Charlotte Highway

Suite 400-191

Ft. Mill, South Carolina 29707

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Respondent, Ziraili Elbey Answers Plaintiff's Motion pleading as follows:

1. That this Court lacks both subject matter and personal jurisdiction over Respondent pursuant to SCRPC 12(b)(1) and 12(b)(2). The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice. *12(b)(1)(2)(6) 12(f) Motion to Strike 12(b)(2) Cause of Action*
2. That Plaintiff's pleading fails to state a claim upon which relief can be granted against Respondent. The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.
3. That in accordance with Rule 8(a) SCRPC Plaintiff's pleading fails to provide a short, plain statement of the claim or that Plaintiff is entitled to any alleged relief sought therein. The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.
4. That those portions of Plaintiff's pleading styled "Motion", "Order to Restore", filing Chapter 13 of the United States Bankruptcy Code....case be restored pursuant to "Chief Justices' Administrative Order issued June 5, 1992 fail to states facts which require an admission or denial. There allegations simply state conclusions of law to which no response is required. However, to the extent a response is required, those previous pleadings of Plaintiff are expressly denied. "Unclear Chain of Title" as to the right of the Plaintiff to enforce the mortgage and mortgage NOTE. The mortgage lien is "SATISFIED". Accordingly, this action should be dismissed with prejudice.
5. That Plaintiff fail to include in its pleading that the "SATISFACTION" of mortgage lien in question, regarding Respondent, Ziraili M Elbey as it relates Plaintiff's initial Complaint #2011-CP-29-35, mortgage foreclosure. This honorable Clerk of Court as a matter of record and duty of office on Respondent's mortgage lien. Registered of Deeds office posted mortgage lien "Satisfied" by this Court, Lancaster, South Carolina Court of Common Pleas and filed with the Lancaster Register of Deeds Office, as of February 19, 2013. [See Exhibit "A" to include Instrument No.# 2013002511, BK: DEED 715, PG: 233-251, and Instrument No: 2013002512, BK: MORT 2618, pg: 242-260] Accordingly, this action should be dismissed with prejudice. The mortgage lien is "SATISFIED".
6. That Plaintiff fail to include in its Motion to Restore Complaint #2011-CP-29-35 that South Carolina Code of Laws, Title 36 – Commercial Codes defines the entity having the right to enforce and make demands upon this Respondent regarding the mortgage, and mortgage NOTE. It is the Uniform Commercial Code laws of South Carolina, in force, at all times relevant to this initial Complaint#2011-CP-29-35 to foreclose on Respondent's property, filed January of 2011. Respondent, Ziraili M Elbey according to [UCC 36 § 3-104] is not dishonored or in default under the NOTE. Respondent's NOTE is a negotiable instrument pursuant to Article 3 of the UCC. [See Exhibit "B", a copy of the NOTE previously submitted in this case by Plaintiff last year August 2012] Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

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7. That Plaintiff fail to include in its Motion to Restore Compliant #2011-CP-29-35 that its copy of the Respondent's NOTE shows no indorsements, directly on it or attached [ALLONGE] to it, and therefore does not indicate that it was ever transferred, sold, exchanged or delivered by the lender to anyone else. Further, Exhibit "B", the copy of the "NOTE in the Complaint #2011-CP-29-35 does not indicate that the NOTE was ever negotiated [UCC 36 § 3-201 (a)] or that it was ever transferred or deliver to another entity [or mortgage servicer] , [UCC 36 § 3-203] and [UCC 36§ 1-201(15)]. Other Respondent, Option One Mortgage Corporation, the original lender told this writer, that it sold the note [see Allonge attached to Exhibit "B"] shortly after it was originated, thereby disclaimed any right in the NOTE. Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

8. That Plaintiff fails to include in its Motion to Restore Compliant #2011-CP-29-35 that Plaintiff, H & R Block Bank, NA cannot enforce foreclosure because it has no right to make any demands for payment than the question is "who does." Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

9. That Plaintiff fails to include in its Motion to Restore Compliant #2011-CP-29-35 that South Carolina's UCC laws help protect the interests of the Respondent, Ziraili Elbey with genuine interests in enforcement of her NOTE. The intended protections of the UCC are recognized across America. See, for example, *In re Kemp*, No. 08-18700-JHW (Bankr. D. NJ 2010) ("From the maker's standpoint, therefore, it becomes essential to establish that the Plaintiff who demands foreclosure preceding or demands payment of a negotiable Note, or to whom payment is made, is the duly qualified holder. Otherwise, the obligor [the Respondent] is exposed to the risk of double payment or at least to the expense of litigation incurred to prevent duplicative satisfaction of the instrument."); *Well Fargo Bank v. Sessley*, 2010-Ohio-2902 (OH Ct.App. 2010)(Noting an underlying concern about multiple judgments on the same debt."); *In re Kang Jin Hwang*, 396 B.R. 757 (Bankr. C.D. CA 2008)(Weighing whether failure to join another party to the suit might leave the Respondent, the borrower subject to a substantial risk of incurring multiple obligations under the same NOTE.); Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

10. That Plaintiff fails to include in its Motion to Restore Compliant#2011-CP-29-35 In the Matter of Foreclosure of a Deed of Trust Executed by Woodard, 185 N.C.App. 159 (NC CtApp. 2007)("[T]he [Respondent], payor of a note exposes herself to double liability, if she makes payments to someone other than the holder of the instrument, unless the other entity to whom payment is made is an agent of the owner of the NOTE.)" **Special Note: The right to enforce a NOTE requires strict adherence to the UCC in South Carolina in order to achieve its protective policies.** See, for example, *Adams Madison Realty & Development, In.*, 853 F.2d 163 (3rd Cir. 1988)(Holding that strict compliance with the South Carolina UCC protects each intended owner of the note as it gets passed about); *Cogswell v. Citifinancial Mortgage*, 624 F.3d. 395 (US Cir. 7th 2010)(Ruling against the foreclosure machine because of its failure to prove compliance with the South Carolina UCC laws created reasonable concern about whether the "Note" was actually held by another. Accordingly, this action should be dismissed with prejudice. The mortgage lien and NOTE is "SATISFIED".

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. sbm to Option One Mortgage
Corporation

Respondents.

Case No. 2011-CP-29-35

**NOTICE OF NON-RESPONSE TO
AFFIDAVIT OF COMMERCIAL
OBLIGATION & NOTICE OF FAULT
& OPPORTUNITY TO CURE**

**REFERS COURT TO PREVIOUSLY
SUBMITTED SCRCP RULE 43(K)
MOTION & ORDER PER SCRCP
RULE 60(b),(5) BY RESPONDENT
AUGUST 6, 2013**

FILED
OFFICE OF CLERK
OF COURT
2013 AUG 16 PM 3:00
CLERK OF COURT
LANCASTER, SC

Come now Respondent, Ziraili M Elbey, woman of the land, beneficial land owner, Entitlement Holder pursuant to SCRCP rule 60 (b), (1), (3), (4), (5), same as SC Code § 15-27-130 Notices this court, again, that on December 24, 2012, instruments of Tender of setoff, for the sum of Thirty-thousand (\$241,036.08), were presented for setoff and Registered Mail to Nationstar Mortgage LLC, Payment Department at 350 Highland Drive, Lewisville, Texas, 75067. May it pleased this court that Respondent, also previously recorded with Lancaster Register of Deeds and submitted by Certified Mail an **AFFIDAVIT OF COMMERCIAL OBLIGATION NOTICE OF FAULT AND OPPORTUNITY TO CURE** February 8, 2013. Let this court 'notice', that, attorney, Block and Scott, PLLC for the Plaintiff acquiesce, maybe an excusable neglect, however, Plaintiff failed to answer Respondent's **AFFIDAVIT OF COMMERCIAL OBLIGATION NOTICE OF FAULT AND OPPORTUNITY TO CURE**, dated February 8, 2013 to this date. Plaintiff, dishonors Respondent's above Presentment and created a **FAULT**. Plaintiff was given an additional seven (7) days to answer exclusive of the day of receipt, to cure the fault and affect a remedy by serving notice to the Respondent, the

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AFFIDAVIT OF COMMERCIAL OBLIGATION

NOTICE OF FAULT AND OPPORTUNITY TO CURE

February 08, 2013

Secured Party/Principal:

Ziraili-Mohassan: Elbey
9789 Charlotte Highway, Suite 400-191
Ft. Mill, SC 29707

Respondent/Bailee

Nationstar Mortgage LLC
Brock & Scott Law Firm PLLC
ATTORNEY(S) and TRUSTEE(S) for the PLAINTIFF(S)
Brook Dangerfield, Bar SC Bar No. 77912
Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79144
Mark A Pearson, SC Bar No. 15926
Third Party Debt Collectors
3800 Fernandina Rd., Suite 110
Columbia, SC 29210

FILED
OFFICE OF CLERK
OF COURT
LANCASTER, SC
2013 FEB 11 PM 3:22

Re: Nationstar Mortgage LLC, Account No. 597002327, File No. 9723536795 for Internal Use Only, Original PLoan No 571007388 dated 03/29/06, debt collection payoff for \$241,936.08 for Lancaster Court of Common Pleas Case No. 2011-CP-29-35, Brock and Scott Law Firm PLLC

Accounts: Nationstar Mortgage LLC, Department of Taxation and Assessments
Account No. 597002327 File No. 9723536795 for Internal Use Only, Brock & Scott Law Firm PLLC, Attorney(s), Trustee(s), for Lancaster County Court of Common Pleas, Case No 2011-CP-29-35

Statement of Facts

I, Ziraili-Mohassan of the family, Elbey, hereinafter Affiant, over the age of twenty-one years, and competent to witness and with first hand knowledge do declare that:

1 NOTICE TO AGENT IS NOTICE TO PRINCIPAL NOTICE TO PRINCIPAL
IS NOTICE TO AGENT and APPLICABLE TO ALL SUCCESSORS AND
ASSIGNS

RECORDING REQUESTED BY

AND WHEN RECORDED, MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENT TO:

Name: Ziraili M Elbey

Street Address: 9789 Charlotte Hwy, Ste 400-191

City, State & Zip code: Fl. Mill, South Carolina 29707

TITLE ORDER NO. _____ ESCROW NO. 9723536795

2013002511

DEED NO CHARGE
RECORDING FEES

\$0.00

PRESENTED & RECORDED:
02-19-2013 12:22 PM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE PHILLIPS DEPUTY

BK: DEED 715

PG: 233-251

2013002512

SATISFACTION MORTGAGE
RECORDING FEES

\$5.00

PRESENTED & RECORDED:
02-19-2013 12:23 PM

JOHN LANE
REGISTER OF DEEDS
LANCASTER COUNTY, SC
By: CANDICE PHILLIPS DEPUTY

BK: MORT 2618

PG: 242-260

SATISFIED

MTG BK 2600 PG 270

DATE 2-19-2013

REGISTER OF DEEDS

LANCASTER COUNTY, SC

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF FULL RECONVEYANCE

Whereas, Ziraili M Elbey the Trustee is under the Deed of Trust dated March 19, 2008, made and executed by ZIRAILI M ELBEY as Trustor(s) to Ziraili M Elbey as beneficiary and recorded as Instrument No. 2013002511 on 01/14/2013, in Book 2600 at Page 270-280 of the Office Records in the Office of the Recorder of LANCASTER County, State of South Carolina having received from Beneficiary is under said Deed of Trust a written request to reconvey, reciting that all sums secured by said Deed of Trust have been fully paid; and said Deed of Trust and the note or notes secured thereby having been surrendered to the Trustee is for cancellation, do I hereby reconvey, without warranty, to the person or persons legally entitled thereto, all right, title and interest heretofore acquired and now held by said Trustee under said Deed of Trust, in the real property commonly know as 13132 Wilburn Park Lane situated in the County of LANCASTER, State of South Carolina, and more particularly described as follows:
SEE ATTACHED

Date: 2/19/13

First Witness Keldin Japp

Second Witness Shirley D. Ellis

Ziraili M Elbey as Trustee/Trustor

STATE OF South Carolina
COUNTY OF York

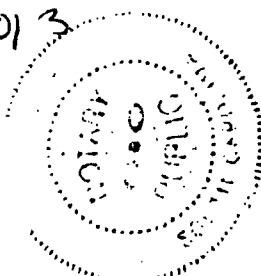
On 2/19/13 before me, Kisha White, a Notary Public, personally appeared Ziraili M Elbey who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of South Carolina that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature Kisha White

(SEAL)

Shirley D. Ellis Sept 10, 2013



RIGHT TO REMOVAL (Optional)



CAPACITY CLAIMED BY SIGNER(S)

☒ INDIVIDUAL(S) Ziraili M Elbey

☐ CORPORATE

OFFICER(S)

☐ PARTNER(S)

(TITLE)

☐ LIMITED

☐ GENERAL

☐ ATTORNEY IN FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☒ OTHER: Second Party Creditor

SIGNER IS REPRESENTING:

Name of Person(s) or Entity

From: Ziraili Elbey
#9723536795
To: NATIONSTAR MORTGAGE LLC

Subj: CONDITIONAL ACCEPTANCE AND REQUEST REGARDING AUTHENTIC STATEMENT
REGARDING ACCOUNTING

Encl: (1) Request regarding Authentic Statement of Account

1. I am in receipt of your payoff letter dated 11/15/2012 and I conditionally accept your bill for \$241,940.00 upon my receipt of a verified claim to my office signed by an authorized representative from your Company, submitted with the following proofs for consideration:

(a) Proof. I agree to pay your claim of \$241,940.00 upon proof that the account no 597002327 is not satisfied and paid in full and reflecting a zero balance due. To validate your claim you are required within 14 days to correct the following true statements; or rebut the following statements as being untrue; or agree, consent, and assent to the statements as fact, by remaining silent.

STATEMENT OF FACTS

(1) On November 15, 2012 an offer for discount payoff price of \$241,936.00 was sent to the law firm of Brett M. Shockley, attorney with McGuireWoods LLP, 201 N. Tryon Street, Suite 3000, Charlotte, NC 28202 on behalf of NATIONSTAR MORTGAGE, LLC.

(2) On November 27, 2012 Brett M. Shockley, attorney with McGuireWoods, LLP, 201 N. Tryon Street, Suite 3000, Charlotte, N.C. 28202 on behalf of NATIONSTAR MORTGAGE, LLC payoff statement was sent to us by email. On December 13, 2012 the payoff statement was printed-out and delivered to accounts payable.

(3) On December 24, 2012 payment was posted and mailed by **REGISTERED MAIL** to NATIONSTAR MORTGAGE, LLC, Attn: Payoff Department, 350 Highland Drive, Lewisville, TX 75067. See **PS Form 3806, Receipt for Registered Mail** [exhibit A]; and **Form 3811 Domestic Return Receipt RA270704656US** [exhibit B]

(4) There exists no evidence or certification of dishonour to the tender and therefore the facts establish that the final credit to the account is made and the balance is adjusted to zero

(5) The account for the total sum of 241,940.00 is now paid in full.

(b) Verification. Your claim must be verified to prove the validity, by presenting the alleged obligation under oath or notary

Ziraili Elbey | 2013

9789 Charlotte Highway, Suite 400-191, Ft. Mill, SC 29707

Request regarding Authentic Statement of Account
UCC Article 9 § 9-210

I hereby certify and confirm this to be a true and correct statement of accounting as received by your office January 02/2013.

[illegible]

Please within 14 days approve or correct this statement. Any corrections hereto must be submitted in writing, under oath and under the penalty of perjury, and full commercial liability (where otherwise not prohibited by law).

First Witness John Crocker

Without Recourse UCC 1-308/207

Second Witness Kausha Cook

By: Ziraili Elbey SEAL
Secured Party Creditor

Date: January 18, 2013

Page 3

133

9789 Charlotte Highway, Suite 400-191, Ft. Mill, SC 29707

State of South Carolina)
) ss
Lancaster County)

Embossed Hereon is My
State of South Carolina Notary Public Seal
My Commission Expires April 4, 2022
KAUSHA COOK

Commission Expires Apr 042072



SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature Nationstar Mail Room	
1. Article Addressed to: NATIONSTAR MORTGAGE LLC Payoff Department 350 Highland Drive Lewisville, TX 75067		B. Received by (Printed Name) C. Date of Delivery JAN 22 2013	
2. Article Number (Transfer from service label) 7010 2780 0002 1524 4373		D. Is delivery address different from item 1? ☒ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ COD		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, February 2004		Domestic Return Receipt	

U.S. Postal Service	
CERTIFIED MAIL[®] RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$ 18.65
Certified Fee	\$ 2.75
Return Receipt Fee (Endorsement Required)	\$ 2.35
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 23.75
Postmark Here JAN 19 2013 01/19/2013	
Send To: NATIONSTAR MORTGAGE LLC - Payoff Department Street, Apt. No., or PO Box No. 350 Highland Drive City, State, ZIP+4[®] LEWISVILLE, TX 75067	

2010006295

PLAT SHALL
RECORDING FEES

\$5.00

PRESENTED & RECORDED
06-11-2010 12:08 PM

JOHN LANE

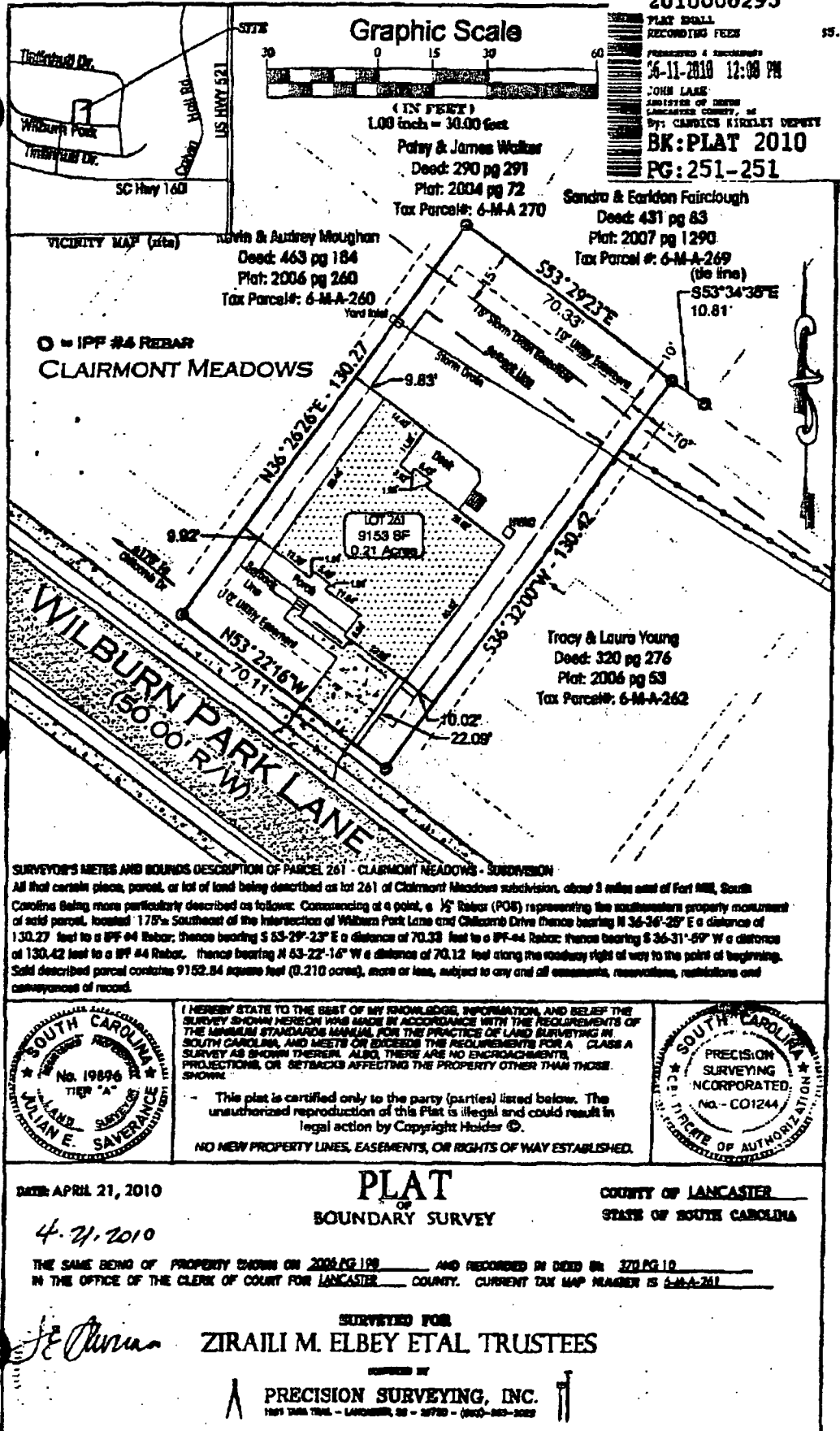
REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CAMDICE KIRKLEY DEPUTY

BK: PLAT 2010

PG: 251-251

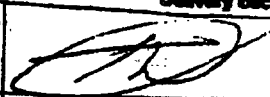
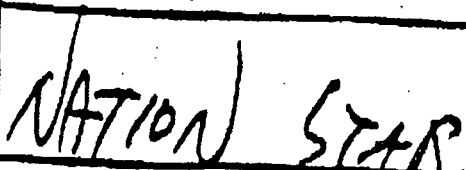


CERTIFIED TO BE A TRUE COPY
REGISTER OF DEEDS
COUNTY OF LANCASTER, SC



Track/Confirm - Intranet Item Inquiry
Item Number: RA27 0704 656U S

This item was delivered on 01/02/2013 at 11:35

Signature:	Delivery Section
	
Address:	

Enter Request Type and Item Number:

Quick Search ☒ **Extensive Search** ☐

Version 1.0

Inquire on multiple items.

Go to the Product Tracking System Home Page.

1. On December 24, 2012, instruments of tender for setoff, hereinafter "Tender" for the sum of Thirty-thousand (\$241,936.08), were presented for setoff and Registered to Nationstar Mortgage LLC, Payoff Department, (hereinafter "Respondent") at the below address.

Nationstar Mortgage LLC, Payoff Department,
350 Highland Drive
Lewisville, Texas 75067 and;

2. On January 02, 2013, tender was accepted for the setoff of the Accounts.
3. As of February 05, 2013 Nationstar Mortgage LLC, Respondents have not sufficiently responded to the presentment.
4. On January 14, 2013, that Affiant did file with the Lancaster Court of Common Pleas, in Lancaster, SC the Payoff Statement and notified Respondents and the Judge for the case no. 2011-CP-29-35 of mortgage satisfaction; Request Regarding Statement of Account for Nationstar Mortgage LLC Payoff Department; Account No. 597002327/File No. 9723536795 for internal use only.
5. On January 14, 2013, Certified copies of the "tender" acceptance by Nationstar Mortgage LLC Payoff Department was filed into the Lancaster County, SC, Court of Common Pleas in docket Case No. 2011-CP-29-35 as mortgage satisfied requiring the acceptance or correction to be made by in accordance with UCC 9-210.
6. On January 17, 2013 Brock & Scott Law PLLC, Attorney(s), Trustee(s) for Nationstar Mortgage LLC, Case File No. 2011-CP-29-35 was notified by Certified Mail No. 70102780000215244175 of the pay-off, mortgage satisfied by the Lancaster County, SC Court of Common Pleas in docket Case File No. 2011-CP-29-35 "tender" requiring the acceptance or correction to be made by in accordance with UCC 9-210.
7. On January 17, 2013 Honorable Philip E. Wright, Special Referee for Lancaster County, SC Court of Common Pleas in Case File No. 2011-CP-29-35 was notified by Certified Mail No. 70102780000215244182 of the pay-off, mortgage satisfied by the Lancaster County, SC Court of Common Pleas in docket Case File No. 2011-CP-29-35 "tender" requiring the acceptance or correction to be made by in accordance with UCC 9-210.
8. On January 17, 2013 Honorable Jeff Hammond, Clerk of Court for Lancaster County, SC Court of Common Pleas in Case File No. 2011-CP-29-35 was notified by Certified Mail No. 70102780000215244199 of the pay-off, mortgage satisfied by the Lancaster County, SC Court of Common Pleas in docket Case File No. 2011-CP-29-35 "tender" requiring the acceptance or correction to be made by in accordance with UCC 9-210.
9. The Respondent was allowed ten (10) days to respond.
10. The Respondents have a duty and obligation to respond to the presentments and serve notice to the secured party that the debt has been discharged and extinguished.
11. As of January 17, 2013 the Brock & Scott, PLLC Respondents was sent a letter Certified No. 70102780000215244175 requesting mortgage satisfied recording according to SC Statues Code Ann Sc. 29-3-310 and 29-3-33(e)
12. As of February 08, Brock & Scott, PLLC, Respondents have not sufficiently responded to the presentment.
13. On January 19, 2013 the Nationstar Mortgage LLC, Respondent received the request regarding the authentic Statement of Account which requires the respondent to correct or accept the statement within fourteen (14) days of receipt (UCC 9-210).
14. On January 17, 2013 the law firm of Brock and Scott PLLC, Attorney(s) and Trustee(s) for Nationstar Mortgage LLC, Third Party Debt Collector received a request by Certified mail

2 | **NOTICE TO AGENT IS NOTICE TO PRINCIPAL NOTICE TO PRINCIPAL
IS NOTICE TO AGENT and APPLICABLE TO ALL SUCCESSORS AND
ASSIGNS**

- no. 70102780000215244182 on January 18, 2012 requesting further action according to SC Statutes Code Ann Sec. 29-3-310 and 29-3-330(e) which respondent have not responded to date.
15. As of February 05, 2013 the time for Nationstar Mortgage LLC to respond to said presentments have expired and the other respondents as dates indicate by law, by non response and by tacit procurement, have agreed and admit to the authenticity of the statement of account which evidences the aggregate amount of unpaid obligations being Zero (\$0.00) and 00/100 dollars, and that all obligations relating thereto have been satisfied. All parties have been notified by certified mail (see Certification of Mailing).

Notice of Fault As an operation of law, the Respondent by dishonor of the Presentment has created a fault.

Opportunity to Cure In the event that Respondent's failure to respond to the Presentment was an oversight, mistake or otherwise unintentional, the Secured Party grants the Respondents an additional seven (7) days, exclusive of the day of receipt, to cure the fault and affect a remedy by serving notice to the secured party that the debt has been discharged and extinguished.

FAILURE TO CURE AND/OR RESPOND WILL RESULT IN THE RECORDING OF A COMMERCIAL LIEN AGAINST THE RESPONDENTS AS LIEN DEBTORS FOR VALUE RECEIVED OF NO LESS THAN THIRTY THOUSAND (\$241,936.08)

Failure to cure will result in the recording of a commercial lien against the Respondents and the collateral identified herein, and shall constitute, as an operation of law, the FINAL admission of the facts set forth in the Presentment by Respondents through tacit assent to the presentments and the whole matter shall be deemed *res judicata* and *stare decisis*.

Surety and Collateral. The secured party accepts for valuable consideration, the oath of office for all listed Attorney(s), Trustee(s) for Nationstar Mortgage LLC, Payoff Department on record with the Supreme Court of South Carolina and all commercial bonds of each of the Respondents, to insure the fulfillment of their obligations as fiduciary/bailee as evidenced in the original financing statement #2012005278:Book:Mort 28, Pg: 3110312 filed with Lancaster Register of Deeds. Let it be known, if the bond(s) of the Respondents is/are insufficient for coverage the payment(s) the assets of the Respondent(s) will be utilized as follows: all the real and moveable property and bank and savings accounts of the Respondents except wedding rings, keepsakes, family photographs, diaries, journals, etc., and the property normally exempted in the lien process.

Liquidation of Collateral. In the event of default, Secured Party Creditor shall have full power to privately or publicly sell, lease, lien, transfer, or otherwise deal with the collateral or proceeds or products therefrom, in her own name or in the name of Respondent(s)/DEBTOR. All expenses related to the liquidation of collateral shall become a part of DEBTOR's indebtedness. Secured Party Creditor may, at her discretion, transfer part or all of the collateral to her own name or to the name of her nominee.

Rights and Remedies. Secured Party Creditor shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as it has been adopted in the state where part or all of the collateral is located or presumed to be located, including but not limited to the right to proceed with self-help with or without a public court or tribunal. Rights and remedies available to Secured Party

**3 | NOTICE TO AGENT IS NOTICE TO PRINCIPAL NOTICE TO PRINCIPAL
IS NOTICE TO AGENT and APPLICABLE TO ALL SUCCESSORS AND
ASSIGNS**

Ziraili M Elbey, Secured Party/Principal
9789 Charlotte Highway, Suite 400-191
Ft. Mill, SC [29707]

Executed in the South Carolina, Republic, this 08 day of February in the year Two-thousand Thirteen.

By: Ziraili-Mohassan: Elbey /WITHO
Secured Party/General Executor/Adm

By: Zirailli-Mohassan: Elbey / WITHOUT PREJUDICE
Secured Party/General Executor/Administrator for
ZIRAILI M ELBEY ESTATE
c/o 9789 Charlotte Highway, Suite 400-191
Ft. Mill [29707]
(803)233-2665

First Witness: Cheresa Beverland

KLO

South Carolina State }
 } ss JURAT
 Lancaster County }

The foregoing instrument was subscribed and sworn to by: Ziraili-Mohassan: Elbey before me this 8th day of February, 2013.

~~Notary Public/Witness~~

SEAL: My Commission Expires May 28, 2020

**4 NOTICE TO AGENT IS NOTICE TO PRINCIPAL NOTICE TO PRINCIPAL
IS NOTICE TO AGENT and APPLICABLE TO ALL SUCCESSORS AND
ASSIGNS**

7010 2780 0002 1524 4205

For delivery information visit our website at www.usps.com

Postage	\$	1.50
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	1.50

Postmark Here
FEB 09 2013

Sent To
Book Dancer, E. Eugene Black, Jr.
Street, Apt. No.
or PO Box No. 3800 Fernside Rd, Ste 110
City, State, ZIP+4
Columbia, SC 29210

PS Form 3800, August 2005 See Reverse for Instructions

7010 2780 0002 1524 4229

For delivery information visit our website at www.usps.com

Postage	\$	1.50
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	1.50

Postmark Here
FEB 09 2013

Sent To
Honorable Judge Philip E. Wright, Special Referee
Street, Apt. No.
or PO Box No. 408 North Street (Main Street)
City, State, ZIP+4
Lancaster, SC 29721

PS Form 3800, August 2005 See Reverse for Instructions

7010 2780 0002 1524 4212

For delivery information visit our website at www.usps.com

Postage	\$	1.50
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	1.50

Postmark Here
FEB 09 2013

Sent To
Jeff Hammond, Lancaster, SC Clerk of Court
Street, Apt. No.
or PO Box No. P.O. Box 1809
City, State, ZIP+4
Lancaster, SC 29721-1809

PS Form 3800, August 2005 See Reverse for Instructions

7010 2780 0002 1524 4236

U.S. Postal Service

Postage	\$	10.00
Certified Fee		13.10
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		10.00
Total Postage & Fees	\$	33.10

Postmark Here
FEB 09 2013

Sent To
Nashander Marty LLC, Payoff Department
Street, Apt. No.
or PO Box No. 360 Highland Drive
City, State, ZIP+4
Lewisville, TX 75067

PS Form 3800, August 2005 See Reverse for Instructions

FORT MILL PO
FORT MILL, South Carolina
297152313
3613950935 -0096
02/09/2013 (803)547-2771 11:18:14 AM

Product Description	Sale Qty	Unit Price	Final Price

LEWISVILLE TX 75067			\$0.46
Zone-5 First-Class			
Letter			
0.50 oz.			
Expected Delivery: Tue 02/12/13			
00 Certified			\$3.10
Label #:	70102780000215244236		

Issue PVI: \$3.56

LANCASTER SC 29721			\$0.46
Zone-1 First-Class			
Letter			
0.50 oz.			
Expected Delivery: Mon 02/11/13			
00 Certified			\$3.10
Label #:	70102780000215244229		

Issue PVI: \$3.56

LANCASTER SC 29721			\$0.46
Zone-1 First-Class			
Letter			
0.50 oz.			
Expected Delivery: Mon 02/11/13			
00 Certified			\$3.10
Label #:	70102780000215244212		

Issue PVI: \$3.56

COLUMBIA SC 29210			\$0.46
Zone-2 First-Class			
Letter			
0.50 oz.			
Expected Delivery: Mon 02/11/13			
00 Certified			\$3.10
Label #:	70102780000215244205		

Issue PVI: \$3.56

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IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation

Respondents.

**NOTICE OF OBJECTION TO SPECIAL
REFEREE'S REPORT, JUDGMENT OF
FORECLOSURE, NOTICE OF SALE AND
RESPONDENT'S REFUSAL TO ACCEPT
PLAINTIFF'S OFFER TO CONTRACT**

(on and for the record a written Transcript of Testimony)

**NOTICE OF OBJECTION TO SPECIAL REFEREE'S REPORT, JUDGMENT OF
FORECLOSURE, NOTICE OF SALE AND RESPONDENT'S REFUSAL TO ACCEPT
PLAINTIFF'S OFFER TO CONTRACT**

Come now Respondent, Ziraili M Elbey indigenous, natural woman as a property owner has a perfected security interest and pursuant to S.C. Code Ann. §36-9-333(a) 'possessory lien' which has priority over a security interest of the Plaintiff and pursuant to S.C. Code Ann. § 36-0-333(b), debt paid in full multiple times as mortgage satisfied, repairs, maintenance, taxes paid created by § 29-15-10 and complies, evidenced in Lancaster Land Records, and Lancaster Clerk of Court. Therefore, this statutory lien § 36-9-333(b) takes priority as a perfected security interest. Further,

Respondent's Objections

The words **PONZI SCHEME** and **FRAUD** violation fall under of US Title 18 and definitely applied to the mortgage meltdown that has been largely dismissed by policy makers, judges,

special referee's, law enforcement and regulators. Respondent, instead is fighting to save map# 0006M-0A-261.00 property heard the terms RISKY BEHAVIOR and RECKLESSNESS. Now a few courts in South Carolina, and law enforcement has finally completed its investigation and determined that those who set the tone and culture of Wall Street were deeply involved in the mortgage PONZI scheme in our state of SC, and were regularly committing FRAUD in the creation of false, fraudulent mortgage document, Robo-signing of fraudulent ASSIGNMENTS affecting the chain of title, Securitization Trust and not informing the homeowner at settlement/closing and the underlying engineering of homeowners signatures on mortgage and loan documents in order to foreclose on homeowner. This has happened to the Respondent and "I OBJECT." Respondent cites these few cases to make the point as evidence specifically in South Carolina courts e.g. US and Szymoniak v. MERS et al. under seal pursuant to 31 U.S.C. § 3730(b)(2) filed in the US District Court in the District of South amended Complaint C.A. No. 10-CV-01465-JFA; Deutsche Bank v. Heinrich case no. 2011-CP-10-1060 filed in the South Carolina Court of Common Pleas of the Ninth Judicial Circuit which in the Judges decision the U.S. Supreme Court case Carpenter v. Logan – 83 US 271 (1872) trumps everything: further stating that the foreclosing party must own both the note and the mortgage to foreclose; Ziraili M Elbey v. H & R Block Bank, FSB in the US Bankruptcy Court of the District of South Carolina case no. 12-80227:jw(2012), the judge remanded the Adversary case to go back to the county for the proper venue; Cosajay v. MERS et al. (2013) case where the judge's decision that the homeowner has a right to challenge fraudulent ASSIGNMENT appearing in their chain of title.

Plaintiff and assigns, Plaintiff's lawyers, and Special Referee of Lancaster Court of Common Pleas were fully aware that the documents Respondent signed at the settlement table at closing to purchase property known as map # 0006M-0A-261.00, a home was an instrument

described as a "Note" but defined a draft/check under the (SCCC) Uniform Commercial Code (U.C.C.) governing definitions for negotiable instruments. The bank accepted the instrument offered as consideration for an equal exchange for the property/home, but did not disclose to Respondent it was a draft/check and mislead Respondent to believe a false presumption in that it is a promise to pay. As Respondent, stated in many of her pleadings before this court, her signature securitized the mortgage and mortgage note, meaning this was the first payment-in-full that Respondent made to satisfy any indebtedness to any entity be it original lender or any of the so-called servicers for a claim on map # 0006M-0A-261.00. It is an injustice to the Plaintiff and its assigns to call the instrument Respondent signed described on its face "note" a promise to pay or even "note". It is neither, but rather a draft/check, even an order. The instrument was full payment tendered as the consideration for the equal exchange for the property known as map # 0006M-0A-261.00. Respondent was not given valuable consideration nor a receipt for full payment of both instruments. The instrument is not evidence of a debt, thus the mortgage is null and void ab initio ultra vires.

Respondent's mortgage lien and mortgage note was securitized meaning placement in a securitization trusts, packaging pools of loans and **sold** to multiple investors and the alleged H & R Block Bank, FSB, plaintiff acted as a servicer to this TRUST, account # 072979775, was not the "holder", nor owner, filed 1) the mortgage assignment with Lancaster Land Records four (4) years after alleged transfer which means the transfer was not made before the closing date of the trust, invalidating ownership, also after the REMIC 60 day closing, and 2) transferred a fraudulent, **BOGUS**, Robo-signed ASSIGNMENT on record later (4 years later) without legal authority nor corporate/business, legal standing to conduct business in the state of South Carolina. The **BOGUS**, fraudulent, ineffective Assignment was used to begin foreclosure action

against Respondent, January 14, 2011 and on November 11, 2011 Plaintiff, with full INTENT transferred an illegal unregistered, unrecorded Assignment to Nationstar Mortgage LLC resorting to an illegal scheme or ponzi scheme alone which their lawyers Brock and Scott in agreement, signed order by Special Referee to initiating under "unclean hands" by more than one entity, creating a conspiracy leading to wrongful foreclosure action October 24, 2013. Whereas not allowing Respondent due process with constant rushing, and more rushing, finally told "I have made an administration decision to Foreclosure." Which meant to Respondent that no matter what she said, the Special Referee had made up his mind prior to the schedule hearing with lawyers for the Plaintiff several day before the October 24th, 2013 hearing because Brock and Scott had already prepared the order and sale documents. Respondent objects to 'unclean hands' in this court.

Respondent, objects pursuant to SCRCF Rule 17(a), Rule 12(b)(6), Rule 12(b)c, and Rule 11(c) to the Foreclosure action which creates gaps in the chain of title as to ownership; Plaintiff never proved that they were the Real Party of Interest nor the The True Owner and Holder of The Note - a potential injured party were they not paid multiple times; further Respondent's object to Special Referee's Report and foreclosure order and sale; Lawyers for Plaintiff never provided Original Mortgage Note, only provided altered copies with a different signature on both the mortgage and mortgage note or than the Respondent's; plus, Plaintiff never provided, a Certified Copy of the Chain of Custody of the Note showing that H & R Block Bank, FSB honestly acquired The Note and lastly, a Certified Copy of the days Call Report from the Original Lender establishing that The Original Lender truly lent Respondent their assets and not their Credit, a thing illegal under Title 12 and previously stated Title 18 of the United States Code.

Respondent's Objections to the Notice of Sale

LET IT BE KNOWN that Respondent, AS GRANTOR is not, and has **NOT** agreed to this Sale. Respondent is not in Default. Respondent, further objects to this SALE as there is no verification of a debt owed. Respondent remains the GRANTOR, SETTLOR, AND TRUSTOR of map# 0006M-0A-261.00. as described in Instrument #2006004368, BK: DEED 329, PG: 170-174. The Plaintiff's lawyers in the Notice of Sale fail to indicate the 1) Trustee, who? to secure an obligation in favor 2) who is the acts as Beneficiary,[the person's name] the beneficial interest in which was assigned by , again, who? under an legal Assignment recorded where?.

SUMMARY

Brock & Scott, PLLC lawyers for the Plaintiff used four fraudulent documents to initiate a wrongful foreclosure 1) defective, fraudulent copies mortgage and mortgage note, 2) the incomplete ALLONGE which would assist in chain of title, but unknown to Respondent, and 3) fraudulent, Robo-signed ASSIGNMENT filed in county four (4) years after transfer to Plaintiff. Respondent objects to the intent, fraudulent documents and total acceptance by the Special Referee in this case and without looking at case merits; where is the Oath of Office taken by Special Referee to be impartial and uphold the judicial code of law in this state. [see exhibit A]

Wherefore, Respondent request this to court reverse the Foreclosure Sale and grant her Notice of Motion to Motion Verified Motion to Vacate Foreclosure Sale and ExParte Temporary Restraining Order and a Permanent Injunction Under Title 18 Section 1345(1)(B), (2)(a), (3)(b), and Title 18 Section 1348(2) order. Plaintiff first foreclosure order dated: originally August 22, 2012, and after Plaintiff motion to restore under SC Supreme Courts

Administrative Order of June 5, 1992 before this court has questions as a matter of law leading to foreclosure hearing on October 24, 2013. Respondent prays, this court and grants Order to vacate foreclosure action and release any mortgage liens held by this county which have already been satisfied as a matter of law. So moved!

Dated: _____ November 20 _____
"without recourse"

By: _____
Ziraili M Elbey, *In Propria Persona*
"All Rights Reserved"

CERTIFICATION OF MAILING

The undersigned hereby certifies that she is Ziraili-Mohassan: Elbey, Secured Party/Principal is of such age and discretion as to be competent to serve papers. That on the _____ November 2013 she served a copy **NOTICE OF OBJECTION TO SPECIAL REFEREE'S REPORT, JUDGMENT OF FORECLOSURE, NOTICE OF SALE AND RESPONDENT'S REFUSAL TO ACCEPT PLAINTIFF'S OFFER TO CONTRACT** by placing said copy in a postage paid envelope addressed to the following person(s) at the address stated below, which is the last known address, and by depositing said envelope and contents in the U.S. Mail.

