

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

JUL 28 2015

SC Court of Appeals

Joe M. Crosby, Master-in-Equity

Appellate Case No. 2015-000295

TD Bank, N.A., Successor by merger to Carolina First Bank, N.A., ... Respondent,

v.

Sunil V. Lalla and Sharon w. Lalla, ... Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank,)
)
)

Plaintiff,)
)
)

v.)
)
)

Sunil V. Lalla and Sharon W. Lalla,)
)
)

Defendants.)
)
)

C/A No. 2011-CP-22-00342

CONSENT ORDER OF REFERENCE

This matter came before the court by consent of the parties for an order of reference pursuant to Rule 53 of the South Carolina Rules of Civil Procedure. This being an action for foreclosure, the court finds and concludes that reference is appropriate.

IT IS HEREBY ORDERED that this action be, and hereby is, referred to the Honorable Joseph M. Crosby, Master in Equity for Georgetown County to: make findings of fact and conclusions of law; dispose of any and all issues; enter a final judgment in the case; and take such other actions as necessary to effectuate the Master's judgment in the case. Any appeal from the Master in Equity's judgment shall be directly to the South Carolina Court of Appeals.

10/5, 2012.

Steven H. John
The Honorable Steven H. John CLERK OF COURT
Chief Administrative Judge

FILED
GEORGETOWN COUNTY S.C.
2012 OCT -5 AM 11:56
ALMA K. WHITE
CLERK OF COURT

For paid: \$125.00
Date: 10/4/12
Joe M. Crosby
Master in Equity for Georgetown County

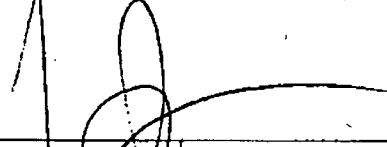
ROA000001

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4816-9007-1569, v. 1

ROA000002

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

TD Bank, N.A., Successor by merger to)
Carolina First Bank, N.A.,)

C/A # 2011-CP-22-00342

Plaintiff,)

vs.)

FINAL ORDER

Sunil V. Lalla and Sharon W. Lalla,)
Defendants.)

This is an action on a note. It is also an action to foreclose on a real estate mortgage.

The lawsuit was commenced March 15, 2011, by the filing of a Summons and Complaint against the Defendants, Dr. Sunil V. Lalla and his wife, Sharon W. Lalla. The pleadings have been properly served upon the Defendants. I find and conclude that the parties as well as the subject matter in issue are before the Court.

The Complaint seeks a deficiency judgment against Dr. Lalla based upon the existence of an alleged note and based upon an allegation the note is owned by the Plaintiff. The Complaint does not seek a deficiency judgment against Sharon Lalla.

For the reasons set forth herein, I find that Plaintiff is not entitled to judgment on the alleged note against either Defendant but with the consent of the Defendants, the Plaintiff is entitled to have the property sold at foreclosure.

The Complaint contains several causes of action. The first cause of action is based upon the alleged note which is claimed to have been signed November 13, 2006. It is alleged the note is secured by a mortgage from the following described parcel of real estate:

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No.19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S.D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Referenced to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City – Georgetown County – South Carolina - dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina. TAM# 41/107-89

The second cause of action seeks foreclosure upon a mortgage as described above. (See Complaint, paragraphs 23-27.)

In the second cause of action, Plaintiff claims its note is secured by the mortgage. The note referred to in the second cause of action is the note alleged to exist in the first cause of action. Thus, the right to foreclose on the mortgage is tied to the proof and existence of the note described in the first cause of action. Pursuant to the Complaint, the right claimed by Plaintiff to a monetary judgment is based upon the note. The right Plaintiff claims to foreclose is based upon the mortgage described in the second cause of action. The second cause of action does not seek any monetary judgment. (See Complaint, paragraph 27.)

The third cause of action seeks attorney's fees and costs pursuant to the note. Thus, without adequate proof of the note, the third cause of action must fail. The fourth cause of action

is basically moot as it seeks a receiver to collect rents to preserve the property during the pendency of the action.

In their Answer, the Defendants admit Plaintiff is a bank. They also admit Plaintiff has offices for the transaction of its business located in Georgetown, South Carolina. The Defendants acknowledge they are residents of South Carolina and it is admitted the property described in the Complaint is located in Georgetown County. The Defendants acknowledge service and acknowledge the jurisdiction of this Court to hear the matter.

In paragraph seven (7) of the Defendants' Answer, they specifically deny they have given Plaintiff the note which is the subject of the first cause of action. Thus, the validity of the note is in question as is the issue of ownership of the note.

The matter was heard before me at the Georgetown County Courthouse on December 10, 2012. Plaintiff was represented by attorney W. Keith Martens and Defendants were represented by attorney S. Jahue Moore. Both attorneys did an admirable job in representing their clients.

Based on the testimony and exhibits, I find and conclude as follows:

The Plaintiff is a national banking institution. Plaintiff claims to be the holder of the note described in the first cause of action. For some reason, the Plaintiff did not bring the original note to the trial and it was not received into evidence. Plaintiff did attempt to introduce a copy of the note but counsel for the Defendants properly objected to the alleged note on the basis of the best evidence rule. *Penton v. J.F. Cleckley and Company*, 326 S.C. 275, 486 S.E.2d. 742 (1997); *Shirer v. O.W.S. and Associates*, 253 S.C. 232, 169 S.E.2d. 621 (1969). The copy of the note having been excluded from evidence, the Court is unable to consider the terms or conditions of the alleged note. Further, without having the note in evidence, the Court is unable to determine

the Defendants' liability on the note. 12 AmJur. 2d. *Bills and Notes*, Section 668; *Liles v. Myers*, 38 N.C. App. 525, 248 S. E. 2d. 305 (North Carolina App. 1978).

Plaintiff did bring an official from the bank to trial. He testified the note is in existence. He testified the original is still in possession of the bank. There was no legitimate reason advanced which would justify the requirement of the original document being placed into evidence. *Penton v. J.F. Cleckley and Company*, 326 S.C. 275, 486 S.E.2d. 742 (1997); *Shirer v. O.W.S. and Associates*, 253 S.C. 232, 169 S.E.2d. 621 (1969); 12 AmJur. 2d. *Bills and Notes*, Section 668.

As an aside, the Court has reviewed the alleged note which is attached to the Complaint. This instrument appears to have been issued by the Defendants in favor of an entity designated as Carolina First Bank. The note was never issued in favor of the Plaintiff. All parties stipulate the Defendants never gave the Plaintiff any note of any type.

Plaintiff claims to be an assignee of the rights of Carolina First Bank. On the other hand, no assignment of any note was placed into evidence and no assignment of any mortgage was placed into evidence. Plaintiff did introduce some securities records wherein Plaintiff acquired the "parent company" of Carolina First Bank. These documents do not establish that Plaintiff is the holder upon which suit has now been brought.

The record is clear that Carolina First Bank is a separate entity from its parent corporation. There simply is nothing in evidence from which the Court can conclude that Plaintiff is now the holder of the note which has been sued upon. It may be true that Plaintiff acquired the parent company of the holder of the note. On the other hand, the subsidiary company of the parent company is a separate legal entity. There is nothing in the record from

which this Court can conclude that Plaintiff ever acquired the note which has been sued upon in this action.

Based on the failure of the Plaintiff to prove the existence of the alleged note; based upon the failure of the Plaintiff to prove the terms of the note; and based upon the failure of the Plaintiff to prove its ownership of the debt, I find and conclude Plaintiff has failed to prove it is entitled to judgment against the Defendants on the alleged note.

It is an elementary rule of civil practice that a Plaintiff must prove the allegations of the Complaint by a preponderance of the evidence. *Brucke v. Howard*, 74 S.C. 144, 54 S.E. 249 (1906); *Smith v. Smith*, 194 S.C. 247, 9 S.E.2d. 584 (1940). In any suit on a note, a Plaintiff must prove the existence of the note. Plaintiff must prove his ownership of the note. Plaintiff must prove the terms of the note. Further, Plaintiff must prove a breach of the note as a condition precedent to suit. 12 Am.Jur. 2d. *Bills and Notes*, Section 650, et. seq...

In this case, Plaintiff has failed to prove ownership of the note. It is admitted the note was never given to the Plaintiff or any of its representatives. The note was given in favor of Carolina First Bank and there is no proof the note was ever assigned by Carolina First Bank to anyone. Plaintiff's representatives testified and I find Carolina First Bank is still a legal entity and still exists as a matter of law. I also find based upon the testimony of the Plaintiff that Carolina First Bank is separate and apart from the Plaintiff. While Plaintiff may own the parent company of Carolina First Bank, there is nothing to indicate there has been a lawful merger of the Plaintiff and the entity known as Carolina First Bank. There certainly is no proof of any assignment of any legal right from Carolina First Bank to the Plaintiff.

In order for an assignee to collect on a negotiable instrument, he must first prove a valid assignment of the instrument *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d. 740 (S.C. App.

2007); *Jervy v. Strauss*, 11 Rich. 376, 1858 W.L. 3675 (1858). There was no such proof in this case. In fact, the public record of Georgetown County shows the record holder of the mortgage to be Carolina First Bank and not the Plaintiff. In short, there is nothing on the public record to indicate the mortgage or the note were ever assigned to the Plaintiff.

I find and conclude Plaintiff has failed to prove by a preponderance of the evidence the terms of the note; any operable assignment of the note; any specific term of the note giving Plaintiff any right to judgment on the note; and any breach. In short, Plaintiff has failed to prove the allegations of its first cause of action.

The problem with which the Court is confronted is the second through fourth causes of action are inextricably tied to the validity of the first cause of action. Without proof of the note and its breach, there is nothing which would give the Plaintiff the right to foreclose. If the first cause of action fails, there is no proof of any cause of action giving rise to the right to foreclose.

The mortgage in this case has been placed into evidence without objection. On its face, it clearly states it exists to secure a note in favor of Carolina First Bank. Paragraph three (3) of the mortgage describes "specific debts" to include the note referred to in the first cause of action of the Complaint. Debts are also described as "all present and future debts from mortgagor to lender". There has been no proof of any such debt from either of the Lallas to the Plaintiff.

The mortgage clearly gives Carolina First the right to foreclose upon proof of default in the note or debts of the Defendants. According to the public record, Plaintiff is not the holder of the mortgage. On the other hand, the right to foreclose according to the mortgage belongs to Carolina First Bank and not to the Plaintiff.

Plaintiff claims it now owns the mortgage which it seeks to foreclose. Again, Plaintiff does not and has not explained exactly how it claims to hold title to the mortgage. Further, Plaintiff has not proven it is the holder of any debts secured by the claimed mortgage.

A mortgage is a security instrument. *Brockington v. Lynch*, 119 S.C. 273, 112 S.E. 94 (1922); *F.D.I.C. v. Prince George Corp.*, 58 F.3d. 1041 (C.A. 4 (SC) 1995). In order to foreclose, a Plaintiff must prove it is owed money secured by the instrument and the terms of the negotiable instrument have been breached. *Paramount Fund Inc. v. Cusaac*, 282 S.C. 497, 319 S.E. 2d. 354 (S.C. App. 1984); *Blackwell v. Blackwell*, 289 S.C. 470, 346 S.E. 2d. 731 (S.C. App. 1986); Am.Jur. 2d. *Mortgages*, Section 658, et. seq. In the present case, there is simply no proof of the essential elements of the causes of action.

Defendants readily admit the legitimacy of the mortgage. They also admit it has been duly recorded. Defendants point to the public record as evidence the Plaintiff does not hold the mortgage. They have every right to do so. Am. Jur. 2d. *Property*, Section 39; C. J.S. *Property*, Section 68.

Notwithstanding the above, the Defendants have denied the terms of the note have been breached. They further deny the right of the Plaintiff to foreclose. (See Answer, Paragraph 7-10.)

In spite of the failure of the Plaintiff to prove the terms of the note; its ownership of the note; its breach; and its ownership of the mortgage, and in spite of all of the other irregularities involved, the Defendants through their counsel have advised the Court they have no objection to a judicial sale of the property in satisfaction of all claims of the Plaintiff and in satisfaction of any claims of any of its affiliated companies such as Carolina First Bank. Plaintiff's counsel has assured the Court it controls Carolina First Bank.

Notwithstanding the fact that the Defendants do consent to a sale of the property in satisfaction of any obligations to the Plaintiff or its related entities, the Defendants do object to any deficiency judgment. I find and conclude the Plaintiff has not proven any right to a deficiency judgment against either Defendant.

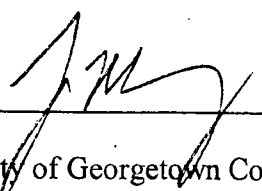
Both Defendants have advised the Court they seek no surplus from the sale of the property so long as this matter is ended. Defendants seek no right or claim to a surplus and simply want the property sold and the obligations secured by the property ended. Based upon the facts of the case and the consent of the Defendants, I find and conclude the property should be sold with all obligations of the Defendants extinguished. The proceeds of sale should belong to the Plaintiff based upon the consent of the Defendants.

NOW, THEREFORE, based upon the foregoing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The claim of the Plaintiff for a monetary judgment against the Defendants is hereby dismissed with prejudice.
2. The property shall be sold at public sale after due and proper notice.
3. The sale shall be final and the bidding shall not remain open.
4. All proceeds from sale shall go to the Plaintiff.
5. The sale shall extinguish the mortgage in question and upon sale, the Clerk of Court shall mark the mortgage satisfied by sale.
6. The public sale of the property shall extinguish all obligations of the Defendants to the Plaintiff or any of its related companies.
7. Each party shall pay his own costs and attorneys fees.

AND IT IS SO ORDERED.



Joe M. Crosby
Master-in-Equity of Georgetown County

Georgetown, South Carolina

22 April, 2013

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN
TD Bank, N.A., Successor by merger
to Carolina First Bank, N.A.,

Plaintiff,

v.

Sunil V. Lalla and Sharon W. Lalla,
Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

2011-CP-22-00342

Order Granting Plaintiff's
Motion to Alter or Amend
and Foreclosure Judgment
and Order of Sale

ALAN WHITE
CLERK OF COURT

2015 FEB -4 AM 9:52

FILED
GEORGETOWN COUNTY, S.C.

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff TD Bank, N.A., timely moved this Court to reconsider its Order dated May 10, 2013, in the above-captioned action. Having considered all the submissions before this Court, the evidence adduced at trial, and the arguments from counsel, this Court grants Plaintiff's motion. As set forth herein, this Court alters and amends its prior order thereby vacating it entirely and issues this Order and Judgment in favor of Plaintiff in *toto*.

Background

On March 8, 2011, Plaintiff commenced this foreclosure action seeking to foreclose upon and sale the mortgaged property and seeking a deficiency judgment against Defendant Sunil V. Lalla for the amounts owed under the note in addition to attorneys' fees and, costs. Plaintiff is the owner of the note executed by Defendant Sunil V. Lalla and that note it is secured by a mortgage executed by both Defendants in favor of Plaintiff on the property located at 744 S. Waccamaw Drive, Garden City, SC 29576. Both parties were represented by counsel and informed of the dates, times, and locations of all hearings in this action.

As detailed herein, Plaintiff has the right to foreclosure and is entitled to a judgment against Defendant Sunil V. Lalla for any deficiency remaining following the foreclosure sale, and is entitled to attorneys' fees and costs under the terms of the note and mortgage.

Findings of Fact and Conclusions of Law

I. Plaintiff is the lawful holder of the note signed by Defendant Sunil V. Lalla.

Plaintiff sufficiently established that it is the holder of the note at issue in this action by providing a copy of the note and testimony regarding its merger with Carolina First Bank, Plaintiff's predecessor in interest, thereby evidencing the transfer of the interest in the note to Plaintiff.¹ Jason Bristol, a vice president of Plaintiff, testified without contradiction that Plaintiff is the holder of a note executed by Defendant Sunil V. Lalla in favor of Carolina First Bank. (Tr. at 20-22). Mr. Bristol also testified extensively regarding the circumstances by which Plaintiff became the holder of the note as a result of its merger with Carolina First Bank. (Tr. 11-21). In addition, Plaintiff submitted documentation from the Secretary of State's office regarding its merger with Carolina First.

As is the case here, where the note's original holder has merged into another bank, "all the rights, franchises and fiduciary and other interests of [the original holder] . . . shall be deemed to be transferred and vested in the resultant bank or trust company, without any deed or any other transfer." S.C. Code Ann. § 34-3-850(c). As the transferee, Plaintiff is entitled to commence this action on the note. See S.C. Code Ann. § 36-3-201(1) ("Transfer of an instrument vests in the transferee such rights as the transferor has therein. . . ."). Thus, Plaintiff,

¹ Through counsel, Defendants attempted to challenge Plaintiff's interest in the note by attacking the validity of the transfer of the note and interest in the subject property from Carolina First to Plaintiff. However, this Court concludes that Defendants lack standing to challenge the validity of the Note's transfer from Carolina First to Plaintiff. See *In re Kain*, 2012 WL 1098465.

under the statutes cited herein, was successor to Carolina First and lawful holder of the note at issue in this case.

Further, Plaintiff placed a copy of the note before this Court and under the "best evidence rule," this Court considered that copy of the note. Specifically, South Carolina Code § 19-5-610 provides that any "photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium" is "as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not." S.C. Code Ann. § 19-5-610. Under South Carolina law, a copy of the note is competent evidence to establish the existence of the note. *See Bank of America, N.A. v. Draper, et. al.*, 405 S.C. 214, 746 S.E.2d-478 (Ct. App. 2013) (relying on the copy of the note to establish its existence). Hence, the copy of the note provided at trial was admissible and this Court has considered it in issuing this order.

Moreover, Defendants failed to attend the hearing before this Court and did not refute executing the note and mortgage via testimony or other competent evidence. Under South Carolina law, a defendant's signature on a note "is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent." Accordingly, as the trier of fact, this Court "must find the existence of [defendant's signing the note] presumed unless and until evidence is introduced which would support a finding [that defendant had not signed the note]." *Id.* § 36-1-201(31)(defining "presumption" and "presumed"). No such evidence was provided. Plaintiff can enforce the note.

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II. Defendant Sunil V. Lalla has defaulted on the terms of the note.

This Court also considered the undisputed testimony and affidavits of Mr. Bristol, who testified regarding the terms and contents of Plaintiff's note and mortgage, and whose testimony unequivocally established by a preponderance of evidence all elements of Plaintiff's claim. Defendants failed to attend the foreclosure hearing before this Court and thus did not rebut, refute, or otherwise disprove any of the proof provided by Plaintiff with any similar or proper modicum of proof.

Mr. Bristol testified regarding Defendant Sunil V. Lalla's payment history on the note, the note's maturity, and that Dr. Lalla defaulted on the terms of the note. (Tr. at 32, 39). Mr. Bristol testified that Dr. Lalla has failed to pay \$740,267.44, plus additional costs of collection totaling \$25,584.50 that are now due and owing under the Note. (Tr. at 37-38, 39, 40). Plaintiff also introduced a payment history report and the subject mortgage, both of which corroborated Mr. Bristol's testimony concerning the principal balance, payment history, interest rate and maturity of the note. The evidence also reflected the default on the terms of the note. Moreover, Defendants admitted the validity of the mortgage in their Answer and the mortgage specifically set forth the principal balance, interest rate and maturity of the note on its face beyond the other testimony and evidence provided by Plaintiff.

Thus, through Mr. Bristol's testimony and the documentary evidence adduced, Plaintiff established each essential element its claim. *See Bank of America v. Draper, supra*. Defendants did not offer any evidence to the contrary. As a result, this Court finds that Defendant Sunil V. Lalla has defaulted on the terms of the note and Plaintiff is entitled to enforce the terms of the note and foreclosure on the subject property. Defendant Sunil V. Lalla has failed to pay

\$740,267.44 plus \$25,584.40 in costs. Thus, \$765,851.84 is lawfully owed to Plaintiff and judgment should be entered by the clerk in this amount.

III: Plaintiff is entitled to sale of the property and judgment.

Based on the above noted default of payment, it is further **Ordered** that:

At or before the time herein indicated, the mortgaged premises described hereinabove shall be sold by the Master in Equity or Designee at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday, on the following terms, that is to say:

- a. For cash: The Master in Equity or Designee will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and Plaintiff's debt.
- b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of \$12.43 per diem.
- c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.
- d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, Plaintiff may pay to the Court only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

5/3

A personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days after the date of the sale, with the sale to be final upon that date. Further, the Court will, by advertisement according to law, give notice of the date, time, and place of such sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Court may advertise the said premises for resale on the next, or some other subsequent sales days, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

Following the sale, the Court will 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;

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

NEXT: Any surplus shall be held pending further Order of this Court.

In the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder 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. The Defendants named herein, and all persons whosoever claiming under Defendants 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.

The property to be sold is described in Exhibit A of the mortgages, on file with the Georgetown County Register of Deeds, as follows:

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City – Georgetown County – South Carolina – dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

TAM# 41/107-89

Pursuant to Section 29-3-650 of the Code of Laws of South Carolina, 1976, as amended, the Clerk of Court is hereby directed to immediately enter judgment against Sunil V. Lalla in the amount of \$765,851.84 due as of the date of the hearing, plus any subsequent necessary advanced and interest from the date of hearing through the date of compliance at the contract rate and thereafter, in the event of any deficiency, at the legal rate; and docket said judgment in the Clerk's office in the same manner as any other judgment. Upon the sale of the mortgaged premises, the Court shall credit upon the judgment the amount paid to the Plaintiff from the

proceeds of the sale or, in the event the Plaintiff is the successful bidder, the amount of Plaintiff's bid.

All rights Defendants have in the subject property are extinguished and Plaintiff is the lawful owner of the property to be sold pursuant to this Order and Judgment. Defendants, in order to preclude the sale of this property will have to post a bond in the amount of \$250,000 should they desire to stay the pending sale consistent with the applicable provisions of Titles 18 and 29.

IV. Dismissal and judgment in favor of Plaintiff on any and all claims and defenses.

Defendants were represented by counsel in this action. Defendants were notified of the hearing in this matter. Defendants did not attend. Thus, Defendants offered no evidence or testimony as to Plaintiff's claims or their own claims or defenses. Hence, this Court rules in favor of Plaintiff on any and all claims and defenses Defendants had in this action and enters judgment in favor of Plaintiff on same.

Conclusion

Based on the above, Plaintiff is entitled to foreclosure on the subject property under the terms of the note and mortgage. The subject property is to be sold. Following the judicial sale, Plaintiff is entitled to a deficiency judgment under the terms of its note and mortgage for any amounts remaining unpaid to Plaintiff following the sale of the subject property. Plaintiff is also entitled to attorney's fees and costs in the amount of \$25,584.40 to be paid first out of the proceeds of the sale with the remainder being paid to the amounts due on the note. Defendant Sunil V. Lalla would be entitled to any surplus that remains following the sale and after payment of the fees and costs and application of the sale proceeds to the outstanding balance on the note.

Undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

IT IS SO ORDERED.



The Honorable Joe M. Crosby
Master-in-Equity
Georgetown County
405 Dozier Street
Georgetown, SC 29440

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-22-0342

TD Bank, NA, Successor by merger to Carolina First
Bank

Sunil V. Lalla and Sharon W. Lalla

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Thomas W. McGee, III, Esquire,
Nelson Mullins, LLP
PO Box 11070, Columbia SC 29211Attorney 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, 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: see attached/filed order and foreclosure judgment.

ORDER INFORMATION

This ends the case.

Additional Information for the Clerk : Transcript of Judgment

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)
TD Bank, NA, Successor by merger to Carolina First Bank	Sunil V. Lalla and Sharon W. Lalla	\$765,851.84
If applicable, describe the property		

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

3072
Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 19th day of Mar, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 10th day of Mar, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas W. McGee, III, Esquire

S. Jahue Moore, Esquire

PO Box 11070

PO Box 5709

Columbia SC 29211

West Columbia, SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lucinda L. Lane, Deputy

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

TD Bank, NA, Successor by merger to Carolina
First Bank, NA,

Plaintiff(s)

vs.

Sunil V. Lalla and Sharon W. Lalla,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011- CP - 22 - 00342

(Please Print)

Submitted By: W. Keith Martens

Address: Hamilton Martens & Ballou, LLC

PO Box 10940, Rock Hill, SC 29731

SC Bar #: 8645

Telephone #: 803-329-7672

Fax #: 803-329-7678

Other:

E-mail: kmartens@hmandb.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

JURY TRIAL demanded in complaint.

xx NON-JURY TRIAL demanded in complaint.

☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.☐ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.☒ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

- Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

- Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Other (399)

- Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☒ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

- Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

- Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☒ Lis Pendens (750)
- ☐ Other (799)

- Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

- Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

- Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)

Submitting Party Signature:

W. Keith Martens

Date: 03/09/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ROA000023

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

TD Bank, NA, successor by merger to)
 Carolina First Bank, NA,)
 Plaintiff,)

PROOF OF ADR OR EXEMPTION

vs.)

FILE NO.: 2011-CP-22-

Sunil V. Lalla and Sharon W. Lalla,)
 Defendant.)

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the Court's Standing Order for Alternative Dispute Resolution dated _____

- A. X I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption: Foreclosure

W. Keith Martens
 Plaintiff/Attorney for Plaintiff

 Defendant/Attorney for Defendant

W. Keith Martens
 Print Name

 Print Name

803-329-7672/803-329-7678

Phone/Fax

 Phone/Fax

Date: 03/02/11

- B. _____ 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

3. The ADR was conducted on _____, 200 _____

SCADR 104A (S/2007)

4. As a result of ADR, this case should be considered (please check one);
- () Fully Settled.
- () by Consent Judgment, to be filed by _____
- Or () Voluntary Dismissal to be filed by _____
- () Partially Settled.
- () At an Impasse.
- () In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____
5. Plaintiff ☐ was present ☐ was not present
Defendant ☐ was present ☐ was not present
6. Other participants were:
- _____ Lawyer for Defendant _____
- _____ Lawyer for Plaintiff _____
- _____ Representative for Insurance Carrier _____
- _____ Guardian *ad Litem* _____
- _____ Experts _____
- _____ Others _____
7. Choice of this neutral was by:
- _____ Stipulation
- _____ Court Order
8. The total number of hours spent in ADR was: _____ hours.
9. Further comments of the neutral:
- _____
- _____
- Neutral's Signature _____
- Date: _____

ROA000026

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C.A.: 2011-CP-22-00342

TD Bank, NA, successor by merger)
 to Carolina First Bank, NA,)

Plaintiff,)

v.)

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)

LIS PENDENS
 Non-Jury

BK20-0137

FILED
 GEORGETOWN COUNTY, S.C.
 2011 MAR 15 PM 4:24
 ALMA Y. WHITE
 CLERK OF COURT

TO: THE CLERK OF COURT FOR ENTRY OF RECORD AND TO THE
 DEFENDANTS ABOVE NAMED:

NOTICE IS HEREBY GIVEN that an action as above entitled has been
 commenced, or will be commenced within twenty (20) days following the filing of this
 lis pendens, in the Court of Common Pleas for Georgetown County, South Carolina,
 between the above-named Plaintiff and the above named Defendants, for foreclosure of a
 mortgage on certain real property, which is described more particularly as follows:

LEGAL DESCRIPTION:

All that certain piece, parcel or lot of land with improvements therein, lying, being and
 situate at Garden City, Georgetown County, South Carolina, and being designated as Lot
 No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown
 County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed
 August, 1948. Reference to said plat being craved as forming a part of this description.
 The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform
 depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr.,
 Garden City - Georgetown County - South Carolina - dated August 7, 1998, and
 recorded in the Register of Deeds Office for Georgetown County on Plat Book 17 at Page
 377.

Being the identical property conveyed to J. Randolph Mackey, Sr., and Jessie C. Mackey by Deed of Geraldine M. Harris recorded September 2, 1998 in Deed Book 897 Page 261 in the Office of the Clerk of Court for Georgetown County, South Carolina.

March 8, 2011.

W. Keith Martens
W. Keith Martens
HAMILTON MARTENS & BALLOU, LLC
Post Office Box 10940
Rock Hill, South Carolina 29731
803/329-7672

ATTORNEYS FOR PLAINTIFF

1

4818-6842-5224, v. 1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT

C.A.: 2011-CP-22-00342

TD Bank, NA, successor by merger)
 to Carolina First Bank, NA,)

Plaintiff,)

v.)

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)

SUMMONS
 Non-Jury

FILED
 GEORGETOWN COUNTY, S.C.
 2011 MAR 15 PM 4:24
 ALMA Y. WHITE
 CLERK OF COURT

TO DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned at HAMILTON MARTENS & BALLOU, LLC, at Post Office Box 10940, Rock Hill, South Carolina 29731, within thirty (30) days after the service hereof, exclusive of the date of such service; and you are hereby notified that should you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

March 8, 2011.

W. Keith Martens
 W. Keith Martens
 HAMILTON MARTENS & BALLOU, LLC
 P.O. Box 10940
 Rock Hill, South Carolina 29731
 (803) 329-7672

ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank, NA,)

C.A.: 2011-CP-22-00342

Plaintiff,

FORECLOSURE COMPLAINT
Non-Jury

v.

Sunil V. Lalla and Sharon W. Lalla,

Defendants.

FILED
GEORGETOWN COUNTY, S.C.
2011 MAR 15 PM 4:24
ALMA Y. WHITE
CLERK OF COURT

The Plaintiff, TD Bank, NA, successor by merger to Carolina First Bank, NA, ("Plaintiff"), complaining of the above-named defendants, would respectfully allege and show unto the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a national banking association, organized and existing under the laws of the United States of America, with a place of business located in Georgetown County, South Carolina.
2. On information and belief, Defendants Sunil V. Lalla and Sharon W. Lalla ("Borrowers") are citizens and residents of York County, South Carolina.
3. The parcel of real property that is the subject of this action is located in Georgetown County, South Carolina.
4. On information and belief, neither of the defendants is in the military service of the United States, and neither of the defendants has been in the military service of the United States within the past ninety (90) days from the initiation of this action.

5. The mortgage loan that is the subject of this action is not a residential mortgage. Consequently, the provisions of the federal "Making Homes Affordable" Loan Modification Program do not apply to the Mortgage.

6. This Court has jurisdiction over the parties and the subject matter of this action. Venue is proper in Georgetown County, South Carolina.

FACTS

7. On or about November 13, 2006, for value received, Defendant Sunil Lalla ("Dr. Lalla" or "Borrower") executed and delivered to Plaintiff a Commercial Promissory Note ("Note"). By the terms of the Note, Borrower promised to pay to Plaintiff the principal amount of Six Hundred Eighty Thousand and 00/100 Dollars (\$680,000.00), with interest thereon from November 13, 2006, at a rate of 6.940% per annum, payable in 59 monthly installments of \$5,250.00 each beginning on January 5, 2007 and on the 5th of each month thereafter, followed by a final payment of all outstanding principal and accrued interest on or before November 13, 2011. A copy of the Note is attached hereto as Exhibit A and incorporated by reference.

8. On or about November 13, 2006, in order to secure the Note, Defendants executed and delivered to Plaintiff a mortgage ("Mortgage") whereby Defendants mortgaged the following real property to Plaintiff:

744 S. Waccamaw Drive
Garden City, SC 29731

LEGAL DESCRIPTION: See Exhibit B.

9. The Mortgage was duly recorded in the Office of the Clerk of Court for Georgetown County, South Carolina, on or about November 17, 2006 as Instrument

Number 200600025099, Book 269 at Page 342. A copy of the Mortgage is attached hereto as Exhibit B and incorporated by reference.

10. Upon information and belief, the Mortgage constitutes a first lien on 744 S. Waccamaw Drive, Garden City, SC and secures Dr. Lalla's obligations under the Note.

11. The Note contains a provision concerning the circumstances constituting Borrower's default and Plaintiff's rights and remedies upon Borrower's default.

12. Among other provisions, the Note provides:

DEFAULT: I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

....

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

REMEDIES: After I default and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following:

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

....

COLLECTION EXPENSES AND ATTORNEY'S FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. . . .

13. The Mortgage contains a provision concerning the circumstances constituting Mortgagors' default and Plaintiff's rights and remedies upon Mortgagors' default.

14. Among other provisions, the Mortgage provides:

DEFAULT: Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

....

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts.

COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. . . . Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. . . .

15. In order to further secure the Note, the Mortgagors executed an Assignment of Leases and Rents ("Assignment") on or about November 13, 2006 as Instrument 200600025100 in Book 269 at Page 351. The Assignment was duly filed in the Georgetown County Clerk of Court's office on or about November 17, 2006 in Record Book 269, Page 351. The Assignment is attached hereto as Exhibit C.

16. Among other provisions, the Assignment provided:

COLLECTION OF RENTS

....

Upon default, Assignor will receive any rents in trust for Lender and Assignor will not commingle the rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the property to Lender.

COLLECTION EXPENSES AND ATTORNEYS' FEES

On or after Default, to the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's right and remedies under this Assignment or any other document related to the Secured Debts...Expenses include, but are not limited to, attorney's fees, court costs and other legal expenses.

17. Pursuant to default provisions in the Note and Mortgage, Borrower and Mortgagors are in default, having failed to make payments of principal and interest when due.

18. Borrower was provided notice of his default, and was afforded a reasonable opportunity to cure the default. Borrower has not cured his default.

FOR A FIRST CAUST OF ACTION
(Suit on Note)

19. Plaintiff reiterates the allegations of Paragraphs 1-18 and incorporates them by reference.

20. Borrower has breached terms of the Note, and is in default. Pursuant to the terms of the Note, Plaintiff has elected to declare the entire balance of Borrower's indebtedness immediately due and owing.

21. As a direct and proximate result of Borrower's default upon the Note, Plaintiff is entitled to recover the following sums:

a. Principal as of March 7, 2011 -	\$ 622,190.17
b. Accrued and unpaid interest as of March 7, 2011 -	\$ 29,387.65
<u>c. late fees as of March 7, 2011</u>	<u>\$ 1837.50</u>

TOTAL as of March 7, 2011 \$653,415.32

Interest continues to accrue at the rate of approximately \$119.94 per day, for each day after March 7, 2011 through the date of final judgment. In addition, Plaintiff anticipates that it will incur attorney's fees, costs and expenses in connection with this litigation, all of which should be added to and increase the judgment amount. Plaintiff will supplement its statement of damages, fees and costs prior to a hearing on the merits.

22. Plaintiff is entitled to judgment against Borrower for such sums as set forth in the preceding paragraph.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage)

23. Plaintiff reiterates the allegations of Paragraphs 1-22 and incorporates them herein by reference.

24. The Mortgage serves as security for the Note and, upon information and belief, constitutes a first lien on 744 S. Waccamaw Drive, Garden City, SC.

25. Plaintiff is the holder and owner of the Mortgage.

26. By reason of the failure of Borrower to comply with the terms of the Note, Mortgagors are in default of the Mortgage.

27. Because of the matters and things set forth above, Plaintiff is entitled to foreclosure of the Mortgage and to have all subordinate liens extinguished, to have 744 S. Waccamaw Drive, Garden City, SC sold, and to have the proceeds of such sale applied to the indebtedness of Borrower as set forth in the First Cause of Action. Plaintiff is also entitled to recover its costs of collection and attorneys' fees. Plaintiff reserves its right to a deficiency judgment against Borrower.

FOR A THIRD CAUSE OF ACTION
(Attorney's Fees and Costs)

28. Plaintiff reiterates the allegations of Paragraphs 1-27 and incorporates them by reference.

29. The Note executed by Borrower provides "On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document.

Expenses include, but are not limited to, attorneys' fees, courts costs and other legal expenses...."

30. Plaintiff is entitled to recover from Borrower all of its costs and fees associated with this matter, including reasonable attorneys' fees.

FOR A FOURTH CAUSE OF ACTION
(Assignment of Rents & Appointment of Receiver)

31. Plaintiff reiterates the allegations of Paragraphs 1-30 and incorporates them by reference.

32. As additional security for Plaintiff's loan, Borrowers executed an Assignment of Leases and Rents in favor of Plaintiff.

33. By reason of Borrower's defaults, Plaintiff is entitled to an interim order directing that all leases and rents of 744 S. Waccamaw Drive, Garden City, SC be paid over directly to Plaintiff.

34. To the extent necessary to collect rents and profits or to preserve 744 S. Waccamaw Drive during the pendency of this action, Plaintiff is also entitled to have a receiver appointed to manage the property and to collect rents and profits for the benefit of Plaintiff.

