THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Charleston County Master in Equity

APPELLATE CASE NO. 2014-002590

BRENT E. BENTRIM, ...Appellant

v.

WELLS FARGO BANK, N.A.,..... Respondent

RECORD ON APPEAL – VOLUME 1 of 3

Robert B. Varnado
Alexis M. Wimberly
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

RECEIVED
FEB 22 2016
SC Court of Appeals

Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE
SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
Attorneys for Respondent

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Certificate of Counsel

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
DEFENDANT.	)	
	)	

ORDER

FILED
2014 MAY 16 PM 4:20
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on April 28, 2014, for a hearing on several discovery motions. At the hearing, the Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrim was also present at the hearing. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III and John C. Hawk IV of Womble Carlyle Sandridge & Rice, L.L.P. After carefully reviewing these motions and memoranda submitted by the parties, and after hearing arguments from counsel for both parties, the Court denies each of Plaintiff's motions and grants each of Wells Fargo's motions, as follows:

1. **PLAINTIFF'S MOTION TO RECONSIDER, FILED MARCH 17, 2014**

Plaintiff moved the Court to alter or amend its Discovery Orders of March 4, 2014 and March 11, 2014. Specifically, Plaintiff requested that the Court reverse its prior rulings denying certain discovery and (a) order Wells Fargo to produce an entire list of codes for the "ACLS" system, (b) allow discovery related to compliance with a Consent Judgment with the South Carolina Attorney General, and (c) order Wells Fargo to respond to discovery related to EIN #

56-1948921. The Court concludes there is no good cause to reverse its prior rulings. Plaintiff's Motion to Reconsider is *denied.*

2. **WELLS FARGO'S MOTION TO ALTER OR AMEND MARCH 11, 2014 DISCOVERY ORDER, OR IN THE ALTERNATIVE, FOR PROTECTIVE ORDER, FILED MARCH 20, 2014**

Wells Fargo moved the Court to alter or amend its Discovery Order of March 11, 2014. Specifically, Wells Fargo requested that the Court reconsider its order requiring production of the "general ledger with account number 157906" for "calendar year 2002" and amend the order so that Wells Fargo would not have to produce any further information from its general ledger. Based on the affidavit of Wells Fargo representative Annette Evans, the Court finds that production of the requested ledger would be exceptionally expensive, burdensome and onerous. The Court concludes that any additional discovery related to funding of the subject loan cannot lead to admissible evidence and is therefore irrelevant. As such, Wells Fargo's motion is *granted.* Wells Fargo shall, however, produce to the Court all HUD-1s executed by Plaintiff in relation to the subject loan, as well as the records Wells Fargo has produced to Mr. Bentrim in this matter relating to payments made by Mr. Bentrim, how such payments were credited, and the assessment of interest, late fees and any other charges relating to the subject loan.

3. **PLAINTIFF'S SECOND MOTION FOR RULE TO SHOW CAUSE, FILED MARCH 24, 2014**

Next, Plaintiff moved that Wells Fargo be held in contempt and sanctioned based on a disagreement between the parties as to when document production was due under this Court's Discovery Orders of March 4, 2014 and March 11, 2014. The Court *denies* Plaintiff's motion in its entirety.

4. WELLS FARGO'S MOTION TO COMPEL, FILED MARCH 25, 2014

On December 12, 2013, Wells Fargo served Supplemental Interrogatories and Requests for Production on the Plaintiff. These requests related to the causes of action found in Plaintiff's Amended Complaint, including his claims for damages. Plaintiff failed to respond to Wells Fargo's requests, and Wells Fargo filed a motion to compel. Immediately prior to a hearing on February 10, 2014, Plaintiff agreed to respond to Wells Fargo's discovery in full, and that agreement was put on the record. However, Wells Fargo contends that Plaintiff's subsequent responses were incomplete. The Court agrees and orders that Plaintiff shall, within 15 days of this Order, set forth an itemized statement of all damages under each remaining cause of action. Plaintiff shall reference any documents supporting his claims, and, to the extent not already produced, shall produce such documents to support his damages claims.

5. WELLS FARGO'S MOTION FOR A PROTECTIVE ORDER, FILED MARCH 25, 2014

Wells Fargo moved for protection as to Plaintiff's Third Set of Requests for Production to Defendant, which consists of seventy-three (73) requests for production. As to Request No. 1, the Court finds that Wells Fargo has already produced the servicing records in its possession, including a Unicar servicing record. This request is therefore duplicative, and Wells Fargo's request for protection as to Request No. 1 is *granted.* Further, the Court finds in regards to Requests Nos. 2- 14 that Wells Fargo need not produce further documentation regarding the ACLS system, and, therefore, the Motion as to these Requests is *granted.* Wells Fargo, as previously set forth in the Court's Discovery Order dated March 5, 2014, is instructed to produce a witness to testify as to the alleged sale noted on the ACLS History card. The Court finds that the deposition satisfies Request No. 15, and Wells Fargo's Motion as to this Request is therefore *granted.* Next, the Court finds that the documents sought by Plaintiff in Requests Nos. 16-73,

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related to receipt of payment, an alleged securitization, and property addresses held in various trusts, are not relevant to this litigation and could not lead to the discovery of admissible evidence. The Court notes that, as of the date of this hearing, that Wells Fargo holds the original Note, and the Note is made payable to its predecessor in interest, First Union Nation Bank. As such, Wells Fargo's Motion as to Requests Nos. 16-73 is also *granted.*

6. PLAINTIFF'S MOTION TO RENEW FIRST MOTION FOR RULE TO SHOW CAUSE, FILED MARCH 28, 2014

Plaintiff moves that the Court hold Wells Fargo in contempt based on Wells Fargo's alleged failure to comply with the Court's directive to inquire with the IRS regarding the assignment of EIN # 56-1948921, and Wells Fargo's alleged failure to furnish information explaining the relationship of EIN # 56-1948921 to Wells Fargo. The Court finds that Wells Fargo provided Plaintiff with a verified answer to the Court's interrogatory explaining the EIN's relationship to Wells Fargo and has produced 147C letters from the IRS dated February 12, 2014 and April 8, 2014 indicating that the EIN number in question was assigned to First Union National Bank. Therefore, the Court concludes that Wells Fargo complied with the Court's previous orders. Accordingly, Plaintiff's motion is *denied.*

7. WELLS FARGO'S MOTION FOR PROTECTIVE ORDER, FILED APRIL 16, 2014

Wells Fargo moved for protection from discovery of additional categories of documents. The Court concludes that good cause exists to prohibit further discovery on certain issues and *grants* Wells Fargo's Motion as follows:

1. The Court denies Plaintiff's request to take the depositions of Paul R. Buck and Joann G. Buck;

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2. The Court finds that further discovery related to "general ledger" bank information prior to August 16, 2006 is irrelevant, cannot lead to the discovery of admissible evidence and is therefore barred;
3. The Court holds that further discovery related to EIN # 56-1948921 is irrelevant, cannot lead to the discovery of admissible evidence and is therefore barred;
4. The Court holds that any discovery related to "First Union National Bank in Greensboro, EIN 56-1948921" is irrelevant, cannot lead to the discovery of admissible evidence and is therefore barred.

The Courts ruling as to Plaintiff's Third Set of Request for Production was already addressed above in Wells Fargo's previous Motion for Protective order which was *granted.*

8. OTHER MATTERS

Within 30 days of this order, Wells Fargo shall identify and produce a 30(b)(6) witness on the topic of the servicing of Plaintiff's loan. In addition, Wells Fargo shall produce for the Court's inspection the vault records produced to Plaintiff in this matter. Unredacted vault records shall be produced *in camera*. The court shall thereafter issue its order thereon.

The parties have established good cause for their inability to meet the deadlines set forth in the Amended Scheduling Order, filed February 14, 2014. The parties shall return to Court for a status conference and motions hearing on June 9, 2014, at 3:00 PM, and a new scheduling order will be addressed at that time. The parties shall schedule a mediation with Dawes Cooke for a date convenient to both parties in July 2014.



AND IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity
Charleston County

May 14, 2014
Charleston, South Carolina

6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	**ORDER**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
DEFENDANT.	)	
	)	

FILED
2014 OCT 28 AM 9:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on June 9, 2014, for a hearing on several discovery and dispositive motions. At the hearing, the Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrim was also present at the hearing. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III and John C. Hawk IV of Womble Carlyle Sandridge & Rice, L.L.P. After carefully reviewing the motions and memoranda submitted by the parties, hearing arguments from counsel for both parties, considering the applicable law and facts related to the motions, the Court rules as follows:

1. PLAINTIFF'S MOTION TO RECONSIDER, FILED MAY 28, 2014

Plaintiff moved the Court to alter or amend its Discovery Order of May 14, 2014. Specifically, Plaintiff requested the Court to reconsider its conclusion that Wells Fargo is the "holder" of the subject promissory note (the "Note"). The Court rejects Plaintiff's argument and again concludes that Wells Fargo is the holder of the Note as a matter of law and a holder in due course of the Note as a matter of law. Further, even if Wells Fargo was not the holder, it would still qualify as a "person entitled to enforce" as defined in S.C. Code Ann. §36-3-301. The Court

concludes there is no good cause to reverse its prior rulings and therefore *denies* Plaintiff's Motion to Reconsider.

2. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED OCTOBER 10, 2013, AND SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT, FILED MAY 30, 2014

At the hearing, Plaintiff informed the Court that he would not pursue the first six of his initial seven grounds found in his Motion for Summary Judgment filed October 10, 2013. He proceeded on the seventh ground, contending that Wells Fargo's foreclosure counterclaim was filed in contravention of the Court's order of July 9, 2010, in Case Number 09-CP-10-4700. He also proceeded on his Supplemental Motion for Summary Judgment filed May 30, 2014. Plaintiff's summary judgment motions are *denied* in their entirety.

3. PLAINTIFF'S MOTION TO COMPEL, FILED MAY 30, 2014

Plaintiff's Motion to Compel requests the Court to order Wells Fargo to produce five categories of documents. The first two categories relate to Wells Fargo's ACLS system. Plaintiff is hereby ordered to provide Wells Fargo with a list of tables and/or reports he believes are maintained in ACLS and contain information he is seeking regarding the servicing of his loan. Upon receipt of the list from Plaintiff, Wells Fargo shall conduct a timely review of the list and determine whether the requested documents relate to the servicing of Plaintiff's loan. If Wells Fargo believes that any of the documents sought are not related to the servicing of Plaintiff's loan or will be unduly burdensome to produce, then Wells Fargo is ordered to submit to the Court within fifteen (15) days of receipt of Plaintiff's list a detailed explanation of why the documents sought are either not related to the servicing of Plaintiff's loan or will be unduly burdensome for Wells Fargo to produce. Otherwise, Wells Fargo shall produce such documents

to Plaintiff. As to the remaining categories of documents requested by Plaintiff, the Court *denies* Plaintiff's motion.

4. WELLS FARGO'S MOTION FOR SUMMARY JUDGMENT, FILED MAY 19, 2014

Wells Fargo moved for summary judgment as to sixteen of Plaintiff's seventeen causes of action, the only exception being the twelfth cause of action for an Accounting. Viewing the facts in the light most favorable to Plaintiff, the Court hereby grants Wells Fargo's motion for Summary Judgment as to the following causes of action:

- Breach of Implied Covenant of Good Faith and Fair Dealing (Third Cause of Action)
- Conversion (Fifth and Tenth Causes of Action)
- Fraud/Fraudulent Misrepresentation (Sixth Cause of Action)
- Constructive Fraud (Seventh Cause of Action)
- South Carolina Unfair Trade Practices Act (Eighth Cause of Action)
- Slander of Title (Ninth Cause of Action)
- Civil Conspiracy (Eleventh Cause of Action)
- Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (Thirteenth Cause of Action)
- South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108 (Fourteenth Cause of Action)
- Mail Fraud (Sixteenth Cause of Action)
- Declaratory Judgment (Seventeenth Cause of Action)

The Court requests further briefing as to the remaining causes of action on which Wells Fargo seeks summary judgment and takes those matters under advisement. After reviewing the

additional briefing, the Court will issue an order either granting or denying Wells Fargo's Motion for Summary Judgment as to these causes of action.

5. SCHEDULING

The Court has set a status conference for January 12, 2015, at 11:00 a.m. to discuss further scheduling issues.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master in Equity

CHARLESTON, SC
October 16, 2014

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Brent E. Bentrim Plaintiff, v. Wells Fargo Bank, N.A. Defendant.	)	IN THE COURT OF COMMON PLEAS OF THE NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-2946 **ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

FILED
2015 JAN 26 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on June 9, 2014, for a hearing on several discovery and dispositive motions. At the hearing, the Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III, and John C. Hawk IV of Womble Carlyle Sandride & Rice, L.L.P.

Wells Fargo moved for summary judgment as to sixteen of Plaintiff's seventeen causes of action. An Order was entered in favor of Defendant's motion for Summary Judgment on fourteen of Plaintiff's sixteen causes of action on October 28, 2014. Four outstanding issues remain. After carefully reviewing the motions and memoranda submitted by the parties, hearing arguments from counsel for both parties, considering the applicable law and facts related to the motions, the Court rules as follows:

Viewing the facts in the light most favorable to Plaintiff (Rule 56, SCRCP), the Court hereby denies Wells Fargo's motion for Summary Judgment as to the remaining causes of action:

- Negligence/Gross Negligence (First Cause of Action)
- Negligent Misrepresentation (Second Cause of Action)
- Breach of Contract Accompanied by a Fraudulent Act (Fourth Cause of Action)
- Real Estate Settlement Procedures Act (Fifteenth Cause of Action)

The Court in a separate order has granted Plaintiff's motion for reconsideration as to the cause of action for a Violation of SC Unfair Trade Practices Act. SC Code 33-17-100 et seq. Accordingly this case shall proceed to trial on these remaining five (5) causes of action.

IT IS THEREFORE ORDERED that defendant's motion for summary judgment on the causes of action noted above is denied.

IT IS FURTHER ORDERED that Plaintiff may proceed with discovery on the remaining causes of action and this case shall be placed on the March 23, 2015 trial term of court.

AND IT IS SO ORDERED!

Charleston, South Carolina
1/23, 2015

Mikell R. Scarborough
Master-In-Equity for Charleston County

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Brent E. Bentrim Plaintiff, v. Wells Fargo Bank, N.A. Defendant.	IN THE COURT OF COMMON PLEAS OF THE NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-2946 **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO RECONSIDER**

FILED
2015 JAN 26 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court on January 12, 2015, for a hearing on a motion to reconsider a prior Order entered on October 28, 2014. At the hearing, the Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III, and John C. Hawk IV of Womble Carlyle Sandride & Rice, L.L.P.

After carefully reviewing the motions and memoranda submitted by the parties, hearing arguments from counsel for both parties, considering the applicable law and facts related to the motions, the Court rules as follows:

Rule 59(e) permits a court to amend a judgment to accommodate a change in controlling law, account for new evidence not available at trial, or correct a clear error of law. Rule 59(e), SCRCP. A party cannot raise an issue for the first time in a Rule 59(e) motion which could have been raised at trial. MailSource, LLC v. M.A. Bailey & Associates, Inc., 356 S.C. 370, 374, 588 S.E.2d 639, 641 (Ct. App. 2003).

Unlike the federal courts, South Carolina courts do not recognize "the plain error" rule. Washington v. Whitaker, 317 S.C. 108, 114, 451 S.E.2d 894, 898 (S.C. 1994). Instead, it is well settled that a contemporaneous objection must be made to preserve an argument for appellate review. Id.

As to Plaintiff's eighth cause of action, South Carolina Unfair Trade Practices (SCUTPA), this Court reverses its October 28, 2014 finding on this issue only. When viewing the facts in the light most favorable to Plaintiff, the Court finds Bentrim has provided this court with sufficient evidence and law to establish a genuine issue of material fact on this cause of action.

As to the other eleven (11) causes of action, Plaintiff offers no new law or any new evidence that would change this Court's prior Order from October 28, 2014. As such, Plaintiff's motion is denied as to the other causes of action.

IT IS THEREFORE ORDERED that Plaintiff's motion to reconsider section 4 of the October 28, 2014 order is hereby granted in part as to SCUTPA and denied in part.

IT IS SO ORDERED!

Charleston, South Carolina
1/15, 2015

Mikell R. Scarborough
Master-In-Equity for Charleston County

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Brent E. Bentrim Plaintiff, v. Wells Fargo Bank, N.A. Defendant.	)	IN THE COURT OF COMMON PLEAS OF THE NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-2946 **ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL DISCOVERY BUT SUBJECT TO AN ORDER OF PROTECTION**

FILED
2015 JAN 26 PM 2:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter came before the Court for a hearing on Plaintiff's Motion to Compel Discovery dated May 30, 2014 and on Defendant's motion for a Protective Order filed April 16, 2014. At a hearing held on June 9, 2014, and Order entered on October 28, 2014, the court requested Defendant's counsel submit to the court the documentation to which the claim of privilege and/or the work product doctrine applies.

After carefully reviewing in camera the documentation submitted, this court is of the opinion that this material shall be provided to the Plaintiff subject to an Order of Protection requiring Plaintiff to keep this material within its possession and for its use exclusively to the Plaintiff in this action.

IT IS THEREFORE ORDERED that Plaintiff's motion to compel discovery is hereby granted as to the documentation provided to the court for in camera review and subject to an order of protection which limits its use to the Plaintiff for purposes of the discovery and trial of this case.

IT IS SO ORDERED!

Charleston, South Carolina
26, 2015

Mikell R. Scarborough
Master-In-Equity for Charleston County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
Brent E. Bentrim,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Wells Fargo Bank, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2012 APR 23 AM 9:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

CONSENT ORDER GRANTING DEFENDANT'S MOTION TO AMEND ANSWER

Whereas, the Defendant, Wells Fargo Bank, N.A., seeks to amend its Answer pursuant to South Carolina Rule of Civil Procedure 15(a), SCRCP, in order to assert additional defenses against Brent E. Bentrim and the following counterclaims: (i) real estate foreclosure; and, (ii) suit on promissory note; and,

Whereas, the Plaintiff Brent E. Bentrim consents to this amendment pursuant to Rule 15(a), SCRCP.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant Wells Fargo Bank, N.A., shall be allowed to file an Amended Answer and Counterclaim pursuant to Rule 15(a), SCRCP, within fifteen (15) days of from the date of filing of this Order to assert additional defenses against Brent E. Bentrim and the following counterclaims: (i) real estate foreclosure; and, (ii) suit on promissory note.

AND IT IS SO ORDERED.

The Honorable Stephanie P. McDonald
Presiding Judge, Ninth Judicial Circuit

April 23, 2012
Charleston, South Carolina

WE MOVE:

Jana B. Baker, S.C. Bar No.72487
William R. Warnock, Jr., S.C. Bar No. 76248
WOMBLE CARLYLE SANDRIDGE & RICE
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
(843) 723-7398 (fax)
ATTORNEYS FOR DEFENDANT

April 23, 2012
Charleston, South Carolina

WE CONSENT:

William H. Sloan
P.O. Box 85
Summerville, SC 29484
(843) 873-7531
(843) 873-7527 fax

ATTORNEY FOR THE PLAINTIFF

April 20, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
BRENT E. BENTRIM, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	)	**ORDER GRANTING, IN PART, AND DENYING IN PART, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

FILED
2012 NOV 20 AM 8:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Judge: The Honorable R. Markley Dennis, Jr.
Plaintiffs' Attorney: Robert B. Varnado, Esquire
Defendant Wells Fargo's Attorney: Jana B. Baker, Esquire

A hearing on Defendant Wells Fargo Bank, N.A.'s (the "**Defendant**" or "**Wells Fargo**") Motion for Summary Judgment (the "**Motion**") was held on October 23, 2012 at 9:30 a.m. in the Charleston County Courthouse (the "**Hearing**"). The Honorable R. Markley Dennis, Jr., presided at the Hearing. Robert B. Varnado, Esquire, appeared on behalf of the Plaintiff Brent E. Bentrim (the "**Plaintiff**" or "**Bentrim**"). Jana B. Baker, Esquire, appeared at the Hearing on behalf of Wells Fargo.

For the reasons set forth below, Wells Fargo's Motion is granted in part, and denied, in part. Specifically, Bentrim's Breach of Contract and Truth in Lending Act (TILA), 15 U.S.C. § 1640(e) claims are dismissed *with prejudice* as a matter of law. However, the following claims remain: (1) RESPA Violations, Section 2605; (2) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (3) Mail Fraud; and, (4) Punitive Damages.

STANDARD OF REVIEW

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Milligan v. Liberty Life Ins. Co., 313 S.C. 478, 443 S.E.2d 381 (1994). The evidence and all reasonable inferences must be examined in the light most favorable to the non-moving party. Sauner v. Public Service Authority of South Carolina, 581 S.E.2d 161, 165 (2003). Summary judgment is inappropriate if the facts are conflicting or the inferences to be drawn from the facts are doubtful. Alston v. Blue Ridge Transfer Co., 308 S.C. 292, 294, 417 S.E.2d 631, 632 (Ct. App. 1992).

CONCLUSIONS OF LAW

I conclude as follows:

1. Wells Fargo's Motion should be granted, in part, and denied, in part, as more particularly set forth below.

2. Bentrim filed the above-referenced action against Wells Fargo on April 25, 2011. Bentrim asserted the following claims against Wells Fargo: (i) RESPA Violations, Section 2605; (ii) Breach of contract; (iii) TILA Violations; (iv) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, et. seq.; (v) Mail Fraud; and, (vi) Punitive Damages.

Plaintiff's claims for (1) Breach of Contract; and (2) TILA Violations shall be dismissed *with prejudice* as a matter of law.

Specifically, Bentrim's breach of contract claim fails as a matter of law since the essential elements are (i) the existence of a contract, (ii) its breach, and (iii) the damages caused by the breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Here, Wells Fargo is entitled to Summary Judgment as to Plaintiffs' Breach of Contract claim since Plaintiff has failed to allege the elements of breach of contract. (Compl. at ¶ 34.) In fact, Plaintiff failed to allege any of the requisite elements to prevail on a breach of contract claim. As such, Plaintiff has failed to: (i) identify the contract that Wells Fargo allegedly breached, (ii) state when such breach occurred; (iii) set forth any allegations to how such breached occurred; and, (iv) set forth the damages, if any, that Plaintiff suffered by such alleged breach. Plaintiff cannot rely on a conclusory statement that simply alleging "Wells Fargo breached its contract with Mr. Bentrim." (Compl. at ¶ 24.) "In our State, the complaint is sufficient if it informs the defendant of the ultimate facts supporting *each element of the cause of action*; there is no necessity that the complaint states all the evidence to be presented upon the trial of the case." Moore v. Moore, 284 S.C. 278, 283, 326 S.E.2d 157 160 (Ct. App. 1985) (emphasis added). "A litigant is required to plead ultimate facts -- the facts which evidence upon trial will prove -- not the evidence necessary to prove these facts." Id. (citing Crowley v. Bob Jones University, 268 S.C. 492, 497, 234 S.E.2d 879, 881 (1977)). "A pleading which sets forth a cause of action. . . shall contain. . . . a short and plain statement of the facts showing that the pleading is entitled to relief. . ." Rule 8(a), SCRCP.

Plaintiff Bentrim's breach of contract cause of action does not plead "ultimate facts supporting *each element of the cause of action.*" Bentrim's Complaint does not even attempt to set forth the elements of this cause of action, and therefore, his pleadings fail to comply with the South Carolina Rule of Civil Procedure 8 and the case law interpreting this Rule.

RMPJ 13

Moreover, Bentrim did not submit an affidavit in opposition to the Motion that would support his Breach of Contract claim. Accordingly, Plaintiff Wells Fargo is entitled to Summary Judgment as to Plaintiff's Breach of Contract claim, and therefore, this cause of actions fails as a matter of law and must be dismissed *with prejudice*.

Plaintiff's TILA claim fails as a matter of law and judgment should be granted in favor of Wells Fargo since the claim is time barred. Specifically, 15 U.S.C. § 1640(e) provides, in pertinent part, the following: "Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within *one year* from the date of the occurrence of the violation or . . ." 15 U.S.C. § 1640(e) (emphasis added).

Plaintiff alleges that the TILA violations occurred in December 19, 2008 or 2009. (Compl. at ¶¶ 14, 15 & 21.) Plaintiff's Complaint was filed on April 25, 2011. Therefore, the TILA claim should have been brought in 2010 at the latest, however, it was not, and as such, the claim should be dismissed as a matter of law since it is time barred under the applicable one year statute of limitations.

Moreover, Plaintiff's counsel admitted at the end of the Hearing that this cause of action should be withdrawn by Plaintiff.

Accordingly, Wells Fargo is entitled to Summary Judgment as to Plaintiff's TILA Violations claim, and therefore, this cause of action fails as a matter of law and must be dismissed *with prejudice*.

12. Defendants' motion for summary judgment is denied as to (1) RESPA Violations, Section 2605; (2) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (3) Mail Fraud; and, (4) Punitive Damages because the Court finds the existence of genuine issues of material fact as a matter of law on each of the foregoing counts. Based on the reasons set forth in

RMP 5/14

this Order and all the pleadings on file with the Court and the arguments submitted by counsel at the Hearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Wells Fargo's Motion for Summary Judgment is granted, in part, and denied, in part.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following claims asserted by Plaintiff Brent E. Bentrim are dismissed as a matter of law *with prejudice*: (1) Breach of Contract; and, (2) Truth in Lending Act (TILA), 15 U.S.C. § 1640(e).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' motion for summary judgment is denied as to (1) RESPA Violations, Section 2605; (2) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (3) Mail Fraud; and, (4) Punitive Damages because the Court finds the existence of genuine issues of material fact as a matter of law on each of the foregoing counts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may, at its option, re-file a motion for summary judgment to dismiss the above claims once the parties engage in further discovery.

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Judge, Ninth Judicial Circuit

November 13, 2012

Charleston, South Carolina

RMDJ/S

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**CONSENT ORDER OF REFERENCE**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2012 NOV 13 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Upon the motion of counsel for Defendant Wells Fargo Bank, N.A. ("Defendant"), and with the consent of counsel for Plaintiff Brent E. Bentrim ("Plaintiff"), the parties seek to refer this, without limitation, foreclosure of real estate mortgage action to the Master-In-Equity for Charleston County, South Carolina.

IT IS THEREFORE ORDERED that the above-captioned action be, and the same hereby is, referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County to take the testimony and other evidence offered and to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in this case pursuant to South Carolina Rule of Civil Procedure 53, SCRCP.

IT IS FURTHER ORDERED that any appeal of the final judgment in this case shall be to the Court of Appeals for the State of South Carolina in accordance with the provisions of S.C. Code § 14-11-85 and South Carolina Rule of Civil Procedure 53(e), SCRCP.

This the 8th day of Nov., 2012
Charleston, South Carolina

Honorable Deadra L. Jefferson
Chief Administrative Judge
Ninth Judicial Circuit

WCSR 7528327v1

WE MOVE:

10-31-12

Sterling Laney, Esq. S.C. Bar No. 6933
Jana B. Baker, Esq. S.C. Bar No. 72487
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
5 Exchange Street, P.O. Box 999 (29402)
Charleston, SC 29401
(843) 722 – 3400
(843) 723 – 7398 (fax)

ATTORNEYS FOR DEFENDANT WELLS FARGO BANK, N.A.

WE CONSENT:

10-31-12

Robert B. Vamado
Brown & Varnado, LLC
P.O. Box 1127
Mt. Pleasant, S.C. 29465
(843) 670 – 1826
(843) 564 – 5106 (fax)

ATTORNEY FOR PLAINTIFF

WCSR 7528327v1

2012
ADR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-10-3933

Wachovia Bank, National Association, successor by merger to First Union National Bank,

Plaintiff,

vs.

Brent E. Bentrim; Citibank South Dakota N.A.; and the County of Charleston,

Defendants.

MOTION AND ORDER OF DISMISSAL AND CANCELLATION OF LIS PENDENS, SUMMONS AND COMPLAINT

FILED
2008 JAN -3 AM 9:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

08-101

Upon motion of Suzanne E. Brown, attorney for the Plaintiff, it appears that the default associated with the subject note and mortgage has been cured and the Plaintiff has requested that the action be dismissed without prejudice.

IT IS THEREFORE ORDERED that this action be dismissed without prejudice and the Lis Pendens, Summons & Complaint canceled of record.

AND IT IS SO ORDERED.

Presiding Judge
Charleston County, South Carolina

Date: 12/21/07

I SO MOVE:

Suzanne E. Brown
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone: 803-454-3540
Attorney for Plaintiff

B&S file no.: 07-09327

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

JUDGMENT IN A CIVIL CASE

Case No.: 09-CP-10-4700

Wachovia
Plaintiff

versus

Bentrim
Defendant

CHECK ONE:

[ ] **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

[ ] **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[X] **ACTION DISMISSED (CHECK REASON):** [ ] Rule 12(b), SCRCP; [X] Rule 41(a), SCRCP (Vol. nonsuit) [ ] Rule 43(k), SCRCP(Settled); [ ] Other - _____

[ ] **ACTION STRICKEN (CHECK REASON):** [ ] Rule 40(j),SCRCP; [ ] Bankruptcy; [ ] Binding Arbitration, Subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other _____

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by Court

Case dismissed. TT Bank may not apply for 90 days and only after submitting to Δ Bentrim a payoff amount calculated.

Dated at Charleston, South Carolina, 7/7/10
Date

Judge

This judgment was entered on the _____ Day of _____, 20__, and a copy mailed first class this _____ Day _____, 20__, to attorneys of record or to parties (when appearing pro-se) as follows:

JULIE J. ARMSTRONG
CLERK OF COURT

2010 JUL -9 PM 4:19

FILED

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

_____
Clerk of Court

CRP Form 4(Rev. 2/96)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No. 05-CP-10-4814
COUNTY OF CHARLESTON	)	
Wachovia Bank, N.A., successor to First Union National Bank,	)	
Plaintiff,	)	**STIPULATION OF DISMISSAL**
vs.	)	
Brent E. Bentrim and Citibank, South Dakota, N.A.,	)	
Defendant(s).	)	

FILED
2006 SEP 12 PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Circuit Court Rule 41, the undersigned attorney for the Plaintiff being the only party appearing in the action does hereby stipulate to dismissal of this action without prejudice.

The undersigned does further agree that the Clerk is to remove said case from the active roster and hereby certifies that he will mail to the defendants a clocked copy of this stipulation within ten (10) days at their last known address.

The Clerk is further directed to cancel the Lis Pendens filed on November 28, 2005.

WOODWARD, COTHRAN & HERNDON

BY: _____

Warren R. Herndon, Jr.
Attorney for Plaintiff
Post Office Box 12399
Columbia, SC 29211
(803) 799-9772

September 8, 2006

Columbia, South Carolina

wch:05-8293

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO. 11-CP-10-2946
Brent E Bentrim Plaintiff,	)	
vs.	)	SUMMONS JURY TRIAL REQUESTED DECLARATORY JUDGEMENT ACTION
Wells Fargo Bank, NA, Defendant.	)	

FILED
2011 APR 25 AM 10:23
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HERBY SUMMONED and required to answer the Complaint, herein, a copy of which is herewith served upon you, or to otherwise appear, and to serve a copy of your Answer to said Complaint, upon the Plaintiff at his office, 49 Archdale Street, 2E Charleston, SC 29401, or other otherwise appear and defend the action pursuant to applicable Court rules, within (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint or otherwise appear and defend within the time allotted, the Plaintiff in this action will apply to the Court for the relief herein demanded, and judgment by default will be rendered against you for the relief demanded in this Complaint.

Brent E. Bentrim, Plaintiff

Appearing Pro Se
49 Archdale Street, 2E
Charleston, SC 29401
843-278-0061

April 25, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO. 2011 CP 10 - 2940
BRENT BENTRIM,	)	
Plaintiff,	)	
vs.	)	CIVIL ACTION
WELLS FARGO BANK, NA	)	
Defendant	)	

FILED
2011 APR 25 AM 10: 23
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

COMPLAINT

COMES NOW Plaintiff and shows the Court the following:

1.

The Plaintiff is a resident and citizen of the County of Charleston, State of South Carolina.

2.

Wells Fargo Bank, NA is a foreign corporation doing business in Charleston, Charleston County, South Carolina with its Registered Agent for service of process being Corporation Service Company, 1703 Laurel Street, Columbia, South Carolina 29201.

3.

The premises covered and affected were, at the time of the filing of this notice, more commonly described as:

ALL that certain piece, parcel or lot of land, together with the buildings and improvements theron, situate, lying and being in the St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W.A. Clark, L.S., dated January 1944, and is duly recorded in the RMC Office for Charleston County in Plat Book

1

E, Page 178 and on plat made by W. A. Clark dated January 1945 and recorded in the RMC office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS No. *421-02-00-107*

Property Address: 10 Nicholson Street, Charleston, SC 29407

4.

Venue is proper in that a substantial part of the events or omissions giving rise to the claims occurred in Charleston County.

5.

Venue is also proper in that a substantial part of the events or omissions giving rise to the claims herein occurred in Charleston County.

6.

The amount in controversy exceeds $7,500.00.

OPERATIVE FACTS

8.

On March 12, 2002, the Plaintiff executed a deed to secure debt to First Union National Bank conveying a security interest in his home at 10 Nicholson Street, Charleston, Charleston Country, South Carolina, 29407.

9.

On the same date, March 12, 2002, the Plaintiff executed a negotiated promissory note to First Union National Bank in the amount of $182,700.00 together with a variable interest rate per anum with the last payment due not later than April 11, 2032.

10.

On November 17, 2008 Wachovia Bank, NA sent a certified letter to the Plaintiff indicating its intention to foreclose demanding payment of $4,920.09. Attached as Exhibit A is a copy of that letter.

11.

Plaintiff immediately contacted Wachovia Bank and obtained conflicting information as to whether the account was past due or current.

12.

On November 26, 2008 Wachovia Bank sent a 'Past Due Notice' demanding payment of $2,279.83. Attached as Exhibit B is a copy of that letter.

13.

On December 8, 2008 Plaintiff sent a letter to Defendant in compliance with and under RESPA 12 USC § 2605(e). Attached as Exhibit C is a copy of that letter.

14.

On December 19, 2008, Defendant responded to Plaintiff's request reiterating the formula for the calculation on principal and interest and included a 'Consumer Loan Payment History' revealing missing payments and incorrect application of principal and interest. Attached as Exhibit D is a copy of that letter.

15.

In violation of section 6 of RESPA, Defendant took no actions to cure the defects and instead wrongly began foreclosure proceedings against Plaintiff in January 2009.

16.

On July 10, 2009, Defendant's attorney, Brock & Scott PLLC, acknowledged 'The Notice of Intention to Foreclose' was incorrect yet still demanded fees, late charges and costs to reinstate the Plaintiff's loan. Attached as Exhibit E is a copy of that letter.

17.

On July 27, 2009, Defendant filed a LIS PENDENS action against Plaintiff in County of Charleston Court of Common Pleas, Case No. 09-CP-10-4700. Plaintiff answered the complaint pro se questioning Defendant's calculations and only seeking reinstatement as relief.

18.

On December 9, 2009 a Final Hearing was held where the Master-in-Equity held over the issue allowing Wells Fargo to produce a witness to testify the interest and principal calculations on Plaintiff's account were correct in regards to the Promissory Note.

19.

On January 8, 2010 in a good faith attempt to resolve this conflict, Plaintiff made a settlement offer to Defendant which would alleviate them of all liability for past loan servicing problems. Once again, the Plaintiff requested no damages against Defendant. Attached as Exhibit F is a copy of that letter

20.

On July 7, 2010, Master-in-Equity dismissed Wachovia's case against the Plaintiff as Wells Fargo failed to produce a witness or testimony as to the accuracy of its principal and interest calculations. Attached as Exhibit G is the order.

21.

Over the course of the foreclosure period Defendant applied nearly $25,000.00 in fraudulent interest to the Plaintiff's account at a staggering 27.34% annual interest rate.

22.

Only July 13, 2010 Plaintiff received a letter by overnight delivery indicating if Plaintiff did not modify the loan he would lose his home. Attached as Exhibit H is a copy of the letter.

23.

On August 25, 2010 Plaintiff received another overnight letter reiterating the need to modify his loan and indicating seeking outside assistance in this matter would result in being 'scammed.' Attached as Exhibit I is a copy of this letter.

24.

On July 21, 2010, Plaintiff sent a Qualified Written Request via Defendant's attorney as well as verification that Wells Fargo is RIGHTFUL Holder in Due Course of the Promissory Note. Attached as Exhibit J is the QWR and also attached as Exhibit K is evidence of receipt.

25.

Defendant ignored the QWR until Plaintiff contacted Wells Fargo on October 12, 2010 and provided requested evidence supporting the QWR on October 25, 2010. Attached as Exhibit L is a copy of the letter.

26.

On October 28, 2010, Corrina Gardner partially responded to Plaintiff's QWR supplying a principal and interest statement that materially differed from the one supplied in December 2008. The new statement indicated Wells Fargo applied no payments to the loan for nearly 18 months as well as a loan balance different from the original note. Ms. Gardner also attempted to pass off the closing attorney paralegal's certified copy of the Promissory Note made at closing as Wells Fargo's original. Attached as Exhibit M is a copy of the letter.

27.

On November 8, 2010 Plaintiff again requested to see an original copy of the Promissory Note. Attached as Exhibit N is a copy of that letter.

28.

On February 17, 2011 Wells Fargo Vault Services sent the Plaintiff a another copy of the closing attorney's certified copy Promissory Note now attached with a true certified copy of a second, and unrequested, loan the Plaintiff has with the Defendant. Attached as Exhibit O is a copy of the letter.

29.

In violation of section 6 of RESPA, on April 5, 2011, Plaintiff received a letter from Defendant stating it had verified the loan as accurate and 906 days past due and reported his account as past due to all Experian, TransUnion and Equifax. Attached as Exhibit P is a copy of that letter.

30.

Defendant has negatively and with malice damaged Plaintiff's credit.

31.

Wells Fargo has refused to answer Plaintiff's legitimate inquires, refused to correct its mistakes and fraudulently attempted to claim an interest in the Plaintiff's home absent any evidence.

32.

Defendant's actions proximately caused damages to Plaintiff. Plaintiff has suffered emotionally, physically, and financially from this ordeal as a direct action of Wells Fargo's actions.

COUNT ONE

RESPA VIOLATIONS

33.

Wells Fargo has failed to comply with Section 2605 of REPSA, making Wells Fargo liable for all actual damages caused to Plaintiff, including but not limited to, emotional damages.

COUNT TWO

BREACH OF CONTRACT

34.

Wells Fargo has breached its contracts with Mr. Bentrim.

COUNT THREE

TILA VIOLATIONS

35.

Wells Fargo has violated Truth-in-Lending Act by applying interest as it sought fit to his account.

COUNT FOUR

UNFAIR TRADE PRACTICES

36.

Wells Fargo has engaged in fraudulent, deceptive and dishonest trade practices that are prohibited by statute and regulations in the servicing of the Plaintiff's account.

COUNT FIVE

MAIL FRAUD

37.

Wells Fargo employed a scheme in which the postal system was used in an attempt to unlawfully obtain money and property from the Plaintiff.

COUNT SIX

PUNTITIVE DAMAGES

37.

Wells Fargo is liable for punitive damages for its willful, malicious and reckless conduct and specific intent to cause harm to Plaintiff.

WHEREFORE plaintiff respectfully requests that he recover the following:

1. Actual Damages
2. Emotional Damages;
3. General Damages;
4. Damages to credit reputation;
5. Expenses of litigation;
6. Punitive Damages;
7. Such other damages as are appropriate in this case;
8. For a trial by jury.