Party(ies) Served:

Chad W. Burgess
Brock & Scott, PLLC
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721

Dated: _____, November 20 _____
9789 Charlotte Highway, Suite 400-191
Ft. Mill, South Carolina

By: _____

Ziraili M Elbey, Secured Party/Principal
"All Rights Reserved"

NOTICE OF SALE

NOTICE OF SALE CIVIL ACTION NO. 2011-CP-29-00035 BY VIRTUE of the decree heretofore granted in the case of: H&R Block Bank vs. Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC Living Trust Under Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation, et al., the undersigned Special Referee for Lancaster County, South Carolina, will sell on December 2, 2013 at 11:00AM, at the Lancaster County Courthouse, Courtroom B, City of Lancaster, State of South Carolina, to the highest bidder:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 0047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 7, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WKFC LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715
TMS: 0006M-0A-261.00

TERMS OF SALE: The successful bidder, other than the Plaintiff, will deposit with the Special Referee, at conclusion of the bidding, five percent (5%) of his bid, in cash or equivalent, as evidence of good faith, same to be applied to the purchase price in case of compliance, but to be forfeited and applied first to costs and then to the Plaintiff's debt in the case of non-compliance. Should the last and highest bidder fail to comply with the other terms of the bid within thirty (30) days, then the Special Referee may re-sell the property on the same terms and conditions on some subsequent Sales Day (at the risk of the said highest bidder). No personal or deficiency judgment being demanded, the bidding shall not remain open after the date of sale and shall be final on that date, and compliance with the bid may be made immediately. Purchaser to pay for documentary stamps on the Deed. The successful bidder will be required to pay interest on the amount of the balance of the bid from date of sale to date of compliance with the bid at the rate of 7.999% per annum. The sale shall be subject to taxes and assessments, existing easements and restrictions, easements and restrictions of record and any other senior encumbrances.

In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

The Honorable Phillip E. Wright
Special Referee for Lancaster County

Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Attorneys for Plaintiff



Ziraili M Elbey

9789 Charlotte Highway, #400-191, Indian Land, SC 29707

February 20, 2014

Property Address: 13132 Wilburn Park Lane, Indian Land, SC 29707

Lancaster County Clerk of Court
c/o Honorable Jeff Hammond
P.O. Box 1809
Lancaster, SC 29721

Special Referee Honorable Philip E. Wright
408 North Main Street
Lancaster, South Carolina 29707

HANDCARRIED TO COURT OF COMMON PLEAS

**RE: H & R Block vs Ziraili M Elbey, et al. - Case No. 2011-CP-29-00035
Motion to Dismiss Writ of Assistance And Writ of Assistance &
Notice and Protection Request as Tenant under the federal Tenant
Rights Protection at Foreclosure Act of 2009 as (amended), Public
Law 111-22, Title VII**

Enclosed please find the original SCRCF Rule 12(b)(5) Motion to Dismiss. Please file the original and return a receipt for the motion and a stamped copy to this writer. We certify that we are sending copies of this Motion to Plaintiff's Attorney of record, and the Resident Circuit Judge in the 6th District, plus the Lancaster County Sheriff's office as they delivered the Writ on February 18, 2014. We are also sending a copy to an attorney firm named FINKLE Law Firm, LLC, whom we do not know nor were notified if this firm has completed a professional substitute counsel signed order Rule 4(d)(1) and Rule 11(b). Maybe FINKLE law firm is not aware of the SCRCF. The counsel of Record in this case #2011-CP-29-00035 is:

**Brock & Scott, PLLC
3800 Fernandina Rd., Ste. 110
Columbia, SC 29210**

Also enclosed, please find my cash receipt in the amount of \$25.00 for this MOTION, SC Court Form 4 completed with Order for Order to Dismiss. If you have any questions, please connect me immediately in writing or by phone at 803-233-2665 as the Writ given to this writer indicates March 5th 2014, is the Sheriff's eviction date at bottom of Writ received posted on front door on February 18, 2014. Mr. Wright, Special Referee, please respond to this writer's Motion in the next five days reference to eviction dismissal. There was not a certified 90 day notice as required by both state and federal law tenant laws protecting the tenants rights as consideration for Writ. Thank you for your attention to this matter. With kind regards, we are

By: 

Ziraili M Elbey, Bona Fide Tenant, In Propria Personna

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OF COURT

2014 FEB 20 PM 2:25

150

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

Case No. 2011-CP-29-00035

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation

Respondents.

**Motion to Dismiss Order for Writ of Assistance
And Writ of Assistance**

**And Notice of Plaintiff's Violations of Section
702(a)(2)(A), & Section 703 of the Federal
"Protecting Tenants at Foreclosure Act of 2009"
(PTFA), (as amended) Plus, SC Code of Law
Section 27-40-210, Sec27-40-22 (1-18) and the
Federal Law (Dowd-Frank) Wall Street Reform
& Consumer Protection Act Section 1484(2),
Public Law 111-22 (as amended), Title V**

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LANCASTER, SC

Property Address: 13132 Wilburn Park Lane, Indian Land, South Carolina 29707, Map
0006M-0A-261.00. Respondent is not an attorney.

COME HERE NOW, Respondent Ziraili M Elbey, indigenous, natural born woman on
the land and a Bona Fide tenant since June 22, 2010 pursuant to SC Code of Law Section 27-40-
210, and definition to the statute Section 27-40-22(1-18), **Section 702(a)(2)(A), & Section 703**
of the Federal "Protecting Tenants at Foreclosure Act of 2009" (PTFA), (as amended), and
the **and the Federal Law (Dowd-Frank Wall Street Reform & Consumer Protection Act**
Section 1484(2) [see included Exhibit 1-6] to respond to Order for Writ of Assistance and Writ
of Assistance which appears to be an insufficiency of service of process according to SCRCF
Rule 4(d)(1). This entitles the Respondent to request this Order to be dismissed under SCRCF
Rule 12(b)(5). Plus, according to this Court of record, Brock and Scott Law Firm, PLLC is the
counsel of record for H & R Block Bank, the Plaintiff. As Respondent in this case# 2011-C-29-

not aware of an order or motion for substitute change of counsel for the above named Plaintiff. Respondent does not know who FINKLE Law Firm is really representing. Respondent's question to this Court is who is FINKLE Law Firm, LLC and has there been a change in counsel? Respondent's question to this Court is FINKLE Law firm starting a new case for Plaintiff with a different case number?

COMPLUSORY JUDICAL NOTICE THAT Respondent prays, that the Special Referee under his official capacity honors his Oath of Office and the due process of Respondent's tenant rights to be protected under the state and federal protecting tenants at Foreclosure Act, Public Law 111-11, (May 20, 2009) / (as amended) Title VII – Protecting Tenants At Foreclosure Act (PTFA) as a Bona Fide tenant since June 22, 2010.

WHEREFORE, Respondent move before this Court that:

- A. This order be dismissed without prejudice according to SCRCP Rules 12(b)(5), for lack of sufficiency of service of process, Respondent never properly served with a copy of this Order until Tuesday, February 18, 2014 when a Lancaster Sheriff taped at the front door at 13132 Wilburn Park Lane, Indian Land, SC 29707.
- B. Further, that FINKEL Law Firm LLC is in violation of SCRCP Rule 1.16 as the firm failed to file a Motion for Substitute Counsel in the existing case # 2011-CP-29-00035 where Brock & Scott Law Firm PLLC is the existing counsel for H & R Block Bank, Plaintiff. Further, moves to dismiss this Order as Rules of profession conduct violations and SCRCP Rule 1.16 and Rule 11(b).
- C. Further, that this court duly notify the Lancaster Sheriff's office of the existing Tenant/Rental Agreement of Respondent as this Order for Writ of Assistance and Writ of Assistance is moot and Order dismissed.

Respondent so Moves 2014 February 20, 2014

Respectfully,

By: [Signature]
Zirail M Elbey, *In Propra Persona* (not a Pro Se. etc.)
Tenant/Renter/Occupant

HENCEFORWARD
SHALL BE
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EMANCIPATION
PROCLAMATION
ABRAHAM LINCOLN
--- 1863 ---
FOREVER . . . USA

EXHIBITS

NUMBER	DATED	EXHIBIT BY NAME
1	06/22/2010	SC Residential – Lease/Rent Agreement – Signed with three (3) Witnesses [prior to Lis Pendens 01/14/2011 & Foreclosure] 5 PGS
2	10/28/2013	Affidavit & Notice of Non-Abandonment Inst #2013016507; Bk: DEED 762; PG 293-297 & filed w/ Lancaster Court of Common Pleas, Clerk of Court dated October 30, 2013 PM12:22
3	01/14/2014	Affidavit of Truth Actual Constructive Notice [response to unknown law firm to vacate] 6 PGS USPS CERTIFIED MAIL
4	01/28/2014 Notation: received 02/18/2014, not served, insufficient service process SCRCF Rule 4(d)(1)	Order for Writ of Assistance and Writ of Assistance requested by unknown law firm FINKLE LLC located in Charleston, SC
5	02/07/2014	Notice of Non-Abandonment to Lancaster Sheriffs's Office – CERTIFIED MAIL
6	02/20/2014	Six Month or more Rental Receipts FYI 3 PGS
	CERTIFIED MAIL RECEIPTS	AVAILABLE UPON OFFICIAL REQUEST

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LANCASTER, SC

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PROCLAMATION
ABRAHAM LINCOLN
1863
FOREVER • • • USA

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CERTIFICATION OF MAILING

The undersigned hereby certifies that she is Ziraili-Mohassan: Elbey,
Tenant/Renter/Occupant is of such age and discretion as to be competent to serve papers.
That on the 20th February 20th 2014 she served a copy of Motion to Dismiss Order for
Writ of Assistance And Writ of Assistance And Notice of Plaintiff's Violations of Section 702(a)(2)(A), &
Section 703 of the Federal "Protecting Tenants at Foreclosure Act of 2009" (PTFA), (as amended) Plus,
SC Code of Law Section 27-40-210, Sec27-40-22 (1-18) and the Federal Law (Dowd-Frank Wall Street
Reform & Consumer Protection Act Section 1484(2), Public Law 111-22 (as amended), Title VII by
placing said copy in a postage paid envelope addressed to the following person(s) at the
address stated below, which is the last known address, and by depositing said envelope and
contents in the **CERTIFIED** U.S. Mail.

Party(ies) Served:

Thomas A Shoot & Assigns, SC Bar#68340
FINKELLAW FIRM LLC
Charleston Foreclosure Office
400 Faber Place Drive, Suite 450
P.O. Box 71727 29415
North Charleston, SC 29405

Sheriff Barry Faile,
Lancaster Sheriff's Department
P.O. Box 908
Lancaster, SC 29720

Brock & Scott, PLLC,
Attn: Chad Burgess
3800 Fernandina Rd, Suite 110
Columbia, South Carolina 29210

The Honorable Jeff Hammond
Post Office Box 1809 [HANDCARRIED]
Lancaster, South Carolina 29721-1809

The Honorable Phillip E. Wright
408 North Main Street
Lancaster, South Carolina 29721

The Honorable Brian M. Gibbons
6th Resident Circuit Court Judge
140 Main Street/ P.O. Drawer 580
Chester, SC 29706

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LANCASTER, SC

Dated: 20th February 20 14
IndianLand/ Ft. Mill, South Carolina

By: Ziraili M Elbey
[Signature]
Ziraili M Elbey, Secured Party/Principal
"All Tenant Rights Reserved"

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP- 29-00035

H & R BLOCK BANK, FSB

Ziraili M Elbey, a/k/a Ziraili Mohassan El Bey

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Respondent: Ziraili M Elbey

Attorney for : ☐ Plaintiff ☒ Defendant

or

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☒ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other Section 702(a)(2)(A) & 703 Fed Protecting Tenants at Foreclosure Act as amended Public Law 111-22 as amended, Title VII
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

**March 5, 2014 Order for Writ of Assistance And
Writ Assistance**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

If applicable, describe the property, including tax map information and address, referenced in the order.

SEE ATTACHED

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

Circuit Court Judge/Special Referee

Judge Code

Date

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CLERK OF COURT
LANCASTER SC

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This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

CLERK OF COURT

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA
FOR THE COUNTY OF LANCASTER

H & R BLOCK BANK, FSB,

Plaintiff,

v.

Ziraili M Elbey© aka Ziraili Mohassan El Bey
aka Ziraili Mohassan El Bey©, WKFC Living
Trust Under Trust Agreement Dated June 4,
2010, by and through its Trustee, Wellesley K.
Clayton and American Home Mortgage
Servicing, Inc. s/b/m to Option One Mortgage
Corporation

Respondents.

Case No. 2011-CP-29-00035

ORDER FOR

**Motion to Dismiss Order for Writ of Assistance
And Writ of Assistance**

**And Notice of Plaintiff's Violations of Section
702(a)(2)(A), & Section 703 of the Federal
"Protecting Tenants at Foreclosure Act of 2009"
(PTFA), (as amended) Plus, SC Code of Law
Section 27-40-210, Sec27-40-22 (1-18) and the
Federal Law (Dowd-Frank) Wall Street Reform
& Consumer Protection Act Section 1484(2),
Public Law 111-22 (as amended). Title VII**

ORDER FOR MOTION TO DISMISS

On this _____ day of _____ 2014, this matter came before the court for
the signing of the Order **Amended Motion To Dismiss 12 (b)(5)** and protection
under the amended Federal "Protecting Tenants at Foreclosure Act of 2009, in the
above captioned matter, and appears to the court that this matter is well taken and
should issue. The court finds said Respondent is entitled to the relief requested.

SO ORDERED.

SIGNED this _____ day of _____, 2014

Circuit Court Judge for Lancaster County or

Clerk of Court Lancaster County, Lancaster South Carolina

_____, 2014
Lancaster Special Referee

HENCEFORWARD
SHALL BE
FREE
EMANCIPATION
PROCLAMATION
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SC RESIDENTIAL-Lease/Rent AGREEMENT

SC Code of Law § 27-40-210 General definitions § 27-40-220,(1-18)& CCP §1161a; §1161b; Dodd-Frank Wall Street Reform and Consumer Protection Act §1484(2)

We Agree That on June 22, 2010

WKFC LIVING TRUST TTEE & ASSIGNS

(Landlord's Name(s))

Leases To

(1) Ms. Ziraili M. Elbey, Tenant

30 YR Lease

(Tenant's Name)

(2) _____

(Tenant's Name)

The Following Premises & Property Description To Be Used For Private Residential Purposes Only
All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office for the Clerk of Court for Lancaster County, South Carolina.

Address: 13132 Wilburn Park Lane, Indian Land, South Carolina 29707

For A 30 Year Term

Beginning June 22, 2010, and

Ending June 22, 2040

Thirty Year Term

Beginning June 22, 2010

(a) **JOINT AND SEVERAL TENANCIES:** If more than one person signs this bona fide possession lease/renter as a Tenant, their obligations are joint and several. This means that each person is responsible not only for his or her individual obligations, but also for the obligations of all other Renters. This includes paying rent (see footnote #1) and performing all other terms of this lease/rent agreement. A judgment entered against Tenant(s) does not bar an action against the others.

(b) **RENT¹:** Tenant must pay Landlord, as rent "other consideration agreed" for the entire term, as a tenant equal to a fair market value agreed is \$ 610.00 by both parties each month being 1st each month, beginning June 22, 2010. Rent is to be paid by mail to: WKFC LIVING TRUST at 338 South Sharon Amity Road, Charlotte, North Carolina 28211.

(c) **SECURITY DEPOSIT:** Tenant must pay Landlord \$100.00, which Landlord holds as a security deposit for Tenant's performance of all the terms of this lease. The security deposit must be deposited at the following financial institution and may be mingled with the security deposits of Landlord's other tenants:

NOTICE:

You must notify your landlord in writing within 10 days after you move of a forwarding address where you can be reached and where you will receive mail; otherwise your landlord shall be relieved of sending you an itemized list of damages

Exhibit #1

SC RESIDENTIAL-Lease/Rent AGREEMENT

SC Code of Law § 27-40-210 General definitions § 27-40-220,(1-18)& CCP §1161a; §1161b; Dodd-Frank Wall Street Reform and Consumer Protection Act §1484(2)

and the penalties adherent to that failure.

(d) **NONREFUNDABLE CLEANING FEE:** Tenant must pay a nonrefundable cleaning fee of \$100.00 at the beginning of the lease term.

(e) **OCCUPANCY:** If more than two persons occupy the premises, the Landlord may terminate this tenancy or assess additional rent of \$100.00 for each additional person. **Occupancy must not exceed the number mandated by local ordinance.** Tenant may accommodate guests for reasonable periods (up to 1 month); other arrangements require Landlord's consent.

(f) **SLEEPING ROOMS:** Basements, attics, and other rooms must not be used as sleeping rooms if they do not comply with the local ordinance for windows, minimum square footage, exits, and ventilation. This is meant to protect Tenant's health and safety. **The following areas may not be used as sleeping rooms:** deck, front porch, library, kitchen, office area or dining room.

(g) **KEYS/LOCKS:** Tenant will receive 2 keys from the Landlord. On or before the termination of this lease, Tenant must return all keys or Tenant will be charged \$50.00 for changing the locks. If Tenant loses the keys or gets locked out of the premises, Tenant is responsible for locksmith and replacement of keys. Tenant must never gain entrance to the premises by force through a window or door, or otherwise without a key. Tenant must not change or add locks without Landlord's written consent.

(h) **CONDITION OF PREMISES AT THE BEGINNING OF TENANT'S OCCUPANCY: "Excellent"**

In excellent condition, lawn care front and back, deck pressured washed and stained, hedges trimmed.

(i) **APPLIANCES AND OTHER FURNISHINGS PROVIDED:** Tenant must not remove or loan any item provided with the premises. Landlord will provide the following items: Washing machine & Dryer, freezer, refrigerator, inside and outside plants and outdoor and indoor furniture irrigation system, ceiling fans, alarm system and furniture.

Landlord *will not* replace any damaged appliances as that is not part of lease/rental agreement, however will replace the roof with a written request from tenant/s.

(j) **SMOKE DETECTORS:** Tenants must install smoke-detection devices as required by law. The premises Currently contains 2 smoke-detection and 2 carbon monoxide devices, all working satisfactorily. Once the tenancy begins, Tenant must regularly test the detectors to ensure that they are working. Tenant must never remove the battery from the smoke-detection and other devices except when necessary to replace it. Tenant must inform the Landlord immediately of any defect or malfunction in its operation.

(k) **ALTERATIONS:** Tenant must not alter the premises without the Landlord's consent except what is already there (e.g., painting, wallpapering, installing locks). Landlord will discuss with Tenant a preferred method of hanging pictures and posters. Tenant is responsible for damage to the walls beyond reasonable wear and tear. Agreed alterations: Floors and Painting of home inside and outside.

(l) **REPAIRS AND MAINTENANCE:** Landlord must provide and maintain the premises in a safe, habitable, and fit condition. Landlord will replace roof upon written request from tenant. **Tenant must notify Landlord IMMEDIATELY, BY PHONE at 704-309-4101 of any gas leaks, electrical problems, water damage, or serious structural damage.** Tenant must notify Landlord, of all other problems needing repair. Landlord must make all repairs to the premises that, in Landlord's sole judgment, are required by law. Landlord must make every effort to do so within a reasonable time. Whenever repairs are delayed for reasons beyond the Landlord's control, the tenant's obligations are not affected, nor does any claim accrue to Tenant against the Landlord. Landlord must maintain those things requiring periodic maintenance (e.g., heating, air conditioning, cracked windows).

SC RESIDENTIAL-Lease/Rent AGREEMENT

SC Code of Law § 27-40-210 General definitions § 27-40-220,(1-18)& CCP §1161a; §1161b;Dodd-Frank Wall Street Reform and Consumer Protection Act §1484(2)

(m) PIPE-FREEZE PREVENTION: If Tenant plans to be away from the premises for any length of time, the heat must be left on during the cold season and the windows closed to avoid broken pipes and water damage.

(n) REPAIRS DUE TO TENANT'S NEGLIGENCE: Damage to the premises caused by Tenant's negligence, or their guest's or invitee's negligence, whether by act or omission, will be repaired by Landlord and charged to the Tenant. Whenever repairs are delayed for reasons beyond Landlord's control, Tenant's obligations are not affected, nor does any claim accrue to the Tenant against Landlord. Tenant must immediately pay the repair costs as additional rent. If Tenant fails to do so, Landlord may take legal action to recover any unpaid rent.

(o) LANDLORD'S RIGHT OF ENTRY: Landlord, or Landlord's agent, may enter the premises at reasonable times, with 72-hours notice to the Tenant, to examine, protect, make repairs or alterations, Landlord may not enter the property at anytime to show property without renter's permission as this is a 30 year lease/rental agreement used as a private residence. In emergency situations, Landlord is required to give Tenant notice. If emergency entry occurs, Landlord must, within 5days, notify Tenant of the date, time, and reason for the entry.

(p) USE OF THE PREMISES: Tenant must use the premises for private residential purposes only. Tenant must not do any of the following, or allow someone else to do any of the following:

- ☐ Harass, annoy, or endanger any other tenant or neighbor, or their guests, or create any excessive noise or public nuisance,
- ☐ Do anything to the structure or its surroundings that may be hazardous or that will cause Landlord's insurance to be cancelled or premiums to increase,
- ☐ Keep any flammable or explosive materials or any dangerous, hazardous, or toxic substance in or around the premises,
- ☐ Deface or damage, or allow another to deface or damage, any part of the premises,
- ☐ Change the locks or install any additional locks or bolts without Landlord's written consent,
- ☐ Place a waterbed or other heavy article on the premises without Landlord's written consent,
- ☐ Pour any commercial anti-clogging agent into the sink or drain that may harm the water pipes, or
- ☐ Install any antenna or satellite without Landlord's written consent.

(q) PETS: Dogs, cats, or other pets are allowed on the premises as agreed no Landlord's consent necessary. If Landlord's consent is given; Tenant agrees to pay a nonrefundable pet fee of **\$50.00**.

(r) PEACEFUL AND QUIET USE OF PREMISES: In exchange for Tenant's timely payment of rent and Performance of all the terms of this lease, Landlord must provide peaceful and quiet use of the premises Throughout the tenancy.

(s) SUBLET AND ASSIGNMENT: Tenant must not sublet the premises or assign any interest in this lease Without Landlord's consent (not to be unreasonably withheld). If Landlord gives written consent, Landlord must also provide Tenant with an appropriate sublease form.

(t) RENTER'S INSURANCE: Tenant is strongly advised to carry renter's insurance on his or her personal Property (e.g., clothing, furniture, household items). Landlord is not responsible for damage to Tenant's Personal property, unless Landlord's negligence or intentional act or omission causes the damage.

(u) LEASE ADDENDUM, RULES, AND REGULATIONS:

Additional pages or rules and regulations, signed by all parties, are incorporated as part of this thirty, 30 year lease/rental agreement, and Landlord must provide copies to the Tenant.

(v) MISCELLANEOUS COSTS AND OBLIGATIONS: Check the appropriate boxes below:
Dictates.

SC RESIDENTIAL-Lease/Rent AGREEMENT

SC Code of Law § 27-40-210 General definitions § 27-40-220,(1-18)& CCP §1161a; §1161b; Dodd-Frank Wall Street Reform and Consumer Protection Act §1484(2)

Not Applicable must water the lawn.
Not Applicable must remove snow and ice from the driveway, parking Area, walkway, and steps.
Not Applicable must mow the lawn.
Not Applicable must rake the leaves
Not Applicable must dispose of all trash by placing in a designated area
Tenant pays for electricity.
Tenant pays for water and sewage.
Tenant pay for gas bill
Tenant pay for bimonthly exterminator Bulwart
Tenant pay for garbage collection
Tenant pays for tree or leaves trash removal.

(w) BREACH OF LEASE AND RIGHT TO RE-ENTER AND REGAIN POSSESSION: If Tenant fails to perform as a business consultant, or pay in some consideration non-currency rent or violates any other term of this lease, Landlord may terminate the tenancy, re-enter the premises, and regain possession in accordance with the law. If Landlord violates any term of this lease, Tenant may terminate the tenancy.

(x) CONDITION OF THE PREMISES AT THE END OF TENANT'S 30 YEAR OCCUPANCY: At the end of Tenant's occupancy, Landlord must complete a termination inventory checklist to assess damages that Landlord claims were caused by the Tenant. This includes unpaid rent, unpaid utilities, and damages beyond reasonable wear and tear. Tenant may ask to be present when the termination inventory checklist is to be completed. Landlord must mail to the Tenant, within 30 days of Tenant's termination of occupancy, an itemized list of damages claimed for which the security deposit may be used—provided, of course, that the Tenant has given a forwarding address.

(y) END OF 30 YEAR LEASE TERM: When the lease term ends, Tenant must promptly vacate the premises, remove all personal property and return all keys. Tenant must dispose of all trash and leave the premises clean.

(z) CHANGES TO THIS LEASE: This lease, and any additional pages or rules and regulations incorporated, contains the entire agreement between Landlord and Tenant; no oral agreement is valid. Changes to the terms of this Lease must be in writing, signed by all parties.

(aa) ENFORCEMENT OF LEASE PROVISIONS: Failure to strictly enforce any provision of this lease, by either the Landlord or the Tenant does not constitute acceptance of a change in its terms. Landlord and Tenant are still obligated to perform as indicated in this thirty (30) Year lease.

(bb) ADDITIONAL PROVISIONS: If for any reason this property goes into foreclosure in the future, after May 26, 2010, the tenant/s are held harmless, and free from intrusion. At which time, a NOTICE OF NON-ABANDONMENT will be filed at the county seat indicating that this property is homestead land, improvements thereon and therein, have not and will NOT be abandoned by landlord, secured interest party, nor any of its heirs or assigns and/or through any simulation of a legal process as under color of law, color of authority, and/or color of title or overlay or by the sale of the legal description known as:

Also being shown as Lot 261 of Clairemont on a Plat and Land Patent of Ziraili Elbey prepared by Precision Surveying Incorporated, No. - CO1244 of Lancaster, SC dated April 21, 2010, and recorded in Plat Doc 2010 at Page 180. This being the identical property conveyed to Ziraili M. Elbey by deed from the Ryland Group, Inc being the same property shown on 2006 at Page 198 and recorded in Deed Book 370 at Page 10 in the Office of the Clerk of Court for Lancaster County with current tax map number at 6M-A-261.

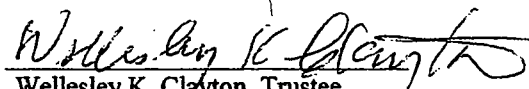
This RESIDENTIAL-30 YEAR LEASE/RENTAL AGREEMENT is signed on June 22nd, 2010.

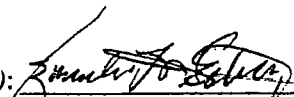
SC RESIDENTIAL-Lease/Rent AGREEMENT

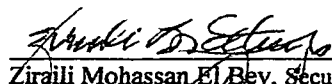
South Carolina Code of Law § 27-40-210 General definitions § 27-40-220, (1-18)

This RESIDENTIAL-30 YEAR LEASE/RENTAL AGREEMENT is signed on June 22nd, 2010.
I have read it, understand it, and voluntarily agree to it. Further, I am mentally
competent and 18 years or older.

Landlord's Signature(s): 
WKFC LIVING TRUST

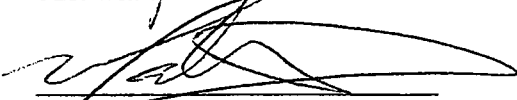

Wellesley K. Clayton, Trustee

Tenant Signature(s): 
Ziraili M. Elbey, Thirty (30)YR Tenant,
& Bonae Fidei Possessor


Ziraili Mohassan El Bey, Secured Party Interest

Date: 06/22/2010 
First Witness

Date: 06/22/2010 
Second Witness

Date: 06/22/2010 
Third Witness

Your Rights Under the Protecting Tenants at Foreclosure Act

Are you a renting a house that is in foreclosure or has been foreclosed?

Under the Protecting Tenants at Foreclosure Act (PTFA) a new owner needs to end your tenancy by giving you a 90-day notice to leave. If you have an unexpired lease, you may be able to stay until the end of the lease unless the **new owner will live in the property**. In that case, you can be required to leave after the new owner gives the 90-day notice.

It does not matter if your lease is **written, oral or is month to month**, so long as the lease is one that is recognized by of your state.

The PTFA protects any legitimate rental arrangement created before title to your home changed as a result of the foreclosure.

The 90 day period **begins** when the person or entity that acquires the title to your home provides you with the required notice. The **form of the notice** is defined by local law.

There are some limits on the tenants that can be protected under the PTFA.

- The **former owner of the property, and that former owner's spouse, children and parents** are not protected by the PTFA.
- The rent paid by the tenant cannot be **substantially less** than that paid for similar properties in the area, unless the rent is reduced because of a federal or state rent subsidy.
- The lease or rental arrangement must be an **arm's length transaction** which means that rental terms that are outside the ordinary, such as long contracts, pre-paid rents, etc., may be subject to additional scrutiny.

What if I am a Section 8 housing choice voucher holder?

If you are renting your home using a Section 8 voucher, you also have the right to remain in your home and the new owner must accept the Section 8 payment. If you have a Section 8 voucher you should contact the agency that issued your voucher for more information.

What can I do if the new owner says I have to leave in less than 90 days?

You can send a letter telling the new owner about the law. Make sure that you keep a copy of the letter you send and it may help to go to the post office and pay for a return receipt to make the new owner sign to prove they got your letter. If you get a return receipt, be sure to keep the green receipt signed by the new owner. You should also offer to pay the new owner your rent.

What if the new owner files an eviction?

You should file an answer with the court that says the new owner failed to give the notice required by the Protecting Tenants at Foreclosure Act, Pub. L. No. 111-22, §702 (2009) and go to court on the date the court sets for a trial. You should take to court the copy of your letter to the new owner, the green return receipt, if you received one, a copy of your lease, if you have one, and a copy of the law that is on the back of this brochure.

Because the protections of the PTFA will differ with the laws of the applicable state and locality and individual facts, it is very important that you seek legal advice.

For more information go to www.nlihc.org or contact:

Your Rights Under the Protecting Tenants at Foreclosure Act

Public Law 111-22, (May 20, 2009)

TITLE VII—PROTECTING TENANTS AT FORECLOSURE ACT (PTFA)¹

SEC. 701. SHORT TITLE.

This title may be cited as the 'Protecting Tenants at Foreclosure Act of 2009'.

SEC. 702. EFFECT OF FORECLOSURE ON PREEXISTING TENANCY.

(a) In General- In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90 day notice under subsection (1),

except that nothing under this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) Bona Fide Lease or Tenancy- For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) Definition- For purposes of this section, the term 'federally-related mortgage loan' has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602). For purposes of this section, the date of a notice of foreclosure shall be deemed to be the date on which complete title to a property is transferred to a successor entity or person as a result of an order of a court or pursuant to provisions in a mortgage, deed of trust, or security deed.

SEC. 703. EFFECT OF FORECLOSURE ON SECTION 8 TENANCIES.

Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) is amended—

(1) by inserting before the semicolon in subparagraph (C) the following: 'and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner—

(i) will occupy the unit as a primary residence; and

(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.';

and

(2) by inserting at the end of subparagraph (F) the following: 'In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602)) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not affect any State or local law that provides longer time periods or other additional protections for tenants.'

SEC. 704. SUNSET.

This title, and any amendments made by this title are repealed, and the requirements under this title shall terminate, on December 31, 2014.

¹ The PTFA was clarified and extended in section 1484 of P.L. 111-203 (July 21, 2010).

**NOTICE: PUBLIC AND PRIVATE AND TO
ANY AND ALL AGENTS, AGENCIES,
EMPLOYEES, OR OTHER FICTITIOUS PERSONS**

Return to:
Wellesley K. Clayton, Trustee & Administer
of KMJ [IRREVOCABLE] TRUST
& WKFC [IRREVOCABLE] TRUST
338 West Sharon Amity, #332
Charlotte, NC 28211

2013016507

AFFIDAVIT
RECORDING FEES

\$11.00

PRESENTED & RECORDED:

10-28-2013 11:34 AM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK: DEED 762

PG: 293-297

file in Case # 2011-CP-29-00035

**AFFIDAVIT AND NOTICE OF NON-ABANDONMENT
AND SECURED INTEREST OF PROPERTY**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, Wellesley K. Clayton, Trustee of WKFC TRUST and Trustee of KMJ [IRREVOCABLE] TRUST, and Ziraili M Elbey, Tenant/Lease/Renter does hereby give **NOTICE OF NON-ABANDONMENT** that the homestead land, improvements thereon and therein, have not and will NOT be abandoned by secured interest party, nor any of its heirs or assigns and/or through any simulation of a legal process as under color of law, color of authority, and/or color of title or overlay or by the sale of the legal description known as:

All pieces being shown as Lot 261 of Clairemont on a Plat and Land Patent of Ziraili Elbey prepared by Precision Surveying Incorporated, No. -CO1244 of Lancaster, SC dated April 21, 2010, and recorded in Plat Doc 2010 at Page 180. This being the identical property conveyed to Ziraili M. Elbey by deed from the Ryland Group, Inc being the same property shown on 2006 at Page 198 and recorded in Deed Book 370 at Page 10 in the Office of the Clerk of Court for Lancaster County with current tax map number at 6M-A-261.

The street address or other common designation, if any, of the real property described above is purported to be 13132 Wilburn Park Lane, Indian Land, South Carolina 29707

The security interest in this affidavit and non-abandonment notices is itemized in the 1099 and itemized in the **Expense Ledger** annexed hereto as though stated in it entirely herein. The securing of our claim: 7 years, 7 months, and 29 days in the amount of \$ 771,562.00. All costs of maintenance, remodeling, repair, additions to the property including, but not limited to: payments, property improvements, and legal cost. The undersigned reserves all rights to adjust the sum to reflect further improvements or expenses. No word or action, notice, and/or writing can be construed to imply the granting of any power of attorney, waiver of rights, or assignment of title to NAME and/or private homestead land improvements therein and thereon as inheritance and reinstatement of claim of rights. The undersigned is the holder in due course and secured party.

AFFIDAVIT

Exhibit # 2

5 pgs

Plaintiff, Ziraili-Mohassan: Elbey, indigenous, natural born woman, on the land, *In Propria Persona* (not "Pro Se" [sic]) of South Carolina in its de jure capacity as a republic and as one of the several states of the union created by the constitution for the united States of America 1777/1789. This incidentally makes me an American aboriginal and a common woman of the UN Rights of Indigenous People, does swear and affirm that Plaintiff has scribed and read the foregoing facts, and in accordance with the best of Plaintiff's firsthand knowledge and conviction, such are true, correct, complete, and not misleading, the truth, the whole truth, and nothing but the truth.

FILED
OFFICE OF CLERK
OF COURT

2013 OCT 30 PM 12:22

OFFICE OF CLERK
OF COURT
LANCASTER, SC

165

**NOTICE: PUBLIC AND PRIVATE AND TO
ANY AND ALL AGENTS, AGENCIES,
EMPLOYEES, OR OTHER FICTITIOUS PERSONS**

Declaratory Relief, Damage Counterclaims and Recoupment arise from the conduct of Lien Bank/Debtors named and unnamed in regards to their conduct doing business as **OPTION ONE MORTGAGE CORPORATION (SAND CANYON CORPORATION), AMERICAN HOME MORTGAGE SERVICING, SPECIALIZED LOAN SERVICING, H & R BLOCK BANK, FSB and Assigns, OTHERS named , & unnamed.** Govern by State and Federal statutes.

1. Ziraili-Mohassan: family of el beys purchased her home at 13132 Wilburn Park Lane, Indian Land, South Carolina (Rural Routing Code 042) in 2006.
2. Ziraili-Mohassan: family of el beys home is paid-in-full with securitized signature at closing, dated March 29, 2006, Real Property owner, and holder in due course reflected by Mortgage Satisfied at Lancaster County Register of Deeds, South Carolina.
3. Ziraili-Mohassan: family of el beys home has been paid multiple times (a) Instrument # 2006004368, Bk: DEED 329, Pg:170 "Public Law" 73-10: US Statute Chapter 48, Statute Vol. Pg: 112-113 securitized "wet ink" signature \$241,940.00, (b) Specialized Loan Servicing, UCC Assignment Instrument#200901158, Bk: MORG: 2175; Pg:343-350 dated 3/29/2009, amount \$49, 296.00, Mortgage Satisfied(c) H & R Block Bank, FSB servicer, Payoff, UCC Assignment, Instrument#2009014160, Bk: MORT 2176, Pg: 2-9, Amount:\$197,186.00, Mortgage Satisfied, (d) Nationstar Mortgage, LLC servicer, UCC Assignment Instrument #2013000645, Bk: MORT 2600, Pg: 270-280, dated 01-14-2013, Amount \$241,940.00, (d) Mortgage Satisfied
4. Ziraili-Mohassan: family of el beys has maintained said home and property by the sweat of their brow creating a financial interest in said property(s)
5. Ziraili-Mohassan: family of el beys entered into a mortgage with **OPTION ONE MORTGAGE CORPORATION** on or about March 29, 2006.
6. **OPTION ONE MORTGAGE CORPORATION** altered the document after it was signed with intent of changing its value.
7. **OPTION ONE MORTGAGE CORPORATION** committed fraud and forgery by altering the documents on the mortgage and mortgage loan to include a new signature.
8. **OPTION ONE MORTGAGE CORPORATION** by deception has taken an asset not theirs, deposited the asset, multiplied the asset and exchanged the asset for an alleged Option One Mortgage Loan Trust 2007-1, Asset-Backed Security, Asset-Backed Certificates in a Trust Agreement with Wells Fargo, NA as Trustee of the Pooling & Service Agreement.
9. **OPTION ONE MORTGAGE CORPORATION** increased its assets by depositing the asset, a Plaintiff's note.
10. **OPTION ONE MORTGAGE CORPORATION** used the deposited Plaintiff's note to create the Federal Reserve Notes that funded the purported loan.
11. **OPTION ONE MORTGAGE CORPORATION** never disclosed this fact and did not issue a receipt to claimant for the deposited Plaintiff's note.
12. **OPTION ONE MORTGAGE CORPORATION** never loaned any of its or its depositors' money in the purported loan transaction.
13. **OPTION ONE MORTGAGE CORPORATION** follows Generally Accepted Accounting Practices (GAAP).
14. **OPTION ONE MORTGAGE CORPORATION** has failed to provide valuable consideration.
15. **OPTION ONE MORTGAGE CORPORATION** has failed to provide full contract disclosure.
16. **OPTION ONE MORTGAGE CORPORATION** has sold said contract to **AMERICAN HOME MORTGAGE SERVICING**, and again transferred an assignment to **H & R BLOCK BANK** and

**NOTICE: PUBLIC AND PRIVATE AND TO
ANY AND ALL AGENTS, AGENCIES,
EMPLOYEES, OR OTHER FICTITIOUS PERSONS**

others named & unnamed, who have acted in concert and with full knowledge of the fraud and forgeries committed by OPTION ONE MORTGAGE CORPORATION, and accepted the Plaintiff's note with full liabilities of the same.

17. H & R BLOCK BANK, FSB, initial complaint according to SC Secretary of State with "Certificate of No Record" never registered to do business in South Carolina.
18. H & R BLOCK BANK, FSB, never no standing to sue.
19. H & R BLOCK BANK, FSB, is not the owner of the property, holder in due course, real property owner.
20. Ziraili-Mohassan: family of el beys is the real property owner, holder, settler, grantor as reflective in Mortgage Satisfied Deed at Lancaster County SC Register of Deeds.

Proof of Declaratory Relief, Injunctive Relief, Damage Counterclaims and Recoupment:

1. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that Ziraili-Mohassan: family of el beys brought and purchased her home in 2006. If no timely rebuttal it is AFFIRMED.
2. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that Ziraili-Mohassan: family of el beys has maintained their property(s) by the sweat of their brow and has obtained financial interest in said property(s). If no timely rebuttal it is AFFIRMED.
3. Defendants' Defendants' Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and it's Assigns, affirm that Ziraili-Mohassan: family of el beys entered into a mortgage with OPTION ONE MORTGAGE CORPORATION in 2006. If no timely rebuttal it is AFFIRMED.
4. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and it's Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage loan ("loan pool"), altered a documents after they were signed with intent of changing its value. If no timely rebuttal it is AFFIRMED.
5. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage loan, committed fraud and forgery by robo-signing mortgage assignments and altering documents. If no timely rebuttal it is AFFIRMED.
6. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and it's Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage loan, and by deception has taken an asset not theirs, deposited the asset, multiplied the asset and exchanged the asset for Option One Mortgage Loan Trust 2007-1, Asset-Backed Security, Asset-Backed Certificates in a Trust Agreement with Wells Fargo, NA as Trustee of the Pooling & Service Agreement If no timely rebuttal it is AFFIRMED.
7. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and it's Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's loan, increased its assets by depositing the asset, Plaintiff' note. If no timely rebuttal it is AFFIRMED.
8. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage loan, and used the deposited Plaintiff's note to create the Federal Reserve Notes that funded the purported loan. If no timely rebuttal it is AFFIRMED.
9. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and it's Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage

**NOTICE: PUBLIC AND PRIVATE AND TO
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loan, and never disclosed this fact and did not issue a receipt to the claimant for the deposited Plaintiff's note. If no timely rebuttal it is AFFIRMED.

10. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage loan, and never loaned any of its or its depositor's money in the purported loan transaction. If no timely rebuttal it is AFFIRMED.
11. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that OPTION ONE MORTGAGE CORPORATION follows Generally Accepted Accounting Practices (GAAP). If no timely rebuttal it is AFFIRMED.
12. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that the OPTION ONE MORTGAGE CORPORATION has failed to provide contract consideration If no timely rebuttal it is AFFIRMED.
13. Defendants' Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns affirm that OPTION ONE MORTGAGE CORPORATION securitized Plaintiff's mortgage loan and has failed to provide full contract disclosure. If no timely rebuttal it is AFFIRMED.

NOTICE is hereby given that Bank Lien Debtors, Third-Party Agents, Attorney-in-Fact, and its Assigns acquiesced since November 19, 2012. They never submitted in writing or verbal an Affidavit of Obligation to rebut, deny, or otherwise prove invalid the above allegations by verified affidavit. Failures to rebut, deny, or otherwise prove any allegation will be construed to be failure to rebut, deny, or otherwise prove all allegations. So be it.