WHEREFORE, Plaintiff prays for the following relief:

A. That judgment be entered against Borrower for the amounts set forth in this Complaint, with interest continuing to accrue on the Note in the amounts set forth in this Complaint from March 7, 2011 through the entry of final judgment;

B. That Plaintiff's Mortgages be declared a first lien on 744 S. Waccamaw Drive, Garden City, SC, senior to all other liens or encumbrances;

C. That the Court grant an Order of Foreclosure as to 744 S. Waccamaw Drive, Garden City, SC, pursuant to Plaintiff's mortgage, foreclosing and extinguishing all liens and encumbrances subordinate to Plaintiff's mortgage, requiring the sale of 744 S. Waccamaw Drive, Garden City, SC, barring the equity of redemption of Mortgagors or anyone else claiming by, through or under Mortgagors;

D. That the Court order a foreclosure sale as to 744 S. Waccamaw Drive, Garden City, SC, and a transfer of 744 S. Waccamaw Drive, Garden City, SC, after such sale to the purchaser by proper deed, free and clear of any and all junior liens or encumbrances;

E. That the Court include in its Order a Finding of Fact and a Conclusion of Law that the provisions of S.C. Code Ann. § 12-54-124 (Supp. 2003) are inapplicable to any conveyance of real property made pursuant to the Court's order of foreclosure;

F. That the Court require the application of the proceeds of sale as follows:

FIRST: To the costs and expenses of this action, including attorney's fees;

SECOND: To the discharge of the amounts due under the Note, together with all other sums found to be due to Plaintiff, with interest and costs to the date of payment;

THIRD: Any surplus to be distributed according to law and the further Order of this Court.

G. For the costs and fees of this action, including attorney's fees;

H. For an interim order directing that all rents and profits of 744 S. Waccamaw Drive be paid over to Plaintiff during the pendency of this foreclosure action, and to the extent necessary for an order appointing a receiver; and

I. For such other relief as the Court deems just and proper.

March 8, 2011.



W. Keith Martens
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672

ATTORNEYS FOR PLAINTIFF

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
	SUNIL V LALLA		11/13/06	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$880,000.00	Not Applicable	6.94%	11/13/11	Commercial
Creditor Use Only				

PROMISSORY NOTE
(Commercial - Single Advance - Fixed Rate)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 13, 2006. The parties and their addresses are:

LENDER:

CAROLINA FIRST BANK
248 East Main Street
Rock Hill, South Carolina 29731
Telephone: (803) 324-2500

BORROWER:

SUNIL V LALLA
668 BRIARWOOD RD
LANCASTER, South Carolina 29720

EXHIBIT

A

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. **Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent.** Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$880,000.00 (Principal) plus interest from November 13, 2006 on the unpaid Principal balance until this Note matures or this obligation is accelerated.**3. INTEREST.** Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.94 percent (Interest Rate).

A. **Interest After Default.** If you declare a default under the terms of this Loan, including for failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue At Carolina First Bank Prime Rate + 4.00%. For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

B. **Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note or obligation will be limited to the Maximum Lawful Amount of interest allowed by state or federal law. Amounts collected in excess of the Maximum Lawful Amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. **Statutory Authority.** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.

D. **Accrual.** During the scheduled term of this Loan interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. **Nonrefundable Fees and Charges.** The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Flood Determination. A(n) Flood Determination fee of \$8.00 payable from separate funds on or before today's date.

Document Preparation. A(n) Document Preparation fee of \$250.00 payable from separate funds on or before today's date.

Appraisal. A(n) Appraisal fee of \$400.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. **Late Charge.** If a payment is more than 20 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment or \$25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

SUNIL V LALLA
South Carolina Promissory Note
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E. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

8. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.

12. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. **COLLECTION EXPENSES AND ATTORNEY'S FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

1B. COMMISSIONS. I understand and agree that you (or your affiliates) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliates.

19. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. INSURANCE. I agree to obtain the insurance described in this Loan Agreement.

A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Loan.

2. Flood Insurance is Required on Some or All of the Property. I will insure the real property securing this Loan against hazards caused by flooding as described by other documents I sign for this Loan.

C. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for this Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, this firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amount I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

18. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America and to the extent required, by the laws of the jurisdiction where the Property is located.

19. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

20. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

21. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

22. **NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

23. **CREDIT INFORMATION.** I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

24. **ERRORS AND OMISSIONS.** I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

25. **SIGNATURES.** By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:


SUNIL V LALLA

(Seal)

Individually

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Lot 19 Blk 20
Garden City

Space Above This Line For Recording Data

This document was prepared by REMBRANDT SERVICES - UPSTATE, CAROLINA FIRST BANK, 1746 EBENEZER ROAD, ROCK HILL, South Carolina 29732

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is NOVEMBER 13, 2006. The parties and their addresses are:

MORTGAGOR:
SUNIL V LALLA, a/k/a Sunil Lalla and Sharon Lalla^W
589 BRIARWOOD RD
LANCASTER, South Carolina 29720

LENDER:
CAROLINA FIRST BANK
Organized and existing under the laws of South Carolina
249 East Main Street
Rock Hill, South Carolina 29731

1. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

744 S WACCAMAW DRIVE, GARDEN CITY, SC AS FURTHER DESCRIBED IN EXHIBIT 'A' WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in GEORGETOWN County at 744 S WACCAMAW DRIVE, GARDEN CITY, South Carolina 29576.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time will not exceed \$880,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in

SUNIL V LALLA
South Carolina Mortgage
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this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, dated November 13, 2006, from Mortgagor to Lender, with a loan amount of \$680,000.00, with an interest rate of 6.94 percent per year and maturing on November 13, 2011.

B. All Debts. All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

A WARRANTY OF TITLE Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

5. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, and other charges relating to the Property, when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

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No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrances. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed; Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Death or Incompetency. Mortgagor dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Arrangements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES: On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts

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immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-85-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any reservation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
- B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
- C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any environmental law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
- D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an

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event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagee and every tenant herein, and as required by applicable law, Borrower, Guarantors and all other parties to this Agreement, shall remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

6. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this security will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

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Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. OTHER TERMS. The following are applicable to this Security Instrument:

A. Additional Terms. Notwithstanding the foregoing maximum obligation limit of \$680,000.00 specified in paragraph 2 above, pursuant to the provisions of Section 29-3-50 et seq. of the South Carolina Code of Laws, as amended, this Mortgage shall secure payment of all future advances and/or extensions of credit that may subsequently be made to Mortgagor by Lender, when evidenced by promissory notes specifically referring to this Mortgage and all extensions and renewals thereof, the maximum principal amount of all existing indebtedness, future advances, extensions of credit and all other indebtedness outstanding at any one time and to be secured by this Mortgage not to exceed ONE MILLION TWENTY THOUSAND DOLLARS AND 00/100 CENTS (\$1,020,000.00), plus interest thereon, attorneys' fees and court costs, and any advances necessary for the protection of the security or title thereto, including, but not limited to, advances for taxes and insurance premiums and all other payments or liabilities otherwise provided for in this Mortgage. This Mortgage may secure interest which is deferred, accrued or capitalized as provided in the aforesaid statute.

This Agreement (along with all deposit accounts, mortgages, security agreements, pledge agreements and any and all other security instruments and items of collateral that I have at any time in the past given to you or that I may at any time in the future give to you) shall secure any and all of the obligations that I currently owe you or that I may at any time in the future owe you.

22. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.

23. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

24. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

25. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

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26. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

[Signature] (Seal)
SUNIL V LALLA

Individually

[Signature]
(Witness)

[Signature]
(Witness)

x Sharon W. Hall

ACKNOWLEDGMENT.

(Individual)

State of SC County of Lancaster

I, Sharon O. Trimnal a notary public for SC, do hereby certify that SUNIL V LALLA personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 13th day of November 2006.

[Signature]
Signature of Notary Public

My commission expires: Sept 1, 2010

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EXHIBIT 'A'

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City - Georgetown County - South Carolina - dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

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49459 Blackwell Trimnal

200600025099
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
11-17-2006 At 11:42 am.
MORTGAGE 15.00
STATE TAX .00
COUNTY TAX .00
Book 269 Page 342 - 350

Wanda J. Orevette

Blackwell Trimnal, LLC
Po Box 2078
Lancaster, SC 29721

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EXHIBIT

tabbies

C

Lot 19 Bk 2.0
Garden City

Space Above This Line For Recording Data

This document was prepared by REMBRANDT SERVICES - UPSTATE, CAROLINA FIRST BANK, 1740 EBENEZER ROAD, ROCK HILL, South Carolina 29732

ASSIGNMENT OF LEASES AND RENTS

DATE AND PARTIES. The date of this Assignment of Leases and Rents (Assignment) is NOVEMBER 13, 2006. The parties and their addresses are:

ASSIGNOR:

✓SUNIL V LALLA, a/k/a Sunil Lalla and Sharon Lalla^W
666 BRIARWOOD RD
LANCASTER, South Carolina 29720

LENDER:

CAROLINA FIRST BANK
Organized and existing under the laws of South Carolina
249 East Main Street
Rock Hill, South Carolina 29731

1. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Assignment at any one time will not exceed \$680,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Assignment. Also, this limitation does not apply to advances made under the terms of this Assignment to protect Lender's security and to perform any of the covenants contained in this Assignment. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

2. SECURED DEBTS. The term "Secured Debts" includes and this Assignment will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, dated November 13, 2006, from Assignor to Lender, with a loan amount of \$680,000.00, with an interest rate of 6.94 percent per year and maturing on November 13, 2011.

B. All Debts. All present and future debts from Assignor to Lender, even if this Assignment is not specifically referenced, or if the future debt is unrelated to or is a different type than this debt. If more than one person signs this Assignment, each agrees that it will secure debts incurred either individually or with others who may not sign this Assignment. Nothing in this Assignment constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Assignor's principal dwelling that is created by this Assignment. This Assignment will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a

SUNIL V LALLA
South Carolina Assignment of Leases and Rents
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"consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Assignment will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. **Sums Advanced.** All sums advanced and expenses incurred by Lender under the terms of this Assignment.

3. **ASSIGNMENT OF LEASES AND RENTS.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Assignor's performance under this Assignment, Assignor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property).

A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to any extensions, renewals, modifications or replacements (Leases).

B. Rents, issues and profits, including but not limited to security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Assignor may have regarding the Property (Rents).

C. The term Property as used in this Assignment shall include the following described real property:

744 S WACCAMAW DRIVE, GARDEN CITY, SC AS FURTHER DESCRIBED IN EXHIBIT 'A' WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in GEORGETOWN County at 744 S WACCAMAW DRIVE, GARDEN CITY, South Carolina 29576.

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

4. **PAYMENTS.** Assignor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Assignment.

5. **COLLECTION OF RENTS.** Assignor may collect, receive, enjoy and use the Rents as long as Assignor is not in default. Assignor will not collect in advance any Rents due in future lease periods, unless Assignor first obtains Lender's written consent.

Upon default, Assignor will receive any Rents in trust for Lender and Assignor will not commingle the Rents with any other funds. When Lender so directs, Assignor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses.

Assignor agrees that this Assignment is immediately effective between Assignor and Lender and effective as to third parties on the recording of this Assignment.

6. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, Assignor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Assignment or any other documents relating to the Secured Debts. Assignor agrees to pay attorneys' fees for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Assignment. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Assignor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Assignor.

7. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public.

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health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Assignor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Assignor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Assignor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Assignor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Assignor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Assignor or any tenant of any Environmental Law. Assignor will immediately notify Lender in writing as soon as Assignor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Assignor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Assignor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Assignor will permit, or cause any tenant to permit Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Assignor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Assignor agrees, at Assignor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Assignor's obligations under this section at Assignor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Assignor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Assignment and in return Assignor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Assignment.

L. Notwithstanding any of the language contained in this Assignment to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Assignment regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

8. CONDEMNATION. Assignor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Assignor authorizes Lender to intervene in Assignor's name in any of the above described actions or claims. Assignor assigns to Lender the proceeds of any award or claim for damages connected with a

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condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Assignment. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

9. APPOINTMENT OF A RECEIVER. On or after an Assignor's default, Assignor agrees to Lender making an application to the court for an appointment of a receiver for the benefit of Lender to take possession of the Property and the Leases, with the power to receive, collect and apply the Rents. Any Rents collected will be applied as the court authorizes to pay taxes, to provide insurance, to make repairs and to pay costs or any other expenses relating to the Property, the Leases and Rents, and any remaining sums shall be applied to the Secured Debts. Assignor agrees that this appointment of a receiver may be without giving bond, without reference to the then-existing value of the Property, and without regard to the insolvency of any person liable for any of the Secured Debts.

10. DUE ON SALE OR ENCUMBRANCE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of all or any part of the Property. This right is subject to the regulations imposed by federal law (12 C.F.R. 591), as applicable.

11. WARRANTIES AND REPRESENTATIONS. Assignor has the right and authority to enter into this Assignment. The execution and delivery of this Assignment will not violate any agreement governing Assignor or to which Assignor is a party.

A. Title. Assignor has good title to the Leases, Rents and Property and the right to assign, grant, bargain, convey and mortgage to Lender as additional security the Leases and Rents, and no other person has any right in the Leases and Rents.

B. Recordation. Assignor has recorded the Leases as required by law or as otherwise prudent for the type and use of the Property.

C. Default. No default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Assignor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Assignor or any party to the Lease defaults or fails to observe any applicable law, Assignor will promptly notify Lender.

D. Lease Modification. Assignor has not sublet, modified, extended, canceled, or otherwise altered the Leases, or accepted the surrender of the Property covered by the Leases (unless the Leases so require).

E. Encumbrance. Assignor has not assigned, compromised, subordinated or encumbered the Leases and Rents.

12. COVENANTS. Assignor agrees to the following covenants:

A. Rent Abatement and Insurance. When any Lease provides for an abatement of Rents due to fire, flood or other casualty, Assignor will insure against this risk of loss with a policy satisfactory to Lender. Assignor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

B. Copies of Leases. Assignor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.

C. Right To Rents. Immediately after the execution of this Assignment, Assignor will notify all current and future tenants and others obligated under the Leases of Lender's rights to the Leases and Rents, and will request that they immediately pay all future Rents directly to Lender when Assignor or Lender asks them to do so.

D. Accounting. When Lender requests, Assignor will provide to Lender an accounting of Rents, prepared in a form acceptable to Lender, subject to generally accepted accounting principles and certified by Assignor or Assignor's accountant to be current, accurate and complete as of the date requested by Lender.

E. Lease Modification. Assignor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's written consent.

F. Encumbrance. Assignor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent.

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G. Future Leases. Assignor will not enter into any future Leases without prior written consent from Lender. Assignor will execute and deliver such further assurances and assignments as to these future Leases as Lender requires from time to time.

H. Personal Property. Assignor will not sell or remove any personal property on the Property, unless Assignor replaces this personal property with like kind for the same or better value.

I. Prosecution and Defense of Claims. Assignor will appear in and prosecute its claims or defend its title to the Leases and Rents against any claims that would impair Assignor's interest under this Assignment and, on Lender's request, Assignor will also appear in any action or proceeding on behalf of Lender. Assignor agrees to assign to Lender, as requested by Lender, any right, claims or defenses which Assignor may have against parties who supply labor or materials to improve or maintain the leasehold subject to the Leases and/or the Property.

J. Liability and Indemnification. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses or damages due to Lender's gross negligence or intentional torts. Otherwise, Assignor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

K. Leasehold Estate. Assignor will not cause or permit the leasehold estate under the Leases to merge with Assignor's reversionary interest, and agrees that the Leases shall remain in full force and effect regardless of any merger of the Assignor's interests and of any merger of the interests of Assignor and any party obligated under the Leases.

L. Insolvency. Lender will be the creditor of each tenant and of anyone else obligated under the Leases who is subject to an assignment for the benefit of creditors, an insolvency, a dissolution or a receivership proceeding, or a bankruptcy.

13. DEFAULT. Assignor will be in default if any of the following occur:

A. Payments. Assignor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Assignor, Borrower, or any co-signer, endorser, surety or guarantor of this Assignment or any other obligations Borrower has with Lender.

C. Death or Incompetency. Assignor dies or is declared legally incompetent.

D. Failure to Perform. Assignor fails to perform any condition or to keep any promise or covenant of this Assignment.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Assignor is in default on any other debt or agreement Assignor has with Lender.

G. Misrepresentation. Assignor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Assignor fails to satisfy or appeal any judgment against Assignor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Assignor changes Assignor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Assignor transfers all or a substantial part of Assignor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Insecurity. Lender determines in good faith that a material adverse change has occurred in Assignor's financial condition from the conditions set forth in Assignor's most recent financial statement before the date of this Assignment or that the prospect for payment of performance of the Secured Debts is impaired for any reason.

14. REMEDIES. After Assignor defaults, and after Lender gives any legally required notice and opportunity to cure the default, Lender may at Lender's option do any one or more of the following.

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A. Acceleration. Lender may make all or any part of the amount owing by the terms of the Secured Debts immediately due.

B. Additional Security. Lender may demand additional security or additional parties to be obligated to pay the Secured Debts.

C. Sources. Lender may use any and all remedies Lender has under South Carolina or federal law or in any document relating to the Secured Debts.

D. Insurance Benefits. Lender may make a claim for any and all insurance benefits or refunds that may be available on Assignor's default.

E. Payments Made On Assignor's Behalf. Amounts advanced on Assignor's behalf will be immediately due and may be added to the Secured Debts.

F. Rents. Lender may terminate Assignor's right to collect Rents and directly collect and retain Rents in Lender's name without taking possession of the Property and to demand, collect, receive, and sue for the Rents, giving proper receipts and releases. In addition, after deducting all reasonable expenses of collection from any collected and retained Rents, Lender may apply the balance as provided for by the Secured Debts.

G. Entry. Lender may enter, take possession, manage and operate all or any part of the Property; make, modify, enforce or cancel or accept the surrender of any Leases; obtain or evict any tenants or licensees; increase or reduce Rents; decorate, clean and make repairs or do any other act or incur any other cost Lender deems proper to protect the Property as fully as Assignor could do. Any funds collected from the operation of the Property may be applied in such order as Lender may deem proper, including, but not limited to, payment of the following: sporting expenses, management, brokerage, attorneys' and accountants' fees, the Secured Debts, and toward the maintenance of reserves for repair or replacement. Lender may take such action without regard to the adequacy of the security, with or without any action or proceeding, through any person or agent, or receiver to be appointed by a court, and irrespective of Assignor's possession.

The collection and application of the Rents or the entry upon and taking possession of the Property as set out in this section shall not cure or waive any notice of default under the Secured Debts, this Assignment, or invalidate any act pursuant to such notice. The enforcement of such remedy by Lender, once exercised, shall continue for so long as Lender shall elect, notwithstanding that such collection and application of Rents may have cured the original default.

H. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies Lender does not give up any other remedy. Lender does not waive a default if Lender chooses not to use a remedy. By electing not to use any remedy, Lender does not waive Lender's right to later consider the event a default and to use any remedies if the default continues or occurs again.

15. TERM. This Assignment will remain in full force and effect until the Secured Debts are paid or otherwise discharged and Lender is no longer obligated to advance funds under any loan or credit agreement which is a part of the Secured Debts. If any or all payments of the Secured Debts are subsequently invalidated, declared void or voidable, or set aside and are required to be repaid to a trustee, custodian, receiver or any other party under any bankruptcy act or other state or federal law, then the Secured Debts will be revived and will continue in full force and effect as if this payment had not been made.

16. CO-SIGNERS. If Assignor signs this Assignment but is not otherwise obligated to pay the Secured Debts, Assignor does so only to assign Assignor's interest in the Property to secure payment of the Secured Debts and Assignor does not agree by signing this Assignment to be personally liable on the Secured Debts. If this Assignment secures a guaranty between Lender and Assignor, Assignor agrees to waive any rights that may prevent Lender from bringing any action or claim against Assignor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

17. WAIVERS. Except to the extent prohibited by law, Assignor waives all homestead exemption rights relating to the Property.

18. OTHER TERMS. The following are applicable to this Assignment:

A. Additional Terms. This Agreement (along with all deposit accounts, mortgages, security agreements, pledge agreements and any and all other security instruments and items of collateral that I have at any time in the past given to you or that I may at any time in the future give to you) shall secure any and all of the obligations that I currently owe you or that I may at any time in the future owe you.

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200600025100 269 337

19. **APPLICABLE LAW.** This Assignment is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.

20. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** Each Assignor's obligations under this Assignment are independent of the obligations of any other Assignor. Lender may sue each Assignor individually or together with any other Assignor. Lender may release any part of the Property and Assignor will still be obligated under this Assignment for the remaining Property. Lender may assign all or part of Lender's rights under this Assignment without Assignor's consent. If Lender assigns this Assignment, all of Assignor's covenants, agreements, representations and warranties contained in this Assignment will benefit Lender's successors and assigns. The duties of this Assignment will bind the successors and assigns of Assignor.

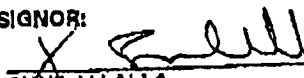
21. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Assignment may not be amended or modified by oral agreement. No amendment or modification of this Assignment is effective unless made in writing and executed by Assignor and Lender. This Assignment and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Assignment is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

22. **INTERPRETATION.** Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Assignment.

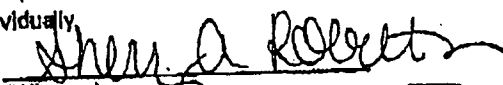
23. **NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES.** Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Assignor will be deemed to be notice to all Assignors. Assignor will inform Lender in writing of any change in Assignor's name, address or other application information. Assignor will provide Lender any financial statements or information Lender requests. All financial statements and information Assignor gives Lender will be correct and complete. Assignor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Assignment. Assignor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Assignor's obligations under this Assignment and to confirm Lender's lien status on any Property, and Assignor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

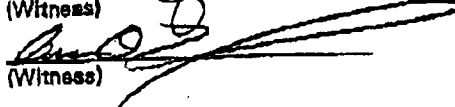
SIGNATURES. By signing under seal, Assignor agrees to the terms and covenants contained in this Assignment. Assignor also acknowledges receipt of a copy of this Assignment.

ASSIGNOR:

 (Seal)
SUNIL V LALLA

Individually


(Witness)


(Witness)

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200600025100

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ACKNOWLEDGMENT.

(Individual)

State OF SC County OF Lancaster ss.
I, Brian D. Trimma a notary public for SC do
hereby certify that SUNIL V LALLA, personally appeared before me this day and acknowledged the due execution
of the foregoing instrument. and Sharon Lalla
Witness my hand and official seal this 13 day of Nov, 2006.

Brian D. Trimma
Signature of Notary Public

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EXHIBIT 'A'

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City - Georgetown County - South Carolina - dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

TAM# 41/107-89

X 84 JA

Blackwell Trinnal, LLC
PO Box 2078
Lancaster, SC 29721

Instrument Book Page
200600025100 269 360

envelope
49459 Blackwell Trinnal

200600025100
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
11-17-2006 At 11:42 am.
ASSIGNMENT 15.00
STATE TAX .00
COUNTY TAX .00
Book 269 Page 351 - 360

Wanda J. Orevette

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

TD Bank, NA, successor by merger to
Carolina First Bank, NA,

Plaintiff,

vs.

Sunil V. Lalla and Sharon W. Lalla,

Defendants.

C.A. No.: 2011-CP-22-00342

ANSWER AND COUNTERCLAIM

Defendants above-named Answer the Complaint of the Plaintiff herein and Counterclaim
as follows:

FOR A FIRST DEFENSE

1. The Defendants hereby deny each and every allegation set forth in the Complaint
except for those allegations hereinafter specifically admitted, qualified or explained.

2. The allegations set forth in paragraphs one (1), two (2), three (3) and four (4) of
the Complaint are admitted.

3. The allegations set forth in paragraph five (5) of the Complaint are denied.

4. The allegations set forth in paragraph six (6) of the Complaint are admitted.

5. The allegations set forth in paragraph seven (7) of the Complaint are denied.

6. The allegations set forth in paragraphs eight (8), nine (9) and ten (10) of the
Complaint are admitted.

7. The allegations set forth in paragraphs eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen (18), nineteen (19) and twenty (20) are denied.

8. The allegations set forth in paragraph twenty-one (21) of the Complaint are denied upon information and belief.

9. The allegations set forth in paragraphs twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26) and twenty-seven (27) of the Complaint are denied.

10. The allegations set forth in paragraphs twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33) and thirty-four (34) of the Complaint are denied.

FOR A SECOND DEFENSE

11. The Defendants hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

12. The causes of action as set forth in the Complaint fail to state a cause of action for which relief can be granted.

FOR A THIRD DEFENSE
AND BY WAY OF COUNTERCLAIM

13. The Defendants hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

14. The Plaintiff or its predecessor in interest received TARP money from the United States Government.

15. The property in question is residential proper and the Plaintiff has not complied with the regulations in regard to negotiating a modification of the note and mortgage.

16. This Court should issue its declaratory judgment declaring the rights of the parties one to another and declaring that the mortgage is not presently subject to foreclosure.

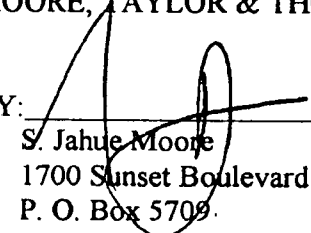
FOR A THIRD DEFENSE
AND FURTHER BY WAY OF COUNTERCLAIM

17. The Defendants hereby reassert and reallege each and every allegation set forth above as fully as if set forth verbatim.

18. The Defendants are entitled to the protection of the South Carolina Appraisal Statutes to the extent that any deficiency judgment or any other type of personal judgment are sought against these Defendants.

WHEREFORE, Defendants pray that the Complaint be dismissed with costs; for a declaration of the rights of the parties one to another; for the protection of the South Carolina Appraisal statutes; and for such other and further relief as this Court might deem just and proper.

MOORE, TAYLOR & THOMAS, P.A.

BY: 

S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR DEFENDANTS

West Columbia, South Carolina
April 11, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank,)

C/A No. 2011-CP-22-00342

Plaintiff,)

v.)

ANSWER TO COUNTERCLAIM

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)

Plaintiff answers Defendants' counterclaim as follows:

FOR A FIRST DEFENSE

1. On information and belief, Defendants' counterclaims are or may be subject to binding arbitration pursuant to a written agreement between the parties, which agreement is valid, irrevocable and enforceable pursuant to the Federal Arbitration Act and/or South Carolina Uniform Arbitration Act.

FOR A SECOND DEFENSE

2. The allegations set forth in Defendants' counterclaims fail to state a cause of action upon which relief may be granted.

3. By reason of the foregoing, Plaintiff is entitled to have the counterclaims dismissed pursuant to Rule 12(b)(6) S.C.R. Civ. P.

FOR A THIRD DEFENSE

4. Plaintiff denies each and every allegation of the counterclaims which is not expressly admitted, modified or explained.

5. On information and belief, the allegations of Paragraphs 1-13 of Defendants' pleadings do not allege any counterclaim and do not require a response.

6. Plaintiff admits the allegations of Paragraph 14.

7. Plaintiff denies the allegations of Paragraph 15.

8. Plaintiff denies the allegations of Paragraph 16.

9. The allegations of Paragraph 17 do not require any response.

10. Plaintiff denies the allegations of Paragraph 18.

FOR A FOURTH DEFENSE

11. Defendants are not entitled to a jury trial, and their demand for a jury trial should be stricken.

FOR AN AFFIRMATIVE DEFENSE TO FIRST COUNTERCLAIM

12. Plaintiff reiterates the allegations of Paragraphs 1-11.

13. The loan at issue in this foreclosure action is a commercial loan, secured by a mortgage on income producing property and not by Defendants' principal residence.

14. By reason of the foregoing, Defendants are not eligible for any alleged modification of the mortgage pursuant to TARP or any governing federal regulation or program.

FOR AN AFFIRMATIVE DEFENSE TO SECOND COUNTERCLAIM

15. Plaintiff reiterates the allegations of Paragraphs 1-14.

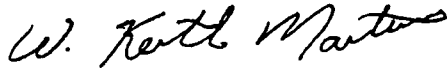
16. The loan at issue in this foreclosure action is a commercial loan, secured by a mortgage on income producing property and not by Defendants' permanent home and legal residence.

17. At the time Defendants obtained the loan at issue in this litigation, Defendants affirmatively waived their right to appraisal under the South Carolina Appraisal Statutes.

18. By reason of the foregoing, Defendants are not entitled to any statutory right of appraisal.

WHEREFORE, having fully answered Defendants' counterclaims, Plaintiff prays for dismissal, for judgment in Plaintiff's favor as set forth in Plaintiff's complaint, for attorney's fees, for costs and for such other and further relief as the court deems just and proper.

April 27, 2011



W. Keith Martens
HAMILTON MARTENS & BALLOU, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
kmartens@hmandb.com

ATTORNEYS FOR PLAINTIFF

In The Matter Of:
TD Bank, NA, et al. v.
Sunil V. Lalla and Sharon W. Lalla

Hearing
December 10, 2012

ALDERMAN COURT REPORTING
"Proudly serving the Palmetto State"
500 Oak Pond Court
Conway, SC 29526
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STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-22-00342

TD BANK, NA, Successor by)
Merger to Carolina First)
Bank,)

Plaintiff,)

vs.)

SUNIL V. LALLA and)
SHARON W. LALLA,)

Defendants.)

FINAL FORECLOSURE HEARING

DATE TAKEN: December 10, 2012

TIME BEGAN: 9:30 a.m.

TIME ENDED: 11:25 a.m.

LOCATION: Georgetown County Courthouse
Courtroom 2-C
401 Cleland Street
Georgetown, SC 29440

REPORTED BY: Glenda K. McCormick
Court Reporter
Notary Public for South Carolina

ALDERMAN COURT REPORTING
"Proudly serving the Palmetto State"
500 Oak Pond Court
Conway, SC 29526

Telephone: 843.254.2675 Fax: 843.234.2309
E-mail: RPA1277@AOL.COM

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5
6 APPEARANCES

7 Joe M. Crosby, Esq., Master-in-Equity

8 W. Keith Martens, Esq.
9 Hamilton Martens & Ballou, LLC
130 East Main Street
Rock Hill, SC 29731

10 On behalf of the Plaintiff

11 S. Jahue Moore, Esq.
12 Moore Taylor & Thomas, P.A.
1700 Sunset Boulevard
13 West Columbia, SC 29169

14 On behalf of the Defendants

15
16
17 STIPULATIONS: The within proceedings were taken pursuant
18 to the South Carolina Rules of Civil Procedure.
19
20
21
22
23
24
25

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2	Form S-8, 15 pages	18
3	Copy of original mortgage to Carolina First by Dr. Lalla, 11-13-2006, nine pages	22
4	Copy of promissory note between Carolina First and Dr. Lalla, 11-13-2006, four pages	31
5	Printout of payment record, four pages	36

P R O C E E D I N G S

THE COURT: All right. Anything you need to bring up real quick?

MR. MOORE: Not at this point.

MR. MARTENS: No, sir.

THE COURT: All right. If y'all will go on ahead and just make sure you identify yourselves for the record.

MR. MARTENS: Your Honor, may it please the Court, I'm Keith Martens on behalf of the Plaintiff, TD Bank. This is a foreclosure hearing and I would like to call Jason Bristol to testify on behalf of the bank.

THE COURT: Mr. Bristol, if you will come around, place your left hand on the Bible, raise your right hand, and the court reporter will swear you in.

JASON BRISTOL,
being duly sworn, was examined and testified as follows:

THE COURT: Just have a seat and state your name for the record. Thank you, sir.

THE WITNESS: Jason Bristol.

EXAMINATION

BY MR. MARTENS:

Q. Mr. Bristol, good morning. Tell the Court where you

1 work?

2 A. I work for TD Bank.

3 Q. And what is your position for TD Bank?

4 A. I'm the regional workout officer.

5 Q. And what does that involve?

6 A. That involves managing our loan portfolio. Typically
7 those borrowers are in default and needing more
8 attention from the bank.

9 THE REPORTER: I'm sorry. Typically what?

10 A. Typically they are relationships that are in default
11 and need more management time from the bank.

12 Q. Is one of the accounts that you oversee and manage for
13 the bank the account that is the subject of this
14 lawsuit?

15 A. Yes, it is.

16 Q. And with regard to this particular account, are you a
17 custodian of records for the bank?

18 A. Yes, I am.

19 Q. Now, is TD Bank the bank that originally made the loan
20 that is the subject of this action?

21 A. No, it is not.

22 Q. What was the name of the bank that originally made the
23 loan?

24 A. Carolina First.

25 Q. And what is the relationship between TD Bank and

1 Carolina First?

2 MR. MOORE: Objection here, Your Honor, as
3 to hearsay. I believe that the appropriate
4 way to prove of any such relationship would be
5 some documentation. I think all he can tell
6 right now is what he's heard by way of
7 hearsay, what someone may have told him.

8 THE COURT: Yes, sir?

9 MR. MARTENS: Your Honor, I believe as an
10 officer of the bank, he can testify as to the
11 legal status of the entity.

12 MR. MOORE: Your Honor, I think what he
13 basically testified was he was some sort of a
14 workout officer. I'm not sure I've ever heard
15 of that position as being an official officer
16 of the bank. I believe if the Court were to
17 make inquiries, he simply is an employee who
18 is attempting to work out various loans on
19 behalf of TD Bank.

20 THE WITNESS: Your Honor, I'm an officer
21 of the bank.

22 THE COURT: Hold on. Your objection is
23 the basis for him testifying that TD Bank is
24 the Successor in Interest to Carolina First
25 Bank?

1 MR. MOORE: Yes, sir.

2 THE COURT: I'm going to allow the
3 question.

4 MR. MOORE: Thank you.

5 THE COURT: Yes, sir?

6 BY MR. MARTENS:

7 Q. Mr. Bristol, what's the relationship between TD Bank
8 and Carolina First?

9 A. TD Bank -- or Carolina First -- I'm sorry -- merged
10 with TD Bank in September of 2010.

11 Q. All right. And as the successor to Carolina First
12 Bank, did TD Bank become the holder and owner of the
13 note that is the subject of this action?

14 A. Yes.

15 MR. MOORE: Your Honor, I would have to
16 object on the grounds he's calling for a legal
17 conclusion and, again, that would basically be
18 hearsay. There would have to be some document
19 of assignment. There would have to be some
20 sort of assignment or something which we would
21 have to place into evidence to show that TD
22 Bank is in effect the holder of this note at
23 this point in time.

24 What we basically have is this: There's
25 a note and the note was to Carolina First.

1 Some way, somehow he claims that TD Bank now
2 is the holder of the note. Was there a
3 merger? If there was a merger between the two
4 organizations and they became one organization,
5 then he would be correct.

6 Was there an asset acquisition? If there was
7 an asset acquisition, the way assets are basically
8 acquired is by virtue of an assignment. If there
9 was an asset acquisition, there would have to have
10 been an assignment document somewhere which would
11 assign the note which is the subject of this
12 action. Was there a takeover by FDIC? Was there
13 any number of things which basically would have
14 caused TD Bank to claim to be the owner?

15 Well, we don't know. All he can tell us is
16 that he believes that TD Bank now is the successor
17 in some fashion to Carolina First. There's no
18 explanation as to how that happened and did
19 Carolina First go out of business? Is it still a
20 corporation? Does it still exist?

21 None of the documents which would have
22 actually assigned any obligation have been
23 explained nor shown to this Court, and I do believe
24 that's a legitimate objection. I think he has to
25 show more than that TD Bank now has acquired in

1 some fashion some interest in Carolina First.

2 THE COURT: Do you have the original note?

3 MR. MARTENS: I do not have the original with
4 me, Your Honor.

5 THE COURT: Okay.

6 MR. MARTENS: But to address counsel's
7 objection, the witness has testified that there
8 was a merger and he testified to that. Under
9 operation of law, when any -- and this is -- the
10 argument that counsel is making is an identical
11 argument that was made involving the same merger
12 in North Carolina which has been rejected by the
13 North Carolina Court of Appeals citing South
14 Carolina statute.

15 In that case, the Court cited, when any such
16 merger is approved -- and this is South Carolina
17 Code 34-3-850(D). When any such merger is
18 approved and effected as provided for by law, all
19 the rights, franchises and fiduciary and other
20 interests of such bank merged in and to all
21 property, real, personal, and mixed and
22 choses in action is considered to be transferred
23 to, invested in the resultant bank or trust
24 company without any deed or any other transfer.