BY: _____
Brent E. Bentrim

Appearing Pro Se
49 Archdale Street, 2E
Charleston, SC 29401
(843) 278-0061

April 25, 2011

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
Brent E. Bentrim, Plaintiff, vs. Wells Fargo Bank, N.A., Defendant.	)	Case No. 2011-CP-10-2946 **ANSWER**

FILED
2011 MAY 27 PM 1:47
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Wells Fargo Bank, N.A. hereby responds to the Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant admits, upon information and belief, the allegations contained in Paragraph 1 of the Complaint.

2. Responding to Paragraph 2 of the Complaint, Defendant denies that it is a foreign corporation.

3. Defendant admits, upon information and belief, the allegations contained in Paragraph 3 of the Complaint.

4. Responding to Paragraph 4 of the Complaint, Defendant admits that venue is proper.

5. Responding to Paragraph 5 of the Complaint, Defendant admits that venue is proper.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and, therefore, denies those allegations.

7. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

8. Responding to Paragraph 9 of the Complaint, Defendant craves reference to the promissory note and denies all allegations inconsistent with the terms and conditions thereof.

9. Defendant admits the allegations contained in Paragraph 10 of the Complaint.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and, therefore, denies those allegations.

11. Defendant admits the allegations contained in Paragraph 12 of the Complaint.

12. Defendant admits the allegations contained in Paragraph 13 of the Complaint.

13. Responding to Paragraph 14 of the Complaint, Defendant admits that Plaintiff sent a letter, but denies the accuracy of the statements in the letter.

14. Responding to Paragraph 15 of the Complaint, Defendant admits that it initiated foreclosure proceedings, but denies the remaining allegations of Paragraph 15.

15. Responding to Paragraph 16 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

16. Responding to Paragraph 17 of the Complaint, Defendant craves reference to the lis pendens and the Plaintiff's answer and denies all allegations inconsistent with the statements therein.

17. Defendant admits, upon information and belief, the allegations contained in Paragraph 18 of the Complaint.

18. Responding to Paragraph 19 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

19. Responding to Paragraph 20 of the Complaint, Defendant craves reference to the Order and denies all allegations inconsistent with the statements therein.

20. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

21. Responding to Paragraph 22 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

22. Responding to Paragraph 23 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

23. Responding to Paragraph 24 of the Complaint, Defendant craves reference to the QWR and denies all allegations inconsistent with the statements therein.

24. Responding to Paragraph 25 of the Complaint, Defendant craves reference to the QWR and denies all allegations inconsistent with the statements therein.

25. Responding to Paragraph 26 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

26. Responding to Paragraph 27 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

27. Responding to Paragraph 28 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

28. Responding to Paragraph 29 of the Complaint, Defendant denies that it violated RESPA and craves reference to the letter and denies all allegations inconsistent with the statements therein.

29. Defendant denies the allegations contained in Paragraph 30 of the Complaint.

30. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

31. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

32. Defendant denies the allegations contained in Paragraph 33 of the Complaint.

33. Defendant denies the allegations contained in Paragraph 34 of the Complaint.

34. Defendant denies the allegations contained in Paragraph 35 of the Complaint.

35. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

36. Defendant denies the allegations contained in the first Paragraph 37 of the Complaint.

37. Defendant denies the allegations contained in the second Paragraph 37 of the Complaint.

SECOND DEFENSE

38. The Complaint fails to state a claim against Defendant upon which relief can be granted.

THIRD DEFENSE

39. Any allegation of the Complaint not admitted, qualified or explained is denied.

WHEREFORE, Defendant prays that the claims against it be dismissed with prejudice, for the fees and costs incurred in responding to the Complaint, and for such other and further relief as the Court may deem just and proper.

MCANGUS GOUDELOCK & COURIE, L.L.C.

Thomas E. Lyden
Post Office Box 12519, Capitol Station
1320 Main Street, 10th Floor (29201)
Columbia, South Carolina 29211-2519
(803) 779-2300
ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
May 25, 2011

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**AMENDED ANSWER AND COUNTERCLAIMS**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2012 MAY -8 AM 10:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Wells Fargo Bank, N.A., ("**Defendant**" or "**Wells Fargo**" or "**Lender**") hereby responds to the Complaint of Plaintiff as follows:

FOR A FIRST DEFENSE

1. Defendant admits, upon information and belief, the allegations contained in Paragraph 1 of the Complaint.

2. Responding to Paragraph 2 of the Complaint, Defendant denies that it is a foreign corporation.

3. Defendant admits, upon information and belief, the allegations contained in Paragraph 3 of the Complaint.

4. Responding to Paragraph 4 of the Complaint, Defendant admits that venue is proper.

5. Responding to Paragraph 5 of the Complaint, Defendant admits that venue is proper.

6. Defendant cannot admit is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and, therefore, denies those allegations.

7. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint since there is not a paragraph 7, and, therefore, denies those allegations to the extent there are any.

8. Responding to Paragraph 8 of the Complaint, Defendant craves reference to the terms of the deed regarding the property subject to the Complaint and the terms of the Mortgage (defined hereinafter) referred to in Paragraph 8 and denies all allegations inconsistent with the terms and conditions thereof.

9. Responding to Paragraph 9 of the Complaint, Defendant craves reference to the promissory note and denies all allegations inconsistent with the terms and conditions thereof.

10. Defendant admits the allegations contained in Paragraph 10 of the Complaint.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and, therefore, denies those allegations.

12. Defendant admits the allegations contained in Paragraph 12 of the Complaint.

13. Defendant admits the allegations contained in Paragraph 13 of the Complaint.

14. Responding to Paragraph 14 of the Complaint, Defendant admits that Plaintiff sent a letter, but denies the accuracy of the statements in the letter.

15. Responding to Paragraph 15 of the Complaint, Defendant admits that it initiated foreclosure proceedings, but denies the remaining allegations of Paragraph 15.

16. Responding to Paragraph 16 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

17. Responding to Paragraph 17 of the Complaint, Defendant craves reference to the lis pendens and the Plaintiff's answer and denies all allegations inconsistent with the statements therein.

18. Defendant admits, upon information and belief, the allegations contained in Paragraph 18 of the Complaint.

19. Responding to Paragraph 19 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

20. Responding to Paragraph 20 of the Complaint, Defendant craves reference to the Order and denies all allegations inconsistent with the statements therein.

21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

22. Responding to Paragraph 22 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

23. Responding to Paragraph 23 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

24. Responding to Paragraph 24 of the Complaint, Defendant craves reference to the QWR and denies all allegations inconsistent with the statements therein.

25. Responding to Paragraph 25 of the Complaint, Defendant craves reference to the QWR and denies all allegations inconsistent with the statements therein.

26. Responding to Paragraph 26 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

27. Responding to Paragraph 27 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

28. Responding to Paragraph 28 of the Complaint, Defendant craves reference to the letter and denies all allegations inconsistent with the statements therein.

29. Responding to Paragraph 29 of the Complaint, Defendant denies that it violated RESPA and craves reference to the letter and denies all allegations inconsistent with the statements therein.

30. Defendant denies the allegations contained in Paragraph 30 of the Complaint.

31. Defendant denies the allegations contained in Paragraph 31 of the Complaint.

32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.

33. Defendant denies the allegations contained in Paragraph 34 of the Complaint.

34. Defendant denies the allegations contained in Paragraph 35 of the Complaint.

35. Defendant denies the allegations contained in Paragraph 36 of the Complaint.

36. Defendant denies the allegations contained in the first Paragraph 37 of the Complaint.

37. Defendant denies the allegations contained in the second Paragraph 37 of the Complaint.

AS TO PLAINTIFF'S PRAYER FOR RELIEF

38. Defendant denies that Plaintiff is entitled to any of the relief prayed for in any part of the Complaint, including, but not limited to the prayer for relief set forth on page 8 of the Complaint.

SECOND DEFENSE
(Failure to State a Claim)

39. The Complaint fails to state a claim against Defendant upon which relief can be granted.

THIRD DEFENSE
(Waiver)

40. Further answering the Complaint and without waiving any other defenses, Wells Fargo states that Plaintiff has waived his claims against Wells Fargo through his conduct.

FOURTH DEFENSE
(ASSUMPTION OF RISK)

41. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims against Defendant are barred because Plaintiff knew and understood the cost, risk, and potential rewards of purchasing the property and therefore assumed the risk associated with purchasing the property.

FIFTH DEFENSE
(LACHES)

42. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims against Defendant are barred, in whole or in part, under the doctrine of laches.

SEVENTH DEFENSE
(ESTOPPEL)

43. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims against Defendant are barred in whole or in part, under the doctrine of estoppel.

EIGHTH DEFENSE
(INTERVENING AND SUPERSEDING ACTS)

44. Further answering the Complaint and without waiving any other defenses Defendant is not liable or responsible for damages to the extent that damages, if any, are due. Such damages, if they exist, were contributed to or caused by, in whole or in part, the conduct of third parties over whom Defendant had no control and for whose conduct it was not responsible. To the extent that conduct of third parties was an intervening, superseding, isolating, or sole cause of the Plaintiff's alleged damages, Defendant pleads the foregoing as a bar to recovery to any of them.

NINTH DEFENSE
(UNFAIR TRADE PRACTICES)

45. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims unfair and deceptive trade practices against Defendant fail because the South Carolina Unfair Trade Practice Act does not apply and, even if it did, Plaintiff has failed to allege any conduct on the part of Defendant that would support such a claim.

TENTH DEFENSE
(PUNITIVE DAMAGES)

46. Further answering the Complaint and without waiving any other defenses, Plaintiff's claim for punitive damages fails to state a claim for relief because they have failed to state any viable claim against Defendant and otherwise failed to allege conduct sufficient to support an award of punitive damages.

ELEVENTH DEFENSE
(PUNITIVE DAMAGES)

47. Further answering the Complaint and without waiving any other defenses, Plaintiff's claim for punitive damages violates provisions of the South Carolina Constitution as well as the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States and should be stricken.

TWELFTH DEFENSE
(SETOFF/RECOUPMENT)

48. Further answering the Complaint and without waiving any other defenses, if and to the extent Plaintiff's are entitled to recover damages against Defendant, which is expressly denied, Wells Fargo is entitled to set off the damages caused by Plaintiff's breach of the terms of

promissory note against any amount Wells Fargo is required to pay on the claims asserted by Plaintiff.

THIRTEENTH DEFENSE
(SPECULATIVE DAMAGES)

49. Plaintiff's claim for damages is speculative and therefore disallowed under South Carolina law.

FOURTEENTH DEFENSE
(FAILURE TO MITIGATE)

50. Plaintiff is legally obligated to mitigate his damages. Upon information and belief Wells Fargo can show that Plaintiff failed to mitigate his damages and is therefore barred from recovery based on this failure.

FIFTEENTH DEFENSE
(PRIOR BREACH)

51. Defendant would show that some or all of Plaintiff's claims are barred by the Plaintiff's prior breach of the parties' contract.

SIXTEENTH DEFENSE
(CONSENT)

52. Defendant would show that Plaintiff's claims are barred by the doctrine of consent.

SEVENTEENTH DEFENSE
(FAILURE TO PERFORM)

53. Defendant would show that the Plaintiff failed to perform under the terms of the Note and Mortgage, and, therefore, these claims must be dismissed

EIGHTTEENTH DEFENSE
(COMPLIANCE WITH THE NOTE AND MORTGAGE)

54. Wells Fargo incorporates by reference all of the terms, conditions, exclusions, exceptions, and limitations of the Note and Mortgage between it and the Plaintiff and would show that it performed all of its obligations under any alleged loan contract and/or in procuring

any alleged loan contract. Defendant further pleads the terms and conditions of any alleged loan contract as a complete defense and bar to this action.

NINETEENTH DEFENSE
(RESERVATION OF RIGHTS)

55. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Defendant's allegations. It intends to act as best as it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Defendant and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and/or law.

TWENTIETH DEFENSE
(BY WAY OF COUNTERCLAIM)
(SUIT ON PROMISSORY NOTE)

56. Wells Fargo incorporates by reference all of the above paragraphs as if set forth fully herein.

JURISDICTION

57. Wells Fargo incorporates all of the admissions and denials contained in the Answer as if fully restated herein.

58. This Court has original jurisdiction over these counterclaims pursuant to Rule 13 of the South Carolina Rules of Civil Procedure.

59. Defendant Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A., as successor by merger to First Union National Bank by way of merger is duly organized and existing under laws of the United States of America and is authorized to do business in the State of South Carolina and conducts business in Charleston County, South Carolina.

60. Upon information and belief, Plaintiff Brent E. Bentrim is a citizen and resident of Charleston County, South Carolina and owns real property located in the Charleston County, State of South Carolina and is currently subject to the jurisdiction of this court.

61. The real property which is the subject of this action is located in the Charleston County, South Carolina and is described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Real Property**").

62. Upon information and belief, the Home Affordable Modification Program is applicable to the real property, which is the subject of this action.

63. This Court has jurisdiction over the parties and subject matter and this forum is a proper venue.

FACTS

64. On or about March 12, 2002, for value received, Plaintiff executed and delivered a certain Negotiable Promissory Note ("**Note**") in favor of Defendant in the principal sum of **ONE HUNDRED EIGHTY-TWO THOUSAND SEVEN HUNDRED AND NO/100THS ($182,700.00) DOLLARS** (the "**Note**").

65. In order to secure the payment of the Note, Plaintiff made, executed and delivered unto Defendant a certain real estate mortgage ("**Mortgage**") covering the Real Property. The Mortgage is dated March 12, 2002 and was recorded in the Charleston County RMC Office in Mortgage Book C-402 at Page 182.

66. Pursuant to the terms and conditions of the Note, Plaintiff was required to make three hundred eighty (380) monthly payments in the amount of **NINE HUNDRED EIGHT-FOUR AND 21/100THS ($984.21) DOLLARS**.

67. Under the terms of the Note, interest accrued on the outstanding principal balance at a variable rate of 4.99% percent per year subject to change as provided in the Note until the full amount of the principal has been paid.

68. The Note provides, among other things, that if a payment is not made by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of five (5.000%) percent of the overdue amount of each payment.

69. The Note provides, among other things, that an event of default would occur if Plaintiff failed to make a payment as required by the terms of the Note.

70. The Note provides that in the event of a default, Defendant is entitled to require immediate payment of all amounts owing under the terms of the Note.

71. The Note further provides, among other things, that if an action or other proceeding is brought to collect the Note, Defendant shall be entitled to recover its attorneys' fees incurred in an amount up to fifteen (15.0%) percent of the unpaid debt.

72. Plaintiff has retained counsel for the purpose of instituting and prosecuting this action

73. Plaintiff has failed and continues to fail to make the payments as due pursuant to the terms and conditions of the Note. Such failure to pay the Note in accordance with the terms and conditions of the Note constitutes an event of default under the Note. The entire balance of the Note is now immediately due and payable and continues to carry interest of the default rate set forth in the Note.

74. As of August 31, 2011, the amount due under the terms of the Note was **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS**, exclusive of attorneys' fees and costs, and is computed as follows:

Principal:	$176,879.20

Interest:	$21,621.89
Late Charges:	$83.02
Other Charges:	$606.13
Term Fees:	$962.00
Total:	**$200,152.24**

75. Under the terms of the Note, interest continues to accrue each day at the currently calculated rate of $16.91 per day subject to change as provided in the Note.

76. On November 20, 2011, Wells Fargo sent a demand letter to Plaintiff regarding his default under the terms of the Note and provided Plaintiff a thirty (30) day opportunity to cure such default.

77. Plaintiff failed to cure his default.

78. Plaintiff is in default under the terms, covenants, and provisions of the Note.

79. Pursuant to the terms of the Note, the entire balance of the Note, including principal, accrued interest and other accrued charges, is now due and payable.

80. Based on the above, Wells Fargo is informed and believes that it is entitled to judgment against Plaintiff Brent E. Bentrim, in the amount of **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS** as of August 31, 2011, plus interest that has accrued since August 31, 2011 and interest that continues to accrue each day at the per diem rate set forth in the Note, the costs of this action and attorneys' fees incurred in an amount up to fifteen (15.0%) percent of the unpaid debt.

TWENTY-FIRST DEFENSE
(By Way Of Counterclaim)
(Foreclosure of Mortgage)

81. Wells Fargo incorporates all of the admissions and denials contained in the Answer as well as all of the allegations contained in paragraphs 56 through 80 of this Answer and Counterclaims as if fully restated herein.

82. Plaintiff Brent E. Bentrim failed and continues to fail to make the payments as due pursuant to the terms and conditions of the Note. Such failure to make monthly payments in accordance with its terms and conditions of the Note constitutes an event of default under the Note. The entire balance of the Note is now immediately due and payable and continues to carry interest at a variable rate as set forth in the Note.

83. Plaintiff's default under the terms of the Note allows Wells Fargo to elect to exercise its rights and remedies under the terms of the Note and Mortgage. The foregoing events of default under the terms of the Note confer upon Wells Fargo the right to accelerate payment of the Note in accordance with its terms and access all rights and remedies available to Wells Fargo under the terms of the provisions of the Note and Mortgage, including without limitation the right to institute this action for foreclosure of the Mortgage, and the right to seek and obtain a judgment against Plaintiff for failure to pay the Note as due as well as the right to seek a deficiency judgment against Plaintiff in the amount of any deficiency remaining after completion of the foreclosure sale of the Real Property in accordance with applicable law.

84. Wells Fargo currently exercises its right to accelerate and declare the Note and all other enumerated sums evidenced, secured and guaranteed by the Mortgage to be due, payable in full, and to foreclose the Mortgage.

85. As of August 31, 2011, Wells Fargo is due from Plaintiff Brent E. Bentrim upon the Note the outstanding principle balance of **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS** plus interest that has accrued since August 31, 2011 and interest that continues to accrue at the rate set forth in the Note, the costs of this action and attorneys' fees incurred in an amount up to fifteen (15.0%) percent of the unpaid debt, together with advances made by Wells Fargo under the Note and Mortgage.

86. Under the terms of the Note, interest continues to accrue each day at the currently calculated rate of $16.91 per day subject to change as provided in the Note.

87. Pursuant to the terms and provisions of the Note and Mortgage, Wells Fargo is entitled to recover all expenses of collection and foreclosure, including but not limited to reasonable attorneys fees up to fifteen (15.0%) percent of the unpaid debt and costs all of which are secured by the Mortgage.

88. Wells Fargo is entitled to the entry of an order for the foreclosure of the Mortgage and sale of the Real Property at the public sale in accordance with law, free and clear of all subordinate liens and security interests.

89. Wells Fargo is hereby seeking foreclosure of the Mortgage and seeking a deficiency judgment against Plaintiff Brent E. Bentrim.

PRAYER FOR RELIEF

WHEREFORE, Wells Fargo respectfully requests that:

(a) Plaintiff's Complaint against Wells Fargo be dismissed with prejudice;

(c) That the court study and determine all amounts due to Wells Fargo under the Note, including principle, interest, fees, costs and advancements, together with reasonable attorneys fees up to fifteen (15.0%) percent of the unpaid debt and the costs of this action, and award Wells Fargo judgment against Plaintiff, Brent E. Bentrim, in such an amount.

(d) That the Mortgage be declared a good and valid first mortgage lien upon the Real Property, subject only to applicable past due and accruing property taxes, and that Wells Fargo have judgment of foreclosure for all amounts found, due and owing under the Note and Mortgage, together with any taxes or insurance premiums which may be due or which may have been paid by Wells Fargo.

(f) That (i) the Real Property be sold at foreclosure according to law and the practice of the court, free and clear of any and all liens, security interests and claims of other persons including, but not limited to, the Plaintiff, but subject to all past due and accruing unpaid property taxes thereon (ii) that the equity of redemption be barred and (iii) the proceeds of sale be applied as follows: First, to the cost and expenses of this action and such sale; Second, to the payment and discharge of all amounts due Wells Fargo under the Note, together with any taxes or insurance premiums which may have been paid by Wells Fargo and with Wells Fargo's costs and attorneys fees; and Third, the surplus, if any, to be distributed according to law.

(h) That Wells Fargo be granted judgment against Plaintiff Brent E. Bentrim in the amount of any deficiency remaining after the sale of the Real Property, such deficiency to be based on the high bid at the judicial foreclosure sale (regardless of any appraised value of the property) and for any such other and further relief the court may deem just and proper.

(i) The costs of this action be taxed against Plaintiff; and,

(j) The Court grant Wells Fargo such further relief as it deems just.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

S. Sterling Laney, III (S.C. Bar No. 6933)
Jana B. Baker (SC Bar No. 72487)
Five Exchange Street, P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR DEFENDANT

Charleston, South Carolina
May 2, 2012

WCSR 7023362v2A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	))	COURT OF COMMON PLEAS
BRENT E. BENTRIM, Plaintiff, WELLS FARGO BANK, NA, Defendant.	))))	CASE NO. 2011-CP-10-2946 REPLY OF COUNTERCLAIM TO DEFENDANT'S COUNTERCLAIM

Plaintiff replies to the Counterclaim filed by Defendant as follows:

Any item that is not specifically admitted is denied and strict proof thereof is demanded.

I. RESPONSES TO THE ALLEGATIONS OF THE COUNTERCLAIM

1-55. Plaintiff need not respond to same as they relate to the allegations of the Complaint. They are denied to the extent that any response here is necessary.

56-57. Plaintiff need not respond to same as they relate to the allegations of the Complaint. They are denied to the extent that any response here is necessary

58. Plaintiff admits No. 58 of Counterclaim.

59. Plaintiff admits NO. 59 of Counterclaim.

60. Plaintiff admits NO. 60 of Counterclaim.

61. Plaintiff admits NO. 61 of Counterclaim.

62. Plaintiff admits NO. 62 of Counterclaim.

63. Plaintiff admits No. 63 of Counterclaim

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2012 SEP 11 PM 2:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

64. With regards to No. 64 of the Counterclaim, Plaintiff admits that he signed said Promissory Note. Plaintiff denies that the Defendant gave him value.

65. With regards to No. 65 of the Counterclaim, Plaintiff admits that he signed said mortgage and that it was recorded in the RMC Office for Charleston County as stated.

66. With regards to No. 66 of the Counterclaim, Plaintiff craves reference to the Referenced Note and denies any allegations inconsistent with the statements therein.

67. With regards to No. 67 of the Counterclaim, Plaintiff craves reference to the Referenced Note and denies any allegations inconsistent with the statements therein.

68. Plaintiff admits No. 68 of the Counterclaim.

69. Plaintiff admits No. 69 of the Counterclaim.

70. Plaintiff denies No. 70 of Counterclaim.

71. Plaintiff denies admits No. 71 of the Counterclaim.

72. Plaintiff is without sufficient information and belief sufficient to admit No. 72 of Complaint and therefore, denies same and demands strict proof thereof.

73. Plaintiff denies No. 73 of Counterclaim to the extent that the payments are due to Defendant.

74. Plaintiff denies No. 74 of Counterclaim.

75. Plaintiff denies No. 75 of Counterclaim.

76. Plaintiff admits No. 76 of Counterclaim only to the extent that he received such a letter from Defendant and denies the remainder of this item.

77. Plaintiff denies No. 77 of Counterclaim that there is any default versus the Defendant.

78. Plaintiff denies No. 78 of Counterclaim.

79. Plaintiff denies No. 79 of Counterclaim.

80. Plaintiff denies No. 80 of Counterclaim.

81. Plaintiff does not need to respond to No. 81 of Counterclaim.

82. Plaintiff denies that there is any default as to the Defendant.

83. Plaintiff denies No. 83 of Counterclaim.

84. Plaintiff denies No. 84 of Counterclaim in that Defendant claims it has a right to accelerate the Note due.

85. Plaintiff denies No. 85 of Counterclaim.

86. Plaintiff denies NO. 86 of Counterclaim.

87. Plaintiff denies No. 87 of Counterclaim.

88. Plaintiff denies No. 88 of Counterclaim.

89. No. 89 of Counterclaim is a prayer for relief and Plaintiff need not respond to same.

II. AFFIRMATIVE DEFENSE- STATUTE OF LIMITATIONS

90. Plaintiff repeats §1-89 of this Reply as if retyped verbatim right here.

91. Defendant has filed this suit for suit on the Note (and the Foreclosure) past the Statute of Limitations. Plaintiff's last payment made during the month of November 2008. Defendant had previously sued the Plaintiff for foreclosure and had voluntarily dismissed this case. Defendant made no attempt to re-file this action until they filed a Motion to Amend their Answer to file this Counterclaim. Therefore, the Defendant has filed their Counterclaim beyond the Statute of Limitations.

AFFIRMATIVE DEFENSE- LACHES

92. Plaintiff repeats §1-91 of this Reply as if retyped verbatim right here.
93. With regards to the foreclosure of mortgage in this case, Plaintiff asserts the equitable defense of laches in this case.

AFFIRMATIVE DEFENSE- ESTOPPEL

94. Plaintiff repeats §1-93 of this Reply as if retyped verbatim right here.
95. During the first foreclosure attempt by Defendant against Plaintiff, Judge Scarbrough ordered Defendant not to re-file the case unless and until they produced the original promissory note and an accurate amortization schedule. Defendant has sent Plaintiff and his counsel at least four different payment schedules and therefore, should be estopped.

AFFIRMATIVE DEFENSE- REAL PARTY IN INTEREST

96. Plaintiff repeats §1-95 of this Reply as it retyped verbatim right here.
97. Upon information and belief, the Plaintiff believes that the Defendant is not the real party and does not have the authority to enforce the Note and Mortgage in this case.

AFFIRMATIVE DEFENSE- INSURANCE- SET OFF

98. Plaintiff retypes §1-97 of this Reply as if retyped verbatim right here.
99. Plaintiff is informed and believes, that the actual owner of the Note and Mortgage that is the subject of this matter is a securitized mortgage trust. Plaintiff further believes that insurance against any "default" of the Plaintiff was in place. Therefore, Plaintiff believes any insurance proceeds should be offset against any alleged damages of the Plaintiff.

AFFIRMATIVE DEFENSE- RESERVATION

100. Plaintiff repeats §1-99 of this Reply as if retyped verbatim right here.
101. Plaintiff reserves the right to bring up any other defenses that may come up at a later date prior to trial.

WHEREFORE, having fully replied to the Counterclaim of Defendant in this case, Plaintiff moves before this Court for the following relief:

1. Dismissal of the Counterclaim with prejudice.
2. Any other relief that this court deems fair and that Plaintiff should be entitled to.

William H. Sloan
Bar No. 69630
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Plaintiff
September 11, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND**
v.	)	**MOTION TO AMEND**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2013 NOV -1 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: S. STERLING LANEY III, ESQUIRE and JANA BAKER, ESQUIRE, ATTORNEYS FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the Plaintiff Brent E. Bentrim, by and through his undersigned counsel, and pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell Scarborough, Charleston County Master-in-Equity, for an order granting leave for the Plaintiff to file and serve the attached, proposed Amended Complaint. The undersigned certifies that pursuant to Rule 11 of the South Carolina Rules of Civil Procedure consultation has been made with opposing counsel but the matter cannot be resolved and/or would serve no useful purpose.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiff

Mt. Pleasant, South Carolina
November 1, 2013

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served the attached ***Notice of Motion and Motion to Amend*** in the above-captioned action via facsimile and by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney for the Defendant as follows:

S. Sterling Laney III, Esquire
Jana Baker, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
Attorney for Defendant

Robert B. Varnado

November 1, 2013
Mount Pleasant, South Carolina

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED SUMMONS**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY summoned and required to answer the Amended Complaint in this action, a copy of which is served upon you, and to have a copy of your Answer served upon the subscriber at 103 Church Street (29464), P. O. Box 1127, Mount Pleasant, South Carolina 29465, within thirty (30) days after the service hereof, exclusive of the day of such service. **If you fail to answer the Amended Complaint within that time, judgment of default will be rendered against you** for the relief demanded in the Complaint, and for other and further such relief as the Court may deem just and proper.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado, Esquire
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 Fax
rvarnado@brown-varnado.com

Attorneys for Plaintiff

November 1, 2012
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED COMPLAINT**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

TO: S. STERLING LANEY III, ESQUIRE and JANA BAKER, ESQUIRE, ATTORNEYS FOR THE DEFENDANT WACHOVIA BANK, N.A.:

COMES NOW THE above-named Plaintiff Brent E. Bentrim ("Bentrim" or "Plaintiff"), by and through his undersigned attorneys and pursuant to the South Carolina Rules of Civil Procedure, who would allege and show before this Honorable Court the following:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Charleston County, South Carolina and is the owner of real property located at 10 Nicholson Street, Charleston, South Carolina 29407 ("the Property").

2. Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") is a national bank authorized to do business within the State of South Carolina, and at all relevant times has transacted business within the Charleston County.

3. Wells Fargo claims to be the successor-by-merger to First Union National Bank, N.A. ("FUNB") and Wachovia Bank, N.A. which also at all relevant times transacted business within the Charleston County.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**AMENDED COMPLAINT**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

TO: STERLING LANEY, ESQUIRE and JANA BAKER, ESQUIRE, ATTORNEYS FOR THE DEFENDANT WACHOVIA BANK, N.A.:

COMES NOW THE above-named Plaintiff Brent E. Bentrim ("Bentrim" or "Plaintiff"), by and through his undersigned attorneys and pursuant to the South Carolina Rules of Civil Procedure, who would allege and show before this Honorable Court the following:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of Charleston County, South Carolina and is the owner of real property located at 10 Nicholson Street, Charleston, South Carolina 29407 ("the Property").

2. Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") is a national bank authorized to do business within the State of South Carolina, and at all relevant times has transacted business within the Charleston County.

3. Wells Fargo claims to be the successor-by-merger to First Union National Bank, N.A. ("FUNB") and Wachovia Bank, N.A. which also at all relevant times transacted business within the Charleston County.

4. This case arises out of improper banking procedures, mortgage origination and servicing practices, negligent acts and omissions, as well as unfair and deceptive trade practices, all to the Plaintiffs' detriment, which occurred within Charleston County, South Carolina and/or were connected with the Property.

5. Based on the foregoing, this Court has subject-matter jurisdiction over the causes of action herein and personal jurisdiction over the parties hereto. Additionally, venue is proper within Charleston County.

FACTUAL ALLEGATIONS

Original Undertaking.

6. In 2002, Plaintiff was an employee of First Union Capital Markets Group, an entity associated with First Union, Corporation – a bank holding company.

7. That year, employees of FUNB approached Plaintiff to ask him to cross-market to his clients a specific adjustable rate mortgage (ARM) and home equity line of credit (HELOC) being offered by First Union.

8. Plaintiff ultimately applied for the specific FUNB ARM and HELOC himself, in order to refinance a fixed thirty year mortgage on the Property, which he had originally purchased on September 29, 2000.

9. FUNB accepted Plaintiff's application on the condition that he modified a prior FUNB prime equity line [opened on the Property in the amount of $49,000.00 in May, 2001] down to $10,000.00. FUNB then consolidated $25,000.00 of debt on that line into the First Union ARM/HELOC.

10. Additionally, FUNB required that the $10,000.00 prime equity line be placed into first lien position on the Property.

11. The closing was set for Monday, March 12, 2002 at the offices of Davidson, Wigger & Bennett Attorneys at Law.

12. On March 12, 2002, at Davidson, Wigger & Bennett, Plaintiff executed *inter alia* the following documents:

(i) a Negotiable Promissory Note ("Note") in the amount of $182,700 for the First Union ARM/HELOC payable to "First Union National Bank or order";

(ii) a Mortgage;

(iii) a First Union Adjustable Rate Disclosure Statement;

(iv) a Truth in Lending Statement;

(v) a Modification Agreement to Prime Equity and Mortgage; and

(vi) a U.S. Department of Housing and Urban Development Settlement Statement (HUD-1)

13. Significantly, FUNB did not fund the loan on March 12, 2002, nor on the scheduled disbursement date of March 18, 2002.

14. In fact, the loan was not funded until March 21, 2002, when funds were wired to Davidson, Wigger & Bennett from an undisclosed FUNB account, with no proof that theses were funds of FUNB or some third-party.

15. The HUD-1 is $2700.00 off, which was an amount sent to FUNB, and collected as an origination fee. FUNB thus charged origination twice, instead of applying the $2700.00 towards the loan. Plaintiff was required to re-execute a second HUD-1 form but the error was not corrected.

Initial Foreclosure Threats

16. The discrepancy over the incorrect accounting of the second $2,700.00 origination fee has resulted in years of contention between Plaintiff and Defendant.

17. Specifically, Plaintiff received notices of intention to foreclose from Wachovia Bank, N.A. dated November 21, 2003, November 12, 2004 and July 13, 2005, even though these reflected errors arising out of the double-billing of the origination fee, and no misfeasance or nonfeasance by Plaintiff.

18. Wachovia Bank, N.A. brought a foreclosure action in 2005, case number 05-CP-10-4814, styled *Wachovia Bank, N.A. successor to First Union National Bank v. Brent E. Bentrim, et al.*, which was resolved by order dated September 8, 2006.

19. In each instance during this time period (2003-2006), Plaintiff alerted Wachovia Bank, N.A. to the reason for the discrepancy. Each time, Plaintiff believed and understood that Wachovia Bank, N.A. corrected the error arising out of the second origination, and accepted that any discrepancies were not Plaintiff's fault.

Wachovia Sells the Note

20. Records of Wachovia Bank, N.A. produced by Defendant shows that Plaintiff's debt was sold on November 29, 2006 in the amount of $174,504.20, to an unknown "pool" investor. This was not revealed to Plaintiff until late 2011.

21. Such sale was consistent with the business practices of Wachovia Bank, N.A. and other banks to securitize and sell residential mortgages to private investors via a Real Estate Mortgage Investment Conduit (REMIC) – i.e., entities which would hold fixed pools of mortgages on behalf of investors – which were ubiquitous during this time period.

22. In spite of the foregoing, the aforementioned sale was never recorded in the RMC Office for Charleston County, nor was it reflected on the endorsement page of the Note. As before, this was not an uncommon practice in the banking industry during the relevant time period.

23. If there were additional sale documents associated with the November 29, 2006 sale of the Note, they have not been produced in discovery in three (3) subsequent lawsuits between Wachovia Bank, N.A. /Wells Fargo Bank, N.A. and Plaintiff.

24. As further evidence that the note was sold, from 2002 to 2008, Wachovia Bank, N.A. Retail Credit Servicing annually filed IRS Form 1098 forms showing that mortgage interest payments from the Plaintiff had been paid to an identity identified only as EIN 56-1948921.

25. Under federal law, Wachovia Bank, N.A. and Wachovia Bank N.A. Retail Credit Servicing were separate and distinct corporate entities, and were not legally or practically alter egos of one another. Wachovia Bank, N.A.'s EIN was 22-1147033.

26. Despite due demand, Defendant has not identified the corporate name and address of EIN 56-1948921, and Plaintiff cannot obtain this information from any source other than Defendant.

27. Wachovia Bank, N.A. records reflect that Plaintiff's debt was repurchased on May 13, 2010 for $176,879.20. Such repurchases were common in the banking industry for alleged non-performing notes that had been sold to REMIC pools.

28. As before, the repurchase was never recorded in the RMC Office for Charleston County, nor was it reflected on the endorsement page of the Note. No repurchase records have been produced in discovery.

Improper Foreclosure Actions – 2007, 2009 and 2011

29. Despite the sale of the note, Wachovia Bank, N.A. Retail Credit Collections – not Wachovia Bank, N.A. – sent Plaintiff "Notices of Breach" dated January 19, 2007 and March 20, 2007 in which it advised that the alleged breach – denied by Plaintiff – "permits the lender" to accelerate the loan.

30. Upon information and belief, however, Wachovia Bank, N.A. was not the lender nor was it the holder of the note, but instead Wachovia Bank N.A. Retail Credit Servicing was the servicer of the note and acting as a debt collector. At no point in the Notices of Breach, however, did Wachovia Bank, N.A. advise Plaintiff that it had sold the note, and/or was no longer acting as a lender but a servicer for a third-party.

31. Wachovia Bank N.A. – in its own name – filed a Summons and Complaint and *Lis Pendens* on September 5, 2007, case number 07-CP-10-3933, styled *Wachovia Bank, National Association successor by merger to First Union National Bank v. Brent E. Bentrim, et al.*, in which it specifically represented to the Court that it was the holder of the Note (¶¶ 17, 18) and otherwise averred to the Court that it had the sole and exclusive right to foreclose on the Note. In the Fair Debt Collection Practices Notice appended thereto, Wachovia Bank averred that it is the creditor to whom the debt is owed. This case was dismissed on December 21, 2007.

32. At no time in the 2007 Foreclosure suit did Wachovia advise the Court that it was no longer the owner of the Note.

33. Once again, on July 30, 2009, Wachovia Bank – in its own name – filed another Summons and Complaint and *Lis Pendens*, case number 09-CP-10-4700, styled Wachovia Bank, National Association s/b/m to First Union National Bank v. Brent E. Bentrim, et al. Once again, Wachovia Bank stated that it was the holder of the note (¶ 13, and p. 4 ¶ 1) and otherwise averred to the Court that it had the sole and exclusive right to foreclose on the Note. In the Fair

Debt Collection Practices Notice appended thereto, Wachovia Bank, N.A. again averred that it is the creditor to whom the debt is owed.

34. The 2009 Foreclosure case was dismissed July 7, 2010 under certain restrictions - which specifically required Defendant to provide Plaintiff with a calculated payoff prior to refiling a claim under the note and mortgage.

35. At no time in the 2009 Foreclosure suit, between July 30, 2009 and May 13, 2010 did Wachovia Bank, N.A. advise the Court that it was not the owner of the Note, nor did it advise the Court that it repurchased the note only two months prior to dismissal.

36. The current counterclaim in the instant action, filed in 2011, is also improper because Defendant has never legally validated the debt despite due demand (insofar that Defendant attempted to use a copy of the Note from the closing attorney's file as proof of the debt, then later submitted a Lost Note Affidavit).

37. Moreover, at the time Defendant filed the instant Counterclaim, the Note was blank endorsed and Wells Fargo was not the holder or the holder in due course by virtue of the fact that Wells Fargo had lost the Note.

38. Additionally, the counterclaim was filed in contravention of the Court's order dismissing the 2009 Foreclosure Suit (which required Defendant provide Plaintiff a payoff) and also it was a mandatory counterclaim pursuant to Rule 19, SCRCP, which was not included in Defendant's original answer and therefore should be dismissed.

Improper Accounting and Compilation of Interest

39. The interest rate on the specific FUNB loan was based on the Wall Street Journal Prime Rate plus ¼% and could change monthly. However, payments to be made on the loan would change every 60 months. Payments would be determined by applying the principal

balance and current prime rate, amortizing payments over the remaining term of the loan. No future payment could be greater than 25% of the last payment.

40. Because the periodic payment may change once every 60 months and the interest rate may change monthly, the periodic payments may not fully cover the interest due. Such interest was to be added to the payoff amount and due at the end of the loan.

41. This provision was the sole reason Mr. Bentrim selected this specific loan; however, the Defendant did not apply principal and interest in a manner consistent to the loan Mr. Bentrim agreed to.

42. The Defendant has instead collected unpaid interest from the periodic payments made by the Plaintiff, maintaining higher principal balance on his loan resulting in the likelihood the Note would never be paid off.

43. Based on the foregoing, the transaction between FUNB never happened. In reality, Plaintiff got a "bait-and-switch." Plaintiff is currently indebted to Defendant more than he contracted for.

44. Notwithstanding the foregoing, all the accountings provided by Defendant and/or its predecessors-in-interest have not only failed to describe the transaction between Plaintiff and FUNB (i.e., describe a different loan product), they either materially differ from one another and/or are incomplete and/or have been altered.

Qualified Requests

45. On November 17, 2008 Wachovia Bank, N.A. sent a certified letter to the Plaintiff indicating its intention to foreclose demanding payment of $4,920.09.

46. Plaintiff immediately contacted Wachovia Bank, N.A. and obtained conflicting information as to whether the account was past due or current.