Expense Ledger Special Damage Counterclaims below, but not limited to:

\$35,000.00	=	Sweat equity (7 years maintenance and care @ \$5,000 per year)
\$ 475.00	=	Service of Process & FedEx, US Postage (years 2011-Present)
\$ 225.00	=	Motion Fee
\$ 5,500.00	=	Labor, Pleading Research & Writing, Ink, Supplies, & Title Search
		Technical Assistance, Gas, Attorney Fees
\$ 241,940.00	=	Securitized "wet ink" Signature, March 29, 2013
\$ 488,422.00	=	UCC1 Mortgage Payoff Assignments Years 2009 & 2013[both
		[both first and second mortgages to different banks]
\$???,??? .00	=	Valuable Consideration
Total \$ <u>771,562.00</u>		

**NOTICE: PUBLIC AND PRIVATE AND TO
ANY AND ALL AGENTS, AGENCIES,
EMPLOYEES, OR OTHER FICTITIOUS PERSONS**

Dated this 28th day of October 2013

Wellesley K. Clayton, Managing Trustee Administer of KMJ and WKFC [IRREVOCABLE] TRUST Administer,
and Ziraili M Elbey, Tenant/Lease/Renter of property located at 13132 Wilburn Park Lane, Indian Land,
SC 29707

"Without recourse"

By: W.K. Clayton W.K. Clayton Ziraili M Elbey
Wellesley K. Clayton, TTEE KMJ TRUST Wellesley K. Clayton, TTEE WKFC TRUST Ziraili M Elbey, Tenant/Lease/Renter

First Witness

Second Witness

JURAT

STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF YORK)

Willie L. Priester II
803-547-7861
Wells Fargo Bank, N.A.
AU 68264

1 4
D330 10
COID 367

On this 28th day of October, 2013, and Wellesley K. Clayton, Managing
Trustee Administer of WKFC [IRREVOCABLE] TRUST & Managing Trustee Administer of KMJ
[IRREVOCABLE] TRUST and Ziraili M Elbey, Tenant/Lease/Renter are duly sworn, and appeared
before me known Notary Public in and for said York County and South Carolina State, who
acknowledged that they executed the above as their sworn executed act and deed.

Willie Lee Priester II
Notary

My Commission Expires April 15, 2023



WILLIE LEE PRIESTER II
NOTARY PUBLIC
SOUTH CAROLINA

MY COMMISSION EXPIRES APRIL 15, 2023

AFFIDAVIT OF TRUTH

ACTUAL CONSTRUCTIVE NOTICE

CERTIFIED MAIL

Thomas A. Shook, SC Bar #68340
FINKEL LAW FIRM LLC
CHARLESTON FORECLOSURE Office
400 Faber Place Drive, Suite 450
P.O. BOX 71727 (29415)
North Charleston, SC 29405

First Attempt 01/14/2014
Second Attempt _____
Third Attempt _____
Fourth Attempt _____

Page | 1

RE: NOTICE TO VACATE PROPERTY – 13132 WILBURN PARK LANE, Indian Land
– FILE NO. 43540:e436898

TO WHOM IT MAY CONCERN:

The above notice to vacate property was received on 13th January 2014 at the above address. I do not know who you are or what your intent is. Let the record show that I as a bona fide renter refused to contract with your Law firm called FINKEL located in the Charleston Foreclosure Office, 400 Faber Place Drive, Sue 450, North Charleston, SC 29405.

Yes, I am a bona fide renter of the above mentioned property as defined under SC Code of Law , §27-40-210 General definitions § 27-40-22-(1-18) & CCP §1161a §1161b; Federal Law (Dowd-Frank)Wall Street Reform and Consumer Protection Act §1484(2). I contacted the owner, and he does not know you. He did say that several law firms and mortgage companies have sent notices to the above address, but did not own the property. The property owner stated that H & R Block Bank, FSB was not the owner of the property according to the SC Secretary of State office[see exhibit A], H & R Block Bank, FSB are not registered to conduct business in the state of South Carolina ["No Record Found"]. The owner further stated that Brock & Scott Law Firm in Columbia, SC has perpetrated a fraudulent foreclosure. In addition to that, he stated that Brock & Scott, Law Firm also said that another mortgage company named Nationstar Mortgage LLC, 350 Highland Drive, Lewisville, TX 75067 was also as the owner of the above mentioned property.

Who is the owner of the property?

- ☐ H & R Block Bank, FSB
- ☐ Nationstar Mortgage LLC
- ☐ Block & Scott Law Firm, Third Party Debt Collectors
- ☐ Ziraili M Elbey, Mortgage Satisfied, Property Owner

Exhibit #3

6 pgs

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AFFIDAVIT OF TRUTH ACTUAL CONSTRUCTIVE NOTICE

AFFIDAVIT OF TRUTH ACTUAL AND CONSTRUCTIVE NOTICE

NOTICE OF REQUEST FOR COMPLETE RELEASE OF FORECLOSURE ACTION OBTAINED THROUGH CONSTRUCTIVE FRAUD, PLUS DAMAGES, UNDER APPLICABLE UNIFORM COMMERCIAL CODE, COMMON LAW, CONSTITUTIONAL LAW, AND OTHER AFFIDAVIT OR CASE LAW EVIDENCE IN SUPPORT THEREOF, AND RESCINDING OF ANY SIGNATURE ON ANY CONTRACT OR AGREEMENT ENTERED INTO WITH THE BANK OR ANY AGENCY OF THE U.S. GOVERNMENT, THROUGH THEIR CONSTRUCTIVE FRAUD, FICTION OF LAW AND UNDER NON-DISCLOSURE OR WITHOUT FULL DISCLOSURE

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Please take NOTICE that I hereby add the following facts of law in support of this Affidavit of Truth and request for refund and damages through which the BANK, Third Party Debt Collectors, Mortgage companies and all related co-conspirers are **officially being placed on Actual and Constructive Notice**, and request this affidavit and attachments be added to placed on file.: This is additional legal evidence of non-disclosure or lack of FULL disclosure of related facts by this law firm and other parties, and their continued constructive fraud against me as a bona fide renter.

1. That I am woman Minister Ziraili Mohassan El Bey©™ signed a lease/renter's agreement as a tenant with the landlord 6/2010.
2. That I am woman Minister Ziraili Mohassan El Bey©™ occupied this property as a renter since June 22, 2010 to present.
3. That I am woman Minister Ziraili Mohassan El Bey©™ maintained the upkeep of this property as a tenant since 2010.
4. That I am woman Minister Ziraili Mohassan El Bey©™ as bona fide tenant/renter have met the terms of the lease/rental agreement and other valuable considerations equal to a fair market value as agreed by both parties on a monthly basis.

By: [Signature]
Bona Fide Renter - Minister Ziraili Mohassan El Bey©™

First Witness: [Signature] Second Witness: [Signature]

State of South Carolina)
)ss
County of Lancaster)

On this, the 15th day of January, 2014, before me a notary public, the undersigned duly sworn/affirm personally appeared Ms .Ziraili Mohassan El Bey©™, Tenant/Renter & Secured Party Creditor known to me to be the person whose name is subscribed to the within instrument, and acknowledged that this affidavit is true to the best of her knowledge and belief.

[Signature]
NOTARY SIGNATURE

DATE: 1/15/14

COMMISSION EXPIRE: April 15, 2023



SEAL
WILLIE LEE PRIESTER II
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES APRIL 15, 2023

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AFFIDAVIT OF TRUTH

ACTUAL CONSTRUCTIVE NOTICE

WHY IS IT IMPORTANT TO KNOW THE CORRECT PARTY, TRUE OWNER OF THE DEBT?

Multiple parties and/or wrong parties are attempting to illegally foreclose nationwide by using a forged Assignment of Security Instrument (assigning title) to a wrong entity with the intent of using it as a cover-up because either:

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- a) the real owner is unknown because of lost or destroyed documents, or
- b) the real owner does not want to be known and is using a law firm to aid and abet the cover up, or
- c) there are multiple owners (investors) because the promissory notes have been bundled together to create a tax-free investment, and investors have bought certificates or bonds (like shares of stock).

Regarding (c), sale of promissory notes into **tax-free investments: this resulted** in the change in ownership of the debt several times, following a very strict sequence that could not be circumvented.

Further, regarding (c), the sale of promissory notes into tax-free investments, very strict, elaborate contracts (called Pooling and Servicing Agreements, or "P.S.A.") were signed to ensure the compliance with IRS tax rules. The reason? The investments would be tax-free and billions of dollars would be exempt from IRS taxation if all requirements were met, thus the reason for strict compliance with the P.S.A. agreements.

WHAT ENTITY HAS THE LEGAL RIGHT TO FORECLOSE? SECURED CREDITOR

As ownership of the debt has been transferred multiple times, it is critical that the homeowner and the land and deed records know the identity of the correct owner.

With multiple parties and/or wrong parties attempting to illegally foreclose in Georgia and nationwide, the understanding of this term is critical:

Basic definition of a Secured Creditor in the arena of foreclosure:

The entity which a) holds the security instrument, b) holds all properly and legally executed Assignments of the security instrument to the true creditor, and c) owns the debt by purchase and consideration of said debt.

In other words, when Party A sells the promissory note (debt) to Party B (new "creditor") which sells the note to Party C (next new creditor) and so on, the **Security Instrument must travel with the note** in order for the creditor to remain "secured".

The security instrument (which can be a **security deed, deed of trust, or mortgage**, depending on the state – *South Carolina uses a mortgage*) is the document which allows the true "secured creditor" to sell the property (exercise a "power of sale") in the event of default on the promissory note.

The security instrument, i.e. security deed (the promissory note's "insurance policy" in case of default on the note) is supposed to be transferred at the same time ownership of the debt

AFFIDAVIT OF TRUTH

ACTUAL CONSTRUCTIVE NOTICE

The security instrument, i.e. security deed (the promissory note's "insurance policy" in case of default on the note) is supposed to be transferred at the same time ownership of the debt changes. This is done by creating a document called an "Assignment" which transfers title to the new owner.

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SUPPORTING SC STATUTES

SECTION 29-3-10. Rights and title of mortgagor and mortgagee.

No mortgagee shall be entitled to maintain any possessory action for the real estate mortgaged, even after the time allotted for the payment of the money secured by mortgage is elapsed, but the mortgagor shall be deemed the owner of the land and the mortgagee as owner of the money lent or due and the mortgagee shall be entitled to recover satisfaction for such money out of the land by foreclosure and sale according to law. But notwithstanding the foregoing provision all releases of the equity of redemption shall be binding and effectual in law.

SECTION 30-7-30. Release or satisfaction of lien affecting title to real estate.

A release or satisfaction of the lien of any mortgage or other written instrument affecting title to real property as security for the payment of money, made or entered into by the original mortgagee, trustee or his legal representative, or any assignee under an assignment recorded as provided in Section 30-7-40 shall be good and effectual, both in law and in equity, for the protection of any subsequent purchaser for a valuable consideration of the property affected by such mortgage or other written instrument, or subsequent creditor obtaining a lien upon such property, notwithstanding any assignment or transfer of such mortgage or other written instrument or of the obligation secured thereby, unless such assignment or transfer shall have been recorded as provided in Section 30-7-40 or such purchaser or creditor shall have had actual notice thereof before such purchaser or lien creditor acquired any interest in or claim upon the real estate so encumbered.

SECTION 29-3-310. Request for entry of satisfaction.

Any holder of record of a mortgage who has received full payment or satisfaction or to whom a legal tender has been made of his debts, damages, costs, and charges secured by mortgage of real estate shall, at the request by certified mail or other form of delivery with a proof of delivery of the mortgagor or of his legal representative or any other person being a creditor of the debtor or a purchaser under him or having an interest in any estate bound by the mortgage and on tender of the fees of office for entering satisfaction, within three months after the certified mail, or other form of delivery, with a proof of delivery, request is made, enter satisfaction in the proper office on the mortgage which shall forever thereafter discharge and satisfy the mortgage.

SECTION 29-3-340. Certificate of satisfaction.

The recording officer or his deputy shall enter on the original mortgage, deed of trust, or other instrument securing the payment and being a lien upon real property when it is produced before him a certificate that a satisfaction has been entered of record and the date of the entry.

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AFFIDAVIT OF TRUTH

ACTUAL CONSTRUCTIVE NOTICE

SECTION 29-3-320. Liability for failure to enter satisfaction.

Any holder of record of a mortgage having received such payment, satisfaction, or tender as aforesaid who shall not, by himself or his attorney, within three months after such certified mail, or other form of delivery, with a proof of delivery, request and tender of fees of office, repair to the proper office and enter satisfaction as aforesaid shall forfeit and pay to the person aggrieved a sum of money not exceeding one-half of the amount of the debt secured by the mortgage, or twenty-five thousand dollars, whichever is less, plus actual damages, costs, and attorney's fees in the discretion of the court, to be recovered by action in any court of competent jurisdiction within the State. And on judgment being rendered for the plaintiff in any such action, the presiding judge shall order satisfaction to be entered on the judgment or mortgage aforesaid by the clerk, register, or other proper officer whose duty it shall be, on receiving such order, to record it and to enter satisfaction accordingly. Notwithstanding any limitations under Sections 37-2-202 and 37-3-202, the holder of record of the mortgage may charge a reasonable fee at the time of the satisfaction not to exceed twenty-five dollars to cover the cost of processing and recording the satisfaction or cancellation. If the mortgagor or his legal representative instructs the holder of record of the mortgage that the mortgagor will be responsible for filing the satisfaction, the holder of the mortgage shall mail or deliver the satisfied mortgage to the mortgagor or his legal representative with no satisfaction fee charged.

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SECTION 30-7-60. Assignment, satisfaction, or release of lien.

Except as otherwise provided by statute, assignments, satisfactions, releases, and contracts in the nature of subordinations, waivers, and extensions of landlords' liens, laborers' liens, sharecroppers' liens, and other liens on personal property, created by law or by agreement of the parties, contracts in the nature of subordinations, waivers, and extensions of liens on real property, created by law or by agreement of the parties, made or entered into by the original mortgagee, lien creditor, or trustee, or his legal representative or any assignee under an assignment recorded as herein or otherwise provided, are good and effectual, both in law and in equity, for the protection of any subsequent purchaser for a valuable consideration of the property affected by the mortgage or other instrument or lien created by any subsequent creditor obtaining a lien upon the property, notwithstanding any other assignment, transfer, satisfaction, release, subordination, waiver, or extension contract of the mortgage or other lien, or the obligation secured thereby, unless the other assignment, satisfaction, release, subordination, waiver, or extension contract of the mortgage or other lien or the obligation secured thereby, has been recorded as herein or otherwise provided or the purchaser or creditor has had actual notice thereof before the purchaser or lien creditor acquired any interest in or lien upon the property so encumbered.

Return Mailing Address
9789 Charlotte Highway
Suite 400-191

Ft. Mill, SC 29707

CERTIFIED MAIL

FINKLE LAW FIRM LLC
P.O.BOX 71727
N Charleston, SC 29415
aaK/43540.E43698

1st NOTICE _____

2nd NOTICE _____

3rd NOTICE _____

Common Pleas
Clerk : Jeff L. Hammond
104 N. Main St.
Lancaster, SC 29721
(803) 285-1581

DUPLICATE

Received From: Elbey, Zirali M
9789 Charlotte Hwy Ste 400-191
Ft Mill, SC

Date: 2/20/2014
Receipt #: 26481
Clerk: c29khal

Paying for: Elbey, Ziraili M

Transaction Type: Payment

Payment Type: Cash \$25.00

Total Paid: \$25.00

Reference #:

Comment:

Non-Refundable

Case #	Caption	Previous Balance	Amount Paid	Balance Due
2011CP2900035	H & R Block Bank, FSB VS Ziraili M Elbey , defendant, et al	\$25.00	\$25.00	\$0.00

Total Cases:	1	\$25.00	\$25.00	\$0.00

PROOF OF SERVICE OF TRANSCRIPT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002-373

H & R Block Bank, FSB,

Respondent,

v.

Ziraili M Elbey, a/k/a Ziraili
Mohassan El Bey,

Appellant.

PROOF OF SERVICE

I certify that Brock & Scott, PLLC, Attn: Chad Burgess, 3800 Fernandina Rd, Ste 110, Columbia, South Carolina 29210 have received the original copy of transcript mailed directly from CREEL COURT REPORTING, INC., 1230 Richland Street, Columbia, SC 29201. Service confirmed. I have served the front page of same transcript, by depositing a copy of it in the United States Mail, postage prepaid, on December 02, 2013, addressed to H & R Block Bank, FSB its attorney of record, Brock & Scott, PLLC, Attn: Chad Burgess, 3800 Fernandina Rd, Ste 110, Columbia, South Carolina 29210

December 02, 2013

By: *Ziraili M Elbey*
Ziraili M Elbey, *In Propria Persona*
9789 Charlotte Highway, # 400-191
Indian Land, South Carolina, 29707
(803) 233-2665

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF LANCASTER) C/A No. 2011-CP-29-00035

H&R Block Bank, FSB,

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan)
El Bey, WKFC Living Trust Under Trust)
Agreement Dated June 4, 2010, by and)
through its Trustee, Wellesley K. Clayton)
and American Home Mortgage Servicing,)
Inc., s/b/m to Option One Mortgage)
Corporation,)

Defendants.

COPY

HEARING

Thursday, October 24, 2013
10:30 a.m. - 12:00 p.m.

The hearing before the Honorable Phillip E. Wright, Special Referee for Lancaster County, was taken at 104 N. Main Street, Conference Room B, Lancaster, South Carolina on the 24th day of October, 2013 before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

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APPEARANCES

Chad W. Burgess, Esquire

James Harkey, Associate

Brock & Scott, PLLC

3800 Fernandina Rd., Ste. 110

Columbia, South Carolina 29210

Attorney for the Plaintiff

Also Present:

Zaraili M. El Bey, Defendant, Pro-Se

Wes Clayton, Trustee

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1 **THE COURT:** My name is Phillip Wright. I am a
2 Special Referee appointed in Case 2011-CP-29-
3 35, H&R Block Bank versus Ziraili M. El Bey, in
4 propria persona. Present today at the hearing
5 are a number of people and I'm going to go
6 around the room and ask first Plaintiff's
7 counsel to introduce themselves.

8 **MR. BURGESS:** Good morning, Your Honor. May it
9 please the Court. My name is Chad Burgess. I
10 represent the Plaintiff, H&R Blank -- Block
11 Bank.

12 **THE COURT:** Okay. And the gentleman at the ---

13 **MR. BURGESS:** Your Honor, this is my law clerk,
14 James Harkey. He's here merely as a -- as a --
15 an observer.

16 **THE COURT:** Okay. And I believe the Defendant, Mrs.
17 El Bey is here?

18 **MS. EL BEY:** I am Ziraili Mohassan El Bey --

19 **THE COURT:** El Bey.

20 **MS. ELBEY:** -- and I'm representing the all-caps
21 name of "Ziraili M. El Bey." I am ---

22 **THE COURT:** I'm sorry, I didn't understand what you
23 said.

24 **MRS. EL BEY:** Yes.

25 **THE COURT:** You're representing what?



1 MS. EL BEY: The all-caps name, "Ziraili," all-caps,
2 "M.," initial, "El Bey," the corporate entity
3 that H&R Block and Nations Forward Mortgage,
4 LLC, addresses an all-caps name, but I'm here
5 as an individual.

6 THE COURT: All right. And there's a gentleman
7 seated in the room.

8 MR. CLAYTON: Observer, Wes Clayton.

9 THE COURT: I'm sorry?

10 MR. CLAYTON: Observer, Wes Clayton.

11 THE COURT: Wes Clayton. C-L-A-Y?

12 MR. CLAYTON: T-O-N.

13 THE COURT: T-O-N. Do you intend to testify in the
14 proceeding, Mr. Clayton?

15 MR. CLAYTON: Testify?

16 THE COURT: Do you intend to testify?

17 MR. CLAYTON: No.

18 THE COURT: All right.

19 MR. BURGESS: Your Honor, I don't anticipate there
20 will be any testimony today. This is a motions
21 hearing and ---

22 THE COURT: This is everything. There will be
23 testimony today.

24 MR. BURGESS: Ah.

25 THE COURT: We will finish this case today.



1 MR. BURGESS: Ah.

2 THE COURT: All right?

3 MR. BURGESS: Yes, sir.

4 THE COURT: Now, first, Mrs. El Bey, I want to go
5 back to your statement. You differentiate, for
6 some reason, your name. Can you tell me --
7 explain to me why you are calling yourself by
8 an all-caps name of some nature?

9 MS. EL BEY: For the record and on the record, for
10 this Honorable Court, it's not that I'm calling
11 myself the all-caps name, but any addresses,
12 statements, mortgage, notes, have been in all-
13 caps, not me as a living individual person. I
14 am not an attorney and I'm not real versed in
15 the law, per per (sic), but I am demanding my
16 rights at this time in and not for them to be
17 confused, that my rights and due process of law
18 as an individual are upheld by the oath of
19 office of the Special Referee and the Plaintiff
20 that's being represented here today. That each
21 party agrees to uphold the constitution, the
22 federal constitution, the constitution of South
23 Carolina and not limit to the Bill of Rights,
24 the indigenous rights of United Nations of
25 Indigenous People. So, the all-caps name is



1 now coming before this Court in order to have
2 this action dismissed with prejudice and I will
3 state the following reasons when I'm given
4 time to speak.

5 **THE COURT:** Mr. Burgess, who did you sue in this
6 case?

7 **MR. BURGESS:** Your Honor, the Defendant, Ziraili M.
8 El Bey, the person who signed the note and the
9 mortgage in this action.

10 **THE COURT:** May I see -- May I see the note and
11 mortgage, please?

12 **MR. BURGESS:** Yes, Your Honor, I do have the
13 originals of these documents. Here's the
14 original note and I also have the original
15 mortgage.

16 **MS. EL BEY:** I'd like to see copies of those, too,
17 when you finish.

18 **THE COURT:** Ms. El Bey, I'm looking at a note that
19 is dated -- well, the loan number that is
20 noted is 571007388 and it has a date of 3/29/06
21 on it and is a promissory note in the amount of
22 \$197,186, that has a maturity date of April
23 2036 with the first payment due of May 2006.
24 And on the second page of the note, there is a
25 signature that appears to be a signature made



1 by someone asserting themselves to be Ziraili
2 M. El Bey, bearing Social Security number [REDACTED]
3 [REDACTED].

4 **MS. EL BEY:** I object, Your Honor. That is not my
5 signature but the name is in all-caps, as I
6 indicated earlier.

7 **THE COURT:** I'm going to ask you to look at that
8 document and tell me whether you signed that
9 document.

10 **MS. EL BEY:** For the record, Your Honor, I did not
11 sign this document, as I have indicated in
12 previous pleadings, that the documents have
13 been altered. It does appear to have the all-
14 caps name "Ziraili M. El Bey"; that is correct.
15 And on the allonge that's attached, the all-
16 caps name appear again and that is "Ziraili M.
17 El Bey" on the allonge to the note, which I was
18 not aware of.

19 **THE COURT:** Okay. And I also have a mortgage that
20 is dated March 29th, 2006, recorded in Mortgage
21 Book 1486 at Page 1, in the face amount of
22 \$197,186 and the mortgage is some seven pages
23 long. And on page seven, again, appears a
24 signature above the typed name "Ziraili M. El
25 Bey." I'll ask you if that's your signature.



1 **MS. EL BEY:** Objection, Your Honor, this is not my
2 signature, again, as I have indicated in the
3 past pleadings that these documents have been
4 altered. So let the record reflect, here
5 again, the all-caps name "Ziraili M. El Bey,"
6 it is not my signature.

7 **THE COURT:** All right. Mr. Burgess, do you have any
8 motions that you want the Court to hear before
9 we begin taking testimony on the merits of the
10 case?

11 **MR. BURGESS:** Yes, Your Honor. Back on September
12 the 26th, 2013, we -- our office filed a Motion
13 to Strike the pleadings of Ms. El Bey, along
14 with a Motion for Sanctions against Ms. El Bey.
15 As Your Honor is aware, there is a number of
16 pleadings filed by Ms. El Bey in this action,
17 all of which appear to be as a part of the --
18 what I know to be a Sovereign Citizens group
19 known as the ---

20 **MS. EL BEY:** Objections.

21 **THE COURT:** Ma'am ---

22 **MS. EL BEY:** Objections.

23 **THE COURT:** Ma'am, you are not to speak while
24 someone else is speaking. When the time comes
25 for you to speak, I will let you speak.



1 MS. EL BEY: Okay.

2 THE COURT: But let the attorney make his argument.

3 MS. EL BEY: That's okay.

4 THE COURT: You'll have an opportunity to speak
5 afterwards.

6 MS. EL BEY: That's okay. Thank you.

7 MR. BURGESS: And, Your Honor, our argument is
8 merely, on the face of the documents that Ms.
9 El Bey has presented, these documents are the
10 definition of sham pleadings under the South
11 Carolina statute regarding sham pleadings and
12 our position is that they should be stricken in
13 their entirety under Rule 12(f) of the South
14 Carolina Rules of Procedure. Your Honor, to
15 take it a step further, back in 2011, Ms. El
16 Bey was warned by the South Carolina Court of
17 Appeals. Clerk Daniel Shearouse wrote her a
18 letter dated January 28th, 2011 ---

19 THE COURT: You have a copy of that?

20 MR. BURGESS: Yes, sir, I do. And in that letter
21 Mr. Shearouse outlines that the pleadings that
22 she's submitting are sham pleadings. I do have
23 a copy of that letter. And Ms. El Bey has
24 continued to submit documents to both our
25 office and to the Court purporting to assert



1 that the mortgage itself has been satisfied,
2 along with a number of other theories that just
3 aren't cognizant. And the pleadings on their
4 face are sham filings and should be stricken in
5 their entirety.

6 **THE COURT:** Ms. El Bey, have you seen a copy of this
7 letter?

8 **MS. EL BEY:** No, I haven't.

9 **THE COURT:** I want to have that marked as Exhibit
10 One.

11 **(Plaintiff's Exhibit Number One was marked for**
12 **identification purposes.)**

13 **MR. BURGESS:** Yes, sir. And I believe that letter
14 may have been a part of -- this case has
15 already been rendered to judgement back on
16 August the 22nd, 2012. Ms. El Bey filed
17 Chapter 13 bankruptcy on August the 24th, 2012,
18 before the foreclosure sale took place. That
19 Chapter 13 bankruptcy in the Federal Bankruptcy
20 Court was converted to a Chapter 7 on September
21 the 28th, 2012. Ms. El Bey was subsequently
22 discharged from bankruptcy and her bankruptcy
23 case was closed on January the 14th of 2013 and
24 the case -- this case was restored to the
25 active roster on August the 1st of 2013.



1 **THE COURT:** Okay. Have all the bankruptcy filings
2 been filed with the court?

3 **MR. BURGESS:** With the bankruptcy court, yes, sir.
4 And I think with the Motion to Restore, we
5 filed a copy of the -- I believe it was the
6 Chapter 7 discharge.

7 **THE COURT:** Let me see your Chapter 7. While he's
8 looking for that, you indicated, Ms. El Bey,
9 that you don't recall having seen this
10 (indicating)?

11 **MS. EL BEY:** No, I don't recall and I'm not saying
12 it wasn't sent to me, Special Referee.

13 **THE COURT:** Is this your proper address, 13132
14 Wilburn Park Track Lane, Fort Mill?

15 **MS. EL BEY:** That is the address of the property,
16 yes, but my mailing address is different.

17 **THE COURT:** Do you reside at that property?

18 **MS. EL BEY:** Occasionally I do.

19 **MR. BURGESS:** I apologize, Your Honor, I have a
20 number of documents here. I thought I had my
21 ---

22 **THE COURT:** Take your time. I'm reading the letter
23 from the Supreme Court. Did the clerk send up
24 the original file?

25 **MR. BURGESS:** This is -- that's her file



1 (indicating).

2 **THE COURT:** If you can look in that and just look
3 for -- what he's trying to find is a Chapter 7
4 discharge that would have been filed with the
5 court. And while you're going, if you see the
6 original Referee's report before the bankruptcy
7 filing.

8 **MR. HARKEY:** Yes, sir.

9 (Off the Record)

10 **MR. BURGESS:** I do have a copy of the Motion to
11 Restore, Your Honor.

12 **THE COURT:** Okay.

13 **MR. BURGESS:** It was filed -- it was submitted July
14 24th, 2013, and it does have the order from the
15 -- the discharge order from the Bankruptcy
16 Court, filed August 1st, 2013.

17 **THE COURT:** I'm going to have the reporter mark this
18 letter as Exhibit One and we'll substitute a
19 copy after the hearing.

20 **MR. BURGESS:** Thank you, sir. I was trying to see --
21 Brook Dangerfield, one of my colleagues, was
22 the counsel with our office handling this case
23 back during the Summary Judgment Motion back in
24 August of 2012 and I thought he might have
25 included a copy of the letter with his Motion



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1 for Summary Judgement, as well. But I --

2 **THE COURT:** And it may be, but I want to have it
3 attached to this hearing record.

4 **MR. BURGESS:** Copies of the note and mortgage were
5 entered at that time, as well.

6 **THE COURT:** Okay.

7 **MR. BURGESS:** And what was the other document? The
8 original Master's report, is what you were
9 looking for?

10 **THE COURT:** (Nods head affirmatively.)

11 **MR. BURGESS:** I think I do have that.

12 **THE COURT:** Right, the Referee's report before the
13 filing of the bankruptcy. The Court notes for
14 the record that there is already in the file a
15 filed copy of the Bankruptcy Discharge Notice
16 as referenced by Mr. Burgess, that being filed
17 August the 1st, 2013, with their Motion to
18 Restore. And the case was restored by my
19 order, which is also attached and dated
20 July 29th, 2013. I'll give you back your copy
21 of that since it's already in the record.

22 **MR. BURGESS:** Thank you, sir.

23 **THE COURT:** While you're looking, Mr. Burgess, do
24 you know if you happen to have a copy with you
25 of the code section cited by the -- Mr.



1 Shearouse, 16-17-735?

2 **MR. BURGESS:** Your Honor, I can certainly get a copy
3 of that. I don't think I have a separate copy
4 of that particular statute.

5 **THE COURT:** Can you get your clerk to go grab a copy
6 of that?

7 **MR. BURGESS:** Yes, sir.

8 **THE COURT:** I need two code sections -- well,
9 actually, three -- if you want to make a note
10 of these. I need a copy of 16-17-735, I need
11 15-75-60, and 30-9-30. If you -- do you have a
12 computer with you with access to ---

13 **MR. BURGESS:** I do. It's actually ---

14 **THE COURT:** I can get my office to run them and send
15 them up if you need them or ---

16 **MR. BURGESS:** It's actually in the back in the very
17 bottom of the thing, if you'll just bring it
18 back up here. They have courthouse access?

19 **THE COURT:** They do.

20 **MR. BURGESS:** All right. If you'll just grab my --
21 my laptop.

22 **MR. HARKEY:** Okay.

23 **THE COURT:** Just go on Casemaker Code and copy those
24 sections.

25 **MR. HARKEY:** Yes, sir.



1 MR. BURGESS: I'll be able to pull them up if you'll
2 just bring the computer up here.

3 MR. HARKEY: Yep.

4 THE COURT: Okay. What I want to do is, I want to
5 put copies in the record as part of the
6 hearing. Did you locate that Referee's report?

7 MR. BURGESS: I had a separate copy of the order.
8 I'm trying to locate that now. And I do
9 apologize, Your Honor. There is a number of --

10

11 THE COURT: No, take your time.

12 MR. BURGESS: There's a lot of people working this
13 file.

14 THE COURT: Well, the clerk has two boxes full and
15 we'll address that shortly.

16 MR. BURGESS: Your Honor, we do have the transcript
17 from the original hearing.

18 THE COURT: Okay.

19 MR. BURGESS: And I believe we have -- and that's
20 from August 22nd, 2012.

21 THE COURT: Okay.

22 MR. BURGESS: We would have the actual Master in
23 Equity's order here, as well. And also I have
24 the original Notice of Sale from that hearing
25 the 22nd.



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1 THE COURT: I'm going to need those printed.

2 MR. BURGESS: Yes, sir.

3 THE COURT: Can you -- while you're looking for
4 that, did we ever find the original Referee's
5 report from the original ---

6 MR. BURGESS: That's what I was looking through in
7 the file and I am -- we have a copy uploaded to
8 our system.

9 THE COURT: Okay.

10 MR. BURGESS: But I don't ---

11 THE COURT: I just wanted to see the order before
12 the bankruptcy and I probably have it in my
13 file, but I -- it is not well organized.

14 MR. BURGESS: And I do apologize, Your Honor. I was
15 reviewing that particular order in preparing
16 for today's hearing and it seems to have been
17 misplaced in my file, as well, which is also
18 quite voluminous.

19 THE COURT: Well, I'm going to -- any ruling that I
20 make today is going to be impacted by that
21 order, so I need to find that original or a
22 clocked copy of that.

23 MR. BURGESS: I've sent an email to my legal
24 assistant back at the office to email me a copy
25 of it from our system. I'm also looking



1 through our finished documents.

2 **THE COURT:** They ought to be in the clerk's original
3 file.

4 **MR. BURGESS:** Your Honor, I do have the 16-17-735
5 section pulled up from the South Carolina
6 Legislature.

7 **THE COURT:** Can you print that?

8 **MR. BURGESS:** I can -- let's see. Can I copy and
9 paste it into an email to your office?

10 **THE COURT:** Uh-huh (affirmative response).

11 **MR. BURGESS:** Would that work?

12 **THE COURT:** Sure.

13 **MR. BURGESS:** All right.

14 **THE COURT:** It might be easier --

15 **MR. BURGESS:** Okay.

16 **THE COURT:** Let me just ---

17 **MR. BURGESS:** Is there an email address that I can -
18 --

19 (Off the Record)

20 (Plaintiff's Exhibit Number Two was marked for
21 identification purposes.)

22 **THE COURT:** I have the order from the previous
23 hearing, which we have marked as Exhibit Two,
24 and I find that that is an order rendering
25 judgement in the case as of the numbers existed



1 as of the date of that hearing. That order was
2 signed by me August 22nd, 2012. All right.
3 Mr. Burgess, so you're moving for sanctions on
4 the grounds that these are sham pleadings that
5 have been filed subsequent to the filing of the
6 order in August of 2012?

7 **MR. BURGESS:** That's correct, Your Honor.

8 **THE COURT:** All right. Okay. Any other motions?

9 **MR. BURGESS:** Your Honor, we're also moving to
10 update the judgement figures as rendered in
11 that August 22nd order based on the passage of
12 time between August 22nd and today. We do have
13 an Affidavit of Indebtedness as to the updated
14 figures. Or, actually, we have a copy of a
15 proposed order that has the updated figures and
16 several copies, one for Ms. El Bey, as well.

17 **THE COURT:** All right. Let me look at your -- let
18 me look at your -- do you have an Affidavit of
19 Debt?

20 **MR. BURGESS:** I have an Affidavit of Attorney's
21 Fees. I do not have an updated Affidavit of
22 Indebtedness. I believe the only thing that's
23 changed is the interest and taxes and
24 insurance.

25 **THE COURT:** Those numbers are included in the



1 proposed order?

2 **MR. BURGESS:** They are --

3 **THE COURT:** All right.

4 **MR. BURGESS:** -- in the proposed order. There's
5 also a copy there for Ms. El Bey to have for
6 her own records, as well.

7 **THE COURT:** Okay. Anything further beyond the
8 proposed order with the affidavit of updated
9 numbers and the Attorney's Fee Affidavit?

10 **MR. BURGESS:** Your Honor, I believe that's
11 everything we're asking for. The sanctions,
12 Your Honor, we're not necessarily seeking
13 anything monetary from Ms. El Bey. We just
14 seek an order basically preventing her from
15 filing any more of these filings in the future.
16 As you can see, the file has become quite
17 voluminous and it's overwhelming to deal with
18 a number of filings; none of which have an
19 relevance to the actual foreclosure action.

20 **THE COURT:** Okay. Is that all?

21 **MR. BURGESS:** Yes, Your Honor, that's everything.

22 **THE COURT:** Okay. Ms. El Bey, you have filed
23 various motions with the Court. It's now time
24 for you to tell me what motions you want for me
25 to consider at this time.



1 **MS. EL BEY:** Thank you, Your Honor. I shall do
2 that. Before you, Special Referee and Counsel,
3 you have two amended motions and what I'm going
4 to do, since I have filed numerous motions
5 utilizing the South Carolina Rules of Civil
6 Procedure, I've narrowed everything down to two
7 motions that I will present today before the
8 Court. And those are the Amended Respondent's
9 Counter Notice of Motion and Motion to Strike
10 and for Sanctions Plaintiff's Complaint and
11 Motion for Default Judgement under Rule 55.
12 Affirmative Defenses under Rules Counter
13 Claims, this action shall be conducted by
14 equitable proceedings under the South Carolina
15 Rules of Civil Procedure 38 and an Affidavit --
16 let me know when you're ready.

17 **THE COURT:** Go ahead.

18 **MS. EL BEY:** And an Affidavit in Support of the
19 Amended Counter Notice of Motion and Motion to
20 Strike for Sanctions to Plaintiff's Complaint
21 and Motion for Default Judgement on Counter
22 Claim with Objections. The last amended motion
23 that I'll present today is a Motion to Dismiss
24 under South Carolina Rules of Civil Procedure
25 12(b)(6).



1 **THE COURT:** Well, 12(b)(6) is the failure to state
2 a cause of action motion. On what basis do you
3 say that they have failed to state a cause of
4 action?

5 **MS. EL BEY:** Your Honor, if you will allow me to
6 address that, I will. Let me know if it's my
7 time to speak. I don't know.

8 **THE COURT:** You're -- you have the floor now.

9 **MS. EL BEY:** Oh, all right.

10 **THE COURT:** Mr. Burgess is off; you're up.

11 **MS. EL BEY:** Okay.

12 **THE COURT:** He's not going to say another word.

13 **MS. EL BEY:** All right. Thank you. What I'd like
14 to do ---

15 **THE COURT:** Are you, Mr. Burgess?

16 **MR. BURGESS:** (Shakes head negatively.)

17 **THE COURT:** No. Thank you.

18 **MS. EL BEY:** On and for the record, I would like to
19 start with the original complaint.

20 **THE COURT:** Ma'am, I'm not here to start with the
21 original complaint. Let me explain to you
22 where we are procedurally and you need to
23 understand this because it has effect on what
24 you're doing. The Court had this matter before
25 it last year and an order was rendered in which



1 facts were found and an order was rendered for
2 sale of the property. At that time, I found
3 that the Plaintiffs had established everything
4 they needed to establish to foreclose on this
5 property. The order that was filed stated
6 that. You've subsequently filed bankruptcy
7 through the United States Bankruptcy Court and
8 that delayed the proceeding until that
9 bankruptcy matter could be resolved. The
10 bankruptcy matter was resolved and the attorney
11 for the Plaintiff submitted to me an order to
12 restore the case to the docket based on the
13 fact that the bankruptcy had been resolved.
14 So, all that happened was, after the hearing
15 last year, when I issued an order granting the
16 relief they sought, there was a delay because
17 of the bankruptcy. We're now back to the point
18 to where we are proceeding with the -- with the
19 case and really all that's happening today is,
20 they are updating the figures on the debt that
21 have increased since the last hearing, and
22 furnishing me with an affidavit of their
23 attorney's fees and making a Motion for
24 Sanctions, because they argue that what you're
25 doing in the case is, in effect, gumming up the



1 Court by filing sham pleadings. That's
2 procedurally where we are. At this point, the
3 issues that relate to the complaint and the
4 relief have been determined. So, if you're
5 making a Motion to Dismiss under Rule 12(b)(6),
6 that motion is moot. That issue was decided
7 last year and that motion would not properly be
8 before the Court. There's no way for you to
9 make a 12(b)(6) motion after the issues have
10 already been determined. So, if you have a
11 12(b)(6) motion, is that -- if that is one of
12 the motions you're making, that motion is
13 dismissed as not timely. So, I'm not going to
14 listen to an argument on the 12(b)(6) motion.
15 If you have another motion, I'll be glad to
16 listen to it. You lost me in the long
17 explanation of what that motion was. Thank
18 you. Tell me about the first motion that you
19 said you had consolidated everything into two
20 things and I lost you somewhere in the
21 explanation in what that first thing was.

22 **MS. EL BEY:** Your Honor, for the record, I need to
23 object because, number one, this is the first
24 hearing that I have attended. The -- this
25 Court should duly note that it was notified the



1 reason I was not at the first hearing in August
2 of 2012 because I was in the hospital. You
3 proceeded to go ahead and have the hearing
4 anyway and this Court proceeded to go ahead and
5 move with an order. So, now making everything
6 moot denies me of my due process. And as far
7 as I am concerned, I need to have my process
8 heard dealing with the law, as well as the
9 facts in this case. And the major fact in this
10 case, for the record, is that the Plaintiff is
11 not even registered to do business in this
12 state and does not have standing to even step
13 -- initiate the initial procedure. This is a
14 certified copy from the Secretary of State that
15 there is no Certificate of Record. It was no
16 Certificate of Record of H&R Block doing
17 business in this state in 2011 and before that
18 when this initial complaint was initiated. May
19 I continue, sir?

20 **THE COURT:** Yes, ma'am.

21 **MS. EL BEY:** Thank you. Now, the initial complaint
22 was filed January the 14th -- actually, it was
23 stamped January the 14th. I think the filing
24 date on here is the 13th. And, for the record,
25 I want it stated that I answered the initial



1 complaint within -- before the 30 days. And if
2 you will bear with me, the initial complaint
3 states -- and since we're dealing with law and
4 facts, I will get to the other Plaintiff's
5 objections later, but I just want to, for the
6 record, deal with the major issue. And the
7 major issue is, does H&R Block have the
8 authority to bring this matter before the
9 Court, okay? Or before this hearing, let's put
10 it that way. And it states that Plaintiff with
11 motion is based upon original note and mortgage
12 and the complaint attached hereto. That was
13 the summons. Now, the complaint indicates that
14 this loan is not owned by H&R Block. This loan
15 is owned or guaranteed by Fannie Mae or it's
16 owned or guaranteed by HLMC. So, I object to
17 the fact that H&R Block and the Plaintiff, who
18 is H&R Block Bank, FSB, has been able to put
19 forth an order for foreclosure on a
20 Respondent's property without even having
21 standing in this matter. As you know, and in
22 my pleadings, that this mortgage was
23 securitized. And for the record, Fannie Mae --
24 here's another exhibit. Fannie Mae does not --

25 -



1 THE COURT: Well, I'm not -- ma'am ---

2 MS. EL BEY: --- and never has ---

3 THE COURT: Ma'am..

4 MS. EL BEY: --- owned the mortgage.

5 THE COURT: Ma'am, if you intend to offer exhibits
6 into the record -- and I need -- you're laying
7 copies of stuff up, but are you intending to
8 offer exhibits into the record at this hearing?

9 MS. EL BEY: Absolutely, Your Honor.

10 THE COURT: Okay. You want to offer this
11 certificate that you handed me from the
12 Secretary of State?

13 MS. EL BEY: Is there another way I'm supposed to do
14 it?

15 THE COURT: You're supposed to offer it as an
16 exhibit.

17 MS. EL BEY: All right.

18 THE COURT: I'm going to put it in as Defendant's
19 One.

20 (Defendant's Exhibit Number One was marked for
21 identification purposes.)