25 That's a matter of South Carolina law, Your

1 Honor, and even going beyond that, I believe
2 that the defense or the objection counsel is
3 raising would be in the nature of an
4 affirmative defense.

5 It has not been pled. It has not been
6 alleged. They have not alleged that TD Bank
7 is not the holder of the note, and this is a
8 surprise attack to objection to the witness's
9 testimony. This case has gone on for well
10 over a year and that issue has never been
11 raised until this morning.

12 MR. MOORE: Your Honor, I believe that we
13 denied basically the material allegations of
14 the complaint, one of which would be -- and I
15 could be wrong about this. I'm going to have
16 to pull out a copy of my answer, but I do
17 believe we placed them to the burden of proof
18 in the complaint by the allegations set forth
19 in the answer.

20 And I have to find my copy.

21 MR. MARTENS: Your Honor, I also want to
22 point out that on August 16th of 2011 we filed
23 an affidavit of Mr. Bristol in which he
24 testified in his affidavit that TD Bank is the
25 holder and owner of the note. Defendants have

1 not come forth with any evidence to refute
2 that testimony.

3 MR. MOORE: Your Honor, I don't think it's
4 our burden of proof. I believe that's on the
5 Plaintiff. Once we file an answer denying the
6 allegations of the complaint, that places upon
7 the Plaintiff the burden of proof. The fact
8 that he may have filed an affidavit in regard
9 to some motion hearing does not change the
10 burden of proof at trial.

11 At some point in time they have to
12 produce, I believe, the original note, and I
13 also believe they have to prove that my client
14 signed it, and I believe they also have to
15 prove that they have some sort of enforcement
16 capability on the note, and I respectfully
17 submit that -- I respectfully submit that they
18 have to basically provide more than just an
19 affidavit which basically contains legal
20 conclusions.

21 To say they've come in and at some point
22 in time have filed an affidavit I believe
23 would be irrelevant to the matter in inquiry
24 at this time. Thank you, sir.

25 THE COURT: Uh-huh. Now, after the

1 arguments -- I'm sorry. Go ahead.

2 MR. MARTENS: No. I'm sorry.

3 THE COURT: The issue is whether or not is
4 the -- does he have a basis for testifying to
5 the validity of the assignment; is that
6 correct?

7 MR. MOORE: Your Honor, I believe the
8 point basically is this: They alleged in
9 their complaint in paragraph seven that Sunil
10 Lalla, Dr. Lalla, who is a surgeon here in
11 town, executed and delivered a commercial note
12 to the Plaintiff, and we deny that. So what
13 we have done is to put them to the burden of
14 proof that on November 13, 2006, Dr. Lalla --

15 MR. MARTENS: Your Honor --

16 MR. MOORE: -- executed a --

17 MR. MARTENS: Your Honor, may I present my
18 case?

19 THE COURT: That's -- both y'all can have
20 a seat for right now. Thank you.

21 The long and short is I'm going to allow
22 your questions. We'll certainly listen to
23 your objections as they come up, so if you
24 would now proceed.

25 MR. MARTENS: Thank you, Your Honor.

1 BY MR. MARTENS:

2 Q. Mr. Bristol, are you a vice-president of TD Bank?

3 A. Yes, I am.

4 Q. All right. And did TD Bank merge with Carolina First?

5 A. Yes.

6 Q. Was that --

7 MR. MOORE: Your Honor, may I just allow
8 my objection to run throughout this entire
9 line of questioning?

10 THE COURT: Yes, sir.

11 MR. MOORE: Thank you. I don't want to
12 interrupt.

13 THE COURT: Yes, sir.

14 BY MR. MARTENS:

15 Q. And was that a transaction approved by the Federal
16 Reserve Board?

17 A. Yes, it was.

18 Q. Let me hand you a document. See if you recognize this
19 document.

20 A. Yes, I've seen this document before.

21 Q. Tell the Court what that document is.

22 A. This is the order approving the acquisition of the
23 South Financial Group, which is a subsidiary of
24 Carolina First, by the Toronto-Dominion Bank.

25 Q. And is that a public document of the United States

1 Federal Reserve Bank?

2 A. Yes, it is.

3 Q. And is it signed by -- who signed the document, the
4 order?

5 A. It's signed by the deputy secretary of the board,
6 Robert Frierson.

7 MR. MARTENS: Your Honor, we would move to
8 introduce that document as Plaintiff's Exhibit
9 No. 1.

10 MR. MOORE: May I see the document, Your
11 Honor?

12 THE COURT: Absolutely.

13 MR. MOORE: Your Honor, was this the
14 document -- may I ask counsel if this was the
15 document I was afforded last week?

16 MR. MARTENS: Yes. Yeah, it is.

17 MR. MOORE: Your Honor, I believe that
18 this document proves the exact point I was
19 making with my original objection. I would
20 withdraw my objection to the document.

21 However, I would ask the Court to strike
22 any testimony about any type of merger based
23 upon the document which counsel has just
24 entered into evidence, and I will explain in a
25 moment if the Court would -- we probably ought

1 to get it marked first.

2 MR. MARTENS: I haven't even introduced
3 it.

4 (Plaintiff's Exhibit No. 1 was marked.)

5 MR. MARTENS: Your Honor, we would move to
6 introduce this document as Plaintiff's Exhibit
7 No. 1.

8 MR. MOORE: No objection. And if I might,
9 Your Honor, I am here defending this case as
10 best I know how. I am not trying to be unduly
11 obstreperous. However, it is critically
12 important that I try to protect my client's
13 rights every way I know how.

14 MR. MARTENS: Your Honor, the --

15 THE COURT: Hold on just a minute. If I
16 could see the exhibit, please.

17 Yes, sir?

18 MR. MOORE: If the Court would look at the
19 document, what that document does is to
20 approve the acquisition by TD Bank of Carolina
21 First Bank. Now, there is a difference
22 between --

23 MR. MARTENS: Your Honor, again, may I
24 please present my case? Counsel can make
25 these arguments when it's his case.

1 THE COURT: He's stating an objection.
2 I'll allow him to state his objection.

3 MR. MARTENS: Yes, sir.

4 MR. MOORE: Your Honor, what I have before
5 the Court I believe is a motion to strike the
6 testimony in regard to a merger because the
7 testimony conflicts with the actual
8 documentation put into evidence now by the
9 Plaintiff.

10 If the Court looks at that document, the
11 Court will see that what happened was not a
12 merger but an acquisition, which is what we
13 thought was the case. What happened is a bank
14 by the name of TD Bank acquired Carolina First
15 Bank. There is nothing in those documents to
16 indicate that Carolina First Bank merged with
17 TD Bank. There is a significant difference
18 between one bank acquiring another bank and
19 one bank merging. When there is a merger --

20 THE COURT: Let's hold up. If your motion
21 is to simply strike the testimony based on
22 Exhibit 1, he also hasn't completed his
23 testimony. If you're going to have a motion
24 subsequent to his testimony, that's absolutely
25 fine, or if you have a motion following

1 Plaintiff's case, that's fine, but at this point,
2 I think your motion may be a little premature.

3 MR. MOORE: And if I might, Your Honor, if
4 we might, and I couldn't -- I totally agree with
5 the Court.

6 Absent some further documentation, I
7 think I probably might revisit that, but might
8 the record simply reflect that absent something
9 more, we would object to the testimony in regard to
10 the merger and ask the Court to basically strike
11 that.

12 THE COURT: Okay. I will note your objection
13 and if you have a motion later, you're certainly
14 preserving those rights as well.

15 MR. MOORE: Yes, sir.

16 MR. MARTENS: May I continue, Your Honor?

17 BY MR. MARTENS:

18 Q. Mr. Bristol, is the Toronto-Dominion Bank publicly
19 registered with the United States Securities and
20 Exchange Commission?

21 A. Yes, it is.

22 Q. And as part of that registration, does it regularly
23 compile documents with the SEC?

24 A. Yes, it does.

25 Q. I'll hand you another document and see if you can

1 recognize this document.

2 A. Yes, this is the Form S-8, which is the official
3 document that is filed as part of the merger agreement.

4 Q. All right.

5 MR. MARTENS: And Your Honor, we would
6 move to introduce that document as Plaintiff's
7 Exhibit No. 2.

8 MR. MOORE: Might I see that document,
9 Your Honor?

10 THE COURT: Absolutely.

11 MR. MOORE: If the Court might give me
12 just a moment, Your Honor.

13 Your Honor, I don't have any objection to
14 the SEC filing Form S-8 of the Toronto-Dominion
15 Bank coming into evidence --

16 THE COURT: Okay.

17 MR. MOORE: -- as this is presented. Now,
18 I would object -- well, no objection to it coming
19 into evidence.

20 (Plaintiff's Exhibit No. 2 was marked.)

21 THE COURT: So Plaintiff's 2 is entered.

22 MR. MARTENS: Thank you, Your Honor.

23 BY MR. MARTENS:

24 Q. Mr. Bristol, if you would, please, read for the Court
25 the explanatory note that prompted the filing of that

1 Form S-8 with the Securities and Exchange Commission.

2 A. Effective as of September 30, 2010, pursuant to the
3 agreement and Plan of Merger dated May 16th, 2010,
4 Merger Agreement in parentheses, by and among the
5 Toronto-Dominion Bank known as Company and Registrant,
6 Hunt Merger Sub, Inc., a wholly-owned subsidiary of the
7 Registrant and The South Financial Group, known as
8 TSFG, the Registrant acquired all of the issued and
9 outstanding shares of TSFG and, as a result of the
10 transaction, TSFG became a wholly-owned subsidiary of
11 the Registrant.

12 Q. And what is TSFG?

13 A. TSFG was the parent holding company of Carolina Bank.

14 Q. Carolina First Bank?

15 A. Carolina First Bank.

16 Q. And is it your testimony that TD Bank and Carolina
17 First Bank merged on September 30th, 2010?

18 A. Yes.

19 MR. MOORE: Objection, please, Your Honor.
20 I would have to object to that calling for a
21 legal conclusion.

22 THE COURT: Let him speak. Yes, sir.

23 MR. MOORE: Your Honor, this document
24 doesn't mention Carolina First Bank. What
25 this document mentions is South Financial

1 Group, the parent company. According to the
2 SEC filings, what happened is the parent
3 company of Carolina First Bank merged with TD
4 Bank.

5 THE COURT: And I'm going to overrule the
6 objection, and certainly, if you want to, ask
7 him about that on cross-examination.

8 MR. MOORE: Sure. Thank you, sir.

9 BY MR. MARTENS:

10 Q. Mr. Bristol, as the successor to Carolina First Bank,
11 did TD Bank become the holder of the note and the
12 mortgage that is the subject of this action?

13 A. Yes.

14 MR. MOORE: Your Honor, I would have to
15 object. That's calling for legal conclusion.
16 There's nothing to indicate -- and this is --
17 this is critical. The maker of this note gave
18 it back to a company known as Carolina First,
19 which was a -- according to this gentleman, a
20 subsidiary company that belonged to this
21 holding company. Somehow this --

22 THE COURT: I mean I understand, but I'm
23 not going to allow you to present your case
24 and argument, and they are going to be allowed
25 to present their case, subject to the

1 objections, but I'm going to start narrowing
2 down the objections, and I understand that
3 many of these points you would view as
4 critical. But if he's -- as an officer of the
5 bank, he's going to be able to testify
6 regarding the merger or not or acquisition,
7 and you ask him about it on cross-examination.

8 MR. MOORE: Thank you, sir.

9 THE COURT: So I'm going to allow the
10 question. Yes, sir.

11 MR. MARTENS: Thank you, Your Honor.

12 By MR. MARTENS:

13 Q. Mr. Bristol, who was the holder and owner of the note
14 and mortgage that is the subject of this action?

15 MR. MOORE: Same objection, please, Your
16 Honor.

17 A. TD Bank.

18 THE COURT: And I'm overruling it.

19 MR. MOORE: Thank you, sir.

20 THE COURT: And I'll consider your
21 objection to be a standing objection.

22 MR. MOORE: Thank you, sir.

23 BY MR. MARTENS:

24 Q. When was the loan that is the subject of this action
25 originally made?

1 A. November of 2006.

2 Q. And who was the lender at that time?

3 A. Carolina First Bank.

4 Q. And who was your borrower?

5 A. Mr. Sunil V. Lalla.

6 Q. It's actually Dr. Lalla; correct?

7 A. Dr. Lalla.

8 Q. Do you recognize that document?

9 A. I do.

10 Q. Would you tell the Court what that document is?

11 A. This is a copy of the original promissory note, dated
12 November 13th, 2006.

13 Q. And do you have the original document with you today?

14 A. I do not.

15 Q. Where is the original document?

16 A. It is locked in a vault on TD premises.

17 MR. MARTENS: Your Honor, we would move to
18 introduce that document as Plaintiff's Exhibit
19 No. 3.

20 MR. MOORE: Your Honor, we would object on
21 the grounds of the best evidence rule. The
22 best evidence of the document would be the
23 note in question. The note in question is
24 in -- it is in existence. This appears
25 according to his testimony to be some type of

1 photocopy. According to the best evidence
2 rule, the best evidence of any document is the
3 original of that document.

4 According to this gentleman, the original
5 of whatever document there is exists somewhere
6 in a vault which apparently is controlled and
7 for some reason they have decided not to bring
8 the best evidence to place into evidence.

9 THE COURT: Okay.

10 MR. MOORE: So I have to object to a copy.

11 THE COURT: Counsel?

12 MR. MARTENS: Your Honor, we believe that
13 the document that has been introduced has --
14 the witness has testified it is a true and
15 accurate copy of the original that is locked
16 in a vault on TD Bank property. We would move
17 to introduce Plaintiff's Exhibit 3 subject to
18 counsel's objection.

19 THE COURT: He's objecting to the copy.
20 Help me out here. I don't understand how I
21 can get around that.

22 BY MR. MARTENS:

23 Q. Mr. Bristol, how would we obtain a -- how would you
24 obtain an original of the note for the Court?

25 A. Simply do a request and the document can be sent to me.

1 But I'd also like to note that producing original
2 promissory notes presents an issue because --

3 Q. Well, let me finish.

4 THE COURT: No, actually.

5 MR. MARTENS: Can I finish?

6 THE COURT: No.

7 Counsel, I understand and, you know, I
8 think I agree with -- that the best evidence,
9 particularly when there's no testimony to the
10 exact opposite, has not been lost or destroyed
11 or unavailable or even if this is a certified
12 copy or anything like that as opposed to
13 simply a photocopy.

14 I'm open for arguments, but I don't know
15 how your -- you have an uphill battle right
16 now.

17 MR. MARTENS: Your Honor, I think the
18 issue and I think my response to the objection
19 would be that the -- the note and the
20 mortgage, the same documents that were moved
21 and introduced were attached as exhibits to
22 Plaintiff's complaint.

23 We allege that those were true and
24 accurate copies of the note and the mortgage.
25 Defendants admitted that the mortgage, a copy

1 of which was attached to our complaint,
2 constitutes a first lien on 744 South Waccamaw
3 Drive and secures obligations under the note.

4 Note and mortgage were both capitalized
5 terms. They were both copies of which were
6 attached to the complaint, and Defendants
7 admitted that.

8 So they have admitted that the
9 copy that we're introducing into evidence is a
10 true and accurate copy of the note executed by
11 Dr. Lalla.

12 THE COURT: Mr. Moore?

13 MR. MOORE: Your Honor, in paragraph seven
14 they allege that Defendant Sunil Lalla
15 executed and delivered to Plaintiff a
16 commercial promissory note. By the terms of
17 the note, they promised to pay X number of
18 dollars. A copy of the note is attached.

19 The allegations set forth in paragraph
20 seven of the complaint are denied. We placed
21 them on the burden of proving their note. We
22 denied the existence of the note. We denied
23 that we ever gave them a note.

24 THE COURT: All right. And that's fine
25 because I think this is significant. You're

1 saying they did one thing. You're saying they
2 did the other. Which is it?

3 MR. MARTENS: I'm saying they admitted --

4 THE COURT: All right. Give me a
5 paragraph.

6 MR. MARTENS: Paragraph 10. Now, again,
7 mortgage was a defined term in the complaint,
8 and it refers to Exhibit B of the complaint.
9 Note was a defined term in the complaint, and
10 it refers to Exhibit A in the complaint.

11 And in paragraph 10, we alleged upon
12 information and belief, the mortgage, a
13 defined term, Exhibit B, constitutes a first
14 lien on 744 South Waccamaw Drive, Garden City,
15 South Carolina, and secures Dr. Lalla's
16 obligations under the note, another defined
17 term, and Defendants admitted that.

18 Now, in addition, Dr. Lalla gave an
19 affidavit in this complaint -- I mean in this
20 action where he says, due to the current
21 economic downturn, my income level has
22 decreased. When I became aware of this issue,
23 I contacted the Plaintiff, TD Bank, in an
24 attempt to speak to them about the promissory
25 note on the property beginning in 2009.

1 So Dr. Lalla has submitted an affidavit
2 admitting there is a note. They have admitted
3 that Exhibit A to our complaint, the defined
4 term note is a true and accurate -- they've
5 admitted that it's secured by a mortgage on
6 their property, and the witness has testified
7 that this is a true and accurate copy of the
8 original note.

9 MR. MOORE: We acknowledge that the
10 mortgage is a first lien on the property.
11 We've just denied the existence of this note.
12 Counsel wants to point to extraneous
13 documentation which was basically presented in
14 regard to various motions which have been
15 filed throughout. At no time in that
16 affidavit did he ever acknowledge the
17 veracity, the truth, the correctness, or
18 anything of this particular document which
19 they claim to be the note.

20 We now are at trial. The issue of the
21 validity of the note has been placed in issue
22 by the pleadings, and for some reason they
23 chose not to bring the original.

24 As I understand it, the second best
25 evidence rule applies only when the original

1 is lost or destroyed. They claim it would
2 have been simply a matter of procedure to have
3 written and secured one. It's in a vault
4 somewhere, they know where it is, it's in
5 existence, and for some reason they choose not
6 to bring the original of the document which is
7 the seminal document at issue in this case.

8 THE COURT: How about your admissions in
9 paragraph six of your answer?

10 MR. MOORE: Your Honor, in paragraph six,
11 we basically say that we -- where's that? In
12 paragraph six, we acknowledge that in order to
13 secure the note, there was a -- we denied this
14 note in paragraph seven. We admit that a
15 mortgage was given. We admit that the
16 mortgage is of record. That document is
17 clearly a lien on the property. It secures a
18 note.

19 But when we go back in paragraph seven
20 and deny that the note was executed as averred
21 in the complaint, it places the burden upon
22 them. All paragraphs eight, nine and ten do
23 are to acknowledge basically that there is a
24 first lien on the property that is -- that is
25 a mortgage.

1 We don't have any problem at all with the
2 mortgage coming into evidence. However, we do
3 have a serious problem with the note coming
4 in. We have denied the validity of the note.
5 It placed it in issue. We have acknowledged
6 the validity of a mortgage that is on this
7 property which constitutes a first lien upon
8 this property. It is their responsibility to
9 place the note into evidence which the
10 mortgage secures.

11 THE COURT: Counsel, looking through here,
12 I see that they denied your paragraph 11,
13 which raises the note. Certainly for issues
14 of the mortgage, I would agree with you that
15 the mortgage is admitted.

16 As an admission in their complaint, the
17 mortgage would be the admissible. However,
18 they have denied the note and I think the note
19 would be subject to the best evidence rule at
20 this point unless you can point me to
21 something else.

22 And I want to be clear for the record as
23 well, in reviewing the complaint, paragraphs
24 nine, ten, and eight referred to a mortgage
25 which is admitted in the Defendant's answer.

1 Paragraph 11 raises the note and
2 provisions within that note. Paragraph 11 and
3 12 are denied in the answer of the Defendants.

4 Yes, sir.

5 MR. MARTENS: Your Honor, let me -- if I
6 may, let me come back to that issue. I
7 understand your ruling as to that is not going
8 to come in at this point.

9 BY MR. MARTENS:

10 Q. Mr. Bristol, can you identify the document that I've
11 just handed you?

12 A. Yes. It is the mortgage for the property of 744 South
13 Waccamaw Drive in Garden City.

14 Q. And who gave the mortgage?

15 A. The mortgage was given by Mr. and Mrs. Lalla.

16 MR. MARTENS: Your Honor, I would move to
17 introduce this document as Plaintiff's
18 Exhibit --

19 THE REPORTER: We didn't accept 3.

20 MR. MARTENS: Your Honor, could we mark
21 the note for identification as far as a
22 court's exhibit?

23 THE COURT: Well, I think for identification
24 purposes, that would be fine. And this will
25 be -- the mortgage itself will be Plaintiff's

1 4? Is that correct, Madam Court Reporter?

2 THE REPORTER: Three is the one you have
3 not accepted.

4 THE COURT: That is correct.

5 THE REPORTER: Okay. So this would be 4?

6 THE COURT: Yes, ma'am.

7 MR. MARTENS: And it's my understanding
8 that Defendants have admitted to the validity
9 of the mortgage --

10 THE COURT: And also I believe you
11 stipulated here that they have no objection to
12 the mortgage; is that correct, sir?

13 MR. MOORE: That's correct, Your Honor.
14 We have no objection at all to it coming in
15 evidence.

16 THE COURT: Okay.

17 (Plaintiff's Exhibit Nos. 3 and 4 were marked.)

18 BY MR. MARTENS:

19 Q. Mr. Bristol, what was the purpose of this mortgage?

20 A. This mortgage -- the purpose of this mortgage was to
21 secure a promissory note on the date of November 13th,
22 2006, in the amount of \$680,000.

23 Q. All right. So the mortgage secured a \$680,000 loan
24 from the bank to Dr. Lalla?

25 A. Yes.

1 Q. What was the interest rate?

2 A. Six point nine four percent.

3 Q. And when --

4 MR. MOORE: Objection.

5 BY MR. MARTENS:

6 Q. -- did the note mature?

7 MR. MOORE: I withdraw the objection.

8 THE COURT: Thank you.

9 A. The note matured November 13, 2011.

10 BY MR. MARTENS:

11 Q. So the note would have been due and payable in full
12 November 13th, 2011?

13 A. Yes.

14 MR. MOORE: Objection to leading, Your
15 Honor.

16 THE COURT: Certainly you would agree the
17 document would speak for itself?

18 MR. MOORE: I do.

19 BY MR. MARTENS:

20 Q. Mr. Bristol, where does the mortgage indicate that Dr.
21 Lalla lived at the time he executed this mortgage and
22 the note that is secured by this mortgage?

23 A. The address is listed as 589 Briarwood Road, Lancaster,
24 South Carolina.

25 Q. So that was the address -- is that the address that he

1 reported to the bank as his residence?

2 MR. MOORE: Objection, please, Your Honor.

3 I think the document speaks for itself in
4 regard to a mailing address, but I don't
5 believe this gentleman would be capable to
6 testify as to what he actually reported.

7 THE COURT: I'll allow the question.

8 BY MR. MARTENS:

9 Q. Is that the address that Dr. Lalla gave the bank as his
10 residence?

11 A. Yes.

12 Q. And the mortgage covers what piece of property, sir?

13 A. It is a property known as 744 South Waccamaw Drive in
14 Garden City, South Carolina.

15 Q. Did Dr. Lalla make a series of loan payments to the
16 bank beginning in November of 2006?

17 A. Yes.

18 Q. Do you recognize this document?

19 A. I do.

20 Q. Could you tell the Court what that document is, sir?

21 A. This is a payment history of Dr. Lalla.

22 Q. Of Dr. Lalla's loan?

23 A. Of Dr. Lalla's loan.

24 MR. MARTENS: Your Honor, we have moved to
25 introduce that document as Plaintiff's Exhibit

1 No. 5.

2 MR. MOORE: Your Honor, I would have to
3 object. This document appears to be a copy.
4 It has some sort of number on it. It does not
5 appear to be an original. It's incredibly
6 hard to read and I am not certain -- well,
7 first of all, I would object on the grounds
8 that this appears to be a copy of the
9 document. It appears to be a poor copy, but
10 it's a copy. It appears to be a copy.

11 THE COURT: Go ahead and just a little
12 more foundation.

13 BY MR. MARTENS:

14 Q. Mr. Bristol, when the bank has an active loan account,
15 does it keep a ledger for the borrower to document what
16 payments are made and what charges are attached to a
17 particular loan account?

18 A. Yes.

19 Q. And has the bank maintained a record of its loan to Dr.
20 Lalla?

21 A. Yes.

22 Q. Where is that record maintained? Is it digital or is
23 it a paper document?

24 A. Electronic.

25 Q. So it's a computer database?

1 A. Yes.

2 Q. And could you tell the Court what Plaintiff's Exhibit 5
3 depicts?

4 A. Is this 5?

5 Q. Yes, sir.

6 A. All right. This one starts with the origination of the
7 loan, the amount --

8 Q. Well, let me ask -- I didn't ask it very well. Is this
9 a print copy of the electronic database that the bank
10 generates and maintains in the ordinary course of its
11 business?

12 A. Yes.

13 MR. MARTENS: Your Honor, we would move to
14 introduce this document as Plaintiff's Exhibit
15 No. 5.

16 MR. MOORE: Your Honor, I'm not sure how
17 to make this objection. This appears to be a
18 copy of a printout. If you look at the
19 document, it appears that it came off a
20 copying machine. If it was an original
21 printout --

22 THE COURT: If it is a, as the witness
23 testified, a copy of the printout, I'm not
24 going to (inaudible) as the best evidence as
25 the basis for keeping it out.

1 MR. MOORE: You say you will not?

2 THE COURT: I will not.

3 MR. MOORE: All right.

4 THE COURT: So I will overrule your
5 objection.

6 MR. MOORE: I would also object on the
7 basis that there is no testimony for the
8 admission of this into evidence as a business
9 record as he has not testified that he is the
10 custodian of the computer which basically
11 maintains the payment histories. Apparently
12 what happens is he has access of a computer
13 and can print out a payment history of some
14 sort.

15 THE COURT: And I'm going to overrule that
16 objection. He has testified he is the
17 mitigation -- well, I'm not exactly sure what
18 his category is, but the defaulting area of
19 individuals and I believe he is qualified, so
20 I will overrule your objection.

21 MR. MOORE: Thank you, Your Honor.

22 MR. MARTENS: Your Honor, may we introduce
23 that document as Plaintiff's Exhibit No. 5?

24 THE COURT: Entered over Defendants'
25 objection.

1 (Plaintiff's Exhibit No. 5 was marked.)

2 BY MR. MARTENS:

3 Q. Mr. Bristol, what does the document, Plaintiff's
4 Exhibit 5, reflect as the original principal amount of
5 the loan that was made to Dr. Lalla on November 13th of
6 2006?

7 A. Six hundred and eighty thousand.

8 Q. Does that Exhibit 5 show a history of payments from Dr.
9 Lalla back to the bank?

10 A. Yes, it does.

11 Q. All right. And what was the amount of Dr. Lalla's
12 monthly payment that he was making under this loan?

13 A. Five thousand, two hundred and fifty dollars.

14 Q. What was the interest rate of the loan that the bank
15 made to Dr. Lalla?

16 A. Six point 94 percent.

17 Q. How long did Dr. Lalla make regular payments of \$5,250
18 each month to the bank in repayment of his loan?

19 A. Just under four years. The last payment received was
20 7-9-2010.

21 Q. So he made regular payments until July 9th of 2010?

22 A. Yes.

23 Q. Has Dr. Lalla made any payments toward his indebtedness
24 to the bank since July 9th, 2010?

25 A. No.

1 Q. What is the status of Dr. Lalla's loan?

2 A. It is in default.

3 MR. MOORE: I would have to object to the
4 question of his loan. I have no problem with
5 the question in regard to the status of the
6 mortgage, but in regard to the loan, I believe
7 that he's basically being allowed to testify
8 to documents which are not in evidence, but I
9 have no problem at all with his testimony of
10 what is the status of the mortgage.

11 BY MR. MARTENS:

12 Q. Has the loan matured?

13 A. Yes, it has.

14 Q. Is it fully due and payable?

15 A. Yes, it is.

16 MR. MOORE: That would be the same
17 objection I have with the loan. The mortgage,
18 I have no problem.

19 THE COURT: Can I see Plaintiff's 5,
20 please?

21 MR. MARTENS: Yes, sir.

22 THE COURT: Counsel, do you have a -- I'd
23 like to see Exhibits 2 and 3. I'm sorry.
24 Not 3. 2 and 4. I have 4.

25 MR. MOORE: Two is the --

1 THE COURT: I will allow the question.

2 Thank you.

3 MR. MARTENS: Thank you, Your Honor.

4 BY MR. MARTENS:

5 Q. Mr. Bristol, what is the status of Dr. Lalla's loan?

6 A. The loan is currently in default and the note is
7 mature.

8 Q. Has Dr. Lalla paid off what's owed to the bank under
9 his loan?

10 A. No.

11 Q. Has Dr. Lalla made any payments to the bank since July
12 9th of 2010?

13 A. No.

14 Q. Have you calculated how much the bank is still owed in
15 repayment of its loan from Dr. Lalla?

16 A. Yes.

17 Q. Will you testify as to those facts, please, sir?

18 A. Yes. Total as of December 10, 2012, is \$740,267.44
19 plus attorney's costs.

20 Q. And how much of that is principal?

21 A. Six hundred, twenty-eight thousand, seven hundred and
22 eighty-seven dollars and fifty-two cents.

23 Q. And is the balance then interest and late fees?

24 A. It would be interest, late fees, and then I believe
25 there's two appraisals.

1 Q. Does the mortgage executed by Dr. Lalla authorize the
2 bank to recover its collection expenses and attorney's
3 fees in the event of a default or failure to pay? Let
4 me refer you, sir, to paragraph 14 of Exhibit 4.

5 A. Yes, it does.

6 Q. And has the bank incurred attorney's fees and expenses
7 in attempting to collect this amount and foreclose its
8 mortgage against Dr. Lalla?

9 A. Yes, it has.

10 Q. How much has the bank incurred in attorney's fees and
11 costs in this litigation to date?

12 A. Twenty-five thousand, five hundred eighty-four dollars
13 and fifty cents.

14 Q. Is the bank asking this Court to enter judgment against
15 Dr. Lalla for the total indebtedness including fees and
16 expenses that the bank has incurred as the result of
17 Dr. Lalla's failure to repay his debt as due by the
18 terms of the loan?

19 A. The bank is.

20 Q. Is the bank also asking the Court to order a
21 foreclosure sale of 744 South Waccamaw Drive in
22 Georgetown County?

23 A. Yes, it is.

24 Q. And in the event that the foreclosure sale of that
25 property does not bring enough to satisfy the bank's

1 indebtedness, is the bank asking that a deficiency
2 judgment be entered against Dr. Lalla?

3 MR. MOORE: Objection, please, Your Honor.

4 I believe the documents -- the complaint
5 speaks for itself and has in fact been
6 requested.

7 THE COURT: Well, I think he can answer
8 that question.

9 A. The bank has, yes.

10 BY MR. MARTENS:

11 Q. So you're asking for a judgment in the full amount of
12 the debt plus attorney's fees; correct?

13 A. Yes.

14 Q. You're asking for foreclosure sale of the property at
15 744 South Waccamaw Drive in Georgetown County, South
16 Carolina?

17 A. Yes.

18 Q. And then you're asking for a deficiency if the
19 foreclosure sale does not bring sufficient proceeds to
20 satisfy the entire debt; is that accurate?

21 A. Yes.

22 MR. MARTENS: Thank you, sir. Please
23 answer any questions that opposing counsel may
24 have for you.

25 CROSS-EXAMINATION

1 BY MR. MOORE:

2 Q. Sir, does the bank take the position that Sharon Lalla
3 has any independent obligation to it to pay money?

4 A. In what regards?

5 Q. You've been referring to Dr. Lalla's debt, Dr. Lalla's
6 debt, Dr. Lalla's debt. You don't contend that the
7 debt that you're attempting to foreclose is a debt of
8 Sharon Lalla, do you?

9 A. No.

10 Q. Okay. Now -- so the person against whom you claim to
11 be seeking this deficiency judgment is Dr. Sunil Lalla;
12 correct?

13 A. Yes.

14 Q. All right. Well, let's take a moment and look at this
15 mortgage which has been placed into evidence. It does
16 appear that the lender, the mortgagee, is Carolina
17 First Bank. You see that?

18 A. I do.

19 Q. And it also says that it's organized and existing under
20 the laws of the State of South Carolina. Do you see
21 that?

22 A. I do.

23 Q. Now, we do know, then, that Carolina First Bank either
24 is or was an independent corporation that was owned by
25 a holding company; correct?

- 1 A. Correct.
- 2 Q. So Carolina First Bank was its only legal entity and it
3 was owned by who?
- 4 A. The South Financial Group.
- 5 Q. The South Financial Group owned the corporation known
6 as Carolina First Bank; correct?
- 7 A. Yes.
- 8 Q. Now, do you know of any document anywhere where
9 Carolina First Bank assigned its mortgage to this --
10 what is it, South Financial?
- 11 A. South Financial Group.
- 12 Q. Do you know of any document where that was assigned
13 from Carolina First Bank to its current company?
- 14 A. I don't have anything in my possession, no.
- 15 Q. And like you said when you got on the stand, you are
16 testifying on behalf of your employer, TD Bank;
17 correct?
- 18 A. Correct.
- 19 Q. So we know of no document anywhere where Carolina First
20 ever assigned its claim to this mortgage to South
21 Financial; correct?
- 22 A. I'm not sure I know how to answer that.
- 23 Q. Well, do you know of any document anywhere in the whole
24 wide world where this independent company, Carolina
25 First Bank, organized and existing under the laws of

1 South Carolina, ever assigned its rights to this
2 mortgage to its parent corporation?

3 A. I don't think I can answer that because I don't think
4 there's a need for it. There's no necessity for it.

5 Q. Well, you know what you know, don't you?

6 A. I do know what I know, yes.

7 Q. What I want to know is not whether you think there is a
8 need for it or not a need for it. I just want to know
9 do you know of any document where the mortgagee to this
10 mortgage ever assigned its interest to the corporation
11 which was its parent corporation?

12 A. I've never seen one.

13 Q. Okay. And do you know of any document where Carolina
14 First Bank, the mortgagee, ever assigned this mortgage
15 to TD Bank?

16 A. Yes. It would have been in Exhibit 1 and Exhibit 2.

17 Q. Well, let's talk a moment, then. So what you claim as
18 the assignment of this mortgage would be Exhibit 1 and
19 Exhibit 2; correct?

20 A. Yes.

21 Q. Let's talk a minute about Exhibit No. 2. Would you
22 point in there where the name Carolina First Bank is
23 anywhere mentioned in Exhibit No. 2?

24 A. I do not see that name in here.

25 Q. Yes, sir. I didn't either and that's what I'm asking

1 you. How is it possible for Exhibit No. 2 to have
2 assigned something on behalf of a corporation that's
3 not part of the transaction referred to in Exhibit No.
4 2?

5 A. Because TD Bank purchased the owner of that entity.

6 Q. They purchased the owner of that entity?

7 A. Right, which owned the assets of its subsidiary.

8 Q. Well, okay. What we know, then, is that TD Bank bought
9 South Financial; right?

10 A. Correct.

11 Q. And South Financial owned Carolina First; right?

12 A. Correct.

13 Q. But one thing we know is that there is nowhere in this
14 filing of Exhibit No. 2 does it mention this mortgage,
15 does it?

16 A. Not specifically.

17 Q. And as a matter of fact, nowhere in Exhibit No. 2 does
18 it mention that TD Bank is going to actually own the
19 assets of Carolina First, does it?

20 A. It does by virtue of the ownership of TSFG.

21 Q. They're going to own whatever assets TSFG owns; right?

22 A. Correct.

23 Q. But Carolina First was its own separate entity and
24 owned what it owned; right?

25 A. Right.

- 1 Q. There's been no merger agreement between Carolina First
2 and TSFG, has there?
- 3 A. I think you're getting to a drafting issue which was
4 not drafted by the bank. It was drafted by the Federal
5 Reserve, by the SEC.
- 6 Q. I appreciate your thoughts. What I would like you to
7 do, if you would, sir -- and I'm not trying to argue
8 with you -- is just to answer my questions. Do you
9 know of any merger agreement between Carolina First
10 Bank, a legal entity, and TSFG?
- 11 A. Repeat that one more time.
- 12 Q. Do you know of any merger agreement between TSFG and
13 Carolina First Bank?
- 14 A. No.
- 15 Q. Do you know of any -- I'm sorry.
- 16 A. There wouldn't be a need for one.
- 17 Q. Do you know of any merger agreement between Carolina
18 First and TD Bank?
- 19 A. Yes, by virtue of the document.
- 20 Q. Well, no. This is TSF&G merged by virtue of this
21 document; correct?
- 22 A. Right.
- 23 Q. And actually, the merger, all this is, No. 2 is
24 actually a Form S-8, which is a registration statement
25 under the Securities Act of 1933; correct?