47. On November 26, 2008 Wachovia Bank, N.A. sent a "Past Due Notice" demanding payment of $2,279.83.

48. On December 8, 2008, Defendant sent a letter to Defendant in compliance with and under RESPA 12 USC §2605(e).

49. On December 19, 2008, Defendant responded to Plaintiff's request reiterating the formula for the calculation on principal and interest and included a 'Consumer Loan Payment History' revealing missing payments and incorrect application of principal and interest.

50. In violation of section 6 of RESPA, Defendant took no actions to cure the defects and instead wrongly began foreclosure proceedings against Plaintiff in January 2009.

51. On July 10, 2009, Defendant's attorney, Brock & Scott PLLC (his misspelling), acknowledged 'The Notice of Intention to Foreclose' was incorrect yet still demanded fees, late charges and costs to reinstate the Plaintiff's loan.

52. On July 27, 2009, Defendant filed a *lis pendens* and foreclosure action against Plaintiff in County of Charleston Court of Common Pleas, Case No. 09-CP-10-4700. Plaintiff answered the complaint *pro se* questioning Defendant's calculations and only seeking reinstatement as relief.

53. On December 9, 2009, a Final Hearing was held where the Master-in-Equity held over the issue allowing Wells Fargo to produce a witness to testify the interest and principal calculations on Plaintiff's account were correct in regards to the Note.

54. On January 8, 2010, in a good faith attempt to resolve this conflict, Plaintiff made a settlement offer to Defendant which would alleviate them of all liability for past loan servicing problems. Once again, the Plaintiff requested no damages against the Defendant.

55. On July 7, 2010, Master-in-Equity dismissed Wachovia's case against the Plaintiff as Wells Fargo failed to produce a witness or testimony as to the accuracy of its principal and interest calculations.

56. Over the course of the foreclosure period Defendant applied nearly $25,000.00 in fraudulent interest to the Plaintiff's account at a staggering 27.34% rate.

57. On July 13, 2010, Plaintiff received a letter by overnight delivery indicating if Plaintiff did not modify the loan he would lose his home.

58. On August 25, 2010, Plaintiff received another overnight letter reiterating the need to modify his loan and indicating seeking outside assistance in the matter would result in being 'scammed.'

59. On July 21, 2010, Plaintiff sent a Qualified Written Request via Defendant's attorney as well as verification that Wells Fargo is rightful Holder in Due Course of the Note.

60. Defendant ignored the QWR until Plaintiff contacted Wells Fargo on October 12, 2010 and provided requested evidence supporting the QWR on October 25, 2010.

61. On October 28, 2010, Corrina Gardner partially responded to Plaintiff's QWR supplying a principal and interest statement that materially differed from the one supplied in December, 2008. The new statement indicated Wells Fargo applied no payments to the loan for nearly 18 months as well as a loan balance different from the original note. Ms. Gardner also attempted to pass off the closing attorney paralegal's certified copy of the Promissory Note made at closing as Wells Fargo's original.

62. On November 8, 2010,Plaintiff again requested to see an original copy of the Promissory Note.

63. On February 17, 2011, Wells Fargo Vault Services sent the Plaintiff another copy of the closing attorney's certified copy Promissory Note now attached with a true certified copy of a second, and unrequested, loan the Plaintiff has with the Defendant.

64. In violation of section 6 of RESPA, on April 5, 2011, Plaintiff received a letter from Defendant stating it had verified the loan as accurate and 906 days past due and reported his account as past due to all Experian, TransUnion and Equifax.

65. Defendant has negatively and with malice damaged Plaintiff's credit.

66. Defendant has refused to accept any payments from Plaintiff since 2008.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

67. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

68 Defendant and its predecessors in interest owed Plantiff a duty to exercise due care in all their financial dealings with Plaintiff.

69. Defendant and its predecessors in interest were careless, negligent, grossly negligent, reckless, willful and wanton in carrying out the duties theyr assumed on behalf of the Plaintiff for which Defendant at all times owed a duty of due care in the performance of the same, including duties to refrain from improper loan origination, servicing, and accounting, and such other and further particulars of negligence and gross negligence as may be established by the trier of fact.

70. As a direct and proximate result of the foregoing negligence and gross negligence of Defendant and its predecessors in interest, Plaintiff has suffered pecuniary loss and is entitled to recover damages in such amount as to be determined by the trier of fact, plus punitive damages for the willful and reckless violation of the same, interest and attorney's fees.

FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

71. Plaintiff restates and re-allegse each of the foregoing allegations as if fully set forth herein verbatim.

72. Defendant and its predecessors in interest First Union and Wachovia made numerous false, negligent, grossly negligent, wanton and willful statements of fact to Plaintiff as described herein.

73. Defendant and/or its predecessors in interest had a pecuniary interest in making the statements, as they would benefit from their origination, securitization, accounting and collections on the Note.

74. Defendant and/or its predecessors in interest owed a duty of care to see that it/they did not make such representations to Plaintiff.

75. Defendant and/or its predecessors breached this above-described duty.

76. The representations aforesaid were false, material and made with the knowledge of their falsity, or with a reckless disregard for the truth or falsity; that they were made with the intent that Plaintiff act upon them, who was ignorant of their falsity, had a right to rely thereon and did reasonably rely on to their detriment.

77. As a direct and proximate result of the foregoing negligent misrepresentations, Plaintiff has suffered pecuniary loss and are entitled to recover damages in such amount as to be determined by the trier of fact, plus punitive damages for the willful and reckless violation of the same, interest and attorney's fees.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

78. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

79. Implicit within the Note and Mortgage are implied covenants of good faith and fair dealing.

80. Based on the above-identified particulars, Defendant and its predecessors in interest breached these implied covenant of good faith and fair dealing, all to the damage of Plaintiffs.

81. As a result of these breaches of implied covenants and the resulting damage, Plaintiff is entitled to recover actual, consequential, and punitive damages, along with pre-judgment interest at the legal rate and their reasonable attorney's fees and costs.

FOR A FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)

82. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

83. The Note and Mortgage constitute contracts with good and valuable consideration and mutual covenants, which Defendant and/or its predecessors have breached.

84. Based on the foregoing, the breach of contract established herein was accompanied by the fraudulent act of Defendant and/or its predecessors in interest, and such other particulars of fraud as to be determined by the trier of fact, all of which were false, material, made with knowledge of their falsehood, with the intent that they be relied upon, and upon which Plaintiff did rely, having a reasonable right to do so, all to his detriment.

85. As a result of these breaches of contract accompanied by fraudulent acts and the resulting damage, Plaintiffs are entitled to recover actual, consequential, and punitive damages, along with pre-judgment interest at the legal rate and their reasonable attorney's fees and costs.

FOR A FIFTH CAUSE OF ACTION
(Conversion)

86. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

87. Defendant and/or its predecessors in interest, by virtue of accepting monetary payments from Plaintiff when Wachovia was not the owner of the Note, and for such other and further acts as maybe established by the trier of fact, has converted money and property rightfully belonging to Plaintiff to its own use.

88. As a result of the unlawful conversion, Plaintiff is entitled to actual and punitive damages, along with pre-judgment interest at the legal rate and their reasonable attorney's fees and costs.

FOR A SIXTH CAUSE OF ACTION
(Fraud/Fraudulent Misrepresentation)

89. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

90. As set forth herein, Defendant and/or its predecessors in interest made numerous fraudulent statements and representations of fact as established with particularity herein.

91. The enumerated representations were false.

92. The enumerated representations were material.

93. Defendant and/or its predecessors in interest had actual and/or constructive knowledge of their falsity.

94. Notwithstanding the foregoing, Defendant and/or its predecessors in interest intended Plaintiff to rely on the representations.

95. Plaintiff did in fact rely on the representations.

96. Plaintiff had a right to rely on the representations.

97. Plaintiff has been damaged by the representations in such amount as may be determined by the trier of fact, including actual, consequential and punitive damages, plus pre-judgment interest.

FOR A SEVENTH CAUSE OF ACTION
(Constructive Fraud)

98. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

99. Defendant and/or its predecessors in interest made numerous fraudulent statements and representations of fact as established with particularity herein.

100. The enumerated representations were false.

101. The enumerated representations were material.

102. Defendant and/or its predecessors in interest had actual and/or constructive knowledge of their falsity.

103. Plaintiff did in fact rely on the representations.

104. Plaintiff had a right to rely on the representations.

105. The enumerated representations constitute constructive fraud.

106. Plaintiff has been damaged by the representations in such amount as may be determined by the trier of fact, including actual, consequential and punitive damages, plus pre-judgment interest.

FOR AN EIGHTH CAUSE OF ACTION
(South Carolina Unfair and Deceptive Trade Practices Act Violation)

107. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

108. Upon information and belief, the conduct of Defendant and/or its predecessors in interest as described herein, constitutes unfair and deceptive acts and practices in the conduct of trade and commerce in violation of the South Carolina Unfair and Deceptive Trade Practices Act ("UTPA").

109. Such deceptive acts and practices were done repeatedly and consistently; will continue in the future; and may have or may occur to other persons similarly situated.

110. Upon information and belief, such deceptive acts and practices are capable of repetition and have an adverse impact on the public interest.

111. Upon information and belief, the conduct of Defendant, and/or its employees and/or agents engaged in unfair and deceptive acts or practices willfully and in full knowledge that their acts were fraudulent and illegal, and thus in violation of the UTPA, for which Defendant is liable under the provisions of the UTPA and other South Carolina law.

112. As a direct and proximate result of the same, Plaintiffs have suffered actual damages and pecuniary loss, including but not limited to loss of profits, revenue and consequential damages in such amount as to be determined by the trier of fact.

113. Accordingly, Plaintiffs are entitled to recover from Defendants actual damages, treble damages, interest and its costs and reasonable attorney's fees, as set forth in S.C. Code Ann § 39-5-140, in such amount as to be determined by the trier of fact.

FOR A NINTH CAUSE OF ACTION
(Slander of Title)

114. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

115. Based on the foregoing, Defendant and/or its predecessors in interest, by virtue of filing improper foreclosure actions and *lis pendenses*, made a communication to a third party of a

false statement derogatory of the title of Plaintiff to the Property, with malice, causing special damages including but not limited to embarrassment, negative credit, inability to refinance, inability to sell the property, in such amounts as to be determined by the trier of fact, and for other special damages, for which Plaintiff should be awarded in such amount as determined by the trier of fact.

FOR A TENTH CAUSE OF ACTION
(Conversion)

116. Plaintiffs restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

117. Defendant, by virtue of improperly accounting for the amounts owed under the FUNB ARM/HELOC, and collecting for same (including but not limited more interest than due as well improper fees and costs), and for such other and further acts as may be established by the trier of fact, has converted money and property rightfully belonging to Plaintiffs to his own use.

118. As a result of the unlawful conversion, Plaintiff is entitled to actual and punitive damages in an amount to be determined by the trier of fact, plus pre-judgment interest, attorneys' fees and costs.

FOR AN ELEVENTH CAUSE OF ACTION
(Civil Conspiracy)

119. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

120. Upon information and belief, Defendant acted jointly and in conspiracy with others, including but not limited to Wachovia Retail Credit Servicing, Inc. and/or an unknown REMIC, for the purpose of obviating the laws of the State of South Carolina and charging and collecting improper compensation from the Plaintiff, and/or asserting liability against Plaintiff where no liability existed, all for the purpose of causing special injuries to Plaintiff, including but not limited to embarrassment, negative credit, inability to refinance, inability to sell the property, among others.

121. In doing so, Defendant and its co-conspirators caused special harm and damages to Plaintiffs under South Carolina law. Accordingly, Plaintiffs are entitled to recover actual, special, consequential, and punitive damages from Defendant based on this conspiracy, plus interest and attorneys' fees, in such amount as to be determined by the trier of fact.

FOR A TWELFTH CAUSE OF ACTION
(Accounting)

122. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

123. Based on the foregoing, Plaintiff is entitled to an equitable accounting from Defendant of all payments made, interest calculations, payoff amounts, resulting from FUNB ARM/HELOC and/or the amounts charged by Defendant or its predecessors in interests.

FOR A THIRTEENTH CAUSE OF ACTION
(Fair Debt Collection)

124. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

125. Defendant and/or its predecessors in interest have violated 15 USCA 1692 by virtue of making false, misleading and deceptive assertions regarding Plaintiff's indebtedness and Defendant's right to pursue collection, including the character and amount of the alleged debt and seeking the dispossession of Plaintiff's property rights.

126. As a result, Plaintiff is entitled to recover damages in such amount as to be determined by the trier of fact and for attorneys' fees and costs.

FOR A FOURTEENTH CAUSE OF ACTION
(Violation of SC Consumer Protection Code)

127. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

128. Defendant and/or its predecessors in interest have violated the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108 by virtue of unconscionable acts, including but not limited to making false, misleading and deceptive assertions regarding Plaintiff's indebtedness and Defendant's right to pursue collection, including the character and amount of the alleged debt and seeking the dispossession of Plaintiff's property rights.

129. As a result, Plaintiff is entitled to recover damages and/or treble damages in such amount as to be determined by the trier of fact and for attorneys' fees and costs.

FOR A FIFTEENTH CAUSE OF ACTION
(Violation of Real Estate Settlement Procedures Act)

130. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

131. Based on the foregoing, Defendant and/or its predecessors in interest have violated Section 2605 of the Real Estate Settlement Procedures Act and are liable for all damages allowed by law thereto, as well as attorneys' fees and costs.

FOR A SIXTEENTH CAUSE OF ACTION
(Mail Fraud)

132. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

133. Defendant and/or its predecessors in interest have devised or intended to devise a scheme to defraud (or to perform specified fraudulent acts including but not limited to to making false, misleading and deceptive assertions regarding Plaintiff's indebtedness and Defendant's right to pursue collection, including the character and amount of the alleged debt and seeking the dispossession of Plaintiff's property rights) and have maide use of the mail for the purpose of executing, or attempting to execute, the scheme or the above-specified fraudulent acts.

134. As a result, Plaintiff is entitled to recover damages and/or treble damages in such amount as to be determined by the trier of fact and for attorneys' fees and costs.

FOR A SEVENTEENTH CAUSE OF ACTION
(Declaratory Judgment)

135. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein verbatim.

136. As established herein, Plaintiff is informed and believes that Defendant claims a mortgage interest in the Property, which is emphatically denied by Plaintiff based on the acts, errors and omissions of Defendant, as well as the intervening sale of the Plaintiff's debt.

137. Pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 *et seq.* and Rule 57 of the South Carolina Rules of Civil Procedure, the Court should issue a declaratory judgment holding that Defendant has no ownership interest, or any rights whatsoever, associated with the Property.

WHEREFORE, having Complained of the Defendant, Plaintiff requests that the Court enter judgment in his favor on all causes of actions against Defendant, and grant him such actual and/or consequential and/or treble damages as he may be entitled, as well as attorneys' fees and costs as it may be entitled, declaratory relief, and for such other and further relief as the Court may deem just and proper.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiff

Mt. Pleasant, South Carolina
_____, 2013

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**WELLS FARGO'S COUNTERCLAIMS AND ANSWER TO AMENDED COMPLAINT**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2013 DEC 10 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Defendant Wells Fargo Bank, N.A. ("**Defendant**" or "**Wells Fargo**" or "**Lender**") hereby responds to the Amended Complaint ("**Complaint**") of Plaintiff Brent E. Bentrim ("**Plaintiff**" or "**Bentrim**").

GENERAL DENIAL

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

RESPONSE TO PARTIES AND JURISDICTION

1. Wells Fargo admits, upon information and belief, the allegations contained in Paragraph 1 of the Complaint.

2. Responding to the allegations of Paragraph 2 of the Complaint, Wells Fargo admits that it is a national banking organization authorized to conduct business in South Carolina and that it conducts business in Charleston County.

3. Wells Fargo admits, upon information and belief, the allegations contained in Paragraph 3 of the Complaint.

4. Wells Fargo denies the allegations of Paragraph 4 of the Complaint.

5. The allegations of Paragraph 5 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent a response is required Wells Fargo asserts that the Master in Equity for Charleston County has proper jurisdiction over this matter pursuant to the filed Consent Order of Reference in this matter dated November 13, 2012.

RESPONSE TO FACTUAL ALLEGATIONS

6. Wells Fargo lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and therefore denies those allegations.

7. Wells Fargo lacks information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint and therefore denies those allegations.

8. Responding to the allegations set forth in Paragraph 8 of the Complaint, Wells Fargo craves reference to the application, prior "fixed thirty year mortgage", deed for the subject property, as well as the public records of the Charleston County RMC's office and denies any allegations inconsistent therewith.

9. Responding to the allegations set forth in Paragraph 9 of the Complaint, Wells Fargo craves reference to any and all documentation between Plaintiff and First Union National Bank evidencing the allegations contained in Paragraph 9 as well as to the deed for the subject property, the public records of the Charleston County RMC's office relating to the Property, the terms of the Mortgage (defined hereinafter), and the terms of the Note (defined hereinafter), and denies all allegations in Paragraph 9 inconsistent therewith.

10. Responding to the allegations set forth in Paragraph 10 of the Complaint, Wells Fargo craves reference to any and all documentation between Plaintiff and First Union National Bank evidencing the allegations contained in Paragraph 10 and further craves reference to

the deed for the subject property, the records of the Charleston County RMC's office, the terms of the Mortgage (defined hereinafter), and the terms of the Note (defined hereinafter), and denies all allegations inconsistent therewith.

11. In response to the allegations contained in Paragraph 11 of the Complaint Wells Fargo admits upon information and belief that the closing for the loan which is the subject matter of this lawsuit was scheduled for March 12, 2002.

12. In response to the allegations set forth in Paragraph 12 of the Complaint Wells Fargo is informed and believes that Plaintiff executed multiple loan documents at the closing including the Note (defined hereinafter) and Mortgage (defined hereinafter) as well as other documents including but not limited to the documents set forth in Paragraph 12 of the Complaint.

13. Wells Fargo is without sufficient information to form a true and accurate belief as to the allegations set forth in Paragraph 13 and therefore denies the same and demands strict proof thereof.

14. Wells Fargo is without sufficient information to form a true and accurate belief as to the allegations set forth in Paragraph 14 and therefore denies the same and demands strict proof thereof.

15. Wells Fargo is without sufficient information to form a true and accurate belief as to the allegations set forth in Paragraph 15 and therefore denies the same and demands strict proof thereof.

16. Wells Fargo is without sufficient information to form a true and accurate belief as to the allegations set forth in Paragraph 16 and therefore denies the same and demands strict proof thereof.

17. Responding to the allegations set forth in Paragraph 17 of the Complaint, Wells Fargo is informed and believes that the correspondence referred to in Paragraph 17 speaks for itself and denies any allegations inconsistent therewith. Wells Fargo denies all remaining allegations in Paragraph 17.

18. Responding to the allegations of Paragraph 18 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court and denies any allegations inconsistent therewith.

19. Wells Fargo lacks information sufficient to form a true and accurate belief as to the allegations of Paragraph 19 of the Complaint, and therefore denies the same and demands strict proof thereof.

20. Wells Fargo denies the allegations of Paragraph 20 of the Complaint.

21. Responding to the allegations set forth in Paragraph 21 of the Complaint, Wells Fargo is without sufficient information to form a true and accurate belief as to the "business practices" of other banks or as to whether or not Plaintiff's characterization of said practices was "ubiquitous" and therefore denies the same. Further, Wells Fargo denies that an actual sale of the subject loan took place, and therefore denies any and all remaining allegations contained in Paragraph 21 of the Complaint.

22. Responding to the allegations set forth in Paragraph 22 of the Complaint, Wells Fargo craves reference to the public records of Charleston County and denies any allegations inconsistent therewith. Wells Fargo further denies that a sale of the subject loan took place, and therefore denies any and all remaining allegations contained in Paragraph 22 of the Complaint.

23. Responding to the allegations contained in Paragraph 23 of the Complaint, Wells Fargo denies that a sale of the subject loan took place, and therefore denies all allegations contained in Paragraph 23 of the Complaint.

24. Responding to the allegations contained in Paragraph 24 of the Complaint, Wells Fargo denies that a sale of the subject loan ever took place. Wells Fargo further specifically denies all remaining allegations contained in Paragraph 24 of the Complaint.

25. Wells Fargo denies the allegations contained in Paragraph 25 of the Complaint. In further response to the allegations, Wells Fargo admits that Wachovia Bank, N.A. used EIN number 22-1147033 but specifically denies an entity is limited to using only one EIN number.

26. Wells Fargo denies the allegations contained in Paragraph 26 of the Complaint.

27. Wells Fargo denies the allegations of Paragraph 27 of the Complaint.

28. Responding to the allegations set forth in Paragraph 28 of the Complaint, Wells Fargo denies that any repurchase took place, and therefore denies the remaining allegations contained in Paragraph 28 of the Complaint.

29. Responding to the allegations contained in Paragraph 29 of the Complaint, Wells Fargo denies the sale of the Note. Wells Fargo further avers that the "Notices of Breach" referred to in Paragraph 29 speak for themselves, and denies any allegations inconsistent therewith.

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

31. Responding to the allegations contained in Paragraph 31 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 07-CP-10-3933, and denies any allegations inconsistent therewith.

32. Responding to the allegations contained in Paragraph 32 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 07-CP-10-3933, and denies any allegations inconsistent therewith. In further response to the allegations contained in Paragraph 32 of the Complaint, Wells Fargo is informed and believes that Wachovia Bank, N.A. was the owner and holder of the Note at all relevant times.

33. Responding to the allegations contained in Paragraph 33 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 09-CP-10-4700, and denies any allegations in Paragraph 33 of the Complaint inconsistent therewith.

34. Responding to the allegations contained in Paragraph 34 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 09-CP-10-4700, and denies any allegations inconsistent therewith.

35. Responding to the allegations contained in Paragraph 35 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 09-CP-10-4700, and denies any allegations inconsistent therewith. In further response to the allegations contained in Paragraph 35 of the Complaint, Wells Fargo is informed and believes that Wachovia Bank, N.A. was the owner and holder of the Note at all relevant times.

36. Wells Fargo denies the allegations of Paragraph 36 of the Complaint.

37. Wells Fargo denies the allegations of Paragraph 37 of the Complaint.

38. Wells Fargo denies the allegations of Paragraph 38 of the Complaint.

39. Responding to the allegations contained in Paragraph 39 of the Complaint, Wells Fargo craves reference to the terms of the Note and subject loan and denies any allegations inconsistent therewith.

40. Responding to the allegations contained in Paragraph 40 of the Complaint, Wells Fargo craves reference to the terms of the Note and subject loan and denies any allegations inconsistent therewith.

41. Wells Fargo is without sufficient information to admit or deny the allegations of Paragraph 41 of the Complaint and therefore denies the same and demands strict proof thereof.

42. Wells Fargo denies the allegations of Paragraph 42 of the Complaint.

43. Wells Fargo denies the allegations of Paragraph 43 of the Complaint.

44. Wells Fargo denies the allegations of Paragraph 44 of the Complaint.

45. Responding to the allegations contained in Paragraph 45 of the Complaint, Wells Fargo craves reference to the letter referred to in Paragraph 45 and denies any allegations inconsistent therewith.

46. Wells Fargo denies the allegations of Paragraph 46 of the Complaint and demands strict proof thereof.

47. Responding to the allegations contained in Paragraph 47 of the Complaint, Wells Fargo craves reference to the "Past Due Notice" referred to in Paragraph 47 and denies any allegations inconsistent therewith.

48. Responding to the allegations contained in Paragraph 48 of the Complaint, Wells Fargo denies it sent a letter to itself dated December 8, 2008. In further response to the allegations contained in Paragraph 48 Wells Fargo craves reference to the letter referred

to in Paragraph 48 and denies any allegations inconsistent therewith. To the extent the allegations of Paragraph 48 state a legal conclusion, Wells Fargo is informed and believes that no response is required. To the extent any response to said conclusions is required, Wells Fargo places the burden of proof on the Plaintiff and demands strict proof thereof.

49. In response to the allegations contained in Paragraph 49 of the Complaint Wells Fargo craves reference to the "response" Plaintiff is referring to in Paragraph 49 and denied any allegations inconsistent with the contents of said response. All remaining allegat5ions in Paragraph 49 are denied and strict proof thereof demanded.

50. Wells Fargo denies the allegations of Paragraph 50 of the Complaint.

51. Responding to the allegations contained in Paragraph 51 of the Complaint Wells Fargo craves reference to the "acknowledgement" by an attorney with Brock and Scott and denies any allegations inconsistent therewith and further denies Plaintiff's conclusory allegations therefrom as set forth in Paragraph 51.

52. Responding to the allegations contained in Paragraph 52 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 09-CP-10-4700, and denies any allegations inconsistent therewith.

53. Responding to Paragraph 53 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 09-CP-10-4700, and denies any allegations inconsistent therewith.

54. Responding to Paragraph 54 of the Complaint, Wells Fargo craves reference to the specific terms and evidence of any offer, and denies any allegations inconsistent therewith.

55. Responding to Paragraph 55 of the Complaint, Wells Fargo craves reference to the records of the Charleston County Clerk of Court regarding Case No. 09-CP-10-4700, and denies any allegations inconsistent therewith.

56. Wells Fargo denies the allegations of Paragraph 56 of the Complaint.

57. Responding to Paragraph 57 of the Complaint, Wells Fargo craves reference to the letter referred to and denies any allegations inconsistent therewith.

58. Responding to Paragraph 58 of the Complaint, Wells Fargo craves reference to the letter referred to and denies any allegations inconsistent therewith. Wells Fargo specifically denies that it indicated seeking outside counsel would result in Plaintiff being "scammed".

59. Responding to Paragraph 59 of the Complaint, Wells Fargo craves reference to the Qualified Written Request ("QWR") referred to in Paragraph 59 by Plaintiff and denies any allegations inconsistent therewith including the conclusory allegation that said writing constituted a QWR.

60. Wells Fargo denies the allegations of Paragraph 60 of the Complaint.

61. In response to the allegations contained in Paragraph 61 of the Complaint, Wells Fargo craves reference to the "partial response" provided to Plaintiff by Corrina Gardiner as well as any and all attachments thereto and denies any allegations inconsistent therewith. All remaining allegations contained in Paragraph 61 are denied by Wells Fargo.

62. Wells Fargo is without sufficient information to form a true and accurate belief as to the date Plaintiff requested a copy of the original Note but admits upon information and belief that such a request has been made by Plaintiff. Wells Fargo further avers to the

Court that Plaintiff's counsel has viewed the original Note being held by counsel for Wells Fargo.

63. Responding to Paragraph 63 of the Complaint, Wells Fargo craves reference to the correspondence referred to in Paragraph 63 and denies any allegations inconsistent therewith.

64. In response to the allegations contained in Paragraph 64 of the Complaint Wells Fargo craves reference to the letter referred to by Plaintiff and denies any allegations inconsistent therewith. Wells Fargo further denies it has violated Section 6 of RESPA with regards to the subject loan or that it has falsely reported the condition of the subject loan to any credit reporting bureau.

65. Wells Fargo denies the allegations of Paragraph 65 of the Complaint.

66. Wells Fargo denies the allegations contained in Paragraph 66 of the Complaint.

AS TO PLAINTIFF'S FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

67. Responding to Paragraph 67 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

68. The allegations of Paragraph 68 state legal conclusions to which no response is required. To the extent a response is required, Wells Fargo places the burden of proof on the Plaintiff and specifically denies it has failed to exercise due care towards Plaintiff.

69. Wells Fargo denies the allegations of Paragraph 69 of the Complaint.

70. Wells Fargo denies the allegations of Paragraph 70 of the Complaint.

AS TO PLAINTIFF'S SECOND CAUSE OF ACTION
(Negligent Misrepresentation)

71. Responding to Paragraph 71 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

72. Wells Fargo denies the allegations of Paragraph 72 of the Complaint.

73. Wells Fargo denies the allegations of Paragraph 73 of the Complaint.

74. The allegations of Paragraph 74 state legal conclusions to which no response is required. To the extent a response is required, Wells Fargo places the burden of proof on the Plaintiff and specifically denies it has failed to exercise due care towards Plaintiff.

75. Wells Fargo denies the allegations of Paragraph 75 of the Complaint.

76. Wells Fargo denies the allegations of Paragraph 76 of the Complaint.

77. Wells Fargo denies the allegations of Paragraph 77 of the Complaint.

AS TO PLAINTIFF'S THIRD CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

78. Responding to Paragraph 78 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

79. The allegations of Paragraph 79 state legal conclusions to which no response is required. To the extent a response is required, Wells Fargo places the burden of proof on the Plaintiff and denies it has breached any express or implied covenants towards Plaintiff.

80. Wells Fargo denies the allegations of Paragraph 80 of the Complaint.

81. Wells Fargo denies the allegations of Paragraph 81 of the Complaint. In further response to this Cause of Action and Plaintiff's claim for damages thereunder, Wells Fargo expressly pleads the terms of Judge Dennis' order dated November 20, 2012 which granted Wells Fargo partial Summary Judgment as to Plaintiff's previously pled Cause of Action for Breach of Contract as a complete bar to this Cause of Action.

AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION
(Breach of Contract Accompanied by a Fraudulent Act)

82. Responding to Paragraph 82 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

83. The allegations of Paragraph 83 state legal conclusions to which no response is required. To the extent a response is required, Wells Fargo places the burden of proof on the Plaintiff. Wells Fargo specifically denies that it breached a contract.

84. Wells Fargo denies the allegations of Paragraph 84 of the Complaint.

85. Wells Fargo denies the allegations of Paragraph 85 of the Complaint. In further response to this Cause of Action and Plaintiff's claim for damages thereunder, Wells Fargo expressly pleads the terms of Judge Dennis' order dated November 20, 2012 which granted Wells Fargo partial Summary Judgment as to Plaintiff's previously pled Cause of Action for Breach of Contract as a complete bar to this Cause of Action.

AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION
(Conversion)

86. Responding to Paragraph 86 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

87. Wells Fargo denies the allegations of Paragraph 87 of the Complaint.

88. Wells Fargo denies the allegations of Paragraph 88 of the Complaint.

AS TO PLAINTIFF'S SIXTH CAUSE OF ACTION
(Fraud/Fraudulent Misrepresentation)

89. Responding to Paragraph 89 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

90. Wells Fargo denies the allegations of Paragraph 90 of the Complaint.

91. Wells Fargo denies the allegations of Paragraph 91 of the Complaint.

92. Wells Fargo denies the allegations of Paragraph 92 of the Complaint.

93. Wells Fargo denies the allegations of Paragraph 93 of the Complaint.

94. Wells Fargo denies the allegations of Paragraph 94 of the Complaint.

95. Wells Fargo denies the allegations of Paragraph 95 of the Complaint.

96. Wells Fargo denies the allegations of Paragraph 96 of the Complaint.

97. Wells Fargo denies the allegations of Paragraph 97 of the Complaint.

AS TO PLAINTIFF'S SEVENTH CAUSE OF ACTION
(Constructive Fraud)

98. Responding to Paragraph 98 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

99. Wells Fargo denies the allegations of Paragraph 99 of the Complaint.

100. Wells Fargo denies the allegations of Paragraph 100 of the Complaint.

101. Wells Fargo denies the allegations of Paragraph 101 of the Complaint.

102. Wells Fargo denies the allegations of Paragraph 102 of the Complaint.

103. Wells Fargo denies the allegations of Paragraph 103 of the Complaint.

104. Wells Fargo denies the allegations of Paragraph 104 of the Complaint.

105. Wells Fargo denies the allegations of Paragraph 105 of the Complaint.

106. Wells Fargo denies the allegations of Paragraph 106 of the Complaint.

AS TO PLAINTIFF'S EIGHTH CAUSE OF ACTION
(UTPA)

107. Responding to Paragraph 107 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

108. Wells Fargo denies the allegations of Paragraph 108 of the Complaint.

109. Wells Fargo denies the allegations of Paragraph 109 of the Complaint.

110. Wells Fargo denies the allegations of Paragraph 110 of the Complaint.

111. Wells Fargo denies the allegations of Paragraph 111 of the Complaint.

112. Wells Fargo denies the allegations of Paragraph 112 of the Complaint.

113. Wells Fargo denies the allegations of Paragraph 113 of the Complaint.

AS TO PLAINTIFF'S NINTH CAUSE OF ACTION
(Slander of Title)

114. Responding to Paragraph 114 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

115. Wells Fargo denies the allegations of Paragraph 115 of the Complaint.

AS TO PLAINTIFF'S TENTH CAUSE OF ACTION
(Conversion)

116. Responding to Paragraph 116 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

117. Wells Fargo denies the allegations of Paragraph 117 of the Complaint.

118. Wells Fargo denies the allegations of Paragraph 118 of the Complaint.

AS TO PLAINTIFF'S ELEVENTH CAUSE OF ACTION
(Civil Conspiracy)

119. Responding to Paragraph 119 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

120. Wells Fargo denies the allegations of Paragraph 120 of the Complaint.

121. Wells Fargo denies the allegations of Paragraph 121 of the Complaint.

AS TO PLAINTIFF'S TWELFTH CAUSE OF ACTION
(Accounting)

122. Responding to Paragraph 122 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

123. Wells Fargo will produce an accounting upon request.

AS TO PLAINTIFF'S THIRTEENTH CAUSE OF ACTION
(Fair Debt Collection)

124. Responding to Paragraph 124 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

125. Wells Fargo denies the allegations of Paragraph 125 of the Complaint.

126. Wells Fargo denies the allegations of Paragraph 126 of the Complaint.

AS TO PLAINTIFF'S FOURTEENTH CAUSE OF ACTION
(S.C. Consumer Protection Code)

127. Responding to Paragraph 127 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

128. Wells Fargo denies the allegations of Paragraph 128 of the Complaint.

129. Wells Fargo denies the allegations of Paragraph 129 of the Complaint.

AS TO PLAINTIFF'S FIFTEENTH CAUSE OF ACTION
(RESPA)

130. Responding to Paragraph 130 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

131. Wells Fargo denies the allegations of Paragraph 131 of the Complaint.

AS TO PLAINTIFF'S SIXTEENTH CAUSE OF ACTION
(Mail Fraud)

132. Responding to Paragraph 132 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

133. Wells Fargo denies the allegations of Paragraph 133 of the Complaint.

134. Wells Fargo denies the allegations of Paragraph 134 of the Complaint.

AS TO PLAINTIFF'S SEVENTEENTH CAUSE OF ACTION
(Declaratory Judgment)

135. Responding to Paragraph 135 of the Complaint, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

136. Responding to Paragraph 136 of the Complaint, Wells Fargo admits that it claims a mortgage interest in the property; but denies the remaining allegations of Paragraph 136.

137. Wells Fargo denies the allegations of Paragraph 137 of the Complaint.

AS TO PLAINTIFF'S PRAYER FOR RELIEF

138. Defendant denies that Plaintiff is entitled to any of the relief requested in any part of the Complaint, including, but not limited to, the prayer for relief ("Wherefore" clause) set forth on page 21 of the Complaint.

SECOND DEFENSE
(Failure to State a Claim)

139. The Complaint fails to state a claim against Defendant upon which relief can be granted. Plaintiff's individual causes of action fail because Plaintiff cannot demonstrate that all elements of the causes of action have been met.

THIRD DEFENSE
(Waiver)

140. Further answering the Complaint and without waiving any other defenses, Wells Fargo states that Plaintiff has waived his claims against Wells Fargo through his conduct.

FOURTH DEFENSE
(Assumption of Risk)

141. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims against Defendant are barred because Plaintiff knew and understood the cost, risk, and

potential rewards of purchasing the property and therefore assumed the risk associated with purchasing the property.

FIFTH DEFENSE
(Laches)

142. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims against Defendant are barred, in whole or in part, under the doctrine of laches.

SIXTH DEFENSE
(Existing Court Order)

143. Further answering the Complaint and without waiving any other defenses, Plaintiff's Causes of Action for Breach of Contract and TILA violations were dismissed with prejudice pursuant to Judge Dennis' Order filed November 20, 2012. Accordingly, Wells Fargo is informed and believes that Plaintiff's Third and Fourth Causes of Action Entitled "Breach of Contract accompanied by a Fraudulent Act" and "Breach of Implied Covenant of Good Faith and Fair Dealing" are expressly barred from being brought by Plaintiff.

SEVENTH DEFENSE
(Estoppel)

144. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims against Defendant are barred in whole or in part, under the doctrine of estoppel.

EIGHTH DEFENSE
(Intervening and Superseding Acts)

145. Further answering the Complaint and without waiving any other defenses Defendant is not liable or responsible for damages to the extent that damages, if any, are due. Such damages, if they exist, were contributed to or caused by, in whole or in part, the conduct of third parties over whom Defendant had no control and for whose conduct it was not responsible. To the

extent that conduct of third parties was an intervening, superseding, isolating, or sole cause of the Plaintiff's alleged damages, Defendant pleads the foregoing as a bar to recovery to any of them.

NINTH DEFENSE
(Unfair Trade Practices)

146. Further answering the Complaint and without waiving any other defenses, Plaintiff's claims for unfair and deceptive trade practices against Defendant fail because the South Carolina Unfair Trade Practice Act does not apply and; even if it did, Plaintiff has failed to allege any conduct on the part of Defendant that would support such a claim.

TENTH DEFENSE
(Punitive Damages)

147. Further answering the Complaint and without waiving any other defenses, Plaintiff's claim for punitive damages fails to state a claim for relief because they have failed to state any viable claim against Defendant and otherwise failed to allege conduct sufficient to support an award of punitive damages. Further, Wells Fargo is informed and believes that it cannot be assessed punitive damages for the actions of its predecessors in interest.

ELEVENTH DEFENSE
(Punitive Damages)

148. Further answering the Complaint and without waiving any other defenses, Plaintiff's claim for punitive damages violates provisions of the South Carolina Constitution as well as the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States and should be stricken.

TWELFTH DEFENSE
(Setoff/Recoupment)

149. Further answering the Complaint and without waiving any other defenses, if and to the extent Plaintiff's are entitled to recover damages against Defendant, which is expressly denied,

Wells Fargo is entitled to set off the damages caused by Plaintiff's breach of the terms and conditions of the Note (hereinafter defined) and Mortgage (herinafter defined) and other documents of the subject loan against any amount Wells Fargo is required to pay on the claims asserted by Plaintiff.

THIRTEENTH DEFENSE
(Speculative Damages)

150. Plaintiff's claim for damages is speculative and therefore disallowed under South Carolina law.

FOURTEENTH DEFENSE
(Failure to Mitigate)

151. Plaintiff is legally obligated to mitigate his damages. Upon information and belief Wells Fargo can show that Plaintiff failed to mitigate his damages and is therefore barred from recovery based on this failure.

FIFTEENTH DEFENSE
(Prior Breach)

152. Defendant would show that some or all of Plaintiff's claims are barred by the Plaintiff's prior breach of the parties' contract.

SIXTEENTH DEFENSE
(Consent)

153. Defendant would show that Plaintiff's claims are barred by the doctrine of consent.

SEVENTEENTH DEFENSE
(Failure to Perform)

154. Defendant would show that the Plaintiff failed to perform under the terms of the Note and Mortgage, and, therefore, these claims must be dismissed.

EIGHTEENTH DEFENSE
(Compliance with the Note and Mortgage)

155. Wells Fargo incorporates by reference all of the terms, conditions, exclusions, exceptions, and limitations of the Note and Mortgage between it and the Plaintiff and would show that it performed all of its obligations under any alleged loan contract and/or in procuring any alleged loan contract. Defendant further pleads the terms and conditions of any alleged loan contract as a complete defense and bar to this action.

NINETEENTH DEFENSE
(Reservation of Rights)

156. Defendant has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Defendant's allegations. It intends to act as best as it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Defendant and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and/or law.