22 THE COURT: And I'm going to put in the other
23 document in a minute. Just wait until the
24 reporter marks this.

25 MS. EL BEY: Let me ask you again ---



1 THE COURT: Ma'am. Wait until the court reporter
2 finishes.

3 MS. EL BEY: Oh, oh.

4 THE COURT: You can't say anything yet. Just wait.
5 Have you marked Exhibit One? All right.

6 (Defendant's Exhibit Number Two was marked for
7 identification purposes.)

8 THE COURT: She's handed me a document that is
9 Fannie Mae loan look-up result. I'm going to
10 hand you and she's offering as her Exhibit Two.
11 All right. Do you have -- you can go ahead
12 with your presentation, but when you get to the
13 point of wanting to put something in the
14 record, you need to tell me so we can offer it
15 as an exhibit and mark it. Okay?

16 MS. EL BEY: Yes, Your Honor.

17 THE COURT: All right.

18 MS. EL BEY: So, based on the Exhibit Number Two,
19 for the record, Fannie Mae, nor FHLM and H&R
20 Block, do not own the mortgage or the note that
21 is before this Court today, for and on the
22 record. And it's my understanding from
23 Plaintiff's exhibit, you have a copy already of
24 the note, which was not my signature, and the
25 mortgage, which was not my signature. I did



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1 sign a mortgage and I did sign a note; I'm not
2 denying that. But those records have been
3 altered. I do want to indicate that -- another
4 exhibit for the record.

5 **THE COURT:** Okay.

6 **MS. EL BEY:** The -- this has been in many of my
7 pleadings and also the Plaintiff's pleading and
8 that is the assignment of the real mortgage.
9 Please note, for the record, that the mortgage
10 -- that this assignment was dated the same day
11 that the mortgage originated and that was March
12 the 29, 2006. However, the assignment was
13 never filed in the Lancaster County until
14 August the 5th, 2010, which makes it four years
15 interrupting the chain of command or the chain
16 of ownership of the mortgage and the note. Not
17 only that, on and for the record, this
18 assignment was later signed by naturally known
19 robo-signers. And I do have two affidavits
20 that have previously been submitted and are
21 part of the existing court record from the
22 Register of Deeds in the Commonwealth of
23 Massachusetts. And if I may read it for the
24 record?

25 **THE COURT:** No ma'am, you may not.



1 MS. EL BEY: Okay. Well, I will submit it for the
2 record.

3 THE COURT: Well, I'll look at the exhibit but you
4 may not read that into the record. Let me see
5 your exhibit.

6 MS. EL BEY: May I continue while you look?

7 THE COURT: No, ma'am.

8 MS. EL BEY: Okay. Okay.

9 THE COURT: I'm considering the exhibit.

10 MS. EL BEY: Oh, okay.

11 (Defendant's Exhibit Number Three was marked for
12 identification purposes.)

13 THE COURT: Ms. El Bey, I'm going to admit into the
14 record the exhibit, which is a two-page
15 exhibit, the Assignment of the Real Estate
16 Mortgage which was recorded August 5th, 2010,
17 in Mortgage Book 2265 at Page 129, but I am not
18 going to introduce the accompanying
19 documentation that is not part of the original
20 document. So, I'm going to return to you your
21 affidavits from the Commonwealth of
22 Massachusetts and we'll mark the two-page
23 exhibit, which is the Assignment of Mortgage,
24 as your Exhibit Number Three and once the court
25 reporter completes that, I have a question.



1 Explain to me, if you can, please, why you
2 think that the recording of the assignment four
3 years after the execution of the assignment has
4 any effect upon this action?

5 **MS. EL BEY:** It is my understanding based on the
6 flow of things -- if I might be able to analyze
7 and give you a brief analysis, if I'm permitted
8 to do that.

9 **THE COURT:** Well, I need for you to answer my ---

10 **MS. EL BEY:** Dealing with ---

11 **THE COURT:** I need for you to answer my question.

12 **MS. EL BEY:** I am -- I am going to answer your
13 question, but in order to answer your question,
14 I need -- I need for an understanding to be
15 placed before this Court, because it appears
16 that I'm being railroaded. I'm not able to
17 even share what has taken place with me as a
18 homeowner in this county. And it's important
19 to me that I am heard and that --

20 **THE COURT:** Ma'am, I'm going to stop you right
21 there. This is a proceeding in the course of
22 this state. I am a Judge in this Court,
23 appointed by the state to hear this case. I am
24 trained in the law, I understand the law and I
25 am giving you your due process. But, I'm not



1 going to stay here all day while you go through
2 this vast amount of material that you have
3 submitted because I have reviewed all of this
4 material and, quite frankly, I have seen this
5 type of material before in other cases. These
6 are, in fact, sham pleadings. These are, in
7 fact, sham defenses. And these are, in fact,
8 documents and defenses that are designed to
9 delay and cause exactly what has been happening
10 in this case and that is a delay in the prompt
11 distribution of justice in this case under the
12 law. Now, I asked you a question. And the
13 question was, why does the passage of four
14 years affect the validity of the assignment.
15 I will answer that question for you. It makes
16 no difference at all. They could have filed
17 that assignment the day before they started
18 this foreclosure, if they wanted to. They do
19 not have to file that assignment the day it is
20 signed. There is no requirement at law. The
21 requirement is that as of the date of filing,
22 everything has to be in place. That was in
23 place before they filed. It assigns the
24 mortgage to the Plaintiff in this case. The
25 Plaintiff has standing and is properly before



1 this Court. So, any objection based on
2 standing is improper and is not going to be
3 granted. So -- and as to the -- to your
4 statement about you being railroaded, you have
5 to comply with the rules of the Court. The
6 Court does not hear everything you wanted to
7 say because everything you wanted to say is not
8 relevant to the issues that are before the
9 Court today. I'm giving you an opportunity to
10 speak to the relevant issues that are before
11 the Court today, but standing of the Plaintiff
12 is not one of those issues; they have standing.
13 So, that's the end of that issue. What other
14 issue do you have?

15 **MS. EL BEY:** I object that the Plaintiff has
16 standing based on what Your Honor has stated,
17 because it is a matter of law, as you stated,
18 and also rules, as you stated. And also, based
19 on my objection, I object from the standpoint
20 that Your Honor has already made a decision and
21 made the statement -- this is on and for the
22 record -- that any decision will be impacted by
23 that order and that order that was referred to
24 was the order to foreclose and sell my
25 property.



1 **THE COURT:** That order ---

2 **MS. EL BEY:** That was your statement.

3 **THE COURT:** Ma'am, that order is the law of this
4 case.

5 **MS. EL BEY:** And that's at rule 701.

6 **THE COURT:** Ma'am?

7 **MS. EL BEY:** Yes.

8 **THE COURT:** Do not talk over me. When I'm talking,
9 you stop.

10 **MS. EL BEY:** I hadn't finished, Your Honor.

11 **THE COURT:** You are finished. This is a simple
12 foreclosure of a mortgage case. You --
13 according to the record in this case, you made
14 transactions of this property after you entered
15 into the mortgage agreement with the Plaintiff,
16 the successor of the Plaintiff. It appears to
17 the Court that the effort to make those
18 conveyances was to confuse the title and delay
19 any prosecution of this case. I note that the
20 gentleman sitting in the court has indicated
21 that his name is Wes Clayton. A named
22 Defendant in this case is Wellesley K. Clayton.
23 I assume that that is the same gentleman seated
24 in the courtroom.

25 **MR. CLAYTON:** I am independent of this Court.



1 **THE COURT:** He is a -- he is a Trustee under one of
2 the deeds that was done in this chain of title.
3 I can tell you that it appears to the Court
4 that this is simply an effort to delay this
5 proceeding. And I'm going to allow you to
6 continue your presentation, but I am not going
7 to allow you to continue endlessly debating the
8 Sovereignty of Nations and your individuality
9 as an indigenous person. You were warned by the
10 South Carolina Supreme Court about this
11 behavior in January of 2011 and I have made
12 copies of the three statutes that were cited in
13 that letter and I herewith deliver them to you
14 and we'll give a copy to Counsel for the
15 Plaintiff. And we'll make a set of those the
16 Court's Exhibit Number One. If you'll mark
17 that, Madame Reporter.

18 (Court's Exhibit Number One was marked for
19 identification purposes.)

20 **THE COURT:** Now, the letter and the statutes have
21 been introduced. Those -- I hope that when you
22 got the letter, you went and reviewed those
23 statutes, looked at them closely and understand
24 that those statutes indicate that the behavior
25 that you're engaging in in this case can be



1 deemed criminal and is, at the very least, a
2 process which the courts of this state
3 discourage and do not recognize. So, I will
4 listen to your presentation, but I can tell you
5 that the bulk of the stuff that you sent me are
6 not proper pleadings. They are not proper
7 responses. They are, in fact, sham pleadings.
8 And the Court gives them little or no weight in
9 the consideration of the issues in this case.
10 You certainly have a right of appeal after we
11 finish this case, but I would again warn you
12 that the strictures contained in the letters
13 that you received dated January 28th, 2011,
14 and, most probably, the instructions that I
15 will grant in the order will prevent you from
16 filing any further sham pleadings with this
17 Court and if you do, I will still have
18 jurisdiction of this case and I will take
19 action in relation to those sham pleadings if
20 they are filed. I have not done anything to
21 this point because I wanted to wait to get to
22 this hearing to see and hear your explanation,
23 but your explanations are not legal reasons for
24 this Court to take action or undo anything that
25 this Court has done to this point. So, I will



1 listen to you as you present your case. If you
2 would like to make further statements to the
3 record, I will listen to the point that the
4 things you say are relevant. When they become
5 irrelevant, I will stop you and we will move to
6 another point.

7 **MS. EL BEY:** Thank you. I object to everything that
8 has been said so far and the objection, Rule
9 103(c), and that objection is improper
10 character characterization that was made by the
11 Plaintiff and also the Special Referee this
12 morning in reference to my motion -- the Motion
13 to Strike, which was repetitive in recognizing
14 me as a Sovereign. I have no idea what that
15 definition is but, to me, that's derogatory.
16 So, on and for the record, I am utilizing South
17 Carolina Rule 103(c) and also Rule 404 and 505
18 as far as an objection is concerned. I want
19 this Court to know, on and for the record, I am
20 not an attorney, but I do recognize law and
21 facts and I will present law and facts. None
22 of my pleadings, as I see them, have been sham.
23 And for the record, in reference to the South
24 Carolina letter, and also the Section 16-17-735
25 dated 2003 and 15 -- Chapter 15-75-60, 2005,



1 and Chapter 30-9-30, 2007, which is the Supreme
2 Court's order dealing with sham pleading
3 filing. At this particular point, since
4 nothing that I have presented so far I would
5 consider sham, everything has been based on the
6 South Carolina Rules. I do have a book that I
7 follow. I do have the evidence and -- evidence
8 rules of South Carolina and I also have the
9 Evidentiary Objection Ruling of South Carolina,
10 which I have tried my best to stay on point and
11 be recognized by the Court dealing with law and
12 facts. I consider the constant attack in
13 reference to me as bolstering credibility and
14 I -- that attack is Rule 608(a). Also, this is
15 reference to saving my property and to whether
16 H&R Block has standing in this case; that is
17 Rule 608(a), as being irrelevant. Moving now
18 the Motion to Restore this case, August of 1,
19 2013, by the Plaintiff. This is after the
20 foreclosure order was submitted by the
21 Honorable Special Referee, Mr. Wright. Let the
22 records indicate that I answered Plaintiff
23 before the 30 days in reference to their Motion
24 to Restore. It is ambiguous at this particular
25 point because some of the statements in the



1 July -- the August 1st pleading, I do not
2 understand and do not see why they were
3 mentioned, but maybe someone can assist me with
4 that. I'm looking at the Motion and Order to
5 Restore and that is ---

6 **THE COURT:** Yes, ma'am. I'm familiar with that and
7 I'm going to stop you at that point. The
8 Motion to Restore is an administrative matter
9 that is summarily handled by the Court on
10 motion of the Plaintiff when the bankruptcy has
11 expired. There is not requiring of a hearing
12 on that motion. There is no requiring for a
13 response on that motion. And I granted the
14 motion upon submission by the Plaintiff because
15 it is an administrative act and does not
16 require a hearing. So, that issue is moot.

17 **MS. EL BEY:** May I continue?

18 **THE COURT:** Not discussing that issue. You can move
19 to the next issue.

20 **MS. EL BEY:** I'm confused. So, I just need -- I
21 just need some clarification on ---

22 **THE COURT:** I've explained to you ---

23 **MS. EL BEY:** --- on this right here. The motion ---
24 well, anyway, I'll wait.

25 **THE COURT:** Well, the Court notes that the Defendant



1 has handed up a Supreme Court order relating to
2 family court forms rendered by Justice Toal in
3 February of 2006; that has absolutely nothing
4 to do with this action because, first, this is
5 not family court. Second, this is an
6 Administrative Order related to forms in the
7 family court and it has nothing to do with
8 this. So, I'm not going to introduce that as
9 anything in the record as it's completely
10 irrelevant. And that's an example of a sham
11 pleading.

12 **MS. EL BEY:** My objection to what has just been
13 stated by the Special Referee, the order that
14 was signed was based on the Chief Justice Order
15 of July -- June the 5th, 1992, and I am
16 definitely confused when I received this
17 because this is not a family court. This is
18 the Court of Common Pleas.

19 **THE COURT:** Ma'am, I am not here -- I am not here to
20 clarify your confusion.

21 **MS. EL BEY:** I don't understand. I don't understand
22 this, but here -- here is ---

23 **THE COURT:** Ma'am, I'm sorry. I'm sorry that you
24 don't understand.

25 **MS. EL BEY:** This is what it was based on. You



1 signed an order.

2 **THE COURT:** Yes, ma'am.

3 **MS. EL BEY:** And it was ---

4 **THE COURT:** Move on to your next point. That had
5 nothing to do ---

6 **MS. EL BEY:** Okay. Let the record reflect that
7 order was signed which had nothing to do ---

8 **THE COURT:** Strike her statements at this point.
9 Move to your next point.

10 **MS. EL BEY:** My next point is that I answered the
11 Plaintiff's Motion to Restore.

12 **THE COURT:** And the Court has told you that no
13 answer was required. Move to your next point.

14 **MS. EL BEY:** Excuse me, Your Honor, are you going to
15 treat me this way as -- as we are going through
16 -- through this? I will go to ---

17 **THE COURT:** Ms. El Bey ---

18 **MS. EL BEY:** --- my next point.

19 **THE COURT:** Ms. El Bey, I am not going to go over
20 ground we have already plowed. You've already
21 stated that you filed an answer to their Motion
22 to Restore. I have told you that it was not
23 necessary to file an answer to that motion. It
24 was an administrative motion; I granted it.
25 It's not relevant. I don't care what you filed



1 in relation to that. It had no bearing on the
2 re-entry of the order restoring this case.
3 Move on to your next point.

4 **MS. EL BEY:** Question.

5 **THE COURT:** Yes, ma'am.

6 **MS. EL BEY:** Your Honor, if there was a record on a
7 Motion to Restore and it was an Administrative
8 Order and I received a copy of this
9 Administrative Order, what does that mean to me
10 if I didn't answer it? Please explain that to
11 me. I want to be in compliance and -- and if
12 I did something wrong, I need you to tell me
13 that. But the rules say that I needed to
14 answer, so please help me out here.

15 **THE COURT:** Ms. El Bey, it is not the job of this
16 Court to teach you law. It is the job of this
17 Court to enforce the law. The fact that you do
18 not understand or appreciate or wish to follow
19 or wish to hire an attorney to get advice,
20 which is what you needed to do, is not the
21 problem of this Court. You have not understood
22 much of this entire process and no -- no amount
23 of me sitting here today telling you that is
24 going to convince you of that. So, I am going
25 to conduct this hearing according to the rules



1 of evidence and the rules of law and that's
2 exactly the path we're going down. Now, if you
3 have another legal issue to raise, you raise it
4 and I'll rule on it. If it's a valid reason,
5 if it's a valid thing, I'll hear it. But so
6 far, everything has been irrelevant. So, move
7 on to your next point.

8 **MS. EL BEY:** The original Master's report, I never
9 received a copy of that and if that is
10 available, I'd like to receive a copy.

11 **THE COURT:** Do you have an Affidavit of Service, Mr.
12 Burgess?

13 **MR. BURGESS:** Your Honor, I believe she's already
14 submitted a copy; that's her refusal of the
15 contract. That would be Plaintiff's Exhibit
16 Number Two.

17 **MS. EL BEY:** Is that the original Master's report?

18 **THE COURT:** That is a copy of the report. They're
19 not required to serve you with an original.
20 They served you with a copy.

21 **MR. BURGESS:** Okay.

22 **MS. EL BEY:** Yes, but I ---

23 **THE COURT:** Did you put that on there(indicating)?

24 **MS. EL BEY:** I just wanted to know if that was what
25 is considered to be ---



1 THE COURT: Did you stamp that on there "refused"?

2 MS. EL BEY: Absolutely.

3 THE COURT: Okay. Well, you received it.

4 MR. BURGESS: She received a copy.

5 MS. EL BEY: Okay. So we are clear that that's --
6 that order was what was called the original
7 Master's report?

8 THE COURT: That's correct.

9 MS. EL BEY: Okay. It didn't say that, so I didn't
10 know that. And I'm really not here for you to
11 teach me law or anything like that. I'm here
12 just to defend my property, okay? I said two
13 things I'd deal with today, so the first thing
14 is the amended form in reference to Counter
15 Notice of Motion to Strike and Sanctions. The
16 Motion to Strike and Default Judgement are
17 brought under the Rules of Civil Procedure in
18 the South Carolina Judicial Court, Rule 11, and
19 the CSPR, which stands for the South Carolina
20 Rules of Procedure, 12(f), and the South
21 Carolina Rules of Procedure, Default Rule 55.
22 Respondent as Counter Claimant and Plaintiff as
23 H&R Block, FSB, have failed to plead or
24 otherwise defend within 30 days as provided by
25 the South Carolina Rules of Civil Procedure and



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1 the South Carolina Judicial Court under Rule
2 55. When presented, the rule and the fact is
3 made to appear by affidavit or otherwise, the
4 clerk shall enter a -- enter the party or
5 plaintiff default. Under Rule and Civil
6 Procedure, South Carolina 13(g), Counter Claim
7 and Cross Claim, when presented, Counter Claim
8 exceeding opposing claim. The grounds to
9 Motion and Strike Sanctions are one; that the
10 Complaint filed by Plaintiff, H&R Block, FSB,
11 is not signed by H&R Block Bank, FSB, nor is it
12 verified by H&R Block Bank, FSB. The Complaint
13 does not contain an existing contract of fact
14 or of fact testimony from a competent fact
15 witness, no evidence has been introduced
16 showing that Rule 11(b)(3), Brock and Scott Law
17 Firm has personal knowledge supported by an
18 affidavit or an oath under the penalty of
19 perjury under the South Carolina Rules of
20 Evidence, Rule 601, 602, 603, 802, 803, 804 and
21 901, requirements for authentication and
22 identification, 1002 and 1003 and 1007 and is
23 hearsay, does not fall within the hearsay
24 exceptions, assumed facts not in evidence and
25 specifically object on these grounds. Brock



1 and Scott, a third-party debt collector, with
2 numerous attorneys and offices located in four
3 different states within the United States are
4 in violation of Rule 11(a). Signature; every
5 pleading, written motion or paper shall be
6 signed. What does this mean when you sign? It
7 means, A, that you have read the pleading; B,
8 that the pleading was not prepared for any
9 improper purpose; and, C, that you have
10 satisfied the substantive requirement of the
11 rule as described below. The third sentence
12 under 11(a) states that if you do not sign a
13 pleading, it may be stricken unless corrected.
14 Brock and Scott, PLLC, breached their duty.
15 Two, the Promissory Note and Mortgage Security
16 Agreement and the Mortgage Assignment dated
17 3/29/2006 to H&R Block contained forged
18 signatures under Section 35 -- Chapter 35,
19 3308(a) and (b) of the South Carolina Uniform
20 Commercial Code and the burden is on H&R Block
21 Bank as a moving party to authenticate the
22 signatures under Section 35-3-308(a)(b) of the
23 South Carolina Unified Commercial Code.

24 **THE COURT:** I'm going to stop you right there, Ms.
25 El Bey. You're reading from the form of the

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1 motion that you already filed with the Court.
2 Is it your intention to read the entire motion
3 into the record?

4 **MS. EL BEY:** Yes, it is my intention to read the
5 entire motion in the record.

6 **THE COURT:** The motion is already in the record. I
7 want to hear argument related to the motion.
8 I don't need you to read the motion into the
9 record. You've filed it. It's part of the
10 record. I need to hear argument.

11 **MS. EL BEY:** Number one, the complaint filed by
12 Brock and Scott is not signed nor verified by
13 the bank and there is no valid, existing
14 contract between the Respondent and Brock --
15 and H&R Block Bank.

16 **THE COURT:** I'm going to stop you at this point.
17 Ma'am, I had found as a matter of fact in the
18 first proceeding that they presented sufficient
19 evidence to go forward and I find your motion
20 to be inappropriate and deny your motion. Move
21 to your next motion.

22 **MS. EL BEY:** I object, Your Honor, but this is your
23 court and I just wanted for the record to note
24 that H&R Block do not have standing in this
25 Court and ---



1 **THE COURT:** I already ruled on that.

2 **MS. EL BEY:** Okay. My next motion, which is my last
3 motion, is an Amended Motion to Dismissed
4 (sic).

5 **THE COURT:** On what grounds?

6 **MS. EL BEY:** 12(b)(6).

7 **THE COURT:** Denied.

8 **MS. EL BEY:** Let the record state that the Special
9 Referee has denied my Amended Motion, 12(b)(6),
10 to be entered into the -- you denied the
11 motion. Can it be entered into the record?

12 **THE COURT:** The motion has already been filed. The
13 motion is part of the file. I told you
14 previously, a 12(b)(6) motion is not
15 appropriate at this stage of the proceeding.
16 We're beyond that stage. It's too late to make
17 a 12(b)(6) motion. I couldn't grant it if I
18 wanted to. It's not appropriate at this stage
19 of the proceeding. It's denied as untimely and
20 unsupported, so it's denied. You mentioned
21 earlier in your arguments about being in
22 default. You are not in default in this case.
23 You filed an answer. The record for the first
24 hearing specifically found that you were not in
25 default in this case. So, default has nothing



1 to do with this case. This was a case that was
2 heard and decided, held in abeyance while you
3 filed bankruptcy, has now been restored to the
4 record and I'm going to proceed to sign an
5 order to sell the property. You have all your
6 rights of appeal that you wish to exercise, but
7 I'm also going to grant the motion of the
8 Plaintiff for sanctions and I'm going ask the
9 Plaintiff to prepare a motion -- prepare an
10 order for me that says that if another sham
11 pleading is filed with this Court that the
12 Court will take action to prevent the filing of
13 other sham pleadings and that if this matter is
14 appealed to the South Carolina Appeals -- Court
15 of Appeals, that the Court would be notified of
16 the proceedings below and that the fact that
17 the Court here has found that you have filed
18 sham pleadings in this case to delay this
19 action and that there should be no further
20 delay in the process of getting this property
21 sold. I want to ask you a question, ma'am.
22 How long has it been since you made a mortgage
23 payment on this property?

24 **MS. EL BEY:** Your Honor, that's irrelevant at this
25 point.



1 **THE COURT:** No, ma'am, my question is how long has
2 it been? You'll answer my question.

3 **MS. EL BEY:** I really don't know.

4 **THE COURT:** Have you made a payment in the last two
5 years?

6 **MS. EL BEY:** Let the record indicate that Respondent
7 did reply to Your Honor.

8 **THE COURT:** Is that the only response you're going
9 to give me?

10 **MS. EL BEY:** The other response, Your Honor, that I
11 am going to express, for and on the record, is
12 that 12(b)(6) can be filed after a judgement.
13 So please have that on and in the record, but
14 Your Honor states that he will not entertain
15 it. But it can be filed at any time following
16 a judgement.

17 **THE COURT:** You misunderstand the law. Hearing is
18 adjourned.

19 (The hearing concluded at 12:00 p.m.)
20
21
22
23
24
25

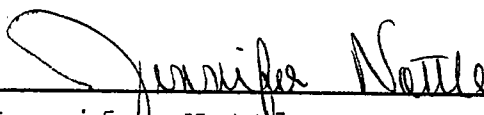


CERTIFICATE

This is to certify that the within hearing consisting of Forty-Nine (49) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on November 26, 2013.



Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: 7/11/2023



The Supreme Court of South Carolina

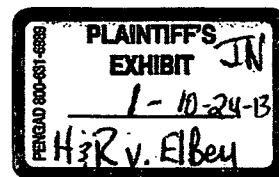
DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

January 28, 2011

Mr. Ziraili M. Elbey
a/k/a Ziraili Mohsassin El Bey
13132 Wilburn Park Lane
Fort Mill, SC 29715



RE: H&R Block Bank v. Elbey, 2011-CP-29-00036

Dear Mr. Elbey:

This responds to the correspondence of January 20, 2011, to Chief Justice Toal. Please be advised that the Chief Justice cannot assist you with this matter.

The above foreclosure action is pending in Lancaster County. Any issues that you have with that action will need to be raised in the trial court. I would encourage you to seek the assistance of an attorney to assist you with this matter.

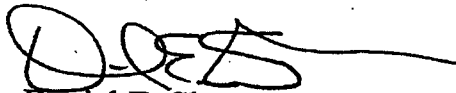
In the correspondence, you appear to be asserting that you have some independent authority to stop the above case. I note that this State has filing restrictions, criminal penalties and civil penalties for filing "sham legal process." S.C. Code Ann. § 16-17-735 (2003) (among other things, it is "unlawful for a person falsely to assert authority of law, in an attempt to intimidate or hinder a state or local official or employee or law enforcement officer in the discharge of official duties, by means of threats, harassment, physical abuse, or use of a sham legal process" and "sham legal process" includes "the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, which purports to: . . . assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of a person or property"); S.C. Code Ann. § 15-75-60 (2005) (civil remedies including actual damages, punitive damages, costs and attorney's fees for a person

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injured by sham legal process as defined by the criminal statute); and S.C. Code Ann. § 30-9-30 (2007) (prohibiting the filing of sham legal process and providing for civil remedies including actual damages, punitive damages, costs and attorney's fees against those who file sham legal process).¹

Finally, if you have any concerns about the status of any member of the South Carolina Bar, you may want to consult the member directory of the South Carolina Bar at http://scbar.org/member_resources/member_directory. I note that all of the members of the bar that are being copied with this letter are currently active members of the South Carolina Bar in good standing.

Sincerely,



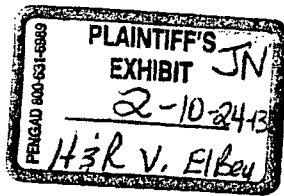
Daniel E. Shearouse

cc: Ronald F. Johnson, Jr., Esquire
Mark A. Pearson, Esquire
Brian L. Campbell, Esquire
Suzanne E. Brown, Esquire
Jason L. Branham, Esquire
Brock & Scott, PLLC
3800 Fernandina Rd., Ste. 110
Columbia, SC 29210

Adam J. Russo, Esquire
701 Ventura Place
Mt. Pleasant, SC 29464

The Honorable John Lane
Lancaster County Clerk of Court
P.O. Box 1807
Lancaster, SC 29721

¹ The statutory provisions are available on the South Carolina General Assembly's website, www.scstatehouse.gov.



FORM 4

EXHIBIT B

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

H&R Block Bank, FSB

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-29-00035

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey, WKFC
Living Trust Under Trust Agreement Dated June 4, 2010
by and through its Trustee Wellesley K. Clayton and
American Home Mortgage Servicing, Inc. s/b/m to Option
One Mortgage Corporation

DEFENDANT(S)

Submitted by: Brock & Scott, PLLC
Westpark Center
3800 Fernandina Road Suite 110
Columbia, SC 29210

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: Special Referee's Order for Foreclosure and Judgment for Sale

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below where the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
H&R Block Bank, FSB	WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton	Deficiency Demanded: Exact deficiency judgment amount to be determined after sale

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ATTACHED

If applicable, describe the property, including tax map information and address, referenced in the order:
All that certain piece, parcel or lot of land located in Lancaster County, South Carolina, and being designated as Lot 261 on that certain Plat of Clairemont, Phase 2, Map 5, prepared by Yarbrough, Williams & Houle, Inc. dated January 18, 2005, and recorded January 28, 2005, as Plat Doc #2005 at Page 0047 in the Office of the Clerk of Court for Lancaster County, South Carolina.

Also being shown as Lot 261 of Clairemont on a Plat of Ziraili Elbey prepared by Hucks and Associates, PC, dated March 3, 2006, and recorded in Plat Doc 2006 at Page 198.

This being the identical property conveyed to Ziraili M. Elbey by deed from The Ryl and Group, Inc. dated March 29, 2006 and recorded April 7, 2006 in Book 329 at Page 170. Subsequently, said property was conveyed to KMJ Trust, dated December 15, 2006 (Trustees: Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton) by Deed of Ziraili M. Elbey dated January 19, 2007 and recorded January 29, 2007 in Book 378 at Page 7. Thereafter, the property was conveyed to WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 (Trustee: Wellesley K. Clayton) by deed of Ziraili Mohassan El Bey and Mark Antonio Findletter Clayton as Trustees of The KMJ Trust, dated December 15, 2006 dated June 11, 2010 and recorded June 22, 2010 in Book 569 at Page 85.

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

Circuit Court Judge 52

Judge Code

Date 8/22/12

For Clerk of Court Office Use Only

This judgment was entered on the 22 day of Aug, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of Aug, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Brian L. Campbell, SC Bar No. 74521
Suzanne E. Brown, SC Bar No. 76440
Jason L. Branham, SC Bar No. 72902
Chad Burgess, SC Bar No. 72520
J. Marshall Swails, SC Bar No. 79067
Sarah B. Oliver, SC Bar No. 80165
J. Martin Page, SC Bar No. 100200
Brook Dangerfield, SC Bar No. 77912
Marc S. Asbill, SC Bar No. 100332
January N. Taylor, SC Bar No. 80069
Travis E. Menk, SC Bar No. 79141
Mark A. Pearson, SC Bar No. 15926

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey;
WKFC Living Trust Under Trust Agreement Dated
June 4, 2010 by and through its Trustee Wellesley K.
Clayton and American Home Mortgage Servicing,
Inc. s/b/m to Option One Mortgage Corporation
DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF LANCASTER

H&R Block Bank, FSB

Plaintiff,

v.

Ziraili M. Elbey a/k/a Ziraili Mohassan El Bey,
WKFC Living Trust Under Trust Agreement
Dated June 4, 2010 by and through its Trustee
Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One
Mortgage Corporation,

Defendant(s)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-29-00035

SPECIAL REFEREE'S REPORT AND JUDGMENT OF
FORECLOSURE AND SALE

DEFICIENCY DEMANDED AS TO DEFENDANT(S)
ZIRAILI M. ELBEY (A/K/A ZIRAILI MOHASSAN EL
BEY)

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), the above-entitled matter was referred to the undersigned Special Referee to make appropriate findings of fact and conclusions of law, with authority to enter a final Judgment in the cause. Any appeal from the decision of the Special Referee shall be directed to the South Carolina Supreme Court.

Pursuant to the said reference, a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on January 14, 2011.
2. The Summons and Complaint were filed on January 14, 2011.
3. Service was made upon the Defendants named in this Report as is shown by the proofs of service filed herein.
4. The Defendant(s) WKFC Living Trust under trust agreement dated June 4, 2010, by and through its Trustee Wellesley K. Clayton; and American Home Mortgage Servicing, Inc. s/b/m to Option One Mortgage Corporation are in default as shown by Affidavit filed herein.

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5. According to an Affidavit filed herein, no Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act fka Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

6. The Defendant Ziraili M. Elbey a/k/a Ziraili M. El Bey answered in this action and has been notified of the time and date of this hearing.

7. The Defendant(s) were notified of the time, date and place of hearing in this matter.

8. For value received, Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) made, executed and delivered a note, dated March 29, 2006, promising thereby to pay to the order of Option One Mortgage Corporation the sum of \$197,186.00 with interest at the rate of 7.999% per annum (hereinafter "Note"). Other terms and conditions are stated in the note, which is of record herein.

9. To better secure the payment of the Note described above, the said Ziraili M. Elbey (a/k/a Ziraili Mohassan El Bey) made, executed and delivered a mortgage to Option One Mortgage Corporation, in writing, dated March 29, 2006, covering real property in Lancaster County, which is the same as that described in the Complaint. The mortgage was recorded on April 7, 2006, and is of record in the Lancaster County Registry in Book 1486 at page 1.

10. This mortgage constitutes a valid purchase money, first lien on the subject property.

11. Thereafter the Mortgage and the Note were assigned to the Plaintiff herein by assignment recorded on August 5, 2010 in Book 2465 at Page 129. By virtue of said assignment, the Plaintiff in this action is the holder of the note and mortgage.

12. 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, the loan does not qualify for a modification under the above foreclosure prevention program because the loan investor has declined to allow a HMP modification.

13. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

14. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton.

15. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

16. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice, the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$2,985.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

17. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	08/22/12	\$189,911.32
Accrued interest from:	02/01/10 to: 07/16/12	\$ 37,335.97
Accruing at:	7.999% per annum	
Advancements to Escrow		\$ 803.19
Corporate Advances		\$ 54.90
Costs of collection prior to hearing:		\$ 2,222.50
Attorney's fees:		\$ 2,985.00

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13. Furthermore, Plaintiff complied with Administrative Order 2011-05-02-1 issued by the South Carolina Supreme Court.

14. The titleholder(s) of record of the Property as of the filing of the Lis Pendens in this action was WKFC Living Trust Under the Provisions of a Trust Agreement Dated June 4, 2010 by and through its Trustee Wellesley K. Clayton.

15. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the Note and Mortgage in the hands of its attorney of record herein for collection.

16. Having considered the nature, extent and difficulty of the services rendered (the field of mortgage foreclosures being a specialized area of practice, the time involved in reviewing the various loan documents, performing the title search, preparing the pleadings and preparing for and attending hearings; the professional standing of the Plaintiff's attorney; the fee customarily charged in this jurisdiction for similar services; and the beneficial results obtained for the Plaintiff, I find that the sum of \$2,985.00 is a reasonable attorney's fee for the Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage. Services anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional, unanticipated circumstances delaying conclusion beyond the normal time.

17. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorney's fees, secured by the Note and Mortgage, is as follows:

Principal due as of today's date:	08/22/12	\$189,911.32
Accrued interest from	02/01/10 to: 07/16/12	\$37,335.97
Accruing at:	7.999% per annum	
Advancements to Escrow		\$803.19
Corporate Advances		\$54.90
Costs of collection prior to hearing:		\$2,222.50
Attorney's fees:		\$2,985.00

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2. That there is due to the Plaintiff on its Note and Mortgage the sum of \$233,312.88, representing the Total Debt due to the Plaintiff as outlined above, together with interest thereon at the rate provided in the Note to the date hereof.
3. That the amount due in the preceding paragraph (the "Total Debt") and later accrued interest and costs shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the rate of 7.999% per annum, the current interest rate of the Note.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. That the Defendant(s) liable for the aforesaid Mortgage debt shall, prior to the date and time of the sale of the Property, hereinafter described, pay to the Plaintiff, or the Plaintiff's attorney, the amount of the Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.
2. That on default of payment prior to the date and time of the sale, the Property, hereinafter described, shall be sold by the undersigned Special Referee at public auction, at the Lancaster County Courthouse, Courtroom B, City of Lancaster, County and State aforesaid, on some convenient sales day hereafter, on the following terms, that is to say:
 - A. FOR CASH: The undersigned Special Referee shall require a deposit of 5% on the amount of the bid (in cash or equivalent) the same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days the same to be forfeited and applied to the costs and then to the Plaintiff's debt.
 - B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.999% per annum, which is the Note's current interest rate.
 - C. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
 - D. Purchaser to pay for the deed and the cost of recording the deed.

8. That it is further ORDERED, ADJUDGED AND DECREED that each Defendant named herein, and all persons whomsoever claiming under him, them or it, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.
9. That it is further ORDERED ADJUDGED AND DECREED that the deed of conveyance made pursuant to this judgment and said sale shall contain the names of only the Plaintiff, the first-named Defendant, who was the title holder of the mortgaged property at the time of the filing of the Lis Pendens, and the Grantee; and that the Lancaster County Register of Deeds is hereby authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.
10. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Lancaster County may be ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.
11. That it is further ORDERED ADJUDGED AND DECREED that after the Order Confirming Sale and Disbursements has been issued and filed, the undersigned Special Referee shall direct the Register of Deeds to release of record the lien(s) being foreclosed, which lien(s) are described in the Findings of Fact herein above.
12. That it is further ORDERED ADJUDGED AND DECREED that the following is a description of the Property herein ordered to be sold:

3. If the Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, the Plaintiff may pay to the undersigned Special Referee only the amount of the costs and expenses, crediting the balance of the bid on the Plaintiffs indebtedness.
4. That a personal or deficiency Judgment being Demanded, the bidding will remain open for thirty (30) days after the date of sale (pursuant to S.C. Code Ann. § 15-39-760(1976) but compliance with the bid may be made immediately.
5. That the undersigned Special Referee will, by advertisement according to law, give notice of the time and place of sale and the terms thereof; and that he will execute to the purchaser, or purchasers, a deed to the Property sold. The Plaintiff, or any other party to this action, or any other person may become a purchaser at such sale. Upon such sale being made, should the successful bidder, or his assignee, fail to comply with the terms thereof within thirty (30) after the date of sale, then the undersigned Special Referee may re-advertise the Property for sale on the next, or some other subsequent, sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.
6. In the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale and sold at the next available sales date upon the terms and conditions as set forth in the Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.
7. That the undersigned Special Referee shall apply the proceeds of the sale as follows:
- FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court; and
- NEXT: To the payment of the amount to the Plaintiff, or the Plaintiffs Attorney, of the amount of the Plaintiff's debt and interest (including attorney fees) or so much thereof as the purchase money will pay on the same; and
- NEXT: Any surplus will be held pending further Order of this Court pursuant to Rule 71(c), SCRPC.

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND LOCATED IN LANCASTER COUNTY, SOUTH CAROLINA, AND BEING DESIGNATED AS LOT 261 ON THAT CERTAIN PLAT OF CLAIREMONT, PHASE 2, MAP 5, PREPARED BY YARBROUGH, WILLIAMS & HOULE, INC. DATED JANUARY 18, 2005, AND RECORDED JANUARY 28, 2005, AS PLAT DOC #2005 AT PAGE 0047 IN THE OFFICE OF THE CLERK OF COURT FOR LANCASTER COUNTY, SOUTH CAROLINA.

ALSO BEING SHOWN AS LOT 261 OF CLAIREMONT ON A PLAT OF ZIRAILI ELBEY PREPARED BY HUCKS AND ASSOCIATES, PC, DATED MARCH 3, 2006, AND RECORDED IN PLAT DOC 2006 AT PAGE 198.

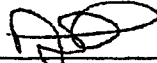
THIS BEING THE IDENTICAL PROPERTY CONVEYED TO ZIRAILI M. ELBEY BY DEED FROM THE RYLAND GROUP, INC. DATED MARCH 29, 2006 AND RECORDED APRIL 7, 2006 IN BOOK 329 AT PAGE 170. SUBSEQUENTLY, SAID PROPERTY WAS CONVEYED TO KMJ TRUST, DATED DECEMBER 15, 2006 (TRUSTEES: ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON) BY DEED OF ZIRAILI M. ELBEY DATED JANUARY 19, 2007 AND RECORDED JANUARY 29, 2007 IN BOOK 378 AT PAGE 7. THEREAFTER, THE PROPERTY WAS CONVEYED TO WFKC LIVING TRUST UNDER THE PROVISIONS OF A TRUST AGREEMENT DATED JUNE 4, 2010 (TRUSTEE: WELLESLEY K. CLAYTON) BY DEED OF ZIRAILI MOHASSAN EL BEY AND MARK ANTONIO FINDLETTER CLAYTON AS TRUSTEES OF THE KMJ TRUST, DATED DECEMBER 15, 2006 DATED JUNE 11, 2010 AND RECORDED JUNE 22, 2010 IN BOOK 569 AT PAGE 85.

CURRENT ADDRESS OF PROPERTY: 13132 Wilburn Park Lane, Fort Mill, SC 29715

TMS: 0006M-0A-261.00

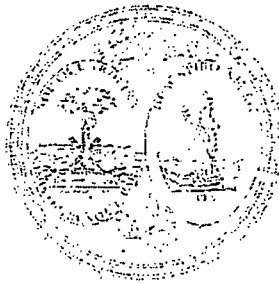
AND IT IS SO ORDERED.

Date: August 22, 2012
Lancaster, South Carolina


The Honorable Phillip E. Wright
Special Referee for Lancaster County

REFUSED OFFER

The State of South Carolina

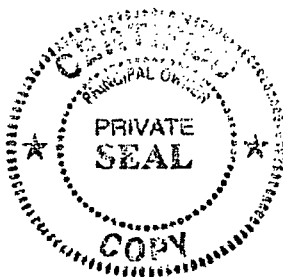
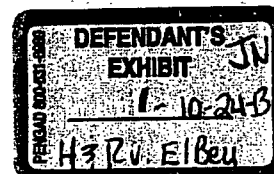


Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

**At this time, this office can find no record of a corporation using the name:
H&R BLOCK BANK, FSB**



**Given under my Hand and the Great
Seal of the State of South Carolina this
18th day of October, 2013.**

Mark Hammond
Mark Hammond, Secretary of State



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[Buy](#)

[Refinance](#)

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[Find Resources](#)

[Home](#) | [Loan Lookup](#) | [Fannie Mae Loan Lookup Results: No Match Found](#)

Fannie Mae Loan Lookup Results: No Match Found

It appears that Fannie Mae does not own your loan, based on the information you entered:

ZIRAJI ELBEY
13132 Wilburn Park Ln.
Fort Mill, SC 29715
Last 4 Digits of Social Security Number ****

FORECLOSURE CONSEQUENCES

What can happen if you are foreclosed on? Find out here so you can be prepared.

[GO TO OUR FORECLOSURE PAGE](#)

Next Steps

Search Again

Re-enter your information in the Loan Lookup Tool or, if there is a co-borrower on the mortgage, try entering the co-borrower's information.