1 A. Correct.

2 Q. What this basically does is to register with the
3 Securities and Exchange Commission the fact that some
4 form of merger has taken place; correct?

5 A. Correct.

6 Q. And if we look at the explanatory note on page three of
7 15, it says, pursuant to the terms of the merger
8 agreement, upon completion of the transaction
9 contemplated by the merger agreement, each outstanding
10 and unexercised option to purchase shares of TSFG
11 common stock became fully vested and automatically
12 converted into an option to acquire common shares;
13 correct?

14 A. It does say that.

15 Q. All right. So really, the document which will tell us
16 what TD Bank got is the merger agreement, right,
17 according to this document?

18 A. According to that document, yes.

19 Q. All right. So if we wanted to see whether or not
20 Carolina First merged into TD Bank, we would have to
21 look at something called a merger agreement; correct?

22 A. Yes.

23 Q. That's the document that's referred to in Plaintiff's
24 Exhibit No. 2, the filing; right?

25 A. Yes.

1 Q. And of course, we know document No. 2 doesn't refer to
2 Carolina First anywhere, does it?

3 A. It's not going to.

4 Q. And actually, if we look at the explanatory note of the
5 SEC filing, what actually happened here was not a
6 merger but the Toronto-Dominion Bank acquired the
7 common stock of TSF&G; right?

8 A. Yes.

9 Q. So what we know here, then, according to the documents
10 in evidence, it wasn't actually a merger; it was a
11 stock acquisition of the parent company; correct?

12 A. Yes.

13 Q. Okay. Now, we know -- we've taken a look at No. 2.
14 Let's take a look here at No. 1. What this is is
15 simply a Federal Reserve Board authorization for TD
16 Bank to acquire the First South Financial Group and its
17 subsidiary; correct?

18 A. Yes.

19 Q. So all Exhibit No. 1 is is a document which authorizes
20 an acquisition; correct?

21 A. Correct.

22 Q. All right. My question to you is this: Where are the
23 documents which actually executed the acquisition that
24 TD Bank acquired?

25 A. The originals?

1 Q. Sure.

2 A. I don't know where the originals are at.

3 Q. We know all we have here in evidence is an SEC filing
4 saying that somebody other than Carolina First is being
5 acquired with a stock acquisition, and we have a
6 document that says the Federal Reserve Board approves
7 the acquisition; correct?

8 A. Yes.

9 Q. All right. So the actual documents of acquisition, the
10 merger or the sale or the bill of sale, those documents
11 will tell us what was acquired and what wasn't
12 acquired; right?

13 A. In the master agreement?

14 Q. Sure.

15 A. Well, yes.

16 Q. All right. Now, were you a party to negotiating that
17 master agreement?

18 A. No.

19 Q. Have you ever seen that master agreement?

20 A. I've never seen the original, no.

21 Q. Do you have any firsthand knowledge of what's contained
22 in the master agreement?

23 A. No.

24 Q. Well, now, would that master agreement be the document
25 which would actually tell us what TD Bank acquired?

1 A. I would presume so.

2 Q. So we could look at that document and tell, say,
3 whether TD Bank ever acquired Carolina First Bank?

4 A. I don't think I can answer that. I've never seen the
5 document.

6 Q. And that document's not available in the courtroom;
7 correct?

8 A. Correct.

9 Q. And since you've never seen the document and have no
10 firsthand knowledge, you can't tell us firsthand what
11 TD Bank got from Carolina First or South Financial, can
12 you?

13 A. I can -- no. I can only refer to what I've seen.

14 Q. See, I wasn't asking you to refer to what you've seen.
15 I'm trying to make sure we understand. Since you don't
16 actually know what TD Bank acquired, you don't know
17 what TD Bank acquired; correct?

18 A. (No audible response.)

19 Q. That's right, isn't it?

20 A. I don't think however I answer that it's going to come
21 out right.

22 Q. That's because you don't know, and Exhibits No. 2 and 3
23 don't tell us -- or No. 1 and No. 2 don't tell us squat
24 about what was acquired, do they? That's true, isn't
25 it?

- 1 A. As to the specific agreement?
- 2 Q. Right.
- 3 A. Right.
- 4 Q. All right. So as you sit here today as an officer of
5 the bank, speaking on behalf of the bank --
- 6 A. Uh-huh.
- 7 Q. -- you have absolutely no idea how TD Bank is supposed
8 to have acquired the mortgage which TD Bank claims to
9 be foreclosing on today?
- 10 A. No. I think what I said was I don't have any specific
11 knowledge of what's in the master agreement.
- 12 Q. Right. And the master agreement contains specific
13 information on what's acquired and what's not?
- 14 A. That doesn't mean it doesn't exist.
- 15 Q. Doesn't mean that it does either, does it?
- 16 A. Well, obviously, there's filings that are done.
- 17 Q. Well, I'm simply trying to determine what those filings
18 mean. Your testimony a moment ago was that by virtue
19 of these filings, this is proof that this mortgage,
20 which is on record in favor of a separate legal entity,
21 was acquired by TD Bank. Now you tell us you don't
22 know. Both of those can't be the truth, can they?
- 23 A. I think what I said is I don't know what's in the
24 agreement.
- 25 Q. Well, what's in the agreement is going to be what's

1 controlling as to whether or not TD Bank ever actually
2 did acquire anything from Carolina First Bank?

3 A. Well, the agreement didn't say what was purchased?

4 Q. And who made the decision not to bring the agreement
5 here today that would show the Court that the TD Bank
6 actually did acquire anything from Carolina First? Who
7 made the decision not to bring what you didn't bring?

8 A. Given its public nature, it's never been required.

9 Q. Well, sir, would you agree with me that this mortgage
10 which appears to be on the record looks just like this
11 Exhibit No. 3 in the Register of Deeds office in
12 Georgetown County?

13 A. Yes.

14 Q. And you would agree with me, then, based upon the
15 official records of this county, the holder of this
16 mortgage is not TD Bank; correct?

17 A. Holder of the mortgage.

18 Q. Right. The holder of the mortgage where it says,
19 lender, Carolina First Bank?

20 A. Yes.

21 Q. All right. So according to the official records of
22 this county, TD Bank is not the holder of the mortgage
23 which is the subject of this action; correct?

24 A. I would say no. No.

25 Q. Okay. And according to the official records of the

1 county, then, the holder of this mortgage is Carolina
2 First Bank; right?

3 A. It was recorded that way, yes.

4 Q. And that's the way it's still on record; right?

5 A. Yes.

6 Q. So as far as the official documentation that we do know
7 of, not the documentation we don't know of, but as far
8 as the evidence that we do have, the official holder of
9 this mortgage is Carolina First Bank; correct?

10 A. In regards to the county.

11 Q. Well, do you know -- okay. In regards to the county,
12 and that would, I guess, mean in regards to the State
13 of South Carolina; right?

14 A. Yes.

15 Q. Okay. So as far as the official records of the county
16 and the State of South Carolina, the holder of this
17 bank (sic) is Carolina First Bank; correct?

18 A. It is, but it's subject to other writings.

19 Q. Other writings, right, which you don't know what's in
20 those other writings nor are those writings in court;
21 right?

22 A. I mean are you -- are you stating that I should have
23 brought the original merger certificates with me?

24 Q. I'm just asking you what you know and what you don't
25 know. You've told us that as of right now, according

1 to what we know of the official records of the State of
2 South Carolina, the holder of this mortgage is Carolina
3 First Bank; right?

4 A. Say that again one more time, please.

5 Q. You've told us according to what you do know that as
6 far as the official records of the State of South
7 Carolina, the holder of this mortgage is the Carolina
8 First Bank; right?

9 A. Based on the way it was recorded.

10 Q. Right. And you told me that that may or may not still
11 be the case based upon other writings?

12 A. Yes.

13 Q. Which you don't know anything about?

14 A. I said I've never seen the original document.

15 Q. Right. Well, where is the original document?

16 A. Probably protected in corporate security.

17 Q. Have you ever read it?

18 A. The original agreement?

19 Q. Yeah.

20 A. No.

21 Q. Okay.

22 A. I don't have access to it.

23 Q. As a matter of fact, you don't even have access to the
24 document which would tell you what TD Bank acquired
25 from First South Capital or South Capital; right?

1 A. No. I don't think you're painting it in an accurate
2 picture.

3 Q. Well, sir, you told me that that document may or may
4 not have some bearing upon the facts of this case;
5 right?

6 A. I -- what I said was is that it was listing assets that
7 were sold.

8 Q. Right. And you've told us that not only have you not
9 read that document, that you wouldn't even be allowed
10 to read that document; right?

11 A. I said I didn't have access to it.

12 Q. So as an officer of this TD Bank, you wouldn't even
13 have access to the documents which you claim may or may
14 not say that TD Bank has an interest in this loan;
15 right?

16 A. I didn't say people wouldn't let me see it. I said I
17 don't have access to it.

18 Q. And you've never had access to it? You've never seen
19 it?

20 A. It's probably in Canada. I don't live in Canada.

21 Q. Okay. But you've never seen it; right?

22 A. The original, no.

23 Q. So neither by reading the official documents nor having
24 a copy of those documents have you ever seen any merger
25 documents which will indicate that this mortgage came

1 into the possession of Toronto-Dominion Bank because
2 you've never seen the documents; right?

3 A. No. I said I've never seen the agreement. I've
4 certainly seen the merger certificates and titles.

5 Q. Well, you've seen merger certificates -- well, let me
6 ask you this question. If there was a stock
7 acquisition as you -- your bank apparently has
8 represented to the federal government -- okay? We know
9 that there was a -- that what was represented to the
10 Securities Exchange Commission is that instead of a
11 merger, there was a stock acquisition of the parent
12 company; right?

13 A. Yes.

14 Q. Well, if you represented to the federal government that
15 instead of a merger what you had was a stock
16 acquisition, who is it that basically got a merger
17 agreement approved; do you know?

18 A. I told you I wasn't part of the transaction. I believe
19 you're asking me to speak to things I wasn't a part of.

20 Q. Well, was there ever a word or agreement between
21 Carolina First Bank and TD Bank that you've seen?

22 A. There would be no need for it.

23 Q. So the answer would be no?

24 A. I think we're kind of going in circles here.

25 Q. I just want to make sure, sir, that you can tell us --

- 1 A. And I have told you what I know.
- 2 Q. Well -- all right. Now, the security agreement, you
3 say that Dr. Lalla told you, told the bank, that his
4 home was at 688 Briarwood Drive, Lancaster; correct?
- 5 A. I think I recall that I said that was the one -- or
6 that was the address on the mortgage.
- 7 Q. Well, your testimony actually was that Dr. Lalla told
8 the bank that was his home. You can't testify that's
9 true, can you?
- 10 A. I was not present at the time this was drawn up.
- 11 Q. Well, if you can't testify it's true, how are you able
12 to tell the Court under oath that that's exactly what
13 Dr. Lalla did?
- 14 A. I don't know.
- 15 Q. Sir, you testified to something you didn't know to be
16 true, didn't you?
- 17 A. Well, I did know it to be true because I have a
18 personal financial statement that he prepared that
19 lists that as his primary residence.
- 20 Q. All right.
- 21 A. So it's his address.
- 22 Q. All right. Let me see that. It just says residence
23 address. It doesn't say primary residence address,
24 does it?
- 25 A. (No audible response.)

1 Q. It doesn't say primary residence address, does it?

2 A. Right. Why would you list anything other than that?

3 Q. Why would you make up a word that's not in there?

4 A. As far as what?

5 Q. You said -- you said -- you just testified that
6 financial statement listed his -- that address as his
7 primary residence address, and we know looking at it
8 the word primary appears nowhere on the document;
9 correct?

10 A. Right.

11 Q. Explain to the Court why you made up a word that's not
12 on the document?

13 MR. MARTENS: Your Honor, objection,
14 argumentative.

15 THE COURT: Well, it's a fair enough
16 question. Go ahead.

17 A. Then I misspoke. I'm very sorry.

18 BY MR. MOORE:

19 Q. Now, the security for this mortgage is a house, is it
20 not?

21 A. It is.

22 Q. A residence; correct?

23 A. It is.

24 Q. Do you know if Dr. Lalla ever actually lived there?

25 A. No, I have no firsthand knowledge.

1 Q. So we know, then, that the mortgage was on a
2 residential piece of property located in Garden City,
3 South Carolina; correct?

4 A. Correct.

5 Q. Now, sir, do you know what the Home Affordable
6 Modification Program is?

7 A. I've heard of it, yes.

8 Q. As a matter of fact, Carolina First and TD Bank are
9 both subject to the Home Affordable Modification
10 Program; correct?

11 A. I believe that to be correct, yes.

12 Q. Now, the loan that is the subject of this action, do
13 you know if Carolina First ever securitized that or if
14 it was guaranteed by anyone?

15 A. You mean from a market perspective or an individual?

16 Q. Market perspective.

17 A. I can't speak to that.

18 Q. You just don't know?

19 A. Right. That's what I just said.

20 Q. Now, in April of '09, the treasury department issued
21 directions for home affordable modifications for
22 residential mortgages, did it not?

23 A. If that's what you're telling me.

24 Q. Now, this mortgage originated prior to May of '09; is
25 that right?

1 A. It did.

2 Q. And your bank basically has agreed that it is subject
3 to the home affordable modification regulations;
4 correct?

5 A. I would say yes.

6 Q. In this case, has the home affordable modification ever
7 been offered to either of the Defendants prior to the
8 foreclosure of this mortgage?

9 A. No. It wasn't required.

10 Q. Well, you say it wasn't required because there are
11 words on the note which say it's a commercial loan;
12 correct?

13 A. Correct.

14 Q. But it's still a loan that was secured by the home;
15 right? Correct?

16 A. I think the home had to be their primary residence.

17 Q. Do you know?

18 A. Yes.

19 Q. Do you know if this home ever was Dr. Lalla's primary
20 residence?

21 A. If it ever was?

22 Q. Sure. Do you know if this home ever was Dr. Lalla's
23 primary residence?

24 A. I can't say where he lived. He has multiple homes.

25 Q. Well, if you don't know, how is it possible that you

1 can testify that it was not necessary for you to comply
2 with HMP prior to filing this action?

3 A. Sir, during the time in which we were pursuing our
4 rights and remedies under our loan documents, Dr. Lalla
5 has reported on his personal tax return that it was an
6 income-producing property; it was not his primary
7 residence.

8 Q. Just because it's an income-producing property doesn't
9 mean it's not a person's residence, does it?

10 A. Are you going to let me come and stay at your house?

11 Q. See, sir, the way this is supposed to work is you're
12 not supposed to answer a question with a question.
13 You're simply supposed to give me the courtesy of
14 responding to the questions. I'm simply trying to
15 elicit testimony.

16 A. I understand.

17 Q. The answer to that question is not a question. It has
18 an answer, doesn't it?

19 A. Repeat it for me, please.

20 Q. Just because a person derives income from a piece of
21 property does not mean that it is not a residence, does
22 it?

23 A. I can't answer that for someone else.

24 Q. Well -- paragraph five of your complaint, you would
25 agree that it's a residential mortgage because it's a

1 residential property; right?

2 A. Yes.

3 Q. Look at paragraph five of your complaint where -- and
4 you're speaking on behalf of the bank. Paragraph five
5 says the mortgage loan that is the subject of this
6 action is not a residential mortgage. Well, you've
7 told us that it is a residential mortgage, and yet in
8 the complaint you've alleged that it's not. Do you
9 know who is responsible for placing something that is
10 untrue in the complaint?

11 A. The mortgage on the residence.

12 Q. I asked you just a moment ago was it a residential
13 mortgage and you said yes. In the complaint you say
14 it is not a residential mortgage.

15 A. I think you're semantics at this point. That's all
16 this is.

17 Q. And I appreciate your thoughts. I just would like you
18 to provide an explanation as to how in one breath you
19 can tell me it's a residential mortgage and then on the
20 other hand you can tell me that it's not. It either
21 is or it isn't. You've testified to both. Now, which
22 of what you have said is the truth?

23 A. (No audible response.)

24 Q. Which is true? You've given us two separate answers.
25 Which one of those answers is true?

- 1 A. It is a mortgage on a residence.
- 2 Q. And you understand that the requirements of the -- I
3 believe it's HMP apply to mortgages on residences,
4 doesn't it?
- 5 A. I can't speak to the specific nature of that.
- 6 Q. One thing you do that you can speak -- well, you're the
7 man that's the loss recovery guy. You're an officer of
8 the bank, claim to be an officer in control of all
9 these records speaking on behalf of the bank. You
10 can't tell me whether HMP was never provided to Dr.
11 Lalla; correct?
- 12 A. During what time frame?
- 13 Q. Ever.
- 14 A. I believe we sat in an all-day mediation and tried to
15 attempt to work through that, so I believe that
16 fulfills the requirement.
- 17 Q. A mediation is something that took place after the
18 lawsuit was filed, was it not?
- 19 A. Yes.
- 20 Q. Long after the lawsuit was filed; correct?
- 21 A. Yes.
- 22 Q. Do you know that qualifying or complying with HMP is a
23 condition preceding actually filing the suit? Did you
24 know that?
- 25 A. Did not know the legal aspect of that.

1 Q. It would be fair to say this lawsuit was filed and
2 prosecuted without your bank ever complying with the
3 HMP; correct?

4 A. Again, I don't believe it was required.

5 Q. Well, let's take a look. You've told -- you've told
6 the Court what it is you want. Would it be fair to say
7 what you want is contained in the complaint? What the
8 bank wants is actually contained in the complaint?
9 Would that be fair to say?

10 A. I can't say that it references everything at this
11 point.

12 Q. So are you telling me that the bank wants things that
13 aren't referenced in the complaint?

14 A. I'd have to see the complaint.

15 Q. Well, here it is. The wherefore clause, what's called
16 an addendum clause -- I don't know where they came up
17 with that but that's what they call it. That basically
18 contains what the bank is looking for. I just want to
19 make sure that that's what y'all are looking for, what
20 is actually set forth in the complaint.

21 A. Yes, I can see it through -- yes.

22 Q. Those items contain exactly what the bank is looking
23 for; correct?

24 A. Yes.

25 Q. All right. And again, you were asked by the bank's

1 lawyer and you're speaking for the bank what it is the
2 bank is wanting and you told him; right?

3 A. Yes. I directed the attorney.

4 Q. So you are able to speak for the bank in regard to what
5 the bank is looking for; correct?

6 A. Yes.

7 Q. And what you're seeking is to have the property sold
8 immediately; right?

9 A. By what venue?

10 Q. By the Court. You want to foreclose immediately?

11 A. Correct.

12 Q. You don't want to wait 30 or 60 or 90 days or anything
13 like that? You want the property sold immediately;
14 right?

15 A. Would be the intent to have it sold as soon as
16 possible.

17 Q. Right. I mean you're not wanting anything like have
18 the bidding remain open for 30 or 60 or 90 days or
19 something like that? You want it sold at once; right?

20 A. Again, as long as it's sold in compliance with the law.

21 Q. Right.

22 A. That's correct.

23 Q. You can sell it in compliance with the law immediately.
24 That's what you want; right?

25 A. Yes.

1 Q. So you're not seeking to have the bidding remain open
2 for any period of time? You want it sold immediately;
3 right?

4 A. Correct.

5 Q. Okay. And you have the authority to speak on behalf of
6 the bank for what you want; right?

7 A. I can state what the bank's intentions are, yes.

8 Q. And that's what the bank wants, what you just told me?

9 A. Right.

10 Q. Okay. That's why the complaint says what it says?

11 A. Yes.

12 Q. Have you had occasion to review this complaint prior to
13 it having been filed with the Court?

14 A. Yes.

15 MR. MOORE: Your Honor, thank you so much.
16 I believe those are all the questions that I
17 have for this gentleman. Thank you, sir, for
18 answering my questions.

19 THE COURT: Yes, sir.

20 MR. MARTENS: May it please the Court --

21 THE COURT: Yes.

22 REDIRECT EXAMINATION

23 BY MR. MARTENS:

24 Q. Mr. Bristol, is TD Bank the successor to Carolina First
25 Bank?

1 MR. MOORE: Your Honor --

2 BY MR. MARTENS:

3 Q. If you know?

4 THE COURT: Well, we've already been
5 through that.

6 MR. MARTENS: Simply trying to redirect
7 the witness, Your Honor.

8 BY MR. MARTENS:

9 Q. Was the merger of TD Bank and Carolina First approved?

10 A. Yes.

11 Q. And as counsel pointed out during cross-examination --

12 MR. MOORE: Objection, please, Your Honor.
13 He says he doesn't -- he says he doesn't know
14 anything about Carolina First, doesn't have
15 any firsthand knowledge. There are documents
16 that are available showing what was and what
17 was not approved.

18 THE COURT: But I'm not sure what the
19 question is yet.

20 MR. MOORE: I thought the question was was
21 the merger between Carolina First and TD Bank
22 approved.

23 MR. MARTENS: Well, you didn't listen
24 to my question.

25 MR. MOORE: I do apologize.

1 THE COURT: That question was asked and
2 answered and then you moved on to the next
3 question, which was -- which I thought that
4 was the basis -- your objection was to the
5 previous question?

6 MR. MOORE: Yes, sir. So --

7 THE COURT: Hold on.

8 MR. MARTENS: May I continue, Your Honor?

9 THE COURT: Not yet.

10 MR. MARTENS: Okay. I'm sorry.

11 THE COURT: I'll allow that question.

12 MR. MOORE: Thank you, sir.

13 BY MR. MARTENS:

14 Q. So did Carolina First and TD Bank merge? I'm sorry.
15 Was the merger approved?

16 THE COURT: Now, you've already asked that
17 question. Please move on.

18 BY MR. MARTENS:

19 Q. Where does the mortgage reflect that the Carolina First
20 Bank is organized?

21 A. That it was organized -- under the lender provision?

22 Q. Yes.

23 A. Right there, existing under the laws of South Carolina.

24 Q. So South Carolina law would govern this merger as it
25 pertains to Carolina First Bank; correct?

1 A. Correct.

2 MR. MOORE: Objection. I've got --

3 THE COURT: I'm sorry. What's the basis
4 of your objection?

5 MR. MOORE: Your Honor, this still
6 isn't -- asking him what law applies to me
7 would be asking for a legal conclusion, and
8 again I believe this gentleman has testified
9 ad nauseam that he does not know if there was
10 a merger or was not a merger and that the
11 documents would be what would control what was
12 and what was not acquired by whom, if
13 anything.

14 THE COURT: Restate your question.

15 BY MR. MARTENS:

16 Q. Does the mortgage that is introduced into evidence
17 reflect the state of organization in existence for
18 Carolina First Bank?

19 A. Yes. South Carolina.

20 Q. It was under South Carolina. Okay.

21 MR. MARTENS: And Your Honor, we would
22 like the Court to take judicial notice of the
23 fact that South Carolina Code General Statutes
24 34-3-850(D) provides when any merger -- and
25 the witness has testified the merger was

1 approved -- when any such merger is approved
2 and effected as provided for by law, all the
3 rights, franchises and fiduciary and other
4 interests of such bank merged in --

5 THE COURT: Hold on just a minute. I'll
6 be able to read that, certainly.

7 MR. MARTENS: Yes, sir.

8 MR. MOORE: Your Honor, with all due
9 respect to counsel, I don't believe this
10 gentleman has testified anything about a
11 merger. What he has told us is that the --
12 that the stock of the parent company organized
13 under some law of some state we know not what
14 was acquired by TD Bank. He has testified ad
15 nauseam --

16 MR. MARTENS: Your Honor, I'll move on.
17 I'll move on.

18 THE COURT: All right. So he's going to
19 withdraw the question. Thank you.

20 BY MR. MARTENS:

21 Q. Mr. Bristol, how long have you been responsible for
22 overseeing this account?

23 A. Since June 2011.

24 Q. And have you dealt with Dr. Lalla with regard to this
25 account?

1 A. I have.

2 Q. Has Dr. Lalla ever expressed to you his concern that TD
3 Bank might not be the owner and holder of his note and
4 mortgage?

5 MR. MOORE: Objection to leading, please,
6 Your Honor.

7 MR. MARTENS: Your Honor, it's a question
8 with a yes or no answer.

9 THE COURT: You can ask that question. Go
10 ahead.

11 BY MR. MARTENS:

12 Q. So, again, sir, has Dr. Lalla ever said, Jason, I don't
13 think you own this note?

14 A. No.

15 Q. Has Dr. Lalla ever expressed to you a concern that he's
16 trying to deal with Carolina First Bank and TD Bank is
17 also asking him for payment?

18 A. No.

19 Q. Who is the holder of the note and the mortgage that was
20 the subject of this lawsuit?

21 MR. MOORE: Objection, Your Honor. That
22 calls for a legal conclusion on the part of
23 the witness which he has already said he
24 doesn't know the answer to.

25 THE COURT: I'll allow him to testify as

1 to his belief.

2 MR. MOORE: Thank you, sir.

3 A. Are you asking who prepared or what I believe the --

4 BY MR. MARTENS:

5 Q. No, sir. Who has the right to sue on this note and
6 mortgage?

7 A. Oh, TD Bank.

8 MR. MOORE: Same objection, Your Honor.

9 THE COURT: And that would be based on his
10 belief?

11 BY MR. MARTENS:

12 Q. Yes, sir, your belief?

13 A. Yes.

14 Q. Mr. Bristol, counsel was asking you whether this was
15 Dr. Lalla's residence or not. Do you recall that
16 question?

17 A. I do.

18 Q. Let me show you -- and you testified -- well, let me
19 show you Dr. Lalla's tax return for 2009. What does
20 Dr. Lalla list as his residence on his federal tax
21 returns that he filed with the federal government for
22 2009?

23 A. 589 Briarwood Road, Lancaster, South Carolina.

24 Q. Does Dr. Lalla's 2009 income tax return show 744 South
25 Waccamaw Drive anywhere?

- 1 A. It does.
- 2 Q. And where does it show, what portion of the return?
- 3 A. In the Schedule E in the income or loss from rental
- 4 real estate or royalties.
- 5 Q. So he's reporting to the federal government that this
- 6 is an income-producing property; correct?
- 7 A. Correct.
- 8 Q. And he's reporting to the federal government that his
- 9 residence is in Lancaster, South Carolina?
- 10 A. Yes.
- 11 Q. Do you have any reason to believe that Dr. Lalla lied
- 12 to the federal government when he filed his income tax
- 13 return?
- 14 A. No.
- 15 Q. How many income-producing properties does Dr. Lalla
- 16 list on that tax return?
- 17 A. Three.
- 18 Q. And one's a rental house in Garden City, South
- 19 Carolina; correct?
- 20 A. Yes.
- 21 Q. The second one is this property we're here about today;
- 22 correct?
- 23 A. Yes.
- 24 Q. And the third one is a rental house on North Seaside
- 25 Drive in Surfside, South Carolina?

- 1 A. Yes.
- 2 Q. Does Dr. Lalla report on this federal tax return that
3 he is deriving income from rental of this piece of
4 property that is the subject of this foreclosure
5 action?
- 6 A. Yes.
- 7 Q. How much did he derive in 2009?
- 8 A. Twenty thousand, nine hundred and four dollars.
- 9 Q. Is he declaring a deduction for the mortgage interest
10 that he paid to the bank in 2009 for this property as a
11 business expense?
- 12 A. Yes.
- 13 Q. Is he -- Mr. Bristol, counsel asked you about whether
14 the bank -- how the bank wanted to proceed with regard
15 to the foreclosure sale of this property. Do you
16 recall that question?
- 17 A. Yes, I do.
- 18 Q. And he was asking you whether you wanted to leave the
19 sale open or have it closed immediately the date of
20 sale? Do you recall that?
- 21 A. Yes.
- 22 Q. Is the bank reserving its right to a deficiency
23 judgment against Dr. Lalla?
- 24 A. Yes.
- 25 Q. And if the law requires that the sale remain open --

1 MR. MOORE: Object, please, Your Honor,
2 that he's leading and asking for a legal
3 conclusion.

4 THE COURT: I'll sustain that.

5 BY MR. MARTENS:

6 Q. Is the bank interested in complying with South Carolina
7 law in regard to this sale?

8 A. Yes.

9 Q. And will the bank do what the law requires in order to
10 preserve its deficiency judgment following a
11 foreclosure sale?

12 A. Yes.

13 MR. MOORE: Objection to leading, Your
14 Honor.

15 THE COURT: And I'll sustain that
16 objection. You can move on.

17 BY MR. MARTENS:

18 Q. To your knowledge, does Carolina First Bank exist
19 anymore?

20 A. No.

21 MR. MARTENS: Thank you, sir. That's all
22 I have.

23 THE COURT: Be extremely brief.

24 RECROSS-EXAMINATION

25 BY MR. MOORE:

1 Q. What happened?

2 THE COURT: Be extremely brief.

3 BY MR. MOORE:

4 Q. Was it dissolved? Did it just cease? Was it
5 terminated? Did the stock get acquired? Do you know?

6 A. Do I know?

7 Q. Do you know?

8 MR. MARTENS: Your Honor, asked and
9 answered.

10 THE COURT: He can answer that question.

11 BY MR. MOORE:

12 Q. Do you know if Carolina First in fact still exists as a
13 legal entity? Do you know?

14 A. I can't answer that.

15 Q. You don't know if you know or not?

16 A. Well, I do know. I'm trying to figure out --

17 Q. You don't know if it's a legal entity or not still, do
18 you?

19 A. I do not if it's in good standing, correct.

20 Q. Now, you say that Dr. Lalla never denied that y'all had
21 a note. You've seen the answer where he denied it;
22 right?

23 A. I saw his answer in the complaint, yes.

24 MR. MOORE: Thank you, Your Honor. No
25 further questions.

1 THE COURT: All right. Yes, sir.

2 MR. MARTENS: Your Honor, we'll call Sunil
3 Lalla. We have him subpoenaed as a witness.

4 THE COURT: Madam Bailiff, will you call
5 Sunil Lalla?

6 MR. MOORE: May I see the affidavit of
7 service, Your Honor? I talked with Dr. Lalla
8 this morning, I believe --

9 THE COURT: Let's see the --

10 MR. MOORE: -- but I don't think I've --
11 he's told me he has not been served with any
12 subpoena nor does he have a witness fee check.
13 He told me he's never been served with a
14 subpoena. If we have an affidavit of service,
15 certainly I would have no problem --

16 MR. MARTENS: If Dr. Lalla says he has not
17 yet been served, I will accept counsel's word
18 on that.

19 MR. MOORE: I can tell you that's what he
20 tells me.

21 MR. MARTENS: That is our last witness,
22 Your Honor.

23 THE COURT: Okay.

24 MR. MARTENS: That's the Plaintiff's case.

25 THE COURT: Do you have any witnesses?

1 MR. MOORE: None, Your Honor. That would
2 be our case.

3 THE COURT: The -- anything I need to hear
4 very briefly before -- yes, sir. I don't
5 need your closing arguments.

6 MR. MOORE: Good.

7 THE COURT: Okay.

8 MR. MOORE: I would assume that out of
9 abundance of caution, I should make a motion
10 for directed verdict for involuntary non-suit.

11 THE COURT: Thank you. I'll note those
12 and deny those.

13 MR. MOORE: Thank you, Your Honor.

14 THE COURT: Yes, sir. I'm going to ask
15 for some more information on the -- what in
16 effect -- and you correct me if I'm wrong, Mr.
17 Moore. I basically see it as a standing
18 question to foreclose on a note. Am I
19 misunderstanding your position?

20 MR. MOORE: That would certainly be one of
21 the questions, Your Honor.

22 THE COURT: Okay. Now, I am going to find
23 that it is not a residence and not subject
24 to -- when I reviewed the answer, the answer
25 admits that that is his residence.

1 Understanding that that was at the time of
2 filing, certainly a review of the income tax
3 returns as well, so I find that it is not his
4 residence.

5 The mortgage is admitted. I'm going to
6 deny your -- your motion is still standing to
7 strike the testimony of the bank officer.

8 However, with those parts, the scope
9 being narrowed, I would still like some more
10 information on the ability of the bank to
11 proceed on the note.

12 Also I am not going to find that the bank
13 can waive deficiency. I understand the
14 questions but the pleadings will stand and I
15 think that the bank has protected their
16 interest on that.

17 Is there anything else that has not been
18 addressed?

19 MR. MOORE: Your Honor, there would --
20 without a note being in evidence and without
21 there being any testimony in regard to the
22 amount of the debt, it would certainly appear
23 to us that there would not be any way to claim
24 a deficiency judgment simply on the face of
25 the mortgage.

1 Additionally, Your Honor, I believe that
2 the Plaintiff testified there was no
3 independent obligation owned by Mrs. Lalla, so
4 if there were to be any deficiency, it would
5 only be against her.

6 THE COURT: And you are correct. And
7 whoever (inaudible) an order that there was
8 no -- the bank I believe conceded that at the
9 beginning, that Miss Lalla was not on the
10 note, so certainly --

11 MR. MARTENS: She is named solely as a
12 mortgagor. She is not the borrower and we are
13 not seeking a deficiency against her.

14 MR. MOORE: And thank you, Your Honor.
15 If I might state on the record that we believe
16 there's been a failure of proof both as to
17 parties, amount, default, entitlement, and
18 that from the Plaintiff's standpoint, I need
19 to say this on the record. I generally don't
20 make arguments for the record, but they are
21 what I believe.

22 What we have here is a Plaintiff who has
23 come into court and sent a gentleman down here
24 to tell the Court exactly what it is he wants.
25 The gentleman has said what they want to do is

1 reserve their rights to a deficiency, whatever
2 that means, but what they have asked the Court
3 for under specific testimony is that there be
4 no remaining open of any bid and that there be
5 an immediate and final sale.

6 If that is the case, and that does appear
7 to be what the pleadings say and it does
8 appear to be what the witness as spokesman for
9 the bank says, what they seek is an immediate
10 sale and they seek not to have the bidding
11 remain open for 30 days.

12 Now, if the Court were to grant a
13 foreclosure without a note, simply on the
14 basis of a mortgage, without any real
15 testimony as to what may or may not be due on
16 the mortgage and simply give them what
17 their witness and their pleadings say they
18 want, then pursuant to SC Code 15-39-720 and
19 pursuant to Rule 71, there can be no
20 deficiency judgment in this case.

21 And with all due respect to the
22 Plaintiff -- and they are fine people and I've
23 enjoyed working with them and Mr. Martens is a
24 fine lawyer -- but when his pleadings
25 basically say what he wants and his client

1 reiterates that's what he wants, what they
2 have asked you for legally is what we say they
3 ought to have.

4 If assuming they've proved any amount of
5 money is due under the mortgage, they ought to
6 get exactly what it is they have asked for, an
7 immediate sale with no bidding to be left
8 open.

9 The pleadings don't ask for deficiency
10 judgment. It simply says they reserve their
11 right to ask for it. The testimony doesn't
12 ask for a deficiency judgment. It simply says
13 he reserves the right to ask for one. At no
14 time did they ever ask for one. As a matter
15 of fact, they asked for the exact opposite.
16 They asked and the witness on behalf of the
17 bank asked the Court to issue an immediate
18 judgment of foreclosure and sale without the
19 bidding being left open.

20 If the Court gives him what he has asked
21 for, then what we would have is a sale of the
22 property with legally no way for there to be a
23 deficiency because he has asked for an
24 immediate sale with nothing to remain open.

25 Counsel asked him the question, what do

1 you want, and then I asked him the question,
2 what do you want, and he said very
3 specifically, no bidding to be left open, I
4 don't want to wait, I want an immediate order
5 of foreclosure and sale.

6 So if the Court were to order the bidding
7 to remain open, that would basically give a
8 remedy contrary to what the testimony says the
9 Plaintiff wants and to what the pleadings say
10 the Plaintiff wants and it would be without
11 the Defendant asking for the 30 days.