TWENTIETH DEFENSE
(Res Judicata/Collateral Estoppel/Claim Preclusion)

157. Plaintiff's Complaint, or particular causes of action, are barred by the doctrines of res judicata, collateral estoppel and/or claim preclusion. Some of Plaintiff's claims were specifically barred by the Honorable R. Markley Dennis' "Order Granting, In Part, And Denying In Part, Defendant's Motion for Summary Judgment," filed November 20, 2012.

TWENTY-FIRST DEFENSE
(Statute of Limitations)

158. Plaintiff's Complaint, or particular causes of action, are barred by the applicable statutes of limitation.

TWENTY-SECOND DEFENSE
(Preemption)

159. Plaintiff's Complaint, or particular causes of action, are preempted by federal law.

TWENTY-THIRD DEFENSE
(FDCPA- Safe Harbor)

160. Wells Fargo maintains various policies and procedures regarding the servicing and collection of accounts. Those policies and procedures were in place during the timeframes the Plaintiff alleges Wells Fargo violated the law. Pursuant to 15 United States Code § 1692k(c), any alleged violation of the FDCPA was not intentional and resulted form a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any and all FDCPA errors alleged by Plaintiff. Based upon the aforementioned procedures, Wells Fargo may not be held liable for any alleged violations of the FDCPA.

TWENTY-FOURTH DEFENSE
(Fraud, Fraudulent Misrepresentation, Constructive Fraud and Negligent Misrepresentation)

161. Further answering the Complaint and without waiving any other defenses, (i) Plaintiff has failed to plead the circumstances giving rise to such claims with particularity as required by Rule 9(b) of the South Carolina Rules of Civil Procedure; and (ii) Plaintiff has failed to allege that Wells Fargo made any misrepresentation to him or that he reasonably relied on any such misrepresentation as required to support a claim for fraud, fraudulent misrepresentation, constructive fraud, or negligent misrepresentation.

TWENTY-FIFTH DEFENSE
(BY WAY OF COUNTERCLAIM)
(SUIT ON PROMISSORY NOTE)

162. Wells Fargo incorporates by reference all of the above paragraphs as if set forth fully herein.

JURISDICTION

163. Wells Fargo incorporates all of the admissions and denials contained in the Answer as if fully restated herein.

164. This Court has original jurisdiction over these counterclaims pursuant to Rule 13 of the South Carolina Rules of Civil Procedure.

165. Defendant Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A., as successor by merger to First Union National Bank is duly organized and existing under laws of the United States of America and is authorized to do business in the State of South Carolina and conducts business in Charleston County, South Carolina.

166. Upon information and belief, Plaintiff Brent E. Bentrim is a citizen and resident of Charleston County, South Carolina and owns real property located in Charleston County, South Carolina.

167. The real property which is the subject of this action is located in Charleston County, South Carolina and is described more fully on **Exhibit "A"**, attached hereto and incorporated herein by reference (the "**Real Property**").

168. Upon information and belief, the Home Affordable Modification Program and Chief Justice Toal's Administrative Order regarding foreclosure intervention (2011-05-02-01) are applicable to the Real Property.

169. This Court has jurisdiction over the parties and subject matter and this forum is a proper venue.

FACTS

170. On or about March 12, 2002, for value received, Plaintiff executed and delivered a certain Negotiable Promissory Note in favor of First Union National Bank in the principal sum

of **ONE HUNDRED EIGHTY-TWO THOUSAND SEVEN HUNDRED AND NO/100THS ($182,700.00) DOLLARS** (the "**Note**").

171. In order to secure the payment of the Note, Plaintiff made, executed and delivered unto First Union National Bank a certain real estate mortgage ("**Mortgage**") covering the Real Property. The Mortgage is dated March 12, 2002 and was recorded in the Charleston County RMC Office in Mortgage Book C-402 at Page 182.

172. Wells Fargo Bank, successor by merger to Wachovia Bank, N.A., as successor by merger to First Union National Bank, is now the owner and holder of the Note and Mortgage and therefore is the real party in interest entitled to bring this action against Plaintiff.

173. Pursuant to the terms and conditions of the Note, Plaintiff was required to make three hundred eighty (380) monthly payments in the amount of **NINE HUNDRED EIGHT-FOUR AND 21/100THS ($984.21) DOLLARS**.

174. Under the terms of the Note, interest accrued on the outstanding principal balance at a variable rate of 4.99% percent per year subject to change as provided in the Note until the full amount of the principal has been paid.

175. The Note provides, among other things, that if a payment is not made by the end of fifteen calendar days after the payment is due, Lender may collect a late charge in the amount of five (5.000%) percent of the overdue amount of each payment.

176. The Note provides, among other things, that an event of default would occur if Plaintiff failed to make a payment as required by the terms of the Note.

177. The Note provides that in the event of a default, Lender is entitled to require immediate payment of all amounts owing under the terms of the Note.

178. The Note further provides, among other things, that if an action or other proceeding is brought to collect the Note, Lender shall be entitled to recover its attorneys' fees incurred in an amount up to fifteen (15.0%) percent of the unpaid debt.

179. Plaintiff has retained counsel for the purpose of instituting and prosecuting this action.

180. Plaintiff has failed and continues to fail to make the payments as due pursuant to the terms and conditions of the Note. Such failure to pay the Note in accordance with the terms and conditions of the Note constitutes an event of default under the Note. The entire balance of the Note is now immediately due and payable and continues to carry interest of the default rate set forth in the Note.

181. As of August 31, 2011, the amount due under the terms of the Note was **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS**, exclusive of attorneys' fees and costs, and is computed as follows:

Principal:	$176,879.20
Interest:	$21,621.89
Late Charges:	$83.02
Other Charges:	$606.13
Term Fees:	$962.00
Total:	**$200,152.24**

182. Under the terms of the Note, interest continues to accrue each day at the currently calculated rate of $16.91 per day subject to change as provided in the Note.

183. On November 20, 2011, Wells Fargo sent a demand letter to Plaintiff regarding his default under the terms of the Note and provided Plaintiff a thirty (30) day opportunity to cure such default.

184. Plaintiff failed to cure his default.

185. Plaintiff is in default under the terms, covenants, and provisions of the Note.

186. Pursuant to the terms of the Note, the entire balance of the Note, including principal, accrued interest and other accrued charges, is now due and payable.

187. Based on the above, Wells Fargo is informed and believes that it is entitled to judgment against Plaintiff Brent E. Bentrim, in the amount of **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS** as of August 31, 2011, plus interest that has accrued since August 31, 2011 and interest that continues to accrue each day at the per diem rate set forth in the Note, the costs of this action and attorneys' fees incurred in an amount up to fifteen (15.0%) percent of the unpaid debt.

TWENTY-SIXTH DEFENSE
(By Way Of Counterclaim)
(Foreclosure of Mortgage)

188. Wells Fargo incorporates all of the admissions and denials contained in this pleading as if fully restated herein.

189. Plaintiff Brent E. Bentrim failed and continues to fail to make the payments as due pursuant to the terms and conditions of the Note. Such failure to make monthly payments in accordance with its terms and conditions of the Note constitutes an event of default under the Note. The entire balance of the Note is now immediately due and payable and continues to carry interest at a variable rate as set forth in the Note.

190. Plaintiff's default under the terms of the Note allows Wells Fargo to elect to exercise its rights and remedies under the terms of the Note and Mortgage. The foregoing events of default under the terms of the Note confer upon Wells Fargo the right to accelerate payment of the Note in accordance with its terms and access all rights and remedies available to Wells Fargo under the terms of the provisions of the Note and Mortgage, including without limitation the right to institute this action for foreclosure of the Mortgage, and the right to seek and obtain a judgment

against Plaintiff for failure to pay the Note as due as well as the right to seek a deficiency judgment against Plaintiff in the amount of any deficiency remaining after completion of the foreclosure sale of the Real Property in accordance with applicable law.

191. Wells Fargo currently exercises its right to accelerate and declare the Note and all other enumerated sums evidenced, secured and guaranteed by the Mortgage to be due, payable in full, and to foreclose the Mortgage.

192. As of August 31, 2011, Wells Fargo is due from Plaintiff Brent E. Bentrim upon the Note the outstanding principle balance of **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS** plus interest that has accrued since August 31, 2011 and interest that continues to accrue at the rate set forth in the Note, the costs of this action and attorneys' fees incurred in an amount up to fifteen (15.0%) percent of the unpaid debt, together with advances made by Wells Fargo under the Note and Mortgage.

193. Under the terms of the Note, interest continues to accrue each day at the currently calculated rate of $16.91 per day subject to change as provided in the Note.

194. Pursuant to the terms and provisions of the Note and Mortgage, Wells Fargo is entitled to recover all expenses of collection and foreclosure, including but not limited to reasonable attorneys fees up to fifteen (15.0%) percent of the unpaid debt and costs all of which are secured by the Mortgage.

195. Wells Fargo is entitled to the entry of an order for the foreclosure of the Mortgage and sale of the Real Property at the public sale in accordance with law, free and clear of all subordinate liens and security interests.

196. Wells Fargo is hereby seeking foreclosure of the Mortgage and seeking a deficiency judgment against Plaintiff Brent E. Bentrim.

PRAYER FOR RELIEF

WHEREFORE, Wells Fargo respectfully requests that:

(a) Plaintiff's Complaint against Wells Fargo be dismissed in its entirety with prejudice;

(c) That the court study and determine all amounts due to Wells Fargo under the Note, including principle, interest, fees, costs and advancements, together with reasonable attorneys fees up to fifteen (15.0%) percent of the unpaid debt and the costs of this action, and award Wells Fargo judgment against Plaintiff, Brent E. Bentrim, in such an amount.

(d) That the Mortgage be declared a good and valid first mortgage lien upon the Real Property, subject only to applicable past due and accruing property taxes, and that Wells Fargo have judgment of foreclosure for all amounts found, due and owing under the Note and Mortgage, together with any taxes or insurance premiums which may be due or which may have been paid by Wells Fargo.

(f) That (i) the Real Property be sold at foreclosure according to law and the practice of the court, free and clear of any and all liens, security interests and claims of other persons including, but not limited to, the Plaintiff, but subject to all past due and accruing unpaid property taxes thereon (ii) that the equity of redemption be barred and (iii) the proceeds of sale be applied as follows: First, to the cost and expenses of this action and such sale; Second, to the payment and discharge of all amounts due Wells Fargo under the Note, together with any taxes or insurance premiums which may have been paid by Wells Fargo and with Wells Fargo's costs and attorneys fees; and Third, the surplus, if any, to be distributed according to law.

(h) That Wells Fargo be granted judgment against Plaintiff Brent E. Bentrim in the amount of any deficiency remaining after the sale of the Real Property, such deficiency to

be based on the high bid at the judicial foreclosure sale (regardless of any appraised value of the property) and for any such other and further relief the court may deem just and proper.

(i) The costs of this action be taxed against Plaintiff; and

(j) The Court grant Wells Fargo such other and further relief as it deems just and proper.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

S. Sterling Laney, III (S.C. Bar No. 6933)
Jana B. Baker (S.C. Bar No. 72487)
John C. Hawk IV (S.C. Bar No. 74786)
Five Exchange Street, P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR WELLS FARGO BANK, N.A.

Charleston, South Carolina
December 10, 2013

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	ANSWER TO COUNTERCLAIM
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

FILED
2014 JAN 21 PM 3:4
JULIE J. ARMSTRONG
CLERK OF COURT

TO: S. STERLING LANEY III, ESQUIRE and JANA BAKER, ESQUIRE, ATTORNEYS FOR DEFENDANT:

COMES NOW THE Plaintiff, by and through his undersigned attorney, would answer the Counterclaim of the Defendant from Defendant's Answer to Amended Complaint and Counterclaim, and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE TO THE COUNTERCLAIM OF DEFENDANT
(Qualified General Denial)

1. Each and every allegation of the Answer to Amended Complaint and Counterclaim Counterclaim that is not hereafter specifically and expressly admitted below by Plaintiff is denied, and strict proof is demanded thereof.

2. The allegations contained in Paragraphs 1 through 161 of the Answer to Amended Complaint and Counterclaim (hereafter "Counterclaim") consist of Defendant's Answer to the Amended Complaint and state no claims or allegations of liability or wrongdoing against Plaintiff. Thus, no response is required of Plaintiff and/or Plaintiff lacks sufficient information to either admit or deny the allegations contained therein. Should a response thereto be required, however, then Plaintiff denies the allegations contained in the enumerated paragraphs and demands strict proof thereof.

ANSWERING DEFENDANT'S FIRST COUNTERCLAIM
(Suit on a Promissory Note)

3. Answering Paragraphs 162 and 163 of the Counterclaim, Plaintiff restates and re-alleges his previous responses as if fully set forth herein verbatim.

4. The allegations contained in Paragraph 164 of the Counterclaim sets forth conclusions of law to which no response is required of the Plaintiff.

5. Plaintiff denies the allegations contained in Paragraph 165 of the Counterclaim as drafted and demands strict proof thereof.

6. Plaintiff admits the allegations contained in Paragraphs 166 and 167 of the Counterclaim.

7. The allegations contained in Paragraphs 168 and 169 of the Counterclaim set forth conclusions of law to which no response is required of the Plaintiff.

8. Answering Paragraph 170 of the Counterclaim, Plaintiff admits it was signed, but denies any and further allegations as drafted, or allegations which are inconsistent with the limited admission, and demands strict proof thereof.

9. Plaintiff admits the allegations contained in Paragraph 171 of the Counterclaim.

10. Plaintiff denies the allegations contained in Paragraphs 172 and 173 of the Counterclaim as drafted and demands strict proof thereof.

11. Plaintiff admits the allegations contained in Paragraphs 174 and 175 of the Counterclaim except to the extent that Defendant alleges it is the "Lender" as defined therein, or is entitled to the rights of a Lender as defined therein, which Plaintiff denies and demands strict proof thereof.

12. Plaintiff denies the allegations contained in Paragraph 176 of the Counterclaim as

drafted and demands strict proof thereof.

13. Plaintiff admits the allegations contained in Paragraphs 177 and 178 of the Counterclaim except to the extent that Defendant alleges it is the "Lender" as defined therein, or is entitled to the rights of a Lender as defined therein, which Plaintiff denies and demands strict proof thereof.

14. Plaintiff admits the allegations contained in Paragraph 179 of the Counterclaim upon information and belief, but denies any liability to Defendant resulting from its decision to retain counsel and/or institute and prosecute an action.

15. Plaintiff denies the allegations contained in Paragraph 180 of the Counterclaim as drafted and demands strict proof thereof.

16. Answering Paragraph 181 of the Counterclaim, Plaintiff would assert that the accounting set forth therein is inconsistent with the terms of the Note, and therefore Plaintiff denies all the allegations of this paragraph as drafted and demands strict proof thereof.

17. Answering Paragraph 182 of the Counterclaim, Plaintiff would assert that the calculation of interest as set forth therein is inconsistent with the terms of the Note, and therefore Plaintiff denies all the allegations of this paragraph as drafted and demands strict proof thereof.

18. Answering Paragraph 183 of the Counterclaim, Plaintiff would assert that the letter referenced therein contained no "right to cure" provisions, and therefore Plaintiff denies all the allegations of this paragraph as drafted and demands strict proof thereof.

19. Answering Paragraph 184 of the Counterclaim, Plaintiff would assert that he is not in default, and therefore Plaintiff denies all the allegations of this paragraph as drafted and demands strict proof thereof.

20. Answering Paragraph 185 of the Counterclaim, Plaintiff would assert that the

transaction described in the Note did not occur, and therefore Plaintiff denies all the allegations of this paragraph as drafted and demands strict proof thereof.

21. Plaintiff denies the allegations contained in Paragraphs 186 and 187 of the Counterclaim as drafted and demands strict proof thereof.

ANSWERING DEFENDANT'S SECOND COUNTERCLAIM
(Foreclosure of Mortgage)

22. Answering Paragraph 188 of the Counterclaim, Plaintiff restates and re-alleges his previous responses as if fully set forth herein verbatim.

23. Plaintiff denies the allegations contained in Paragraphs 189, 190, 191, 192, 193, 194 and 195 of the Counterclaim as drafted and demands strict proof thereof.

24. Answering Paragraph 196 of the Counterclaim states no specific claims or allegations of liability or wrongdoing against Plaintiff. Thus, no response is required of Plaintiff but should a response thereto be required, however, then Plaintiff denies the allegations contained in the enumerated paragraph and demands strict proof thereof.

FOR A SECOND DEFENSE
(Failure to State a Cause of Action)

25. Defendant has failed to state facts sufficient to constitute a cause of action against Plaintiff, and therefore the Counterclaim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Lack of Standing/Real Party in Interest)

26. Defendant's claims are barred in whole or in part because it lacks standing to bring the Counterclaim causes of action against this Plaintiff for alleged damages or any matters related thereto and/or is not the real party in interest pursuant to Rule 17 of the South Carolina

Rules of Civil Procedure. Thus, Plaintiff's Counterclaim causes of action against this Defendant should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Statute of Limitations)

27. Defendant's claims against Plaintiff are barred by the applicable statutes of limitation. Thus, Defendants' claims against Plaintiff should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE
(Waiver/Estoppel/Laches)

28. Defendant's claims against Plaintiff are barred by the equitable doctrines of waiver and/or estoppel and/or laches. Thus, Defendant's Counterclaim causes of action against this Plaintiff should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE
(Unclean Hands)

29. Defendant's claims against Plaintiff are barred by the equitable doctrine of unclean hands. Thus, Defendant's Counterclaim causes of action against this Plaintiff should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure

FOR A SEVENTH DEFENSE
(Noncompliance with Terms of Note/No Transaction)

30. Defendant's claims against Plaintiff are barred and/or limited due to Defendant's failure to comply with the terms of the Note and the fact that the transaction as described in the (a) Promissory Note, (b) First Union Adjustable Rate Disclosure Statement and (c) other closing documents did not occur. Thus, Defendant's Counterclaim causes of action against this Plaintiff should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure

FOR A EIGHTH DEFENSE
(Satisfaction/Release of Mortgage)

31. Defendant's claims against Plaintiff are barred and/or limited due to the fact that by virtue of Defendant's conduct in selling the Note, the Mortgage has been satisfied under by the express provisions of the same. Thus, Defendant's Counterclaim causes of action against this Plaintiff should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure

FOR AN NINTH DEFENSE
(Noncompliance with an Order of the Court)

32. The Counterclaim was filed in contravention of the Court's order of July 9, 2010 in case number 09-CP-10-4700 which specifically required Wells Fargo to provide Bentrim with a calculated payoff prior to refiling a claim under the note and mortgage There is no genuine issue of material fact that Wells Fargo failed to comply with this order.

FOR A TENTH DEFENSE
(Noncompliance with Consent Agreements)

33. The Counterclaim was filed in contravention of Article V of the Defendant's Consent Cease & Desist Order "Order" signed on April 13, 2011 with its regulator, the Office of the Comptroller of the Currency "OCC" which specifically requires Wells Fargo to have documentation sufficient to establish ownership of promissory note and / or right to foreclose at the time the foreclosure action is commenced. The Counterclaim is also in contravention of the Defendant's Consent Judgment with the federal government and state attorneys on April 4, 2012 through the filing of affidavits, sworn statements and declarations of certain information that is false and unsubstantiated. Thus, Defendant's Counterclaim causes of action against this Plaintiff should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure

FOR AN ELEVENTH DEFENSE
(Spoliation of Evidence)

34. Defendants' claims may be barred by the doctrine of spoliation of evidence, specifically including but not limited to the destruction/loss of all principal and interest records of First Union National Bank.

FOR A TWELFTH DEFENSE
(Non Compliance with S.C. Code Ann. § 37-5-114)

35. Defendants' claims may be barred by the Defendant's failure to comply with the requirements of S.C. Code Ann. § 37-5-114.

FOR A THIRTEENTH DEFENSE
(Non Compliance with S.C. Code Ann. §§ 37-5-110 and -111)

36. Defendants claims may be barred by the Defendant's failure to provide a Notice of Cure in conformity with the requirements of S.C. Code Ann. §§ 37-5-110 and -111.

FOR A FOURTEENTH DEFENSE
(Fraud / Mistake)

37. Defendant's claims are barred by the intervening fraud and/or mistake on the part of Defendant.

FOR A FIFTEENTH DEFENSE
(Mistake)

38. Defendant's claims are barred by the intervening mistake on the part of Defendant.

FOR A SIXTEENTH DEFENSE
(Lost Note Affidavit)

39. Defendant's claims are barred by the fact the Counterclaim seeks to enforce a note despite the fact that Wells Fargo has filed a Lost Note Affidavit in this matter. Accordingly, pursuant to S.C. Code Ann. Sec. 36-3-305, the Counterclaim should be dismissed because

Plaintiff is not obliged to pay on a lost instrument.

FOR A SEVENTEENTH DEFENSE
(Unenforceability of Note by operation of Uniform Commercial Code)

40. Defendant's Note is unenforceable by virtue of operation of the Uniform Commercial Code.

FOR AN EIGHTEENTH DEFENSE
(Unenforceability of Mortgage by Non-Assignment)

41. Defendant's mortgage is unenforceable by virtue of the fact Defendant failed to record an assignment thereof.

FOR A NINETEENTH DEFENSE
(Mandatory Counterclaim)

42. The Counterclaim was compulsory within the meaning of Rule 13 of the South Carolina Rules of Civil Procedure and – because it was not asserted in the first answer of Defendant by prior counsel – it is waived.

FOR AN ADDITIONAL DEFENSE
(Reservation/Non-Waiver)

43. Plaintiff specifically reserves any additional defenses including affirmative defenses, as may be available or revealed to him during the course of his investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered Defendant's Counterclaim, Plaintiff prays that the Counterclaim be dismissed, with costs, and for such other relief as the Court may grant

Signature on following page

BROWN & VARNADO LLC

Robert B. Varnado, Esquire
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, South Carolina 29465
Telephone: (843) 737-7300
Facsimile: (843) 654-5109
rvarnado@brown-varnado.com
ATTORNEY FOR PLAINTIFF

January 17, 2014
Mount Pleasant, South Carolina

2011-CP-10-2946

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

FILED
2015 MAR -5 PM 1:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Charleston County Master in Equity

CASE NO. 2011-CP-10-2946

BRENT E. BENTRIM, ...Appellant

v.

WELLS FARGO BANK, N.A.,..... Respondent

NOTICE OF APPEAL

Brent E. Bentrim appeals Section 4 of the ***Order*** of the Honorable Mikell R. Scarborough, Charleston County Master-In- Equity signed October 16 and filed October 28, 2014, attached herewith as Exhibit "A," along with the ***Order Granting in Party and Denying in Part Plaintiff's Motion to Reconsider,*** attached herewith as Exhibit "B". Appellant received written notice of entry of the latter on January 26, 2015.

February 25, 2015

Robert B. Varnado
Alexis M. Wimberly
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorneys for Appellant

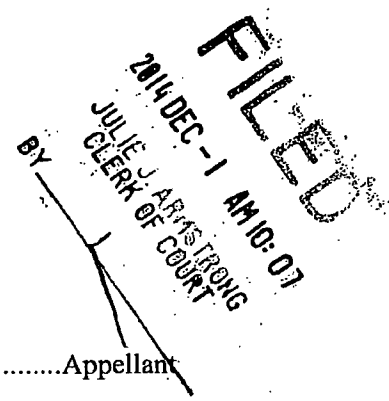
Other Counsel of Record:
Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Charleston County Master in Equity

CASE NO. 2011-CP-10-2946



BRENT E. BENTRIM , ...Appellant

v.

WELLS FARGO BANK, N.A.,..... Respondent

NOTICE OF APPEAL

Brent E. Bentrim appeals Section 1 of the order of the Honorable Mikell R. Scarborough, Charleston County Master-In- Equity signed October 16 and filed October 28, 2014, attached herewith as Exhibit "A." Appellant received written notice of entry of the same on November 5, 2014.

November 28, 2014

Robert B. Varnado
Alexis M. Wimberly
BROWN & VARNADO LLC
P.O. Box 1127
Mount Pleasant, South Carolina 29465
(843) 737-7300
Attorney for Appellant

Other Counsel of Record:
Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorney for Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**NOTICE OF DEFENDANT'S MOTION AND MOTION FOR SUMMARY JUDGMENT**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

TO: WILLIAM H. SLOAN, ESQUIRE, ATTORNEY FOR PLAINTIFF BRENT E. BENTRIM

Defendant Wells Fargo Bank, N.A. ("**Wells Fargo**" or "**Defendant**"), by and through its undersigned attorneys, hereby submits this Notice and Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure against Plaintiff Brent E. Bentrim ("**Plaintiff**"). This Motion is supported by the facts and case law set forth herein as well as the attachments hereto, and any later filed supplemental affidavits, memorandums of law, excerpts from deposition testimony and the argument of counsel.

Summary Judgment is proper in this case as to each of Plaintiff's causes of action because there are no genuine issues of material fact as to any of Plaintiff's claims pending before this Court, and therefore, Wells Fargo is entitled to judgment as a matter of law against Plaintiff. Specifically, there are no genuine issues of material fact that Plaintiff's claims fail as a matter of law for: (i) RESPA Violations, Section 2605; (ii) Breach of contract; (iii) TILA Violations; (iv) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (v) Mail Fraud; and, (vi) Punitive Damages.

STATEMENT OF FACTS

On or about March 12, 2002, Plaintiff Bentrim executed that certain Negotiable Promissory Note in the original principal amount of **ONE HUNDRED EIGHTY-TWO THOUSAND SEVEN HUNDRED AND NO/100THS ($182,700.00) DOLLARS** (the "**Note**") in favor of Wells Fargo. A copy of the Note is attached hereto and incorporated herein by reference as **Exhibit "A."** Plaintiff does not dispute the authenticity of the Note as shown by the Complaint and Plaintiff's Answers to Wells Fargo's Request For Admission, which are attached hereto and incorporated herein by reference as **Exhibit "B."** (Compl. at para 9 & Ex. B at No.1.)

The Note is secured by, among other things, that certain Mortgage dated March 12, 2002, between Bentrim and Wells Fargo, and recorded in the RMC Office for Charleston County, South Carolina in Mortgage Book C-402 at Page 182 (the "**Mortgage**,"), (Collectively the "**Mortgage**" together with the "**Note**" shall be referred to as the "**Loan Documents**"). A copy of the Mortgage is attached hereto and incorporated herein as **Exhibit "C."** Plaintiff does not dispute the authenticity of the terms of the Mortgage as shown by his Answers to Wells Fargo's Request For Admission Number 2 (Ex. B. ¶ No.2.)

Plaintiff Bentrim failed to make payments under the terms of the Note, and therefore, is in default under the terms of the Loan Documents. Despite being in default under the terms and conditions of the Loan Documents, Bentrim filed the above-referenced action against Wells Fargo on April 25, 2011. Bentrim's causes of action are for: (i) RESPA Violations, Section 2605; (ii) Breach of contract; (iii) TILA Violations; (iv) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, et. seq.; (v) Mail Fraud; and, (vi) Punitive Damages.

STANDARD OF REVIEW

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Milligan v. Liberty Life Ins. Co., 313 S.C. 478, 443 S.E.2d 381 (1994). The evidence and all reasonable inferences must be examined in the light most favorable to the non-moving party. Sauner v. Public Service Authority of South Carolina, 581 S.E.2d 161, 165 (2003). Summary judgment is inappropriate if the facts are conflicting or the inferences to be drawn from the facts are doubtful. Alston v. Blue Ridge Transfer Co., 308 S.C. 292, 294, 417 S.E.2d 631, 632 (Ct. App. 1992).

ARGUMENT

I. THE COURT SHOULD DISMISS PLAINTIFF'S CLAIMS AGAINST WELLS FARGO BECAUSE THERE IS NO GENUINUE ISSUE OF MATERIAL FACT AS TO EACH OF PLAINTIFF'S PURPORTED CLAIMS AND THEREFORE JUDGMENT SHOULD BE GRANTED IN FAVOR OF WELLS FARGO AS A MATTER OF LAW.

A. RESPA VIOLATIONS

Plaintiff's RESPA Violations against Wells Fargo fail as a matter of law. Mr. Bentrim asserts that Wells Fargo violated 12 U.S.C § 2605 ("**RESPA**"). Mr. Bentrim alleges that because Wells Fargo allegedly failed to appropriately respond to Qualified Written Requests ("**QWR**") sent to Defendant on December 8, 2008 and on July 21, 2010 that Wells Fargo violated RESPA. (*See* Compl. at paras. 13 & 24.)

RESPA is a consumer protection statute that regulates the real estate settlement process, including the servicing of loans and the assignment of those loans. *See* 12 U.S.C. § 2601. The

statute imposes a number of duties on lenders, and in this case, loan servicers. Most relevant is the duty of servicers to timely respond to a borrower's written requests for information. 12 U.S.C. § 2605(e).

A servicer's obligation to respond to a borrower's written requests is only triggered upon receipt of a QWR. A QWR is a written correspondence from the borrower to a lender which includes "a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower." 12 U.S.C. § 2605(e)(b)(1). To qualify as a QWR, the request must also include the name and account of the borrower. Id. A written correspondence need not include magic words to qualify as a QWR. Catalan v. GMAC Mortgage Corp., 629 F.2d 679 (7th Cir. 2011).

The Seventh Circuit has taken the liberal view that "any reasonably stated written request for account information can be a qualified written request." Id. at 687. "To the extent that a borrower is able to provide reasons for a belief that the account is in error, the borrower should provide them, but any request for information made with sufficient detail is enough under RESPA to be a qualified written request." Id.

A servicer must send notice of receipt of a QWR to the borrower within twenty (20) days. 24 C.F.R 3500.21 (e)(1). Upon receipt of a QWR, the servicer must take one of the following three actions within sixty (60) days: (1) make appropriate corrections to the account of the borrower, and provide the borrower with written clarification; (2) investigate the borrower's account and provide written explanation of why the servicer believes the account is correct; or, (3) investigate the borrower's account and provide written clarification that includes the information the borrower requested or why the information is unavailable. 12 U.S.C. § 2605(e)(2)(A)(B)(C).

a. December 8, 2008 Letter to Wells Fargo

Mr. Bentrim alleges he sent a letter dated December 8, 2008 to Wells Fargo ("**Letter**"), which should be viewed as a QWR taking all of the facts in the light most favorable to Bentrim. (Compl. at Ex. C.) Specifically, Mr. Bentrim states in the Letter the following: "[U]ntil I received this letter, my account was current, I am uncertain as to why such a demand letter was sent." (Compl. at Ex. C.) The Letter further states "it is however strange to note I am also receiving conflicting amount in regard to what should bring this loan current." (Compl. at Ex. C.) Accordingly, Mr. Bentrim requests Wells Fargo to "please check your records in regards to payment and interest schedules since the life of the loan and forward to me along with the *original loan documentation*." (Compl. at Ex. C.) (emphasis added).

Mr. Bentrim's request for "original loan documentation" is outside the scope of a QWR because the original loan documents relate to origination of the subject loan and not the servicing of the loan. However, Mr. Bentrim's request for "payment and interest schedules since the life of the loan" may be viewed as a QWR as it appears to be a "reasonably stated written request for account information." Catalan, 629 F.2d at 687.

In any event, Wells Fargo responded to the Letter dated December 19, 2008 ("**Response**") and thereby answered Mr. Bentrim's purported QWR. (Compl. at Ex. D.) The Response complied with both the twenty (20) day period within which a servicer must acknowledge receipt of a QWR and with the sixty (60) day period to respond to the requests within the QWR. The Response from Wells Fargo included a payment history documenting all charges, fees, and applied payments starting from origination as Mr. Bentrim requested. (Compl. at Ex. D.) Accordingly, the Response fully complied with RESPA, and therefore, Bentrim's RESPA cause of action must be dismissed as a matter of law.

b. Written Correspondence sent by Plaintiff to Wells Fargo's Attorney is Not a Qualified Written Request.

Mr. Bentrim also alleges that a July 21, 2010 letter he sent to former Wells Fargo counsel, namely, Ronald Johnson of Brock & Scott, PLLC,[1] constitutes a QWR under RESPA (Compl. at ¶ 24.) Bentrim alleges that "Defendant ignored the QWR until Plaintiff contacted Wells Fargo on October 12, 2010." (Compl. at ¶ 25.)

The July 21, 2010 letter sent by Mr. Bentrim to former Wells Fargo counsel does not constitute a QWR as defined by RESPA since it was not sent directly to the lender, namely, Wells Fargo. RESPA provides, in part, that if a "servicer of a federally related mortgage loan" receives a QWR from "*the borrower (or an agent of the borrower)*" the servicer must send notice to the borrower confirming receipt within 20 days and take appropriate action within 60 days. 24 C.F.R 3500.21(e)(1); 12 U.S.C. §2605(e)(2)(A)(B)(C) (emphasis added).

RESPA is silent as to whether correspondence sent to an agent of a servicer can qualify as a QWR. RESPA explicitly states that submission of correspondence from a borrower's agent must still be treated as a QWR. In order to provide guidance to interpret RESPA, the Supreme Court held that "where Congress includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that Congress actions intentionally and purposely in the disparate inclusion or exclusion." Russello v. United States, 464 U.S. 16, 23 (1983). Thus, by specifically including one type of agent, the *borrower's*, Congress excluded the servicer's agent. Likewise, South Carolina courts strictly construe statutory language. "Statutes in derogation of the common law are to be strictly construed." Epstein v. Coastal Timber Co., 393 S.C. 276, 285, 711 S.E.2d 912, 917 (2011). Under this rule, a

[1] At the time Bentrim sent this letter to Wells Fargo's counsel, Brock & Scott, PLLC represented Wells Fargo. As shown by the Order Substituting Counsel, Womble Carlyle Sandridge & Rice, LLP, has been representing Wells Fargo in this matter since July 8, 2011.

statute restricting the common law will "not be extended beyond the clear intent of the legislature." Crosby v. Glasscock Trucking Co., 340 S.C. 626, 628, 532 S.E.2d 856, 857 (2000); City of Myrtle Beach v. Juel Corp., 344 S.C. 43, 543 S.E.2d 538 ("In construing statutes, words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation; statutes in derogation of common law must be strictly construed and should not be impliedly extended to cases not within their scope and purpose.") (2001). Therefore, correspondence sent to an agent of a servicer cannot constitute a QWR under RESPA regardless of the contents of the correspondence.

Moreover, courts in other jurisdictions have determined that correspondence sent to a servicer's counsel cannot qualify as a QWR. Identical to Mr. Bentrim's letter, in Kee v. Fifth Third Bank, a borrower sent correspondence to the bank's attorney rather than the bank. Kee v. Fifth Third Bank, No. 2:06-cv-00602-cw, 2009 U.S. Dist. Lexis 21502, at *12 (D. Utah. Mar. 18, 2009). The Kee Court held that "because Congress refers to a borrower's agent but does not reference a servicer's agent [. . .] the court concludes Congress intentionally excluded the servicer's agent." Id. As such, "written correspondence sent to the Bank's attorney did not constitute qualified written requests because they were not sent to the loan servicer." Id. at *13; See e.g. Griffin v. CitiFinancial Mortgage Co., Inc., No. 3:05-cv-1502, 2006 U.S. Dist. LEXIS 6709, at *6-7 (M.D. Pa. Feb. 1, 2006) (holding correspondence sent from borrower's agent to servicer's agent could not constitute a QWR); Morilus v. Countrywide Home Loans, Inc., 2007 U.S. Dist. LEXIS 44943 (E.D. Pa. June 20, 2007) (same).

Here, Mr. Bentrim admits he only sent the July 21, 2010 letter "via Defendant's attorney." (Comp. at ¶ 24.) Mr. Bentrim further attached Exhibits "K" and "J" to his Complaint, showing a letter to former Wells Fargo's counsel and an email chain between Mr. Bentrim and

former counsel for Wells Fargo as "proof of receipt." (Comp. at Ex. K & J.) Even viewing all of the evidence in the light most favorable to Mr. Bentrim, there is not any evidence that he sent the July 21, 2010 letter to Wells Fargo. Moreover, Bentrim admits he only sent the letter to Wells Fargo's former counsel. As such, the letter does not qualify as a QWR. Therefore, Wells Fargo was under no obligation under RESPA to act or respond to Mr. Bentrim's letter of July 21, 2010. As a result, this Court should dismiss Mr. Bentrim's RESPA cause of action as it pertains to this particular "QWR" as a matter of law.

B. BREACH OF CONTRACT

Plaintiff has failed to allege the elements of breach of contract. (Compl. at ¶ 34.) In fact, Plaintiff failed to allege any of the requisite elements to prevail on a breach of contract claim. The elements of a breach of contract are: (1) a binding agreement entered into by the parties, (2) Defendant's failure to perform in accordance with the agreement, and (3) damage suffered by the Plaintiff as a direct and proximate result of Defendant's breach. Fuller v. Eastern Fire Ins. Co., 240 S.C. 75, 124 S.E.2d 602, 609 (1962).

Plaintiff has failed to: (i) identify the contract that Wells Fargo allegedly breached, (ii) state when such breach occurred; (iii) set forth any allegations to how such breached occurred; and, (iv) set forth the damages, if any, that Plaintiff suffered by such alleged breach. Plaintiff has a responsibility to inform Wells Fargo of the nature of his claims against it. Plaintiff cannot rely on a conclusory statement that simply alleging "Wells Fargo breached its contract with Mr. Bentrim." (Compl. at ¶ 24.) "In our State, the complaint is sufficient if it informs the defendant of the ultimate facts supporting *each element of the cause of action*; there is no necessity that the complaint states all the evidence to be presented upon the trial of the case." Moore v. Moore, 284 S.C. 278, 283, 326 S.E.2d 157 160 (Ct. App. 1985) (emphasis added). "A litigant is required to

plead ultimate facts -- the facts which evidence upon trial will prove -- not the evidence necessary to prove these facts." Id. (citing Crowley v. Bob Jones University, 268 S.C. 492, 497, 234 S.E.2d 879, 881 (1977)). "A pleading which sets forth a cause of action. . . shall contain. . . . a short and plain statement of the facts showing that the pleading is entitled to relief. . ." Rule 8(a), SCRCP.

Plaintiff Bentrim's breach of contract cause of action does not plead "ultimate facts supporting *each element of the cause of action.*" Bentrim's Complaint does not even attempt to set forth the elements of this cause of action, and therefore, his pleadings fail to comply with the South Carolina Rule of Civil Procedure 8 and the case law interpreting this Rule. Accordingly, the Court should dismiss Plaintiff's breach of contract claim with prejudice and grant judgment in favor of Defendant Wells Fargo.

C. TILA VIOLATIONS

Plaintiff's claim under 15 U.S.C. § 1640(e) fails as a matter of law and judgment should be granted in favor of Wells Fargo since the claim is time barred. Specifically, 15 U.S.C. § 1640(e) provides, in pertinent part the following: "Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within *one year* from the date of the occurrence of the violation or . . ." 15 U.S.C. § 1640(e) (emphasis added).

Plaintiff alleges that the TILA violations occurred in December 19, 2008 or 2009. (Compl. at ¶¶ 14, 15 & 21.) Plaintiff's Complaint was filed on April 25, 2011. Therefore, the TILA claim should have been brought in 2010 at the latest, however, it was not, and as such, the claim should be dismissed as a matter of law since it is time barred under the applicable one year statute of limitations.

Moreover, Plaintiff Bentrim admits the authenticity of the First Union Adjustable Rate Loan Information Sheet attached hereto and incorporated herein by reference as **Exhibit "D,"** which Bentrim signed on March 12, 2002, as shown by his Answers to Wells Fargo's Request For Admission Number 7 (Ex. B. No.7.) The First Union Adjustable Rate Loan Information Sheet informed Plaintiff, among other things, that his loan is a "[v]ariable rate and [his] interest may increase during the term of [his] loan based upon an increase in the 'Prime Rate published in the Wall Street Journal." (Ex. D.) Therefore, Mr. Bentrim was apprised of the fact that his interest rate could increase during the term of the subject loan.