Explore KnowYourOptions.com

Review the useful information and tools on this site to learn more about your options.

Contact Your Mortgage Company

Confirm these results and obtain additional information regarding your mortgage by contacting your mortgage company. Remember, data entered in the Loan Lookup Tool that does not match our records exactly may return inaccurate results.

See if Your Loan is Owned by Freddie Mac

Go to MakingHomeAffordable.gov

Learn more about the Making Home Affordable program—other investors (who might own your loan) may participate in this program.

Contact the Homeowner's HOPE™ Hotline

Get free housing counseling and immediate assistance by contacting the Homeowner's HOPE™ Hotline at 888-995-HOPE (4673) or www.995HOPE.org.

Visit HUD.gov

Find for more information about avoiding foreclosure.

[Search Again](#)

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[Fannie Mae](#)

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SOUTH CAROLINA



PREPARED BY SECURITY
CONNECTIONS, INC.
WHEN RECORDED MAIL TO:
SECURITY CONNECTIONS INC.
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401
PH: (208) 528-9895
ATT: KARLEEN MAUGHAN

COUNTY OF LANCASTER
POOL NO.
LOAN NO. 0021232020



Assignment-Interv.-Recorded

ASSIGNMENT OF REAL ESTATE MORTGAGE

For value received SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

located at 7595 IRVINE CENTER DRIVE, SUITE 100, IRVINE, CA 92618
hereby transfers, assigns and sets over without recourse unto
H & R BLOCK BANK PSB

located at ONE H & R BLOCK WAY, 8TH FLOOR, KANSAS CITY, MO 64105

its successors and assigns forever, that certain mortgage executed by
ZIRAILI M ELBEY
to OPTION ONE MORTGAGE CORPORATION

dated MARCH 29, 2006 and recorded in the Clerk's office LANCASTER
County, South Carolina, on APRIL 7, 2006, in Mortgage Book MORT 1486,
Page 1, together with the note thereby secured conditioned for the
payment of the full and just sum of \$197,186.00 Dollars,
according to the terms as set forth in said note and mortgage.



Loan No.

(NMRI.SC)
C=S.383.0002
P=S.002.00120.21

Page 1 of 2

J-HR8010109AI.s.02249

2010008401

ASSIGNMENT OF MORTGAGE
RECORDING FEES

\$7.00

PRESENTED & RECORDED:

08-05-2010 12:11 PM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

BK:MORT 2265

PG:129-130

LOAN NO. 0021232020

In Witness Whereof, SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

caused these presents to be signed by MELISSA HIVELY
its VICE PRESIDENT and MELANIE HANSON
its ASSISTANT VICE PRESIDENT this 2nd day of JULY
2010, but effective the 29th day of MARCH, 2006

SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

Carmen Rivera
Witness CARMEN RIVERA

BY Melissa Hively
MELISSA HIVELY
VICE PRESIDENT

Mistylin Hansen
Witness MISTYLIN HANSEN

BY Melanie Hanson
MELANIE HANSON
ASSISTANT VICE PRESIDENT

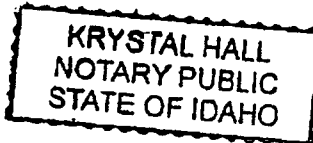
STATE OF IDAHO

COUNTY OF BONNEVILLE

) SS

On JULY 2, 2010 before me, KRYSTAL HALL
personally appeared MELISSA HIVELY
and MELANIE HANSON personally known to me
(or proved to me on the basis of satisfactory evidence) to be the persons
who executed the within instrument as VICE PRESIDENT
and ASSISTANT VICE PRESIDENT or on behalf of the Corporation
therein named and acknowledged to me that the Corporation executed it.

Krystal Hall
KRYSTAL HALL (COMMISSION EXP. 11-14-11)
NOTARY PUBLIC



(NMRI.SC.2)
C=s.383.0002
P=S.002.00120.21

Page 2 of 2

J=HR8010109AI.s.02249

Book 2265 Page 130

243

No.	Date	Title of Motion – Form 4 & Coversheet	Paid Court	Special Referee – Denied Plaintiff's Due Process
1	02/ /2011	Motion to Dismiss	\$25	Withdrew Motion
2	05/21/2012	Motion to Dismiss & Order	\$25	Failure to Act on Motion
3	05/25/2012	Motion to Compel Plaintiff to Answer Request for Admissions	\$25	Failure to Act on Motion
4	08/20/2012	Notice of Absence From The Final Hearing	-0-	Failure to Reschedule Final Hearing
5	08/05/2012	Answer to Plaintiff's Motion & Order to Restore	-0-	
6	10/02/2012	Supplement to Verified Motion to Vacate Quash Void Judgment	\$25	Failure to Act on Motion
7	10/23/2012	Request for Healing To Verified Motion to Vacate Quash and Void Judgment	\$25	Failure to Act on Motion
8	10/24/2012	Notice of Fraud	-0-	
9	10/24/2012	Newly Discovered Evidence Supplement to Verified Motion to Vacate Quash Void Judgment	-0-	Failure to Act on Motion
10	10/29/2012	Newly Discovered Evidence Notice of Actual Fraud to Supplement to Verified Motion to Vacate Quash Void Judgment	-0-	Failure to Act on Motion
11	08/06/2013	Motion to Vacate Judgment of Foreclosure and Sale Filed on August 22, 2012	\$25	Failure to Act on Motion
12	08/08/2013	Notice in the Nature Mortgage Satisfaction	-0-	Filing with Lancaster ROD
13	08/09/2013	Respondent's Refuses Offer to Contract & Accommodation with Plaintiff's Motion & Order to Restore to Include Plaintiff's Form -4		
14	08/09/2013	Correction Notice :Respondent Inadvertently in Err Used Word "Plaintiff" instead of "Respondent" in some Pleadings		
1	08/16/2013		\$25	Failure to Act on Motion
1	08/16/2013	Notice of Non-Response to Affidavit of Commercial Obligation & Notice of Fault & Opportunity to Cure Refers Court to Previously submitted SCRCP Rule 43(K) Motion & Order		

		Per SCRC Rule 60(b)(5) by Respondent August 6, 2013		
	08/20/2013	Motion and Order to Set Aside/Void Judgment, Release Deficiency Demand and Foreclosure Judgment as to Airaili M Elbey and Demand Valuable Consideration from H & R Block Bank, FSB as Plaintiff & Attorneys Brock & Scott PLLC brought Fraud upon this Court & Dismiss with Prejudice	\$25	Failure to Act on Motion
	08/21/2013	Motion to Amend Motion and Order to Set Aside/Void Judgment, Release Deficiency Demand and Foreclosure Judgment as to Ziraili M Elbey and Demand Valuable Consideration from H & R Block Bank, FSB, as Plaintiff & Attorneys Brock & Scott PLLC brought Fraud upon this Court & Dismiss with Prejudice and include SC False Claims Act & USC 31 Sec 3729 False Claims Act	\$25	Failure to Act on Motion
	10/03/2014	Respondent's Objections/Answers Plaintiff's Notice of Motion & Motion to Strike and for Sanctions Respondent's counter notice of Motion and Motion to Strike and for Sanctions Further Respondent's Notice of Completion in Brief and Notice of Previous Motion to Dismiss	\$25	Failure to Act on Motion
	10/04/2013	Notice of Motion and Motion for Default Judgment	\$25	Failure to Act on Motion
	02/20/2014	Motion to Dismiss Order for Writ of Assistance & Writ of Assisance	\$25	Failure to Act on Motion

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney:

Chad W. Burgess, Bar No. 72520

Address: **[No Substitute Counsel Order]**

Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: _____ Other: _____

Defendant's Attorney:

Ziraili M Elbey, In Propria Persona Address:

Return Address: 9789 Charlotte Hwy,
Ste 400-191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com

Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☒ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information Nature of Motion:

Estimated Time Needed: _____

Court Reporter Needed: _____

YES/

NO

☐☐

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

02/20/2014

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

FILED
OFFICE OF CLERK
OF COURT
2014 FEB 20 PM 2:25
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney:

Ronald Johnson, Bar No. ESQ

Address:

Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: Other:

Defendant's Attorney:

Ziraili M Elbey, Bar No. In Propria Persona

Address:

Return Address: 9789 Charlotte Hwy, Ste 400-
191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

05/25/2012

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

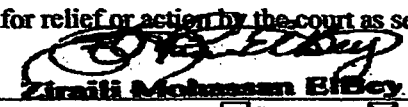
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney: Chad W. Burgess, Bar No. ESQ Address: Brock & Scot Law Firm, 3800 Fernandina Rd, Ste 110 Phone: 803-454-3540 Fax 803-454-3541 E-mail: _____ Other: _____	Defendant's Attorney: Ziraili M Elbey, Bar No. In Propria Persona Address: Return Address: 9789 Charlotte Hwy, Ste 400-191 Phone: 803-233-2665 Fax 866-408-8863 E-mail: arnold.miser@gmail.com Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Defendant's Motion to Vacate Order Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☒ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  <u>Ziraili M. Elbey</u> Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted <u>08/20/2013</u>	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ FILED OFFICE OF CLERK OF COURT LANCASTER, SC 2013 AUG 20 PM 4:28	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

243

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

H & R Block Bank

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

IN THE COURT OF COMMON PLEAS

6th JUDICIAL CIRCUIT

CASE NO.: 2011-CP-29-35

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Ronald Johnson, Bar No. ESQ

Address:

Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: Other:

Defendant's Attorney:

Ziraili M Elbey, Bar No. In Propria Persona

Address:

Return Address: 9789 Charlotte Hwy, Ste 400-
191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

05/21/2012

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney:

Chad W. Burgess, Bar No. 72520

Address: **[No Substitute Counsel Order]**Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: _____ Other: _____

Defendant's Attorney:

Ziraili M Elbey, In Propria Persona Address:

Return Address: 9789 Charlotte Hwy,
Ste 400-191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com

Other: _____

☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)☒ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)**SECTION I: Hearing Information Nature of Motion:**

Estimated Time Needed: _____

Court Reporter Needed: _____

YES/

NO

☐☐**SECTION II: Motion/Order Type**☒ Written motion attached☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

02/20/2014

Date submitted

SECTION III: Motion Fee☒ **PAID - AMOUNT: \$ 25.00**☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached order.☐ Other: _____

JUDGE CODE _____

Date: _____

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney:

Chad W. Burgess, Bar No. ESQ

Address:Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: Other:

Defendant's Attorney:

Ziraili M Elbey, Bar No. In Propria Persona

Address:

Return Address: 9789 Charlotte Hwy, Ste 400-191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com Other:

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

SECTION I: Hearing Information

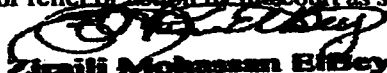
Nature of Motion: RESPONDENT'S NOTICE OF MOTION AND MOTION TO STRIKE AND FOR SANCTIONS

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES ☒ NO**SECTION II: Motion/Order Type**

- ☒ **Written motion attached**
☐ **Form Motion/Order**

I hereby move for relief or action by the court as set forth in the attached proposed order.


 Ziraili M. Elbey
Signature of Attorney for ☐ Plaintiff ☒ Defendant

10/02/2013

Date submitted

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT: \$ 25.00**
☐ **EXEMPT:** (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

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

JUDGE CODE _____

Date: _____

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- ☐ **MOTION FEE COLLECTED: \$ _____**
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

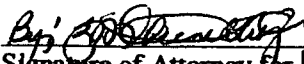
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff,

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney: Chad W. Burgess, Bar No. 72520 Address: Brock & Scot Law Firm, 3800 Fernandina Rd, Ste 110 Phone: 803-454-3540 Fax 803-454-3541 E-mail: _____ Other: _____	Defendant's Attorney: Ziraili M Elbey, Bar No. In Propria Persona Address: Return Address: 9789 Charlotte Hwy, Ste 400-191 Phone: 803-233-2665 Fax 866-408-8863 E-mail: arnold.miser@gmail.com Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant 10/04/2013 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCR)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster

CASE NO.: 2011-CP-29-35

H & R Block Bank

MOTION AND ORDER INFORMATION

Plaintiff,

FORM AND COVERSHEET

vs.

Ziraili M Elbey, In Propria Persona

Defendant.

Plaintiff's Attorney:

Chad W. Burgess, Bar No. ESQ

Address:

Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: _____ Other: _____

Defendant's Attorney:

Ziraili M Elbey, Bar No. In Propria Persona

Address:

Return Address: 9789 Charlotte Hwy, Ste 400-
191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com Other: _____

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

SECTION I: Hearing Information

Nature of Motion: Respondent's Motion to Vacate Order

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES ☐ NO**SECTION II: Motion/Order Type**☐ Written motion attached☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

08/06/2013

Date submitted

SECTION III: Motion Fee☒ PAID - AMOUNT: \$ 25.00☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support☐ Domestic Abuse or Abuse and Neglect☐ Indigent Status ☐ State Agency v. Indigent Party☐ Sexually Violent Predator Act ☐ Post-Conviction Relief☐ Motion for Stay in Bankruptcy☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCR 60)☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____**JUDGE'S SECTION**☐ Motion Fee to be paid upon filing of the attached
order.☐ Other: _____

JUDGE CODE _____

Date: _____

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

6th

JUDICIAL CIRCUIT

COUNTY OF Lancaster)

CASE NO.: 2011-CP-29-35

H & R Block Bank)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

vs.)

Ziraili M Elbey, In Propria Persona)

Defendant.)

Plaintiff's Attorney:

Chad W. Burgess, Bar No. ESQ

Address:

Brock & Scot Law Firm, 3800 Fernandina Rd,
Ste 110

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

E-mail: Other:

Defendant's Attorney:

Ziraili M Elbey, Bar No. In Propria Persona

Address:

Return Address: 9789 Charlotte Hwy, Ste 400-
191

Phone: 803-233-2665 Fax 866-408-8863

E-mail: arnold.miser@gmail.com Other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Respondent's Motion to Vacate Order

Estimated Time Needed: Court Reporter Needed: ☐ YES ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

08/06/2013

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCR 60)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

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U.S. Code (/uscode/text) › Title 15 (/uscode/text/15) › Chapter 41
(/uscode/text/15/chapter-41) › Subchapter V (/uscode/text/15/chapter-41/subchapter-V) › § 1692a

15 U.S. Code § 1692a - Definitions

Current through Pub. L. 113-185 (<http://www.gpo.gov/fdsys/pkg/PLAW-113publ185/html/PLAW-113publ185.htm>). (See Public Laws for the current Congress (<http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws>).)

US Code (/uscode/text/15/1692a?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates)

Notes (/uscode/text/15/1692a?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates)

Authorities (CFR) (/uscode/text/15/1692a?qt-us_code_temp_noupdates=3#qt-us_code_temp_noupdates)
prev (/uscode/text/15/1692) | next (/uscode/text/15/1692b)

As used in this subchapter—

- (1) The term "Bureau" means the Bureau of Consumer Financial Protection.
- (2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.
- (3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.
- (4) The term "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.
- (5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.
- (6) The term "debt collector" means 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. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f (/uscode/text/15/1692f) (6) (/uscode/text/15/usc_sec_15_00001692--f000-#6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the

U.S. Code Toolbox

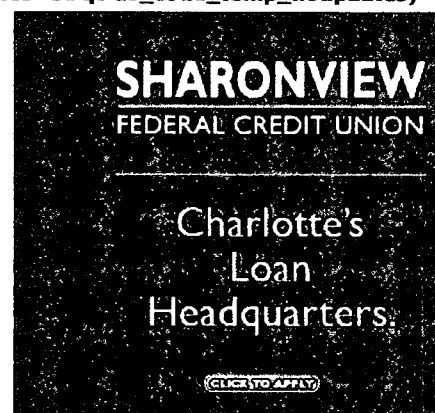
Wex: Commercial Law: Overview
(/wex/commercial_law)

@CLS: Clarke Business Law Institute
(<http://www.lawschool.cornell.edu/academi>)

Title 15 USC, RSS Feed (<http://www.law.cornell.edu/uscode/rss/usc>)

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principal purpose of which is the enforcement of security interests. The term does not include—

- (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
- (B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;
- (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;
- (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;
- (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and
- (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity
 - (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement;
 - (ii) concerns a debt which was originated by such person;
 - (iii) concerns a debt which was not in default at the time it was obtained by such person; or
 - (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.
- (7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.
- (8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

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David A. Concha

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L. Bree Laughrun, Esq.

(<http://lawyers.law.cornell.edu/lawyer/l-l-laughrun-esq-1492473>)

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Listing of Mortgage Servicer Definitions

NORTH CAROLINA	SECURE AND FAIR ENFORCEMENT MORTGAGE LICENSING ACT - "Engaging in the mortgage business" means: 1) For compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, to accept or offer to accept an application for a residential mortgage loan from prospective borrowers, solicit or offer to solicit a residential mortgage loan from prospective borrowers, negotiate the terms or conditions of a residential mortgage loan with prospective borrowers, issue residential mortgage loan commitments or interest rate guarantee agreements to prospective borrowers, or engage in table funding of residential mortgage loans, whether any such acts are done through contact by telephone, by electronic means; by mail, or in person with the borrowers or prospective borrowers. 2) To make or fund, or offer to make or fund, or advance funds on residential mortgage loans for compensation or gain, or in the expectation of compensation or gain. 3) To engage, whether for compensation or gain from another or on one's own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any residential mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the residential mortgage loan, the residential mortgage loan servicing documents, or servicing contract, or otherwise to meet the definition of the term "servicer" in 12 U.S.C. § 2605(i)(2) with respect to residential mortgage loans.	N.C. Gen. Stat. §53-244.030(10)
NORTH DAKOTA	This state does not define a mortgage servicer or the act of servicing a mortgage loan under the Mortgage Brokers Act or the Mortgage Loan Originator Act	
OHIO	This state does not define a mortgage servicer or the act of servicing a mortgage under the Mortgage Broker Act or Mortgage Lender Act, although also see the definition under lender.	
OKLAHOMA	SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT - Defines the act of servicing a mortgage under the definition of mortgage lender. "Mortgage lender" means an entity that takes an application for a residential mortgage loan, makes a residential mortgage loan or services a residential mortgage loan and is an approved or authorized: (a) mortgagee with direct endorsement underwriting authority granted by the United States Department of Housing and Urban Development; (b) seller or servicer of the Fannie Mae or Freddie Mac; or (c) issuer for the Ginnie Mae.	Okla. Stat. Ann. tit. 59, §2095.2
	UNIFORM CONSUMER CREDIT CODE - Although the UCCC does not specifically define a mortgage servicer, a license is required as a supervised lender in order to engage in the business of making supervised loans or taking assignments and undertaking direct collection of payments from or enforcement of rights against borrowers arising from supervised loans. "Supervised loan" means any loan secured by an interest in land in which the annual percentage rate exceeds 13% per year.	Okla. Stat. Ann. tit. 14A, §3-503
OREGON	"Mortgage loan servicer" means a person engaging in the servicing of residential mortgage loans in this state and includes a person who makes or holds a mortgage loan if the person is the holder of the mortgage servicing rights or has been delegated servicing functions for the mortgage loan. "Servicing of residential mortgage loans" includes, but is not limited to: (a) Collecting or remitting, or having the right or obligation to collect or remit, for a lender, note owner, note holder or other holder of an interest in a note, payments, interest, principal and trust items, including but not limited to hazard insurance and taxes, on a residential mortgage loan in accordance with the terms of the loan, and includes loan payment follow-up, delinquency loan follow-up, loan analysis and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing; (b) Bringing and maintaining a suit or action to collect amounts owed on a residential mortgage loan, including but not limited to exercising contractual, statutory or common law remedies such as injunction, specific performance, judicial or nonjudicial foreclosure or receivership; and, (c) Taking action for the purpose of protecting the lender's, note owner's, note holder's or other owner of an interest in the property and rights under the security instrument. "Servicing of residential mortgage loans" does not include the activities of any person licensed or authorized to act as an attorney, escrow agent, title company, or title insurer under Oregon law, or any person qualified to serve as a trustee.	Or. Admin. Rules §137-020-0800
PENNSYLVANIA	This state does not define a mortgage servicer or the act of servicing a mortgage loan under the Mortgage Licensing Act.	
RHODE ISLAND	This state does not define a mortgage servicer or the act of servicing a mortgage loan under the General Laws Licensed Activities Act.	
SOUTH CAROLINA	MORTGAGE LENDING ACT - Defines a mortgage servicer under the definition of a mortgage lender. "Mortgage lender" means a person who acts as a mortgage lender or engages in the business of servicing mortgage loans for others or collecting or otherwise receiving mortgage loan payments directly from borrowers for distribution to another person. This does not include a person engaging in a tablefunded transaction. "Act as a mortgage lender" means to engage in the business of making or servicing a mortgage loan for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, including soliciting, processing, placing, or negotiating a mortgage loan.	S.C. Code Ann. §37-22-110
SOUTH DAKOTA	MORTGAGE LENDER BUSINESS STATUTE - Defines a mortgage servicer under the definition of a mortgage lender in the Mortgage Lender Business Statute. "Mortgage lender" means any person who, for valuable consideration, originates, sells, or services mortgages, or holds himself, herself, or itself out as a person who, for valuable consideration, originates, sells, or services mortgages, other than those exempt from the South Dakota Mortgage Lender Business Statute.	S.D. Codified Laws §54-14-12(8)
TENNESSEE	RESIDENTIAL LENDING, BROKERAGE AND SERVICING ACT - "Mortgage loan servicer" means any person who in the regular course of business assumes responsibility for servicing and accepting payments for a residential mortgage loan.	Tenn. Code Ann. §45-13-105(16)
TEXAS	RESIDENTIAL MORTGAGE LOAN SERVICER REGISTRATION ACT - "Residential mortgage loan servicer" means a person who: (A) receives scheduled payments from a borrower under the terms of a residential mortgage loan, including amounts for escrow accounts; and (B) makes the payments of principal and interest to the owner of the loan or other third party and makes any other payments with respect to the amounts received from the borrower as may be required under the terms of the servicing loan document or servicing contract. The Mortgage Banker Registration and Residential Mortgage Loan Originator License Act contains an exemption for residential mortgage loan servicers.	Tex. Fin. Code Ann. §158.002
UTAH	MORTGAGE LENDING AND SERVICING ACT - "Servicer" means a person who in the regular course of business assumes responsibility for servicing and accepting payments for a mortgage loan.	Utah Code Ann. §70D-2-102(8)
VERMONT	LOAN SERVICERS ACT - "Third party loan servicer" means a person who engages in the business of servicing a loan, directly or indirectly, owed or due or asserted to be owed or due another. "Servicing" means receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or a reverse mortgage, servicing includes making payment to the borrower.	Vt. Stat. Ann. tit. 8, §2900

**BROCK
& SCOTT**
PLLC



EXHIBIT "D"
1815 pgs

COLUMBIA OFFICE

WESTPARK CENTER
3800 FERNANDINA ROAD
SUITE 110
COLUMBIA, SC 29210
PHONE 803-454-3540
FAX 803-454-3541

www.brockandscott.com

THOMAS E. BROCK *
GREGORY A. SCOTT *
JAMES P. BONNER *
MARK A. PEARSON **
BRIAN L. CAMPBELL **
SEAN M. CORCORAN *

ATLANTA, GA
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* Licensed in North Carolina

** Licensed in North Carolina and South Carolina

May 29, 2012

Ziraili Elbey
13132 Wilburn Park Lane
Fort Mill, SC 29715

RE: Case reference: Ziraili Elbey
B&S File No.: 10-19401
Property Address: 13132 Wilburn Park Lane
Fort Mill, SC 29715

Dear Ziraili Elbey:

Enclosed please find the requirements in response to your request of Notice of Right to Foreclosure Intervention pursuant to South Carolina Supreme Court Administrative Order 2011-05-02-01.

Please review in its entirety and return completed package to Brock & Scott, PLLC, Attn: SC-Foreclosure Intervention, 5431 Oleander Drive, Wilmington, NC 28403 no later than Wednesday, August 1, 2012. Failure to provide the completed package by 8/1/12 may result in our commencing with the foreclosure action.

Should you have any questions please contact the law firm of Brock & Scott at 888-726-9953 x 4102.

Respectfully,

Melissa Settlemyre
SC-Foreclosure Intervention
Brock & Scott, PLLC

Enclosures

258.
10-19401*



350 Highland Dr.
Lewisville, Texas 75067

Dear Customer:

Thank you for your recent request for assistance for property retention. Please remit the following documents signed and dated, where necessary, to complete your request. **Take note**, partial and incomplete documents will prolong the review process.

- ☐ 3rd Party Authorization
- ☐ Dodd Frank Certification
- ☐ Detailed hardship letter
- ☐ Financial Information Request Form
 - 2 Most recent pay stubs for all household contributors
 - **NOTE: CONTRIBUTION LETTERS/INCOME CANNOT BE CONSIDERED**
 - Current SSI/D award letter
 - Child support Order
 - YTD or Current quarter P/L
 - Food Stamp Awards letter
 - Most recent unemployment award letter
- ☐ Last 60 Days COMPLETE PERSONAL/BUSINESS Bank Statements (If Self-Employed)
- ☐ 08/09 **COMPLETE and SIGNED TAX RETURNS**
 - Remit same if self employed
- ☐ Divorce Decree or Legal Separation documents (If applicable)
 - Quit Claim Deed
 - General Warranty Deed
- ☐ FORM 1020 (FNMA Monthly Expense form)
- ☐ FORM 1021 (FNMA Hardship Affidavit)
- ☐ 4306(T)
- ☐ RMA
- ☐ Recent Utility Bill
- ☐ Home Owner Association Letter/Statement (if applicable)
- ☐ Assistance Application Checklist & Questionnaire (For FREDDY MAC loans only)

Thank you in advance,
Nationstar Mortgage Mediation Dpt.

3rd Party Authorization

Fax # _____

TO: NATIONSTAR MORTGAGE, LLC.

RE: Loan #: _____

Property Address: _____

Date: _____, 20____

To Whom It May Concern:

I/We are having trouble maintaining my/our mortgage payments and would like to request a short sale. Please accept this letter as my/our authorization for you to speak with the following individuals regarding my account.

Name: _____

Company: _____

Phone: _____

Please direct all correspondence regarding the short sale to them.
If you have any questions please contact one of the above parties. They have my written consent to speak to you about my account(s). This authorization is to remain in effect until further notice in writing or until my account is closed.

Thank you in advance for your cooperation.

Borrower Name Date _____

Borrower Name Date _____

Borrower Signature Date _____

Borrower Signature Date _____

260

Dodd-Frank Certification

The following information is requested by the federal government in accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203). You are required to furnish this information. The law provides that no person shall be eligible to receive assistance from the Making Home Affordable Program, authorized under the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 *et seq.*), or any other mortgage assistance program authorized or funded by that Act, if such person, in connection with a mortgage or real estate transaction, has been convicted, within the last 10 years, of any one of the following: (A) felony larceny, theft, fraud or forgery, (B) money laundering or (C) tax evasion.

Borrower

- ☐ I have not been convicted within the last 10 years of any one of the following in connection with a mortgage or real estate transaction:
- (a) felony larceny, theft, fraud or forgery,
 - (b) money laundering or
 - (c) tax evasion

Co-Borrower

- ☐ I have not been convicted within the last 10 years of any one of the following in connection with a mortgage or real estate transaction:
- (a) felony larceny, theft, fraud or forgery,
 - (b) money laundering or
 - (c) tax evasion

In making this certification, I/we certify under penalty of perjury that all of the information in this document is truthful and that I/we understand that the Servicer, the U.S. Department of the Treasury, or their agents may investigate the accuracy of my statements by performing routine background checks, including automated searches of federal, state and county databases, to confirm that I/we have not been convicted of such crimes. I/we also understand that knowingly submitting false information may violate Federal law.

Borrower Signature

Date

Co-Borrower Signature

Date

SC STATUTE CHAPTER 23.

PAROL, FRAUDULENT, AND OTHER VOID GIFTS OR CONVEYANCES

SECTION 27-23-10. Conveyances to defraud creditors; transfers of income and property to avoid paying child support.

(A) Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

South Carolina Fraudulent Conveyance Statute, S.C.
Code Ann. § 27-23-10 (2007) (hereinafter the Statute of Elizabeth)

Appellants claim the assignment of the note was a fraudulent conveyance in violation of the Statute of Elizabeth. Appellant agrees.

The Statute of Elizabeth provides: Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken . . . to be clearly and utterly void

S.C. Code Ann. § 27-23-10(A) (2007).

EXECUTIVE SUMMARY

ATTN: LINE

1 THRU 10 &

**PG 8 ON FICTITIOUS
TRANSACTIONS**



Forensic Professionals Group USA, Inc.

EXECUTIVE SUMMARY

Based upon my personal investigation and the facts discovered I can testify that this foreclosure appears to have been conducted unlawfully. It includes foreclosure-related documents signed in a manner that are not lawful; reverse engineered false and inaccurate documents, undisclosed and manipulated conflicts of interest, and purposeful deceit in falsifying faulty chains of title. Designs in this manner make a mockery of our courts.

1. This loan has been securitized,
2. Subsequent sales or transfers of the loan have not been revealed,
3. The ELBEY's Note and Mortgage presented
 - a. have been paid in full in 2006,
 - b. have been separated (bifurcated)
4. The documents submitted as the basis of this foreclosure are fictitious and faulty,
5. The chain of ownership is deceitful and faulty,
6. The evidence reveals "robo-signing" has also taken place.
 - a. Documentation asserting claims without knowledge of the facts, or confirming their accuracy.
 - b. Employees of foreclosure trustees are signing documents posing as the corporate officer of multiple banks and Mortgage servicers.
 - c. Reverse-engineering the chain of title in the Assignment to make it appear as though the loan was passed from company to company when in fact it was not.
7. The documentation has been reverse engineered,
8. Federal loan modification requirements have not been met, and
9. Consumer protection requirements have not been followed.
10. A chain of ownership for the loan or the security interest that has been falsely manipulated and reverse engineered to appear lawful when in fact it is not;

Such deceptive processes may violate state laws, and individual Attorney Generals have requested suspension of questionable foreclosures and investigation into the underlying cases in which judges and courts have not yet confirmed the following:

- that all foreclosure-related documents were lawfully signed,
- that the chain of ownership is clear and has been revealed to you in full

EXHIBIT

BROCK & SCOTT KNEW BEFORE FILING INITIAL COMPLAINT THAT
RESPONDENT'S MORTGAGE WAS PAID-IN-FULL
BROCK & SCOTT SHOULD BE SCANTIONED FOR VIOLATION OF
"SCROP" RULE 11

EXECUTIVE SUMMARY

 Forensic Professionals Group USA, Inc.

ATTN: LINE

1 THRU 10 &

**PG 8 ON FICTITIOUS DIAGRAM OF THE FICTITIOUS TRANSACTION
TRANSACTIONS**

Ziraili M. Elbey

MORTGAGOR

\$197,186.00

Loan originated: March 29, 2006
Option One Mortgage Corporation, Inc.

 Option One Mortgage Corporation, Inc.

ORIGINATOR

Originates the loan with borrower. Initial loan
docs: Note not endorsed, Mortgage not
assigned - indicates portfolio loan

Sand Canyon Corporation FKA Option One Mortgage

ASSIGNMENT OF REAL ESTATE MORTGAGE

Docs dated July 2, 2010

Transferred to H&R Block

Signed by Melissa Hively, VP (robo-signer)

Melanie Hanson, Assistant VP (robo-signer)

Notarized by Krystal Hall (robo signer)

Fabricated, Robo-Signed, Reverse engineered

12/4/2007 Option One Announces Shut Down of Lending Operations

01/31/2008 OOMC ceases all loan origination activities.

4/30/2008 OOMC sells Servicing to AHMSI for \$1.3b

03/18/2009 BK: Sand Canyon no longer engaged in servicing,

has no servicing rights, and

does not own any residential real estate loans.

H&R Block Bank

COURT CASE

HRB relying on bogus fictitious Assignment above
to obtain ownership and deficiency judgment.

UNKNOWN

TRUST FUND - ISSUING ENTITY

Holds Pool Of Loans; Issues Certificates

Closing Date: Unknown

BROCK & SCOTT KNEW BEFORE FILING INITIAL COMPLAINT THAT
RESPONDENTS MORTGAGE WAS PAID-IN-FULL
BROCK & SCOTT SHOULD BE SCANTIONED FOR VIOLATION OF
"SCRC" FILE 11

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

**At this time, this office can find no record of a corporation using the name:
H&R BLOCK BANK, FSB**

Given under my Hand and the Great
Seal of the State of South Carolina this
18th day of October, 2013,

A handwritten signature in cursive script that reads 'Mark Hammond'. The signature is written in dark ink and is positioned above the printed name.
Mark Hammond, Secretary of State

**EXAMINATION OF ASSIGNMENTS OF MORTGAGE
CONDUCTED IN THE
ESSEX SOUTHERN DISTRICT REGISTRY OF DEEDS**

By Marie McDonnell, CFE

**Protocols and Practical Applications for Classifying Assignments of Mortgage
According to the Prescribed Definitions of Terms**

VALID ASSIGNMENT OF MORTGAGE

Non-Foreclosure Situation

A *valid assignment* is recognizable when the originating Lender lawfully assigns borrower's loan (note & mortgage) at or near origination.

1. Example: Barnes — On 4/15/2010, Salem Five Mortgage Company, LLC assigns mortgage to JPMorgan Chase Bank, N.A. at settlement and immediately records it after the mortgage.

Where it can be established that the signer and the notary are persons duly authorized pursuant to M.G.L. c. 183 § 54B.

Where the assignment is duly acknowledged in compliance with M.G.L. c. 183, s. 30, 33 and 41 as applicable.

Where the originating lender appears to have continuously held the borrower's loan (note & mortgage) from the date of execution until the date the assignment is made as there are no subsequent assignments on record, and no forensic evidence of any prior transfer of the loan.

Where there is no forensic evidence available suggesting there were any intervening transfer(s) by the Lender or Assignee of record who is executing the assignment at issue.

Foreclosure Situation

A party other than the originating Lender seeking to conduct a non judicial foreclosure under the "power of sale" contained in a mortgage in Massachusetts must comply with the following:

Interpreting G.L. c. 267, s. 1, *Commonwealth v. O'Connell*, 55 Mass. App. Ct. 100 (2002) states:

"[fn6] To make out its case on forgery, the Commonwealth must prove that the defendant falsely made all or part of a document with the intent to defraud. G.L. c. 267, § 1. *Commonwealth v. Apalak*, 396 Mass. 292, 295-296 (1985) [fn7] See Model Penal Code § 224.1 (1980) ("A person is guilty of forgery if . . . the actor: (a) alters any writing of another without his authority; or (b) makes . . . any writing so that it purports to be the writing of another who did not authorize the act") (emphasis supplied); 18 Pa. Cons. Stat. § 4101 (2001); *State v. Mason*, 79 Haw. 175, 180 (Ct. App. 1995); *People v. Piening*, 99 A.D.2d 583, 584 (N.Y. 1984); *Lewis v. Commonwealth*, 213 Va. 156 (1972). See also *Owen v. People*, 118 Colo. 415, 421 (1948), and cases cited.

The phrase "falsely makes" was examined in the case of *Commonwealth v. Apalak*, 396 Mass. 292 (1985) and found to be essentially synonymous with "forgery".

Accordingly, forgery is the false making or material alteration of a written instrument with the intent to injure or defraud. *Commonwealth v. Apalak*, supra at 298. The focus for forgery is upon the *false making* of the document(s) and/or instrument(s), not their *publication*. It is not necessary to show that anyone actually was defrauded. *Commonwealth v. Analetto*, 326 Mass. 115, 118 (1950).

One who falsely makes a written instrument with the requisite intent to injure or defraud, even if they never show that document(s) and/or instrument(s) to another, is guilty of forgery.

Uttering:

Where document(s) and/or instrument(s) have been fraudulently or "falsely made" and are thereafter published (i.e. recorded or registered on the public land records), the crime of "uttering" has been committed and may be punished under G.L. c. 267, s. 5.

G.L. c. 267, s. 5 states:

"Whoever, with *intent to injure or defraud*, utters and publishes as true a false, forged or altered record, deed, instrument or other writing mentioned in the four preceding sections, knowing the same to be false, forged or altered, shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two years."

The crime of uttering punishes the *publication*, with *intent to injure or defraud*, of an instrument known to be *forged*. *Commonwealth v. Levin*, 11 Mass. App. Ct. 482, 496-97 (1981).

12. Example: Miller — On 10/12/2010, *Robo-signer Tom Croft of Carrington Mortgage Services, LLC* as attorney in fact for New Century Mortgage Corporation executed and caused to be recorded an Assignment of Mortgage from New Century Mortgage Corporation to Wells Fargo Bank, N.A. as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC4. New Century has been in a liquidation bankruptcy since 2007 and had divested itself of its loans years before. The Miller loan had to be conveyed into the subject trust within 90 days of when the deal closed in 2006.

A *fraudulent assignment* of mortgage may also become *criminally fraudulent* when it violates at least one of several Massachusetts laws related to the preparation and/or the preparation and then recordation on the public land records of various legal documents associated with mortgages (in this context):

Formerv:

"Falsely making" document(s) and/or instrument(s) with knowledge that such document(s) and/or instrument(s) have been executed with an "intent to injure or defraud" is a crime in Massachusetts typically reviewed under the "forgery" statute at G.L. c. 267, s. 1.

G.L. c. 267, s. 1 states:

"Whoever, with intent to injure or defraud, falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of a clerk or register of a court, public register, notary public, justice of the peace, town clerk or any other public officer, in relation to a matter wherein such certificate, return or attestation may be received as legal proof; or a charter, deed, will, testament, bond or writing obligatory, power of attorney, policy of insurance, bill of lading, bill of exchange or promissory note; or an order, acquittance or discharge for money or other property or a credit card or an instrument described as a United States Dollar Traveller's Check or Cheque, purchased from a bank or other financially responsible institution, the purpose of which is a source of ready money on cashing the instrument without identification other than the signature of the purchaser; or an acceptance of a bill of exchange, or an endorsement or assignment of a bill of exchange or promissory note for the payment of money; or an accountable receipt for money, goods or other property; or a stock certificate, or any evidence or muniment of title to property; or a certificate of title, duplicate certificate of title, certificate issued in place of a duplicate certificate, the registration book, entry book, or any indexes provided for by chapter one hundred and eighty-five, or the docket of the recorder; shall be punished by imprisonment in the state prison for not more than ten years or in jail for not more than two years."

Bank of America assigned the bid to Federal National Mortgage Association (Fannie Mae), the real party in interest.

FRAUDULENT ASSIGNMENT OF MORTGAGE

An *invalid assignment* may be determined to be a *fraudulent assignment* where pattern and practice evidence exists that the party executing the assignment does so knowingly and willfully with intent to deceive.

8. Example: Berger — On 11/28/2008, *Andrew S. Harmon*, a known principal and attorney at Harmon Law Offices, PC, acting as an attorney as well as a purported MERS Certifying Officer, prepared, executed, and caused to be recorded on the public land records an Assignment of Mortgage from Mortgage Electronic Registration Systems, Inc. to Wells Fargo Bank, N.A. Forensics established however that Fannie Mae is the current owner of the mortgage obligation.
9. Example: Griffin — On 1/7/2010, *Andrew S. Harmon*, a known principal and attorney at Harmon Law Offices, PC, acting as an attorney as well as a purported MERS Certifying Officer, prepared, executed, and caused to be recorded on the public land records an Assignment of Mortgage from Mortgage Electronic Registration Systems, Inc. to Wells Fargo Bank, N.A. Forensics established however that Fannie Mae is the current owner of the mortgage obligation.
10. Example: Green — On 8/6/2010, *Andrew S. Harmon*, a known principal and attorney at Harmon Law Offices, PC, acting as an attorney as well as a purported MERS Certifying Officer, prepared, executed, and caused to be recorded an Assignment of Mortgage from Mortgage Electronic Registration Systems, Inc. to Wells Fargo Bank, N.A. Forensics established however that Fannie Mae is the current owner of the mortgage obligation.

CRIMINALLY FRAUDULENT ASSIGNMENT

A *fraudulent assignment* may become *criminally fraudulent* when it violates the Massachusetts Residential Mortgage Fraud statute, M.G.L. c. 266 § 35(A)(b)(4) and was recorded on the public land records on or after August 7, 2010.

11. Example: McGrath — On 10/6/2010, *Andrew S. Harmon of Harmon Law Offices, P.C.*, acting as an attorney as well as a purported MERS Certifying Officer, prepared, executed, and caused to be recorded an Assignment of Mortgage from Mortgage Electronic Registration Systems, Inc. to Wells Fargo Bank, N.A. Forensics established however that Fannie Mae is the current owner of the mortgage obligation.

(See *U.S. Bank National Association v. Ibanez*, 458 Mass. 637 (2011); *HSBC Bank USA, N.A. v. Haro*, Suffolk County District Court, Chelsea Division, Case No. 201014SU000264, 6/15/2011; and *Eaton v. Federal National Mortgage Association*, Suffolk County Superior Court, Civil Action No. 11-1382, 6/17/2011)

An assignment executed by a purported MERS "Certifying Officer" that attempts to convey the mortgage from MERS to the foreclosing entity is typically ineffective and invalid for the reasons stated above.

- An assignment from MERS is limited by the agency status contained in the mortgage between MERS and its principal whereby MERS has limited power(s) to act solely as "nominee" for the originating Lender and for the Lender's successors and assigns.¹

An assignment from MERS as nominee for the Lender or the Lender's successors and assigns that fails to validly assign the mortgage to the current note holder will not comport with the requirement that the note and mortgage be held in the same ownership by the foreclosing entity. Accordingly, the Assignee will not have the legal authority to foreclose the mortgage non judicially and the assignment will be considered invalid when used for that purpose.

Where the assignment is being prepared by the Loan Servicer or a Foreclosing Law Firm to prosecute a non judicial foreclosure *and where* forensic analysis establishes that the Assignor is not the current owner (i.e., the assignment appears to contain false statements or representations), it is considered invalid. In such cases, the Assignor lacks ownership and/or authority to assign the mortgage; moreover, recorded assignments that contain false statements are considered forgeries and utterings in Massachusetts.

Assignments of Bid post-foreclosure are considered invalid when analysis determines that the foreclosing entity was not the legal owner of the note and mortgage at the time the foreclosure took place.