12 So it is our position with the testimony
13 as it now stands, they have in effect done
14 exactly what we think they did. That's why we
15 asked the questions. By asking the Court what
16 the gentleman asked for on the record, that is
17 the equivalent to asking for a waiver of the
18 right to a deficiency judgment.

19 I was quite frankly quite shocked when he
20 did say that what he wanted was the immediate
21 sale and no waiting. Okay. If he gets what
22 he asked for, I can't imagine how the Court
23 would ever grant a Plaintiff any more than
24 he's asked for. Well, that's what he asked
25 for, and there is -- I would respectfully

1 submit that even an amendment of the pleadings
2 to conform to the proof would amend to
3 pleadings to ask for an immediate sale, which
4 if we look at these two code sections or the
5 code section and the rule, without a 30-day
6 knock-down period, this is a waiver of
7 deficiency under the case law and the code
8 section and the rule.

9 THE COURT: Okay.

10 MR. MOORE: And I know that's somewhat of
11 a legalistic argument, but it certainly
12 appears to be legit to me.

13 THE COURT: Okay. Very good. Thank you,
14 sir.

15 MR. MARTENS: Your Honor, may I respond?
16 As the Court is well aware, waiver is an
17 intentional relinquishment of a known right.
18 The complaint that we filed in this case,
19 Paragraph 27, Plaintiff reserves its right to
20 a deficiency judgment against the borrower.

21 Affidavit that we filed on July 26, 2012,
22 Plaintiff expressly reserves its right to a
23 deficiency judgment against Sunil Lalla and
24 requests that this matter be referred to the
25 Master-In-Equity to complete the foreclosure

1 sale and enter such additional orders as
2 necessary.

3 I believe that the first affidavit that
4 was filed in July of last year, Plaintiff
5 reserved a deficiency. I'm not seeing
6 anywhere in our pleadings that we have asked
7 for a sale to close the day of the auction.

8 THE COURT: And here's where I -- the
9 response for the question or the response as I
10 understood it was basically I want to have it
11 sold immediately, and I think that that was
12 your point, and the question about the waiting
13 period, I don't know if that was understood
14 before the sale or after the sale.

15 And I understand your argument. However,
16 I am not to going to find that he has waived
17 his deficiency. You've made yourself very
18 clear on the record and I appreciate that.

19 MR. MOORE: Thank you, sir.

20 THE COURT: However, understanding with
21 those issues again narrowed, that does not
22 address your issue on the note on whether they
23 can get a deficiency if they are able to
24 proceed on the note, so your -- the additional
25 information I would like is that the bank can

1 proceed on the note because I frankly agree
2 with counsel that if there is no -- if you are
3 not able to proceed on the note, there is no
4 basis for a deficiency. I agree with that, so
5 that's going to be the one issue, are you able
6 to proceed on the note.

7 I would like some information no later
8 than 15 days from today. I think everybody is
9 ready for this -- (inaudible) -- so the issue
10 is can you proceed on the note. If you cannot
11 proceed on the note, then there is no basis
12 for a deficiency. If you can, then there is,
13 but y'all will be able to make that decision.

14 Okay?

15 MR. MARTENS: Yes, sir.

16 MR. MOORE: May I just say, Your Honor,
17 the problem I have is Plaintiff rested the
18 case without adequate testimony in the record
19 to be able to demonstrate what they could or
20 could not do, and obviously the Court is
21 basically saying, gee, I don't know. And the
22 Court's right. We don't know.

23 The problem is that once they have
24 rested, we now have a record where the answer
25 is I don't know. The Court has told us, I

1 think very candidly, the answer is I don't
2 know.

3 If the answer is I don't know and the
4 record is closed, the answer remains I don't
5 know. If the answer is I don't know, as it
6 is, no way they can proceed. If they submit
7 something by way of an affidavit or something,
8 I can't cross-examine it, not if they've
9 rested.

10 THE COURT: What I want -- I'm not taking
11 affidavits. I simply want some briefing from
12 counsel. I am entitled to seek some
13 additional information, and I am not asking
14 for additional testimony. I will not accept
15 additional testimony, simply briefs.

16 MR. MOORE: Thank you very much, Your
17 Honor.

18 THE COURT: And thank you for clarifying
19 that.

20 MR. MOORE: And I appreciate your
21 clarification myself, and thank you.

22 It's been an absolute honor to have
23 appeared before Your Honor. It's been a
24 pleasure. I know I've been somewhat of a pain
25 this morning, and for that I apologize to my

1 friend Mr. Martens, who is my friend.

2 Your Honor, thank you for your patience
3 with me this morning.

4 THE COURT: Thank you, sir. Appreciate
5 y'all coming down.

6 Yes, sir?

7 MR. MARTENS: One housekeeping matter, I
8 counted 15 days from today, which is Christmas
9 Day.

10 THE COURT: The 2nd of January. How about
11 that?

12 MR. MARTENS: Thank you, sir.

13 MR. MOORE: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (Proceedings concluded at 11:25 a.m.)
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1 STATE OF SOUTH CAROLINA :
2 COUNTY OF GEORGETOWN : SS:
3

4 I, Glenda K. McCormick, a Notary Public
5 for South Carolina, do hereby certify that
6 the foregoing transcript is a true and correct
7 transcript, to the best of my ability, of the
8 proceedings before the Honorable Joe M.
9 Crosby, Master-In-Equity for Georgetown
10 County, South Carolina, at the Georgetown
11 County Courthouse, 401 Cleland Street,
12 Georgetown, South Carolina, on Monday, the
13 10th day of December 2012.
14

15 Glenda K. McCormick
16 Notary Public
17 for South Carolina

18 My Commission expires September 18, 2016.
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25

FEDERAL RESERVE BOARD

The Toronto-Dominion Bank
Toronto, Canada

Order Approving the Acquisition of a Bank Holding Company

The Toronto-Dominion Bank ("TD") and its subsidiary bank holding companies, TD US P & C Holdings ULC ("TD ULC"), Calgary, Canada, and TD Bank US Holding Company ("TD Bank US HC"), Portland, Maine (collectively, "Applicants"), have requested the Board's approval under section 3 of the Bank Holding Company Act ("BHC Act")¹ to acquire The South Financial Group, Inc. ("TSFG") and its subsidiary bank, Carolina First Bank ("Carolina First"), both of Greenville, South Carolina.²

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (75 Federal Register 30,406 (2010)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in the BHC Act.

TD, with total consolidated assets equivalent to \$568 billion, is the second largest depository organization in Canada.³ TD operates a branch in New York City and an agency in Houston. Through TD Bank US HC, TD controls two subsidiary banks in the United States, TD Bank and TD Bank USA, National Association ("TD Bank USA"), Portland, Maine. TD Bank US HC, with total consolidated assets of \$155 billion, is the 18th largest depository organization in the United States, controlling

¹ 12 U.S.C. § 1842.

² TD, TD ULC, and TD Bank US HC are all financial holding companies within the meaning of the BHC Act. TD filed an application with the Office of the Comptroller of the Currency ("OCC") on June 18, 2010, for approval under the Bank Merger Act (12 U.S.C. § 1828(c)) to merge Carolina First into TD's subsidiary bank, TD Bank, N.A., ("TD Bank"), Wilmington, Delaware.

³ Canadian asset and ranking data are as of April 30, 2010, and are based on the exchange rate as of that date.

\$125 billion in deposits.⁴ Its subsidiary banks operate in 12 states and the District of Columbia.⁵ In Florida, the only state where a subsidiary depository institution of TD Bank US HC and TSFG both operate, TD Bank US HC is the 16th largest depository organization, controlling deposits of approximately \$4.4 billion.

TSFG has total consolidated assets of approximately \$12.4 billion, and its subsidiary bank operates in South Carolina, North Carolina, and Florida. TSFG is the 13th largest depository organization in South Carolina, controlling deposits of \$5.5 billion. In Florida, TSFG is the 20th largest depository organization, controlling deposits of \$3 billion.

On consummation of the proposal, TD Bank US HC would become the 17th largest depository organization in the United States, with total consolidated assets of approximately \$167 billion. TD Bank US HC would control deposits of approximately \$134.7 billion, which represent 1.7 percent of the total amount of deposits of insured depository institutions in the United States.⁶ In Florida, TD Bank US HC would become the 11th largest depository organization, controlling deposits of approximately \$7.4 billion, which represent approximately 1.8 percent of deposits of insured depository institutions in the state.

Interstate Analysis

Section 3(d) of the BHC Act allows the Board to approve an application by a bank holding company to acquire control of a bank located in a state other than the bank holding company's home state if certain conditions are met. For purposes of the

⁴ Asset data and nationwide deposit ranking data are as of March 31, 2010, and statewide deposit and ranking data are as of June 30, 2009.

⁵ TD Bank operates in Connecticut, Delaware, Florida, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, Virginia, and the District of Columbia. TD Bank USA operates in Maine.

⁶ In this context, insured depository institutions include commercial banks, savings banks, and savings associations.

BHC Act, the home state of TD is New York,⁷ and TSFG is located in South Carolina, North Carolina, and Florida.⁸

Based on a review of all the facts of record, including relevant state statutes, the Board finds that the conditions for an interstate acquisition enumerated in section 3(d) of the BHC Act are met in this case.⁹ In light of all the facts of record, the Board is permitted to approve the proposal under section 3(d) of the BHC Act.

Competitive Considerations

The BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a bank acquisition that would substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served.¹⁰

Applicants and TSFG have subsidiary insured depository institutions that compete directly in five banking markets in Florida: Miami-Fort Lauderdale,

⁷ A bank holding company's home state is the state in which the total deposits of all banking subsidiaries of such company were the largest on July 1, 1966, or the date on which the company became a bank holding company, whichever is later. 12 U.S.C. § 1841(o)(4)(C).

⁸ For purposes of section 3(d) of the BHC Act, the Board considers a bank to be located in the states in which the bank is chartered or headquartered or operates a branch. 12 U.S.C. §§ 1841(o)(4)-(7), 1842(d)(1)(A), and 1842(d)(2)(B).

⁹ 12 U.S.C. §§ 1842(d)(1)(A)-(B) and 1842(d)(2)-(3). TD is adequately capitalized and adequately managed, as defined by applicable law. TSFG's subsidiary bank has been in existence and operated for the minimum period of time required by applicable state laws and for more than five years. See 12 U.S.C. § 1842(d)(1)(B)(i)-(ii). On consummation of the proposal, TD would control less than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1842(d)(2)(A). TD also would control less than 30 percent of, and less than the applicable state deposit cap for, the total amount of deposits in insured depository institutions the relevant states. 12 U.S.C. § 1842(d)(2)(B)-(D). All other requirements of section 3(d) of the BHC Act would be met on consummation of the proposal.

¹⁰ 12 U.S.C. § 1842(c)(1).

Orlando, Palatka, St. Augustine, and West Palm Beach. The Board has reviewed carefully the competitive effects of the proposal in each of these banking markets in light of all the facts of record. In particular, the Board has considered the number of competitors that would remain in the banking markets, the relative shares of total deposits in depository institutions ("market deposits") controlled by Applicants and TSFG in the markets,¹¹ the concentration levels of market deposits and the increases in those levels as measured by the Herfindahl-Hirschman Index ("HHI") under the Department of Justice Merger Guidelines ("DOJ Guidelines"),¹² other characteristics of the markets, and commitments that TD has made to divest branches in the Palatka banking market.

A. Banking Market with Divestiture

Applicants and TSFG compete directly in one banking market, the Palatka banking market, that warrants a detailed review of competitive effects.¹³ TD Bank is the largest insured depository institution in the Palatka banking market, controlling deposits

¹¹ Deposit and market share data are based on data reported by insured depository institutions in the summary of deposits data as of June 30, 2009, and are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See, e.g., Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board regularly has included thrift deposits in the market share calculation on a 50 percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

¹² Under the DOJ Guidelines, a market is considered unconcentrated if the post-merger HHI is less than 1000, moderately concentrated if the post-merger HHI is between 1000 and 1800, and highly concentrated if the post-merger HHI is more than 1800. The Department of Justice ("DOJ") has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The DOJ has stated that the higher-than-normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

¹³ The Palatka banking market is defined as Putnam County and the Hastings area of St. Johns County, Florida.

of approximately \$250.2 million, which represent approximately 34.3 percent of market deposits. Carolina First is the fourth largest depository institution in the market, controlling deposits of approximately \$92.7 million, which represent approximately 12.7 percent of market deposits. On consummation and without the proposed divestiture, the HHI in this market would increase by 873 points, from 2071 to 2944, and the pro forma market share of the combined entity would be 47 percent.

To reduce the potential adverse effects on competition in the Palatka banking market, TD has committed to divest branches with no less than \$59 million in deposits, in the aggregate, to an out-of-market insured depository organization.¹⁴ On consummation of the proposed merger, and after accounting for the divestiture, TD would remain the largest depository institution in the market, controlling deposits of approximately \$283.9 million, which represent 38.9 percent of market deposits. The HHI would increase no more than 243 points to 2313.

The Board has considered carefully whether other factors either mitigate the competitive effects of the proposal or indicate that the proposal would have a significantly adverse effect on competition in the market.¹⁵ In this market, the anticompetitive effects of this proposal are mitigated by several factors. On consummation of the proposal and the proposed divestiture to an out-of-market

¹⁴ TD has committed that, before consummation of the proposed merger, it will execute an agreement for the proposed divestiture in the Palatka banking market with a purchaser that the Board determines to be competitively suitable. TD also has committed to complete the divestiture within 180 days after consummation of the proposed merger. In addition, TD has committed that, if it is unsuccessful in completing the proposed divestiture within such time period, it will transfer the unsold branches to an independent trustee who will be instructed to sell the branches to an alternate purchaser or purchasers in accordance with the terms of this order and without regard to price. The trust agreement, trustee, and any alternate purchaser must be deemed acceptable by the Board. See BankAmerica Corporation, 78 Federal Reserve Bulletin 338 (1992); United New Mexico Financial Corporation, 77 Federal Reserve Bulletin 484 (1991).

¹⁵ The number and strength of factors necessary to mitigate the competitive effects of a proposal depend on the size of the increase in and resulting level of concentration in a banking market.

insured depository institution, five other insured depository institutions would continue to operate in the market.

In addition, the Board notes that three community credit unions also exert a competitive influence in the Palatka banking market.¹⁶ These credit unions offer a wide range of consumer products, operate street-level branches, and have membership open to almost all the residents in the market. The Board concludes that their activities in this banking market exert sufficient competitive influence that mitigate, in part, the potential competitive effects of the proposal.¹⁷

B. Banking Markets without Divestiture

Consummation of the proposal would be consistent with Board precedent and within the thresholds in the DOJ Guidelines in the four remaining banking markets in which TD's subsidiary depository institutions and Carolina First directly compete.¹⁸ On consummation of the proposal, three markets would remain moderately concentrated, and one would remain unconcentrated, as measured by the HHI. The change in the HHI measure of concentration in each of the banking markets would be small, however, and numerous competitors would remain in each market.

C. Views of Other Agencies and Conclusion on Competitive Considerations

The DOJ also has conducted a detailed review of the potential competitive effects of the proposal and has advised the Board that consummation of the proposal would not likely have a significantly adverse effect on competition in any relevant banking market. In addition, the appropriate banking agencies have been afforded an opportunity to comment and have not objected to the competitive effects of the proposal.

¹⁶ The Board previously has considered the competitiveness of certain active credit unions as a mitigating factor. See, e.g., Regions Financial Corporation, 93 Federal Reserve Bulletin C16 (2007); Wachovia Corporation, 92 Federal Reserve Bulletin C183 (2006); F.N.B. Corporation, 90 Federal Reserve Bulletin 481 (2004).

¹⁷ If credit unions are factored into the market calculations on a 50 percent weighted basis, TD would control approximately 35 percent of market deposits on consummation of the proposal, and the HHI would increase 196 points to 1920.

¹⁸ These banking markets and the effects of the proposal on their concentrations of banking resources are described in the appendix.

Based on all the facts of record, the Board concludes that consummation of the proposal would not have a significantly adverse effect on competition or on the concentration of resources in the five banking markets in which TD and TSFG compete directly or in any other relevant banking market. Accordingly, the Board has determined that competitive considerations are consistent with approval.

Financial, Managerial, and Supervisory Considerations

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and depository institutions involved in the proposal and certain other supervisory factors. The Board has carefully considered these factors in light of all the facts of record, including confidential supervisory and examination information from the U.S. banking supervisors of the institutions involved and publicly reported and other financial information, including substantial information provided by Applicants. The Board also has consulted with the Office of the Superintendent of Financial Institutions ("OSFI"), the agency with primary responsibility for the supervision and regulation of Canadian banks, including TD.

In evaluating the financial resources in expansion proposals by banking organizations, the Board reviews the financial condition of the organizations involved on both a parent-only and consolidated basis, as well as the financial condition of the subsidiary insured depository institutions and significant nonbanking operations. In this evaluation, the Board considers a variety of information, including capital adequacy, asset quality, and earnings performance. In assessing financial resources, the Board consistently has considered capital adequacy to be especially important. The Board also evaluates the financial condition of the combined organization at consummation, including its capital position, asset quality, and earnings prospects, and the impact of the proposed funding of the transaction.

The Board has considered carefully the financial resources of the organizations involved in the proposal in light of information provided by Applicants and supervisory information on these organizations available to the Federal Reserve, including information from the Federal Deposit Insurance Corporation ("FDIC"), the

primary federal supervisor of Carolina First. The capital levels of TD exceed the minimum levels that would be required under the Basel Capital Accord and are, therefore, considered to be equivalent to the capital levels that would be required of a U.S. banking organization. TD also plans to raise an additional \$240 million in capital before consummation that will be downstreamed to its U.S. operations. In addition, the subsidiary depository institutions of TD involved in the proposal are well capitalized and would remain so on consummation. The proposed transaction is structured as a partial share exchange and a partial cash purchase of shares. Applicants will use existing resources to fund the cash purchase of shares.¹⁹ Based on its review of the record, the Board finds that Applicants have sufficient financial resources to effect the proposal.

The Board also has considered the managerial resources of the organizations involved. The Board has reviewed the examination records of Applicants, TSFG, and their subsidiary depository institutions, including assessments of their management, risk-management systems, and operations. In addition, the Board has considered its supervisory experiences and those of other relevant banking supervisory agencies, including the OCC and the FDIC, with the organizations and their records of compliance with applicable banking law and with anti-money laundering laws.

The Board also has considered carefully the future prospects of the organizations involved in the proposal in light of the financial and managerial strength that Applicants will bring to the operations of TSFG. The Board notes that TSFG and Carolina First have recently experienced financial and managerial difficulties and are operating under formal supervisory actions by the Federal Reserve Bank of Richmond and the FDIC. Consummation of this proposal would create a combined organization that would serve as a strong provider of banking and other financial services in the markets served by Carolina First. Moreover, the Board has considered Applicants' plans for implementing the acquisition and managing the integration of TSFG into the

¹⁹ On May 18, 2010, TD entered into a Securities Purchase Agreement with the U.S. Department of the Treasury ("Treasury") under which TD will purchase from Treasury all the issued and outstanding shares of TSFG's preferred stock and the related warrant issued in connection with the Treasury's Capital Purchase Program on December 5, 2008.

TD organization and the proposed management after consummation.²⁰ The Board also has considered Applicants' experience with acquiring banking organizations and successfully integrating them into the TD organization.

Based on all the facts of record, the Board has concluded that considerations relating to the financial and managerial resources and future prospects of the organizations involved in the proposal are consistent with approval, as are the other supervisory factors.²¹

Section 3 of the BHC Act also provides that the Board may not approve an application involving a foreign bank unless the bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the bank's home country.²² As noted, the OSFI is the primary supervisor of Canadian banks,

²⁰ The Board received a comment expressing concern about a lawsuit that has been filed by certain shareholders of TSFG concerning the price that TD has offered for TSFG shares. These allegations are subject to litigation before a court of competent jurisdiction and are not within the discretion of the Board to resolve. Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir. 1973).

²¹ Section 3 of the BHC Act also requires the Board to determine that an applicant has provided adequate assurances that it will make available to the Board such information on its operations and activities and those of its affiliates that the Board deems appropriate to determine and enforce compliance with the BHC Act. 12 U.S.C. § 1842(c)(3)(A). The Board has reviewed the restrictions on disclosure in the relevant jurisdictions in which TD operates and has communicated with relevant government authorities concerning access to information. In addition, TD previously has committed that, to the extent not prohibited by applicable law, it will make available to the Board such information on the operations of its affiliates that the Board deems necessary to determine and enforce compliance with the BHC Act, the International Banking Act, and other applicable federal laws. TD also previously has committed to cooperate with the Board to obtain any waivers or exemptions that may be necessary to enable its affiliates to make such information available to the Board. Based on all facts of record, the Board has concluded that TD has provided adequate assurances of access to any appropriate information the Board may request.

²² 12 U.S.C. § 1843(c)(3)(B). As provided in Regulation Y, the Board determines whether a foreign bank is subject to consolidated home country supervision under the standards set forth in Regulation K. See 12 CFR 225.13(a)(4). Regulation K provides that a foreign bank will be considered subject to comprehensive supervision or regulation on a consolidated basis if the Board determines that the bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the

including TD. The Board previously has determined that TD is subject to comprehensive supervision on a consolidated basis by its home country supervisor.²³ Based on this finding and all the facts of record, the Board has concluded that TD continues to be subject to comprehensive supervision on a consolidated basis by its home country supervisor.

Convenience and Needs Considerations

In acting on a proposal under section 3 of the BHC Act, the Board also must consider the effects of the proposal on the convenience and needs of the communities to be served and take into account the records of the relevant insured depository institutions under the Community Reinvestment Act ("CRA").²⁴ The CRA requires the federal financial supervisory agencies to encourage insured depository institutions to help meet the credit needs of the local communities in which they operate, consistent with their safe and sound operation, and requires the appropriate federal financial supervisory agency to take into account a relevant depository institution's record of meeting the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, in evaluating expansionary proposals.²⁵

The Board has considered carefully all the facts of record, including reports of examination of the CRA performance records of TD's subsidiary insured depository

worldwide operations of the bank, including its relationship with any affiliates, to assess the bank's overall financial condition and its compliance with laws and regulations. See 12 CFR 211.24(c)(1).

²³ See The Toronto-Dominion Bank, 94 Federal Reserve Bulletin C51 (2008); 92 Federal Reserve Bulletin C100 (2006); and 91 Federal Reserve Bulletin 277 (2005).

²⁴ 12 U.S.C. § 2901 *et seq.*; 12 U.S.C. § 1842(c)(2).

²⁵ 12 U.S.C. § 2903. The commenter also criticized TD Bank for acquiring assets and liabilities of failed insured depository institutions in FDIC resolution transactions, because those transactions provided no public comment period to submit comments on the bank's CRA performance record. The Board notes that the transactions were processed under emergency review procedures specifically authorized by statute. Moreover, in connection with this proposal, the commenter provided public information about the possible locations of bank's future branches.

institutions and Carolina First, data reported by TD under the Home Mortgage Disclosure Act ("HMDA"),²⁶ other information provided by TD, confidential supervisory information, and public comment received on the proposal. A commenter alleged, based on 2009 HMDA data, that TD has engaged in disparate treatment of minority individuals in home mortgage lending.

A. CRA Performance Evaluations

As provided in the CRA, the Board has considered the convenience and needs factor in light of the evaluations by the appropriate federal supervisors of the CRA performance records of the relevant insured depository institutions. An institution's most recent CRA performance evaluation is a particularly important consideration in the applications process because it represents a detailed, on-site evaluation of the institution's overall record of performance under the CRA by its appropriate federal supervisor.²⁷

TD Bank received an "outstanding" rating at its most recent CRA performance evaluation by the OCC, as of December 8, 2008.²⁸ Carolina First received an "outstanding" rating at its most recent CRA performance evaluation by the FDIC, as of September 5, 2006. After the merger with TD Bank, Carolina First's operations will adopt the CRA program of TD Bank, as modified to address issues specific to the markets served by Carolina First.

B. HMDA and Fair Lending Record

The Board has carefully considered the fair lending records and HMDA data of TD in light of public comment received on the proposal. A commenter alleged that, based on 2009 HMDA data, TD has denied the home mortgage loan applications of African American, Hispanic, and Native American borrowers more frequently than those

²⁶ 12 U.S.C. §2801 et seq.

²⁷ See Interagency Questions and Answers Regarding Community Reinvestment, 75 Federal Register 11642 at 11665 (2010).

²⁸ TD's other bank subsidiary, TD Bank USA, received a "satisfactory" rating at its most recent CRA performance evaluation by the OCC, as of December 8, 2008.

of nonminority applicants.²⁹ The commenter also alleged that TD made higher-cost mortgage loans disproportionately to African American borrowers than to nonminority borrowers.

Although the HMDA data might reflect certain disparities in the rates of loan applications, originations, denials, or pricing among members of different racial or ethnic groups in certain local areas, they provide an insufficient basis by themselves on which to conclude whether or not TD is excluding any racial or ethnic group on a prohibited basis. The Board recognizes that HMDA data alone, even with the recent addition of pricing information, provide only limited information about the covered loans.³⁰ HMDA data, therefore, have limitations that make them an inadequate basis, absent other information, for concluding that an institution has engaged in illegal lending discrimination.

The Board is nevertheless concerned when HMDA data for an institution indicate disparities in lending and believes that all lending institutions are obligated to ensure that their lending practices are based on criteria that ensure not only safe and sound lending but also equal access to credit by creditworthy applicants regardless of their race or ethnicity. Moreover, the Board believes that all bank holding companies and their affiliates must conduct their mortgage lending operations without any abusive lending practices and in compliance with all consumer protection laws.

Because of the limitations of HMDA data, the Board has considered these data carefully and taken into account other information, including examination reports

²⁹ The Board reviewed HMDA data for 2009 for TD Bank in its combined assessment area and in its statewide assessment areas for Maine, Massachusetts, New Hampshire, New Jersey, and Pennsylvania.

³⁰ The data, for example, do not account for the possibility that an institution's outreach efforts may attract a larger proportion of marginally qualified applicants than other institutions attract and do not provide a basis for an independent assessment of whether an applicant who was denied credit was, in fact, creditworthy. In addition, credit history problems, excessive debt levels relative to income, and high loan amounts relative to the value of the real estate collateral (reasons most frequently cited for a credit denial or higher credit cost) are not available from HMDA data.

that provide on-site evaluations of compliance by TD's subsidiary insured depository institutions with fair lending laws. The Board also has consulted with the OCC, the primary federal supervisor of TD's subsidiary banks. In addition, the Board has considered information provided by TD about its compliance risk-management systems.

The record of this application, including confidential supervisory information, indicates that TD has taken steps to ensure compliance with fair lending and other consumer protection laws and regulations. TD also represents that its subsidiary banks have such compliance policies and procedures in place. Specifically, TD Bank maintains a fair lending compliance program that includes a second-review process to identify and prevent any discriminatory practices and a process for resolving fair lending complaints. TD Bank provides annual fair lending training for all employees and compliance personnel involved in any respect with mortgage and consumer lending activities and conducts periodic internal audits of its fair lending and consumer protection programs, which also are subject to periodic review by the OCC. TD has stated that Carolina First's operations would be integrated into TD's existing fair lending and consumer protection compliance programs after consummation of the proposal.

The Board also has considered the HMDA data in light of other information, including overall performance records of the subsidiary banks of TD and TSFG under the CRA. These established efforts and records of performance demonstrate that the institutions are active in helping to meet the credit needs of their entire communities.

C. Conclusion on Convenience and Needs and CRA Performance

The Board has considered carefully all the facts of record, including the evaluation of the CRA performance records of TD Bank and TD Bank USA, information provided by TD, comments received on the proposal, and confidential supervisory information. TD represented that it would offer a broader array of banking products and services to the customers serviced by Carolina First. In addition, consummation of the proposal would allow the combined organization to continue to provide credit and other

financial services in support of the convenience and needs of the communities served by Carolina First. Based on a review of the entire record, the Board concludes that considerations relating to the convenience and needs factor and the CRA performance records of the relevant insured depository institutions are consistent with approval of the transaction.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the application should be, and hereby is, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Applicants with the conditions in this order and all the commitments made to the Board in connection with the proposal.³¹ For purposes of this transaction, these commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

³¹ The commenter requested that the Board hold a public meeting or hearing on the proposal. Section 3 of the BHC Act does not require the Board to hold a public hearing on an application unless the appropriate supervisory authority for the bank to be acquired makes a written recommendation of denial of the application. The Board has not received such a recommendation from a supervisory authority. Under its rules, the Board also may, in its discretion, hold a public meeting or hearing on an application to acquire a bank if necessary or appropriate to clarify material factual issues related to the application and to provide an opportunity for testimony. 12 CFR 225.16(e), 262.3(e), and 262.25(d). The Board has considered carefully the commenter's request in light of all the facts of record. As noted, the commenter had ample opportunity to submit its views and, in fact, submitted written comments that the Board has considered carefully in acting on the proposal. The commenter's request fails to demonstrate why written comments do not present its views adequately or why a meeting or hearing otherwise would be necessary or appropriate. For these reasons, and based on all the facts of record, the Board has determined that a public meeting or hearing is not required or warranted in this case. Accordingly, the request for a public meeting or hearing on the proposal is denied.

The proposal may not be consummated before the fifteenth calendar day after the effective date of this order, or later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of New York, acting pursuant to delegated authority.

By order of the Board of Governors,³² effective July 22, 2010.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

³² Voting for this action: Chairman Bernanke and Governors Kohn, Warsh, Duke, and Tarullo.

Appendix

TD/TSFG Banking Markets in Florida Consistent with Board Precedent and DOJ Guidelines						
Deposit data are as of June 30, 2009. Deposit amounts are unweighted. Rankings, market deposit shares, and HHIs are based on thrift deposits weighted at 50 percent.						
Miami-Fort Lauderdale – Broward and Miami-Dade Counties.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change In HHI	Remaining Number of Competitors
TD Bank US HC Pre-Consummation	28	\$495.7 mil.	0.5	753	+ 1	102
TSFG	33	\$398.5 mil.	0.4			
TD Bank US HC Post-Consummation	22	\$894.2 mil.	0.8			
Orlando – Orange, Osceola, and Seminole Counties; the western half of Volusia County; and the towns of Clermont and Groveland in Lake County.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change In HHI	Remaining Number of Competitors
TD Bank US HC Pre-Consummation	20	\$266.6 mil.	0.8	1199	+ 1	49
TSFG	15	\$335.1 mil.	1.0			
TD Bank US HC Post-Consummation	10	\$601.7 mil.	1.8			

St. Augustine – St. Johns County, excluding the towns of Fruit Cove, Ponte Vedra, Ponte Vedra Beach, Jacksonville, Switzerland, and Hastings.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
TD Bank US HC Pre-Consummation	4	\$105.5 mil.	6.2	1266	+ 36	14
TSFG	11	\$49.2 mil.	2.9			
TD Bank US HC Post-Consummation	4	\$154.7 mil.	9.1			
West Palm Beach – Palm Beach County, east of Loxahatchee; and the towns of Indiantown and Hobe Sound in Martin County.						
	Rank	Amount of Deposits	Market Deposit Shares (%)	Resulting HHI	Change in HHI	Remaining Number of Competitors
TD Bank US HC Pre-Consummation	10	\$843.1 mil.	2.3	1100	+ 2	58
TSFG	29	\$164.7 mil.	0.5			
TD Bank US HC Post-Consummation	8	\$1.0 bil.	2.8			

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As filed with the Securities and Exchange Commission on October 1, 2010

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

The Toronto-Dominion Bank

(Exact name of Registrant as specified in its charter)

Canada
(State or other jurisdiction of incorporation or organization)

13-5640479
(I.R.S. Employer Identification No.)

P.O. Box 1
Toronto-Dominion Centre
King Street West and Bay Street
Toronto, Ontario M5K 1A2
Canada
(416) 982-8222
(Address, including zip code, of Registrant's principal executive office)

TSFG Stock Option Plan
TSFG Long Term Incentive Plan
The South Financial Group, Inc. Amended and Restated Directors' Stock Option Plan
1995 Nonstatutory Stock Option Plan of Gulf West Banks, Inc.
CNB Florida Bancshares, Inc. 1998 Performance-Based Incentive Plan
Pointe Financial Corporation 1998 Incentive Compensation and Stock Award Plan
The South Financial Group, Inc. 401(k) Plan
The South Financial Group 2005 Executive and Director Deferred Compensation Plan
(Full Title of the Plan)

Brendan O'Halloran
The Toronto-Dominion Bank
31 West 52nd Street
New York, New York 10019-6101
(212) 827-7000
(Name, address and telephone number, including area code, of agent for service)

Copies to:
Lee Meyerson
Ellen Patterson
Simpson Thacher & Bartlett LLP
425 Lexington Avenue

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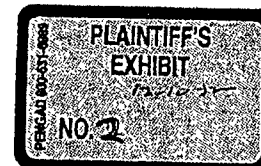
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The Toronto-Dominion Bank
31 West 52nd Street
New York, New York 10019-6101
(212) 827-7000

(Name, address and telephone number, including area code, of agent for service)

Copies to:
Lee Meyerson
Ellen Patterson
Simpson Thacher & Bartlett LLP
425 Lexington Avenue



New York, New York 10017-3954
(212) 455-2000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☒ Accelerated filer ☐ Non-accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (a)(b)	Proposed Maximum Offering Price Per Share (c)	Proposed Maximum Aggregate Offering Price (c)	Amount of Registration Fee (c)(d)
Common Shares, without par value	31,568	\$1,751	\$55,288,723	\$3,887

- (a) The number of Common Shares being registered hereby shall be adjusted to include any additional shares which may become issuable as a result of stock splits, stock dividends or similar transactions in accordance with the provisions of the plans described herein.
- (b) Includes shares being offered pursuant to The South Financial Group, Inc. 401(k) Plan (20,000 Common Shares), shares being offered as dividend reinvestments pursuant to The South Financial Group 2005 Executive and Director Deferred Compensation Plan (300 Common Shares) and shares underlying outstanding and unexercised stock options under the following plans: TSFG Stock Option Plan (8,307 Common Shares), TSFG Long Term Incentive Plan (2,060 Common Shares), The South Financial Group, Inc. Amended and Restated Directors' Stock Option Plan (632 Common Shares), 1995 Nonstatutory Stock Option Plan of Gulf West Banks, Inc. (21 Common Shares), CNB Florida Bancshares, Inc. 1998 Performance-Based Incentive Plan (175 Common Shares) and Pointe Financial Corporation 1998 Incentive Compensation and Stock Award Plan (73 Common Shares).
- (c) Estimated solely for purposes of calculating the registration fee pursuant to Rule 457(h)(1) and Rule 457(c) under the Securities Act of 1933, as amended. The proposed maximum offering price per share, the proposed maximum aggregate offering price and the amount of registration fee have been based on: (i) with respect to the shares underlying outstanding options previously granted under the TSFG Stock Option Plan, on the weighted average per share exercise price of such options equal to approximately \$5,118.61 (based on a \$42,520,297.50 aggregate exercise price); (ii) with respect to the shares underlying outstanding options previously granted under the TSFG Long Term Incentive Plan, on the weighted average per share exercise price of such options equal to approximately \$3,038.23 (based on a \$6,258,750.00 aggregate exercise price); (iii) with respect to the shares underlying outstanding options previously granted under The South Financial Group, Inc. Amended and Restated Directors' Stock Option Plan, on the weighted average per share exercise price of such options equal to approximately \$5,742.06 (based on a \$3,628,980.00 aggregate exercise price); (iv) with respect to the shares underlying outstanding options previously granted under the 1995 Nonstatutory Stock Option Plan of Gulf West Banks, Inc., on the weighted average per share exercise price of such options equal to approximately \$2,750.00 (based on a \$57,750.00 aggregate exercise price); (v) with respect to the shares underlying outstanding options previously granted under the CNB Florida Bancshares, Inc. 1998 Performance-Based Incentive Plan, on the weighted average per share exercise price of such options equal to approximately \$6,545.19 (based on a \$1,145,407.50 aggregate exercise price); and (vi) with respect to the shares underlying outstanding options previously granted under the Pointe Financial Corporation 1998 Incentive Compensation and Stock Award Plan, on the weighted average per share exercise price of such options equal to approximately \$2,844.01 (based on a \$207,612.50 aggregate exercise price); and (vii) with respect to the shares being offered pursuant to The South Financial Group, Inc. 401(k) Plan and The South Financial Group 2005 Executive and Director Deferred Compensation Plan, on the basis of the average high and low prices of the Common Shares reported in the New York Stock Exchange on September 27, 2010.
- (d) Pursuant to Rule 457(p), \$55.23 of the \$4,307.22 filing fee previously paid by the registrant in connection with the filing of its Form F-4 (File No. 333-167443) on June 10, 2010 is offset against the currently due filing fee.