For these reasons, the Court should grant Defendant's Motion for Summary Judgment and dismiss Plaintiff's TILA claim as matter of law.

D. SOUTH CAROLINA UNFAIR TRADE PRACTICE ACT ("SCUTPA")

Plaintiff's claim under SCUTPA fails because Plaintiff has not alleged facts that Wells Fargo engaged in any practice that was unfair or deceptive that would rise to the level of an unfair trade practice or that would cause injury to the public. (Compl. at ¶ 36.) To allege a claim for unfair trade practices, a plaintiff must allege "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Wright v. Craft, 640 S.E.2d 486, 498 (Ct. App. 2006). An act is "unfair" when "it is offensive to public policy or when it is immoral, unethical, or oppressive." Id. at 500. An act is "deceptive" if it "has a tendency to deceive." Id.

Plaintiff simply asserts the following conclusory statement: "Wells Fargo has engaged in fraudulent, deceptive and dishonest trade practices that are prohibited by statute and regulations in the servicing of Plaintiff's account." (Compl. at ¶ 36.) Clearly, Plaintiff has not alleged each

and every element in order to properly assert a SCUPTA claim, including, without limitation, that Wells Fargo's actions have affected the public and that he has been damaged as a result. (Compl. ¶ 36.)

In Robertson v. First Union Nat'l Bank, 565 S.E.2d 309 (Ct. App. 2002), the plaintiffs sued their lender, First Union, for violations of SCUTPA, among other things. After agreeing to buy commercial property for $200,000, the plaintiffs in Robertson approached the bank for financing. Subsequently, the bank ordered an appraisal of the property. When the appraisal reflected the property's market value at $200,000, the bank loaned the plaintiffs $160,000. Years later, the plaintiffs sued the bank, premising their complaint, like Defendants' counterclaims, on the allegation that they were "harmed by entering into a mortgage agreement secured by property with an over-estimated appraisal value." Id. at 311. The South Carolina Court of Appeals determined that, as a matter of law, the plaintiffs' claims against the bank failed.

The South Carolina Court of Appeals affirmed the dismissal of the Robertson plaintiffs' SCUTPA claim because the bank's alleged conduct was not unfair and did not affect the public interest. Id. at 315. In order to prevail on a SCUTPA claim, a plaintiff must not only allege and prove that the defendant's conduct was unfair, but also must "allege and prove the defendant's actions adversely affected the public interest." Id. Thus, "'conduct which only affects the parties to the transaction provides no basis for a[n unfair trade practices] claim.'" Id. (quoting Jefferies v. Phillips, 451 S.E.2d 21, 23 (S.C. Ct. App. 1994)). The Robertson court found that there was no evidence "of an act or practice that [was] unfair or one that affect[ed] the public interest" because: (1) the bank loaned the plaintiffs money "based on the appraised value of the secured property"; and (2) there was nothing, "other than [the plaintiffs'] unproven allegations and inferences of impropriety and coincidences, to suggest that [the bank] deliberately set out to

loan [the plaintiffs money] secured by insufficient collateral." Robertson, 565 S.E.2d at 315. The court further noted that it could "think of no logical reason why [the bank] would make it a practice to intentionally make loans for an amount in excess of the collateral's value and risk substantial losses [to itself] in the event of default." Id.

Based upon the above, Plaintiff's SCUTPA claim fails against Defendant since Plaintiff has not set forth any facts to establish that Wells Fargo engaged in an unfair or deceptive act or one that affected the public interest or that any such alleged unfair or deceptive act actually caused him damage. Specifically, Plaintiff' unfair trade practices claim fails because: (1) Wells Fargo loaned Plaintiff money to purchase his home; and (2) Plaintiff has not averred that Wells Fargo's alleged conduct affects parties outside of the transaction in question. *See* (Compl. generally.) Pursuant to the South Carolina Court of Appeals' holding in Robertson, these facts are insufficient to support a cause of action for violation of SCUTPA against Wells Fargo, and the Court should dismiss Defendants' SCUTPA counterclaim against Wells Fargo with prejudice.

Additionally, SCUTPA does not apply to federally-insured banks. S.C. CODE ANN. § 39-5-20(b) provides that "[i]t is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended." In 15 U.S.C. 45(a)(2), the Federal Trade Commission Act sets forth the extent to which the Federal Trade Commission can regulate banks:

> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, **except banks, savings and loan institutions** described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], common carriers subject to the Acts to regulate commerce,

> air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 USCS §§ 40101 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 USCS §§ 181 et seq.], except as provided in section 406(b) of said Act [7 USCS § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

15 U.S.C. 45(a)(2) (emphasis added).

Based on S.C. CODE ANN. § 39-5-20(b), circuit courts across this state have found that the SCUTPA is inapplicable to banks like Wells Fargo. *See, e.g. JJH Transport, LLC and Joel Herring v. Brank Banking and Trust Company of South Carolina* (2006-CP-21-1814) (attached hereto as **Exhibit "E"**); *Branch Banking and Trust Company of South Carolina v. Eartha Marshall* (2003-CP-40-3272) (attached hereto as **Exhibit "F"**). For this reason as well, the Court should grant Wells Fargo summary judgment as to Bentrim's SCUTPA claim and dismiss it with prejudice.

E. MAIL FRAUD

Plaintiff's claim for Mail Fraud against Wells Fargo must be dismissed *with prejudice*. Plaintiff alleges that "Wells Fargo employed a scheme in which the postal system was used in an attempt to unlawfully obtain money and property from the Plaintiff." (Compl. at ¶ 37.) The Plaintiff does not cite to any statute that would provide him relief nor does he provide the Court with any specific facts to support this bold assertion. Accordingly, Plaintiff fails to state a cause of action to which relief may be granted, and therefore, this claim should be dismissed *with prejudice*.

Further, if Bentrim is referring to 18 U.S.C. § 1341, Mail Fraud, his claim should still be dismissed with prejudice. This statutory provision states, in pertinent part, the following:

> Whoever, having *devised or intending to devise any scheme or artifice to defraud*, or for *obtaining money or property by means of false or fraudulent*

> *pretenses, representations, or promises,* or *to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office* or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1341 (emphasis added). Bentrim fails to allege in his Complaint that Wells Fargo devised or intended to devise any scheme or artifice to defraud, or for obtaining money or property by means of false pretenses. See (Compl. generally). Even if Bentrim did allege such facts, Bentrim is in possession of the home that Wells Fargo is intending to foreclose upon. Moreover, Wells Fargo loaned Bentrim money to obtain the home. (Exs. A & B.) These facts simply do not support any claim for mail fraud and thus, Plaintiff's mail fraud claim must be dismissed with prejudice.

Bentrim also fails to allege that Wells Fargo sold, loaned or gave away a loan or security or other article or anything represented to be or intimated or held out to be such *counterfeit or spurious coin, obligation, security and placing such item in the mail.* This missing fact and omission from the Complaint is fatal to Bentrim's Mail Fraud cause of action. The actual facts are as follows: a) Bentrim decided to apply for a loan from Wells Fargo; b) the loan closing occurred on or about March 12, 2002; c) Bentrim was represented by counsel at the loan closing as shown by the HUD-1 statement, attached hereto and incorporated by reference as **Exhibit "G."** Accordingly, this is not a case of mail away loan transaction which occurred by use of the United States Postal Service nor is it a case where a loan was closed without an attorney present.

Moreover, Bentrim has not alleged that Wells Fargo failed to loan him money to purchase his home. Accordingly, this claim fails as a matter of law and should be dismissed with prejudice.

F. PUNITIVE DAMAGES

Plaintiff's claim for punitive damages fails because Plaintiff not stated a claim against Wells Fargo that would entitle him to an award of actual or compensatory damages. "Punitive damages are recoverable where there is evidence the defendant's conduct was reckless, willful, or wanton." Fairchild v. S.C. Dot, 398 S.C. 90, 727 S.E.2d 407 (2012) (citing Cartee v. Lesley, 290 S.C. 333, 350 S.E.2d 388 (1986)). Id. at 99, 727 S.E.2d at 411-12. "Recklessness is the doing of a negligent act knowingly; it is a conscious failure to exercise due care, and the element distinguishing actionable negligence from a willful tort is inadvertence." Id. (citing Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011). Plaintiff has not alleged facts sufficient to support a claim for punitive damages, and therefore, this claim should be dismissed with prejudice.

CONCLUSION

For the reasons stated above, Wells Fargo requests that the Court dismiss Plaintiff's claims against Wells Fargo with prejudice as a matter of law. Plaintiff Brent E. Bentrim failed to aver that there is a genuine issue of material fact as the purported claims asserted against Wells Fargo and, as such, the Court should grant Plaintiff summary judgment and dismiss Plaintiff's counterclaims with prejudice.

Respectfully submitted,

WOMBLE CARLYLE SANDRIDGE & RICE LLP

S. Sterling Laney, III, S.C. Bar No. 6933
Jana B. Baker, S.C. Bar No. 72487
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR DEFENDANT WELLS FARGO, N.A.

September 19, 2012
Charleston, South Carolina

WCSR 7370850v6

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
BRENT E. BENTRIM, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	)	**NOTICE OF MOTION AND MOTION TO AMEND**

2013 NOV -1 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: S. STERLING LANEY III, ESQUIRE and JANA BAKER, ESQUIRE, ATTORNEYS FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the Plaintiff Brent E. Bentrim, by and through his undersigned counsel, and pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell Scarborough, Charleston County Master-in-Equity, for an order granting leave for the Plaintiff to file and serve the attached, proposed Amended Complaint. The undersigned certifies that pursuant to Rule 11 of the South Carolina Rules of Civil Procedure consultation has been made with opposing counsel but the matter cannot be resolved and/or would serve no useful purpose.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiff

Mt. Pleasant, South Carolina
November 1, 2013

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2011-CP-10-2946
BRENT E. BENTRIM, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	)	**NOTICE OF MOTION AND SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

FILED
2014 MAY 30 PM 4:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLEASE TAKE NOTICE that the above-named Plaintiff Brent E. Bentrim ("Bentrim" or "Plaintiff"), by and through his undersigned attorney and pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such date, time and place as counsel may be heard, or on June 9, 2014 at 3:00 p.m. at the Charleston County Courthouse, for an Order granting Summary Judgment, and/or Partial Summary Judgment, against the Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant") on its counterclaim. This motion is based on the following grounds, which are supplemental and additional to the prior grounds in Plaintiff's prior Motion for Summary Judgment filed October 10, 2013:

1. Because Plaintiff is only required to pay a person entitled to enforce the Note (S.C. Code Ann. § 36-3-412), Plaintiff is entitled to summary judgment as a matter of law because there is no genuine issues of material fact that Defendant Wells Fargo Bank, N.A. is not, has never been and cannot be the "holder" of the Note pursuant to S.C. Code. Ann. § 36-1-201(20), and, thus, Defendant Wells Fargo Bank, N.A. is not a person entitled to enforce the Note under S.C. Code. Ann. § 36-3-301.

2. Defendant never sent an opportunity to cure default as set forth in Paragraph 123 of Wells Fargo's Counterclaims and Answer to Amended Complaint served December 10, 2013.

This motion is supported by the attached affidavit and such other and further memoranda of law and submissions as may be allowed under the Rules. No consultation with opposing counsel is required pursuant to Rule 11 of the South Carolina Rules of Civil Procedure.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiffs

May 30, 2014
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
BRENT E. BENTRIM	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF CASIMIRA KITA**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED before me, the undersigned Casimira Kita, who, after being duly sworn depose and state as follows:

1. I am an adult over the age of 18 and competent to make this affidavit. A copy of my C.V. is attached.
2. I am an independent consultant and subject matter expert on the Advanced Consumer Lending System (ACLS) owned and manufactured by CGI Group, Inc. [CGI].
3. I have spent 23 years with CGI and its clients on the development, implementation and servicing of ACLS -- including designing, programming and testing software changes and loan conversion from other servicing platforms.
4. I am intimately familiar with the reporting capabilities and loan level data held in ACLS.
5. I have reviewed the ACLS files provided by the Defendant to the Plaintiff.
6. Accounts that are booked on ACLS are controlled by the parameters in the Bank Control File (BCF), which are files ALRS9915 & ALRS9905. Files and tables are interrelated and cannot operate independently of one another.

7. To my knowledge, neither ALRS9915 & ALRS9905 have been produced and would constitute servicing records.

8. Many fields that control the account processing are internal fields and are not displayed on any report which means the missing tables are required in order to understand fully the information contained on the history card that was provided.

9. The transaction history records are used for the Customer History Card. Not all the data on the transaction history record are shown on the History Card Report, however.

10. All the transactions details are on the Master File Display. These are used to validate all the changes on the account in the order they were processed.

11. After reviewing the Master File Display for the Loan, I affirm it is incomplete, missing the following TABLES – all of which constitute servicing records maintained in ACLS:

a. ALT0184 LOAN FEES (front end fees)
b. ALT0185 LOAN STATEMENTS AND COUPONS
c. ALT0187 LOAN RECURRING FEES
d. ALT0191 LOAN VIR INTEREST/SPLIT RATE
e. ALT0192 LOAN DELINQUENCY
f. ALT0193 LOAN CIF ACCOUNT
g. ALT0194 LOAN USER DATA
h. ALT0195 LOAN INSURANCE TYPE
i. ALT0196 LOAN PAYMENT SCHEDULES
j. ALT0197 LOAN EXPENSES
k. ALT0198 LOAN COLLATERAL
l. ALT0200 LOAN HISTORY
m. ALT0325 LOAN TICKLER.

12. In addition to the Bank and Type records, the pool and investor records are maintained by ACLS. The specific account in question was defined to a pool that was sold to an investor.

13. In order to obtain and verify the identity and investors in Pool 794, shown to be the owner of the subject loan on December 1, 2006, March 8, 2007 and May 30, 2009 the following records are required:

a. SLIA for the Investor, or a printout of table ALT0271

b. SLAA for the Pool, or a printout of table ALT0297

14. These servicing records should not be overly burdensome and can be produced within 10 to 15 minutes

FURTHER AFFIANT SAYETH NOT.

Casimira Kita

SWORN TO AND SUBSCRIBED BY ME
this 23rd day of May, 2014.

Heather R Mouhourtis
Notary Public for the State of Florida
My Commission Expires: 2-11-15

HEATHER R MOUHOURTIS
Notary Public - State of Florida
My Comm. Expires Feb 11, 2015
Commission # EE 58638

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
BRENT E. BENTRIM	)	
	)	**SECOND AFFIDAVIT OF**
Plaintiff,	)	**CLIFTON D. BODIFORD**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED before me, the undersigned Clifton D. Bodiford, CPA, who, after being duly sworn depose and state as follows:

1. I am an adult over the age of 18 and competent to make this affidavit.
2. I am a certified public accountant practicing in Columbia, South Carolina. I have over 40 years of experience in accounting; there has been no lapse in my CPA status since I began practice. My C.V. is attached.
3. Within my practice, I specialize in providing consulting and audit services to the financial services industry including nationally chartered banks. As such have reviewed the accounting for loan and the accounting for the sales of loans and participation interests in loans.
4. I have reviewed the following documents produced by the Defendant: WF2294, WF2299, WF2300, WF2301, WF2302, WF2303, WF2304 and WF2305.
5. I have expertise related to Financial Accounting Standards Board (FASB) Statement Number 140 (the identification number before the codification) as it applies to the accounting for loans owned and the loans sold on December 1, 2006.

6. Whole loans (the entire loan balance) or a participation interest in a loan (a percentage of the loan) may be sold by the entity holding the loan. In either event – whether the entire loan or a portion of the loan is transferred -- the transfer of ownership constitutes a sale,
7. The transaction described in WF2301 indicates Wachovia Bank, NA loaned The Money Store/ Service Corp the funds to purchase loans from Wachovia Bank, NA.
8. The documents reviewed indicate the Wachovia Bank, NA sold the loans in question, as without a sale there would have been no gain to recognize as was reflected in the journal entries (regardless of whether or not the gain was or was not eliminated in consolidation).

FURTHER AFFIANT SAYETH NOT.

Clifton D. Bodiford

SWORN TO AND SUBSCRIBED BY ME
this 23 day of May, 2014.

Melissa B Buchanan
Notary Public for the State of South Carolina
My Commission Expires: 10/19/15

Clifton D. Bodiford
Certified Public Accountant

Education

1965 - University of South Carolina-B.S. Accounting

Work Experience

1965-1985 - Clarkson, Harden & Gantt, CPA's, Partner
1985-1992 – Ernst & Young, Partner
1993 - Arthur Andersen & Company, Partner
1994 – Present-self employed CPA

Clients Served

Extensive experience serving banks, saving and loan associations and insurance companies providing audit and related consulting services

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND PLAINTIFF'S**
v.	)	**MOTION TO RECONSIDER DISCOVERY**
	)	**ORDER OF MAY 14, 2014**
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	

FILED
2014 MAY 27 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CHARLES M. BAKER III, ESQUIRE, S. STERLING LANEY III, ESQUIRE and JOHN C. HAWK IV, ESQUIRE, ATTORNEYS FOR DEFENDANT:

PLEASE TAKE NOTICE that the above-named Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), by and through his undersigned attorneys and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such time, date and place as counsel may be heard - or on June 9, 2014 at 3:00 p.m., at the Charleston County Courthouse, for an order to alter or amend the Court's Discovery Order of May 14, 2014 ("Order") attached herewith as Exhibit "A", on the following grounds:

1. In Section 5 of the Order, the Court made the following finding: "*Wells Fargo holds the original Note, and the Note is made payable to its predecessor in interest, First Union Nation Bank.*" The Court should alter the word 'holds' to 'in possession' of the Note, because under the Uniform Commercial Code, Wells Fargo Bank NA cannot be the 'holder' of the March 12, 2002 Note as a matter of law pursuant to Sections 36-1-201(20), 36-3-109(b) and 36-3-109(b), 36-3-301(ii), 36-3-203(b) and 36-3-308 of the Code. Rather, the Court should find as a matter of law that the Defendant is a non-holder in possession of the Note under Section 3-

301(ii), who has the burden to plead and prove its rights to enforce under Sections 3-203(b) and 3-308.

2. In Section 5 of the Order, the Court ruled that "... *that Wells Fargo need not produce further documentation regarding the ACLS system.*" This Court should strike this ruling for the following reasons:

a. The Court's prior March 5, 2014 Discovery Order, page 2 ¶ 1, required Wells Fargo to "produce any servicing records it has in its possession, custody or control pertaining to the subject loan, whether maintained electronically or on paper..." Wells Fargo never sought to alter or amend this provision and it is the law of the case. The affidavit of Mrs. Kita – an expert in the ACLS software platform, attached herewith as Exhibit "B" – establishes that there are no less than sixteen (16) ACLS reports that directly go to servicing of the subject loan which have not been produced to Plaintiff – as required in the March 5 Order.

b. Rule 7(b)(1), SCRCP requires that motions "shall state with particularity the grounds thereof and shall set for the relief or order sought." Defendant's Wells Fargo's motion for protective order on Plaintiff's Third Set of Requests for Production, numbers 2-14 was limited to *those specific requests*; it did not seek a prohibition on further ACLS records. Counsel inserted this finding in the proposed order. Thus, it is improper under Rule 7(b)(1) and prejudicial to Plaintiff because Plaintiff had no notice Defendant was seeking a ban on further ACLS discovery.

c. By operation of S.C. Code 36-3-203(b) a successor bank can enforce a Note given to a predecessor under Section 36-3-301(ii) [i.e., as a non holder in possession] only ***if the successor can prove predecessor had the rights of a holder in due course at the time it was acquired.*** See also Official Comments. On April 18, 2014 the Defendant produced WF 2299,

2300, WF 2301 & WF 2303 all revealing the Plaintiff's Loan was sold between November 29, 2006-December 1, 2006 to "Pool 794." Defendant has submitted no probative evidence into the record to substantiate the unsupported argument of its counsel that no sale occurred. '*Because the transferee's rights are derivative of the transferor's rights, those rights must be proved.*' (See Sec. 2-203, Official Comments). Moreover, Wells Fargo has still yet to produce any documentation required in the March 5 Discovery Order, p. 2 ¶ 3 (movement of Note) or p. 3 ¶ 5 (repurchase on 5/13/10) to show the "sale, repurchase, transfer, assignment, delivery or hypothecation of the Note and Mortgage" as required therein. Ms. Kita, a fact and subject matter expert in ACLS, states in order to obtain the identity of and investors in Pool 794, the following ALCS reports should be generated reflecting December 1, 2006, March 8, 2007 and May 30, 2009: (i) SLIA for the Investor, or a printout of ALT0271; (ii) SLAA for the Pool, or a printout of ALT0297. Because Wells Fargo must bear the burden of proving its rights to enforce, this ACLS discovery is necessary for Plaintiff to test Defendant's assertions.

3. In Section 5 of the Order, the Court granted Defendant protection on Plaintiff's requests No. 16-73. Because Defendant is not a holder of the Note as a matter of law, and Section 36-3-203(b) requires Wells Fargo Bank, NA to prove its rights to enforce, receipt of payment is extremely relevant; Defendant must show which portion of its payment went to the Defendant and which to The Money Store/Service Corp.

Pursuant to Rule 11 SCRCP, no consultation is required to be made with opposing counsel regarding the instant motion and/or such consultation would serve no useful purpose.

[Signature appears on following page]

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiff

Mt. Pleasant, South Carolina
May 27, 2014

11-CP-10-2946

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served the attached ***Notice of Motion and Motion to Reconsider Discovery Order of May 14, 2014*** in the above-captioned action via US Mail, proper postage paid to the attorneys for the Defendant as follows:

Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
Attorneys for Defendant

FILED
2014 MAY 27 PM 3:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Elizabeth T. Plasters
Paralegal to Robert B. Varnado, Esq.

May 27, 2014
Mount Pleasant, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
PLAINTIFF,	)	
	)	
V.	)	**ORDER**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
DEFENDANT.	)	
	)	

This matter came before the Court on April 28, 2014, for a hearing on several discovery motions. At the hearing, the Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), was represented by Robert B. Varnado of Brown & Varnado, LLC. Mr. Bentrim was also present at the hearing. The Defendant, Wells Fargo Bank, N.A. ("Defendant" or "Wells Fargo"), was represented by Charles J. Baker III, S. Sterling Laney III and John C. Hawk IV of Womble Carlyle Sandridge & Rice, L.L.P. After carefully reviewing these motions and memoranda submitted by the parties, and after hearing arguments from counsel for both parties, the Court denies each of Plaintiff's motions and grants each of Wells Fargo's motions, as follows:

1. **PLAINTIFF'S MOTION TO RECONSIDER, FILED MARCH 17, 2014**

Plaintiff moved the Court to alter or amend its Discovery Orders of March 4, 2014 and March 11, 2014. Specifically, Plaintiff requested that the Court reverse its prior rulings denying certain discovery and (a) order Wells Fargo to produce an entire list of codes for the "ACLS" system, (b) allow discovery related to compliance with a Consent Judgment with the South Carolina Attorney General, and (c) order Wells Fargo to respond to discovery related to EIN #

56-1948921. The Court concludes there is no good cause to reverse its prior rulings. Plaintiff's Motion to Reconsider is *denied.*

2. WELLS FARGO'S MOTION TO ALTER OR AMEND MARCH 11, 2014 DISCOVERY ORDER, OR IN THE ALTERNATIVE, FOR PROTECTIVE ORDER, FILED MARCH 20, 2014

Wells Fargo moved the Court to alter or amend its Discovery Order of March 11, 2014. Specifically, Wells Fargo requested that the Court reconsider its order requiring production of the "general ledger with account number 157906" for "calendar year 2002" and amend the order so that Wells Fargo would not have to produce any further information from its general ledger. Based on the affidavit of Wells Fargo representative Annette Evans, the Court finds that production of the requested ledger would be exceptionally expensive, burdensome and onerous. The Court concludes that any additional discovery related to funding of the subject loan cannot lead to admissible evidence and is therefore irrelevant. As such, Wells Fargo's motion is *granted.* Wells Fargo shall, however, produce to the Court all HUD-1s executed by Plaintiff in relation to the subject loan, as well as the records Wells Fargo has produced to Mr. Bentrim in this matter relating to payments made by Mr. Bentrim, how such payments were credited, and the assessment of interest, late fees and any other charges relating to the subject loan.

3. PLAINTIFF'S SECOND MOTION FOR RULE TO SHOW CAUSE, FILED MARCH 24, 2014

Next, Plaintiff moved that Wells Fargo be held in contempt and sanctioned based on a disagreement between the parties as to when document production was due under this Court's Discovery Orders of March 4, 2014 and March 11, 2014. The Court *denies* Plaintiff's motion in its entirety.

4. WELLS FARGO'S MOTION TO COMPEL, FILED MARCH 25, 2014

On December 12, 2013, Wells Fargo served Supplemental Interrogatories and Requests for Production on the Plaintiff. These requests related to the causes of action found in Plaintiff's Amended Complaint, including his claims for damages. Plaintiff failed to respond to Wells Fargo's requests, and Wells Fargo filed a motion to compel. Immediately prior to a hearing on February 10, 2014, Plaintiff agreed to respond to Wells Fargo's discovery in full, and that agreement was put on the record. However, Wells Fargo contends that Plaintiff's subsequent responses were incomplete. The Court agrees and orders that Plaintiff shall, within 15 days of this Order, set forth an itemized statement of all damages under each remaining cause of action. Plaintiff shall reference any documents supporting his claims, and, to the extent not already produced, shall produce such documents to support his damages claims.

5. WELLS FARGO'S MOTION FOR A PROTECTIVE ORDER, FILED MARCH 25, 2014

Wells Fargo moved for protection as to Plaintiff's Third Set of Requests for Production to Defendant, which consists of seventy-three (73) requests for production. As to Request No. 1, the Court finds that Wells Fargo has already produced the servicing records in its possession, including a Unicar servicing record. This request is therefore duplicative, and Wells Fargo's request for protection as to Request No. 1 is *granted.* Further, the Court finds in regards to Requests Nos. 2- 14 that Wells Fargo need not produce further documentation regarding the ACLS system, and, therefore, the Motion as to these Requests is *granted.* Wells Fargo, as previously set forth in the Court's Discovery Order dated March 5, 2014, is instructed to produce a witness to testify as to the alleged sale noted on the ACLS History card. The Court finds that the deposition satisfies Request No. 15, and Wells Fargo's Motion as to this Request is therefore *granted.* Next, the Court finds that the documents sought by Plaintiff in Requests Nos. 16-73,

related to receipt of payment, an alleged securitization, and property addresses held in various trusts, are not relevant to this litigation and could not lead to the discovery of admissible evidence. The Court notes that, as of the date of this hearing, that Wells Fargo holds the original Note, and the Note is made payable to its predecessor in interest, First Union Nation Bank. As such, Wells Fargo's Motion as to Requests Nos. 16-73 is also *granted*.

6. PLAINTIFF'S MOTION TO RENEW FIRST MOTION FOR RULE TO SHOW CAUSE, FILED MARCH 28, 2014

Plaintiff moves that the Court hold Wells Fargo in contempt based on Wells Fargo's alleged failure to comply with the Court's directive to inquire with the IRS regarding the assignment of EIN # 56-1948921, and Wells Fargo's alleged failure to furnish information explaining the relationship of EIN # 56-1948921 to Wells Fargo. The Court finds that Wells Fargo provided Plaintiff with a verified answer to the Court's interrogatory explaining the EIN's relationship to Wells Fargo and has produced 147C letters from the IRS dated February 12, 2014 and April 8, 2014 indicating that the EIN number in question was assigned to First Union National Bank. Therefore, the Court concludes that Wells Fargo complied with the Court's previous orders. Accordingly, Plaintiff's motion is *denied*.

7. WELLS FARGO'S MOTION FOR PROTECTIVE ORDER, FILED APRIL 16, 2014

Wells Fargo moved for protection from discovery of additional categories of documents. The Court concludes that good cause exists to prohibit further discovery on certain issues and *grants* Wells Fargo's Motion as follows:

1. The Court denies Plaintiff's request to take the depositions of Paul R. Buck and Joann G. Buck;

2. The Court finds that further discovery related to "general ledger" bank information prior to August 16, 2006 is irrelevant, cannot lead to the discovery of admissible evidence and is therefore barred;
3. The Court holds that further discovery related to EIN # 56-1948921 is irrelevant, cannot lead to the discovery of admissible evidence and is therefore barred;
4. The Court holds that any discovery related to "First Union National Bank in Greensboro, EIN 56-1948921" is irrelevant, cannot lead to the discovery of admissible evidence and is therefore barred.

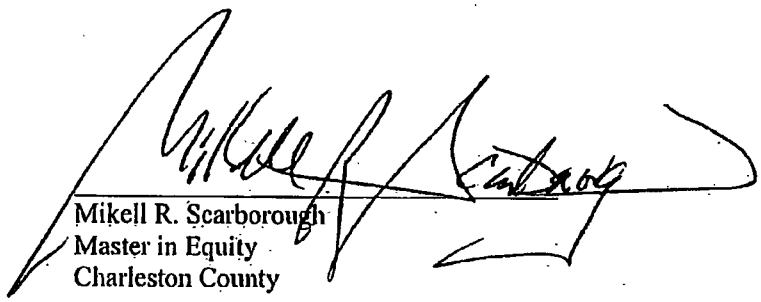
The Courts ruling as to Plaintiff's Third Set of Request for Production was already addressed above in Wells Fargo's previous Motion for Protective order which was *granted.*

8. OTHER MATTERS

Within 30 days of this order, Wells Fargo shall identify and produce a 30(b)(6) witness on the topic of the servicing of Plaintiff's loan. In addition, Wells Fargo shall produce for the Court's inspection the vault records produced to Plaintiff in this matter. Unredacted vault records shall be produced *in camera.* The court shall thereafter issue its order thereon.

The parties have established good cause for their inability to meet the deadlines set forth in the Amended Scheduling Order, filed February 14, 2014. The parties shall return to Court for a status conference and motions hearing on June 9, 2014, at 3:00 PM, and a new scheduling order will be addressed at that time. The parties shall schedule a mediation with Dawes Cooke for a date convenient to both parties in July 2014.

AND IT IS SO ORDERED!



Mikell R. Scarborough
Master in Equity
Charleston County

May 14, 2014
Charleston, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
BRENT E. BENTRIM	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF CASIMIRA KITA**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED before me, the undersigned Casimira Kita, who, after being duly sworn depose and state as follows:

1. I am an adult over the age of 18 and competent to make this affidavit. A copy of my C.V. is attached.
2. I am an independent consultant and subject matter expert on the Advanced Consumer Lending System (ACLS) owned and manufactured by CGI Group, Inc. [CGI].
3. I have spent 23 years with CGI and its clients on the development, implementation and servicing of ACLS -- including designing, programming and testing software changes and loan conversion from other servicing platforms.
4. I am intimately familiar with the reporting capabilities and loan level data held in ACLS.
5. I have reviewed the ACLS files provided by the Defendant to the Plaintiff.
6. Accounts that are booked on ACLS are controlled by the parameters in the Bank Control File (BCF), which are files ALRS9915 & ALRS9905. Files and tables are interrelated and cannot operate independently of one another.

7. To my knowledge, neither ALRS9915 & ALRS9905 have been produced and would constitute servicing records.

8. Many fields that control the account processing are internal fields and are not displayed on any report which means the missing tables are required in order to understand fully the information contained on the history card that was provided.

9. The transaction history records are used for the Customer History Card. Not all the data on the transaction history record are shown on the History Card Report, however.

10. All the transactions details are on the Master File Display. These are used to validate all the changes on the account in the order they were processed.

11. After reviewing the Master File Display for the Loan, I affirm it is incomplete, missing the following TABLES – all of which constitute servicing records maintained in ACLS:

a.	ALT0184	LOAN FEES (front end fees)
b.	ALT0185	LOAN STATEMENTS AND COUPONS
c.	ALT0187	LOAN RECURRING FEES
d.	ALT0191	LOAN VIR INTEREST/SPLIT RATE
e.	ALT0192	LOAN DELINQUENCY
f.	ALT0193	LOAN CIF ACCOUNT
g.	ALT0194	LOAN USER DATA
h.	ALT0195	LOAN INSURANCE TYPE
i.	ALT0196	LOAN PAYMENT SCHEDULES
j.	ALT0197	LOAN EXPENSES
k.	ALT0198	LOAN COLLATERAL
l.	ALT0200	LOAN HISTORY
m.	ALT0325	LOAN TICKLER.

12. In addition to the Bank and Type records, the pool and investor records are maintained by ACLS. The specific account in question was defined to a pool that was sold to an investor.

13. In order to obtain and verify the identity and investors in Pool 794, shown to be the owner of the subject loan on December 1, 2006, March 8, 2007 and May 30, 2009 the following records are required:

a. SLIA for the Investor, or a printout of table ALT0271

b. SLAA for the Pool, or a printout of table ALT0297

14. These servicing records should not be overly burdensome and can be produced within 10 to 15 minutes

FURTHER AFFIANT SAYETH NOT.

Casimira Kita

SWORN TO AND SUBSCRIBED BY ME
this 23rd day of May, 2014.

Heather R Mouhourtis
Notary Public for the State of Florida
My Commission Expires: 2-11-15

HEATHER R MOUHOURTIS
Notary Public - State of Florida
My Comm. Expires Feb 11, 2015
Commission # EE 58638

Casimira Kita
1671 Country Walk Dr.
Fleming Island, FL
904-375-1736
kitkazia@gmail.com

SUMMARY: Experienced business and systems analyst focusing on system solutions for consumer lending services. Combined understanding of business aspects of lending with the ability to translate them into automated systems. Developed loyal client base because of adeptness at conceptualizing user's requirements into detailed designs, providing constructive feedback during development, analyzing test output, diagnosing problems and offering solutions. Expertise in the following areas:

Credit Card Systems
Revolving Credit Systems
Closed-end Consumer Lending
Guaranteed Student Loans
Recovery Accounting

PROFESSIONAL EXPERIENCE:

CGI, Atlanta Georgia 3/2003- 11/2013

Senior Consultant

Employed by CGI in 2003. CGI acquired AMS and all employees were bridged. Assigned to work on a project for Washington Mutual then at Zions Bank as a subject matter expert in lending, general ledger and Collection Recovery.

Following those assignments, I worked with clients as a SME in a consumer Lending System (ACLS) and a collection recovery system (CACS/CAS).

Selected Accomplishments:

- Wrote designs for CAS modifications for World Omni and assisted in testing. Moved to a new start up project that needed consumer lending and recovery accounting expert. Assisted in producing a document for the client that addressed their needs, the functionality built in to the Collections and Recovery Accounting Systems and modifications descriptions for addressing their requirements.
- Assisted the Support Group as a Subject Matter Expert as clients reported issues. Also suggested changes needed to the programs to correct the issue.
- Built test scripts for Washington Mutual (WAMU) Bank customizations in ACLS. Assisted with the entry of scripts into the QES test facility. Reviewed output tests and wrote up problem reports.
- As a SME, I worked with PNC Bank to design, code and test modifications to their version of ACLS that was highly modified.
- Assisted in review of designs written for Regions Bank. Worked with Regions Bank staff to write test scripts and expected results. This assignment also included the conversion from TSYS to ACLS.
- On travel to Cleveland for KeyBank on a CACS 8.0 and Recovery project. Worked closely with the financial accounting functional staff to prepare a future state document that outlined the bank's requirements. Created a general ledger spreadsheet that was

uploaded for CAS, the Recovery Accounting System. Leveraged my knowledge of ACLS to become a specialist in the CAS system.

- Moved to the technical side of the project to assist in problem resolution, conversion requirements and transfer of knowledge to KeyBank support staff.

- Providing functional support for ACLS 6.1 and general ledger mapping to the users at Zions Bank. This includes reviewing the code of all the programs in an older version of ACLS to determine the custom modifications made through the years and preparing high level requirements documentation for these modifications. As additional new requirements were presented, writing designs and coding for ACLS to accommodate the requirements.

American Management Systems, Inc., Sarasota Florida 3/1990 – 6/2001

Senior Principal

Employed by American Management Systems Inc. (AMS), a billion-dollar consulting firm with 8 thousand employees. Was responsible for delivering loan-servicing systems to financial institutions starting with sales support to final implementation and post implementation support. Clients included Illinois Student Assistance Commission (ISAC), World Omni, AmSouth Bank, Key Bank Services, Bank of America, and Rollins Acceptance Corporation.

Selected Accomplishments:

- Adapted the Advanced Consumer Lending System (ACLS), allowing student loan guarantor to service defaulted student loans. Enhancements were required to comply with federal regulations. Learned new line of business within short time frame. Served as only loan expert on the project, who had knowledge of ACLS. Successfully transferred knowledge to junior business analysts. Enhanced system is now being implemented at another guarantee agency and is being marketed to other agencies.

- Managed the implementation phase of the project with ISAC with team of 8 client staff and 3 AMS staff. Document produced detailed current functions and requirements at ISAC and provided a vision of processes that would meet their needs. The team consisted of 8 client staff and 3 AMS staff. Delivered on time and within budget.

- Mentored 2 new business analysts, teaching them the business side of loans and how these business functions could be performed in ACLS. They have each moved on to managing new designs and testing.

- Led professional services staff on a 3-year project with World Omni, a privately held finance company, which was implemented on time and exceeded revenue forecasts. World Omni's primary business is the financing of vehicles for dealers associated with WO. Complex designs were required to meet their business needs.

CRK Systems, Inc. Oakland, CA 6/1976 – 2/1990

President

Self-employed credit expert providing business and system analysis to lending institutions. Analysis of the business needs of a client, proposal of solution options, programming and documentation as needed and testing and implementation of the completed system. Clients included Crocker Bank, Wells Fargo Bank, NCNB, Citicorp and AMS.

Selected Accomplishments:

- Enhanced a credit card servicing package that the financial institution had licensed to service a new product offering for revolving credit accounts. This required designing

variable rate processes and other complex functionality to support the institutions unique requirements. A major change involved providing detailed general ledger processing. This product was used as the basis of a new system that would support consumer and business revolving lines.

- Retained by major financial institution for over a period of 10 years providing business and technical expertise for conversions of loans as other financial institutions were acquired or loan portfolios were purchased.
- Provided training to the financial institutions user and technical staff on the functions and use of the loan serving system
- Based on my prior experience in loan servicing systems, I worked with AMS clients on ACLS implementations.

Arthur S. Kranzley and Company, Cherry Hill, NJ 11/1965 – 5/1976

Senior Programmer Analyst

Worked for Arthur S. Kranzley Company, a consulting firm with 70 employees. Was responsible for delivering loan-servicing systems to financial institutions starting with sales support to final implementation and post implementation support. Clients included Wachovia Bank, Boatmen's Bank, and NCNB.

Selected Accomplishments:

- Played a major role in developing a consumer lending system with a major banking institution as a partner. Programmed major modules of the system based on requirements provided by the bank. Tested and implemented the system and later delivered the system to other banks with modifications need to support their unique requirements.
- Managed the design, code, test and implementation of simple interest and variable rate processing for the lending package. This system was the predecessor of ACLS.

Frankford Arsenal Philadelphia, PA 7/1962 – 10/1965

Programmer Analyst

This was an entry level position with the federal government in the area of all inventory tracking.

Selected Accomplishments:

- Wrote a complicated process for tracking backorders of supplies. This involved the use of EAM equipment in some of the steps.
- Mastered machine language to correct program errors and the process for the use of overlay programming for programs requiring more memory than was available at that time.