7. Example: Odolomerun — On 12/13/2004, Bank of America originated the loan and sold it to Fannie Mae. According to Fannie Mae's Selling and Servicing Guide, this conveyance required Bank of America to prepare, execute and deliver an Assignment of Mortgage to Fannie Mae, *but not record same*. On 4/9/2010, Bank of America filed a Complaint to Foreclose Mortgage in the Massachusetts Land Court and obtained a judgment on 9/15/2010. The following day, 9/16/2010,

¹ MERS' unilateral statement that it is the "mortgagee" under a typical MERS mortgage does not automatically confer the legal status of a mortgagee upon MERS simply because the document states so.

INVALID ASSIGNMENT OF MORTGAGE

Non-Foreclosure Situation

An *invalid assignment* results, for example, when the originating Lender purports to assign the note and mortgage directly to the Issuing Entity of a securitized trust. Such a transfer violates the Pooling and Servicing Agreement governing the trust, New York Trust and other New York state laws, as well as I.R.S. REMIC rules and is, therefore, presumptively invalid.

Where an assignment from Mortgage Electronic Registration Systems, Inc. fails to identify the Principal Member who is purporting to assign the mortgage, there is no "grant" from a person who can be confirmed as an authorized signer pursuant to M.G.L. c. 183 § 54B and therefore, the assignment is presumptively invalid.

— Moreover, an assignment from MERS conveys only the agency status that MERS has established in the mortgage whereby it has limited powers to act solely as nominee for the Lender and for the Lender's successors and assigns. See (Agard; BONY v. Silverberg)

Where a known Robo-Signer executes the assignment without proper authority or personal knowledge of the document's contents and legal effect.

Where a Surrogate-Signer executes the assignment there may be forgery, uttering, and notary fraud.

Where the Execution Date on the assignment and Notary Date are not the same.

Foreclosure Situation

A party other than the originating Lender seeking to conduct a non judicial foreclosure under the "power of sale" contained in a mortgage in Massachusetts must comply with the following:

- a.) The foreclosing party must be the lawful owner of the note;
- b.) The foreclosing party must be in possession of the original promissory note;
- c.) The foreclosing party must be the Mortgagee (as that term is defined by statute and under the common law) by way of a valid assignment(s) at the time the foreclosure sale is noticed (and at the time any sale is conducted) pursuant to M.G.L. c. 244 § 14.

If challenged, the foreclosing entity must be able to prove that it has a complete, unbroken chain of title from the originating Lender together with valid documentation of all intervening Assignees.

3. Example: Clain — On 10/26/2010, Wells Fargo Bank, N.A. *assigns mortgage* directly to U.S. Bank National Association as Trustee for Structured Asset Securities Corporation Trust 2005-WF2. Under the stated terms of the Pooling and Service Agreement to the Trust therefore, there are three (3) obviously Missing Assignments:
- a.) Wells Fargo Bank, N.A. to the Seller/Sponsor;
 - b.) Seller/Sponsor to the Depositor/ and;
 - c.) Depositor to U.S. Bank National Association as Trustee for Structured Asset Securities Corporation Trust 2005-WF2.

QUESTIONABLE ASSIGNMENT OF MORTGAGE

A *questionable assignment* is one where bank failures and/or mergers & acquisitions make it nearly impossible to validate conveyances.

4. Example: Hodgkins — On 9/16/2010, Bank of America, N.A. as S/B/M/T Fleet National Bank as S/B/M/T BayBank Middlesex *assigns mortgage* to JPMorgan Chase Bank, N.A.
5. Example: Norris — On 3/19/2010, Chase Home Finance LLC S/B/M to Chase Manhattan Mortgage Corp. A/I/F for Bank of America F/K/A Fleet National Bank F/K/A BankBoston NA SBM the First National Bank of Boston SBM Pioneer Financial, A Cooperative Bank Consolidated with Malden Co-Operative Bank *assigns mortgage* to JPMorgan Chase Bank, N.A. Successor in Interest from Federal Deposit Insurance Corporation as Receiver for Washington Mutual Bank, FA.

Where the mortgage is being assigned years after a discharge in an attempt to correct a skip or gap in the chain of title.

6. Example: Beck — On 10/22/1998, Beck granted a Mortgage to Homeside Lending, Inc.; Mortgage Electronic Registration Systems, Inc. discharged the mortgage on 5/30/2003. Six (6) years later, on July 23, 2009, Wells Fargo Bank, N.A. successor by merger to Wells Fargo Home Mortgage, Inc. as Attorney in Fact for U.S. Bank National Association as successor Trustee to Wachovia Bank, N.A. f/k/a First Union National Bank, as Trust Administer *assigns the mortgage* to Mortgage Electronic Registration Systems, Inc.

Where the Assignment is suspected to be invalid because of a preponderance of evidence gathered involving the parties to the transfer.

- a.) The foreclosing party must be the lawful owner of the note;
- b.) The foreclosing party must be in possession of the original promissory note;
- c.) The foreclosing party must be the Mortgagee (as that term is defined by statute and under the common law) by way of a valid assignment(s) at the time the foreclosure sale is noticed (and at the time any sale is conducted) pursuant to M.G.L. c. 244 § 14.

If challenged, the foreclosing entity must be able to prove that it has a complete, unbroken chain of title from the originating Lender together with valid documentation of all intervening Assignees.

(See *U.S. Bank National Association v. Ibanez*, 458 Mass. 637 (2011); *HSBC Bank USA, N.A. v. Haro*, Suffolk County District Court, Chelsea Division, Case No. 201014SU000264, 6/15/2011; and *Eaton v. Federal National Mortgage Association*, Suffolk County Superior Court, Civil Action No. 11-1382, 6/17/2011)

Accordingly, if an assignment is being prepared in order to pass title into the foreclosing Mortgagee, the following must be *true*:

The Assignor is the originating Lender or a lawful successor in interest, or became the Mortgagee through one or more valid Assignment(s) of Mortgage *and* the forensic evidence indicates that the Assignee is the current lawful owner of the note (and is in possession of the original thereof) *or* is silent.

MISSING ASSIGNMENT OF MORTGAGE

A *missing assignment* may be detected where there is a skip or "gap" in the chain of title because the last known Lender/Mortgagee/Assignee is not the current owner or holder of the mortgage obligation as determined through forensic examination.

- 2. Example: Costa — On 9/3/2010, Bank of America, N.A. as Lender *assigns* mortgage to BAC Home Loans Servicing, LP; research established that Fannie Mae owns the loan. Therefore, there is a Missing Assignment to Fannie Mae.

The securitization model popularized over the past decade usually requires two (2) "true sales" to distance the originating Lender from the Issuing Entity in order to create a so-called "bankruptcy remote" transaction. This involves at least three (3) assignments of the mortgage in question. When there is an assignment from the originating Lender directly into the Trust, which is typically a prohibited act pursuant to virtually all Pooling and Servicing Agreements, there are usually at least three (3) Missing Assignments. (See Securitization Flow Chart)



Commonwealth of Massachusetts

SOUTHERN ESSEX DISTRICT REGISTRY OF DEEDS
SHETLAND PARK
45 CONGRESS STREET
SUITE 4100
SALEM, MASSACHUSETTS 01970

JOHN L. O'BRIEN, JR.

Register of Deeds

(978) 542-1704

Fax: (978) 542-1706

e-mail: southernsexcustomerservice@sec.state.ma.us
www.salemdeeds.com

A division of the Secretary of the Commonwealth
WILLIAM FRANCIS GALVIN, SECRETARY

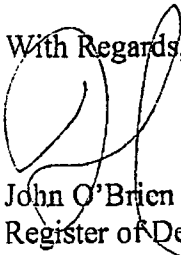
Ziraili M. Elbey
13132 Wilburn Park Lane
Ft. Mill, SC 29707

Dear Ziraili,

In an attempt to provide you with more assistance, I have enclosed, an affidavit signed by me, as Register of the Southern Essex District Registry of Deeds, attesting to the presence of a robo-signed signature on your document as listed on McDonnell Property Analytics Approved Robo-signers List. If you are currently being foreclosed upon, this affidavit may be presented to your attorney, the lender, or the court to show that your chain of title has been corrupted. For those of you who are not in foreclosure, the affidavit may be presented to your current lender to show that a robo-signed document has in fact been recorded in your chain of title and be part of a request to investigate how this happened and what the lender is going to do to correct it.

Thank you for contacting us concerning your robo-signed document. Should you have any further questions or need assistance, please contact my Customer Service Department at 978-542-1704.

With Regards,


John O'Brien
Register of Deeds

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AFFIDAVIT OF JOHN L. O'BRIEN, REGISTER OF DEEDS
SOUTHERN ESSEX DISTRICT

1. I, John L. O'Brien, Register of the Southern Essex District Registry of Deeds, do hereby swear or aver as follows:
2. As of June 2011 it has been my policy as follows:
 - a. IF THERE ARE VARIATIONS OF AN ALLEGED ROBO-SIGNER ON RECORD AT MY REGISTRY – I require that all documents sent for recording that are executed by that alleged robo-signer, be independently verified by an affidavit that the signature is in fact the signature of the named individual, prior to recording. (See Exhibit B attached hereto).
 - b. IF THERE ARE NO VARIATIONS OF AN ALLEGED ROBO or SURROGATE SIGNER ON RECORD AT MY REGISTRY – I record the documents and forward them to the Massachusetts Attorney General's Office for review and possible violation of a Crime Against Property, specifically MGL Chapter 266, Section 35A (b) (4).
3. I have instituted this policy based on the opinion of our forensic analyst, Marie McDonnell of McDonnell Property Analytics who has provided me with a list of robo and surrogate signers.

McDonnell defines a "robo-signer" as: *The person on a legal document processing assembly line whose only task is to sign previously prepared documents affecting title to real property in a robotic-like fashion without reading the documents or verifying the facts contained therein by reviewing primary source evidence. The robo-signer's mission is to expedite the documents' recordation in the public land records or in court proceedings. Additionally, robo-signers regularly fail to establish or simply do not have the authority to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

McDonnell defines a "surrogate signer" as: *A person who signs a legal document on behalf of and in the name of another without reading it or understanding the document's contents; surrogate-signers are not authorized to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

4. I am aware that MELISSA HIVELY is an alleged robo or surrogate signer.

Signed this 14th day of November 2012, under the pains and penalties of perjury.


John L. O'Brien, Register

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AFFIDAVIT OF JOHN L. O'BRIEN, REGISTER OF DEEDS
SOUTHERN ESSEX DISTRICT

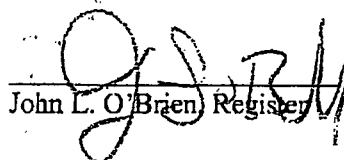
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 - a. IF THERE ARE VARIATIONS OF AN ALLEGED ROBO-SIGNER ON RECORD AT MY REGISTRY – I require that all documents sent for recording that are executed by that alleged robo-signer, be independently verified by an affidavit that the signature is in fact the signature of the named individual, prior to recording. (See Exhibit B attached hereto).
 - b. IF THERE ARE NO VARIATIONS OF AN ALLEGED ROBO or SURROGATE SIGNER ON RECORD AT MY REGISTRY – I record the documents and forward them to the Massachusetts Attorney General's Office for review and possible violation of a Crime Against Property, specifically MGL Chapter 266, Section 35A (b) (4).
3. I have instituted this policy based on the opinion of our forensic analyst, Marie McDonnell of McDonnell Property Analytics who has provided me with a list of robo and surrogate signers.

McDonnell defines a "robo-signer" as: *The person on a legal document processing assembly line whose only task is to sign previously prepared documents affecting title to real property in a robotic-like fashion without reading the documents or verifying the facts contained therein by reviewing primary source evidence. The robo-signer's mission is to expedite the documents' recordation in the public land records or in court proceedings. Additionally, robo-signers regularly fail to establish or simply do not have the authority to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

McDonnell defines a "surrogate signer" as: *A person who signs a legal document on behalf of and in the name of another without reading it or understanding the document's contents; surrogate-signers are not authorized to execute these documents on behalf of the legal title holder or principal on whose behalf they purport to act.*

4. I am aware that KRYSTAL HALL is an alleged robo or surrogate signer.

Signed this 14th day of November 2012, under the pains and penalties of perjury.


John L. O'Brien, Register



DEPOSITION OF KRYSTAL HALL - 11/30/2009

SHEET 1 PAGE 1

IN THE DISTRICT COURT IN AND FOR MIAMI-DADE FLORIDA

BANK OF AMERICA, NATIONAL
ASSOCIATION,

Plaintiff,

vs.

Defendant.

Case No.
09-~~2455~~ CA (15)

THE TELEPHONIC DEPOSITION OF KRYSTAL HALL

Monday, November, 2009, 1:07 P.M.

Idaho Falls, Idaho

M. Rainey Stockton
CSR 746

PAGE 3.

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MR. SHUSTER	4

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PAGE 2

DEPOSITION OF KRYSTAL HALL

BE IT REMEMBERED that the telephonic deposition of KRYSTAL HALL was taken by the attorney for the Defendant, at the office of Security Connection, Inc. located at 599 University Boulevard, Idaho Falls, Idaho, before M. Rainey Stockton, Court Reporter and Notary Public, in and for the State of Idaho, on Monday, the 30th day of November 2009, commencing at the hour of 1:07 P.M. in the above-entitled matter.

APPEARANCES

For the Defendant via telephone:
SHUSTER & SAREN
BY: RICHARD SHUSTER, ESQUIRE
4770 Biscayne Blvd., Suite 1030
Miami, Florida 33137
(305) 576-8688

For the Plaintiff via telephone:
BUTLER & BOSCH, P.A.
BY: NICHOLAS VANHOOK
3185 South Conway Road
Suite E
Orlando, Florida 32812
(407) 381-5200

ALSO PRESENT: Jon Maughan
Terrill Nielson

Page 2

PAGE 4

1 (KRYSTAL HALL, after having been duly
2 sworn, testified as follows):
3 (The telephonic deposition proceeded at 1:07
4 P.M. as follows):

EXAMINATION

BY MR. SHUSTER:

Q. Good afternoon.

A. Good afternoon.

Q. Ms. Hall, can you hear me okay?

A. Uh-huh. (Yes)

Q. My name is Richard Shuster and I
represent ~~Bank of America~~ in a foreclosure action
filed by Bank of America National Association in
the case as filed in Miami-Dade County in
Florida.

We set your deposition because you
executed an Assignment of Mortgage and I have a
few questions for you about that -- about that
document.

A. Okay.

Q. Could you state your name for the
record?

A. Krystal Hall.

Q. And, Ms. Hall, who is your employer?

A. Security Connections, Incorporated.

DEPOSITION OF KRYSTAL HALL - 11/30/2009

SHEET 3 PAGE 9

1 did you speak to anybody at First Franklin?
 2 A. No.
 3 Q. Okay. And before you executed this
 4 Assignment, did you confirm whether or not First
 5 Franklin had previously assigned this mortgage to
 6 somebody else?
 7 MR. VANHOOK: Objection. She doesn't
 8 work for First Franklin, as far as her job
 9 duties, to figure out what First Franklin had
 10 done in the past.
 11 MR. SHUSTER: Okay.
 12 BY MR. SHUSTER:
 13 Q. Do you know whether -- do you know
 14 whether First Franklin owned this mortgage at the
 15 time that you executed the Assignment?
 16 A. Not that I know of.
 17 MR. VANHOOK: Objection. She does not
 18 directly work for First Franklin.
 19 BY MR. SHUSTER:
 20 Q. Okay. So, basically, somebody else
 21 prepares the Assignment of Benefits and if they
 22 prepare the Assignment of Benefits and place it
 23 before you, you execute it.
 24 A. Yes.
 25 Q. Okay. And who prepares the Assignment

PAGE 11

1 Q. I see.
 2 And why is it that you -- why is it
 3 that you believe that you have the authority to
 4 act on behalf of First Franklin?
 5 A. Because I'm on the Corporate
 6 Resolution.
 7 Q. Okay.
 8 MR. SHUSTER: And let me place a
 9 continuing objection on the record to the
 10 Corporate Resolution on the basis of that it's
 11 hearsay.
 12 BY MR. SHUSTER:
 13 Q. The Corporate Resolution that you have,
 14 you didn't witness this execution, correct?
 15 A. Correct.
 16 Q. And the Corporate Resolution you have
 17 is not notarized, correct?
 18 A. Correct.
 19 Q. Okay. And you don't have firsthand
 20 knowledge of any of the people listed on the
 21 Resolution as to whether or not they actually
 22 signed the Resolution, correct?
 23 A. Correct.
 24 Q. And the Resolution, the place where
 25 your name appears is on an exhibit that's not

PAGE 10

1 of Mortgage?
 2 A. The Release Department or the
 3 Assignment Department.
 4 Q. Okay. And how does the Release
 5 Department or the Assignment Department know to
 6 know what bank the Assignment is being made to?
 7 A. I don't know because I'm not in that
 8 department.
 9 MR. VANHOOK: Objection to form.
 10 BY MR. SHUSTER:
 11 Q. Does -- do you have a -- does Security
 12 Connections have a file associated with this
 13 mortgage?
 14 A. Not that I know of.
 15 Q. What do you have in front of you other
 16 than the Assignment itself?
 17 A. The Corporate Resolution.
 18 Q. Okay. How was it that Security
 19 Connections prepared this Assignment in the first
 20 place?
 21 In other words, what was the action
 22 that sparked Security Connections to prepare this
 23 Assignment of Benefits or Assignment of Mortgage?
 24 A. I don't know because I'm not -- I
 25 wasn't in charge of that.

PAGE 12

1 part of the exhibit attached to the Resolution,
 2 correct?
 3 A. Correct.
 4 Q. And you don't know whether the exhibit
 5 that is attached --
 6 MR. VANHOOK: Objection. Leading.
 7 BY MR. SHUSTER:
 8 Q. Do you have personal knowledge as to
 9 whether the Exhibit 1 that's attached to the
 10 Resolution in your possession is the same as the
 11 Exhibit 1 that might have existed at the time
 12 that this document was purportedly executed by
 13 four people who you don't know?
 14 MR. VANHOOK: Objection. Form.
 15 Please, rephrase.
 16 BY MR. SHUSTER:
 17 Q. Do you have knowledge as to whether the
 18 Exhibit 1 that is in your possession existed at
 19 the time or was the same at the time as the
 20 Resolution was purportedly executed?
 21 A. I don't know.
 22 Q. Okay. After you signed the Assignment
 23 of Mortgage, were you responsible for mailing
 24 this document to the law firm of Butler & Hosch?
 25 A. I believe it went to the County.

REPORTER'S CERTIFICATE

STATE OF IDAHO)
COUNTY OF BONNEVILLE) ss.
)

I, Mary L. Stockton, CSR and Notary Public in and for the State of Idaho, do hereby certify:

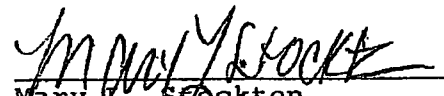
That prior to being examined KRYSTAL HALL, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 4th day of December 2009.

Mary L. Stockton
Notary Public
State Of Idaho


Mary L. Stockton
Idaho CSR No. 746,
Notary Public in and for
the State of Idaho.

My Commission Expires: 11-10-10

280

UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS OF
FIRST FRANKLIN FINANCIAL CORPORATION
SCI Signing Authority Resolution

The undersigned members of the Board of Directors (the "Board") of First Franklin Financial Corporation (the "Corporation"), a Delaware corporation, hereby adopt, by this written consent, the following resolutions effective as of November 1, 2008:

RESOLVED, that the Corporation hereby grants to certain employees of Security Connections, Inc., with its principal place of business located at Idaho Falls, Idaho the limited authority to prepare and execute the documents described below in connection with residential first and second mortgage loans and home equity lines of credit originated by the Corporation.

FURTHER RESOLVED, that the employees of Security Connections, Inc. listed on Exhibit "A" attached to this Resolution acting in his/her capacity as such employee of Security Connections, Inc. (collectively, "SCI") are hereby granted all authority necessary to lawfully and properly prepare, execute, witness, attest and deliver assignments, endorsements, amended or corrective notes and mortgage and such other documents that will enable SCI to effect the transfer and, if applicable, reformation of Corporation's sale of mortgage-secured loans and lines of credit including, without limitation, execution and delivery of writings related to the transfer or assignment of mortgage-secured loans and lines of credit, execution and delivery of loss policy affidavits on behalf of First Franklin for the purpose of obtaining updated or missing title policies,

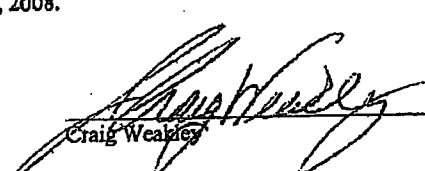
FURTHER RESOLVED, that all acts for and on behalf of Corporation by SCI pursuant to the limited authority granted hereby shall be with the same force and effect as if the same has been done by the Corporation but in all cases subject to the terms and conditions of the Vendor Agreement by and between FFFC and SCI dated as of September 22, 2008, as the same may be amended from time to time, and

FURTHER RESOLVED, that the foregoing Authorization shall remain in full force and effect until terminated or changed or upon termination of the Vendor Agreement with SCI.

IN WITNESS WHEREOF, the undersigned, being all of the directors of the Corporation, have affixed their signatures hereunto in acknowledgment of their consent and agreement to the adoption of the resolutions hereinabove set forth, effective as of November 1, 2008.


Joseph D'Urso


Steve Mageras


Craig Weakley

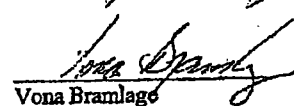

Vona Bramlage

EXHIBIT A

**Employees of Security Connections, Inc. Granted Limited Authority to Perform Functions for First Franklin
Financial Corporation**

**Shawna Allen
Brandi Beck
Sandy Carvalho
Joan Cook
Mary Enos
Krystal Hall
Mark Hatfield
Eric Hender
Caryn Killian
Onni Loftus
Mary Lou Marcum
Jon Maughan
Karleen Maughan
Terrill Nielson
Jennifer Parsons
Amy Siuda
Vicki Sorg
Tina Stucki
Angelita Swearingen**

2012014233

MORTGAGE
RECORDING FEES \$41.00

PRESENTED & RECORDED:
10-24-2012 03:59 PM

JOHN LANE
REGISTER OF DEEDS
LACASTER COUNTY, SC

By: CANDICE PHILLIPS DEPUTY

BK:MORT 2563
PG:194-228

This is a written transcript and testimony by above property owner Ziraili M Elbey, Indigenous, Natural woman of the land who has found a fraudulent **ASSIGNMENT** notarized by Krystal Hall recorded with the Register of Deeds in the county and city a Lancaster, South Carolina. I refuse to contract with any and all fraudulent documents in reference to the property address above or the State of South Carolina. The "robo-signing of affidavits and Assignments of Mortgage and all other mortgage foreclosure documents served to cover up the fact that loan servicers cannot demonstrate the facts required to conduct a lawful foreclosure. If it turns out that robo-signers did indeed sign off on loans without review, they committed **fraud** by claiming knowledge of a financial matter of which they had no personal knowledge. It could also mean that some people are wrongly being evicted from their houses. See a certified deposition of Krystal Hall where she acknowledges signing about 400 mortgage **ASSIGNMENT** a day employed by Security Connection, Incorporated.

Second Witness

State of South Carolina)
) ss.
County of Lancaster)

Carolee Knight
Notary Public

CAROLINE KNIGHT
Notary Public - State of South Carolina
My Commission Expires September 5, 2022



Fraudulent Document

National Robo-signers

PREPARED BY SECURITY
CONNECTIONS, INC.
WHEN RECORDED MAIL TO:
SECURITY CONNECTIONS INC.
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401
PH: (208) 528-9895
ATT: KAREN MAUGHAN

COUNTY OF LANCASTER
POOL NO.
LOAN NO.

Assignment-Intervenor-Recorded

ASSIGNMENT OF REAL ESTATE MORTGAGE

For value received SAND CANYON CORPORATION FROM SAND CANYON MORTGAGE CORPORATION

located at 7595 IRVINE CENTER DRIVE, SUITE 100, IRVINE, CA 92618
hereby transfers, assigns and sets over without recourse unto
H & R BLOCK BANK FSB

located at ONE H & R BLOCK WAY, 4TH FLOOR, KANSAS CITY, MO 64105

Sits successors and assigns forever, that certain mortgage executed by
ZIRALLY H KIBBY
to OPTION ONE MORTGAGE CORPORATION

dated MARCH 29, 2006 and recorded in the Clerk's office LANCASTER
County, South Carolina on APRIL 7, 2006, in Mortgage Book MORT 1486,
Page 1, together with the note thereby secured conditioned for the
payment of the full and just sum of \$197,186.00 Dollars,
according to the terms as set forth in said note and mortgage.

(NMRI-SC)
C=B.383.0002
P=S.002.00120.21

Page 1 of 2

J=BR8010109AT.S.02249

2010008401

ASSIGNMENT OF MORTGAGE
RECORDING FEES

\$7.00

VERIFIED & RECORDED

08-05-2010 12:11 PM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CAROLINE KIRKLEY DEPTT

BK:MORT 2265

PG:129-130

Book 2265 Page 422

Fraudulent Document

National Robo-signers

Pa 1

234

Exhibit A

Fraudulent Document

LOAN NO.

In Witness Whereof, SAND CANYON CORPORATION VIA OFFICE OF NOTARIAL CORPORATION

caused these presents to be signed by MELISSA RIVERLY
its VICE PRESIDENT and MELANIE HANSON
its ASSISTANT VICE PRESIDENT this 2nd day of JULY
2010, but effective the 29th day of MARCH, 2006

SAND CANYON CORPORATION VIA OFFICE OF NOTARIAL CORPORATION

Witness CARMEN RIVERA

BY MELISSA RIVERLY
VICE PRESIDENT

Witness MISTYLIN HANSEN

BY MELANIE HANSON
ASSISTANT VICE PRESIDENT

STATE OF IDAHO

COUNTY OF BONNEVILLE

On JULY 2, 2010 I, KRYSTAL HALL,
personally appeared MELISSA RIVERLY
and MELANIE HANSON personally known to me
(or proved to me on the basis of satisfactory evidence) to be the persons
who executed the within instrument as VICE PRESIDENT
and ASSISTANT VICE PRESIDENT or on behalf of the Corporation
therein named and acknowledged to me that the Corporation executed it.

KRYSTAL HALL
NOTARY PUBLIC COMMISSION EXP. 11-14-11

KRYSTAL HALL
NOTARY PUBLIC
STATE OF IDAHO

(NMRI/8)
C=8.383.002
P=9.002.00120.21

Page 2 of 2

J=HR8010109AT.8.02249

Book 2265 Page 430

Fraudulent Document

National Robo-signers

Pg 2

Exhibit A 285

SOUTH CAROLINA

PREPARED BY SECURITY
CONNECTIONS, INC.
WHEN RECORDED MAIL TO:
SECURITY CONNECTIONS INC.
240 TECHNOLOGY DRIVE
IDAHO FALLS, ID 83401
PH: (208) 528-9895
ATT: KARLEEN MAUGHAN

COUNTY OF LANCASTER
POOL NO.
LOAN NO. 0021232020



Assignment-Interv.-Recorded

ASSIGNMENT OF REAL ESTATE MORTGAGE

For value received SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

located at 7595 IRVINE CENTER DRIVE, SUITE 100, IRVINE, CA 92618

thereby transfers, assigns and sets over without recourse unto
H & R BLOCK BANK FSB

located at ONE H & R BLOCK WAY, 8TH FLOOR, KANSAS CITY, MO 64105

its successors and assigns forever, that certain mortgage executed by
ZIRAILI M ELBEY
to OPTION ONE MORTGAGE CORPORATION

dated MARCH 29, 2006 and recorded in the Clerk's office LANCASTER
County, South Carolina, on APRIL 7, 2006, in Mortgage Book MORT 1486,
Page 1, together with the note thereby secured conditioned for the
payment of the full and just sum of \$197,186.00 Dollars,
according to the terms as set forth in said note and mortgage.



Loan No.

(NMRI.SC)
C=s.383.0002
P=S.002.00120.21

Page 1 of 2

J=HR8010109AI.s.02249

2010008401

ASSIGNMENT OF MORTGAGE
RECORDING FEES

\$7.00

PRESENTED & RECORDED:

08-05-2010 12:11 PM

JOHN LANE

REGISTER OF DEEDS

LANCASTER COUNTY, SC

By: CANDICE KIRKLEY DEPUTY

BK:MORT 2265

PG:129-130

LOAN NO. 0021232020

In Witness Whereof, SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

caused these presents to be signed by MELISSA HIVELY
its VICE PRESIDENT and MELANIE HANSON
its ASSISTANT VICE PRESIDENT this 2nd day of JULY
2010, but effective the 29th day of MARCH, 2006

SAND CANYON CORPORATION FKA OPTION ONE MORTGAGE CORPORATION

Carmen Rivera
Witness CARMEN RIVERA

BY Melissa Hively
MELISSA HIVELY
VICE PRESIDENT

Mistylin Hansen
Witness MISTYLIN HANSEN

BY Melanie Hanson
MELANIE HANSON
ASSISTANT VICE PRESIDENT

STATE OF IDAHO

COUNTY OF BONNEVILLE

) SS

On JULY 2, 2010 before me, KRYSTAL HALL
personally appeared MELISSA HIVELY
and MELANIE HANSON personally known to me
(or proved to me on the basis of satisfactory evidence) to be the persons
who executed the within instrument as VICE PRESIDENT
and ASSISTANT VICE PRESIDENT or on behalf of the Corporation
therein named and acknowledged to me that the Corporation executed it.

Krystal Hall
KRYSTAL HALL (COMMISSION EXP. 11-14-11)
NOTARY PUBLIC

KRYSTAL HALL
NOTARY PUBLIC
STATE OF IDAHO

(NMRI.SC.2)

C=S.383.0002

P=S.002.00120.21

Page 2 of 2

J=HR8010109AI.s.02249



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www.fpg-usa.com ph: 786-329-5588 fax: 305-675-7676 info@fpg-usa.com

S1-TNID-IF-Judicial

FORENSIC LENDER DISCOVERY sm

STAGE ONE

LOAN SECURITIZATION AUDIT REPORT

Date of Issuance

March 14, 2011

Borrower

Ziraili M. Elbey

Property Address

13132 Wilburn Park LN, Fort Mill, SC 29715

Borrower's Attorney

TBD

USE OF THIS REPORT

This report is authorized for use by both the borrower and attorney designated above. The content constitutes written evidentiary findings testimony by the expert whose name appears at the bottom of this report. The expert issuing this report is considered a 35 year veteran "highly qualified" independent party with no financial interest in the outcome of this case and attaches his/her declarations. The expert stands ready to testify before any State or Federal court as an expert witness in support of the attorney's foundation of evidence and judicial notice. This report is based upon facts, documentation, investigation and review of the evidence. A sworn oath is provided.

Disclaimer Notice

FPG-USA provides forensic lender securitization and compliance analysis, research, discovery and reporting services. Our research and examinations are based upon facts, written documentation, established government compliance guidelines, rules, regulations. Our principal qualifying expert has over thirty five years experience in mortgage backed securitization, real estate, finance and mortgage lending. FPG-USA reports are designed for use in court by attorneys. We offer veteran highly qualified expert witness testimony in support of our findings. FPG-USA is an independent third party with no financial interest in the outcome of cases in which our reporting is used. FPG-USA does not provide legal, accounting, real estate or mortgage lending advice and nothing issued or received should be construed as such. If you need those services, contact duly licensed professionals in the area of your concern. FPG-USA aggressively pursues our intellectual property rights, all material is copyright protected and where noticed, is service marked, trademarked and patent or patent pending. No unauthorized use of any materials is allowed without express written permission before the fact. See our website for additional information <http://www.fpg-usa.com>.



ABOUT THE AUTHOR AND QUALIFYING EXPERT

Richard Merrill Kahn is considered a veteran highly qualified expert in private and public mortgage backed securities syndication; real estate acquisition, management and disposition; residential and commercial mortgage lending; and mortgage analysis in the process. He is the author of *Winning Against Foreclosure*. His experience spans more than thirty-five years from his beginnings on Wall Street working as Merrill Lynch C.E.O. Donald Regan's National Real Estate Tax Sheltered Product Manager. Mr. Kahn's resume is online at http://www.fpg-usa.com/RK_Resume.cfm.

Mr. Kahn was on the mortgage banking, investment banking and lending side until 2008 when he turned his experience to become a qualifying expert of his firm FPG-USA to supply forensic mortgage analysis as part of a credible defense against foreclosure in court.

ABOUT FPG-USA

FPG-USA provides highly qualified expert forensic mortgage analysis, discovery, investigation and reporting. Our reports are more than informational—we provide expert witness services to back them up in court. Anything less will not get serious attention by lenders or in court. Our senior qualifying expert has over 35 years in mortgage backed securitization, real estate lending and finance.

We service all states, judicial and non-judicial process. Civil and Bankruptcy. Pre-Foreclosure and Foreclosure. We only work for the borrower side of transactions. We specialize in working with attorneys and supporting the evidence process for judicial notice. We do not work for the lender side in foreclosures. FPG-USA accepts new clients and cases selectively.

AUTHENTICATE THIS REPORT Attach report and send to info@fpg-usa.com for authentication.

PURPOSE AND FINDINGS

FPG-USA has been hired to investigate the referenced foreclosure documentation and investigate the legitimacy of claims being made by the party seeking to foreclose. The borrower(s) took a loan and are in default. A wrongful foreclosure can have disastrous results to the borrower(s) in the future. The borrower's attorney ordered outside third party expert investigation to answer four simple questions.

1. Has the party seeking to foreclose demonstrated true beneficial ownership?
2. Have claims of financial interest been fully disclosed and represented truthfully?
3. Have all beneficial owners and parties been voluntarily disclosed?
4. Have all material facts, documents and agreements that govern the transaction been disclosed?

If the answer to any of the above questions is "no," then we are to report our findings based on facts and documentation which should not be objectionable because they pertain to material issues and the documentation upon which they rely is of a source considered credible and reliable. Whereby we present this report and are prepared to support the findings in court.



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EXECUTIVE SUMMARY

Based upon my personal investigation and the facts discovered I can testify that this foreclosure appears to have been conducted unlawfully. It includes foreclosure-related documents signed in a manner that are not lawful; reverse engineered false and inaccurate documents, undisclosed and manipulated conflicts of interest, and purposeful deceit in falsifying faulty chains of title. Designs in this manner make a mockery of our courts.

1. This loan has been securitized,
2. Subsequent sales or transfers of the loan have not been revealed,
3. The ELBEY's Note and Mortgage presented
 - a. have been paid in full in 2006,
 - b. have been separated (bifurcated)
4. The documents submitted as the basis of this foreclosure are fictitious and faulty,
5. The chain of ownership is deceitful and faulty,
6. The evidence reveals "robo-signing" has also taken place.
 - a. Documentation asserting claims without knowledge of the facts, or confirming their accuracy.
 - b. Employees of foreclosure trustees are signing documents posing as the corporate officer of multiple banks and Mortgage servicers.
 - c. Reverse-engineering the chain of title in the Assignment to make it appear as though the loan was passed from company to company when in fact it was not.
7. The documentation has been reverse engineered,
8. Federal loan modification requirements have not been met, and
9. Consumer protection requirements have not been followed.
10. A chain of ownership for the loan or the security interest that has been falsely manipulated and reverse engineered to appear lawful when in fact it is not;

Such deceptive processes may violate state laws, and individual Attorney Generals have requested suspension of questionable foreclosures and investigation into the underlying cases in which judges and courts have not yet confirmed the following:

- that all foreclosure-related documents were lawfully signed,
- that the chain of ownership is clear and has been revealed to you in full,



- that state consumer protection requirements have been followed and have been processed according to state law.

South Carolina Attorney General (AG) Alan Wilson is a member of the National Attorney General Deed of Trust Foreclosure Multistate Group¹. The Attorney Generals are investigating lenders, Deed of Trust servicers and local trustees for questionable practices such as those I find in this case, and asking that foreclosures be suspended while investigation into the underlying transaction and its legality can be established. This loan appears to have multiple issues of concern enumerated by the joint AG task force.

All references in this report to the Note and Mortgage refer to those executed by ELBEY on August 29, 2006.

I am available through the borrower's attorney for mediation and litigation support.

Richard M. Kahn, made 3/14/2011

¹ [http://www.naag.org/joint-statement-of-the-Deed of Trust-foreclosure-multistate-group.php](http://www.naag.org/joint-statement-of-the-Deed-of-Trust-foreclosure-multistate-group.php) If not available on the NAAG website, please find printout attached. _Ex_20101013_joint-statement-of-the-Deed of Trust-foreclosure.pdf

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TIMELINE AND DOCUMENTATION

03/29/2006 NOTE

Loan Number: 571007388
Servicing Number: 002123202-0
\$197,186.00 7.999%, 30 year FR
Lender: Option One Mortgage Corporation, a California corporation
First Payment: May 01, 2006
Make payments to:
Option One Mortgage Corp
P.O Box 92103, Los Angeles, Ca 90009
Monthly payment: \$1,446.74
Signed by Ziraili M Elbey
Single family home
5% late charge is noted for late payment after 15 calendar days
No PPP
No MERS or Fannie Mae records

03/29/06 Mortgage

Loan Number: 571007388
Recordation top right of page one
2006004370
Presented and & recorded: 04-07-2006 9:46 AM
Same terms as Note
Servicing Number: 002123202-
When RECORDED MAIL TO:
OPTION ONE MORTGAGE CORPORATION
P.O. BOX 57096
IRVINE, CA 92619-7096
Lender is: Option One Mortgage Corporation, a California Corporation
Lender address: 3 Ada, Irvine, CA 92618
Property Address: 13132 WILBURN PARK LN,
FORT MLL, South Carolina 29715 -15 98
NO MERS FOUND
NO ASSIGNMENT
BORROWER SIGNATURES DIFFER FROM THOSE ON NOTE

09/08/2009 MORTGAGE STATEMENT

Statement date: 09/08/2009
Account Number: 072979775
H&R Block Bank
Customer Service PO Box 5179, Van Nuys, CA 91410-0229



Balance: \$190,797
Monthly payment \$1,446.74
30y Conventional 7.999%; remaining 26y 7mos
Make check payable to
H&R Block bank
Attn Remittance Processing
PO BOS 650070
Dallas, TX 75265-0070
Recorded: 2010008401
Assignment of Mortgage
Recording Fees \$7.00
08/05/2010 12:11 PM
BK: Mort 2265
PG: 129-130
Notation at bottom of page: J=HR8010109AI.s.02249
Barcode at bottom left of page 1 has Loan No. BLANK

01/14/2010 LIS PENDENS, COURT PROCEEDING
02/01/2010 NOTICE OF COLLECTIONS ACT
04/06/2010 SLS - SPECIALIZED LOAN SERVICING, LLC LETTER
Debt collector disclosure at top.
Loan Number: 1001901264
Responding to QWR request by borrower
04/27/2010 HR BLOCK LETTER
Loan Mod and Contact HRB letter.
05/03/2010 SLS - SPECIALIZED LOAN SERVICING, LLC LETTER
Debt collector disclosure at top.
Loan Number: 1001901264
Responding to QWR request by borrower
06/04/2010 LIS PENDES, COURT PROCEEDING
06/30/2010 HR BLOCK LETTER
Refusal to respond to QWR
08/05/2010 ASIGNMENT OF MORTGAGE
SOUTH CAROLINA
Return to: Security Connections, Inc
240 Technology Dr.
Idaho Falls, ID 83401



Ph: 208-528-9895
ATT: Karleen Maughan
County of Lancaster
Pool N: BLANK
Loan Number: **0021232020**

Sand Canyon Corporation fka Option One Mortgage Corporation
Located: 7595 Irvine Center Drive, Suite 100, Irvine, CA 92618
Transfers, assigns and sets over to

H&R Block Bank FSB
Located: One H&R Block Way, 8th Floor, Kansas City, MO 64105
Signed by witnesses

Notary Public: Krystal Hall (com exp 11-14-110 Idaho
Page 2 of Assignment of Mortgage

Witness Sand Canyon Corporation fka Option One Mortgage Corporation
By Melissa Hively VP and Melanie Hanson AVP on July 2, 2010 but
effective March 29th 2006 (4 years post dated).

Notary **IDAHO** County of BONNEVILLE
July 2, 2010 before Notary Krystal Hall
Signature spelling appears to misspell Hall "HULL"
Signature is illegible
Krystal Hall – Notary Public – State of Idaho (Comm exp 11-15-11)
Appearing personally: Melissa Hively VP and Melanie Hanson VP *typed*

10/21/2010 HR BLOCK LETTER

Account # **72929775**
Short Sale Offer from HR Block to Borrower
\$189,911.32 per final HUD by Jan 21, 2011

1/13/11 COURT OF COMMONS PLEA

Submitted by RONALD F Johnson, SC BAR #16931
Brian L Campbell #74521

Address:
Brock & Scott, PLLC
38000 Fernandina Rd, suite 110
Colombia, SC 29210
Attorney for Plaintiff

Phone# 888-726-9953

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DIAGRAM OF THE FICTITIOUS TRANSACTION

Ziraili M. Elbey

MORTGAGOR

\$197,186.00

Loan originated: March 29, 2006

Option One Mortgage Corporation, Inc.



Option One Mortgage Corporation, Inc.

ORIGINATOR

Originates the loan with borrower. Initial loan
docs: Note not endorsed, Mortgage not
assigned - indicates portfolio loan

Sand Canyon Corporation FKA Option One Mortgage

ASSIGNMENT OF REAL ESTATE MORTGAGE

Docs dated July 2, 2010

Transferred to H&R Block

Signed by Melissa Hively, VP (robo-signer)

Melanie Hanson, Assistant VP (robo-signer)

Notarized by Krystal Hall (robo signer)

Fabricated, Robo-Signed, Reverse engineered

12/4/2007 Option One Announces Shut Down of Lending Operations

01/31/2008 OOMC ceases all loan origination activities.

4/30/2008 OOMC sells Servicing to AHMSI for \$1.3b

03/18/2009 BK: Sand Canyon no longer engaged in servicing,

has no servicing rights, and

does not own any residential real estate loans.

H&R Block Bank

COURT CASE

HRB relying on bogus fictitious Assignment above
to obtain ownership and deficiency judgment.