In addition, pursuant to Rule 416(c) under the Securities Act of 1933, this Registration Statement also covers an indeterminate amount of interests to be offered or sold pursuant to the 401(k) Plan described herein.

EXPLANATORY NOTE

Effective as of September 30, 2010, pursuant to an Agreement and Plan of Merger, dated May 16, 2010 (the "Merger Agreement"), by and among The Toronto-Dominion Bank (the "Company" or "Registrant"), Hunt Merger Sub, Inc., a wholly-owned subsidiary of the Registrant, and The South Financial Group, Inc. ("TSFG"), the Registrant acquired all of the issued and outstanding shares of TSFG and, as a result of the transaction, TSFG became a wholly-owned subsidiary of the Registrant.

Pursuant to the terms of the Merger Agreement, upon completion of the transactions contemplated by the Merger Agreement, each outstanding and unexercised option to purchase shares of TSFG common stock became fully vested and automatically converted into an option ("Converted Option") to acquire common shares, without par value, of the Registrant ("Common Shares"), according to formulas set forth in the Merger Agreement. Further, in connection with the completion of the transactions contemplated by the Merger Agreement, effective as of September 30, 2010, the company stock fund, which is an eligible investment option under The South Financial Group, Inc. 401(k) Plan (the "401(k) Plan"), will include the Common Shares in lieu of shares of TSFG common stock, and participants will, therefore, be able to direct the investments of their plan accounts in the Common Shares. In addition, participants under The South Financial Group 2005 Executive and Director Deferred Compensation Plan (the "Deferred Compensation Plan") who received the Common Shares in exchange for the shares of TSFG common stock in their accounts in connection with the merger may in the future receive additional Common Shares as dividend reinvestments or as part of regular plan administration reconciliation.

This Registration Statement on Form S-8 is being filed for the purpose of registering Common Shares (i) issuable upon the exercise of Converted Options outstanding under the plans listed on the cover page of this Registration Statement, (ii) being offered to employees of TSFG under the 401(k) Plan and (iii) being offered to participants under the Deferred Compensation Plan, as described above.

PART I**INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS**

The information specified in Item 1 and Item 2 of Part I of this Registration Statement is omitted from this filing in accordance with the provisions of Rule 428 under the 1933 Act and the introductory note to Part I of the Registration Statement. The documents containing the information specified in Part I will be delivered to the participants in the Plans covered by this Registration Statement as required by Rule 428(b)(1).

PART II**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT****Item 3. Incorporation of Documents by Reference.**

The following documents filed by the Registrant with the Securities and Exchange Commission (the "Commission") are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant's Annual Report on Form 40-F for the fiscal year ended October 31, 2009, filed on December 3, 2009, which contains audited financial statements for the Registrant's latest fiscal year.
- (b) Form 6-K, filed on December 3, 2009.
- (c) Form 6-K, filed on February 25, 2010.
- (d) Form 6-K, filed on February 26, 2010.
- (e) Form 6-K, filed on March 4, 2010, which includes the 1st Quarter 2010 Report to Shareholders.
- (f) Form 6-K, filed on May 17, 2010.
- (g) Form 6-K, filed on May 27, 2010, which includes the 2nd Quarter 2010 Report to Shareholders.
- (h) Form 6-K, filed on June 3, 2010.
- (i) Form 6-K, filed on September 2, 2010, which includes the 3rd Quarter 2010 Report to Shareholders.
- (j) The 401(k) Plan's Annual Report on Form 11-K for the fiscal year ended December 31, 2009, filed on June 28, 2010.
- (k) The description of the Registrant's Common Shares contained in the Registrant's Registration Statement on Form 8-A filed on August 22, 1996.

All documents filed by the Company or the 401(k) Plan pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement indicating that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Additional Information Relating to Certain Prior Disclosures of TD

The discussion set forth under "Capital Structure — Ratings" in the Annual Information Form filed as Exhibit 99.1 to the Registrant's Annual Report on Form 40-F for the year ended October 31, 2009, "Liquidity Risk — Funding" in the Management's Discussion and Analysis attached as Exhibit 99.2 to the Registrant's Annual Report on Form 40-F for the year ended October 31, 2009, "Management's Discussion and Analysis — Liquidity Risk" in the 1st Quarter 2010 Report to Shareholders attached as Exhibit 99.1 to the Registrant's Report of Foreign Issuer on Form 6-K filed with the SEC on March 4, 2010 that attached as an exhibit the Registrant's 1st Quarter 2010 Report to Shareholders, and "Management's Discussion and Analysis — Liquidity Risk" in the 2nd Quarter 2010 Report to Shareholders attached as Exhibit 99.1 to the Registrant's Report of Foreign Issuer on Form 6-K filed with the SEC on May 27, 2010 that attached as an exhibit the Registrant's 2nd Quarter 2010 Report to Shareholders, which reports are incorporated by reference into this Registration Statement, is amended by supplementing such discussion with the following additional information:

Credit ratings are important to TD's borrowing costs and ability to raise funds. A ratings downgrade could potentially result in higher financing costs and reduce access to capital markets. A lowering of credit ratings may also affect TD's ability to enter into normal course derivative or hedging transactions and impact the costs associated with such transactions. TD regularly reviews the level of increased collateral its trading counterparties would require in the event of a downgrade of TD's credit rating. TD believes that the impact of a one notch downgrade would be minimal and could be readily managed in the normal course of business, but more severe downgrades could have a more significant impact by increasing TD's cost of borrowing and/or requiring TD to post additional collateral for the benefit of its trading counterparties. Credit ratings and outlooks provided by the ratings agencies reflect their views and are subject to change from time to time, based on a number of factors, including TD's financial strength, competitive position and liquidity as well as factors not entirely within TD's control, including the methodologies used by the rating agencies and conditions affecting the financial services industry generally.

The information contained under "Capital Structure — Ratings" in the Annual Information Form with respect to the description of ratings categories of various ratings agencies is issuer-related disclosure required by Canadian law and was based solely on public statements by the respective ratings agencies available on their respective public websites.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Christopher A. Montague, Executive Vice President and General Counsel of the Registrant, owns or has the right to acquire Common Shares of the Registrant in an amount that does not exceed 0.05% of the outstanding Common Shares of the Registrant.

Item 6. Indemnification of Directors and Officers.

Under the Bank Act of Canada, a bank may not, by contract, resolution or by-law, limit the liability of its directors for breaches of the Act, including their fiduciary duties imposed under the Act. However, a bank may indemnify a director or officer, a former director or officer or a person who acts or acted, at the bank's request, as a director or officer of or in a similar capacity for another entity, and his or her heirs and personal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him or her because of any civil, criminal, administrative, investigative or other proceeding in which he or she is involved because of that association and may advance funds to him or her for the costs, charges or expenses of such a proceeding, provided however, that a bank may not indemnify such a person unless:

- (1) that person acted honestly and in good faith with a view to the best interests of, as the case may be, the bank or the other entity for which they acted at the bank's request as a director or officer or in a similar capacity; and
- (2) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, that person had reasonable grounds for believing that his or her impugned conduct was lawful.

Under the Bank Act of Canada, these individuals are entitled to be indemnified by the bank in respect of all costs, charges and expenses reasonably incurred by them in connection with the defense of any civil, criminal, administrative, investigative or other proceeding in which he or she is involved because of an association referred to above with the bank or other entity if the person was

not judged by the courts or other competent authority to have committed any fault or omitted to do anything that they ought to have done and fulfilled the conditions set out in (1) and (2) above. A bank may, with the approval of a court, also indemnify these individuals in respect of, or advance amounts to him or her for the costs, charges and expenses of, a proceeding referred to above, in respect of an action by or on behalf of the bank or other entity to procure a judgment in its favor, to which the person is made a party because of an association referred to above with the bank or other entity, if he or she fulfills the conditions set out in (1) and (2) above.

The Registrant's by-laws provide that subject to the limitations contained in the Bank Act of Canada, but without limit to the right of the Registrant to indemnify or advance funds to any person under the Bank Act of Canada or otherwise, the Registrant will indemnify a director or officer or a former director or officer, or a person who acts or acted at the Registrant's request as a director or officer of or in a similar capacity for another entity, and such person's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by such person in respect of any civil, criminal, administrative, investigative or other proceeding to which such person is involved because of that association with the Registrant or other entity. However, the Registrant's bylaws further provide that the Registrant shall not indemnify any such person unless: (i) such person acted honestly and in good faith with a view to the best interests of the Registrant or the other entity for which they acted at the Registrant's request as a director or officer or in a similar capacity; and (ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, such person had reasonable grounds for believing that such person's conduct was lawful. These indemnification provisions could be construed to permit or require indemnification for certain liabilities arising out of U.S. federal securities laws. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable in the United States.

The Registrant maintains directors' and officers' liability insurance policies providing for the insurance on behalf of any person who is or was a director or officer of the Registrant and subsidiary companies against any liability incurred by him or her in any such capacity or arising out of his or her status as such.

The Registrant also maintains liability insurance policies providing for the insurance on behalf of any person who is or was an employee of the Registrant while acting as a director, officer, trustee, governor or executive director of any organization where such service is with the knowledge and consent of the Registrant's Board of Directors against any liability incurred by him or her in any such capacity or arising out of his or her status, provided that such insurance shall not apply to the extent that any such person is entitled to be indemnified by such organization or to the extent that such organization maintains separate insurance of behalf of the person against such liability.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

No.	Exhibit
4.1	TSFG Stock Option Plan (Incorporated by reference to Exhibit 99.1 of TSFG's Registration Statement on Form S-8, Commission File No. 333-158835).
4.2	TSFG Long Term Incentive Plan (Incorporated by reference to Exhibit 99.1 of TSFG's Registration Statement on Form S-8, Commission File No. 161130).
4.3	The South Financial Group, Inc. Amended and Restated Directors' Stock Option Plan (Incorporated by reference to Exhibit 99.1 from TSFG's Registration Statement on Form S-8, Commission File No. 33-82668/82670).
4.4	1995 Nonstatutory Stock Option Plan of Gulf West Banks, Inc (Incorporated by reference to the Gulf West Banks, Inc. Registration Statement on Form S-4, filed on December 4, 1997, Commission File No. 333-57053).
4.5	CNB Florida Bancshares, Inc. 1998 Performance-Based Incentive Plan (Incorporated by reference to the CNB Florida Bancshares, Inc. Registration Statement on Form S-8 filed on December 7, 1998).
4.6	Pointe Financial Corporation 1998 Incentive Compensation and Stock Award Plan (Incorporated by reference to Exhibit 99.1 from TSFG's Registration Statement on Form S-8, Commission File No. 333-124859).

No.	Exhibit
4.7	The South Financial Group, Inc. 401(k) Plan (Incorporated by reference to Exhibit 29 from TSFG's Registration Statement on Form S-8, filed on November 9, 1998, Commission File No. 33-25424).
4.8	The South Financial Group 2005 Executive and Director Deferred Compensation Plan (Incorporated by reference to Exhibit 10.3 of TSFG's Current Report on Form 8-K dated December 10, 2008).
5.1	Opinion of Christopher A. Montague.
5.2	ERISA opinion of Simpson Thacher & Bartlett LLP.
23.1	Consent of Ernst & Young LLP.
24.1	Power of Attorney.

With respect to the 401(k) Plan, in lieu of the opinion of counsel or determination letter contemplated by Item 601(b)(5) of Regulation S-K, the Registrant hereby undertakes that it will submit or has submitted the 401(k) Plan, and any amendments thereto, to the Internal Revenue Service ("IRS") in a timely manner and has made or will make all changes required by the IRS in order to qualify the 401(k) Plan under Section 401 of the Internal Revenue Code of 1986, as amended.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act").
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.
 - (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the Registration Statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

- (2) That, for the purpose of determining any liability of the Registrant under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.
- (3) To remove from registration by means of a post-effective amendment any of the securities being registered hereby which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where

applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered herein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act, and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Toronto, Ontario, Canada on this 1st day of October, 2010.

THE TORONTO-DOMINION BANK

By: /s/ CHRISTOPHER A. MONTAGUE

Name: Christopher A. Montague

Title: Executive Vice President and General Counsel

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
* William E. Bennett	Director	October 1, 2010
* Hugh J. Bolton	Director	October 1, 2010
* John L. Bragg	Director	October 1, 2010
* W. Edmund Clark	President, Chief Executive Officer and Director (principal executive officer)	October 1, 2010
* Wendy K. Dobson	Director	October 1, 2010
* Henry H. Ketcham	Director	October 1, 2010
* Pierre H. Lessard	Director	October 1, 2010
* Brian M. Levitt	Director	October 1, 2010
* Harold H. MacKay	Director	October 1, 2010
* Irene R. Miller	Director	October 1, 2010
* Nadir H. Mohamed	Director	October 1, 2010
* Wilbur J. Prezzano	Director	October 1, 2010
* 	Director	October 1, 2010

Helen K. Sinclair

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>*</u> Carole S. Taylor	Director	October 1, 2010
<u>*</u> John M. Thompson	Director and Chairman	October 1, 2010
<u>/s/ KELVIN TRAN</u> Kelvin Tran	Senior Vice President and Chief Accountant (principal accounting officer)	October 1, 2010
<u>/s/ COLLEEN M. JOHNSTON</u> Colleen M. Johnston	Group Head Finance and Chief Financial Officer (principal financial officer)	October 1, 2010
<u>/s/ CHRISTOPHER A. MONTAGUE</u> Christopher A. Montague		October 1, 2010
<u>* Attorney-in-fact</u>		
Authorized Representative in the United States:		
<u>/s/ BRENDAN O'HALLORAN</u> Name: Brendan O'Halloran Title: Senior Vice President		October 1, 2010

Pursuant to the requirements of the Securities Act of 1933, as amended, the trustees (or other persons who administer The South Financial Group, Inc. 401(k) Plan) have duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greenville, State of South Carolina on the 1st day of October, 2010.

THE SOUTH FINANCIAL GROUP, INC. 401(K) PLAN

By: /s/ DAVID BELL

Name: David Bell

Title: Plan Administrator

INDEX TO EXHIBITS

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4.8	The South Financial Group 2005 Executive and Director Deferred Compensation Plan (Incorporated by reference to Exhibit 10.3 of TSFG's Current Report on Form 8-K dated December 10, 2008).
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Ln # 5120998953
TIN 257-90-2140

ORIGINAL

Lot 19 Blk 20
Garden City

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This document was prepared by REMBRANDT SERVICES - UPSTATE, CAROLINA FIRST BANK, 1746 EBENEZER ROAD, ROCK HILL, South Carolina 29732

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is NOVEMBER 13, 2006. The parties and their addresses are:

MORTGAGOR:

SUNIL V LALLA, a/k/a Sunil Lalla and Sharon Lalla
689 BRIARWOOD RD
LANCASTER, South Carolina 29720

LENDER:

CAROLINA FIRST BANK
Organized and existing under the laws of South Carolina
249 East Main Street
Rock Hill, South Carolina 29731

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

744 S WACCAMAW DRIVE, GARDEN CITY, SC AS FURTHER DESCRIBED IN EXHIBIT 'A' WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in GEORGETOWN County at 744 S WACCAMAW DRIVE, GARDEN CITY, South Carolina 29576.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

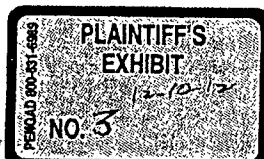
2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$680,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in

SUNIL V LALLA
South Carolina Mortgage
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this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, dated November 13, 2006, from Mortgagor to Lender, with a loan amount of \$880,000.00, with an interest rate of 6.94 percent per year and maturing on November 13, 2011.

B. All Debts. All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

- A. **Payments.** Mortgagor fails to make a payment in full when due.
- B. **Insolvency or Bankruptcy.** The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.
- C. **Death or Incompetency.** Mortgagor dies or is declared legally incompetent.
- D. **Failure to Perform.** Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.
- E. **Other Documents.** A default occurs under the terms of any other document relating to the Secured Debts.
- F. **Other Agreements.** Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.
- G. **Misrepresentation.** Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.
- H. **Judgment.** Mortgagor fails to satisfy or appeal any judgment against Mortgagor.
- I. **Forfeiture.** The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.
- J. **Name Change.** Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.
- K. **Property Transfer.** Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.
- L. **Property Value.** Lender determines in good faith that the value of the Property has declined or is impaired.
- M. **Insecurity.** Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts

immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an

event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. OTHER TERMS. The following are applicable to this Security Instrument:

A. Additional Terms. Notwithstanding the foregoing maximum obligation limit of \$680,000.00 specified in paragraph 2 above, pursuant to the provisions of Section 29-3-50 et seq. of the South Carolina Code of Laws, as amended, this Mortgage shall secure payment of all future advances and/or extensions of credit that may subsequently be made to Mortgagor by Lender, when evidenced by promissory notes specifically referring to this Mortgage and all extensions and renewals thereof, the maximum principal amount of all existing indebtedness, future advances, extensions of credit and all other indebtedness outstanding at any one time and to be secured by this Mortgage not to exceed ONE MILLION TWENTY THOUSAND DOLLARS AND 00/100 CENTS (\$1,020,000.00), plus interest thereon, attorneys' fees and court costs, and any advances necessary for the protection of the security or title thereto, including, but not limited to, advances for taxes and insurance premiums and all other payments or liabilities otherwise provided for in this Mortgage. This Mortgage may secure interest which is deferred, accrued or capitalized as provided in the aforesaid statute.

This Agreement (along with all deposit accounts, mortgages, security agreements, pledge agreements and any and all other security instruments and items of collateral that I have at any time in the past given to you or that I may at any time in the future give to you) shall secure any and all of the obligations that I currently owe you or that I may at any time in the future owe you.

22. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.

23. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

24. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

25. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

26. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

[Signature] (Seal)
SUNIL V LALLA

Individually

[Signature]
(Witness)

[Signature]
(Witness)

ACKNOWLEDGMENT.

(Individual)

State of SC County of Lancaster

I, Brian O. Trimm a notary public for SC, do hereby certify that SUNIL V LALLA personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 13th day of November 2006.

[Signature]
Signature of Notary Public

My commission expires: Sept 1, 2010

EXHIBIT 'A'

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City - Georgetown County - South Carolina - dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

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Instrument 200600025099 Book Page 269 350

TD Bank
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49459 Blackwell Trinnal

200600025099
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
11-17-2006 At 11:42 am.
MORTGAGE 15.00
STATE TAX .00
COUNTY TAX .00
Book 269 Page 342 - 350

Wanda J. Prevette

Blackwell Trinnal, LLC
PO Box 2018
Lancaster, SC 29721

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
	SUNIL V LALLA		11/13/06	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$680,000.00	Not Applicable	6.84%	11/13/11	Commercial
Creditor Use Only				

PROMISSORY NOTE

(Commercial - Single Advance - Fixed Rate)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 13, 2006. The parties and their addresses are:

LENDER:

CAROLINA FIRST BANK
248 East Main Street
Rock Hill, South Carolina 29731
Telephone: (803) 324-2500

BORROWER:

SUNIL V LALLA
689 BRIARWOOD RD
LANCASTER, South Carolina 29720

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. Preamble. The preamble "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. Loan Documents. Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$680,000.00 (Principal) plus interest from November 13, 2006 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.84 percent (Interest Rate).

A. Interest After Default. If you declare a default under the terms of this Loan, including for failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue At Carolina First Bank Prime Rate + 4.00%. For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note or obligation will be limited to the Maximum Lawful Amount of interest allowed by state or federal law. Amounts collected in excess of the Maximum Lawful Amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.

D. Accrual. During the scheduled term of this Loan interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. Nonrefundable Fees and Charges. The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Flood Determination. A(n) Flood Determination fee of \$8.00 payable from separate funds on or before today's date.

Document Preparation. A(n) Document Preparation fee of \$250.00 payable from separate funds on or before today's date.

Appraisal. A(n) Appraisal fee of \$400.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay those additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. Late Charge. If a payment is more than 20 days late, I will be charged 8.000 percent of the Unpaid Portion of Payment or \$25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

SUNIL V LALLA
South Carolina Promissory Note
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D. Returned Check Charge. I agree to pay a fee not to exceed \$25.00 for each check, negotiable order of withdrawal or draft I issue in connection with this Loan that is returned because it has been dishonored.

6. PAYMENT. I agree to pay this Note as follows: I Agree To Pay This Note In 60 Payments. This Note Is Amortized Over 240 Payments. I Will Make 60 Payments Of \$5,250.00 Beginning January 5, 2007 And On The 5th Day Of Each Month Thereafter. A Single "Balloon Payment" Of The Entire Unpaid Balance Of Principle And Interest Will Be Due On November 13, 2011..

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. The actual amount of my final payment will depend on my payment record.

7. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

8. LOAN PURPOSE. The purpose of this Loan is REFINANCE INCOME PRODUCING PROPERTY.

9. SECURITY. This Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Leases And Rents Assignment - 744 S WACCAMAW DRIVE	SUNIL V LALLA
Mortgage - 744 S WACCAMAW DRIVE	SUNIL V LALLA

10. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

11. DUE ON SALE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 501), as applicable.

12. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

SUNIL V LALLA
South Carolina Promissory Note
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B. **No Waiver By Lender.** Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. **REMEDIES.** After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. **Acceleration.** You may make all or any part of the amount owing by the terms of this Note immediately due.

B. **Sources.** You may use any and all remedies you have under state or federal law or in any Loan Document.

C. **Insurance Benefits.** You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. **Payments Made On My Behalf.** Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. **Set-Off.** You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. **Waiver.** Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. **COLLECTION EXPENSES AND ATTORNEYS' FEES.** On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. **COMMISSIONS.** I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. **WARRANTIES AND REPRESENTATIONS.** I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. **INSURANCE.** I agree to obtain the insurance described in this Loan Agreement.

A. **Property Insurance.** I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Loan.

B. **Flood Insurance Is Required on Some or All of the Property.** I will insure the real property securing this Loan against hazards caused by flooding as described by other documents I sign for this Loan.

C. **Insurance Warranties.** I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for this Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

18. **APPLICABLE LAW.** This Note is governed by the laws of South Carolina, the United States of America and to the extent required, by the laws of the jurisdiction where the Property is located.

19. **JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS.** My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not affect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

20. **AMENDMENT, INTEGRATION AND SEVERABILITY.** This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

21. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

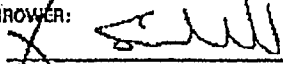
22. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

23. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

24. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

25. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:


SUNIL V. LALLA

(Seal)

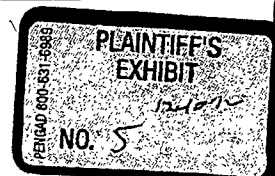
Individually

2884922-9001

Accrual Basis

ROA000205

DATE	TRANSACTION TYPE	NUMBER OF DAYS	PRINCIPAL	INTEREST	LATE FEES	MISC FEES	ESOROW	REMAINING PRINCIPAL	INTEREST RATE	ACCUMULATED INTEREST	REMAINING INTEREST
11/13/06	Origination		(680,000.00)	0.00				680,000.00	6.94%		0.00
01/16/07	Payment	64	0.00	5,250.00				680,000.00	6.94%	6,389.69	3,139.69
02/13/07	Payment	28	0.00	5,250.00				680,000.00	6.94%	3,670.49	1,560.18
03/12/07	Payment	27	1,068.04	4,181.96				678,931.96	6.94%	3,539.40	917.62
04/13/07	Payment	32	1,191.19	4,058.81				677,740.77	6.94%	4,188.28	1,047.06
05/10/07	Payment	27	1,328.56	3,921.44				676,412.21	6.94%	3,527.64	653.26
06/08/07	Payment	29	1,206.41	4,043.59				675,205.80	6.94%	3,781.52	391.19
07/13/07	Payment	35	1,344.36	3,905.64				673,861.44	6.94%	4,555.76	1,041.32
08/08/07	Payment	26	1,220.86	4,029.14				672,640.58	6.94%	3,377.54	389.72
09/07/07	Payment	30	1,229.51	4,020.49				671,411.07	6.94%	3,890.10	259.34
10/01/07	Payment	24	1,366.54	3,883.46				670,044.53	6.94%	3,106.40	(517.73)
11/13/07	Payment	43	1,246.79	4,003.21				668,797.74	6.94%	5,554.30	1,033.36
12/07/07	Payment	24	1,380.20	3,869.80				667,417.54	6.94%	3,094.30	257.86
01/11/08	Payment	35	1,260.90	3,989.10				666,156.64	6.94%	4,503.21	771.98
02/08/08	Payment	28	1,267.52	3,982.48				664,889.12	6.94%	3,595.77	385.26
03/07/08	Payment	28	1,532.17	3,717.83				663,356.95	6.94%	3,588.92	256.36
04/04/08	Payment	28	1,285.11	3,964.89				662,071.84	6.94%	3,580.65	(127.88)
05/13/08	Payment	39	1,421.27	3,828.73				660,650.57	6.94%	4,977.68	1,021.07
05/30/08	Payment	17	1,299.68	3,950.32				659,350.89	6.94%	2,165.10	(764.16)
07/07/08	Payment	38	1,438.26	3,811.74				657,912.63	6.94%	4,830.11	254.22
08/08/08	Payment	32	1,317.69	3,932.31				656,594.94	6.94%	4,058.59	380.50
08/28/08	Payment	20	1,325.35	3,924.65				655,269.59	6.94%	2,531.54	(1,012.62)
10/06/08	Payment	39	1,462.40	3,787.60				653,807.19	6.94%	4,928.54	126.32
11/10/08	Payment	35	1,342.50	3,907.50				652,464.69	6.94%	4,411.38	630.20



ROA000206

DATE	TRANSACTION TYPE	NUMBER OF DAYS	PRINCIPAL	INTEREST	LATE FEES	MISC FEES	ESGROW	REMAINING PRINCIPAL	INTEREST RATE	ACCRUED INTEREST	REMAINING INTEREST
12/08/08	Payment	28	1,475.28	3,774.72				650,989.41	6.94%	3,521.86	377.34
01/12/09	Payment	35	1,358.76	3,891.24				649,630.65	6.94%	4,392.37	878.47
02/05/09	Payment	24	1,365.90	3,884.10				648,264.75	6.94%	3,005.62	(0.00)
03/13/09	Payment	36	1,750.82	3,499.18				646,513.93	6.94%	4,498.96	999.77
04/03/09	Payment	21	1,383.66	3,866.34				645,130.27	6.94%	2,617.30	(249.26)
05/07/09	Payment	34	1,519.53	3,730.47				643,610.74	6.94%	4,228.47	248.74
06/08/09	Payment	32	1,403.12	3,848.88				642,207.62	6.94%	3,970.36	372.22
07/13/09	Payment	35	1,535.09	3,714.91				640,672.53	6.94%	4,333.12	990.43
08/10/09	Payment	28	1,418.90	3,831.10				639,253.63	6.94%	3,458.21	617.54
09/04/09	Payment	25	1,428.38	3,821.62				637,825.25	6.94%	3,080.85	(123.24)
10/13/09	Payment	39	1,561.52	3,688.48				636,263.73	6.94%	4,795.38	983.67
11/06/09	Payment	24	1,445.21	3,804.79				634,818.52	6.94%	2,943.78	122.66
12/04/09	Payment	28	1,578.36	3,671.64				633,240.16	6.94%	3,426.61	(122.37)
01/08/10	Payment	35	1,465.99	3,784.01				631,774.17	6.94%	4,272.61	366.23
02/10/10	Payment	33	1,473.60	3,776.40				630,300.57	6.94%	4,019.14	608.97
03/09/10	Payment	27	1,846.35	3,403.65				628,454.22	6.94%	3,280.71	486.03
04/02/10	Payment	24	1,492.87	3,757.13				626,961.35	6.94%	2,907.65	(363.45)
05/24/10	Payment	52	1,624.93	3,625.07				625,336.42	6.94%	6,284.94	2,296.42
06/15/10	Payment	22	1,506.97	3,743.03				623,829.45	6.94%	2,652.12	1,205.51
07/09/10	Payment	24	1,639.28	3,610.72				622,190.17	6.94%	2,886.25	481.04
08/25/10	L.Fee Assessed	47			(262.50)			622,190.17	6.94%	5,637.39	6,118.43
09/27/10	L.Fee Assessed	33			(262.50)			622,190.17	6.94%	3,958.17	10,076.59
10/25/10	L.Fee Assessed	28			(262.50)			622,190.17	6.94%	3,358.44	13,435.04
11/26/10	L.Fee Assessed	32			(262.50)			622,190.17	6.94%	3,838.22	17,273.26
12/27/10	L.Fee Assessed	31			(262.50)			622,190.17	6.94%	3,718.28	20,991.54
01/25/11	L.Fee Assessed	29			(262.50)			622,190.17	6.94%	3,478.39	24,469.93
02/25/11	L.Fee Assessed	31			(262.50)			622,190.17	6.94%	3,718.28	28,186.20

ROA000207

[illegible]

DATE	TRANSACTION TYPE	NUMBER OF DAYS	PRINCIPAL	INTEREST	DATE FEES	MISC FEES	ESCROW	REMAINING PRINCIPAL	INTEREST RATE	ACCRUED INTEREST	REMAINING INTEREST
				1307	334.90	3721.2					
				1308	321.15	371029.12					
				1309	363.00	731429.12					
				1310	1308.40	872629.12					
				1311	3310.00	8731429.12					
				1312	2105.00	109931.12					
				1313	3721.20	1120.2					
				1314	353.75	1176029.12					
				1103	1103.00	1103.00					

ROA000208

✱

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank,)

C/A No. 2011-CP-22-00342

Plaintiff,)

v.)

AFFIDAVIT OF JASON BRISTOL

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)
_____)

Personally appeared before me, Jason Bristol, who first being duly sworn, deposes and says:

1. I am a vice president with TD Bank, N.A. TD Bank is the successor by merger to Carolina First Bank, N.A. Prior to the merger of Carolina First and TD Bank, I was a vice president and commercial loan officer with Carolina First.

2. One of the commercial accounts under my management is the loan account that is the subject of this lawsuit. With regard to that account, I am a custodian of records for TD Bank. The testimony set forth in this affidavit is based upon my personal knowledge or belief, or is reflected in records that TD Bank and its predecessor, Carolina First, have generated and maintained in the ordinary course of business.

3. Based upon information that Sunil and Sharon Lalla have provided the Bank over the course of several years, the Lallas reside in Lancaster County, South Carolina.

4. The Lallas own several pieces of rental property, including a beach house located at 744 S. Waccamaw Drive, Garden City, Georgetown County, South Carolina

(the "Property"). The Lallas have always listed the Property as income producing rental property on copies of the financial statements and tax returns that they have provided to TD Bank and its predecessor, Carolina First Bank.

5. On or about November 13, 2006, Carolina First Bank made a commercial loan to Sunil Lalla in the original principal sum of Six Hundred Eighty Thousand and 00/100 Dollars (\$680,000.00)(the "Loan"). The Loan was a refinance of a prior commercial loan covering the Property. The Loan was secured by a mortgage covering the Property.

6. The Loan closed on November 13, 2006. At closing, Dr. Lalla executed a Commercial Promissory Note (the "Note"). In addition, Dr. Lalla and Ms. Lalla executed a mortgage covering the Property (the "Mortgage"). The Lallas also executed a form whereby they waived their statutory appraisal rights. A true and accurate copy of the Note is attached as Exhibit A to this affidavit, and is incorporated by reference. A true and accurate copy of the Mortgage is attached as Exhibit B to this affidavit, and is incorporated by reference. A true and accurate copy of the Waiver of Appraisal Rights is attached as Exhibit C and is incorporated by reference.

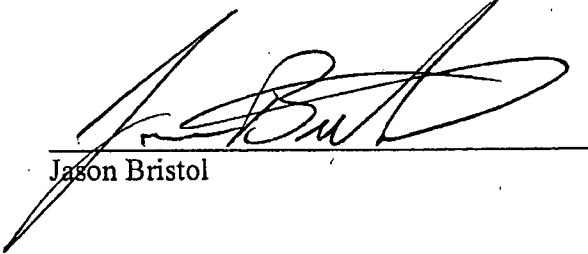
7. As successor by merger to Carolina First Bank, TD Bank is the owner and holder of the Note and Mortgage.

8. Dr. Lalla has failed and/or refused to make payments of principal and interest as required by the terms of the Note. As a result, the Note and Mortgage are in default. Pursuant to the terms of the Note and Mortgage, TD Bank has elected to accelerate the Note and to declare all sums immediately due and owing.

9. Because the Loan is a commercial loan, the Loan is not eligible for modification under the federal Home Affordable Mortgage Program or similar loan modification program. Furthermore, the Loan is not secured by the Lalla's primary residence.

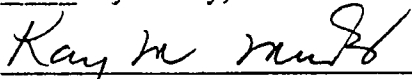
10. There was Six Hundred Sixty Nine Thousand Eight and 10/100 dollars (\$669,008.10) due and owing under the Note, as of July 15, 2011. Additional interest continues to accrue at the rate of approximately \$119.94 per day.

11. TD Bank does not waive, but expressly reserves, its right to a deficiency judgment.



Jason Bristol

Sworn to before me this
29th day of July, 2011.


Notary Public for South Carolina

My commission expires: May 5, 2018

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
	SUNIL V LALLA		11/13/06	
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
\$680,000.00	Not Applicable	6.94%	11/13/11	Commercial
Creditor Use Only				

PROMISSORY NOTE

(Commercial - Single Advance - Fixed Rate)

DATE AND PARTIES. The date of this Promissory Note (Note) is November 13, 2006. The parties and their addresses are:

LENDER:

CAROLINA FIRST BANK
249 East Main Street
Rock Hill, South Carolina 29731
Telephone: (803) 324-2600

BORROWER:

SUNIL V LALLA
689 BRIARWOOD RD
LANCASTER, South Carolina 29720

1. DEFINITIONS. As used in this Note, the terms have the following meanings:

- A. **Pronouns.** The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together. "You" and "Your" refer to the Lender.
- B. **Note.** Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.
- C. **Loan.** Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.
- D. **Loan Documents.** Loan Documents refer to all the documents executed as a part of or in connection with the Loan.
- E. **Property.** Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.
- F. **Percent.** Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of \$680,000.00 (Principal) plus interest from November 13, 2006 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 6.94 percent (Interest Rate).

A. **Interest After Default.** If you declare a default under the terms of this Loan, including for failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue At Carolina First Bank Prime Rate + 4.00%. For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

B. **Maximum Interest Amount.** Any amount assessed or collected as interest under the terms of this Note or obligation will be limited to the Maximum Lawful Amount of interest allowed by state or federal law. Amounts collected in excess of the Maximum Lawful Amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. **Statutory Authority.** The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-605, 37-3-105 and 37-10-101 et. seq.

D. **Accrual.** During the scheduled term of this Loan interest accrues using an Actual/360 days counting method.

4. ADDITIONAL CHARGES. As additional consideration, I agree to pay, or have paid, these additional fees and charges.

A. **Nonrefundable Fees and Charges.** The following fees are earned when collected and will not be refunded if I prepay this Note before the scheduled maturity date.

Flood Determination. A(n) Flood Determination fee of \$8.00 payable from separate funds on or before today's date.

Document Preparation. A(n) Document Preparation fee of \$250.00 payable from separate funds on or before today's date.

Appraisal. A(n) Appraisal fee of \$400.00 payable from separate funds on or before today's date.

5. REMEDIAL CHARGES. In addition to interest or other finance charges, I agree that I will pay these additional fees based on my method and pattern of payment. Additional remedial charges may be described elsewhere in this Note.

A. **Late Charge.** If a payment is more than 20 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment or \$25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

SUNIL V LALLA
South Carolina Promissory Note
SC/4Xtemphtw00838500004823014111308N

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ROA000212

EXHIBIT

tabbies

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6. Returned Check Charge. I agree to pay a fee not to exceed \$25.00 for each check, negotiable order of withdrawal or draft I issue in connection with this Loan that is returned because it has been dishonored.