EDUCATION: BA, Holy Family University, Philadelphia PA, 1954-1958

PERSONAL: Avid reader, especially of mysteries and expert in sewing and other needlework crafts.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**DEFENDANT WELLS FARGO BANK N.A.'S**
	)	**MEMORANDUM IN OPPOSITION TO**
v.	)	**PLAINTIFF'S MOTION AND SUPPLEMENTAL**
	)	**MOTION FOR SUMMARY JUDGMENT**
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant, Wells Fargo Bank, N.A. ("**Defendant**" or "**Wells Fargo**"), submits this Memorandum in Opposition to Plaintiff's Motion for Summary Judgment filed on October 10, 2013 and Plaintiff's Supplemental Motion for Summary Judgment filed on May 30, 2014 (together, "Motions").

The Plaintiff, Brent E. Bentrim ("**Plaintiff**" or "**Bentrim**"), contends that Wells Fargo's counterclaim for foreclosure should be dismissed as a matter of law. The Motions include seven grounds from the original motion and two additional grounds from the supplemental motion. Most of Plaintiff's grounds are based on misunderstandings or misapplication of applicable law and/or the language of the subject Note and Mortgage. None are proper grounds for summary judgment. As such, the Court should deny summary judgment as to Wells Fargo's foreclosure action.

FACTS

Plaintiff admits that he signed a Note and Mortgage to First Union National Bank dated March 12, 2002. **Exhibit A**, Answers for Requests for Admission by Plaintiff in Response to Defendant, Sept. 11, 2012. Further, he acknowledges that he used the money from this

transaction to refinance his residence at 10 Nicholson St., Charleston, SC. **Exhibit B,** Bentrim Depo Tran. 21:12-20. The proceeds from the Note and Mortgage were used to satisfy Plaintiff's obligations upon an existing loan from Bank of America as evidenced by the satisfaction of Bank of America's mortgage lien on 10 Nicholson St., Charleston, SC. ***See*** **Ex. B,** Bentrim Depo Tran. 21:12-20; **Exhibit C – Satisfaction of Bank of America Mortgage at Book 412, Page 295.** Finally, Plaintiff admits he made payments on the Note and Mortgage from 2002 until January 2009. **Ex. B,** Bentrim Depo Tran. 48:14-22.

Plaintiff brought this lawsuit in 2011. Wells Fargo responded by filing an Answer, and later, after receiving the express consent of Plaintiff by and through Plaintiff's counsel, amended the Answer to add a counterclaim for foreclosure and a suit on the note. Wells Fargo was initially unable to locate the original Note because it remained with Wells Fargo's foreclosure counsel from a previous foreclosure action filed on the subject Mortgage. On February 7, 2012, Wells Fargo employee, Tracy Thomas, executed a lost note affidavit indicating she had performed a diligent search for the subject Note, and that it was her belief the Note was lost. Subsequently, however, the Note was returned to Wells Fargo by the previous foreclosure counsel, and Wells Fargo is now is possession of the original Note. Plaintiff, counsel for Plaintiff as well as this Court in prior hearings have been provided with the opportunity to inspect the original of the subject Note. In a prior hearing on this matter, Plaintiff responded affirmatively to questions from the Court as to whether the previous loan to Bank of America been paid in full. **Exhibit D,** Tran. of Hearing, pg. 33.

LEGAL STANDARD

Under Rule 56(c), SCRCP, "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). "The evidence, and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Id.

ARGUMENT

Plaintiff's nine arguments for summary judgment are addressed in order:

Ground 1: The transaction described in the Note and Mortgage "did not occur."

This argument fails for several reasons. First, there is at the very least a question of fact as to whether the "transaction" took place. Plaintiff has authenticated the signed Note and Mortgage from the closing. **Ex. A** and **Ex. B** at 21:12-20. Plaintiff and Plaintiff's counsel have seen and inspected the original Note, and Plaintiff admits to making payments on the Note and Mortgage for at least seven years. **Ex. B** at 48:14-22. Certainly, if the transaction did not occur, he would not have made any payments upon a non-existent transaction. Plaintiff's unsupported claim ignores the undisputed facts directly to the contrary.

Further, having taken the benefit of the Note and Mortgage, Plaintiff cannot now take a position contrary to the terms of the Note and Mortgage. The South Carolina Supreme Court approved such an estoppel theory in *Brown v. Prudential Insurance Company of America*, 40 S.E.2d 637, 642 (S.C. 1946), noting that its conclusion about the effect of a conveyance of real property was "fortified and confirmed by the construction placed thereon by the parties

themselves" before the litigation, and they were "now estopped to take a contrary position." Likewise, in a Fourth Circuit Court case governed by South Carolina law, the Court stated that a party may not deny the validity of a contract after taking and keeping its benefits. *See National Manufacture & Stores Corp. v. Whitman*, 93 F.2d 829, 831-32 (4th Cir. 1938). In a District Court case applying South Carolina law, the Court noted that " under the doctrine of quasi-estoppel, a party cannot accept or retain the benefits of a transaction . . . and take a position inconsistent therewith." *BCD, LLC v. BMW Mfg. Co.*, 2008 WL 304878, at *16 (D.S.C. Jan. 31, 2008), aff'd, 360 Fed. Appx. 428 (4th Cir. 2010) (unpublished). Here, Bentrim undeniably received the benefits of his Note and Mortgage as evidenced by, among other items, his admission to receiving loan proceeds and in having the prior loan transaction with Bank of America paid in full. See Ex. B at 21: 12-20 and Exhibit C respectively. Plaintiff should be equitably estopped from taking such a position in an attempt to avoid repaying his debt and satisfying his admitted contractual obligations.

Ground 2: Plaintiff is not obligated to pay on a "lost instrument."

Plaintiff apparently argues that, because Wells Fargo could temporarily not locate the original Note and filed a Lost Note Affidavit in this matter, S.C. Code Ann. § 36-3-305 renders the Note unenforceable. As stated above, after filing the Lost Note Affidavit, Wells Fargo located the original Note and is now in possession of the original Note. Regardless, Plaintiff misinterprets the statute as supporting his theory that he does not have to pay on a "lost instrument". S.C. Code Ann. § 36-3-305(c) reads:

> An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

The statute applies only when *two* conditions are met: the person seeking enforcement (Wells Fargo) does not have the rights of a holder in due course *and* the obligor (Bentrim) proves the instrument is lost or stolen. As evidenced the fact that original Note has been produced to Plaintiff and his counsel for inspection as well as to this Court in prior proceeds, the instrument is not now either lost nor stolen. Further, pursuant to S.C. Code Ann. § 36-3-302, Wells Fargo has the rights of a holder in due course of the Note. Accordingly, § 36-3-305 is not applicable to this case and does not support Plaintiff's motion for Summary Judgment.

Ground 3: The sale of the Note voids the instrument.

Plaintiff next alleges that the Note was sold in 2006, and, therefore, the terms of the Mortgage nullify his obligations under the Note due to such sale. Simply put, Plaintiff mistates the facts and further misinterprets the plain language of the Mortgage. The pertinent portion of the Mortgage reads as follows:

> 20. Satisfaction. Upon payment of all sums secured by this Mortgage, the conveyance of the Property pursuant to this Mortgage shall become null and void and Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

This paragraph addresses a full payoff of the Note by or directly on behalf of a borrower rather than a sale of any interest in or transfer of ownership of the Note. If Plaintiff's interpretation of this provision was correct, notes could never be sold because the mortgages securing the notes would instantly be voided upon payment of the consideration for an assignment of any interest in the loan. Further, the affidavit from Wells Fargo employee Matthew Wakefield (attached as **Exhibit E**) explains that a 100% right in the benefical interests of the Note was sold to a subsidiary of Wachovia Bank, N.A. (subsequently Wells Fargo).

Nothing in the record before this Court indicates such payment was made on behalf of Plaintiff. Thus, there is absolutely no evidence that the sum borrowed by Plaintiff pursuant to the subject Note has been repaid by Plaintiff or anyone on his behalf. Accordingly, there has not been a "payment of all sums secured by this Mortgage," and the provision cited by Plaintiff is inapplicable to this matter. Additionally, Section 36-3-602(a) of the South Carolina Code of Laws (1976 as amended) holds that, "an instrument is **paid** to the extent payment is made by or on behalf of a party obliged to pay the instrument...". (emphasis added). In this case, there is simply no evidence before this Court to indicate that any payment of the full amount due on the Note was ever made by Plaintiff or on his behalf. Therefore, the note instrument has not been "paid" and Summary Judgment for Plaintiff is not warranted under this theory either.

Ground 4: Wells Fargo is time-barred from enforcing the Note.

Plaintiff claims that the Mortgage is null and void, and Wells Fargo is therefore time-barred from enforcing the Note, apparently arguing that a three-year limitation period would apply. As an initial matter, and as explained above, the Mortgage is NOT null and void. At a minimum, there exists a question of fact as to whether the Mortgage is null and void.

Further, even if the Mortgage was null and void, Wells Fargo would still not be time-barred from enforcing the Note as a matter of law. The twenty-year statute of limitations would apply. At the time it was executed, the Note was secured by a mortgage of real property, and therefore falls squarely under S.C. Code Ann. § 15-3-520, which states:

> Within twenty years:
>
> (a) **an action upon a bond or other contract in writing secured by a mortgage of real property;**
>
> (b) an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period

> of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725.

South Carolina Code Ann. § 15-3-520 (emphasis added).

Because the Note is a "bond or other contract in writing secured by a mortgage of real property," the twenty-year statue applies to Wells Fargo's Note. *See Stelts v. Martin*, 90 S.C. 14, 72 S.E. 550, 552 (1911) (citing *Lyles v. Lyles*, 71 S. C. 391, 51 S. E. 113).

Ground 5: Wells Fargo's counterclaim was filed in contravention of the OCC Consent Order signed on April 13, 2011.

Plaintiff has already unsuccessfully argued this point to the Court during prior hearings on other motions. He claims that Wells Fargo's foreclosure action fails because Wells Fargo violated the OCC's Cease and Desist Order signed on April 13, 2011. To the contrary, the OCC order states clearly that it does not give individual borrowers like Bentrim "any legal or equitable right, remedy or claim." Courts across the country have ruled that the OCC order cannot be used as a defense to a foreclosure action. For example, the Sixth Circuit recently held:

> [Borrower] has no right to enforce the terms and conditions of the OCC Consent Orders. Each specifically provides, "Nothing in the Stipulation and Consent or this Order, express or implied, shall give to any person or entity, other than the parties hereto ... any benefit or any legal or equitable right, remedy or claim under the Stipulation and Consent or this Order." Courts in this circuit have specifically held that a consent order is a contract that non-parties are not entitled to enforce.

Green v. Bank of Am. Corp., 530 F. App'x 426, 430 (6th Cir. 2013)(internal citations omitted). *See also, Hersh v. CitiMortgage, Inc.*, 2:13-CV-1344, 2013 WL 6858443 (W.D. Pa. Dec. 30, 2013); *Anderson v. Deutsche Bank Nat. Trust Co.*, 13-CV-12854, 2014 WL 988994 (E.D. Mich. Mar. 13, 2014).

Further, as evidenced by: a) Plaintiff's own admission to executing the subject Note and Mortgage in favor of Wells Fargo's predecessor in interest, First Union; b) Plaintiff making payments upon the subject Note and Mortgage only to First Union and/or Wachovia Bank, N.A.; c) Wells Fargo's possession of the original Note made payable to its predecessor in interest, First Union; and d) the testimony set forth in the Wakefield Affidavit, there exists at least a question of fact as to whether Wells Fargo possessed documentation sufficient to establish standing to bring this action as well as legal rights in the subject Note at all relevant times.

Ground 6: Wells Fargo's counterclaim was filed in contravention of the Consent Judgment signed on April 4, 2012.

As with the OCC Order addressed above, Plaintiff argues that Wells Fargo's foreclosure action fails because Wells Fargo violated the Consent Judgment signed on April 4, 2012. Again, Plaintiff's claim is misguided. Courts addressing this issue have consistently ruled that "individual borrowers are merely incidental beneficiaries of the National Mortgage Settlement, and so have no right to bring third-party suits to enforce the Consent Judgment. Thus, any claims that allege a violation of the Consent Judgment should be dismissed." *Rehbein v. CitiMortgage, Inc.*, 937 F. Supp. 2d 753, 762 (E.D. Va. 2013).

The *Rehbein* Court explains in greater detail:

> On March 12, 2012, the United States Department of Justice and the attorneys general of forty-nine states and the District of Columbia filed a joint complaint against five mortgage servicers. . . alleging various foreclosure abuses. Shortly after the complaint was filed, the parties reached a settlement (the "National Mortgage Settlement"), which was memorialized by a Consent Judgment ("Consent Judgment") entered on April 4, 2012, by the United States District Court for the District of Columbia. The Consent Judgment sets forth servicing standards aimed at protecting homeowners. The mortgage servicers must comply with these standards . . .

> Consent judgments and decrees are to be construed for enforcement purposes basically as a contract. It is a basic tenet of contract law that a nonparty becomes legally entitled to a benefit promised in a contract only if the contracting parties so intend. As a general matter, consent decrees are not enforceable directly or in collateral proceedings by those who are not parties to it even though they were intended to be benefited by it. In order to have enforcement rights, third parties to a consent decree must demonstrate that they are intended beneficiaries, as opposed to merely incidental beneficiaries.
>
> Because the government usually acts in the general public interest, third parties to consent decrees involving the government are presumed to be incidental beneficiaries, not intended beneficiaries. To overcome this presumption and qualify as an intended beneficiary, the third party must demonstrate that the contracting parties intended the third party to be able to sue to protect the benefit the consent judgment conferred on the third party; it is not sufficient to show simply that the parties had some intent to benefit the third party.
>
> . . . ***The language of the Consent Judgment indicates that the parties to the agreement did not intend the individual borrowers to be able to sue to protect the benefits the consent judgment confers.***
>
> The Consent Judgment expressly provides a mechanism by which its terms are to be enforced, and appoints an independent monitor to oversee the servicers' compliance with the servicing standards. The Consent Judgment specifies that "[a]ny enforcement action under this Consent Judgment may be brought by any Party to this Consent Judgment or the Monitoring Committee." Third party borrowers are conspicuously absent from this list. Under the principle of *expressio unius est exclusio alterius*, it follows that, pursuant to the Consent Judgment's own terms, individual borrowers are not eligible to bring enforcement actions.

Rehbein, 937 F. Supp. 2d at 760-62 (E.D. Va. 2013)(internal citations and punctuation omitted; emphasis added). *See also*, *Madura v. BAC*, 2013 WL 3777094 (M.D.Fla.)("This incoherent defense does not preclude Bank of America from prosecuting the Foreclosure Counterclaim and is unavailing."); *Winders v. CITI*, 2013 WL 4039399 (M.D.Ga.); *Zadrozny v. Bank of New York Mellon*, 720 F.3d 1163 (2013); *Johnson v. Wells Fargo*, 2013 WL 823369 (E.D.Mich.); *Pachecano v. JP Morgan*, 2013 WL 4520530 (W.D.Tex.); *JP Morgan v. Ackley*, 834 N.W.2d 82, 2013 WL 1749783 (Iowa App.); *Raup v. Wells Fargo*, 2013 WL 3216175 (D.Ariz.).

Ground 7: Wells Fargo's counterclaim was filed in contravention of the Court's order of July 9, 2010 in Case Number 09-CP-10-4700.

In an earlier foreclosure action between the same parties, Wells Fargo failed to produce a witness at a foreclosure hearing and the action was dismissed without prejudice. This Court issued an order that Wells Fargo "may not refile for 90 days and only after submitting to Defendant Bentrim a calculated payoff amount." **Exhibit F**, July 9, 2010 Order. After Bentrim brought the present action, Wells Fargo filed an Answer. Later, after consulting with Plaintiff's counsel and receiving written consent from Plaintiff's counsel as well as entering into a joint consent order, Wells Fargo filed an amended pleading which included a counterclaim for foreclosure. **Exhibit G**, Email correspondence from Plaintiff's previous counsel of record, Bill Sloan, to Jana Baker consenting to amending Answer to add foreclosure counterclaim. **Exhibit H**, Consent Order dated April 25, 2012. By consenting to the amendment and entering into the Consent Order, Plaintiff waived his right to object to the amendment and is now estopped from raising the objection. Even if Bentrim had not consented to the amendment, Wells Fargo had already satisfied this Court's requirements from the 2010 Order. More than ninety days had passed since the Order was filed, and Wells Fargo mailed Bentrim a calculated payoff statement via certified mail on September 27, 2011. **Exhibit I,** Certified Letter to Brent E. Bentrim dated September 27, 2011. As such, Plaintiff's argument fails and his motion for Summary Judgment on this basis must be denied with prejudice.

Ground 8 (Supplemental Motion): Wells Fargo is not the "holder" of the Note.

Plaintiff continues to argue that Wells Fargo cannot enforce the Note, this time because Wells Fargo allegedly "is not, has never been and cannot be the 'holder' of the Note." While his

reasoning is not entirely clear, Plaintiff appears to argue that the Note was originated by a predecessor in interest to Wells Fargo (First Union National Bank), and that the corporate mergers between First Union National Bank, Wachovia Bank, N.A. and Wells Fargo did not legally transfer the predecessors' status as "holder" to Wells Fargo. This theory is legally flawed. Transfers of promissory notes resulting from mergers of national banks are addressed at 12 U.S.C.A. § 215a, "Merger of national banks or State banks into national banks":

> e) Status of receiving association; property rights and interests vested and held as fiduciary
>
> The corporate existence of each of the merging banks or banking associations participating in such merger shall be merged into and continued in the receiving association and such receiving association shall be deemed to be the same corporation as each bank or banking association participating in the merger. ***All rights, franchises, and interests of the individual merging banks or banking associations in and to every type of property (real, personal, and mixed) and choses in action shall be transferred to and vested in the receiving association by virtue of such merger without any deed or other transfer.*** The receiving association, upon the merger and without any order or other action on the part of any court or otherwise, shall hold and enjoy all rights of property, franchises, and interests, including appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, and receiver, and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any one of the merging banks or banking associations at the time of the merger, subject to the conditions hereinafter provided.

12 U.S.C.A. § 215a (West)(emphasis added).

Bentrim's Note was made by First Union National Bank on March 12, 2002. A beneficial interest in the Note was sold by Wachovia Bank, N.A. to The Money Store Service Corporation for fair market value on November 29, 2006. The Money Store Service Corporation was a subsidiary of The Money Store, LLC, which was a subsidiary of Wells Fargo Bank, N.A. *See* Ex. E, Wakefield Affidavit. In May 2010 the Money Store Service Corporation merged into the Money Store, LLC. The Money Store LLC was then dissolved and distributed into its parent

Wells Fargo. *Id.* Accordingly, at all times relevant hereto, the rights and interests in the Note whether it is as an issuer, owner, servicer, beneficial owner and/or holder were held by either a predecessor in interest to Wells Fargo (First Union or Wachovia Bank, N.A.) or a subsidiary of a predecessor in interest to Wells Fargo (the Money Store Service Corporation) or by Wells Fargo itself. Thus, pursuant to 12 U.S.C.A. § 215a, as well as Sections 36-1-201(20), 36-3-301 and 36-3-203(b) of the South Carolina Code of Laws, (1976 as amended), Plaintiff's unsupported claim that Wells Fargo is not the "holder" and therefore cannot bring the subject foreclosure action must fail.

It is uncontroverted from the record before this Court that Wells Fargo is also currently the servicer of the subject loan as successor in interest to First Union and Wachovia which are the only entities Plaintiff made payments to for the subject loan. See **Ex. B** at pages 48-50, 53,59,60-61,63,66, 90, 109 and 113 all referencing payments from Plaintiff to First Union or Wachovia. Under the holding of *Bank of America v Draper*, 405 S.C. 214, 746 S.E.2d 478 (Ct. App. 2013) a bank which is acting as servicer of a loan is a "real party in interest" and is "able to initiate a foreclosure." *Id.* at 222, 223. Wells Fargo, thus, has the right to bring the subject foreclosure action regardless of whether or not it is the holder of the Note. Therefore, for purposes of considering Plaintiff's motion to grant him summary judgment, the question of whether Wells Fargo is the holder of the Note is not dispositive of the question of whether Wells Fargo has standing to bring the subject foreclosure action. Whether or not Wells Fargo is the "holder" of the note cannot then serve as the basis for a grant of Summary Judgment in Plaintiff's favor at this time. For this and the other reasons set forth above, Plaintiff's motion should be denied.

Ground 9 (Supplemental Motion): Wells Fargo did not allow Bentrim an opportunity to cure his default.

The Mortgage signed by Bentrim specifically states that Wells Fargo is not required to provide Bentrim with an opportunity to cure. Page 4 of the Mortgage reads:

> Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being herby expressly waived.

Mortgage, **Exhibit J**. Accordingly, even if Wells Fargo did not present Plaintiff with an opportunity to cure his default, such failure is not a ground for Summary Judgment in this case in Plaintiff's favor. Moreover, the letter of Jana Baker to Plaintiff dated September 27, 2011 attached hereto as **Exhibit I**, provided Plaintiff with thirty (30) days in which to pay the amount due under the Note and Mortgage. Wells Fargo respectfully submits that such language provided Plaintiff with a "cure" period prior to the filing of the foreclosure action and provides additional support for denying Plaintiff's motion for Summary Judgment on this particular ground.

CONCLUSION

For the reasons set forth above, Plaintiff's Motions should be denied in their entirety.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

Charles J. Baker III
S. Sterling Laney, III
John C. Hawk IV
Five Exchange Street, P.O. Box 999
Charleston, SC 29402
(843) 722-3400

ATTORNEYS FOR WELLS FARGO BANK, N.A.

Charleston, South Carolina
June 5th, 2014

WCSR 31600642v3

CERTIFICATE OF SERVICE 11-CP-10-2946

I do hereby certify that on the 5th day of June, 2014, I served a copy of the within **Wells Fargo's Memorandum in Opposition to Motion for Summary Judgment** to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Robert B. Varnado Esquire
Brown & Varnado, LLC
Post Office Box 1127
Mount Pleasant SC 29465-1127

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

Carla Cerchione

FILED
2014 JUN -5 PM 4:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

WCSR 31600642v3

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	))	COURT OF COMMON PLEAS
BRENT E. BENTRIM, Plaintiff,	))	CASE NO. 2011-CP-10-2946 ANSWERS FOR REQUEST FOR ADMISSION BY PLAINTIFF
WELLS FARGO BANK, NA, Defendant.	)	IN RESPONSE TO DEFENDANT

Plaintiff, via his undersigned attorney, answers the Requests for Admission served upon him by Defendant's counsel.

1. Please admit that the copy of the Negotiable Promissory Note attached hereto and incorporated herein by reference as **Exhibit** "A" is a true and accurate copy of the Note dated March 12, 2002, signed by Brent E. Bentrim promising, without limitation, to pay First Union National Bank the principal sum of $182,700.00 plus interest (the **Note**").

Answer: **Plaintiff admits that the document appears to be the same document signed by Plaintiff on March 12, 2002. Plaintiff denies that the Note is Negotiable. Plaintiff does not understand the "without limitation" portion of this Request to Admit and therefore, cannot admit or deny same.**

2. Please admit that the copy of the Mortgage attached hereto and incorporated herein by reference as **Exhibit "B"** is a true and accurate copy of the Mortgage dated March 12, 2002 given by Brent E. Bentrim to First Union National Bank and recorded on April 3, 2002 in the Charleston County RMC Office on August 31, 2007 in Book C-402, at Page 182.

Answer: Plaintiff admits that the document is a copy of the Mortgage that he signed. Plaintiff does admit that the Mortgage was recorded in the RMC Office as stated. Plaintiff does not admit the right of Defendant to enforce same.

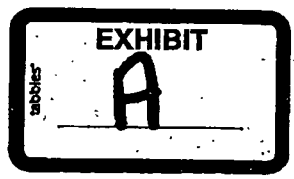
3. Please admit that Plaintiff failed to make payments as they have become due and owing pursuant to the terms and conditions of the Note and Mortgage.

Answer: Plaintiff denies that the Note and Mortgage accurately show the transaction that actually took place.

4. Please admit that Plaintiff is in default under the terms of the Note and Mortgage for failing to pay the monthly payments as required under the terms of the Note.

Answer: Denied.

5. Please admit the terms of the Note and Mortgage and other loan documents allow Defendant to, among other things, foreclose on the subject Property if Plaintiff breached the terms of the Note and/or Mortgage.



Answer: Plaintiff admits that the documents state what is stated. Defendant denies that there is a default.

6. Please admit that the copy of the Truth-in-Lending Disclosure Statement attached hereto and incorporated herein by reference as **Exhibit** "C," is a true and accurate copy of the Truth-in-Lending Disclosure Statement dated March 12, 2002, and signed by Plaintiff.

Answer: Plaintiff admits that the document is a copy of what he signed on March 12, 2002. Plaintiff denies that is accurately shows the transaction.

7. Please admit that the copy of the First Union Adjustable Rate Loan Information Sheet attached hereto and incorporated herein by reference as **Exhibit "D,"** is a true and accurate copy of the Interest Rate Agreement dated March 12, 2002, and signed by Plaintiff.

Answer: Admitted.

William H. Sloan
Bar No. 69630
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Plaintiff
September 11, 2012

SLOAN LAW FIRM
Post Office Box 85
SUMMERVILLE, SC 29484
843-873-7531 PH
843-873-7527 FAX
sloanlawfirm@yahoo.com

September 11, 2012

Jana B. Baker, Esq.
Womble, Carlyle, Sandridge and Rice
Post Office Box 999
5 Exchange St.
Charleston, SC 29402(1)

Re: Bentrim vs. Wells Fargo
Case No. 11-CP-10-2946

Dear Jana:

Enclosed please find my Reply in this case along with the Responses to Request to Admit in this case. If you have any questions, please advise. Thank you for your attention to this matter.

SLOAN LAW FIRM
Yours Truly,

William H. Sloan

SLOAN LAW FIRM
Post Office Box 85
SUMMERVILLE, SC 29484
843-873-7531 PH
843-873-7527 FAX
sloanlawfirm@yahoo.com

September 17, 2012

Charleston County Clerk of Court
100 Broad St., Suite 106
Charleston, SC 29401

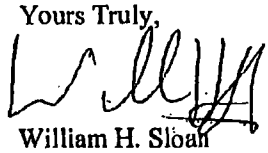
Re: Bentrim vs. Wells Fargo
Case No. 11-CP-10-2946

Dear Ms. Armstrong:

Enclosed please find the original and one copy of the Plaintiff's Reply in this case. Please file the original with your records and return a copy to me in the return envelope. If you have any questions, please advise.

With kind regards, I am

SLOAN LAW FIRM
Yours Truly,



William H. Sloan

Cc: Jana B. Baker, Esq.
Womble, Carlyle, Sandridge and Rice
Post Office Box 999
5 Exchange St.
Charleston, SC 29402(1)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF CHARLESTON) Case No. 2011-CP-10-2946

BRENT E. BENTRIM)
)
Plaintiff(s),)
) DEPOSITION OF:
-vs-)
) BRENT E. BENTRIM
)
WELLS FARGO BANK, NA,)
)
Defendant(s),)

Given before John P. Crawford, Jr., Court Reporter and Notary Public, at Womble Carlyle Sandridge & Rice, LLP, 5 Exchange Street, Charleston, South Carolina, on Wednesday, May 8th, 2013, commencing at 10:10 o'clock, a.m.

ESQUIRE SOLUTIONS
EXHIBIT B
800.211.DEPO (3376)
EsquireSolutions.com

A P P E A R A N C E S

For the Plaintiff(s): Brown & Varnado, LLC
By: Robert B. Varnado, Esquire
103 Church Street
Mount Pleasant, SC 29464

For the Defendant(s): Womble Carlyle Sundridge & Rice, LLP
By: Jana B. Baker, Esquire
5 Exchange Street
Charleston, SC 29401

INDEX TO EXAMINATIONS

DIRECT EXAMINATION BY MS. BAKER 6

Q. Okay. And this is the deed showing that you purchased the 10 Nicholson property, correct?
A. Right. From Ms. Zervos.
Q. Okay. Exactly. And what was the year that you, when was the original closing for this?
A. September 2000. I know it's dated here on October 6th, but I think that's when they stamped it.
Q. Is it September 29th, 2000?
A. Right around, yeah. It's going to be somewhere around there.
Q. Okay. And did you, when you initially purchased the property, did you obtain a mortgage?
A. I did.
Q. Okay. And was it with Bank of America?
A. It was.
Q. Okay. And were you able to make the monthly payments at that time?
A. I was.
Q. Okay. And what was the amount of the mortgage with Bank, B of A, if you recall?
A. I believe it was one sixty, I'm trying to think if I did like an eighty/twenty, but I don't believe I did. I believe it was just one sixty. I don't think there was a second on there.

Q. Okay. I'm not going to hold you to that.
A. Yeah. No. I was just trying to --
Q. Okay.
A. -- some of these questions, you're like, wow, why don't, you know.
Q. It was a long time ago. Right, exactly. Okay. And then you, after that, you went ahead and refinanced with First Union, correct?
A. Right.

(PROMISSORY NOTE MARKED AS DEFENDANT'S EXHIBIT NO. 2 FOR IDENTIFICATION.)

Q. Okay. And take a look, we're going to use this as Exhibit Two. This is the note. I'll just let you hold onto that. Okay. And so, do you recall the date that you refinanced with First Union?
A. Yes. It was March 12th, 2002.
Q. Okay. And take a look at what's marked as Exhibit Two which is a negotiable promissory note?
A. Right.
Q. Have you seen that before, have you seen the document before that you're looking at?
A. Yes.
Q. Okay. And does it appear to be a true and accurate copy of the note that you signed?

A. At this point, I have no idea, Jana. There's been three or four notes proffered by your client that says that this is a true and accurate copy.
Q. Do you know the original note we have here in our vault?
A. Right.
Q. Okay. And you're welcome to look at it with your attorney.
MR. VARNADO: In fact, we might do that. We might take you up on that at a break.
MS. BAKER: We can do that.
THE WITNESS: Okay.
Q. Well, how about this, if you turn, this is again Exhibit Two of the note, if you turn to the last page of the document which is at the bottom, it's labeled WF eight.
A. Yep.
Q. Is that your signature?
A. Yes. It is.
Q. Okay. And do you recall the amount of the loan with First Union?
A. One eighty-two seven hundred.
Q. Okay. And do you recall what the interest rate was?
A. Yes. I do.

Q. Okay.
A. It was an adjustable rate mortgage.
Q. Okay.
A. It was based off the prime plus a quarter.
Q. Okay. Or you could actually, if you look at the note, it may, where the X is on the first page it's indicated. Is that correct? Here, I can show it to you.
A. Yeah. That is correct.
Q. Do you want to read it just for the record?
A. The interest rate is prime rate which was then four point seven five percent plus point two four percentage points or twenty-four basis points.
Q. Okay. And where are you? Sorry about this. Okay. I see what you're saying. Okay. That's the initial interest rate?
A. Yeah.
Q. And then, if you read above that where the X is located, is that correct? If indicated, which is where the X is. I can point it.
A. Four point nine nine.
Q. You can just read that sentence.
A. "If indicated, this is a variable rate loan and my initial interest rate is four point nine nine."

Q. Okay. And then, was this, did this reduce, what did the modification do?
A. Ten grand. Ten thousand.
Q. It reduced it to ten thousand dollars?
A. Yeah.
Q. Okay. You said, is it still open?
A. What happened last or in 2011 when your firm sent me out an acceleration on the other loan is they quit accepting payments and quit sending me statements on this loan. So, it's still got something on it.
Q. Okay. So, there's still a -- okay. What did you, did you use the loan proceeds to buy anything or did you --
A. Heck if I know.
Q. All right.
A. Yeah.
Q. Does this law suit that we're here, does it have anything to do with this amount?
A. No.
Q. No. Okay. Okay. Now --
A. However.
Q. Okay.
A. Sorry. When I did call and say hey, you know, why did you quit accepting my payments and quit

sending me statements, they said because we're foreclosing, so I believe Wells Fargo believes this is part of it.

Q. Okay.

A. Yeah.

Q. But it's not part of any of your claims against Wells Fargo?

A. No. Not part of my claims against them.

Q. Okay. Now, in regard to, let's see here, the current, you know, the mortgage and note and mortgage, are you currently, you know, which is Exhibit Two that we looked at and probably Three.

A. Three.

Q. Are you making payments now on this loan?

A. No.

Q. Okay. When did you stop making payments, do you recall?

A. In January 2009, your client refused to take further payments.

Q. So, you were making payments in January of 2009; is that a yes?

A. Yes. It is. Sorry.

Q. Okay. Why did Wells Fargo, why did they stop accepting the payments?

MR. VARNADO: Object to form. You can

BK L 412PG295

State of South Carolina
County of Charleston

Prepared by:
Liz Injaychock
Bank of America
475 CrossPoint Pkwy, Getzville NY 14068
Loan Number: 6497088796

When recorded mail to:
Brent E Bentrim

10 Nicholson Street
Charleston, SC 29407

Satisfaction
(with Lost Mortgage Affidavit)

The debit secured by that certain mortgage of real estate executed by Brent E Bentrim to BANK OF AMERICA NA dated 09/29/2000, recorded on 09/29/2000 in Mortgage Book B 356 Page 683 has been paid in full.
Dated 06/21/2002.

Bank of America, N.A., ~~a national banking association~~

Witness Sandra Boyce
Sandra Boyce

By: Susan A.D. Corrigan
Susan A.D. Corrigan,
Vice President

Witness Veronica Garrison
Veronica Garrison

STATE OF New York
COUNTY OF Erie

Personally appeared before me Sandra Boyce and made oath that he/she saw the within named Susan A.D. Corrigan, Vice President sign, seal and as his/her Act and Deed, deliver the within written Deed; and that he/she with Veronica Garrison witnessed the execution thereof.
Sworn before me on 06/21/2002.

Marla J Naab
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 16, 2003

Sandra Boyce
Sandra Boyce

STATE OF New York
COUNTY OF Erie

Personally appeared before me Susan A.D. Corrigan, Vice President who being duly sworn deposes and says that he/she is the bona fide owner and holder of the within Bond/Note and Mortgage, that the same has not been assigned hypothecated or otherwise deposed of, and that the same has been lost or destroyed, and after diligent search cannot be found. That deponent has full authority to mark the Mortgage satisfied and canceled of record.
Sworn before me on 06/21/2002.

Marla J Naab
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 16, 2003

By: Susan A.D. Corrigan
Susan A.D. Corrigan,
Vice President

MARLA J. NAAB NOTARY PUBLIC STATE OF NEW YORK

EXHIBIT
tabbies
C

BANK OF AMERICA
POST OFFICE BOX 9000
GETZVILLE,NY 14068-9000
ENV

BK L 412PG296

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REGISTER
CHARLESTON COUNTY SC
SATISFACTION

STATE OF SOUTH CAROLINA) : IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2011-CP-10-2946

BRENT E. BENTRIM,
Plaintiff(s),
-vs
WELLS FARGO BANK, NA,
Defendant(s),

HEARING

Given before the Honorable Judge Mikell Scarborough in the Charleston County Courthouse, 100 Broad Street, Suite 266, Charleston, South Carolina on Monday, April the 28, 2014, commencing at 4:00 o'clock p.m.

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EXHIBIT D

A-P-P-E-A-R-A-N-C-E-S

For the Plaintiff	:	Brown & Varnado By: Robert Varnado, Esq., 103 Church Street Mt. Pleasant, SC 29464
For the Defendant	:	Womble Carlyle Sandridge & Rice By: Charles Baker, Esq., By: Sterling Laney, Esq., By: John Hawk, Esq., PO Box 999 Charleston, SC 29402
Also Present	:	Brent Bentrim, Elizabeth Lassiter

INDEX TO EXHIBITS

(None were marked.)

and collateral estoppel from arguing that First Union didn't fund this loan, didn't originate this loan. And that's the only thing is the 2002 general ledger documents could show. So for that reason as well we ask that you alter and amend.

THE COURT: Tell me about that, Mr. Varnado.

MR. VARNADO: Judge, it's just not right on a lot of grounds. I'm going to try to explain it as best I can. Your Honor ordered them to turn over all the documents which would substantiate that it was their money. And that was in your order. And the only thing which could be timely considered to be a Rule 59 Alter/Amend is don't turn over the 2002. It's too difficult.

Let me reiterate the reasons, the legal reasons why this is important. One, Wells Fargo has to prove the debt. That's just a basic foreclosure law. They must prove the debt.

THE COURT: He's holding an original note over there you've acknowledged already. That's pretty much a debt in my book.

MR. VARNADO: Your Honor, a note without evidence that money was actually transferred would not be evidence that the money was transferred. And Your Honor already ordered them to do it. And the note might be competent evidence, but it's not going to be the evidence that they actually paid their own money to do it. And why is it

important? There's four legal grounds --

THE COURT: Do you have a HUD one saying that they closed the loan? You talked about that earlier. I'm not real sure what you're arguing here unless it's a three day thing and a re-fi. So was this a re-fi of some property, or was this a purchase?

MR. VARNADO: Yeah, it was a HELOC re-fi. That's exactly what it was, a three day turn around.

MR. BENTRIM: We paid off a Bank of America loan actually, Your Honor.

MR. VARNADO: But the funny thing is is that the note which Mr. Laney says is the evidence says they paid $182,700. And yet you're going to hear from counsel, and you'll see in the memoranda they only paid 180, eight days later, three days after the closing.

THE COURT: I've closed a bunch of loans. They would have taken their fees out of it, I'm sure of that.

MR. VARNADO: The fees were included in the 180, Judge. So the note says 182,700 --

THE COURT: So are we fighting over $2,000?

MR. VARNADO: No, sir. We're not.

THE COURT: We better not be.

MR. VARNADO: We're not fighting over it, Your Honor, I promise you. What we're fighting over is that what they say took place in the note is not what took place in

reality.

THE COURT: Did Mr. Bentrim have a Bank of America loan on the day he went into Davidson Bennet and Wigger and enter into this transaction?

MR. VARNADO: Yes, sir. But that's --

THE COURT: Does that Bank of America loan exist today, or was it paid off somewhere close to the 2002 time period?

MR. VARNADO: It would have been paid off after the August the 20th -- I mean, March the 20th, eight days later, three days after that closing closed.

THE COURT: All right. Your client got a Satisfaction of Mortgage and Cancellation of Note from Bank of America?

MR. LANEY: I've got it right here if you'd like to see it.

MR. VARNADO: I assume it would all be in there, Judge, but the --

THE COURT: If that happened then I know they transferred some money.

MR. VARNADO: They transferred some money. Did they transfer the money that was said in the note, and is the note enforceable under it's terms? And the next question is is there is -- it happens that banks do not use their own money to fund mortgages. Mr. Laney talked about

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) C/A No.: 2011-CP-10-2946
BRENT E. BENTRIM	)
Plaintiff,	)
vs.	) **AFFIDAVIT OF MATTHEW WAKEFIELD**
WELLS FARGO BANK, N.A.	)
Defendant.	)

The undersigned, being duly sworn, states as follows:

1. He is a Vice President at Wells Fargo Bank, N.A. ("Wells Fargo"), and as such has access to business records and information which pertain to the facts set forth in this Affidavit.

2. The loan at issue in this case was made by First Union National Bank ("First Union") pursuant to a Negotiable Promissory Note dated March 12, 2002 executed in favor of First Union by Brent E. Bentrim the ("Bentrim Loan.")

3. The beneficial interest of the Bentrim loan was sold to The Money Store Service Corporation for fair market value on or about November 29, 2006. On or about May 1, 2010, The Money Store Service Corporation was merged into The Money Store, LLC. Also, on May 1, 2010, The Money Store, LLC was dissolved and distributed to Wells Fargo.

4. As evidenced by the attached record which is publicly available and maintained by the Federal Reserve ("Exhibit 1"), The Money Store Service Corporation was a subsidiary of The Money Store, LLC which was a subsidiary of Wells Fargo Bank, N.A.