UNKNOWN

TRUST FUND - ISSUING ENTITY

Holds Pool Of Loans; Issues Certificates

Closing Date: Unknown

EXAMINATION OF THE FICTITIOUS TRANSACTION REVEALS FATAL DEFECTS

1. Ziraili M. Elbey took a \$197,186 mortgage with Option One Mortgage Corporation (OOMC) on March 29, 2006.
2. The initial original loan's Note and Mortgage has no endorsement on the face of the Note and no assignment on the bottom of the mortgage. These documents are being submitted as the current holder in due course originals evidencing current ownership when in fact, the Note and Mortgage evidenced by this documentation was sold in a securitization and paid in full back in 2006.
3. Option One was owned by H&R Block, the largest U.S. Income tax preparation company (HRB:NYSE). Option One was a subprime lender that originated loans and immediately sold them into large pools of loans that were securitized and sold to investors.
4. The initial loan documentation suggests Option One held this loan as a "portfolio" loan and ownership of the loan was transferred to an asset by option one to Sand Canyon Corporation fka Option One Mortgage Corporation in an Assignment of Real Estate Mortgage prepared by Security Connections Inc. August 5, 2010. The undisputable facts discovered disprove these claims.
 - a. Option One securitized all of its mortgages. It retained loan servicing rights on many mortgages. Loan servicing the day to day operations of loan administration was performed for a fee that approximated 1/3 of 1% of loan amount per year or \$333 per year per \$100,000 of loan amount. On the Elbey loan that annual loan servicing fee approximated \$600 per year. This is the entire financial interest of the loan servicer in the Elbey loan.
 - b. The initial mortgage was issued March 29, 2006.
 - c. H&R Block announced Option One's intention to shut down lending operations Dec 4, 2007.
 - d. Option One ceased all loan origination activities January 31, 2008 according to H&R Block annual report.
 - e. On April 30, 2008 H&R Block consummated the sale of all Option One loan service to American Home Mortgage Servicing Inc. (AHMSI).



f. On March 18, 2009 in a Chapter 13 bankruptcy case (07-11862 EWM) before the Eastern District of Louisiana New Orleans case the president of Sands Canyon Corporation (Sand Canyon) Mr. Dale M. Sugimoto made declarations filed with the court. In pertinent part these included statements that pertain to this case:

i. I am the president of Sand Canyon Corporation f/k/a (formerly known as) Option One Mortgage Corporation (OOMC). H&R Block is the parent of Sand Canyon. H&R Block is wholly owned by HRB a publicly traded corporation

ii. Effective April 30, 2008 HRB sold OOMC's mortgage loan servicing business to American Home Mortgage Servicing Inc. (AHMSI).

iii. Quoting HRB's 2008 Annual Report states "during our third fiscal quarter ended January 31, 2008 OOMC ceased all loan origination activities and initiated a plan to sell its servicing operations."

iv. April 30, 2008 OOMC sold its loan servicing assets to an affiliate of W.L. Ross & Co. LLC (RL Ross). [this affiliate is AHMSI – added by author]

v. "Accordingly, Sand Canyon is no longer engaged in the servicing of residential mortgage loans. Sand Canyon has no servicing rights."

vi. "Sand Canyon also does not own any residential real estate mortgages."

vii. "Sand Canyon's present business involves dealing with litigation claims, including title issues or litigation relating to servicing prior to the sale of OOMC's serving rights to AHMS"

viii. "I declare under penalty of perjury that the foregoing is true and correct".

5. When we now turn to the Assignment of Mortgage filed by Sands Canyon on August 5, 2010 we find fatal flaws.

a. On July 2, 2010 Sand Canyon did not own any residential real estate mortgages. Nor did it own any mortgage loan servicing rights.

b. Undisclosed conflicts of interest exist in the parties making the Assignment.

i. Security Connections Inc (SCI) prepared the Assignment.

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- 1 ii. Two employees of SCI signed as Vice President and Assistant Vice
2 President of Sand Canyon Corporation F/K/A Option One Mortgage
3 Corporation to affect a transfer of ownership in the loan that did not
4 exist, to H & R Block Bank FSB in Kansas City MO 64105.
- 5 iii. The issues of the two employees Hively and Hanson include non-
6 disclosure that they are in fact SCI employees and have not worked for
7 nor are they Vice Presidents or Assistant Vice Presidents for Sand Canyon
8 as they claim on the face of the document; and robo-signing, meaning
9 signing documents as different corporate executives for different
10 companies at the same time and not knowing or investigating the
11 underlying claims but rather signing as they are told.
 - 12 1. Krystal Hall, the Notary on the Assignment of Real Estate
13 Mortgage was deposed in the District Court in and for Miami-
14 Dade Florida where Bank of America was the plaintiff and in that
15 deposition gives testimony of admitted robo-signing. She also is
16 identified as an employee of Security Connections, Inc. in Idaho
17 Falls, ID. She also admits signing for other companies such as First
18 Franklin as assistant secretary because she was told to.
 - 19 2. In an October 2010 Substitution of Trustee we find Krystal Hall
20 signing as assistant secretary of Mortgage Electronic Registration
21 Systems and Melissa Hively signs as Notary.
 - 22 3. 20110314 FPG-USA Investigator called Security Connections (SCI)
23 at 1-800-894-0742 and used the touch tone phone pad to search
24 for employees by last name. Entering 448 for HIV the automated
25 response spelled out M-e-l-i-s-s-a H-i-v-e-l-y and by pressing 1
26 connected to her phone extension. Melissa Hively is an employee
27 of Security Connections, the party preparing the assignment, not a
28 Borrower: Ziraili M. Elbey
29 299



Vice President of Sand Canyon corporation as the assignment is signed.

4. Both Hively and Hanson are listed as SCI employee appointees on a July 2, 2009 American Home Mortgage Secretary's Certificate

5. We also have a Georgia District Court Case Ziemba v. American Home Mortgage Servicing and Option One Corporation where Hively lists herself as VP AHMSI and Hanson as AVP. 10-CV-02781-RWS

6. It may be pertinent to note that the notary in this case, Krystal Hall, the notary has participated in any number of signings changing place with Hively as Vice President and with Hively in the Notary position.

a. One example is the case of Michael G. Dustin on 10/18/2010 Loan number 10218953 where Hall is signing as Assistant Secretary of MERS and Hively is swearing as Idaho Notary.

6. Now we find a non-jury Complaint In the South Carolina County of Lancaster in the Court of Common Pleas for a deficiency judgment by H & R Block based upon the bogus Assignment mentioned in the item above. Certain claims in this action can be referenced based upon the revelation of facts discovered in this case.

a. The referenced loan was paid for in full by currently undisclosed parties when OOMC securitized the loan back when it was issued in March 2006.

b. The claim to ownership in the bogus falsified Assignment by H & R Block is a bald claim. Given the undisputable nature of the facts discovered, bald claims of ownership are not prima facie evidence of ownership. Documentation other



performed or considered. FPG-USA provides pre HAMP modification consultation and we were not provided with any documentation from which to work with the borrower to effectuate a HAMP loan modification.

g. Item 11 discusses failure to pay under initial original loan documentation. As previously disclosed, that initial loan Note and Mortgage were paid in full by investors when the loan was securitized. Any loan ownership evidenced post that initial sale will expect to find properly endorsed and assigned note and mortgage evidence.

h. It is pertinent to add that the bogus falsified Assignment of Mortgage is not assignment of the Note evidencing ownership. Notes are endorsed, are not assigned and are not recorded.

i. It becomes quite clear by the evidence that the Note and Mortgage were paid in full and H & R Block is relying on what we find as a fraudulent misrepresented chain of title. We fail to see the documentary evidence to base a claim of a lawsuit at all, nonetheless a deficiency judgment.

7. I see no evidence to support that AHMSI has any authority to service the ELBEY loan. At this juncture the proof is that the ELBEY loan documentation referenced was paid in full and sold with all rights, title and interest. In light of the other falsified allegations of ownership and authority, claims of servicing authority absent written servicing agreements and proof are not prima facie evidence.

IN CONCLUSION OF OUR EXAMINATION PRESENTED ABOVE

It is the opinion of the expert in this case that this mortgage foreclosure was wrongful, questionable and based upon the evidence as the result of our investigations, we believe the borrower ELBEY has the basis upon which to win a verdict in their favor.



1 In light of OOMC's program of securitizing all OOMC Mortgage loans, the ELBEY loan was securitized,
2 meaning pooled with hundreds of millions of dollars of other loans and sold in the secondary market as
3 a Mortgage Backed Security to heretofore undisclosed investors.

4
5 I have included several diagram charts at the end of this report to indicate what the evidence indicates
6 truthfully transpired with the ELBEY loan.

7
8 The securitization has not been revealed, neither have the subsequent real true sales that took place
9 after the initial originals evidenced were originated and closed. True sales that included all rights title
10 and interest. H&R Bank likely knew about these as they are the ultimate owner of OOMC and Sand
11 Canyon and knew that attempting to transfer or assign ownership after both companies divested
12 themselves of all loan servicing and loan assets was a fabricated misrepresentation with knowledge
13 beforehand.

14
15 Not divulging the securitization hides the details of subsequent ownership and current true ownership
16 from the court. If the court were to order full disclosure of the securitization, we could acquire all the
17 legally filed sworn U.S. Securities and Exchange documentary filings and discern all the details necessary
18 to provide a detailed diagram and history of this loan after it was sold.

19
20 Based upon personal experience of reviewing trillions of dollars of mortgage backed securities pool
21 documents and loan ownership, the likelihood of motive for not disclosing the true ownership and chain
22 of title in this case is the onerous reality of repurchasing a defective loan from the MBS pool.

23
24 The SEC filings will be clear to the details, should H&R Bank ever be forced to reveal what they have
25 painstakingly hidden from the court in this case: the true rightful owner of the ELBEY loan. In general
26 with OOMC MBS, the automatic repurchase includes full mortgage loan value in the amount the loan
27 was sold into the pool. In ELBEY's case that would put what is now the deficiency wrongfully put upon
28 ELBEY in this wrongful foreclosure, straight onto H&R Bank, the party that seeks to foreclose because
29 they would be required to buy this defaulted loan back from the MBS investors prior to effectuating a
30 legal foreclosure.

31 One can only imagine the glee the parties who have falsely designed this foreclosure before the court
32 reveling in their nefarious design to strip a home from a borrower by deceit in court and not being



1 caught in the process. Foreclosure of the typical OOMC MBS severs the risk of repurchasing a defective
2 chain of title loan from the pool and takes that onerous reality off the table. Instead, a successful
3 foreclosure by the questionable means we find in this case puts a party, H&R Bank in the
4 unsubstantiated ownership position to exercise predatory collections upon this borrower for years to
5 come by deficiency judgment.

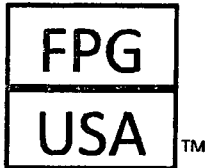
6
7 As a result of my personal mortgage foreclosure fraud examinations in this case, it pains me to see
8 institutions we expect to come to court with just the truth, coming with a host of manipulative fictitious
9 documentation and claims making a mockery of the court.

10
11 I declare under penalty of perjury that to the best of my knowledge the foregoing findings are
12 true, correct and based upon evidentiary findings retained for our records. I submit these
13 findings in affidavit form as they are presented. Should the borrower retain an attorney, I offer
14 my services to testify in person via phone or video conference to the court at their convenience
15 and answer any and all questions pertaining to this investigation. Should the truth be known I
16 feel there is an overwhelming chance for the borrower to win a verdict in their favor.

Richard M. Kahn, Signed on March 14, 2011
Principal Mortgage Fraud Forensic Investigator
Senior Qualifying Expert for FPG-USA



Forensic Professionals Group USA, Inc.



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fax: 305-675-7676 rkahn@fpg-usa.com

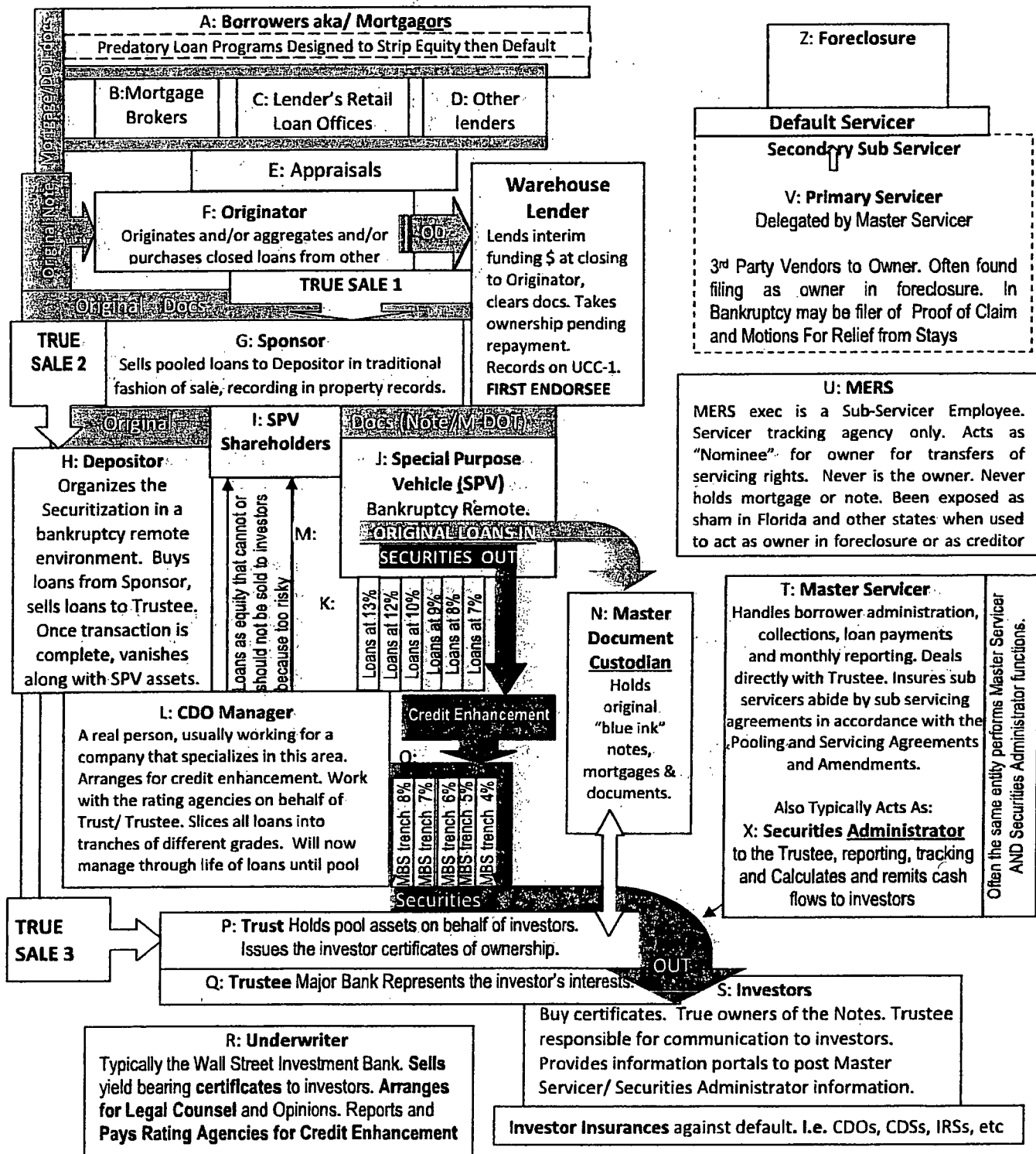
DECLARATION OF RICHARD KAHN

- A. I, Richard M Kahn, am an experienced mortgage analyst and my firm of which I am the principal and Senior Qualifying Expert, Forensic Professionals Group USA, Inc. ("FPG-USA"), specializes in providing third party forensic mortgage analysis to attorneys to use fighting foreclosure in court.
- B. I have been actively involved in and earned my living in the fields of mortgage backed securitization, real estate, mortgage lending and mortgage analysis for more than 30 years. My resume may be obtained from http://www.fpg-usa.com/RK_Resume.cfm
- C. I am the author of Winning Against Foreclosure, a Strategy Guide, written for attorneys, available on Amazon.com. More information is available at http://www.fpg-usa.com/WAF_Winning.cfm. This the first book in a series. My second book is expected to be released 2011.
- D. FPG-USA specializes in securitized loan audits and provides mortgage analysis and reporting services in all U.S. States. I offer my services as expert witness on my evidentiary findings issuances for a nominal fee via teleconference and/or video conference.
- E. I have performed dozens of forensic mortgage analysis, securitization and loan audits for attorneys fighting foreclosure in various State and Federal courts including civil and bankruptcy. 2010 included such states as Arizona, California, Florida, Georgia, Idaho, Illinois, Maryland, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Texas, Utah, Virginia and Washington State.
- F. My evidentiary findings reports are intended as written testimony based upon research and discover. They seek to present facts which are undisputable due to the quality of the source and not objectionable because they pertain to material issues. They are intended to serve as evidence or proof and may include my personal clarification for the purpose of establishing the basis of facts contained therein.
- G. Our fees are collected upon the placing of an order(s) without contingency of their results. Neither FPG-USA nor I have any financial interest in the outcome of this case. In all regards, I am a disinterested person within the meaning of 11 U.S.C. §101(14).

By my signature below, I declare under penalty of perjury that the foregoing declarations are true and correct.

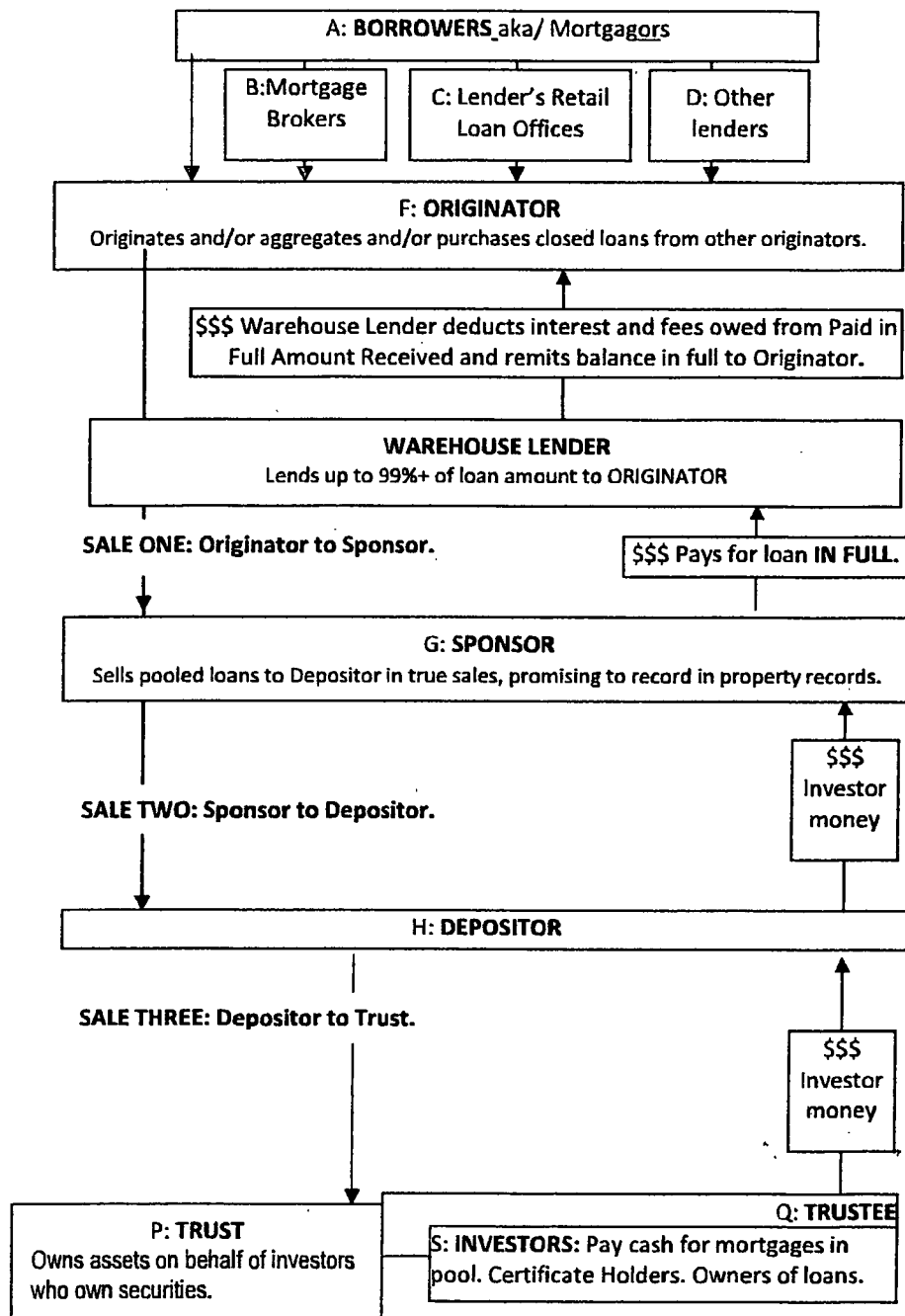
Richard M. Kahn, Signed on January 1, 2011
Principal, Sr. Qualifying Expert

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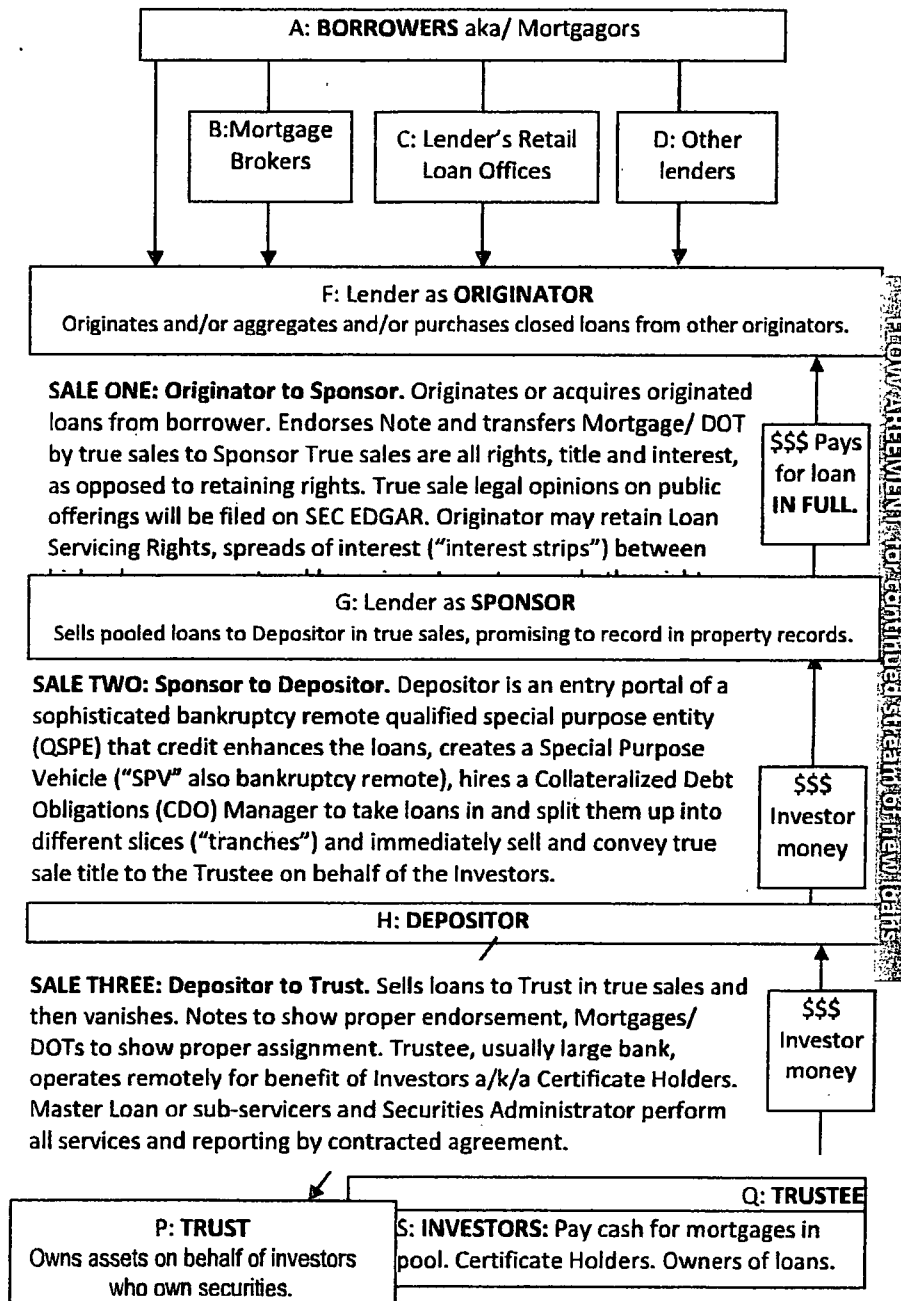
**PROJECTED UNDISCLOSED SECURITIZATION MODEL OF ELBEYS LOAN**



Projected Undisclosed Subsequent Sale Summary of ELBEYs Loan



Projected Undisclosed Subsequent Sale Detail of ELBEYs Loan





Projected Undisclosed Subsequent Sale Essential Governing Documentation of ELBEYs Loan

F: Lender as **ORIGINATOR**

Originates and/or aggregates and/or purchases closed loans from other originators.

FLOW AGREEMENT – Originator promises to keep loan flowing for this deal and all deals under time, terms and payment specific terms.

MORTGAGE PURCHASE AGREEMENT – Stipulates conveyance and form of endorsement of Notes and assignment of Mortgages/ DOTs. Makes representations and warranties including provision of repurchase by Originator of defective loans.

G: Lender as **SPONSOR**

Sells pooled loans to Depositor in true sales, promising to record in property records:

MORTGAGE PURCHASE AGREEMENT – Stipulates conveyance and form of endorsement of Notes and assignment of Mortgages/ DOTs. Makes representations and warranties including provision of repurchase by Originator of defective loans.

H: **DEPOSITOR**

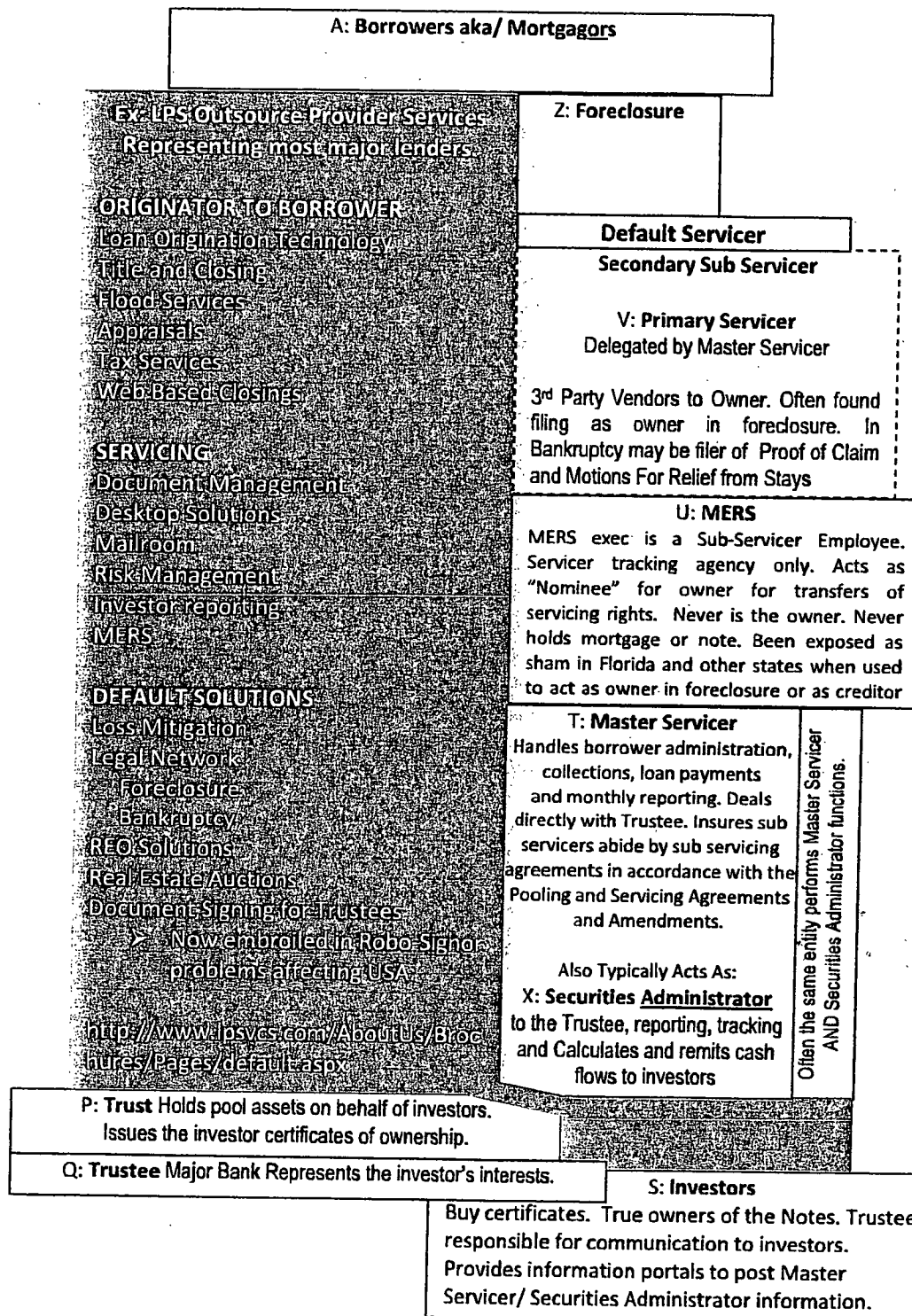
POOLING AND SERVICING AGREEMENT – Stipulates conveyance and form of endorsement of Notes and assignment of Mortgages/ DOTs. Makes representations and warranties including provision of repurchase by Originator of defective loans. Specifies loan servicing policies and procedures and rights of investor owners.

MASTER DOCUMENT CUSTODIAN AGREEMENT – Identifies party who will take custody of, protect and ensure safety of all the properly endorsed Notes and assigned mortgages. Because sometimes these are made in blank, the originals may be bearer instruments payable to anyone who holds the "blue ink" originals. Extreme care and procedures are required of this responsible party.

Q: **TRUSTEE**



PROJECTED UNDISCLOSED OUTSOURCED LOAN SERVICING ON ELBEYS LOAN



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Deutsche Bank National Trust Company, as
Trustee of the IndyMac INDX Mortgage Trust
2007-FLX3, Mortgage Pass-Through
Certificates, Series 2007-FLX3 under the
Pooling and Servicing Agreement dated April 1,
2007

Plaintiff,

vs.

Scott J. Heinrich; Dinah K. Heinrich; OneWest
Bank, FSB; County of Charleston,

Defendants.

(514773-00572 JJH)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

DOCKET NO.: 2011-CP-10-1060

ORDER ~~DEEMING~~ DEFENDANTS SCOTT
J. HEINRICH AND DINAH K.
HEINRICH'S MOTION TO DISMISS

FILED
2013 JUL 31 AM 9:17
JULIE J. ARMSTRONG
CLERK OF COURT

This case came before me on May 13, 2013 on Defendants' pre-Answer Motion to Dismiss this case pursuant to Rules 12(b)(6) and 12(b)(7), SCRCP. Defendants, Scott J. Heinrich and Dinah K. Heinrich ("Defendants"), were represented by William H. Sloan of the Sloan Law Firm, PA in Summerville, and Plaintiff was represented by John J. Hearn of Rogers Townsend & Thomas, PC in Columbia.

I. Rule 12(b)(6), SCRCP

Defendants claim that the Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP, because Plaintiff "lacks the necessary standing to file this action prior to acquiring and recording an Assignment of Mortgage" and fails to mention how they are the owner of the Note and Mortgage in this case under our fact-based pleading scheme. Plaintiff admits that the assignment of mortgage into Plaintiff was recorded February 23, 2011, about two weeks after this action was filed. Plaintiff claims to have no obligation to record the assignment into itself prior to filing this action.

Plaintiff has possession of the original Note, which is indorsed in blank at the time of the hearing before me on May 13, 2013. Plaintiff claims that the note is a negotiable instrument under the South Carolina Uniform Commercial Code, S.C. Code §36-3 et seq. which would entitle them certainly to sue on the note in this action. However, Plaintiff is seeking to foreclose on the mortgage that is attached to the real property as opposed to simply suing on the promissory note.

The idea that the Mortgage follows the Note is one which has been repeatedly confirmed by our courts: "South Carolina recognizes the 'familiar and uncontroverted proposition' that 'the assignment of a note secured by a mortgage carries with it an assignment of mortgage. However, *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872), quoted by Plaintiff's counsel in this oral argument and brief, clearly supports the notion that the Plaintiff must clearly **own the Note and the Mortgage** to foreclose on the property. Plaintiff failed to show that it owned ~~on~~ the Mortgage at the time the Complaint was filed. ^{IN JCM} ~~in its Complaint~~, Plaintiff merely contends in §3 of its Complaint that it is a holder and has the right to enforce. Further, the mortgage of this case shows Mortgage Electronic Registration Systems, Inc. (MERS) to be the mortgagee. This was confirmed by Plaintiff's counsel in oral argument. MERS is never mentioned on the Note, ^{JCM} ~~and therefore, the Note and Mortgage of this case have been separated permanently.~~ ^{JCM}

Our state court of appeals made a recent decision in *BAC Home Loan Servicing, L.P. v. Kinder*, 398 S.C. 619, 731 S.E.2d 547 (Ct. App. 2012.) "[T]he assignment of a mortgage does not need to be recorded, and failure to do so has no effect on the rights of the assignee." *Id.* at 623. However, I distinguish the facts of *Kinder* from this case as the Assignment of Mortgage in

Kinder was after the foreclosure was already complete and the issue at dispute in that case was the surplus funds going to the Assignee. *Filing is not the issue but ownership of the note. JCR*

owner JCR
It is clear that to have standing in this foreclosure case, Plaintiff must not only be the holder of the original Note, but also the Mortgage as well. Plaintiff's Complaint in this case fails to meet this criteria. Plaintiff lacks the standing to initiate and prosecute the foreclosure, and dismissal pursuant to Rule 17(a) and Rule 12(b) (6) SCRPC is appropriate.

II. Failure to Join Necessary Parties under Rule 12(b)(7), SCRPC

Rule 12(b)(7) provides that one defense to an action is the failure to join a party under Rule 19 of the South Carolina Rules of Civil Procedure. Rule 19 provides that:

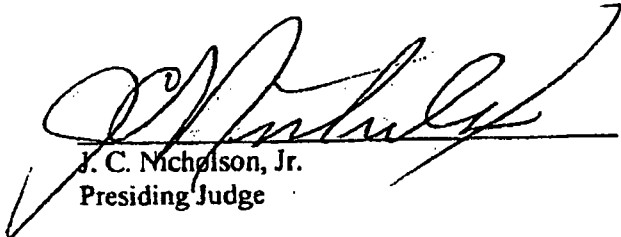
A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be afforded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

Defendants claim that Mortgage Electronic Registration Systems, Inc. ("MERS") and IndyMac Bank, FSB ("IndyMac") are necessary parties to this action, and that the court must join them as parties to protect the Defendants from "double or triple liability" on the Note and Mortgage at issue. Again, Defendants misapprehend the applicable law by advancing this argument. Under South Carolina law, Defendants would not be subject to duplicative payment obligations because Plaintiff's foreclosure judgment will discharge Defendants' liability to other claimants. See S.C. Code Ann §36-3-603(1) (2003) (explaining the circumstances under which cancellation or satisfaction filed by the holder of a negotiable instrument will discharge liability for other claims on same instrument.)

There is no reason that the absence of MERS or IndyMac would prevent this court from issuing a foreclosure judgment establishing Plaintiff's sole authority to enforce the Note and Mortgage at issue here. Further, even if it is determined that these were necessary parties. Rule 12(b)(7) does not call for dismissal of the action, and instead only requires that the parties be joined. On a Rule 12(b)(7) motion, "the proper course for the trial court is to determine the necessity of adding a new party under Rule 19 to insure a full adjudication of the controversy." *Bancohio National Bank v. Neville*, 310 S.C. 323, 328, 426 S.E.2d 773, 776 (1993). As such, Defendants' motion to dismiss pursuant to Rule 12(b)(7) is denied. However, In find this issue moot as I have dismissed this case pursuant to Defendants' Heinrich's Motion to Dismiss under Rule 12(b)(6), SCRCF.

And it is so ordered that this case be dismissed without prejudice.

IT IS SO ORDERED!


J. C. Nicholson, Jr.
Presiding Judge

July 30, 2013

**Chet Adams Co. v. James F. Pederson Co., 413 SE 2d 827 -
SC: Supreme Court 1992**

307 S.C. 33 (1992)
413 S.E.2d 827

CHET ADAMS COMPANY, Petitioner
v.
JAMES F. PEDERSON COMPANY, and Heil Quaker Corporation, f/d/b/a
Zoneaire Corporation, Respondents.

Supreme Court of South Carolina.

Heard December 2, 1991.
Decided January 13, 1992.

34*34 *Robert T. Lyles, Jr., of Wall and Shoun, Charleston, for petitioner.*

T.E. Pederson, Charleston, for respondents.

Heard Dec. 2, 1991.

Decided Jan. 13, 1992.

HARWELL, Justice:

The sole issue on appeal is whether the Court of Appeals erred in remanding this case to the circuit court for a determination of issues arising out of petitioner Chet Adams' failure to comply with S.C. Code Ann. § 33-15-102(a) (1990).^[1] We reverse and remand the case to the Court of Appeals for a decision on the merits.

I. FACTS

Petitioner Chet Adams Company, a **foreign corporation**, brought this action against respondent James F. Pederson Company to recover monies allegedly owed on an account as the result of the sale of air conditioning equipment.^[2] After a non-jury trial, the circuit court judge entered judgment in favor of Chet Adams. Pedersen appealed and the case was assigned to the Court of Appeals.

In its reply brief to the Court of Appeals, Pedersen claimed that the case should be dismissed because Chet Adams had not obtained a certificate of authority as required by Section 33-15-102(a). At the oral argument in front of the Court of Appeals, Chet Adams submitted a certificate of registration 35*35 which it had obtained that day. After some discussion regarding this issue, the parties argued the merits of the appeal.

On April 11, 1991, the Court of Appeals issued a per curiam, unpublished decision holding that, since the registration issue was raised for the first time on appeal and had not been ruled on by the circuit court, the case should be remanded so the circuit court could address the issue. On remand, the Court of Appeals ordered the circuit court to determine three issues:

- (1) whether Pederson waived the right to complain about Chet Adams' not having the required certificate by not raising the issue until the case was on appeal; or
- (2) whether the fact Chet Adams did not have the certificate deprived the Court of subject matter jurisdiction to entertain the suit; and
- (3) whether Chet Adams should be allowed to remove, *ex post facto*, the impediment to maintaining the proceeding by obtaining the certificate after judgment was rendered.

We granted petitioner Chet Adams' petition for writ of certiorari to review the Court of Appeals' decision to remand the case to the circuit court.

II. DISCUSSION

The primary question in this case is whether Section 33-15-102 is jurisdictional or whether it merely affects a party's capacity to sue. We find that our prior case law, as well as the Official Comments to Section 33-15-102, demonstrate that the failure to comply with Section 33-15-102 does not affect a court's subject matter jurisdiction.

In Cost of Wisconsin v. Shaw, 292 S.C. 435, 357 S.E. (2d) 20 (1987), Cost of Wisconsin, a **foreign corporation** that was not registered to do business in South Carolina, sought to foreclose a mechanics' lien filed against property owned by Theme Golf, Inc. Theme Golf moved to dismiss the action on the ground that Cost of Wisconsin lacked **standing** to maintain the suit because it was not authorized to do business in South Carolina as required by S.C. Code Ann. § 33-23-140(B) (Supp. 36*36 1986).^[3] We held that a **foreign corporation** could qualify under Section 33-23-140(B) after commencement of the suit.

This holding is consistent with the Official Comments to our current statute, which provide that:

[Section 33-15-102] authorizes a court to stay a proceeding to determine whether a **corporation** should have qualified to transact business and, if it concludes that qualification is necessary, it may grant a further stay to permit the **corporation** to do so. Thus, the **corporation** will not be compelled to re-file a suit if the **corporation** qualifies to transact business within a reasonable period. The purpose of these provisions is to encourage corporations to obtain certificates of authority and to eliminate the temptation to raise [Section 33-15-102] defenses only after applicable statutes of limitation have run.

Acts by a court as to a matter over which it has no jurisdiction are void. Hoover v. Hoover, 271 S.C. 177, 246 S.E. (2d) 179 (1978). Accordingly, if the failure of a **foreign corporation** to comply with Section 33-15-102 deprived a court of jurisdiction, a court-ordered stay such as is authorized by the above cited authorities would be impossible; once a lack of jurisdiction was determined, the court would have to dismiss the action and could not order a stay *See* Rule 12(h)(3), SCRPC ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

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Courts from other jurisdictions which have addressed this issue have also concluded that statutes such as Section 33-15-102, known as "door closing" statutes, affect a **foreign corporation's** capacity to **sue** rather than a court's subject matter jurisdiction. *See, e.g., Hot Roll Mfg. Co. v. Cerone Equipment Co.*, 38 A.D. (2d) 339, 329 N.Y.S. (2d) 466 (1972); *Video Engineering Co. v. Foto-Video Electronics, Inc.*, 207 Va. 1027, 154 S.E. (2d) 7 (1967).

Thus, we hold that a **foreign corporation's** failure to comply with the provisions of Section 33-15-102 does not affect a court's subject matter jurisdiction. Instead, 37*37 compliance with this statute affects a **foreign corporation's** capacity to **sue**. Further, the defense of capacity to **sue** can be waived by a defendant if not raised. *H & H Glass Co. v. Wynne*, 289 S.C. 389 346 S.E. (2d) 523 (1986) (Where lack of capacity to **sue** is not timely raised by demurrer or answer, it is waived.). *See also*, Rule 9(a), SCRPC (In order to raise an issue as to the capacity of a party to **sue**, a party must have a specific negative averment to that effect.). In this case, Chet Adams' failure to register was not raised as a defense by Pedersen in its pleadings, at the trial of the case, or as an exception on appeal. It was raised for the first time in Pedersen's reply brief. Accordingly, Pedersen has waived its right to complain that Chet Adams lacks capacity to **sue**.

In sum, we conclude that the Court of Appeals erred in remanding this case to the circuit court. Instead, it should have determined that the circuit court was not deprived of jurisdiction and that Pedersen waived its right to complain as to Chet Adams' lack of capacity to **sue**. Accordingly, we reverse and remand the case to the Court of Appeals for a decision on the merits.

Reversed and remanded.

GREGORY, C.J., and CHANDLER, FINNEY and TOAL, JJ., concur.