7. PAYMENT. I agree to pay this Note as follows: I Agree To Pay This Note In 60 Payments. This Note Is Amortized Over 240 Payments. I Will Make 60 Payments Of \$5,250.00 Beginning January 5, 2007 And On The 5th Day Of Each Month Thereafter. A Single "Balloon Payment" Of The Entire Unpaid Balance Of Principle And Interest Will Be Due On November 13, 2011..

Payments will be rounded to the nearest \$.01. With the final payment I also agree to pay any additional fees or charges owing and the amount of any advances you have made to others on my behalf. Payments scheduled to be paid on the 29th, 30th or 31st day of a month that contains no such day will, instead, be made on the last day of such month.

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. The actual amount of my final payment will depend on my payment record.

7. PREPAYMENT. I may prepay this Loan in full or in part at any time. Any partial prepayment will not excuse any later scheduled payments until I pay in full.

8. LOAN PURPOSE. The purpose of this Loan is REFINANCE INCOME PRODUCING PROPERTY.

9. SECURITY. This Loan is secured by separate security instruments prepared together with this Note as follows:

Document Name	Parties to Document
Leases And Rents Assignment - 744 S WACCAMAW DRIVE	SUNIL V LALLA
Mortgage - 744 S WACCAMAW DRIVE	SUNIL V LALLA

10. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against me or any co-signer, endorser, surety or guarantor of this Note or any other obligations I have with you.

C. Death or Incompetency. I die or am declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other Loan Document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

G. Misrepresentation. I make any verbal or written statement or provide any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. I fail to satisfy or appeal any judgment against me.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. You determine in good faith that the value of the Property has declined or is impaired.

M. Insecurity. You determine in good faith that a material adverse change has occurred in my financial condition from the conditions set forth in my most recent financial statement before the date of this Note or that the prospect for payment or performance of the Loan is impaired for any reason.

11. DUE ON SALE. You may, at your option, declare the entire balance of this Note to be immediately due and payable upon the creation of, or contract for the creation of, any transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 601), as applicable.

12. WAIVERS AND CONSENT. To the extent not prohibited by law, I waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.

A. Additional Waivers By Borrower. In addition, I, and any party to this Note and Loan, to the extent permitted by law, consent to certain actions you may take, and generally waive defenses that may be available based on these actions or based on the status of a party to this Note.

(1) You may renew or extend payments on this Note, regardless of the number of such renewals or extensions.

(2) You may release any Borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.

(3) You may release, substitute or impair any Property securing this Note.

(4) You, or any institution participating in this Note, may invoke your right of set-off.

(5) You may enter into any sales, repurchases or participations of this Note to any person in any amounts and I waive notice of such sales, repurchases or participations.

(6) I agree that any of us signing this Note as a Borrower is authorized to modify the terms of this Note or any instrument securing, guarantying or relating to this Note.

B. No Waiver By Lender. Your course of dealing, or your forbearance from, or delay in, the exercise of any of your rights, remedies, privileges or right to insist upon my strict performance of any provisions contained in this Note, or any other Loan Document, shall not be construed as a waiver by you, unless any such waiver is in writing and is signed by you.

13. REMEDIES. After I default, and after you give any legally required notice and opportunity to cure the default, you may at your option do any one or more of the following.

A. Acceleration. You may make all or any part of the amount owing by the terms of this Note immediately due.

B. Sources. You may use any and all remedies you have under state or federal law or in any Loan Document.

C. Insurance Benefits. You may make a claim for any and all insurance benefits or refunds that may be available on my default.

D. Payments Made On My Behalf. Amounts advanced on my behalf will be immediately due and may be added to the balance owing under the terms of this Note, and accrue interest at the highest post-maturity interest rate.

E. Set-Off. You may use the right of set-off. This means you may set-off any amount due and payable under the terms of this Note against any right I have to receive money from you.

My right to receive money from you includes any deposit or share account balance I have with you; any money owed to me on an item presented to you or in your possession for collection or exchange; and any repurchase agreement or other non-deposit obligation. "Any amount due and payable under the terms of this Note" means the total amount to which you are entitled to demand payment under the terms of this Note at the time you set-off.

Subject to any other written contract, if my right to receive money from you is also owned by someone who has not agreed to pay this Note, your right of set-off will apply to my interest in the obligation and to any other amounts I could withdraw on my sole request or endorsement.

Your right of set-off does not apply to an account or other obligation where my rights arise only in a representative capacity. It also does not apply to any Individual Retirement Account or other tax-deferred retirement account.

You will not be liable for the dishonor of any check when the dishonor occurs because you set-off against any of my accounts. I agree to hold you harmless from any such claims arising as a result of your exercise of your right of set-off.

F. Waiver. Except as otherwise required by law, by choosing any one or more of these remedies you do not give up your right to use any other remedy. You do not waive a default if you choose not to use a remedy. By electing not to use any remedy, you do not waive your right to later consider the event a default and to use any remedies if the default continues or occurs again.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, I agree to pay all expenses of collection, enforcement or protection of your rights and remedies under this Note or any other Loan Document. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of this Note. All fees and expenses will be secured by the Property I have granted to you, if any. In addition, to the extent permitted by the United States Bankruptcy Code, I agree to pay the reasonable attorneys' fees incurred by you to protect your rights and interests in connection with any bankruptcy proceedings initiated by or against me.

15. COMMISSIONS. I understand and agree that you (or your affiliate) will earn commissions or fees on any insurance products, and may earn such fees on other services that I buy through you or your affiliate.

16. WARRANTIES AND REPRESENTATIONS. I have the right and authority to enter into this Note. The execution and delivery of this Note will not violate any agreement governing me or to which I am a party.

17. INSURANCE. I agree to obtain the insurance described in this Loan Agreement.

A. Property Insurance. I will insure or retain insurance coverage on the Property and abide by the insurance requirements of any security instrument securing this Loan.

B. Flood Insurance Is Required on Some or All of the Property. I will insure the real property securing this Loan against hazards caused by flooding as described by other documents I sign for this Loan.

C. Insurance Warranties. I agree to purchase any insurance coverages that are required, in the amounts you require, as described in this or any other documents I sign for this Loan. I will provide you with continuing proof of coverage. I will buy or provide insurance from a firm licensed to do business in the State where the Property is located. If I buy or provide the insurance from someone other than you, the firm will be reasonably acceptable to you. I will have the insurance company name you as loss payee on any insurance policy. You will apply the insurance proceeds toward what I owe you on the outstanding balance. I agree that if the insurance proceeds do not cover the amounts I still owe you, I will pay the difference. I will keep the insurance until all debts secured by this agreement are paid. If I want to buy the insurance from you, I have signed a separate statement agreeing to this purchase.

18. APPLICABLE LAW. This Note is governed by the laws of South Carolina, the United States of America and to the extent required, by the laws of the jurisdiction where the Property is located.

19. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. My obligation to pay the Loan is independent of the obligation of any other person who has also agreed to pay it. You may sue me alone, or anyone else who is obligated on the Loan, or any number of us together, to collect the Loan. Extending the Loan or new obligations under the Loan, will not effect my duty under the Loan and I will still be obligated to pay the Loan. This Note shall inure to the benefit of and be enforceable by you and your successors and assigns and shall be binding upon and enforceable against me and my personal representatives, successors, heirs and assigns.

20. AMENDMENT, INTEGRATION AND SEVERABILITY. This Note may not be amended or modified by oral agreement. No amendment or modification of this Note is effective unless made in writing and executed by you and me. This Note and the other Loan Documents are the complete and final expression of the agreement. If any provision of this Note is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

21. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Note.

22. NOTICE, FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Borrower will be deemed to be notice to all Borrowers. I will inform you in writing of any change in my name, address or other application information. I will provide you any financial statement or information you request. All financial statements and information I give you will be correct and complete. I agree to sign, deliver, and file any additional documents or certifications that you may consider necessary to perfect, continue, and preserve my obligations under this Loan and to confirm your lien status on any Property. Time is of the essence.

23. CREDIT INFORMATION. I agree to supply you with whatever information you reasonably request. You will make requests for this information without undue frequency, and will give me reasonable time in which to supply the information.

24. ERRORS AND OMISSIONS. I agree, if requested by you, to fully cooperate in the correction, if necessary, in the reasonable discretion of you of any and all loan closing documents so that all documents accurately describe the loan between you and me. I agree to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with your requests within thirty (30) days.

25. SIGNATURES. By signing under seal, I agree to the terms contained in this Note. I also acknowledge receipt of a copy of this Note.

BORROWER:

 (Seal)
SUNIL V LALLA
Individually

Lot 19 Blk 20
Garden City

Space Above This Line For Recording Data

This document was prepared by REMBRANDT SERVICES - UPSTATE, CAROLINA FIRST BANK, 1746 EBENEZER ROAD, ROCK HILL, South Carolina 29732

MORTGAGE

DATE AND PARTIES. The date of this Mortgage (Security Instrument) is NOVEMBER 13, 2006. The parties and their addresses are:

MORTGAGOR:
SUNIL V LALLA, a/k/a Sunil Lalla and Sharon Lalla^W
589 BRIARWOOD RD
LANCASTER, South Carolina 29720

LENDER:
CAROLINA FIRST BANK
Organized and existing under the laws of South Carolina
249 East Main Street
Rock Hill, South Carolina 29731

1. CONVEYANCE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debts and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys and mortgages to Lender, the following described property:

744 S WACCAMAW DRIVE, GARDEN CITY, SC AS FURTHER DESCRIBED IN EXHIBIT 'A' WHICH IS ATTACHED HERETO AND MADE A PART HEREOF

The property is located in GEORGETOWN County at 744 S WACCAMAW DRIVE, GARDEN CITY, South Carolina 29576.

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described (all referred to as Property). This Security Instrument will remain in effect until the Secured Debts and all underlying agreements have been terminated in writing by Lender.

2. MAXIMUM OBLIGATION LIMIT. The total principal amount secured by this Security Instrument at any one time will not exceed \$680,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in

SUNIL V LALLA
South Carolina Mortgage
SC/4Xtempftw00836500004823014111308Y

996 Bankers Systems, Inc., St. Cloud, MN *Express*

ROA000216

EXHIBIT

2

this Security Instrument. Interest under the Note will be deferred, accrued or capitalized; however, Lender will not be required to defer, accrue or capitalize any interest except as provided in the Note.

3. SECURED DEBTS. The term "Secured Debts" includes and this Security Instrument will secure each of the following:

A. Specific Debts. The following debts and all extensions, renewals, refinancings, modifications and replacements. A promissory note or other agreement, dated November 13, 2006, from Mortgagor to Lender, with a loan amount of \$680,000.00, with an interest rate of 6.94 percent per year and maturing on November 13, 2011.

B. All Debts. All present and future debts from Mortgagor to Lender, even if this Security Instrument is not specifically referenced, or if the future debt is unrelated to or of a different type than this debt. If more than one person signs this Security Instrument, each agrees that it will secure debts incurred either individually or with others who may not sign this Security Instrument. Nothing in this Security Instrument constitutes a commitment to make additional or future loans or advances. Any such commitment must be in writing. In the event that Lender fails to provide any required notice of the right of rescission, Lender waives any subsequent security interest in the Mortgagor's principal dwelling that is created by this Security Instrument. This Security Instrument will not secure any debt for which a non-possessory, non-purchase money security interest is created in "household goods" in connection with a "consumer loan," as those terms are defined by federal law governing unfair and deceptive credit practices. This Security Instrument will not secure any debt for which a security interest is created in "margin stock" and Lender does not obtain a "statement of purpose," as defined and required by federal law governing securities.

C. Sums Advanced. All sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

4. PAYMENTS. Mortgagor agrees that all payments under the Secured Debts will be paid when due and in accordance with the terms of the Secured Debts and this Security Instrument.

5. WARRANTY OF TITLE. Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell and mortgage the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances of record.

6. PRIOR SECURITY INTERESTS. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

7. CLAIMS AGAINST TITLE. Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

8. DUE ON SALE. Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any transfer or sale of all or any part of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. WARRANTIES AND REPRESENTATIONS. Mortgagor has the right and authority to enter into this Security Instrument. The execution and delivery of this Security Instrument will not violate any agreement governing Mortgagor or to which Mortgagor is a party.

10. PROPERTY CONDITION, ALTERATIONS AND INSPECTION. Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor, and of any loss or damage to the Property.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Security Instrument. Mortgagor will not partition or subdivide the Property without Lender's prior written consent.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender will give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property will be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. AUTHORITY TO PERFORM. If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor will not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. DEFAULT. Mortgagor will be in default if any of the following occur:

A. Payments. Mortgagor fails to make a payment in full when due.

B. Insolvency or Bankruptcy. The death, dissolution or insolvency of, appointment of a receiver by or on behalf of, application of any debtor relief law, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against Mortgagor, Borrower, or any co-signer, endorser, surety or guarantor of this Security Instrument or any other obligations Borrower has with Lender.

C. Death or Incompetency. Mortgagor dies or is declared legally incompetent.

D. Failure to Perform. Mortgagor fails to perform any condition or to keep any promise or covenant of this Security Instrument.

E. Other Documents. A default occurs under the terms of any other document relating to the Secured Debts.

F. Other Agreements. Mortgagor is in default on any other debt or agreement Mortgagor has with Lender.

G. Misrepresentation. Mortgagor makes any verbal or written statement or provides any financial information that is untrue, inaccurate, or conceals a material fact at the time it is made or provided.

H. Judgment. Mortgagor fails to satisfy or appeal any judgment against Mortgagor.

I. Forfeiture. The Property is used in a manner or for a purpose that threatens confiscation by a legal authority.

J. Name Change. Mortgagor changes Mortgagor's name or assumes an additional name without notifying Lender before making such a change.

K. Property Transfer. Mortgagor transfers all or a substantial part of Mortgagor's money or property. This condition of default, as it relates to the transfer of the Property, is subject to the restrictions contained in the DUE ON SALE section.

L. Property Value. Lender determines in good faith that the value of the Property has declined or is impaired.

M. Insecurity. Lender determines in good faith that a material adverse change has occurred in Mortgagor's financial condition from the conditions set forth in Mortgagor's most recent financial statement before the date of this Security Instrument or that the prospect for payment or performance of the Secured Debts is impaired for any reason.

13. REMEDIES. On or after default, Lender may use any and all remedies Lender has under state or federal law or in any document relating to the Secured Debts. Any amounts advanced on Mortgagor's behalf will be immediately due and may be added to the balance owing under the Secured Debts. Lender may make a claim for any and all insurance benefits or refunds that may be available on Mortgagor's default.

Subject to any right to cure, required time schedules or any other notice rights Mortgagor may have under federal and state law, Lender may make all or any part of the amount owing by the terms of the Secured Debts

immediately due and foreclose this Security Instrument in a manner provided by law upon the occurrence of a default or anytime thereafter.

All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether or not expressly set forth. The acceptance by Lender of any sum in payment or partial payment on the Secured Debts after the balance is due or is accelerated or after foreclosure proceedings are filed will not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

At any time after default (whether before or after judgment), Lender may take possession of any collateral for the loan or obtain the appointment of a receiver pursuant to SC Code §15-65-10, et seq. or otherwise as permitted by law. Any receiver shall be vested with all of the powers, rights and duties of receivers generally. Lender or any receiver may collect any rents and profits from the collateral and may rent, sell, operate or manage the collateral without notice to Mortgagor or any other party (Mortgagor waives any right to notice) and without consideration of the value of the collateral or Mortgagor's solvency. All amounts collected by Lender or the receiver shall, after the expenses of taking possession, renting, selling, operating and managing (and of any receivership), be applied to payment of the loan. If Lender should take possession or if a receiver should be appointed or if there should be a sale of the collateral, Mortgagor, or any person in possession of the collateral, shall become a tenant at will of Lender, the receiver or the purchaser and may be removed by a writ of ejectment, summary ejectment or other lawful remedy.

14. COLLECTION EXPENSES AND ATTORNEYS' FEES. On or after Default, to the extent permitted by law, Mortgagor agrees to pay all expenses of collection, enforcement or protection of Lender's rights and remedies under this Security Instrument or any other document relating to the Secured Debts. Mortgagor agrees to pay expenses for Lender to inspect and preserve the Property and for any recordation costs of releasing the Property from this Security Instrument. Expenses include, but are not limited to, attorneys' fees, court costs and other legal expenses. These expenses are due and payable immediately. If not paid immediately, these expenses will bear interest from the date of payment until paid in full at the highest interest rate in effect as provided for in the terms of the Secured Debts. In addition, to the extent permitted by the United States Bankruptcy Code, Mortgagor agrees to pay the reasonable attorneys' fees incurred by Lender to protect Lender's rights and interests in connection with any bankruptcy proceedings initiated by or against Mortgagor.

15. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES. As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substance," "hazardous waste," "hazardous substance," or "regulated substance" under any Environmental Law.

Mortgagor represents, warrants and agrees that:

A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.

B. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.

C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.

D. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor has no knowledge of or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an

event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.

E. Except as previously disclosed and acknowledged in writing to Lender, Mortgagor and every tenant have been, are and will remain in full compliance with any applicable Environmental Law.

F. Except as previously disclosed and acknowledged in writing to Lender, there are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.

G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.

H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.

I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.

J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.

K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Security Instrument and in return Mortgagor will provide Lender with collateral of at least equal value to the Property without prejudice to any of Lender's rights under this Security Instrument.

L. Notwithstanding any of the language contained in this Security Instrument to the contrary, the terms of this section will survive any foreclosure or satisfaction of this Security Instrument regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.

16. CONDEMNATION. Mortgagor will give Lender prompt notice of any pending or threatened action by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

17. INSURANCE. Mortgagor agrees to keep the Property insured against the risks reasonably associated with the Property. Mortgagor will maintain this insurance in the amounts Lender requires. This insurance will last until the Property is released from this Security Instrument. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debts. Mortgagor may choose the insurance company, subject to Lender's approval, which will not be unreasonably withheld.

All insurance policies and renewals will include a standard "mortgage clause" and, where applicable, "loss payee clause." If required by Lender, Mortgagor agrees to maintain comprehensive general liability insurance and rental loss or business interruption insurance in amounts and under policies acceptable to Lender. The comprehensive general liability insurance must name Lender as an additional insured. The rental loss or business interruption insurance must be in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing).

Mortgagor will give Lender and the insurance company immediate notice of any loss. All insurance proceeds will be applied to restoration or repair of the Property or to the Secured Debts, at Lender's option. If Lender acquires the Property in damaged condition, Mortgagor's rights to any insurance policies and proceeds will pass to Lender to the extent of the Secured Debts.

Mortgagor will immediately notify Lender of cancellation or termination of insurance. If Mortgagor fails to keep the Property insured, Lender may obtain insurance to protect Lender's interest in the Property and Mortgagor will pay for the insurance on Lender's demand. Lender may demand that Mortgagor pay for the insurance all at once, or Lender may add the insurance premiums to the balance of the Secured Debts and charge interest on it at the rate that applies to the Secured Debts. This insurance may include coverages not originally required of Mortgagor, may be written by a company other than one Mortgagor would choose, and may be written at a higher rate than Mortgagor could obtain if Mortgagor purchased the insurance. Mortgagor acknowledges and agrees that Lender or one of Lender's affiliates may receive commissions on the purchase of this insurance.

18. ESCROW FOR TAXES AND INSURANCE. Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

19. CO-SIGNERS. If Mortgagor signs this Security Instrument but is not otherwise obligated to pay the Secured Debts, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debts and Mortgagor does not agree by signing this Security Instrument to be personally liable on the Secured Debts. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws.

20. WAIVERS. Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

21. OTHER TERMS. The following are applicable to this Security Instrument:

A. Additional Terms. Notwithstanding the foregoing maximum obligation limit of \$680,000.00 specified in paragraph 2 above, pursuant to the provisions of Section 29-3-50 et seq. of the South Carolina Code of Laws, as amended, this Mortgage shall secure payment of all future advances and/or extensions of credit that may subsequently be made to Mortgagor by Lender, when evidenced by promissory notes specifically referring to this Mortgage and all extensions and renewals thereof, the maximum principal amount of all existing indebtedness, future advances, extensions of credit and all other indebtedness outstanding at any one time and to be secured by this Mortgage not to exceed ONE MILLION TWENTY THOUSAND DOLLARS AND 00/100 CENTS (\$1,020,000.00), plus interest thereon, attorneys' fees and court costs, and any advances necessary for the protection of the security or title thereto, including, but not limited to, advances for taxes and insurance premiums and all other payments or liabilities otherwise provided for in this Mortgage. This Mortgage may secure interest which is deferred, accrued or capitalized as provided in the aforesaid statute.

This Agreement (along with all deposit accounts, mortgages, security agreements, pledge agreements and any and all other security instruments and items of collateral that I have at any time in the past given to you or that I may at any time in the future give to you) shall secure any and all of the obligations that I currently owe you or that I may at any time in the future owe you.

22. APPLICABLE LAW. This Security Instrument is governed by the laws of South Carolina, except to the extent otherwise required by the laws of the jurisdiction where the Property is located, and the United States of America.

23. JOINT AND INDIVIDUAL LIABILITY AND SUCCESSORS. Each Mortgagor's obligations under this Security Instrument are independent of the obligations of any other Mortgagor. Lender may sue each Mortgagor individually or together with any other Mortgagor. Lender may release any part of the Property and Mortgagor will still be obligated under this Security Instrument for the remaining Property. The duties and benefits of this Security Instrument will bind and benefit the successors and assigns of Lender and Mortgagor.

24. AMENDMENT, INTEGRATION AND SEVERABILITY. This Security Instrument may not be amended or modified by oral agreement. No amendment or modification of this Security Instrument is effective unless made in writing and executed by Mortgagor and Lender. This Security Instrument and any other documents relating to the Secured Debts are the complete and final expression of the agreement. If any provision of this Security Instrument is unenforceable, then the unenforceable provision will be severed and the remaining provisions will still be enforceable.

25. INTERPRETATION. Whenever used, the singular includes the plural and the plural includes the singular. The section headings are for convenience only and are not to be used to interpret or define the terms of this Security Instrument.

26. NOTICE, FINANCIAL REPORTS, ADDITIONAL DOCUMENTS AND RECORDING TAXES. Unless otherwise required by law, any notice will be given by delivering it or mailing it by first class mail to the appropriate party's address listed in the DATE AND PARTIES section, or to any other address designated in writing. Notice to one Mortgagor will be deemed to be notice to all Mortgagors. Mortgagor will inform Lender in writing of any change in Mortgagor's name, address or other application information. Mortgagor will provide Lender any financial statements or information Lender requests. All financial statements and information Mortgagor gives Lender will be correct and complete. Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording of this Security Instrument. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and to confirm Lender's lien status on any Property, and Mortgagor agrees to pay all expenses, charges and taxes in connection with the preparation and recording thereof. Time is of the essence.

SIGNATURES. By signing under seal, Mortgagor agrees to the terms and covenants contained in this Security Instrument. Mortgagor also acknowledges receipt of a copy of this Security Instrument.

MORTGAGOR:

[Signature] (Seal) x Sharon W. Hall
SUNIL V LALLA
Individually
[Signature]
(Witness)
[Signature]
(Witness)

ACKNOWLEDGMENT.

(Individual)

State SC OF County of Lancaster

I, Brian O. Trimm a notary public for SC, do hereby certify that SUNIL V LALLA and Sharon Lalla personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 13th day of November, 2006.

[Signature]
Signature of Notary Public

My commission expires: Sept 1, 2010

EXHIBIT 'A'

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City - Georgetown County - South Carolina - dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

TAM# 41/107-89

X Sun JA

Instrument Book Page
200600025099 269 350

49459 Blackwell Trimna

200600025099
Filed for Record in
GEORGETOWN SC
REGISTER OF DEEDS
11-17-2006 At 11:42 am.
MORTGAGE 15.00
STATE TAX .00
COUNTY TAX .00
Book 269 Page 342 - 350

Wanda J. Orewette

ROA000224

Blackwell Trimnal, LLC
PO Box 2078
Lancaster, SC 29721

WAIVER OF APPRAISAL RIGHTS

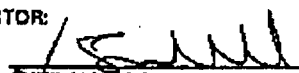
The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

SIGNATURES. By signing under seal, I agree to the terms contained in this . I also acknowledge receipt of a copy of this on November 13, 2008.

BORROWER:

 (Seal)
SUNIL V LALLA
Individually

DEBTOR:

 (Seal)
SUNIL V LALLA
Individually

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank,)

C/A No. 2011-CP-22-00342

Plaintiff,)

v.)

SUPPLEMENTAL
AFFIDAVIT OF JASON BRISTOL

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)

Personally appeared before me, Jason Bristol, who first being duly sworn, deposes and says:

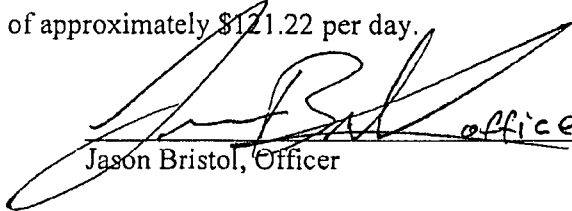
1. I am a vice president with TD Bank, N.A. One of the commercial accounts under my management is the loan account that is the subject of this lawsuit. With regard to that account, I am a custodian of records for TD Bank. The testimony set forth in this affidavit is based upon my personal knowledge or belief, or is reflected in records that TD Bank and its predecessor, Carolina First Bank, N.A., have generated and maintained in the ordinary course of business.

2. On July 29, 2011, I executed an affidavit in this matter. Among other things, that affidavit set forth the amount owed on the account as of July 15, 2011. As of July 15, 2011 that time, there was \$669,008.10 due and owing.

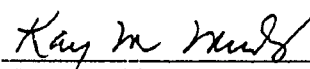
3. No payments have been made on this account since July 29, 2010 and interest has continued to accrue. In addition, TD Bank was required to pay Six Thousand Five Hundred Ninety-Seven and 35/100 Dollars (\$6597.35) to the Georgetown County

Delinquent Tax Collector in September 2011, in order to redeem the mortgaged property following tax sale in 2010.

4. With the additional disbursement paid by TD Bank, N.A. and additional accrued interest since July 29, 2011, there is due and owing Six Hundred Ninety One Thousand Eighty and 79/100 Dollars (\$691,080.79) as of November 3, 2011. Additional interest continues to accrue at the rate of approximately \$121.22 per day.


Jason Bristol, Officer

Sworn to before me this
4th day of November, 2011.


Notary Public for South Carolina
My commission expires: May 5, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS

TD Bank, NA, successor by merger to)
Carolina First Bank, NA,)

Plaintiff.)

vs.)

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)
_____)

C.A. No.: 2011-CP-22-00342

**AFFIDAVIT OF SUNIL LALLA IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

PERSONALLY APPEARED before me, SUNIL LALLA, who upon first being duly sworn deposes and says:

1. I am Sunil Lalla. I am over eighteen years of age and competent to execute this affidavit.
2. I am a Defendant in the above-titled matter.
3. I own the property located at 744 South Waccamaw Drive, Garden City, South Carolina, 29576, which is the subject of this action.
4. The property serves as a second residence for my family, and when we are not residing there we rent the property out to third parties to assist in paying in the bank.
5. Due to the current economic downturn, my income level has decreased. When I became aware of this issue I contacted the Plaintiff, T.D. Bank, in an attempt to speak to them about the promissory note on the property beginning in 2009.
6. I have always been forthcoming and cooperative in attempting to resolve this matter with the Plaintiff. The Plaintiff has refused to cooperate in any manner.

7. The Plaintiff has refused to cooperate with me, counsel, or consider any proposals we have given them. As late as last week I attempted to contact the Plaintiff to resolve this matter.

8. The Plaintiff has refused to modify the interest rate on the loan, refused to amortize the note and reduce the amount of the loan payments, and has refused to assist in short sales.

9. While the Plaintiff has refused to cooperate, I have always complied with the Plaintiff's requests in turning over tax documents and taking the property off the market at the Plaintiff's request.

10. Based on my current economic situation, my family and I may be forced to move into the home and use it as our primary residence on a full-time basis.

11. I have at all times in good faith responded to the Plaintiff's requests, and provide them with the necessary documentation. I have been cooperative in attempting to resolve this matter.

12. It is my testimony that the above stated information is true and accurate and based upon my personal knowledge.

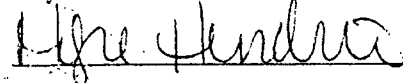
Further, affiant sayeth not.



Sunil Lalla.

SWORN TO BEFORE me this 6th

Day of December 2011



Notary Public for South Carolina

My Commission Expires: November 18, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank,)

C/A No. 2011-CP-22-00342

Plaintiff,)

v.)

SECOND SUPPLEMENTAL
AFFIDAVIT OF JASON BRISTOL

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)

Personally appeared before me, Jason Bristol, who first being duly sworn, deposes and says:

1. I am a vice president with TD Bank, N.A. One of the commercial accounts under my management is the loan account that is the subject of this lawsuit. With regard to that account, I am a custodian of records for TD Bank. The testimony set forth in this affidavit is based upon my personal knowledge or belief, or is reflected in records that TD Bank and its predecessor, Carolina First Bank, N.A., have generated and maintained in the ordinary course of business.

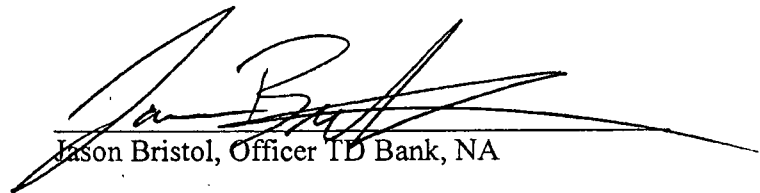
2. I have previously given two affidavits in this case. This affidavit is intended to supplement my prior affidavits.

3. Nothing regarding the payment status of Sunil Lalla's account has changed during this litigation. TD Bank has still not received any payments toward satisfaction of its account since August 2010. In addition, TD Bank was required to purchase insurance covering the mortgaged property after Defendants allowed insurance coverage to lapse. There is now \$727,782.17 due and owing to the Bank.

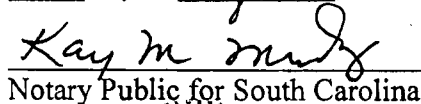
3. Since March 2012, I have personally been involved in negotiations with Sunil Lalla in an effort to resolve this matter without foreclosure. On May 25, 2012, the bank authorized Defendant to sell the mortgaged property through "short sale" and communicated that approval through our attorney to Defendants' attorney. See Exhibit A. For unknown reasons, that sale did not occur.

4. On July 30, 2012 I participated in a day-long mediation with Defendants in another effort to resolve this matter. At mediation, the parties again agreed that the property should be sold through short sale. At Defendants' request, I agreed to give Defendants thirty days to complete a sale of the property to a purchaser they had identified. Again, the sale did not close for unknown reasons.

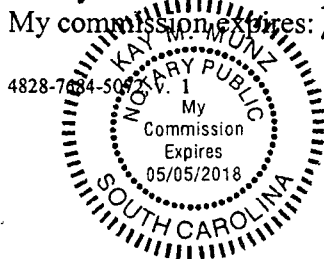
5. The Bank did not in any way interfere or impede closing of Defendants' proposed short-sale.


Jason Bristol, Officer TD Bank, NA

Sworn to before me this
29th day of August, 2012.


Notary Public for South Carolina

My commission expires: May 5, 2018

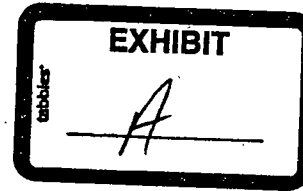


Hamilton Martens & Ballou

ATTORNEYS AT LAW

W. Keith Martens
kmartens@hmandb.com
Dial: 803-329-7662

May 25, 2012



S. Jahue Moore, Jr.
Moore Taylor & Thomas, PA
P.O. Box 5709
W. Columbia, SC 29171

RE: TD Bank, N.A. v. Lalla
C/A No. 2011-CP-22-00342
Our File: 10054.025

Dear Jake:

We have some progress! TD Bank has approved Dr. Lalla's proposed short-sale of 744 S. Waccamaw Drive to Erin and Michelle Schaffer for \$400,000. TD Bank will release its mortgage on the property upon receipt of the net sale proceeds of \$372,034.45. TD Bank reserves all of its rights with regard to the remaining loan balance. Neither this letter nor TD Bank's approval of the short-sale proposal shall constitute a waiver, modification or novation of the parties' respective rights and obligations under their loan documents, at law or in equity.

Per Judge John's email message, I will contact Theron Cochran to obtain some more dates for our mediation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Keith".

W. Keith Martens
For the Firm

WKM/dh

4820-7774-8239, v. 1

Hamilton Martens & Ballou, LLC

130 East Main Street Post Office Box 10940 Rock Hill, South Carolina 29731 Phone: 803.329.7672 Fax: 803.329.7678

ROA000232

Sunil Lalla

Payoff information for Bristol Affidavit signed 08/29/2012

Totals

	Payoff Balances	Current Balances
Principal	\$628,787.52	\$628,787.52
Interest	\$94,720.18	\$94,720.18
Late Charges	\$1,312.50	\$1,312.50
Fees	\$2,961.97	
Gross Payoff	\$724,820.20	
Escrow Tax	\$0.00	
Escrow Insurance	\$0.00	
Escrow MPP	\$0.00	
Total Net Payoff	\$727,782.17	

ROA000233

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, NA, Successor by merger)
to Carolina First Bank,)

C/A No. 2011-CP-22-00342

Plaintiff,)

v.)

PLAINTIFF'S POST-TRIAL
MEMORANDUM

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)
_____)

This matter came before the Master on December 10, 2012 for contested foreclosure hearing. Jason Bristol, an officer of TD Bank, N.A. ("TD Bank"), testified that TD Bank is the holder of a note executed by Defendant Sunil Lalla ("Dr. Lalla")(the "Note"). Mr. Bristol also testified that Note is secured by a mortgage covering 744 S. Waccamaw Drive in Georgetown County, South Carolina (the "Mortgage"). Mr. Bristol testified that the Note had matured, was fully due, and was in default. Defendants did not call any witnesses or present any evidence to contradict Mr. Bristol's testimony.

At the conclusion of the hearing, the Master instructed the parties to submit post-trial memoranda concerning whether TD was entitled to enforce the Note and seek a deficiency judgment against Dr. Lalla. For the reasons set forth below, TD submits that it is entitled to judgment against Dr. Lalla on the Note.¹

¹ Based upon the Master's comments at the conclusion of hearing, TD is informed and believes that the Master has determined TD Bank is entitled to foreclose its Mortgage. The only open question is whether TD Bank is entitled to a personal judgment for any remaining deficiency following foreclosure sale of the property. Because the Master did not request any briefing regarding enforcement of the Mortgage, TD Bank has not briefed any issues concerning the Mortgage.

ARGUMENT

I. Applicable Law and Shifting Burden of Proof

In an action for suit on a note, a plaintiff proves its claim by demonstrating: that the plaintiff is the holder of a note executed by the defendant, and that the note has matured or become due. *See* S.C. Code Ann. § 36-3-122 (Law. Co-op. 2003). The plaintiff must establish its claim by a preponderance of the evidence. § 36-1-201 (8). A note is enforceable by the original holder or by any transferee. § 36-3-201(1) (“Transfer of an instrument vests in the transferee such rights as the transferor has therein. . . .”). As in this case, where the note’s original holder has merged into another bank, “all the rights, franchises and fiduciary and other interests of [the original holder] . . . shall be deemed to be transferred and vested in the resultant bank or trust company, without any deed or any other transfer.” S.C. Code Ann. § 34-3-850(c)(Law. Co-op. 1987).

Even when a defendant denies signing a note, the defendant’s signature on the note “is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who as died or become incompetent.” S.C. Code Ann. § 36-3-307 (Law. Co-op. 2003). Therefore, “the trier of fact must find the existence of [defendant’s signing the note] presumed unless and until evidence is introduced which would support a finding [that defendant had not signed the note].” § 36-1-201(31)(defining “presumption” and “presumed”).

A party seeking to enforce a note is not *required* to introduce the note in evidence to enforce the terms of the instrument. In fact, South Carolina law permits “[t]he owner of an instrument that is lost, destroyed or stolen [to] maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts

which prevent his production of the instrument and its terms.” S.C. Code Ann. § 36-3-804 (Law. Co-op. 2003). Likewise, other jurisdictions have held that a party may enforce the terms of a note, even without introducing the note, when evidence of those terms is “established by other competent evidence.” *See, e.g., Yanoff v. Muncy*, 688 N.E.2d 1259, 1263 (Ind. 1997)(where the evidence presented at trial would enable the court to calculate the amount of the debt, the holder of a note had carried its burden of proof, and was entitled to judgment on its debt.