FURTHER AFFIANT SAYETH NOT

By: _____
Name: Matthew Wakefield
Title: Vice President
Company: Wells Fargo Bank, N.A.

SWORN to before me this 4th day of June, 2014.

_____
Notary Public for the State of North Carolina
My commission expires: 4-22-2017

LINDA L. PETERSON NOTARY PUBLIC UNION COUNTY, NC

EXHIBIT E

Report created: 6/3/2014

WACHOVIA BANK, NATIONAL ASSOCIATION (484422)

as of 11/29/2006

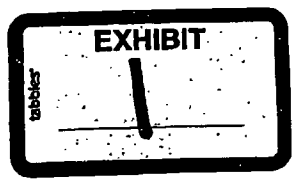
Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
1	* WACHOVIA BANK, NATIONAL ASSOCIATION (484422)		CHARLOTTE	NC	National Bank
2	-* WACHOVIA INTERNATIONAL BANKING CORPORATION (24837)	1	CHARLOTTE	NC	Edge Corporation - Investment
3	--* PHILADELPHIA INTERNATIONAL EQUITIES, INC. (1188156)	2	WILMINGTON	DE	Domestic Entity Other
4	—* + PHILADELPHIA NATIONAL LIMITED (1181915)	3	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
5	—* WACHOVIA SERVICES PTE. LTD. (2449827)	3	SINGAPORE	SINGAPORE	International Nonbank Sub of Domestic Entities
6	--* WACHOVIA CAPITAL FINANCE CORPORATION (CANADA) (2324803)	2	TORONTO	CANADA	Finance Company
7	--* WACHOVIA SECURITIES INTERNATIONAL LIMITED (2715063)	2	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
8	--* EVERGREEN WORLDWIDE DISTRIBUTORS, LTD. (2823632)	2	HAMILTON	BERMUDA	International Nonbank Sub of Domestic Entities
9	--* CONGRESS FINANCIAL CAPITAL (US) CORPORATION (3088830)	2	CHARLOTTE	NC	Domestic Entity Other
10	—* CONGRESS FINANCIAL CAPITAL COMPANY (3088885)	9	HALIFAX	CANADA	Finance Company
11	—* CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	10	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
12	—* + CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	9	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
13	--* WIBC ARUBA N.V. (3469167)	2	ORANJESTAD	ARUBA	International Nonbank Sub of Domestic Entities
14	-* FIRST NATIONAL PROPERTIES, INC. (1308945)	1	COLUMBIA	SC	Domestic Entity Other
15	-* WB LOAN FUNDING 3, LLC (3302992)	1	CHARLOTTE	NC	Domestic Entity Other
16	-* CALIBRE ADVISORY SERVICES, INC. (3308323)	1	WALTHAM	MA	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

^ Although this relationship is not governed by U.S. banking statutes, it is included because it is of interest to the Federal Reserve.



Report created: 6/3/2014

WACHOVIA BANK, NATIONAL ASSOCIATION (484422)

as of 11/29/2006

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
1294	-* POOLED AUTO SECURITIES SHELF LLC (2924557)	1	CHARLOTTE	NC	Domestic Entity Other
1295	--* WACHOVIA AUTO OWNER TRUST 2004-A (3287129)	1294	CHARLOTTE	NC	Domestic Entity Other
1296	--* WACHOVIA AUTO OWNER TRUST 2004-B (3291984)	1294	CHARLOTTE	NC	Domestic Entity Other
1297	--* WACHOVIA AUTO OWNER TRUST 2005-A (3308556)	1294	CHARLOTTE	NC	Domestic Entity Other
1298	--* WACHOVIA AUTO OWNER TRUST 2005-B (3368297)	1294	CHARLOTTE	NC	Domestic Entity Other
1299	--* WACHOVIA AUTO OWNER TRUST 2006-A (3384943)	1294	CHARLOTTE	NC	Domestic Entity Other
1300	-* WACHOVIA EXCHANGE SERVICES, LLC (2944274)	1	CHARLOTTE	NC	Domestic Entity Other
1301	--* TQI EXCHANGE, LLC (3302910)	1300	CHARLOTTE	NC	Domestic Entity Other
1302	--* HNB AUTO EXCHANGE, LLC (3379640)	1300	CHARLOTTE	NC	Domestic Entity Other
1303	--* RYDER EXCHANGE, LLC (3411214)	1300	CHARLOTTE	NC	Domestic Entity Other
1304	--* PHH FUNDING, LLC (3437214)	1300	CHARLOTTE	NC	Domestic Entity Other
1305	-* WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN) (1149296)	1	PASADENA	CA	Domestic Entity Other
1306	-* WACHOVIA EMPLOYER SOLUTIONS, LLC (3039458)	1	TAMPA	FL	Domestic Entity Other
1307	-* SOUTHTRUST INTERNATIONAL, INC. (3088979)	1	BIRMINGHAM	AL	Agreement Corporation - Investment
1308	--* SOUTHTRUST HONG KONG, LIMITED (3121483)	1307	CENTRAL	HONG KONG	Finance Company
1309	-* SUMMITT PELS FUNDING LLC (3147054)	1	CHARLOTTE	NC	Domestic Entity Other
1310	-* MW1-2002, LLC (3149937)	1	CHARLOTTE	NC	Domestic Entity Other
1311	-* SPFE, INC. (3151127)	1	CHARLOTTE	NC	Domestic Entity Other
1312	-* WACHOVIA LARGE LOAN, INC. (3157914)	1	CHARLOTTE	NC	Domestic Entity Other
1313	-* UNIVERSAL MASTER SERVICING, LLC (3165898)	1	CHARLOTTE	NC	Domestic Entity Other
1314	-* MONEY STORE, LLC, THE (3168536)	1	ROSEVILLE	CA	Domestic Entity Other
1315	--* WACHOVIA SBA LENDING, INC. (1675683)	1314	ROSEVILLE	CA	Domestic Entity Other
1316	---* WACHOVIA SBA HOLDINGS, INC. (2722799)	1315	ROSEVILLE	CA	Domestic Entity Other
1317	--* MONEY STORE/SERVICE CORP., THE (2722306)	1314	ROSEVILLE	CA	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

^ Although this relationship is not governed by U.S. banking statutes, it is included because it is of interest to the Federal Reserve.

Report created: 6/3/2014

WELLS FARGO BANK, NATIONAL ASSOCIATION (451965)

as of 05/01/2010

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
1	* WELLS FARGO BANK, NATIONAL ASSOCIATION (451965)		SIOUX FALLS	SD	National Bank
2	-* WACHOVIA INTERNATIONAL BANKING CORPORATION (24837)	1	CHARLOTTE	NC	Edge Corporation - Investment
3	--* PHILADELPHIA INTERNATIONAL EQUITIES, INC. (1188156)	2	WILMINGTON	DE	Domestic Entity Other
4	---* PHILADELPHIA NATIONAL LIMITED (1181915)	3	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
5	--* WELLS FARGO CAPITAL FINANCE CORPORATION CANADA (2324803)	2	TORONTO	CANADA	Finance Company
6	--* WELLS FARGO SECURITIES INTERNATIONAL LIMITED (2715063)	2	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
7	--* EVERGREEN WORLDWIDE DISTRIBUTORS, LTD. (2823632)	2	HAMILTON	BERMUDA	International Nonbank Sub of Domestic Entities
8	--* CONGRESS FINANCIAL CAPITAL (US) CORPORATION (3088830)	2	CHARLOTTE	NC	Domestic Entity Other
9	---* CONGRESS FINANCIAL CAPITAL COMPANY (3088885)	8	HALIFAX	CANADA	Finance Company
10	----* CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	9	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
11	---* + CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	8	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
12	--* WIBC ARUBA N.V. (3469167)	2	ORANJESTAD	ARUBA	International Nonbank Sub of Domestic Entities
13	--* WACHOVIA REAL ESTATE KOREA, INC. (3559273)	2	SEOUL	KOREA, SOUTH	International Nonbank Sub of Domestic Entities
14	-* WACHOVIA MORTGAGE CORPORATION (1073560)	1	CHARLOTTE	NC	Domestic Entity Other
15	--* RELS, L.L.C. (2724010)	14	DES MOINES	IA	Domestic Entity Other
16	---* RELS REPORTING SERVICES, L.L.C. (2377340)	15	DES MOINES	IA	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

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Report created: 6/3/2014

WELLS FARGO BANK, NATIONAL ASSOCIATION (451965)

as of 05/01/2010

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
54	-* J.L. KAPLAN ASSOCIATES, LLC (3153505)	1	BOSTON	MA	Domestic Entity Other
55	-* WACHOVIA PREFERRED REALTY, LLC (3153916)	1	ROSEVILLE	CA	Domestic Entity Other
56	-* WACHOVIA LARGE LOAN, INC. (3157914)	1	CHARLOTTE	NC	Domestic Entity Other
57	-* UNIVERSAL MASTER SERVICING, LLC (3165898)	1	CHARLOTTE	NC	Domestic Entity Other
58	-* SOUTHTRUST MORTGAGE CORPORATION (1079544)	1	MARIETTA	GA	Domestic Entity Other
59	-* MONEY STORE, LLC, THE (3168536)	1	ROSEVILLE	CA	Domestic Entity Other
60	--* WES HOLDING CORPORATION (3536537)	59	CHARLOTTE	NC	Domestic Entity Other
61	---* EQUITY INSURANCE AGENCY, INC. (2722696)	60	ROSEVILLE	CA	Domestic Entity Other
62	--* MONEY STORE/SERVICE CORP., THE (2722306)	59	ROSEVILLE	CA	Domestic Entity Other
63	---* TMS SPECIAL HOLDINGS, INC. (2722753)	62	ROSEVILLE	CA	Domestic Entity Other
64	--* WELLS FARGO EDUCATION FINANCE INC. (2722856)	59	RANCHO CORDOVA	CA	Finance Company
65	---* TMS STUDENT HOLDINGS INC. (2722865)	64	RANCHO CORDOVA	CA	Domestic Entity Other
66	—* WACHOVIA EDUCATION LOAN FUNDING LLC (3368309)	64	CHARLOTTE	NC	Finance Company
67	—* WACHOVIA STUDENT LOAN TRUST 2005-1 (3402641)	66	CHARLOTTE	NC	Domestic Entity Other
68	—* WACHOVIA STUDENT LOAN TRUST 2006-1 (3451984)	66	CHARLOTTE	NC	Domestic Entity Other
69	-* WACHOVIA ENCRYPTION TECHNOLOGIES, LLC (3175422)	1	CHARLOTTE	NC	Data Processing Servicer
70	-* WPFC ASSET FUNDING LLC (3182608)	1	CHARLOTTE	NC	Domestic Entity Other
71	-* WELLS FARGO CREDIT CARD FUNDING, LLC (3195532)	1	LAS VEGAS	NV	Finance Company
72	--* WELLS FARGO CREDIT CARD MASTER NOTE TRUST (3207798)	71	LAS VEGAS	NV	Domestic Entity Other
73	-* WELLS FARGO CAPITAL FINANCE, LLC (3197200)	1	SANTA MONICA	CA	Finance Company
74	--* WELLS FARGO DISTRIBUTION FINANCE, LLC (3601994)	73	SANTA MONICA	CA	Finance Company
75	-* OMNIPLUS CAPITAL CORPORATION (3221730)	1	NASHVILLE	TN	Domestic Entity Other

* Institutions Matching Selection Rule.

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

JUDGMENT IN A CIVIL CASE

Case No.: 09-CP-10-4700

Wachovia
Plaintiff

versus

Bentrim
Defendant

CHECK ONE:

[ ] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.

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

[X] ACTION DISMISSED (CHECK REASON): [ ] Rule 12(b), SCRCP; [X] Rule 41(a), SCRCP (Vol. nonsuit) [ ] Rule 43(k), SCRCP(Settled); [ ] Other -

[ ] ACTION STRICKEN (CHECK REASON): [ ] Rule 40(j),SCRCP; [ ] Bankruptcy; [ ] Binding Arbitration, Subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other

IT IS ORDERED AND ADJUDGED: [ ] See attached order; [ ] Statement of Judgment by Court

Case dismissed. TI Bank may not apply for 90 days and only after submitting to D Bentrim a payoff calculated amount.

Dated at Charleston, South Carolina, 7/7/10
Date

Judge

This judgment was entered on the ____ Day of _____, 20__, and a copy mailed first class this ____ Day of _____, 20__, to attorneys of record or to parties (when appearing pro-se) as follows:

JULIE J. ARMSTRONG
CLERK OF COURT

2010 JUL -9 PM 4:19

FILED

Attorney(s) for Plaintiff(s)

Attorney(s) for Defendant(s)

Clerk of Court

SCRP Form 4(Rev. 2/96)

EXHIBIT
tabbies
F

Baker, Jana

From: Bill Sloan [mailto:sloanlawfirm@yahoo.com]
Sent: Thursday, April 19, 2012 2:03 PM
To: brent@carolopolis.com
Cc: Baker, Jana
Subject: Re: Wells Fargo vs. Bentrim

Hi Jana:
Sorry I could not take your call. I had a pre-scheduled call with Brent.

1. I sent you discovery on the issue of servicing only which is the basis for the Compel Motion on Tuesday. As this is now a foreclosure, I am going to send you all my discovery. I am willing to delay the motion to compel.
2. My client has finally consented to amending your Answer to include the Countersuit. My client wishes to amend, therefore, his Complaint, to include actions for quiet title and other matters. PLease advise if you will consent to this. Otherwise, we will have to file a Rule 15 Motion.
3. As this is now a foreclosure for a primary residence, this action is stayed by the Admin. Order. Please send any paperwork that you want Mr. Bentirm to fill out to be considered by WF. Will you be filing the form Motion to remove the case from the active docket?
4. Mr. Bentrim would like to take this case to mediation. please let me know if your client would be willing to do this or if we should file a motion for mediation.

Please feel free to call me back. I have instructed Janice to interrupt me if I am in a meeting. Thank you, Bill Sloan

William H. Sloan
Sloan Law Firm
Post Office Box 85
Summerville, SC 29484
Phone 843-873-7531
FAX 843-873-7527
This e-mail is subject to attorney-client privilege. If you received this message in error, you are ordered to destroy this e-mail.

EXHIBIT
tabbies 6

Baker, Jana

From: Bill Sloan [mailto:sloanlawfirm@yahoo.com]
Sent: Friday, April 20, 2012 1:06 PM
To: Baker, Jana
Cc: brent@carolopolis.com
Subject: RE: Wells Fargo vs. Bentrim

Hi Jana. Please see my responses in bold.

Bill,

Great speaking with you yesterday. I spoke with my client and as discussed, we are in agreement. To clarify, I will set forth the points below and please confirm you agree. I will also notify the court that we resolved the motion to amend and the motion to compel, however, you will likely need to let Caroline know if you are continuing or withdrawing the motion to compel.

Therefore, we discussed and agreed to the following:

1. As counsel for Bentrim, you will consent to Wells Fargo's ("WF") Motion to Amend the Answer. Accordingly, I will draft a consent order allowing the amendment and send it to you to sign.

Yes

2. As discussed, once WF amends the answer, Bentrim, pursuant to Rule 15(a), SCRCP, has 30 days to amend the Complaint as of right (and therefore, he will not need our consent to amend the Complaint).

You quote 15-a correctly. However, per the Admin. Order, I will have 30 days from the date you file and serve me with a Certificate of Compliance (if applicable) that our attempts to modify or intervene per the Admin. Order fail. I would not be in default until 30 days after that Compliance is filed and served.

3. As counsel for Bentrim, you will withdraw or continue Bentrim's pending Motion to Compel. You agreed to narrow the documents concerning "the issue of servicing." You agreed send me the narrowed document list via email.

I reserve all rights under discovery. I will just withdraw the motion for now. If you want me to send the e-mail to Caroline, I will be happy to do that. Please send me her e-mail and I will copy you on that of course.

4. As counsel for Bentrim, you agreed to enter into a Consent Confidentiality Agreement with WF and understand WF will not produce the documents regarding "servicing" until the order is signed by the Chief

Administrative Judge and filed with the Court.

While reserving all rights on sending disocvery requests, I agree to bound by the confidentiality agreement similar to the one I signed with your firm on another WF case.

5. Once the Answer is amended, the case will be a foreclosure action involving borrower's primary residence, and therefore, the case is subject to the Chief Justice's administrative order and will be stayed while the parties engage in foreclosure intervention. Accordingly, we both agreed that we should remove the case from the active docket to allow the parties time to engage in foreclosure intervention. However, we both agreed that the parties could still conduct discovery during this time. **Correct**

6. Since this case is now a foreclosure action involving borrower's primary residence, I will send you the HAMP package to complete to determine if borrower is eligible for a loan modification under HAMP upon receipt of same.

Very well. I think to follow procedure, you should serve me with the Amended answer and the Notice of Right to Foreclosure Intervention. I will file a response to this requesting intervention and file it with the court and serve it on you.

7. If we cannot resolve this case via a potential loan modification, we are amenable to mediation. **good**

8. Mr. Bentrim will plan to amend his Complaint to include issues regarding the foreclosure and not just the servicing issues in his Complaint. I will send you a copy of it before I file to see if you will consent to it. If not, I will file a Motion to Amend, but not before consulation.

Thanks, Jana **Your welcome, Bill**

From: Bill Sloan [mailto:sloanlawfirm@yahoo.com]
Sent: Thursday, April 19, 2012 2:03 PM
To: brent@carolopolis.com
Cc: Baker, Jana
Subject: Re: Wells Fargo vs. Bentrim

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Motion to remove the case from the active docket?

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Please feel free to call me back. I have instructed Janice to interrupt me if I am in a meeting. Thank you, Bill Sloan

William H. Sloan
Sloan Law Firm
Post Office Box 85
Summerville, SC 29484
Phone 843-873-7531
FAX 843-873-7527
This e-mail is subject to attorney-client privilege. If you received this message in error, you are ordered to destroy this e-mail.

Subject: RE: Referral

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-10-2946

Brent E. Bentrim,

PLAINTIFF(S)

Wells Fargo Bank, N.A.

DEFENDANT(S)

Submitted by: Jana B. Baker Womble Carlyle Sandridge & Rice, LLP 5 Exchange Street Charleston, SC 29401	**Attorney for :** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit), ☐ Rule 43(k), SCRCP (Settled), ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ 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

FILED
2012 APR 25 AM 9:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court. CONSENT ORDER GRANTING MOTION TO AMEND ANSWER

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk

INFORMATION FOR THE PUBLIC INDEX

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

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

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

SCRCP Form 4C (10/2011)

EXHIBIT H

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 | 2163 Judge Code | 4/23/12 Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Brent E. Bentrim, Plaintiff, v. Wells Fargo Bank, N.A., Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-2946 **CONSENT ORDER GRANTING DEFENDANT'S MOTION TO AMEND ANSWER**

FILED
2012 APR 23 AM 9:56
JULIE ARMSTRONG
CLERK OF COURT
BY

Whereas, the Defendant, Wells Fargo Bank, N.A., seeks to amend its Answer pursuant to South Carolina Rule of Civil Procedure 15(a), SCRCP, in order to assert additional defenses against Brent E. Bentrim and the following counterclaims: (i) real estate foreclosure; and, (ii) suit on promissory note; and,

Whereas, the Plaintiff Brent E. Bentrim consents to this amendment pursuant to Rule 15(a), SCRCP.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant Wells Fargo Bank, N.A., shall be allowed to file an Amended Answer and Counterclaim pursuant to Rule 15(a), SCRCP, within fifteen (15) days of from the date of filing of this Order to assert additional defenses against Brent E. Bentrim and the following counterclaims: (i) real estate foreclosure; and, (ii) suit on promissory note.

AND IT IS SO ORDERED.

The Honorable Stephanie P. McDonald
Presiding Judge, Ninth Judicial Circuit

April 23, 2012
Charleston, South Carolina

WE MOVE:

Jana B. Baker, S.C. Bar No.72487
William R. Warnock, Jr., S.C. Bar No. 76248
WOMBLE CARLYLE SANDRIDGE & RICE
5 Exchange Street
P.O. Box 999
Charleston, SC 29402
(843) 722-3400
(843) 723-7398 (fax)
ATTORNEYS FOR DEFENDANT

April 23, 2012
Charleston, South Carolina

WE CONSENT:

William H. Sloan
P.O. Box 85
Summerville, SC 29484
(843) 873-7531
(843) 873-7527 fax

ATTORNEY FOR THE PLAINTIFF

April 20, 2012
Charleston, South Carolina

JULIE J. ARMSTRONG
CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258
RETURN SERVICE REQUESTED

CHARLESTON COUNTY SOUTH CAROLINA

www3.charlestoncounty.org

Jana Bebergal Baker
Womble Carlyle Sandridge & Rice Pllc
P.O. Box 999
Charleston, SC 29402

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRCP

Order/Consent Order granting defnt's mot to amend answer

CASE NO: 2011CP1002946
Brent E Bentrim VS Wells Fargo Bank NA

This judgment was entered on the 25th day of April, 2012, and a copy mailed first class on Thursday, May 03, 2012, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at www3.charlestoncounty.org.

1820102_20120503042O1.00676

WOMBLE CARLYLE SANDRIDGE & RICE
A PROFESSIONAL LIMITED LIABILITY COMPANY

5 Exchange Street
Charleston, SC 29401

Mailing Address:
Post Office Box 999
Charleston, SC 29402
Telephone: (843) 722-3400
Fax: (843) 723-7398
www.wcsr.com

JANA B. BAKER
ATTORNEY AT LAW
E-Mail: jabaker@wcsr.com
Direct Dial: (843) 720-4635

Certified Article Number
7196 9008 9111 1669 3126
SENDERS RECORD

September 27, 2011

Via Certified Mail/
Return Receipt Requested,
And Regular Mail
Brent E. Bentrim
10 Nicholson Street
Charleston, S.C. 29407

RE: $182,700.00 Negotiable Promissory Note dated March 12, 2002, from Brent E. Bentrim to First Union National Bank
Loan Number: WF-0513328-01
Our File No.: 63002.0092.1

Dear Mr. Bentrim:

This law firm represents Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A., as successor by merger to First Union National Bank (the "**Lender**"). Reference is made to that certain loan (the "**Loan**") evidenced by that certain Negotiable Promissory Note dated March 12, 2002, in the original principal amount of **ONE HUNDRED EIGHTY-TWO THOUSAND SEVEN HUNDRED AND NO/100THS ($182,700.00) DOLLARS** (the "**Note**") given by Brent E. Bentrim (the "**Borrower**"), in favor of Lender. **This is an attempt to collect a debt owed to Lender and any information obtained will be used for that purpose.**

The Note is secured by, among other things, that certain Mortgage dated March 12, 2002, between Borrower and Lender, and recorded in the RMC Office for Charleston County, South Carolina in Mortgage Book C-402 at Page 182 (the "**Mortgage**"). Except as otherwise provided herein, all terms herein shall have the meanings ascribed thereto in the documents related to the Loan, including but not limited to the Note and Mortgage, and all other documents related to the Loan (the "**Loan Documents**").

The Note provides, among other things, that the failure to make a payment as required under the terms of the Note constitutes an event of default. Borrower has failed to pay the

EXHIBIT
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amounts due and owing under the terms of the Note and is therefore in default of his obligations under the terms of the Note and Loan Documents.

Under the terms of the Note and the Loan Documents, an event of default by Borrower entitles Lender to, among other things, (i) demand immediate payment of all amounts owed under the Note including, without limitation, the principal, unpaid interest and other accrued charges; and, (ii) foreclosure of the property secured by the Mortgage under power of sale by judicial proceeding and sale of the property. By this letter, Lender is exercising its right to demand payment of all amounts owed under the terms of the Note and hereby demands full payment by Borrower of all amounts due and owing on the Note.

As of August 31, 2011, the amount due under the terms of the Note was **$200,152.24**, exclusive of attorneys' fees and costs, and is computed as follows:

Principal:	$176,879.20
Interest:	$21,621.89
Late Charges:	$83.02
Other Charges:	$606.13
Term Fees:	$962.00
Total:	**$200,152.24**

Lender is hereby making demand upon you to pay the sum of **TWO HUNDRED THOUSAND ONE HUNDRED FIFTY-TWO AND 24/100THS ($200,152.24) DOLLARS** plus additional accrued interest, Lender's costs, expenses and reasonable attorneys' fees on or before the close of business on Friday, October 28, 2011. Under the terms of the Note, interest continues to accrue each day at the currently calculated rate of $16.91 per day. This per diem interest figure is exclusive of late fees, attorneys' fees and costs.

Lender hereby reserves all other rights and remedies it may have against you under the terms of the Note and all other documents evidencing or securing the Note and granted by law or equity, including, without limitation, the right to collect from you default interest, late charges and legal fees, and all other expenses Lender may incur by reason of your default and any failure to pay the above sums when due, including, without limitation attorneys fees and costs.

Any partial payment(s) that may be made or received on account of the Loan shall not constitute an agreement to waive demand for full payment of all amounts due under the Loan. Nothing contained in this letter constitutes a waiver of, or any agreement to forbear from exercising any rights and remedies under the Loan Documents, at law or in equity, which such rights and remedies are expressly reserved.

Please be advised that pursuant to the terms of the Loan, Wells Fargo also reserves the right to collect a deficiency balance, if any.

Please be further advised of the following:

1. The total amount of the debt which Lender is trying to collect is described above in the first and second full paragraphs of this page.

2. The creditor to whom the debt is owed is Wells Fargo Bank, N.A., successor by merger to Wachovia Bank, N.A., as successor by merger to First Union National Bank, FL 0503, Collection Shared Services, P.O. 52117, Jacksonville, Florida 32201-2117.

3. The debt described in this document will be assumed to be valid by this law firm, unless you, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.

4. If you notify this law firm in writing, within thirty (30) days of the receipt of this notice, that the debt or any portion thereof is disputed, this law firm will obtain a verification of the debt and a copy of the verification will be mailed to you by this law firm.

5. Written requests should be addressed to: Jana B. Baker, Esq., Womble Carlyle Sandridge & Rice, PLLC, 5 Exchange Street, P.O. Box 999, Charleston, South Carolina 29402, (843) 722-3400.

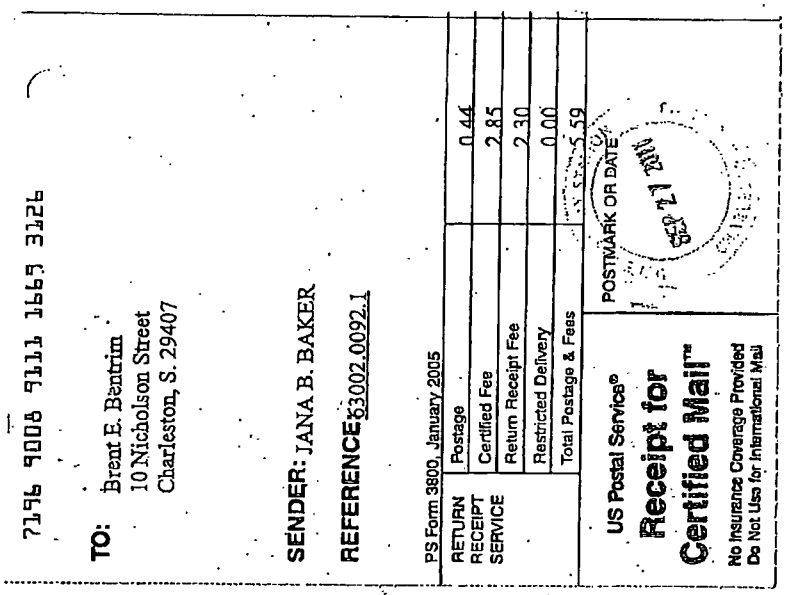
Sincerely,

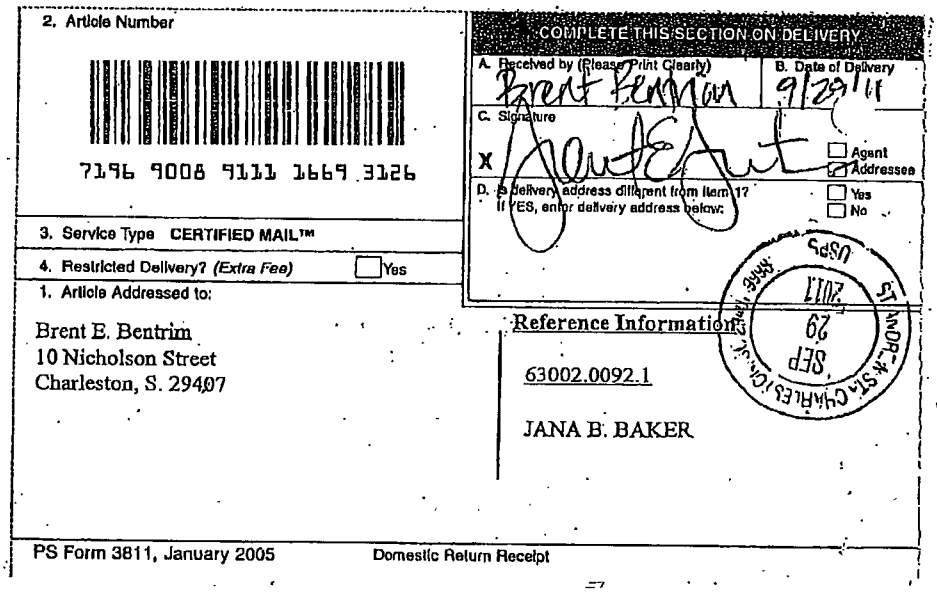
WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company

Jana B. Baker

JBB/cve
Enclosures

WCSR 6906538v5A


7196 9008 9111 1665 3126
TO: Brent E. Bentrim
10 Nicholson Street
Charleston, S. 29407
SENDER: JANA B. BAKER
REFERENCE: 63002.0092.1
PS Form 3800, January 2005
RETURN RECEIPT SERVICE
Postage 0.44
Certified Fee 2.85
Return Receipt Fee 2.30
Restricted Delivery 0.00
Total Postage & Fees $5.59
POSTMARK OR DATE
US Postal Service
Receipt for Certified Mail
No Insurance Coverage Provided
Do Not Use for International Mail


2. Article Number
7196 9008 9111 1669 3126
COMPLETE THIS SECTION ON DELIVERY
A. Received by (Please Print Clearly) Brent Bentrim
B. Date of Delivery 9/29/11
C. Signature
X
Agent
Addressee
D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No
3. Service Type CERTIFIED MAIL™
4. Restricted Delivery? (Extra Fee) Yes
1. Article Addressed to:
Brent E. Bentrim
10 Nicholson Street
Charleston, S. 29407
Reference Information
63002.0092.1
JANA B. BAKER
USPS
SEP 29 2011
ST. NORTH CHARLESTON, S.C.
PS Form 3811, January 2005
Domestic Return Receipt

BKC 402PG182

Return To:
First Union National Bank
Consumer Loan Operations
P.O. Box 50010
Roanoke, VA 24022
Parcel No:

Prepared By:

MORTGAGE

THIS MORTGAGE made this day 12 March, 2002 between the Mortgagor, Brent E. Bentrim

(herein "Borrower"), and the Mortgagee, First Union National Bank, a national banking association organized and existing under the laws of the United States of America, whose address is First Union National Bank, 301 South College Street, NC 0630, Charlotte, North Carolina 28288-0630 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. $ 182700.00 which indebtedness is evidenced by Borrower's Note dated 03/12/02 extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on 04/11/32.

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described Property located in the County of Charleston, State of South Carolina:

SEE ATTACHED EXHIBIT "A" INCORPORATED HEREIN BY REFERENCE

which has the address of 10 NICHOLSON STREET
CHARLESTON SC 29407
and Parcel No. 421-02-00-107 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the Property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the Property covered by this Mortgage; and all of the foregoing, together with said Property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenant and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

EXHIBIT J

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.

2. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

3. Hazard Insurance. a) Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards, including floods or flood, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 5.

b) All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgagee clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

c) Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property or does not answer within thirty (30) days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

d) Except as provided in subparagraph 3(e) below, should partial or complete destruction or damage occur to the Property, Borrower hereby agrees that any and all instruments evidencing insurance proceeds received by Lender as a result of said damage or destruction, shall be placed in a non-interest bearing escrow account with Lender. At Lender's discretion, Lender may release some or all of the proceeds from escrow after Borrower presents Lender with a receipt(s), invoice(s), written estimates(s) or other document(s) acceptable to Lender which relates to the repair and/or improvements of the Property necessary as a result of said damage and/or destruction. Absent an agreement to the contrary, Lender shall not be required to pay Borrower any interest on the proceeds held in the escrow account. Any amounts remaining in the account after all repairs and/or improvements have been made to the Lender's satisfaction, shall be applied to the sums secured by this Mortgage. Borrower further agrees to cooperate with Lender by endorsing all checks, drafts and/or other instruments evidencing insurance proceeds and any necessary documents. Should Borrower fail to provide any required endorsement and/or execution within thirty (30) days after Lender sends Borrower notice that Lender has received an instrument evidencing insurance proceeds, or document(s) requiring Borrower's signature, Borrower hereby authorizes Lender to endorse said instrument and/or document(s) on Borrower's behalf, and collect and apply said proceeds at Lender's option, either to restoration or repair of the Property or to sums secured by this Mortgage. It is not the intention of either party that this escrow provision, and/or Lender's endorsement or execution of an instrument(s) and/or document(s) on behalf of Borrower create a fiduciary or agency relationship between Lender and Borrower.

e) Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraph 1 or change the amount of the payments. If under paragraph 15 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument.

4. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

5. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest in the Property.

Any amounts disbursed by Lender pursuant to this paragraph 5, with interest thereon from the date of disbursal, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon

notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder.

6. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's Interest in the Property.

7. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

8. **Borrower Not Released; Forbearance by Lender Not a Waiver.** The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) the sale of all or a part of the premises; (b) the assumption by another party of the Borrower's obligations hereunder; (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the Property; and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder, to the extent permitted by applicable law.

Any forbearance by Lender in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

9. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of paragraph 14, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender.

10. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate in writing by notice to Lender as provided herein, and any other person personally liable on this Note as these persons' names and addresses appear in the Lender's records at the time of giving notice and (b) any notice to Lender shall be given by first class mail to Lender's address at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

11. **Governing Law; Severability.** The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs," "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

12. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Note, this Mortgage and Rider(s) at the time of execution or after recordation hereof.

13. **Rehabilitation Loan Agreement.** Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

14. **Transfer of the Property or a Beneficial Interest in Borrower; Assumption.** As used in this paragraph 14, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written

BEP

consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is given in accordance with paragraph 10 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies by this Security Instrument without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

15. Default; Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived. Lender may invoke the power of sale hereby granted. Lender shall have the right to enter upon and take possession of the Property hereby conveyed or shall without taking such possession have the right to sell the same at public auction for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale, in some newspaper published in said county, and upon payment of the purchase money, the Lender, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors, a good and sufficient deed to the Property sold; the Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said Property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of said sale; and fourth, the balance, if any, shall be paid over to the said Borrowers or to whomever then appears of record to be the owner of said Property. The Lender may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder.

16. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued if: (a) Borrower pays Lender all sums which would be then due under this Mortgage, this Note and Notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in this Mortgage, and in enforcing Lender's remedies as provided in paragraph 15 hereof, including, but not limited to, reasonable attorneys' fees; and (d) Borrower takes such action, as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

17. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that so long as Borrower is not in default hereunder, Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration and/or foreclosure under paragraph 15 hereof, or abandonment of the Property, Lender, in person or by agent, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. The Lender shall be liable to account only for those rents actually received prior to the foreclosure sale as provided in paragraph 15. Lender shall not be liable to account to Borrower or to any other person claiming any interest in the Property for any rents received after foreclosure.

18. Loan Charges. If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed permitted limits, then: (a) any such loan charges shall be reduced by the amount necessary to reduce the charge to the permitted limit and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by mailing a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment under the Note.

19. Legislation. If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rider, unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Mortgage or the Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

20. Satisfaction. Upon payment of all sums secured by this Mortgage, the conveyance of the Property pursuant to this Mortgage shall become null and void and Lender shall release this Mortgage. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

21. Waiver of Homestead. Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of dower and curtesy in the Property.

BGB

22. Hazardous Substances. Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit, or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal, or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 22, "Hazardous Substances" are those substances defined as toxic or Hazardous Substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 22, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety, or environmental protection.

REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender at First Union National Bank, Consumer Loan Operations, P.O. Box 50010, Roanoke, VA 24022 of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of:

Witness

Robert J. Donaldson, III
Witness Name Typed or Printed

Witness

Bridget G. Legare
Witness Name Typed or Printed

X _____ [SEAL]
Borrower Brent E. Bentrin

_____ [SEAL]
Borrower

_____ [SEAL]
Borrower

_____ [SEAL]
Borrower

State of South Carolina

County of Charleston

Before me, the undersigned Notary Public, personally appeared Robert J. Donaldson, III who being duly sworn, deposed and said that (s)he saw Brent E. Bentrin sign, seal and deliver the foregoing Mortgage and that (s)he, together with Bridget G. Legare witnessed the execution thereof.

SWORN to and subscribed before me this 12th day of March, 2002.

Witness

_____ [SEAL]
Notary Public for South Carolina

Bridget G. Legare
Notary Public Name (Typed or Printed)

My Commission Expires: 1/31/12

Davidson
Bennett
&Wigger
ATTORNEYS AT LAW

MW

BK C 402PG 188

FILED
C402-182
2002 APR -3 PM 3:15
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

12.00
C

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andrews parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Bymes Downs, which plat was made by W. A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat book F, Page 178 and on plat made by W. A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

BEING the same property conveyed to the Mortgagor herein by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded in the RMC Office for Charleston County, South Carolina in Book B356 at Page 214.

TMS # 421-02-00-107

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO.: 11-CP-10-2946

Brent E. Bentrim,

[x] Plaintiff,

v.

Wells Fargo Bank, N.A.,

[ ] Defendant.

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

check box above indicating submitting party

Name, S.C. Bar no. and address of plaintiff=s attorney	Name, S.C. Bar no. and address of defendant=s attorney
Robert B. Varnado, Esquire Brown & Varnado LLC P.O. Box 1127 Mt. Pleasant, SC 29465 telephone: (843) 737-7300 fax: (843) 654-5109 e-mail: rvarnado@brown-varnado.com	S. Sterling Laney, III, Esquire Jana Baker, Esquire John C. Hawk IV, Esquire Womble Caryle Sandridge & Rice, LLP P.O. Box 999 Charleston, SC 29402 (843) 720-4635 jabaker@wcsr.com

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

SECTION I: Hearing Information

Nature of Motion: Motion to Compel
Estimated Time Needed: 15 min Court Reporter Needed: yes

SECTION II: Motion/Order Type

[X] Written motion attached
[ ] Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff — **May 30, 2014** Date submitted

SECTION III: Motion Fee

[X] PAID B AMOUNT: $25.00
[ ] EXEMPT: (check reason)
[ ] Rule to Show Cause in Child or Spousal Support
[ ] Domestic Abuse or Abuse and Neglect
[ ] Indigent Status [ ] State Agency v. Indigent Party
[ ] Sexually Violent Predator Act Post-Conviction Relief
[ ] Motion for Stay in Bankruptcy
[ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP)
[ ] Proposed order submitted at request of the court; or, reduced to writing from motibn made in open court per judge=s instructions
Name of Court Reporter: _____
[ ] Other: _____

JUDGE'S SECTION

[ ] Motion Fee to be paid upon filing of the attached order.
[ ] Other: _____

_____
JUDGE
CODE: _____ Date: _____

CLERK=S VERIFICATION

Collected by: _____ DATE FILED
(print name)
[ ] MOTION FEE COLLECTED: _____
[ ] CONTESTED B AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	
	)	**NOTICE OF MOTION AND MOTION**
v.	)	**TO COMPEL**
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	

FILED
2014 MAY 30 PM 4:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CHARLES M. BAKER III, ESQUIRE, S. STERLING LANEY III, ESQUIRE, and JOHN C. HAWK IV, ESQUIRE, ATTORNEYS FOR DEFENDANT:

PLEASE TAKE NOTICE that the above-named Plaintiff, Brent E. Bentrim ("Plaintiff" or "Bentrim"), by and through his undersigned attorneys and pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, will move before the Honorable Mikell R. Scarborough, Charleston County Master in Equity, at such time, date and place as counsel may be heard, or on June 9, 2014 at 3:00 p.m. at the Charleston County Courthouse, for an order to compel the Defendant Wells Fargo Bank, N.A. ("Wells Fargo") to produce the following sets of documents and/or witness identification pursuant to the Court's Discovery Order of March 5, 2014 ("March 5 Discovery Order"), as amended by the Form 4 Order of March 11, 2014.