[1] Section 33-15-102(a) requires a **foreign corporation** transacting business in this State to obtain a certificate of authority before it can maintain a proceeding in any court in this State.

[2] Originally, Chet Adams also named Heil Quaker **Corporation**, f/d/b/a Zoneaire **Corporation**, as a defendant. However, Heil Quaker filed a crossclaim against Pedersen and assigned its cause of action to Chet Adams, leaving Pedersen as the only remaining defendant.

[3] Section 33-23-140(B), the predecessor of Section 33-15-102(a), provided that a **foreign corporation** could not maintain a suit until it was authorized to do business in this State.

This Hon. Court may allow Plaintiffs time to properly registered, which in my opinion would be futile. The Plaintiff already by their actions have shown through their actions and through their counsel that they have no respect for this Hon. Court, the people of South Carolina and their stockholders by their actions. Plaintiff holds a fiduciary duty to the stockholders to ensure that all parties that have an interest in the property were signed upon the original

mortgage and promissory note. Plaintiffs' are not the real party in interest, meaning not being the holder in due course, and have now by Plaintiffs' actions involved officers of the Court, and officers of the county to do actions unbecoming to their oaths. Defendant has reported these actions to the necessary agencies, including the Atty. Gen. of South Carolina. If this case goes any further Defendant has a duty to protect this Hon. Court, as well as Plaintiff's counsel. Defendant is under the opinion that the Plaintiff have not registered with the purpose and intent to defraud and commit Fraud in the Factum, Fraud in the Inducement, and Fraud in the Execution. Defendant is under the opinion that Plaintiffs have also not register within the State in order to not have to pay any state income tax on their actions, in which, the State is in desperate need, of and once a corporation properly registered to do business in said state. It would be necessary to look into all the state actions involving Federal National Mortgage Association thru this Hon. Court that have ever been filed in order to determine whether or not properly Federal National Mortgage Association have filed state income taxes.

Plaintiff claims to be the holder due course and claims to be the real party in interest under Fed Rule 17 (a) Ratification of Commencement and Real Party of Interest, (the original lender has to appear in court and grant power of attorney to a servicer in order for a servicer to commence a foreclosure action in court. Plaintiff claim to be original party and Holder in Due Course but if a servicer takes a note by transfer and is Entitled or Authorized to Receive Payments from the borrower is called a note holder, Art. 3-301 of the UCC Statute. A mortgage servicer and a bank trustee would have no interest in this note. The only party with authority to enforce this note is the same party entitled to the borrowers payments under the Pooling and Servicing Agreement, and since Plaintiff has never demonstrated or produced a "PSA" Plaintiff

does not have the ability to invoke the jurisdiction of this Hon. Furthermore if the alleged loan has been securitized then the only person entitled to collect, whom would also be the only party able to bring forth a foreclosure proceeding is the true certificate holder of the original note and original mortgage together, for a separation of the two would cause a nullity of all contractual obligations (please provide proof). It was not disclosed what form of credit was created off of my signature such as M1 and 2 or M3. It was not disclosed that the bank cannot lend its own credit, nor could it have lent the stockholders credit (Banks and Banking Title 12 U.S.C., Chapter II, Subchapter IV § 83), that would be a violation and bank fraud (ENRON Case), it was not disclosed that the bank had nothing to lend upon the signing of the promissory note. The bank proceeded to do a double book entry, entering my promissory note and mortgage upon their books to pad and show that they had money, the credit that was created off my signature was purported to be lent to me at that time. They also were allowed to lend 10 times the amount of credit that was created by fractionalizing of my signature. Once again "off of my signature" I am in fact the true creditor and Lender is entitled to a processing fee. Original lender also did not disclose the monetization of the original note and mortgage. Once the original mortgage and promissory note had been monetized any obligation that may have existed no longer exists. Attached hereto and incorporated herein, See the affidavit of Walker Todd exhibit B.

Plaintiffs did not file the original mortgage and promissory note with the County Recorder's Office in which it was recorded and returned to the Original Bank to invoke Fed Rule 17(a). Plaintiffs have now involved this Hon. Court and the County recorder in actions that are unbecoming of a public office, all elected and appointed officials have/or should have taken an

oath of office to uphold the Constitution of the United States and also the Constitution of South Carolina. By placing a copy of a securities instrument within this claim and not having or being the holder in due course as required under the UCC's, have violated Title 18 sections 470 to 473 and 474.

In *Fina Supply, Inc. v. Abilene Nat. Bank*, 726 S.W.2d 537, 1987 it says "Party having superior knowledge who takes advantage of another's ignorance of the law to deceive him by studied concealment or misrepresentation can be held responsible for that conduct."

"In the federal courts, it is well established that a national bank has no power to lend its credit to another by becoming surety, indorser, or guarantor for him." *Farmers and Miners Bank v. Bluefield Nat 'l Bank*, 11 F 2d 83, 271 U.S. 669; "A national bank has no power to lend its credit to any person or corporation." *Bowen v. Needles Nat. Bank*, 94 F 925, 36 CCA 553, certiorari denied in 20 S.Ct 1024, 176 US 682, 44 LED 637

The Counterfeit Detection Act of 1992, Public Law 102-550, in Section 411 of Title 31 of the Code of Federal Regulations, permits color illustrations of U.S. currency provided:

The illustration is of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of the item illustrated

- The illustration is one-sided
- All negatives, plates, positives, digitized storage medium, graphic files, magnetic medium, optical storage devices, and any other thing used in the making of the illustration that contain an image of the illustration or any part thereof are destroyed and/or deleted or erased after their final use

Other Obligations and Securities

• Photographic or other likenesses of other United States obligations and securities and foreign currencies are permissible for any non-fraudulent purpose, provided the items are reproduced in black and white and are less than three-quarters or greater than one-and-one-half times the size, in linear dimension, of any part of the original item being reproduced. Negatives and plates used in making the likenesses must be destroyed after their use for the purpose for which they were made.

Title 18 USC § 472 Uttering counterfeit obligations or securities Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than 20 years, or both.

Title 18 USC § 473 Dealing in counterfeit obligations or securities Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than 20 years, or both.

Title 18 USC § 474 Plates, stones, or analog, digital, or electronic

images for counterfeiting obligations or securities Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or ossession, an analog, digital, or electronic image of any obligation or other security of the United States is guilty of a class B felony.

"Fraud vitiates the most solemn Contracts, documents and even judgments" [U.S. vs. Throckmorton, 98 US 61, at pg. 65].

"It is not necessary for rescission of a contract that the party making the misrepresentation should have known that it was false, but recovery is allowed even though misrepresentation is innocently made, because it would be unjust to allow one who made false representations, even innocently, to retain the fruits of a bargain induced by such representations." [Whipp v. Iverson, 43 Wis 2d 166].

"Any false representation of material facts made with knowledge of falsity and with intent that it shall be acted on by another in entering into contract, and which is so acted upon, constitutes 'fraud,' and entitles party deceived to avoid contract or recover damages." Barnsdall Refining Corn. v. Birnam Wood Oil Co. 92 26 817.

I believe that this Hon. Court and the County Recorder would have not intentionally participated, and have unknowingly violated their oaths of office. By violating my rights to Due Process of Law, I have now rescinded all contracts due to the fraudulent inducement with the alleged promissory note and mortgage. Attached hereto and incorporated herein rescission of contract exhibit C.

Plaintiffs have violated [FDCPA] by their actions as a third-party debt collector Defendant has not been given notice and opportunity to validate any alleged debt. Attached hereto and incorporated herein demand for debt validation under the [FDCPA].

Plaintiff's counsel has violated his/her disciplinary rules and ethical canons by the filing of this alleged action having an obligation to ensure that the party they represent, are properly registered as a Real Party in Interest within the State of South Carolina and in order to have standing to sue in the first instance, not to mention counsel of Plaintiff also had a duty to protect this Hon. Court from any void or voidable actions.

WHEREFORE: Defendant requests that this Hon. Court dismiss this action for lack of standing.

This Hon. Court does not possess Personum Jurisdiction over a foreign entity not possessing a foreign certificate of authority to be able to commence an action in S.C. court, and not simply defending an action against said Bank. This Hon. Court may have jurisdiction of the Subject Matter to be the proper court to hear this issue. However this Hon. Court does not possess Jurisdiction Over Subject Matter if one of the parties being a foreign corporation does not possess a Foreign Certificate of Authority to be able to maintain an action in this S.C. Court, the foreign corporation without Foreign Certificate of Authority does not need to have it to defend against an action in this S.C. Court. Due to the prima facie evidence that the Plaintiff is not now, nor was ever the Real Party in Interest and definitely not registered with the Secretary of State in order to have standing or lawfully conduct and transact business in this State. I, Pray for any and all other relief this court may deem just via Sua Sponte of the Court in regards to matter such as this. Defendant requests that this Hon. Court dismiss this case with prejudice due to the fraud, and that all parties uphold their oaths of office and not violated the Federal, and State constitutionally protected rights. Equality Under the Law Is paramount And a Must.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BANK ONE, N.A.,

Plaintiff,

v.

HARSHAVARDHAN DAVE and
PRATIMA DAVE, jointly and severally,

Defendants.

Case No. 03-047448-CZ

Hon. E.. Sosnick

AFFIDAVIT OF WALKER F. TODD,
EXPERT WITNESS FOR DEFENDANTS

Harshavardhan Dave and Pratima H. Dave
C/o 5128 Echo Road
Bloomfield Hills, MI 48302
Defendants, *in propria persona*

Michael C. Hammer (P41705)
Ryan O. Lawlor (P64693)
Dickinson Wright PLLC
Attorneys for Bank One, N.A.
500 Woodward Avenue, Suite 4000
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Now comes the Affiant, Walker F. Todd, a citizen of the United States and the State of Ohio over the age of 21 years, and declares as follows, under penalty of perjury:

1. That I am familiar with the Promissory Note and Disbursement Request and Authorization, dated November 23, 1999, together sometimes referred to in other documents filed by Defendants in this case as the "alleged agreement" between Defendants and Plaintiff but called the "Note" in this Affidavit. If called as a witness, I would testify as stated herein. I make this Affidavit based on my own personal knowledge of the legal, economic, and historical principles stated herein, except that I have relied entirely on documents provided to me, including the Note, regarding certain facts at issue in this case of which I previously had no direct and personal knowledge. I am making this affidavit based on my experience and expertise as an attorney, economist, research writer, and teacher. I am competent to make the following statements.

PROFESSIONAL BACKGROUND QUALIFICATIONS

2. My qualifications as an expert witness in monetary and banking instruments are as follows. For 20 years, I worked as an attorney and legal officer for the legal departments of the Federal Reserve Banks of New York and Cleveland. Among other things, I was assigned responsibility for questions involving both novel and routine notes, bonds, bankers' acceptances, securities, and other financial instruments in connection with my work for the Reserve Banks' discount windows and parts of the open market trading desk function in New York. In addition, for nine years, I worked as an economic research officer at the Federal Reserve Bank of Cleveland. I became one of the Federal Reserve System's recognized experts on the legal history of central banking and the pledging of notes, bonds, and other financial instruments at the discount window to enable the Federal Reserve to make advances of credit that became or could become money. I also have read extensively treatises on the legal and financial history of money and banking and have published several articles covering all of the subjects just mentioned. I have served as an expert witness in several trials involving banking practices and monetary instruments. A summary biographical sketch and resume including further details of my work experience, readings, publications, and education will be tendered to Defendants and may be made available to the Court and to Plaintiff's counsel upon request.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

3. Banks are required to adhere to Generally Accepted Accounting Principles (GAAP).

GAAP follows an accounting convention that lies at the heart of the double-entry bookkeeping system called the Matching Principle. This principle works as follows: When a bank accepts bullion, coin, currency, checks, drafts, promissory notes, or any other similar instruments (hereinafter "instruments") from customers and deposits or records the instruments as assets, it must record offsetting liabilities that match the assets that it accepted from customers. The liabilities represent the amounts that the bank owes the customers, funds accepted from customers. In a fractional reserve banking system like the United States banking system, most of the funds advanced to borrowers (assets of the banks) are created by the banks themselves and are not merely transferred from one set of depositors to another set of borrowers.

RELEVANCE OF SUBTLE DISTINCTIONS ABOUT TYPES OF MONEY

4. From my study of historical and economic writings on the subject, I conclude that a common misconception about the nature of money unfortunately has been perpetuated in the U.S. monetary and banking systems, especially since the 1930s. In classical economic theory, once economic exchange has moved beyond the barter stage, there are two types of money: money of *exchange* and money of *account*.. For nearly 300 years in both Europe and the United States, confusion about the distinctiveness of these two concepts has led to persistent attempts to treat money of account as the equivalent of money of exchange. In reality, especially in a fractional reserve banking system, a comparatively small amount of money of exchange (e.g., gold, silver, and official currency notes) may support a vastly larger quantity of

business transactions denominated in money of account. The sum of these transactions is the sum of credit extensions in the economy. With the exception of customary stores of value like gold and silver, the monetary base of the economy largely consists of credit instruments. Against this background, I conclude that the Note, despite some language about "lawful money" explained below, clearly contemplates both disbursement of funds and eventual repayment or settlement in money of account (that is, money of exchange would be welcome but is not required to repay or settle the Note). The factual basis of this conclusion is the reference in the Disbursement Request and Authorization to repayment of \$95,905.16 to Michigan National Bank from the proceeds of the Note. That was an exchange of the credit of Bank One (Plaintiff) for credit apparently and previously extended to Defendants by Michigan National Bank. Also, there is no reason to believe that Plaintiff would refuse a substitution of the credit of another bank or banker as complete payment of the Defendants' repayment obligation under the Note. This is a case about exchanges of money of account (credit), not about exchanges of money of exchange (lawful money or even legal tender).

5. Ironically, the Note explicitly refers to repayment in "lawful money of the United States of America" (see "Promise to Pay" clause). Traditionally and legally, Congress defines the phrase "lawful money" for the United States. Lawful money was the form of money of exchange that the federal government (or any state) could be required by statute to receive in payment of taxes or other debts. Traditionally, as defined by Congress, lawful money only included gold, silver, and currency notes redeemable for gold or silver on demand. In a banking law context, lawful money was only those forms of money of exchange (the forms just mentioned, plus U.S. bonds and notes redeemable for gold) that constituted the reserves of a national bank prior to 1913

(date of creation of the Federal Reserve Banks). *See*, Lawful Money, *Webster's New International Dictionary* (2d ed. 1950). In light of these facts, I conclude that Plaintiff and Defendants exchanged reciprocal credits involving money of account and not money of exchange; no lawful money was or probably ever would be disbursed by either side in the covered transactions. This conclusion also is consistent with the bookkeeping entries that underlie the loan account in dispute in the present case. Moreover, it is puzzling why Plaintiff would retain the archaic language, "lawful money of the United States of America," in its otherwise modern-seeming Note. It is possible that this language is merely a legacy from the pre-1933 era. Modern credit agreements might include repayment language such as, "The repayment obligation under this agreement shall continue until payment is received *in fully and finally collected funds*," which avoids the entire question of "In what form of money or credit is the repayment obligation due?"

6. Legal tender, a related concept but one that is economically inferior to lawful money because it allows payment in instruments that cannot be redeemed for gold or silver on demand, has been the form of money of exchange commonly used in the United States since 1933, when domestic private gold transactions were suspended (until 1974).. Basically, legal tender is whatever the government says that it is. The most common form of legal tender today is Federal Reserve notes, which by law cannot be redeemed for gold since 1934 or, since 1964, for silver. *See*, 31 U.S.C. Sections 5103, 5118 (b), and 5119 (a).

Note: I question the statement that fed reserve notes cannot be redeemed for silver since 1964. It was Johnson who declared on 15 March 1967 that after 15 June 1967 that Fed Res Notes would not be exchanged for silver and the practice did stop on 15 June

1967 – not 1964. I believe this to be error in the text of the author's affidavit.

7. *Legal tender under the Uniform Commercial Code (U.C.C.), Section 1-201 (24)* (Official Comment), is a concept that sometimes surfaces in cases of this nature. The referenced Official Comment notes that the definition of money is not limited to legal tender under the U.C.C. Money is defined in Section 1-201 (24) as "a medium of exchange authorized or adopted by a domestic or foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more nations." The relevant Official Comment states that "The test adopted is that of sanction of government, whether by authorization before issue or adoption afterward, which recognizes the circulating medium as a part of the official currency of that government. The narrow view that money is limited to legal tender is rejected." Thus, I conclude that the U.C.C. tends to validate the classical theoretical view of money.

HOW BANKS BEGAN TO LEND THEIR OWN CREDIT INSTEAD OF REAL MONEY

8. In my opinion, the best sources of information on the origins and use of credit as money are in Alfred Marshall, MONEY, CREDIT & COMMERCE 249-251 (1929) and Charles P. Kindleberger, A FINANCIAL HISTORY OF WESTERN EUROPE 50-53 (1984). A synthesis of these sources, as applied to the facts of the present case, is as follows: As commercial banks and discount houses (private bankers) became established in parts of Europe (especially Great Britain) and North America, by the mid-nineteenth century they commonly made loans to borrowers by extending their own credit to the borrowers or, at the borrowers' direction, to third parties. The typical form of such extensions of credit was drafts or bills of exchange drawn upon themselves (claims on the credit of the drawees) instead of disbursements of bullion,

coin, or other forms of money. In transactions with third parties, these drafts and bills came to serve most of the ordinary functions of money. The third parties had to determine for themselves whether such "credit money" had value and, if so, how much. The Federal Reserve Act of 1913 was drafted with this model of the commercial economy in mind and provided at least two mechanisms (the discount window and the open-market trading desk) by which certain types of bankers' credits could be exchanged for Federal Reserve credits, which in turn could be withdrawn in lawful money. Credit at the Federal Reserve eventually became the principal form of monetary reserves of the commercial banking system, especially after the suspension of domestic transactions in gold in 1933. Thus, credit money is not alien to the current official monetary system; it is just rarely used as a device for the creation of Federal Reserve credit that, in turn, in the form of either Federal Reserve notes or banks' deposits at Federal Reserve Banks, functions as money in the current monetary system. In fact, a means by which the Federal Reserve expands the money supply, loosely defined, is to set banks' reserve requirements (currently, usually ten percent of demand liabilities) at levels that would encourage banks to extend new credit to borrowers on their own books that third parties would have to present to the same banks for redemption, thus leading to an expansion of bank-created credit money. In the modern economy, many non-bank providers of credit also extend book credit to their customers without previously setting aside an equivalent amount of monetary reserves (credit card line of credit access checks issued by non-banks are a good example of this type of credit), which also causes an expansion of the aggregate quantity of credit money. The discussion of money taken from Federal Reserve and other modern sources in paragraphs 11 et seq. is consistent with the account of the origins of the use of bank credit as money in this paragraph.

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ADVANCES OF BANK CREDIT AS THE EQUIVALENT OF MONEY

9. Plaintiff apparently asserts that the Defendants signed a promise to pay, such as a note(s) or credit application (collectively, the "Note"), in exchange for the Plaintiff's advance of funds, credit, or some type of money to or on behalf of Defendant. However, the bookkeeping entries required by application of GAAP and the Federal Reserve's own writings should trigger close scrutiny of Plaintiff's apparent assertions that it lent its funds, credit, or money to or on behalf of Defendants, thereby causing them to owe the Plaintiff \$400,000. According to the bookkeeping entries shown or otherwise described to me and application of GAAP, the Defendants allegedly were to tender some form of *money* ("lawful money of the United States of America" is the type of money explicitly called for in the Note), securities or other capital equivalent to money, funds, credit, or something else of value in exchange (money of exchange, loosely defined), collectively referred to herein as "money," to repay what the Plaintiff claims was the *money* lent to the Defendants. It is not an unreasonable argument to state that Plaintiff apparently changed the economic substance of the transaction from that contemplated in the credit application form, agreement, note(s), or other similar instrument(s) that the Defendants executed, thereby changing the costs and risks to the Defendants. At most, the Plaintiff extended its own *credit* (money of account), but the Defendants were required to repay in *money* (money of exchange, and *lawful money* at that), which creates at least the inference of inequality of obligations on the two sides of the transaction (*money*, including *lawful money*, is to be exchanged for *bank credit*).

MODERN AUTHORITIES ON MONEY

11. To understand what occurred between Plaintiff and Defendants concerning the alleged loan of *money* or, more accurately, *credit*, it is helpful to review a modern Federal Reserve description of a bank's lending process. See, David H. Friedman, MONEY AND BANKING (4th ed. 1984)(apparently already introduced into this case): "The commercial bank lending process is similar to that of a thrift in that the receipt of cash from depositors increases both its assets and its deposit liabilities, which enables it to make additional loans and investments. . . . When a commercial bank makes a business loan, it accepts as an asset the borrower's debt obligation (the promise to repay) and creates a liability on its books in the form of a demand deposit in the amount of the loan." (Consumer loans are funded similarly.) Therefore, the bank's original bookkeeping entry should show an increase in the amount of the asset credited on the asset side of its books and a corresponding increase equal to the value of the asset on the liability side of its books. **This would show that the bank received the customer's signed promise to repay as an asset, thus monetizing the customer's signature and creating on its books a liability in the form of a demand deposit or other demand liability of the bank.** The bank then usually would hold this demand deposit in a transaction account on behalf of the customer. Instead of the bank lending its *money* or other assets to the customer, as the customer reasonably might believe from the face of the Note, the bank *created* funds for the customer's transaction account without the customer's permission, authorization, or knowledge and delivered the *credit* on its own books representing those funds to the customer, meanwhile alleging that the bank lent the customer *money*. If Plaintiff's response to this line of argument is to the effect that it acknowledges that it lent credit or issued credit instead of money, one might refer to Thomas P. Fitch, BARRON'S .

BUSINESS GUIDE DICTIONARY OF BANKING TERMS, "Credit banking," 3. "Bookkeeping entry representing a deposit of funds into an account." But Plaintiff's loan agreement apparently avoids claiming that the bank actually lent the Defendants *money*. They apparently state in the agreement that the Defendants are obligated to repay Plaintiff principal and interest for the "Valuable consideration (money) the bank gave the customer (borrower)." The loan agreement and Note apparently still delete any reference to the bank's receipt of actual cash value from the Defendants and exchange of that receipt for actual cash value that the Plaintiff banker returned.

12. According to the Federal Reserve Bank of New York, money is anything that has value that banks and people accept as money; money does not have to be issued by the government. For example, David H. Friedman, I BET YOU THOUGHT. . . . 9, Federal Reserve Bank of New York (4th ed. 1984)(apparently already introduced into this case), explains that banks create new money by depositing IOUs, promissory notes, offset by bank liabilities called checking account balances. Page 5 says, "Money doesn't have to be intrinsically valuable, be issued by government, or be in any special form. . . ."

13. The publication, Anne Marie L. Gonczy, MODERN MONEY MECHANICS 7-33, Federal Reserve Bank of Chicago (rev. ed. June 1992)(apparently already introduced into this case), contains standard bookkeeping entries demonstrating that *money* ordinarily is recorded as a bank *asset*, while a bank *liability* is evidence of *money* that a bank owes. The bookkeeping entries tend to prove that banks accept cash, checks, drafts, and promissory notes/credit agreements (assets) as *money* deposited to create credit or checkbook money that are bank *liabilities*, which shows that, absent any right of setoff, banks owe *money* to persons who deposit *money*.. Cash (money of

exchange) is money, and credit or promissory notes (money of account) become money when banks deposit promissory notes with the intent of treating them like deposits of cash. See, 12 U.S.C. Section 1813 (1)(1) (definition of "deposit" under Federal Deposit Insurance Act). The Plaintiff acts in the capacity of a lending or banking institution, and the newly issued credit or money is similar or equivalent to a promissory note, which may be treated as a deposit of money when received by the lending bank.. Federal Reserve Bank of Dallas publication MONEY AND BANKING, page 11, explains that when banks grant loans, they create new money. The new money is created because a new "loan becomes a deposit, just like a paycheck does." MODERN MONEY MECHANICS, page 6, says, "What they [banks] do when they make loans is to accept promissory notes in exchange for credits to the borrowers' transaction accounts." The next sentence on the same page explains that the banks' assets and liabilities increase by the amount of the loans.

COMMENTARY AND SUMMARY OF ARGUMENT

14. Plaintiff apparently accepted the Defendants' Note and credit application (money of account) in exchange for its own credit (also money of account) and deposited that credit into an account with the Defendants' names on the account, as well as apparently issuing its own credit for \$95,905.16 to Michigan National Bank for the account of the Defendants. One reasonably might argue that the Plaintiff recorded the Note or credit application as a loan (money of account) from the Defendants to the Plaintiff and that the Plaintiff then became the borrower of an equivalent amount of money of account from the Defendants.

15. The Plaintiff in fact never lent any of its own pre-existing money, credit, or assets as consideration to purchase the Note or credit agreement from the Defendants. (Robertson Notes: I add that when the bank

does the forgoing, then in that event, there is an utter failure of consideration for the "loan contract".) When the Plaintiff deposited the Defendants' \$400,000 of newly issued credit into an account, the Plaintiff created from \$360,000 to \$400,000 of new money (the nominal principal amount less up to ten percent or \$40,000 of reserves that the Federal Reserve would require against a demand deposit of this size). The Plaintiff received \$400,000 of credit or money of account from the Defendants as an asset. GAAP ordinarily would require that the Plaintiff record a liability account, crediting the Defendants' deposit account, showing that the Plaintiff owes \$400,000 of money to the Defendants, just as if the Defendants were to deposit cash or a payroll check into their account.

16. The following appears to be a disputed fact in this case about which I have insufficient information on which to form a conclusion: I infer that it is alleged that Plaintiff refused to lend the Defendants Plaintiff's own money or assets and recorded a \$400,000 loan from the Defendants to the Plaintiff, which arguably was a \$400,000 deposit of money of account by the Defendants, and then when the Plaintiff repaid the Defendants by paying its own credit (money of account) in the amount of \$400,000 to third-party sellers of goods and services for the account of Defendants, the Defendants were repaid their loan to Plaintiff, and the transaction was complete.

17. I do not have sufficient knowledge of the facts in this case to form a conclusion on the following disputed points: None of the following material facts are disclosed in the credit application or Note or were advertised by Plaintiff to prove that the

Defendants are the true lenders and the Plaintiff is the true borrower. The Plaintiff is trying to use the credit application form or the Note to persuade and deceive the Defendants into believing that the opposite occurred and that the Defendants were the borrower and not the lender. The following point is undisputed: The Defendants' loan of their credit to Plaintiff, when issued and paid from their deposit or credit account at Plaintiff, became money in the Federal Reserve System (subject to a reduction of up to ten percent for reserve requirements) as the newly issued credit was paid pursuant to written orders, including checks and wire transfers, to sellers of goods and services for the account of Defendants.

CONCLUSION

18. Based on the foregoing, Plaintiff is using the Defendant's Note for its own purposes, and it remains to be proven whether Plaintiff has incurred any financial loss or actual damages (I do not have sufficient information to form a conclusion on this point). In any case, the inclusion of the "lawful money" language in the repayment clause of the Note is confusing at best and in fact may be misleading in the context described above.

AFFIRMATION

19. I hereby affirm that I prepared and have read this Affidavit and that I believe the foregoing statements in this Affidavit to be true. I hereby further affirm that the basis of these beliefs is either my own direct knowledge of the legal principles and historical facts involved and with respect to which I hold myself out as an expert or statements made or documents provided to me by third parties whose veracity I reasonably assumed.

Further the Affiant sayeth naught.

At Chagrin Falls, Ohio

December 5, 2003

WALKER F. TODD (Ohio bar no. 0064539)
Expert witness for the Defendants
Walker F. Todd, Attorney at Law
1164 Sheerbrook Drive
Chagrin Falls, Ohio 44022
(440) 338-1169, fax (440) 338-1537
e-mail: westodd@adelphia.net

NOTARY'S VERIFICATION

At Chagrin Falls, Ohio

December 5, 2003

On this day personally came before me the above-named Affiant, who proved his identity to me to my satisfaction, and he acknowledged his signature on this Affidavit in my presence and stated that he did so with full understanding that he was subject to the penalties of perjury.

Notary Public of the State of Ohio

Note: Emphasis added.

LAW OFFICE
PHILIP E. WRIGHT, P.A.
ATTORNEY AT LAW

TELEPHONE: (803) 286-4343

408 NORTH MAIN STREET
LANCASTER, SC 29720
civil@pewpa.com

FAX: (803) 286-9996

October 8, 2013

**BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND REGULAR U.S. MAIL**

Chad W. Burgess, Esq.
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210

Ms. Ziraili M. Elbey
9789 Charlotte Highway, #400-191
Fort Mill, SC 29707-9998

Re: H&R Block Bank, FSB vs. Ziraili M. Elbey, *et al.*
Case No. 2011-CP-29-035

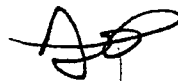
Dear Mr. Burgess and Ms. Elbey:

I have a number of motions filed by Ms. Elbey and a Motion to Strike and for Sanctions filed by the Plaintiff.

I will hear all motions and the merits of this action on October 24, 2013 at 10:30 a.m. in the Courtroom B Conference Room at the Lancaster County Courthouse, 104 North Main Street, Lancaster, South Carolina 29720.

Please be prepared to fully state and try your case at that time including all motions and causes of actions.

Sincerely yours,



Philip E. Wright
Special Referee

PEW:jb

Enclosures

cc/encs: American Home Mortgage Servicing, Inc.
s/b/m to Option One Mortgage Corporation

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STATE OF SOUTH CAROLINA)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-29-00035

HER Block Bank, FSB,)
Plaintiff,)

vs.)

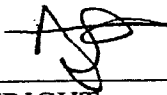
NOTICE OF HEARING

Ziraili M. Elbey a/k/a Ziraili)
Mohassen El Bey WKFC Living)
Trust Under Trust Agreement)
Dated June 4, 2010 by and through)
its Trustee Wellesley K. Clayton)
and American Home Mortgage)
Servicing, Inc. s/b/m to Option One)
Mortgage Corporation,)
Defendants.)

TO THE PLAINTIFF AND DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that a hearing on all Motions filed by all parties
and a Merits Hearing are scheduled in this case as follows:

DATE: October 24, 2013
TIME: 10:30 a.m.
LOCATION: Lancaster County Courthouse
104 North Main Street
Courtroom B Conference Room
Lancaster, SC 29720



PHILIP E. WRIGHT
SPECIAL REFEREE

October 8, 2013
Lancaster, South Carolina.

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KMJ TRUST [IRREVOCABLE BUSINESS ORGANIZATION] 2013

C/o Ziraili Mohassan El Bey, Grantor , Settlor & Trustee, 9789 Charlotte Hwy, #400-191, Ft. Mill, SC 29707

The Honorable Jeff Hammond
Lancaster County Clerk of Court
Post Office Box 1809
Lancaster, SC 29721-1809

H & R Block Bank v. Ziraili M Elbey et al.
Case No: 2011-CP-29-35

RE: Respondent's Answers Motion and Order to Restore Case#2011-CP-29-35 filed by Law Firm Brock & Scott , an Affidavit of Notice of Counter Claim filed by Respondent and further since Brock & Scott have request "no hearing" on Bank's Motion for Case#2011-CP-29-35 this Respondent finds it necessary to address the Lancaster Clerk of Court and further copy this letter to the Lancaster Register of Deeds, and the Lancaster County Sheriff in reference a unduly stress Homeowner that DEMANDS, 1) a better than best viable communication, and screening method/procedure between the Register of Deeds office and the Lancaster Court of Common Pleas, 2) to include, the Lancaster County Sheriff's office, as it relates to Mortgage Foreclosures in Lancaster County, SC in pursuing the proper enforcer "Holder" profile [UCC 36 § 1-201(21) of the "NOTE" and or the "Holder of the Instrument" according to the [South Carolina Uniform Commercial Code Statute SCCC[36 § 3-301:]

Dear Honorable Jeff Hammond:-

As stated above, please find this Respondent's Answer to Plaintiff's Motion before the Lancaster Court of Common Pleas for Case#2011-CP-29-35. The Plaintiff in this foreclosure judgment before this Court requested "no hearing." The reason for the extended letter is because the Plaintiff's attorney requested "no hearing". The Respondent has assets in this property before this court and after multiple "tender of payments" still waits to receive valuable consideration.

As writer, Respondent, and as grantor transferred ownership to the KMJ TRUST an [IRREVOCABLE BUSINESS TRUST ORGANIZATION] now through a transfer and Warranty Deed [Instrument #2012002846], she is the Trustee. The KMJ TRUST is the current property owner as described in map number #0006M-0A-261 and in case#2011-CP-29-35.

There is no controversy. The writer believes that the South Carolina Court Legal System and the Lancaster Court Legal System upholds common-sense principles of fairness. For example, this legal system support puts legal teeth behind the concept that a borrower is required to pay only bona fide legal debts and that the "HOLDER" of that legal debt, not someone else, is the only one entitled to enforce the obligations of the "NOTE".

The South Carolina Uniform Commercial Code, or UCC, or know as South Carolina Code of Commerce (SCCC) is designed to implements these fairness principles. It contains protections for the borrower that

Date	Mortgage Servicers - NOT- the "HOLDER" According to UCC [cannot Legally Initiate Foreclosure]	Ineffective [Fraudulent] ASSIGNMENT	DATE Recorded In Lancaster Register of Deeds	NO ENDORSER ON "NOTE" According to UCC [cannot Legally Initiate Foreclosure]
04-29-2006	Option One Mortgage Corp ¹	✓	08-05-2010	✓
04-29-2006	H&R BLOCK BANK, FSB**	✓	08-05-2010	✓
11-10-2011	NATIONSTAR MORTG LLC	✓	Not Recorded	✓

simultaneously protect the "HOLDER", and vice versa. This UCC South Carolina statue also protects the borrower from someone not entitled to enforce the "NOTE"

See Exhibit "C"

¹ ** Sand Canyon Corporation FKA Option One Mortgage Corporation[at the time BANKRUPT] stated that they registered [executed] Real Estate ASSIGNMENT with H & R Block Bank, FSB dated 04/29/2006 when in fact Lancaster ROD File, date: 08-05-2010, Inst#2010008401 BKMORT 2265, PG:129-130-by Notary, a Nationally known Mortgage ROBO signer & others on aforementioned ASSIGNMENT from H & R Block Bank, Plaintiff, 07-02-2010

FILED
OFFICE OF CLERK
OF COURT
2013 AUG 5 4:44 PM
LANCASTER COUNTY
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KMJ TRUST [IRREVOCABLE BUSINESS ORGANIZATION] 2013

C/o Ziraili Mohassan El Bey, Grantor , Settlor & Trustee, 9789 Charlotte Hwy, #400-191, Ft. Mill, SC 29707

Further to the above, this writer since placing her "wet ink signature" on the mortgage documents at closing March 29, 2006 has maintain beneficial owner, entitlement holder until transfer to KMJ TRUST [IRREVOCABLE], and paid property taxes in Lancaster County, SC on property described in Map Number 0006M-0A-261 and same as described in case#2011-CP-29-35. **Respondent has "SATISFIED" this mortgage lien and mortgage loan multiple of times see below:**

BENEFICIAL OWNER	ENTITLEMENT HOLDER	MORTGAGE SATISFIED & RECORDED IN LANCASTER COUNTY LAND RECORDS
KMJ TRUST	KMJ TRUST	WARRANTY DEED filed ROD 02-25-2013 Instrument# 2012002846, BK:DEED 716, PG:249-253 To KMJ TRUST [IRREVOCABLE]
ZIRAILI M ELBEY	KMJ TRUST	MEMORANDUM OF TRUST TO TRANSFER REAL ESTATE filed 2-25-2013, ROD Instrument# 2013002847, BK:DEED 716, PG: 254-255 & WARRANTY DEED filed ROD 02-25-2013 Instrument# 2012002846, BK:DEED 716, PG:249-253
ZIRAILI M ELBEY Payoff – Again First Mortgage & Second Mortgage	ZIRAILI M ELBEY	UCC Instrument No: 2013000645, BK: MORT 2600, PG: 270-280 dated: 01-14-2013, \$241,940.00, "Full Tender of Payment" now to Nations Mortgage LLC, [never contracted with these folk] 350 Highland Drive, Lewisville, TX 75067
ZIRAILI M ELBEY Payoff - Again First Mortgage Mortgage Satisfied 10-29-2009	ZIRAILI M ELBEY	NOTICE OF RECONVEYANCE 2010002834 BK:MORT 2220, PG:72-77 dated: 3-17-2010 ; NOTICE of CONDITIONAL ACCEPTANCE #2009014160 BK: MORT 2176 , PG 2-9 dated: 10-29-2009 – UCC Instrument # 2009014161, BK: MORT 2176, PG 10-10, \$197,186.00 "Full Tender of Payment" to H & R. Block Bank, FSB , P.O. Box 650070 for "Full Set-off and Discharge of Payment – UCC 36 §§ 103,1-104.10-104.3-419 and Public Law 73-10, Chapter 48, 48 Stat 112-113
ZIRAILI M ELBEY Payoff Again Second Mortgage Mortgage Satisfied 10-29-2009	ZIRAILI M ELBEY	NOTICE of RECONVEYANCE 2009014158 BK MORT: 2175; PG 343-350, dated:10-29-2009 \$49,296.00 "Full Tender of Payment" to Specialized Loan Servicing
ZIRAILI M ELBEY Payoff at Closing First and Second Mortgages Mortgage Satisfied 10-29-2009	ZIRAILI M ELBEY	2006004368 BK:DEED 329, PG:170 \$246,482.00 Dated 03-29-2006 – payment to OPTION ONE MORT CORP, now Bankrupt - "Full Set-off and Discharge of Payment" "Public Law 73- 10: CHAPTER 48, 48 STAT 112 Respondent's "wet ink" signature created the money.

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KMJ TRUST [IRREVOCABLE BUSINESS ORGANIZATION] 2013

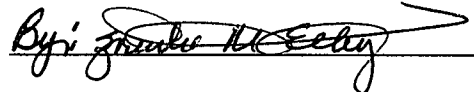
C/o Ziraili Mohassan El Bey, Grantor , Settlor & Trustee, 9789 Charlotte Hwy, #400-191, Ft. Mill, SC 29707

Mr. Hammond, Lancaster Clerk of Court, this writer is sure the situation she finds herself in is not unique to this Court or other counties in South Carolina or across this country, however, no property beneficial owner and entitlement holder of this county should ever have to endure what Respondent has dealt with unscrupulous foreclosure mill law firms who's interest is the mislead the Court and evict as many property land owner in the process.

Mr. Hammond to save the Court and Judges time, the Respondent might suggest some sort of screening process before a foreclosure attorney or law firm is allowed to file a Foreclosure Complaint with the Lancaster Court of Common Plea. There are three ways a person becomes entitled to enforce the NOTE². Further suggest, that before accepting mortgage foreclosure complaints from untrustworthy law firms and attorneys representing banks, mortgage servicers that have no standing, that file ineffective [fraudulent] Assignments with Lancaster Register of Deeds office. This monitoring system or "Right to Foreclose" attorney screening would lessen undue homeowner stress , illegal homeowner evictions in this county and allow the Lancaster's Sheriff's office to concentrate on more county criminal activity.

Dated: August 5, 2013 A.D.

Respectfully,



Printed: Ziraili Mohassan Elbey,
Respondent *In Propria Persona*
(not "Pro Se" [sic])

"All Rights Reserved"

Cc: File

Brock & Scott, PLLC
Lancaster Register of Deeds
Lancaster Sheriff's Office

² UCC 36 §3-301 of the SCCC – Physical possession is important for all three ways. 1) Current possession is required for 36 § 3-301(i) and (ii), 2) Past possession is required for 36 § 3-301(iii) and 3) Status of each prior transferee of a Note is necessary to understanding whether the person currently asserting "HOLDER" status actually has the right to enforce the Note. Why? Physical possession of the Note is the only way you can inspect the entire Note --- front, back, endorsements, and allonges (if physically attached; copies, paper-clipped pages or loose pages separate from the Note do not count). And, Proper indorsement, by a person who was a holder when the indorsement was made. (e.g. a person who was the HOLDER" only in 2005 cannot be an indorser in 2007. Facts evidencing that the transferor intended to voluntarily deliver 100% of it rights, including the right to enforce the NOTE, to the transferee, and that the transferor retained no rights of any kind in the Note. Remember, only the "HOLDER" can transfer "HOLDER" status, and then only if it transfers 100% of all right and interest in the Note.

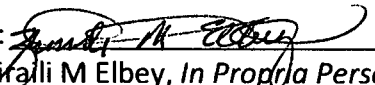
"Holder" profile is defined in 36 § 1-201(21), but right to enforce means more. Other UCC parts define which person in possession of the Note may enforce it. Facts that supersede physical possession must be proven because mere possession does not, in itself, prove "HOLDER" status. 36 § 3-201(a) states that "negotiation" by transfer is necessary to "HOLDER" status and so on.

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Certificate by Appellant

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

November 12, 2014

By: 
Zihali M Elbey, *In Propria Persona*
9789 Charlotte Highway, #400-191
Ft. Mill, South Carolina, 29707
(803) 233-2665

Brock & Scott, PLLC
3800 Fernandina Rd., Ste 110
Columbia, South Carolina, 29210
Counsel for Respondent
803-454-3340

Certificate of Service

State of South Carolina Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Philip E. Wright, Special Referee

Case No. 2013-002373

H & R Block Bank, FSB,

Respondent

v.

Ziraili M Elbey, a/k/a/ Ziraili Mohassan El Bey, WKFC Living
Trust Under Trust Agreement dated June 4, 2010 by and
through its Trustee Wellesley K. Clayton and American Home
Mortgage Servicing, Inc. s/b/m to Option One Mortgage
Servicing, Inc. s/b/m to Option One Mortgage Corporation,
Defendants,

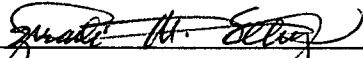
Appellant

Of Whom Ziraili M. Elbey is the Appellant.

PROOF OF SERVICE

I certify that Brock & Scott, PLLC, Attn: Chad Burgess, 3800 Fernandina Rd., Ste 110,
Columbia, South Carolina, 29210 received a copy of the **RECORD ON APPEAL** by depositing a
copy of it in the U.S. Mail, postage prepaid, on November 12, 2014 addressed to above
counsel listed and this Appellate Court.

November 12, 2014

By: 
Ziraili M Elbey, *In Propria Persona*
9789 Charlotte Highway, #400-191
Ft. Mill, South Carolina, 29707
(803) 233-2665