Once a plaintiff presents a preponderance of evidence supporting its claim for suit on a note, the burden of proof *shifts* to the opposing party to “clearly prove[] that the consideration of the instrument was illegal, or that it was fraudulent in its inception, or that it had been lost or stolen before it came to the possession of the holder.” *Collins v. Gilbert*, 94 U.S. 753, 754-55 (1876); see also S.C. Code Ann. § 36-1-201(31)(outlining shifting burden of proof where signing of note is presumed). Furthermore, as recently noted by the United States Bankruptcy Court for the District of South Carolina, “it appears that a judicial consensus has developed holding that a borrower lacks standing to . . . request a judicial determination that a loan assignment is invalid . . . when the borrower is neither a party to nor a third party beneficiary” of the assignment. *In re Kain*, ADV 10-80047-HB, 2012 WL 1098465 (Bankr. D.S.C. Mar. 30, 2012) (other citations omitted).

II. TD Bank conclusively established that it is the holder of the Note, and that it is entitled to judgment on the Note.

At trial on December 10, 2012, Jason Bristol, a vice president of TD Bank testified without contradiction that TD Bank is the holder of a note executed by Sunil V. Lalla in favor of Carolina First Bank. (Tr. at 20-22). Mr. Bristol also testified

extensively regarding the circumstances by which TD Bank became the holder of the Note, as a result of its merger with Carolina First Bank. (Tr. 11-21). Under South Carolina law, as a result of the merger of TD Bank and Carolina First Bank, TD Bank acquired "all the rights, franchises and fiduciary and other interests" in the Note "without any deed or other transfer." S.C. Code § 34-3-850(c)(Law. Co-op. 1987). Mr. Bristol testified regarding the payment history on the Note, the Note's maturity and its default status. (Tr. at 32, 39). Mr. Bristol testified that Dr. Lalla has failed or to pay \$740,267.44, plus additional costs of collection totaling \$25,584.50² that are due and owing under the Note. (Tr. at 37-38, 39, 40). Mr. Bristol's testimony established each essential element of TD Bank's claim under the Note.

In addition, TD Bank introduced a payment history report and a Mortgage, both of which corroborated Mr. Bristol's testimony concerning the principal balance, payment history, interest rate and maturity of the Note. (Pl.'s Ex. 3 and 5). In fact, the Mortgage (the validity of which Dr. Lalla admitted in his answer and again at trial) specifically set forth the principal balance, interest rate and maturity of the Note on its face. (See Pl.'s Ex. 3 at ¶ 3(A)). Through testimony and evidentiary exhibits, TD Bank established by a preponderance of evidence each element of its claim.

By contrast, Dr. Lalla did not present any countervailing evidence even though carried the burden of establishing any defense to enforcement of the Note. Instead, Dr. Lalla attempted to rely upon his bare pleadings, general denials and objections to defeat TD Bank's claims under the Note. Furthermore, Dr. Lalla likely did not even have

² Even if the court refused to enforce the Note, the Mortgage allows TD Bank to recover its costs and fees of collection. See Pl. Ex. 3, ¶ 14.

standing to challenge the validity of the Note's transfer from Carolina First to TD Bank.

See *In re Kain*, 2012 WL 1098465.

CONCLUSION

TD Bank met its burden of proof at trial, and presented competent evidence by which the Master may determine that TD is the holder of a note executed by Dr. Lalla and secured by a mortgage covering Dr. Lalla's property. TD Bank also presented evidence by which the Master may ascertain the amount of the debt and enter judgment against Dr. Lalla. As established by the evidence presented at trial, TD Bank is entitled to judgment against its borrower, Sunil V. Lalla, in the sum of \$740,267.44, plus additional costs and fees totaling \$25,584.50. (Tr. at 39, 40).

January 31, 2013

Respectfully Submitted,



W. Keith Martens
HAMILTON MARTENS BALLOU & CARROLL, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
keith.martens@hamiltonmartens.com

ATTORNEYS FOR PLAINTIFF

4821-7865-6530, v.

STATE OF SOUTH CAROLINA
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

TD Bank, N.A., Successor by merger
to Carolina First Bank, N.A.,

Plaintiff,

v.

Sunil V. Lalla and Sharon W. Lalla,

Defendants.

Motion to Alter or Amend
Court's Order

ALMA Y. WHITE
CLERK OF COURT

2013 JUN -7 PM 2:21

FILED
GEORGETOWN COUNTY, S.C.

Pursuant to Rule 59(e) S.C. R. Civ. P., Plaintiff TD Bank, N.A. moves for reconsideration of the Master in Equity's Final Order in this matter, which was filed on May 10, 2013. Plaintiff's Counsel received written notice of the entry of the Master in Equity's Final Order on May 28, 2013, and filed this motion within ten (10) days thereafter.

As set forth specifically below, Plaintiff respectfully submits that there are several facts that the Master in Equity failed to consider in his Final Order. Plaintiff further respectfully submits that the Master in Equity misapprehended or misapplied the governing law in his Final Order. Plaintiff requests that the Master in Equity reconsider his Final Order in view of the following:

1. The Master should have overruled Defendant's objection under the "best evidence rule," and accepted into evidence a copy of Plaintiff's promissory note. South Carolina Code § 19-5-610 specifically provides that any "photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium" is "as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not." S.C. Code Ann. § 19-5-610 (Law. Co-

op. 1976). Under South Carolina law, a copy of the note is competent evidence to establish the existence of the note. *See Bank of America v. Draper, et. al.*, Op. No. 5140 (S.C. Sup. Ct. filed June 5, 2013) (Shearouse Adv. Sh. No. 25 at 53, 60) (relying on the copy of the note to establish its existence).

2. The Master erred in ruling that Plaintiff's copy of its promissory note was inadmissible.

3. The Master's order fails to consider the undisputed testimony of Jason Lalla, who testified regarding the terms and contents of Plaintiff's note and mortgage, and whose testimony easily established by a preponderance of evidence all elements of Plaintiff's claim.

4. The Master failed to apply the presumption that Defendant had executed a note in favor of Plaintiff. Even when a defendant denies signing a note, the defendant's signature on the note "is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent." S.C. Code Ann. § 36-3-307 (Law. Co-op. 2003). Therefore, "the trier of fact must find the existence of [defendant's signing the note] presumed unless and until evidence is introduced which would support a finding [that defendant had not signed the note]." *Id.* § 36-1-201(31)(defining "presumption" and "presumed"). Defendant did not present any evidence supporting Defendant's assertion that he did not sign Plaintiff's note.

5. The Master's order fails to recognize the rule of law that a promissory note is enforceable by the original holder or by any transferee. S.C. Code Ann. § 36-3-201(1)(Law. Co-op. 2003) ("Transfer of an instrument vests in the transferee such rights as the transferor has therein...").

6. The Master's order fails to recognize that, as in this case, where the note's original holder has merged into another bank, "all the rights, franchises and fiduciary and other interests of [the original holder] . . . shall be deemed to be transferred and vested in the resultant bank or trust company, without any deed or any other transfer." S.C. Code Ann. § 34-3-850(c)(Law. Co-op. 1987).

7. The Master's order fails to address the fact that a party seeking to enforce a note is not required to introduce the note in evidence to enforce the terms of the instrument. South Carolina law permits "[t]he owner of an instrument that is lost, destroyed or stolen [to] maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms." S.C. Code Ann. § 36-3-804 (Law. Co-op. 2003). Likewise, other jurisdictions have held that a party may enforce the terms of a note, even without introducing the note, when evidence of those terms is "established by other competent evidence." *See, e.g., Yanoff v. Muncy*, 688 N.E.2d 1259, 1263 (Ind. 1997)(where the evidence presented at trial would enable the court to calculate the amount of the debt, the holder of a note had carried its burden of proof, and was entitled to judgment on its debt).

8. The Master overlooked the fact that Jason Bristol, a vice president of TD Bank testified without contradiction that TD Bank is the holder of a note executed by Sunil V. Lalla in favor of Carolina First Bank. (Tr. at 20-22). Mr. Bristol also testified extensively regarding the circumstances by which TD Bank became the holder of the Note, as a result of its merger with Carolina First Bank. (Tr. 11-21). Under South Carolina law, as a result of the merger of TD Bank and Carolina First Bank, TD Bank acquired "all the rights, franchises and fiduciary and other interests" in the Note "without any deed or other transfer." S.C. Code § 34-3-850(c)(Law.

Co-op. 1987). The Court indicated that it did not have sufficient record evidence that Carolina First merged with TD Bank. First, evidence was provided establishing that TD Bank was the successor in interest, pursuant to South Carolina law, to Carolina First. Second, this Court can take judicial notice of the public records available at the South Carolina Secretary of State's Office demonstrating that Carolina First merged with TD Bank. (See Exhibit A, Secretary of State's Office documentation that TD Bank merged with Carolina First). It is well-established a court can take judicial notice of public records. See *State ex. Rel. Medlock v. Nest Egg Society Today, Inc.*, 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986) (taking judicial notice of states of incorporation and laws applicable in those states). Thus, TD Bank, under the statutes cited herein, was successor to Carolina First and lawful holder of the note at issue in this case.

9. Defendants admitted the existence of the mortgage. Defendants are bound by their admission. See *Peter W. Postal v. Edward C. Mann*, 308 S.C. 385, 418 S.E.2d 322 (Ct. App. 1992) (holding that a party is bound by their admissions). As shown by the evidence in the record, the mortgage included a provision incorporating all related documents to the transaction into the mortgage. This provision incorporated the note into the mortgage. Therefore, because the Defendants admitted the existence of the mortgage, including the related documents provision incorporating the terms of the note, the Defendants have admitted the existence of the note. Defendants are bound to this admission and cannot refute the existence of the note. The Court should have found Defendants liable under the terms of the note.

10. Further, the Defendants made payments to TD Bank under the note. TD Bank offered undisputed evidence that Defendants made payments to TD Bank. Because Defendants made payments to the bank under the note, the Defendants are estopped from denying the existence of the note and their intention to pay the debt. See, e.g., *First Citizens Bank and Trust*

Company of South Carolina v. Donald J. Strable, 292 S.C. 146, 355 S.E.2d 278 (Ct. App. 1987) (demonstrating facts where a debtor acknowledged the existence of a debt and an intention to pay the debt).

11. The Master overlooked the undisputed testimony of Jason Bristol, which established all of the essential elements of Plaintiff's claim. Mr. Bristol testified regarding Defendant's payment history on the Note, the Note's maturity and its default status. (Tr. at 32, 39). Mr. Bristol testified that Dr. Lalla has failed or to pay \$740,267.44, plus additional costs of collection totaling \$25,584.50 that are due and owing under the Note. (Tr. at 37-38, 39, 40). Mr. Bristol's testimony established each essential element of TD Bank's claim under the Note, and was undisputed. *See Bank of America v. Draper, et. al.*, Op. No. 5140 (S.C. Sup. Ct. filed June 5, 2013) (Shearouse Adv. Sh. No. 25 at 53, 60) (relying on evidence of payment ledgers in establishing the bank held the note).

12. The Master failed to consider that TD Bank introduced a payment history report and a Mortgage, both of which corroborated Mr. Bristol's testimony concerning the principal balance, payment history, interest rate and maturity of the Note. (Pl.'s Ex. 3 and 5). In fact, the Mortgage (the validity of which Dr. Lalla admitted in his answer and again at trial) specifically set forth the principal balance, interest rate and maturity of the Note on its face. (*See* Pl.'s Ex. 3 at ¶ 3(A)). Through testimony and evidentiary exhibits, TD Bank established by a preponderance of evidence each element of its claim.

13. The Defendants made payments to TD Bank under the note. Defendants cannot deny making payments. TD Bank offered undisputed evidence that Defendants made payments to TD Bank. Because Defendants made payments to the bank under the note, the Defendants are estopped from denying the existence of the note and their intention to pay the debt. *See, e.g.*,

First Citizens Bank and Trust Company of South Carolina v. Donald J. Strable, 292 S.C. 146, 355 S.E.2d 278 (Ct. App. 1987) (demonstrating facts where a debtor acknowledged the existence of a debt and an intention to pay the debt).

14. The Master failed to consider that Plaintiff's mortgage authorized TD Bank to recover attorney's fees and costs of collection. Thus, even if the Plaintiff's note were excluded from consideration, Plaintiff was entitled to recover attorney's fees and expenses by the terms of its mortgage.

15. The Master failed to consider that Defendant did not present any evidence to counter Plaintiff's evidence, even though Defendant carried the burden of establishing any defense to enforcement of the Note.

16. The Master failed to consider that Defendant did not have standing to challenge the validity of the Note's transfer from Carolina First to TD Bank. *See In re Kain*, 2012 WL 1098465.

17. The Master failed to apply the appropriate burden of proof. Plaintiff presented sufficient evidence to establish its claim by a preponderance of the evidence, particularly given Defendant's failure to present any evidence at trial.

18. The Master failed to consider Plaintiff's right to a deficiency judgment under the terms of its Mortgage.

This motion will be based upon the appropriate statutory and case law, the South Carolina Rules of Civil Procedure, and the record of the case. Counsel certifies, pursuant to Rule 11 S.C. R. Civ. P. that he had no duty to consult with opposing counsel prior to filing this motion.

Respectfully submitted,

By: Matt Bogan / JEG
Thomas William McGee, III
SC Bar No. 11317
E-Mail: billy.mcgee@nelsonmullins.com
A. Mattison Bogan
SC Bar No. 72629
E-Mail: matt.bogan@nelsonmullins.com
Nelson Mullins Riley & Scarborough
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

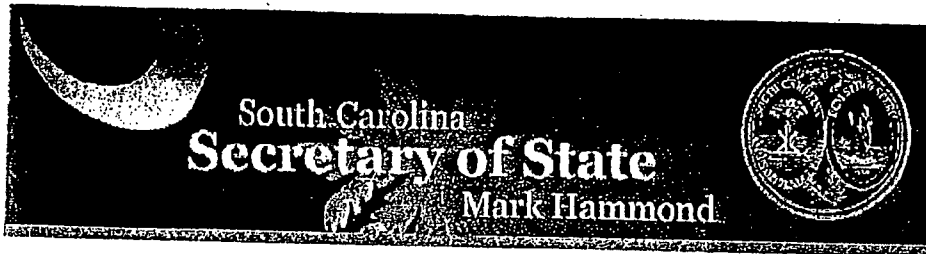
W. Keith Martens
HAMILTON MARTENS BALLOU & CARROLL, LLC
P.O. Box 10940
Rock Hill, South Carolina 29731
(803) 329-7672
keith.martens@hamiltonmartens.com

Attorneys for Plaintiff

Columbia, South Carolina
June 4, 2013

Exhibit A

**Documentation from the South Carolina
Secretary of State's demonstrating
Carolina First's merger with TD Bank**

**CAROLINA FIRST BANK**

Note: This online database was last updated on 6/6/2013 6:02:10 PM.
See our Disclaimer.

DOMESTIC / FOREIGN: Domestic
STATUS: MER
STATE OF INCORPORATION: SOUTH CAROLINA
/ ORGANIZATION: Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME: WILLIAM P CRAWFORD JR
ADDRESS: 104 S MAIN ST
CITY: GREENVILLE
STATE: SC
ZIP: 29601
SECOND ADDRESS:
FILE DATE: 11/20/1986
EFFECTIVE DATE: 11/20/1986
DISSOLVED DATE: 09/30/2010

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Merger	09/30/2010	MERGED INTO-TD BANK NATIONAL ASSOCIATION (N.A. NQ)	
Merger Survivor	12/31/2008	SURVIVED MERGER WITH-FLARESCO, INC.(FL CORP NQ)	
Merger Survivor	12/31/2008	SURVIVED MERGER WITH-RE HOLDINGS, INC.	
Merger Survivor	08/29/2007	SURVIVED MERGER WITH-MERCANTILE BANK(FL NQ)	
Merger Survivor	12/01/2005	SURVIVED MERGER WITH-CF TECHNOLOGY SERVICES COMPANY(FL CORP NQ)	
Amendment	10/01/2004		
Merger Survivor	10/03/2003	SUR MER W/MOUNTAIN BANK(NC NQ) (8)	Image
Agent	09/11/2002	CH AGT/ADD FR-WALLACE K UIGHTSEY	Image
Amendment	08/11/2002	STOCK AMENDMENT	Image
Amendment	01/11/2001	STOCK AMENDMENT	Image
Merger Survivor	12/20/2000	SUR MER W/CAROLINA FIRST BANK FBS(EFF:12/30/200)	Image
Merger Survivor	07/07/2000	SUR MER W/ANCHOR BANK	Image
Merger Survivor	10/19/1998	SUR MER W/COLONIAL BANK OF SOUTH CAROLINA, INC.	Image
Merger Survivor	09/29/1998	SUR MER W/FIRST NATIONAL BANK OF PICKENS COUNTY(NQ)	Image
Merger Survivor	11/21/1997	SUR MER W/FIRST FEDERAL SAVINGS AND LOAN ASSN OF ANDERSON-NQ	Image
Merger Survivor	07/18/1997	SUR MER W/LOWCOUNTRY SAVINGS BANK, INC.	Image
Merger Survivor	08/30/1995	SUR MER W/CAROLINA FIRST BANK-NQ	Image
Merger Survivor	02/03/1995	SUR MER W/CAROLINA FIRST SAVINGS BANK, F.S.B. (NQ)	Image

Amendment	01/09/1995	STOCKAMD	Image
Amendment	07/01/1988	STOCK INCREASE	Film
Incorporation	11/20/1988	ART	Film

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC
29201



July 15, 2014

The Honorable Joe M. Crosby
Georgetown Master-In-Equity
405 Dozier Street
Georgetown, SC 29440-3214

RE: TD Bank, NA, Successor by merger to Carolina First Bank v. Sunil V. Lalla and Sharon
W. Lalla
C.A. No.: 2011-CP-22-00342

Dear Judge Crosby:

I recently received a letter from Billy McGee asking the Court to schedule a hearing on the motion for reconsideration which has been filed.

Quite frankly, I do not believe the motion for reconsideration contains anything which was not considered at trial. There are issues which appear to be raised in the motion for reconsideration which were not raised by the Plaintiff at trial.

It is our belief the Court properly ruled based upon what was before it. Thus, we believe the motion should be denied without the requirement of counsel coming for a hearing. On the other hand, we are always delighted to appear before Your Honor and I am always happy to have a chance to come to the coastal area of our State.

We very much appreciate the Court's consideration in this matter and we are at your disposal.

Yours very truly,

S. Jahue Moore

SJM:dc

cc: Thomas William McGee, III, Esquire

ROA000249

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

1320 Main Street / 17th Floor / Columbia, SC 29201

Tel: 803.799.2000 Fax: 803.255.9013

www.nelsonmullins.com

Thomas William McGee, III

Circuit Court Mediator for SC

(Admitted in DC, NC & SC)

Tel: 803.255.9431

Fax: 803.255.9013

billy.mcgee@nelsonmullins.com

June 18, 2015

The Honorable Joe M. Crosby

405 Dozier Street

Georgetown, SC 29440-3214

RE: TD Bank, NA, Successor by merger to Carolina First Bank v. Sunil V. Lalla and
Sharon W. Lalla
Civil Action No. 2011-CP-22-00342
Our File No. 04387/01834

Dear Judge Crosby:

It has come to my attention that the Form 4 entered along with your Order Granting Plaintiff's Motion to Alter or Amend and Foreclosure Judgment and Order of Sale in the above-referenced matter inadvertently indicated that a monetary judgment had been entered against Mrs. Sharon W. Lalla.

Because Mrs. Lalla did not sign the subject promissory note, TD Bank did not seek any monetary judgment against her and the Order does not contemplate any monetary judgment against her. Accordingly, enclosed please find a corrected Form 4 deleting the entry of a monetary judgment against Mrs. Lalla.

Please execute and return the corrected Form 4 at your earliest convenience. I have included a self-addressed stamped envelope for you.

Also enclosed please find a courtesy copy of our Motion for Leases, Rents, and Appointment of Receiver which we are filing today. We respectfully request a hearing on this Motion at your earliest convenience.

The Honorable Joe M. Crosby

June 18, 2015

Page 2

If you have any questions or need anything further, please contact me at your convenience.

With highest regards,

Billy McGee (12)

Thomas William McGee, III

Enclosures

Cc: Jahue Moore, Esq.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-22-0342

TD Bank, NA, successor by merger to Carolina

Sunil V. Lalla and Sharon W. Lalla

First Bank

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Thomas W. McGee, III, Esquire
Nelson Mullins Riley & Scarborough, LLP

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
- ☐ **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 : Judgment (Correction to Form 4 Entered March 9, 2015)

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)
TD Bank, NA, successor by merger to Carolina First Bank	Sunil V. Lalla	\$765,851.84
		\$
		\$

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

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this day of _____, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas W. McGeo, III, Esquire

Nelson Mullins Riley & Scarborough LLP

PO Box 11070, Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

S. Jahue Moore, Esquire

PO Box 5709

West Columbia, SC 29171

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.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-CP-22-00342

TD Bank, N.A., Successor by merger to Carolina First Bank, N.A., Respondent,

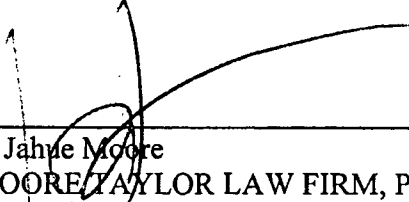
vs.

Sunil V. Lalla and Sharon W. Lalla, Appellants.

NOTICE OF APPEAL

FILED
GEORGETOWN COUNTY, S.C.
2015 FEB 24 AM 11:01
ALMA Y. WHITE
CLERK OF COURT

Appellants, Sunil V. Lalla and Sharon W. Lalla, appeal the order of the Honorable Joe M. Crosby, dated January 29, 2015, a copy of which is attached hereto and incorporated here. Appellant received written notice of entry of this Order on February 2, 2015.


S. Jahne Moore
MOORE TAYLOR LAW FIRM, P.A.
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
ATTORNEY FOR APPELLANTS

Other Counsel of Record:

Thomas W. McGee, III, Esq.
Nelson Mullins, LLP
PO Box 11070
Columbia, SC 29211
(803) 799-2000
ATTORNEY FOR THE RESPONDENT

RECEIVED

SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF GEORGETOWN)

TD Bank, N.A., Successor by merger
to Carolina First Bank, N.A.,)

Plaintiff,)

v.)

Sunil V. Lalla and Sharon W. Lalla,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

**Order Granting Plaintiff's
Motion to Alter or Amend
and Foreclosure Judgment
and Order of Sale**

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Plaintiff TD Bank, N.A., timely moved this Court to reconsider its Order dated May 10, 2013, in the above-captioned action. Having considered all the submissions before this Court, the evidence adduced at trial, and the arguments from counsel, this Court grants Plaintiff's motion. As set forth herein, this Court alters and amends its prior order thereby vacating it entirely and issues this Order and Judgment in favor of Plaintiff *in toto*.

Background

On March 8, 2011, Plaintiff commenced this foreclosure action seeking to foreclose upon and sale the mortgaged property and seeking a deficiency judgment against Defendant Sunil V. Lalla for the amounts owed under the note in addition to attorneys' fees and, costs. Plaintiff is the owner of the note executed by Defendant Sunil V. Lalla and that note it is secured by a mortgage executed by both Defendants in favor of Plaintiff on the property located at 744 S. Waccamaw Drive, Garden City, SC 29576. Both parties were represented by counsel and informed of the dates, times, and locations of all hearings in this action.

As detailed herein, Plaintiff has the right to foreclosure and is entitled to a judgment against Defendant Sunil V. Lalla for any deficiency remaining following the foreclosure sale, and is entitled to attorneys' fees and costs under the terms of the note and mortgage.

Findings of Fact and Conclusions of Law

I. Plaintiff is the lawful holder of the note signed by Defendant Sunil V. Lalla.

Plaintiff sufficiently established that it is the holder of the note at issue in this action by providing a copy of the note and testimony regarding its merger with Carolina First Bank, Plaintiff's predecessor in interest, thereby evidencing the transfer of the interest in the note to Plaintiff.¹ Jason Bristol, a vice president of Plaintiff, testified without contradiction that Plaintiff is the holder of a note executed by Defendant Sunil V. Lalla in favor of Carolina First Bank. (Tr. at 20-22). Mr. Bristol also testified extensively regarding the circumstances by which Plaintiff became the holder of the note as a result of its merger with Carolina First Bank. (Tr. 11-21). In addition, Plaintiff submitted documentation from the Secretary of State's office regarding its merger with Carolina First.

As is the case here, where the note's original holder has merged into another bank, "all the rights, franchises and fiduciary and other interests of [the original holder] . . . shall be deemed to be transferred and vested in the resultant bank or trust company, without any deed or any other transfer." S.C. Code Ann. § 34-3-850(c). As the transferee, Plaintiff is entitled to commence this action on the note. See S.C. Code Ann. § 36-3-201(1) ("Transfer of an instrument vests in the transferee such rights as the transferor has therein. . ."). Thus, Plaintiff,

¹ Through counsel, Defendants attempted to challenge Plaintiff's interest in the note by attacking the validity of the transfer of the note and interest in the subject property from Carolina First to Plaintiff. However, this Court concludes that Defendants lack standing to challenge the validity of the Note's transfer from Carolina First to Plaintiff. See *In re Kain*, 2012 WL 1098465.

under the statutes cited herein, was successor to Carolina First and lawful holder of the note at issue in this case.

Further, Plaintiff placed a copy of the note before this Court and under the "best evidence rule," this Court considered that copy of the note. Specifically, South Carolina Code § 19-5-610 provides that any "photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium" is "as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not." S.C. Code Ann. § 19-5-610. Under South Carolina law, a copy of the note is competent evidence to establish the existence of the note. *See Bank of America, N.A. v. Draper, et. al.*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013) (relying on the copy of the note to establish its existence). Hence, the copy of the note provided at trial was admissible and this Court has considered it in issuing this order.

Moreover, Defendants failed to attend the hearing before this Court and did not refute executing the note and mortgage via testimony or other competent evidence. Under South Carolina law, a defendant's signature on a note "is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent." Accordingly, as the trier of fact, this Court "must find the existence of [defendant's signing the note] presumed unless and until evidence is introduced which would support a finding [that defendant had not signed the note]." *Id.* § 36-1-201(31)(defining "presumption" and "presumed"). No such evidence was provided. Plaintiff can enforce the note.

II. Defendant Sunil V. Lalla has defaulted on the terms of the note.

This Court also considered the undisputed testimony and affidavits of Mr. Bristol, who testified regarding the terms and contents of Plaintiff's note and mortgage, and whose testimony unequivocally established by a preponderance of evidence all elements of Plaintiff's claim. Defendants failed to attend the foreclosure hearing before this Court and thus did not rebut, refute, or otherwise disprove any of the proof provided by Plaintiff with any similar or proper modicum of proof.

Mr. Bristol testified regarding Defendant Sunil V. Lalla's payment history on the note, the note's maturity, and that Dr. Lalla defaulted on the terms of the note. (Tr. at 32, 39). Mr. Bristol testified that Dr. Lalla has failed to pay \$740,267.44, plus additional costs of collection totaling \$25,584.50 that are now due and owing under the Note. (Tr. at 37-38, 39, 40). Plaintiff also introduced a payment history report and the subject mortgage, both of which corroborated Mr. Bristol's testimony concerning the principal balance, payment history, interest rate and maturity of the note. The evidence also reflected the default on the terms of the note. Moreover, Defendants admitted the validity of the mortgage in their Answer and the mortgage specifically set forth the principal balance, interest rate and maturity of the note on its face beyond the other testimony and evidence provided by Plaintiff.

Thus, through Mr. Bristol's testimony and the documentary evidence adduced, Plaintiff established each essential element its claim. *See Bank of America v. Draper, supra*. Defendants did not offer any evidence to the contrary. As a result, this Court finds that Defendant Sunil V. Lalla has defaulted on the terms of the note and Plaintiff is entitled to enforce the terms of the note and foreclosure on the subject property. Defendant Sunil V. Lalla has failed to pay

\$740,267.44 plus \$25,584.40 in costs. Thus, \$765,851.84 is lawfully owed to Plaintiff and judgment should be entered by the clerk in this amount.

III. Plaintiff is entitled to sale of the property and judgment.

Based on the above noted default of payment, it is further **Ordered** that:

At or before the time herein indicated, the mortgaged premises described hereinabove shall be sold by the Master in Equity or Designee at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday, on the following terms, that is to say:

a. For cash: The Master in Equity or Designee will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and Plaintiff's debt.

b. Interest on the balance of the bid shall be paid to the day of compliance at the rate of \$12.43 per diem.

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

d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, Plaintiff may pay to the Court only the amount of the costs and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

A personal or deficiency judgment having been demanded, the bidding will remain open for thirty (30) days after the date of the sale, with the sale to be final upon that date. Further, the Court will, by advertisement according to law, give notice of the date, time, and place of such sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Court may advertise the said premises for resale on the next, or some other subsequent sales days, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

Following the sale, the Court will 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;

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

NEXT: Any surplus shall be held pending further Order of this Court.

In the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder 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. The Defendants named herein, and all persons whosoever claiming under Defendants 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.

The property to be sold is described in Exhibit A of the mortgages, on file with the Georgetown County Register of Deeds, as follows:

All that certain piece, parcel or lot of land with improvements thereon, lying, being and situate at Garden City, Georgetown County, South Carolina, and being designated as Lot No. 19, Block 20, as shown on a revised map of a portion of Garden City, Georgetown County, South Carolina, made by S. D. Cox, Jr., dated October, 1946, and resurveyed August, 1948. Reference to said plat being craved as forming a part of this description. The said lot fronting 60 feet on Waccamaw Drive and extending back with a uniform depth 130 feet to Underwood Drive, all as shown on said map.

Said lot also being shown on that certain plat prepared for J. Randolph Mackey, Sr., Garden City – Georgetown County – South Carolina – dated August 7, 1998, and recorded in the Register of Deeds Office for Georgetown County in Plat Book 17 at Page 377.

Being the identical property conveyed to Sunil Lalla and Sharon Lalla by Deed of J. Randolph Mackey, Sr. and Jessie C. Mackey recorded May 24, 2005 in Deed Book 1651 at Page 16 in the Register of Deeds Office for Georgetown County, South Carolina.

TAM# 41/107-89

Pursuant to Section 29-3-650 of the Code of Laws of South Carolina, 1976, as amended, the Clerk of Court is hereby directed to immediately enter judgment against Sunil V. Lalla in the amount of \$765,851.84 due as of the date of the hearing, plus any subsequent necessary advanced and interest from the date of hearing through the date of compliance at the contract rate and thereafter, in the event of any deficiency, at the legal rate; and docket said judgment in the Clerk's office in the same manner as any other judgment. Upon the sale of the mortgaged premises, the Court shall credit upon the judgment the amount paid to the Plaintiff from the

proceeds of the sale or, in the event the Plaintiff is the successful bidder, the amount of Plaintiff's bid.

All rights Defendants have in the subject property are extinguished and Plaintiff is the lawful owner of the property to be sold pursuant to this Order and Judgment. Defendants, in order to preclude the sale of this property will have to post a bond in the amount of \$250,000 should they desire to stay the pending sale consistent with the applicable provisions of Titles 18 and 29.

IV. Dismissal and judgment in favor of Plaintiff on any and all claims and defenses.

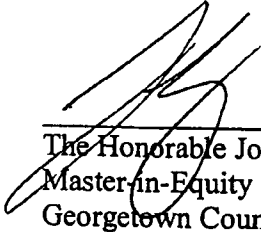
Defendants were represented by counsel in this action. Defendants were notified of the hearing in this matter. Defendants did not attend. Thus, Defendants offered no evidence or testimony as to Plaintiff's claims or their own claims or defenses. Hence, this Court rules in favor of Plaintiff on any and all claims and defenses Defendants had in this action and enters judgment in favor of Plaintiff on same.

Conclusion

Based on the above, Plaintiff is entitled to foreclosure on the subject property under the terms of the note and mortgage. The subject property is to be sold. Following the judicial sale, Plaintiff is entitled to a deficiency judgment under the terms of its note and mortgage for any amounts remaining unpaid to Plaintiff following the sale of the subject property. Plaintiff is also entitled to attorney's fees and costs in the amount of \$25,584.40 to be paid first out of the proceeds of the sale with the remainder being paid to the amounts due on the note. Defendant Sunil V. Lalla would be entitled to any surplus that remains following the sale and after payment of the fees and costs and application of the sale proceeds to the outstanding balance on the note.

Undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

IT IS SO ORDERED.



The Honorable Joe M. Crosby
Master-in-Equity
Georgetown County
405 Dozier Street
Georgetown, SC 29440

CERTIFICATE OF SERVICE

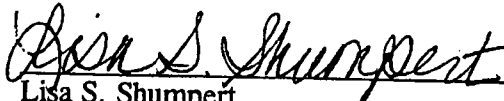
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for TD Bank, NA, Successor by merger to Carolina First Bank, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Order Granting Plaintiff's Motion to Alter or Amend and
Foreclosure Judgment and Order of Sale

Counsel Served:

S. Jahue Moore
Moore Taylor & Thomas
P.O. Box 5709
West Columbia, SC 29171



Lisa S. Shumpert
Administrative Assistant

January 29, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
CIRCUIT COURT FOR THE FIFTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2011-CP-22-00342

TD Bank, N.A., Successor by merger to Carolina First Bank, N.A., Respondent,

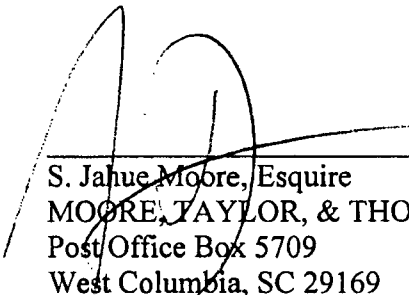
vs.

Sunil V. Lalla and Sharon W. Lalla, Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by mail on February 17, 2015 to the following counsel of record:

Thomas W. McGee, III, Esq.
Nelson Mullins, LLP
PO Box 11070
Columbia, SC 29211


S. Jahue Moore, Esquire
MOORE, TAYLOR, & THOMAS, PA
Post Office Box 5709
West Columbia, SC 29169
(803)-796-9160
(803)-791-8410

ATTORNEY FOR APPELLANTS

FILED

Appeals

FILED
GEORGETOWN COUNTY, S.C.
2015 FEB 24 AM 11:01
ALMA Y. WILK
CLERK OF COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

Joe M. Crosby, Master-in-Equity

Appellate Case No. 2015-000295

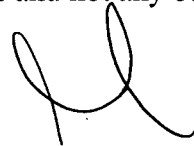
TD Bank, N.A., Successor by merger to Carolina First Bank, N.A., ...Respondent,

v.

Sunil V. Lalla and Sharon w. Lalla, ... Appellants.

CERTIFICATE OF COUNSEL

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.



S. Jahue Moore, SC Bar #4063
John C. Bradley, Jr., SC Bar #7869
Moore Taylor Law Firm, PA
1700 Sunset Boulevard
Post Office Box 5709
West Columbia, SC 29171
(803) 796-9160
john@mttlaw.com
ATTORNEYS FOR APPELLANTS

July 28, 2015

ROA000266

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

JUL 28 2015

SC Court of Appeals

Joe M. Crosby, Master-in-Equity

Appellate Case No. 2015-000295

TD Bank, N.A., Successor by merger to Carolina First Bank, N.A., ... Respondent,

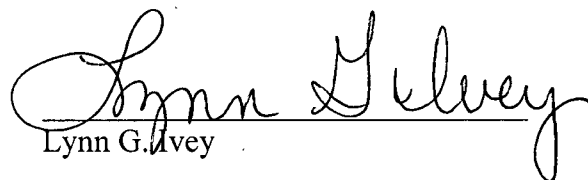
v.

Sunil V. Lalla and Sharon w. Lalla, ... Appellants.

PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, PA, certify that I have served the Record on Appeal on counsel of record for Respondent in this action by depositing a copy of same in the United States Mail, postage prepaid, on July 28, 2015, addressed as follows:

Thomas Wm. McGee, III
Allen Mattison Bogan
Tara C. Sullivan
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P.O. Box 11070
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Lynn G. Ivey

West Columbia, South Carolina
July 28, 2015