1. Subject to Plaintiff's motion to reconsider the Court's Discovery Order of May 14, 2014 ("May 14 Discovery Order"), the Plaintiff moves to compel servicing tables maintained in the ALCS pursuant to Page 2, Paragraph 1 of the March 5 Discovery Order ("*Within thirty (30) days of the hearing on this motion, WFB, NA shall produce any servicing records it has in its possession, custody or control pertaining to the subject loan, whether maintained electronically or on paper ...*"):

a. ALT0183 LOAN EXTENSION SUBVENTION
b. ALT0184 LOAN FEES (front end fees)
c. ALT0185 LOAN STATEMENTS AND COUPONS
d. ALT0187 LOAN RECURRING FEES
e. ALT0191 LOAN VIR INTEREST/SPLIT RATE
f. ALT0192 LOAN DELINQUENCY
g. ALT0193 LOAN CIF ACCOUNT
h. ALT0194 LOAN USER DATA
i. ALT0195 LOAN INSURANCE TYPE
j. ALT0196 LOAN PAYMENT SCHEDULES
k. ALT0197 LOAN EXPENSES
l. ALT0198 LOAN COLLATERAL
m. ALT0200 LOAN HISTORY
n. ALT0182 LOAN COMMON

2. Subject to Plaintiff's motion to reconsider the Court's Discovery Order of May 14, 2014 ("May 14 Discovery Order"), the Plaintiff moves to compel servicing files maintained in the ALCS: ALRS9915 & ALRS9905 also under Page 2, Paragraph 1 of the March 5 Discovery Order.

3. The Plaintiff moves to compel all vault records and/or records showing movement of the Note, including the records the Lost Note Affiant Tracy Thomas testified about at some length, pursuant to Page 2, Paragraph 3 of the March 5 Discovery Order ("*Within thirty (30) days of the hearing on this motion, WFB, NA shall produce all records in its possession, custody or control that are vault records showing the movement of original notes, etc. associated with the subject loan in and out of WFB, NA's (or predecessors') vaults, and/or documents which show the physical custody and control of the note associated with the subject loan at all times by WFB, NA or its predecessors, and their employees, agents, counsel, etc.*").

4. The Plaintiff moves to compel the name of the witness and documents relating to the sale and repurchase of the Note pursuant to Page 3, Paragraph 7 of the March 5 Discovery Order ("*Within thirty (30) days of the hearing on this motion, WFB, NA shall produce all records in its possession, custody or control relating in any way to the sale, repurchase, transfer, assignment,*

delivery or hypothecation of the Notes or Mortgages associated with the subject loan to any third-party, including but not limited to supporting documentation concerning the sale noted on the ACLS History card at 5/29/06 and the repurchase on 5/13/10. Furthermore, WFB, NA shall produce a fact witness for deposition at a mutually convenient time and place for the specific and limited purpose of testifying as to any sale and/or repurchase of the subject loan.")

5. The Plaintiff moves to compel all First Union National Bank servicing records pursuant to Page 3, Paragraph 7 of the March 5 Discovery Order: ("*Within thirty days of the hearing on this matter, WFB, NA shall produce any documents in its possession, custody or control relating to the servicing of the subject loan by First Union National Bank.*")

This motion is supported by the affidavits of Casimira Kita and Clifton D. Bodiford, and by such other and further memorandum as may be filed by the Plaintiff in accordance with the rules.

Pursuant to Rule 11 SCRCP, consultation was made with opposing counsel and/or would serve no useful purpose. Plaintiff seeks recovery of his reasonable attorneys' fees and costs incurred herein.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiff

May 30, 2014
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served the attached ***Plaintiff's Motion to Compel*** in the above-captioned action by hand deliveryto the attorneys for the Defendant as follows:

S. Sterling Laney, III, Esquire
Jana Baker, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorney for Defendant

Elizabeth T. Plasters
Paralegal to Robert B. Varnado, Esq.

May 30, 2014
Mount Pleasant, South Carolina

FILED
2014 MAY 30 PM 4:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
BRENT E. BENTRIM	)	
	)	
Plaintiff,	)	**AFFIDAVIT OF CASIMIRA KITA**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED before me, the undersigned Casimira Kita, who, after being duly sworn depose and state as follows:

1. I am an adult over the age of 18 and competent to make this affidavit. A copy of my C.V. is attached.
2. I am an independent consultant and subject matter expert on the Advanced Consumer Lending System (ACLS) owned and manufactured by CGI Group, Inc. [CGI].
3. I have spent 23 years with CGI and its clients on the development, implementation and servicing of ACLS -- including designing, programming and testing software changes and loan conversion from other servicing platforms.
4. I am intimately familiar with the reporting capabilities and loan level data held in ACLS.
5. I have reviewed the ACLS files provided by the Defendant to the Plaintiff.
6. Accounts that are booked on ACLS are controlled by the parameters in the Bank Control File (BCF), which are files ALRS9915 & ALRS9905. Files and tables are interrelated and cannot operate independently of one another.

7. To my knowledge, neither ALRS9915 & ALRS9905 have been produced and would constitute servicing records.

8. Many fields that control the account processing are internal fields and are not displayed on any report which means the missing tables are required in order to understand fully the information contained on the history card that was provided.

9. The transaction history records are used for the Customer History Card. Not all the data on the transaction history record are shown on the History Card Report, however.

10. All the transactions details are on the Master File Display. These are used to validate all the changes on the account in the order they were processed.

11. After reviewing the Master File Display for the Loan, I affirm it is incomplete, missing the following TABLES – all of which constitute servicing records maintained in ACLS:

a.	ALT0184	LOAN FEES (front end fees)
b.	ALT0185	LOAN STATEMENTS AND COUPONS
c.	ALT0187	LOAN RECURRING FEES
d.	ALT0191	LOAN VIR INTEREST/SPLIT RATE
e.	ALT0192	LOAN DELINQUENCY
f.	ALT0193	LOAN CIF ACCOUNT
g.	ALT0194	LOAN USER DATA
h.	ALT0195	LOAN INSURANCE TYPE
i.	ALT0196	LOAN PAYMENT SCHEDULES
j.	ALT0197	LOAN EXPENSES
k.	ALT0198	LOAN COLLATERAL
l.	ALT0200	LOAN HISTORY
m.	ALT0325	LOAN TICKLER.

12. In addition to the Bank and Type records, the pool and investor records are maintained by ACLS. The specific account in question was defined to a pool that was sold to an investor.

13. In order to obtain and verify the identity and investors in Pool 794, shown to be the owner of the subject loan on December 1, 2006, March 8, 2007 and May 30, 2009 the following records are required:

a. SLIA for the Investor, or a printout of table ALT0271

b. SLAA for the Pool, or a printout of table ALT0297

14. These servicing records should not be overly burdensome and can be produced within 10 to 15 minutes

FURTHER AFFIANT SAYETH NOT.

Casimira Kita

SWORN TO AND SUBSCRIBED BY ME
this 23rd day of May, 2014.

Heather R Mouhourtis
Notary Public for the State of Florida
My Commission Expires: 2-11-15

HEATHER R MOUHOURTIS
Notary Public - State of Florida
My Comm. Expires Feb 11, 2015
Commission # EE 58638

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
BRENT E. BENTRIM	)	
	)	**SECOND AFFIDAVIT OF**
Plaintiff,	)	**CLIFTON D. BODIFORD**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED before me, the undersigned Clifton D. Bodiford, CPA, who, after being duly sworn depose and state as follows:

1. I am an adult over the age of 18 and competent to make this affidavit.
2. I am a certified public accountant practicing in Columbia, South Carolina. I have over 40 years of experience in accounting; there has been no lapse in my CPA status since I began practice. My C.V. is attached.
3. Within my practice, I specialize in providing consulting and audit services to the financial services industry including nationally chartered banks. As such have reviewed the accounting for loan and the accounting for the sales of loans and participation interests in loans.
4. I have reviewed the following documents produced by the Defendant: WF2294, WF2299, WF2300, WF2301, WF2302, WF2303, WF2304 and WF2305.
5. I have expertise related to Financial Accounting Standards Board (FASB) Statement Number 140 (the identification number before the codification) as it applies to the accounting for loans owned and the loans sold on December 1, 2006.

6. Whole loans (the entire loan balance) or a participation interest in a loan (a percentage of the loan) may be sold by the entity holding the loan. In either event – whether the entire loan or a portion of the loan is transferred -- the transfer of ownership constitutes a sale,
7. The transaction described in WF2301 indicates Wachovia Bank, NA loaned The Money Store/ Service Corp the funds to purchase loans from Wachovia Bank, NA.
8. The documents reviewed indicate the Wachovia Bank, NA sold the loans in question, as without a sale there would have been no gain to recognize as was reflected in the journal entries (regardless of whether or not the gain was or was not eliminated in consolidation).

FURTHER AFFIANT SAYETH NOT.

Clifton D. Bodiford

SWORN TO AND SUBSCRIBED BY ME
this 23 day of May, 2014.

Melissa B Buchanan
Notary Public for the State of South Carolina
My Commission Expires: 10/19/15

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BRENT E. BENTRIM, PLAINTIFF, V. WELLS FARGO BANK, N.A., DEFENDANT.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-2946 **DEFENDANT WELLS FARGO BANK N.A.'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

FILED
2011 MAY 19 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT

TO: ROBERT B. VARNADO, ESQUIRE, ATTORNEY FOR PLAINTIFF

PLEASE TAKE NOTICE that the Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"), by its undersigned counsel, will move before the Master In Equity, Ninth Judicial Circuit, Charleston, South Carolina, at such place and time as the Court may appoint, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an order granting it summary judgment on the grounds that there is no genuine issue of material fact and it are entitled to judgment as a matter of law. More specifically, this Motion is based upon the following grounds, organized by cause of action:

1. **Negligence/Gross Negligence (First Cause of Action)**

   a. The underlying allegations of Plaintiff's negligence cause of action arise solely out of his contractual relationship with Wells Fargo and therefore Plaintiff's claim cannot sound in tort. *See Waterpointe I Property Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 536 S.E.2d 878 (Ct. App. 2000) (noting that alleging a breach of duty does not establish a tort claim where the duty arose solely from the subject contract).

b. Plaintiff's negligence claim is governed by a three-year limitations period. Plaintiff alleges errors with the origination and servicing of his loan, but he admits that he has known about the alleged issues since shortly after the loan closing in 2002. Because Plaintiff knew or should have known of the issues for which he now complains for nine years before he brought this lawsuit, his negligence claim is barred by the applicable statutes of limitation.

c. At all times relevant to this lawsuit, the relationship between Plaintiff and Wells Fargo was that of debtor-creditor, and therefore no special duty arose between the two parties which could give rise to claims of negligence.

2. Negligent Misrepresentation (Second Cause of Action)

a. The underlying allegations of Plaintiff's negligence cause of action arise solely out of his aforementioned contractual relationship with Wells Fargo and therefore Plaintiff's claim cannot sound in tort. *See Waterpointe v. Paragon, supra.*

b. As to any representations which allegedly occurred prior to April 2008 regarding the subject loan, Plaintiff's claims as to such claims are barred by the applicable three-year limitations period.

c. Plaintiff has no evidence that the alleged representations made by Wells Fargo were false at the time they were made. Accordingly, there cannot be any liability on the part of Wells Fargo for such allegations. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993) (holding that "[t]o be actionable, the representation must relate to a present or pre-existing fact and be false when made").

d. Plaintiff has no evidence that Wells Fargo failed to exercise due care in any communications with him.

e. Plaintiff has no evidence that his alleged reliance on any alleged negligent representation proximately caused him to suffer any pecuniary loss.

3. Breach of Implied Covenant of Good Faith and Fair Dealing (Third Cause of Action)

a. Plaintiff's breach of contract claim was dismissed with prejudice by order of Judge Markley Dennis on November 20, 2012. Plaintiff did not file a Rule 59 motion regarding this order from Judge Dennis, nor did he appeal the order. Accordingly, Plaintiff is barred from now filing any cause of action based upon breach of contract and this cause of action should be dismissed with prejudice. *See RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004) (holding that the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract).

b. Additionally, any claim for the breach of good faith and fair dealing which is based on conduct occurring prior to April 2008 is barred by the applicable statute of limitations.

4. Breach of Contract Accompanied by a Fraudulent Act (Fourth Cause of Action)

a. As noted in the preceding section, Plaintiff's breach of contract claim was dismissed with prejudice by order of Judge Markley Dennis on November 20, 2012. Breach of contract is a required element of breach of contract accompanied by a fraudulent act. *See id.* at 470, 597 S.E.2d at 883 (finding that to maintain an action for breach of contract accompanied by a fraudulent

act, a plaintiff must prove three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach). Accordingly, this cause of action should be dismissed with prejudice.

b. Additionally, any claim for breach of contract accompanied by a fraudulent act which is based on conduct occurring prior to April 2008 is barred by the applicable statute of limitations.

5. Conversion (Fifth and Tenth Causes of Action)

a. The contractual relationship between Plaintiff and Wells Fargo is solely that of debtor and creditor. Further, the only funds which Wells Fargo received from Plaintiff were payments on the subject loan. An action cannot lie in conversion based on these facts. *See Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 220 S.E.2d 116 (1978) (holding that there can be no conversion where there is a mere obligation to pay a debt and that an action based on conversion of the funds representing the debt is improper where the relationship of the parties is merely that of debtor-creditor).

b. Further, Plaintiff voluntarily paid Wells Fargo each and every monetary payment which he is now alleging Wells Fargo wrongfully converted to its own use.

6. Fraud/Fraudulent Misrepresentation/Constructive Fraud (Sixth and Seventh Causes of Action)

a. Plaintiff has failed to state or plead with particularity the circumstances constituting fraud as required by Rule 9(b), SCRCP. *See also Bookhart v. Central Elec. Power Cooperative, Inc., 222 S.C. 289, 72 S.E.2d 576 (1952).*

b. Plaintiff's claims for fraud or fraudulent misrepresentation should be dismissed with prejudice because he has no evidence that any alleged representations made by Wells Fargo were false at the time they were made. *See Fields*, 312 S.C. at 105, 439 S.E.2d at 285.

c. The underlying transaction was arms-length, such that no fiduciary or confidential relationship was formed. Therefore, Plaintiff had no right to rely on Wells Fargo's statements. *Regions Bank v. Schmauch*, 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) ("[T]here is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests.").

d. No representations were made by Wells Fargo to Plaintiff which proximately caused Plaintiff to suffer any injury.

7. South Carolina Unfair Trade Practices Act (Eighth Cause of Action)

a. Wells Fargo is regulated by the Federal Reserve System and is therefore exempt from the South Carolina Unfair Trade Practices Act. *See, e.g. Anderson v. Citizens Bank*, 294 S.C. 387, 399, 365 S.E.2d 26, 33 (Ct. App. 1987) (finding on grounds other than "general activity test" that banks are exempt from SCUTPA—namely that banks' unfair and deceptive practices are regulated under rules of the Federal Reserve System not under Federal Trade Commission Act, which guides interpretation of SCUTPA), *overruled*

on other grounds by Ward v. Dick Dyer & Assoc., 304 S.C. 152, 403 S.E.2d 310 (1991) (discontinuing the "general activity test" only).

b. Even if the SCUTPA applied, the basis for Plaintiff's cause of action—that Wells Fargo overcharged Plaintiff by $2,700—constitutes a dispute solely and uniquely between Plaintiff and Wells Fargo and therefore does not affect the public interest.

c. Plaintiff has no evidence indicating that Wells Fargo engaged in conduct rising to the level of an unfair trade practice.

8. Slander of Title (Ninth Cause of Action)

a. Plaintiff's cause of action for Slander of Title should be dismissed with prejudice because the filing of a *lis pendens*, as with any other publication incident to a judicial proceeding, is absolutely privileged. *D.R. Horton, Inc. v. Wescott Land Co.*, LLC, 398 S.C. 528, 546, 730 S.E.2d 340, 349 (Ct. App. 2012). Accordingly, Plaintiff may not maintain this cause of action simply because Wells Fargo filed *lis pendens* in connection with previous foreclosure actions which have since been dismissed or filed a *lis pendens* in connection with its counterclaim for foreclosure in this case.

9. Civil Conspiracy (Eleventh Cause of Action)

a. Plaintiff has no evidence that Wells Fargo acted in concert with any other person.

b. Plaintiff has no evidence that Wells Fargo acted for the purpose of injuring the Plaintiff.

c. Plaintiff failed to allege or produce any evidence that he suffered special damages as result of an alleged conspiracy.

10. Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (Thirteenth Cause of Action)

a. Wells Fargo, a national bank in the business of lending money, is not a debt collector as defined by 15 U.S.C. § 1692a when it is collecting its own loan and therefore is not subject to the provisions of the Fair Debt Collection Practices Act ("FDCPA"), codified as 15 U.S.C. § 1692 et seq. *See, e.g. Davis v. Dillard Nat'l Bank*, 1:02 CV 00546, 2003 WL 21297331, *4 (M.D.N.C. June 4, 2003) ("Crediting institutions, such as banks, are not debt collectors under section 1692a(6)(A) because they collect their own debts and are in the business of lending money to consumers."). The only evidence before this Court is that Wells Fargo was at all times collecting a debt in its own name. Accordingly, Plaintiff's cause of action for violation of the FDCPA should be dismissed with prejudice.

b. Even if the FDCPA applied to Wells Fargo's actions in this matter, there is no evidence before this Court indicating that the provisions of the act were violated by specific conduct of Wells Fargo.

11. South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108 (Fourteenth Cause of Action)

a. The underlying loan that is the subject of this action is secured by a first lien or equivalent security interest in real estate and is therefore excluded from the definition of "consumer loan" pursuant to § 37-3-105(1). As such, the subject

loan is not a "consumer credit transaction" as defined by § 37-1-301(11), and the provisions of § 37-5-108 do not apply to Wells Fargo.

b. Neither § 37-5-108 nor § 37-10-105(C) provide for an award of treble damages, as requested by Plaintiff pursuant to this cause of action. Plaintiff's claim for such damages should be dismissed with prejudice.

c. Plaintiff has no evidence that any action taken by Wells Fargo in connection with the subject loan was "unconscionable" in violation of § 37-5-108.

d. Plaintiff's claims are barred by the applicable limitations period, and Plaintiff failed to comply with the procedures set forth in the Consumer Protection Code at § 37-5-108(6).

e. Plaintiff's claims are preempted by the Home Owners' Loan Act of 1933 ("HOLA"), 12 U.S.C. §§ 1461, *et seq.*

12. Real Estate Settlement Procedures Act (Fifteenth Cause of Action)

a. Plaintiff's alleged written communications directed to Wells Fargo do not conform to the requirements of a "qualified written request," as set forth in 12 U.S.C. § 2605(e)(1)(B).

b. Even if Plaintiff's alleged communications rose to the level of a "Qualified Written Request," Wells Fargo responded to Plaintiff's alleged communications and said responses were sufficient under 12 U.S.C. § 2605(e)(2). For these reasons, Plaintiff's claims and affirmative defenses under RESPA should be dismissed with prejudice.

13. Mail Fraud (Sixteenth Cause of Action)

a. Plaintiff has failed to state with particularity the circumstances constituting fraud as required by Rule 9(b), SCRCP. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137, n. 8 (noting that allegations of mail fraud is subject to the same pleading requirement as common law fraud as set forth in Rule 9, SCRCP).

b. Further, the acts involving the mail alleged by Plaintiff are not criminally indictable as mail fraud under 18 U.S.C. § 1341 and therefore Plaintiff's private cause of action pursuant to 18 U.S.C. § 1964 fails as a matter of law. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) ("The upshot is that RICO provides a private right of action for treble damages to any person injured in his business or property by reason of the conduct of a qualifying enterprise's affairs through a pattern of acts indictable as mail fraud").

14. Declaratory Judgment (Seventeenth Cause of Action)

a. Plaintiff seeks a declaration that Wells Fargo "has no ownership interest, or any rights whatsoever, associated with the Property." However, Plaintiff admitted he executed a mortgage in favor of Wells Fargo's predecessor in interest, First Union. Further, the Master's Report and Judgment of Foreclosure and Sale, executed by Judge Scarborough and entered on August 16, 2006, specifically found that Wells Fargo, by way of its predecessor by merger, had a mortgage interest in the subject property. Therefore, Plaintiff is collaterally estopped from now claiming that Wells Fargo has no mortgage lien on the property. This cause of action should be dismissed with prejudice.

b. Wells Fargo is in possession of the original note and has the power to enforce the note. *See Horvath v. Bank of New York, N.A.*, 641 F.3d 617, 621 (4th Cir. 2011) (holding that "whoever possesses an instrument endorsed in blank has full power to enforce it"). The assignment of a note secured by a mortgage, such as the subject note signed by Mr. Bentrim, carries with it an assignment of the mortgage. *Hahn v. Smith*, 157 S.C. 157, 154 S.E. 112 (1930). As such, Wells Fargo has a mortgage interest in the property as a matter of law, and Plaintiff's cause of action should be dismissed with prejudice.

Based on the foregoing, there is no genuine issue of material fact, and Wells Fargo is entitled to judgment as a matter of law as to all Plaintiff's causes of action, with the exception of Plaintiff's twelfth cause of action, the request for an accounting. This motion will be supported by the pleadings, interrogatory answers, depositions, affidavits on file and such memoranda as may be submitted at the hearing on this matter.

Charles Baker (SC Bar # 486)
S. Sterling Laney, III (SC Bar # 6933)
John C. Hawk, IV (SC Bar # 74786)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29401
Telephone: (843) 722-3400
jhawk@wcsr.com
slaney@wcsr.com

This 19th day of May, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BRENT E. BENTRIM, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	)	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2011-CP-10-2946 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTIONS FOR SUMMARY JUDGMENT**

FILED
2014 JUN -6 PM 1:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE HONORABLE MIKELL R. SCARBOROUGH, CHARLESTON COUNTY MASTER IN EQUITY:

The Plaintiff, Brent E. Bentrim (hereafter 'Plaintiff'), by and through his undersigned counsel, respectfully submits the following Memorandum of Law in Support of Plaintiff's Supplemental Notice of and Motion for Summary Judgment:

LEGAL ARGUMENT AND ANALYSIS

I. WELLS FARGO IS NOT ENTITLED TO ENFORCE THE NOTE.

Plaintiff is entitled to summary judgment on Wells Fargo's counterclaim because Wells Fargo is not a "holder" under the definition codified at S.C. Code Ann. § 36-1-201(20) and, thus, cannot enforce the Note under § 3-301 of the Uniform Commercial Code.

A. Definition of a Holder

Under § 1-201(20), a 'Holder' is specifically defined as "a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank." S.C. Code Ann. § 36-1-201(20).

The Ninth Circuit Court of Appeals explains the concept in more simple terms:

"[a] person is a holder if the person possesses the note and either (i) the note has been made payable to the person who has it in his possession or (ii) the note is payable to the bearer of the note. This determination requires physical examination not only of the face of the note but also of any indorsements."

In re Veal, 450 B.R. 897, 911 (9th Cir. 2011). Legal scholar William Lawrence elaborates further:

"The definition includes dual requirements: To be a holder, a person must be in possession of an instrument and the instrument essentially must run to that person. The determination of whether an instrument runs to a particular person depends on whether the instrument is characterized as order paper or bearer paper. This characterization depends on the form of the instrument as it was originally prepared or according to the effect following any appropriate indorsements.

Lawrence, UNDERSTANDING NEGOTIABLE INSTRUMENTS & PAYMENT SYSTEMS, pp. 52-53 (LexisNexis 2002).

B. Why Wells Fargo Cannot be the Holder

Wells Fargo has physical possession of the Note – but this is just *one* factor in the analysis. Three other salient facts, however, combine to preclude Wells Fargo from being the holder of the Note:

- There are no endorsements on the Note;
- The Note was issued to First Union National Bank or order;
- Wells Fargo admits that it is the successor in interest to Wachovia Bank N.A., successor in interest to First Union National Bank.

C. Effect of No Endorsements

Physical examination of the Note shows there are no endorsements on it or attached to it. Thus, the Note is an unendorsed instrument. The lack of endorsement (spelled "indorsement" in the Code) has two important legal results:

First, the Note cannot be bearer paper. Because the original named payee was First Union National Bank (FUNB), the Note could become bearer paper only if FUNB endorsed it in blank

— i.e., an endorsement consisting of a signature, as opposed to one that specifies to whom the instrument is made payable, which is known as a special endorsement. See S.C. Code Ann. § 36-3-109(c) § 36-3-205(b) ("When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed").

Second, an unendorsed Note cannot be payable to Wells Fargo. As Professor Lawrence explains:

"An instrument that is drawn to the order of a named payee is order paper and (assuming no indorsements) runs only to the person named. The only possible person who could qualify as a holder on such an instrument is the named payee."

Lawrence, *supra*, p. 53. Similarly, in *Negotiable Instruments Under the Uniform Commercial Code*, Professors Hart Willier explain:

"The first requirement of being a holder is possession of the instrument. However, possession is not necessarily sufficient to make one a holder. . . . The payee is always a holder if the payee has possession. **Whether other persons qualify as a holder depends upon whether the instrument initially is payable to order or payable to bearer, and whether the instrument has been indorsed." (footnotes omitted). Accordingly, a third party must prove both physical possession *and* the right to enforcement through either a proper indorsement or a transfer by negotiation."**

Frederick M. Hart & William F. Willier, *Negotiable Instruments Under the Uniform Commercial Code*, § 12.02(1) at 12-13 to 12-15 (2012)(*emphasis added*).

D. Being a Successor by Merger Does Not Confer Holder Status

Because the Note is not in bearer form nor specifically made payable to Wells Fargo by virtue of an endorsement, Wells Fargo simply cannot be holder as a matter of law. Wells Fargo attempts to avoid this outcome by arguing it is successor-by-merger to FUNB — the original named payee — via Wachovia Bank N.A. Under this theory, argues Defendant, the merger transferred both physical possession along with the coveted holder status from FUNB to Wells Fargo automatically.

Plaintiff does not dispute that Wells Fargo is a successor by merger to FUNB via Wachovia

Bank N.A. But this fact is irrelevant to whether Wells Fargo is a "holder" under the Code ***because there is no endorsement on the instrument.***

Under the Code, negotiation is the exclusive means by which a transferee can become a holder of an instrument made payable to another identified payee. See S.C. Code Ann. § 36-3-201(a). Negotiation requires endorsement. *Id* at (b)(" ... if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder"). Negotiation is separate and distinct from the concept of transfer. A transferee cannot be a holder, but it may receive enforcement rights may via transfer (but not necessarily ownership rights, which are governed by UCC article 9). S.C. Code Ann. § 36-3-201.

E. Person Entitled to Enforce

The necessary determination that Wells Fargo is not a holder is critical for several reasons:

One, under UCC 3-301 only a "Person entitled to enforce" – known as a 'PETE' – is entitled to enforce a negotiable instrument. S.C. Code § 36-3-301. There are only three classes of PETEs: "(i) the holder of the instrument, (ii) a non-holder in possession with rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to § 36-3-309 or § 36-3-418(d)." *Id.*; see also *Bank of America v. Draper*, 746 S.E.2d 478, Because Wells Fargo is not a holder [3-301(i)], it cannot be a PETE unless it falls under either 3-301(ii) or 3-301(iii).

Two, pursuant to UCC § 3-412, a Maker – like Plaintiff – has a payment obligation only to a PETE. S.C. Code § 36-3-412 ("[t]he obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument ..."). The *In Re Veal* Court succinctly explains the risk of a Maker paying a non-PETE: "[i]f a maker pays someone other than a 'person entitled to enforce' – even if that person physically possesses the note the maker signed – the

payment generally has no effect on the obligations under the note. The maker still owes money to the 'person entitled to enforce' ... and, at best, has only an action in restitution to recover the mistaken payment." 450 B.R. at 910 (internal citations omitted); *see also* UCC § 3-418(b). Only payment to a PETE satisfies the Maker's obligation. S.C. Code Ann. § 36-3-602(a), (c).

Three, as a non-holder, Wells Fargo is not entitled to a rebuttable presumption of enforceability which a holder enjoys. S.C. Code Ann. § 36-3-308(b); *see also RMS Residential Properties, LLC v. Miller*, 32 A.2d 307, 321-322 (Conn. 2011). A non-holder, by contrast, who has received an instrument by transfer must prove his right to enforce. The Official Comments to S.C. Code Ann. § 36-3-203(b) provides crystal clear guidance:

"Subsection (b) states that transfer vests in the transferee any right of the transferor to enforce the instrument "including any right as a holder in due course." If the transferee is not a holder because the transferor did not indorse, the transferee is nevertheless a person entitled to enforce the instrument under Section 3-301 if the transferor was a holder at the time of transfer. Although the transferee is not a holder, under subsection (b) the transferee obtained the rights of the transferor as holder. ***Because the transferee's rights are derivative of the transferor's rights, those rights must be proved. Because the transferee is not a holder, there is no presumption under Section 3-308 that the transferee, by producing the instrument, is entitled to payment. The instrument, by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it. Proof of a transfer to the transferee by a holder is proof that the transferee has acquired the rights of a holder.*** *At that point the transferee is entitled to the presumption under Section 3-308."*

Official comments, 3-203(b)(*emphasis added*).

The Maryland Court of Appeals reached the same conclusion when considering the position of a transferee who received an unendorsed Note in *Anderson v Burson*, 424 Md. 232, 35, A.3d 450 (2011): '[a] non-holder in possession [and] cannot rely on possession of the instrument alone as the basis to enforce it." *Id.* at 248-49, 35 A.3 at 462. Rather, because '[t]he transferee's rights to enforce the instrument derives from the transferor (because by the terms of the instrument, it is not payable to the transferee),' those rights must be proved. *Id.* 'The transferee does not enjoy

the statutorily provided assumption of the right to enforce the instrument that accompanies a negotiated instrument, and so the transferee 'must account for possession of the unendorsed instrument by proving the transaction through which the transferee acquired it'" *Id.* at 249.

Similarly, the New Mexico Supreme Court, in *Bank of New York v. Romero* 320 P.3d 1, 2014 WL 576151 (N.M. 2014) ruled that: "***Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it.***"

F. Impact of Sale on December 1, 2006

Because Wells Fargo is faced with the fact it cannot be a holder as a matter of law, it is anticipated that Wells Fargo will try and claim PETE status under U.C.C. § 3-301(ii) [non holder in possession with rights to enforce] or § 3-301(iii) [lost note affidavit] as a means to avoid summary judgment.

Both of these arguments must fail, however, because it is uncontroverted that Wells Fargo's predecessor sold the Bentrim loan on November 29-December 1, 2006. Thus, Wachovia Bank, NA ***was not the holder at the time of the merger*** on March 20, 2010 (See WF 2299, 2300, 2301, 2302, 2303 and Clifton Bodiford Affidavit). The affidavit of Wells Fargo bank officer Matthew Wakefield substantiates this conclusion – he avers that a 100% beneficial interest in the Note was sold to The Money Store on November 29, 2006 (which, it should be noted, directly conflicts with the discovery responses of Wells Fargo; the LNA of bank officer Tracy Thomas; and the ***unequivocal and emphatic*** representations of Wells Fargo's counsel at both the February 10, 2014 and April 28, 2014 hearings that ***no sale*** took place). In fact, Mr. Wakefield's testimony proves what Plaintiff has been saying all along – Wells Fargo Bank NA did not acquire his Note from Wachovia Bank, NA.

In its memorandum, Wells Fargo argues the applicability of 12 USCA § 215 — which basically says that when banks merge, property rights shall be transferred to the successor bank. The Plaintiff agrees. Both 12 USCA § 215 and § 36-3-203 transfer rights – therefore there would be no need for Wells Fargo Bank, NA to have repurchased Bentrim's loan on May 13, 2010 some 12 days after the purported 12 USCA § 215 transfer. Once again the Defendant's records do not match its testimony.

12 USCA § 215 has no bearing on a UCC analysis for three reasons:

One - a note secured by a mortgage on real property is a negotiable instrument, and is **thus governed by Article Three**. *Swindler v. Swindler, 355 S.C. 245, 584 S.E.2d 438, 440-441 (2003),* (finding that Article Three governs a note secured by a mortgage on real property); *see also Midfirst Bank, SSB, v. C.W. Haynes & Co., Inc.*, 893 F.Supp. 1304, 1312 n. 3 (D.S.C.1994) ("Article Three of the UCC controls transfers of negotiable instruments, and the mortgage notes are clearly negotiable."). In other words, Article 3 trumps 12 USCA § 215.

Two - as discussed above in section E, the UCC specifically contemplates transfers – such as allowed under 12 USCA§ 215 – result in the transferee becoming a "non-holder in possession" who must prove the transaction in order to enjoy enforcement rights. S.C. Code Ann. § 36-301(ii); Section 3-203 Official Comment. Stated another way, there is nothing in 12 USCA § 215 that conflicts in the slightest with Article 3.

Three – if the Bank wants to call itself a servicer, then it is playing word games. Regardless, a servicer first has to prove its rights to enforce under Article 3 as a non-holder in possession under Section 3-301(ii). See *In Re Neals*, 459 B.R. 612, 618 (Bankr. D.S.C. 2011). In order to have standing, a servicer must also prove an agency relationship with a PETE. *In Re Veal*, 450 B.R. at 920. Defendant has offered no evidence that it has enforcement rights as a non-holder in

possession or that it has, or had, an agency relationship with a PETE. On the contrary, in the Counterclaim it claims it a holder by virtue of a successor-by-merger scenario of FUNB to Wachovia to Wells Fargo that its own affiant, Mr. Wakefield, torpedoes out of the water. Trying to call itself as a servicer does not get Wells Fargo out of the requirement to prove its purported right to enforce under Article 3.

G. Lack of Standing and Failure to Own Mortgage at Initiation of Claim.

Moreover, there is the Lost Note Affidavit and deposition testimony of Tracy Thomas which unequivocally shows that Wells Fargo did not have possession of the Note at the time it filed its Counterclaim in December 2011. Based on these fact, Wells Fargo lacks standing to bring the Counterclaim as a matter of law and also fails to meet the requirement of the U.S. Supreme Court in the seminal case of *Carpenter v. Longan*, 83 U.S. 271, 16 Wall. 271, 21 L.Ed. 313 (1872) – which holds that a plaintiff must own the Note *and* Mortgage at the time the Complaint is filed in order to foreclose on property.

Pleadings and Lost Note Affidavit

On December 13, 2011, the Defendant, Wells Fargo Bank, NA moved to file an Amended Answer and Counterclaim seeking to enforce the March 12, 2002 Note and to foreclose on his home. The Defendant asserted in its pleadings that the Note had been issued and delivered to it and that it had the right to foreclose because demand had been made allowing Bentrim the right to cure his default, but Bentrim failed to comply. Significantly, the Defendant neither plead possession of the Note nor attached a copy to its pleading at that time. Bentrim timely answered the complaint denying the Note was payable to Wells Fargo or that any such demand was ever made.

On April 3, 2012, the Defendant produced a Lost Note Affidavit (WF 219-222) signed by

Bank Officer Tracy M. Thomas as well as a "copy" (WF 223-226) of the Note certified as a *"true, correct and substantial copy of the lost or destroyed Note"* (See LNA, WF 220 paragraph 8). No other documents or records were attached to the Affidavit. Affiant Thomas further "states that Wells Fargo Bank, NA as successor by merger to Wachovia Bank, NA, successor by merger to First Union National Bank has not pledged, assigned, transferred, hypothecated or otherwise disposed of the Note." (WF 220 paragraph 5). Thomas further testified that she had personal knowledge that Bentrim was the present holder and owner of the Note (see WF 220 paragraph 6.C).

The original promissory Note was purported found and returned to Wells Fargo's vault on February 27, 2012, (see Thomas Deposition 119:14) some 6 weeks prior to providing Bentrim WF 219-227, and such discovery was not provided until February 2013!

However, prior to filing its first Amended Answer and Counterclaim, Wells Fargo produced an ACLS History Card Report (WF 159-218) on November 8, 2011. On November 29, 2006 an entry is clearly marked "Loan Sold to Pool." Ms. Thomas attaches no further records to explain the "sale" and admits (See Thomas Deposition page 72: 6-23) never even looking at Wachovia Bank NA's servicing records contained in ACLS. Thomas is a robosigner and can only verify the bold typeface in Section 3 of her affidavit.

On December 10, 2013, the Defendant amended its Amended Answer and Counterclaim to assert "Wells Fargo Bank, successor by merger to Wachovia Bank, NA as successor by merger to First Union National Bank, ***is now*** the owner and holder of the Note and Mortgage and therefore is the real party in interest entitled to bring this action against Plaintiff" (See ¶ 172, emphasis added).

Assuming its assertion in its December 10, 2013 pleading that it '*is **now** the owner and*

holder of the Note and Mortgage' is true, this constitutes an admission by Wells Fargo that it was not the owner and holder of the Note and Mortgage at the commencement of its action is fatal and cannot be cured.

There are additional factual problems. The Note attached to the LNA (WF 223-226) is certified as a *"true, correct and substantial copy of the lost or destroyed Note"* materially differs from the Note which Wells Fargo relies on now — as it does not have the two barcodes on it. Ms. Thomas claims in her testimony (104: 9-16) that when the Note first arrived in the vault in 2002, a barcode was placed upon it and then was imaged into a system call CLPR. Prior to January 2013, no barcoded note was ever presented in any previous litigation.

Further, the copy of the Note produced by Brock and Scott attorney Suzanne Brown (who Wells Fargo claims was supposed to have possession of the Note) bears no barcode. Most critically, the Defendant has produced no vault records showing any movement of the Note prior to *after* it was sent to Womble Carlyle. Even if Wells Fargo was entitle as a manner of law to enforce the Note through possession alone, **it has presented no evidence it had possession at the time of filing.**

1. Standing

"A threshold inquiry for any court is the determination of justiciability, i.e., whether the litigation presents an active case in controversy. 'No justiciable controversy is presented unless the [defendant] has standing to maintain the action.'" *Lennon v. South Carolina Coastal Council*, 330 S.C., 414, 415, 498 S.E.2d 906, 906 (Ct. App. 1998) (citations omitted). "Standing refers to 'a party's right to make a legal claim or seek judicial enforcement of a duty or right.' 'Standing is...that concept of justiciability that is concerned as to whether a particular person may raise legal arguments or claims.'" *Powell ex rel. Kelly v Bank of Am*, 379 S.C. 437, 444, 665, S. E.2d 237,241

(Ct. App. 2008) (citations omitted). Rule 17 of the South Carolina Rules of Procedure requires cases be brought by the real party in interest.

"[S]tanding is to be determined as of the commencement of suit." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570-71 n.5 (1992); accord *Young v. People's Bank*, 163 S.C. 57, 161 S.E. 324, 329 (1931)("Plaintiff's right to any recovery depended on its right at the inception of the lawsuit, and the non-existence of a cause of action when the suit was started is a fatal defect, which cannot be cured by the accrual of a cause of action pending suit."). Pursuant to 55 Am. Jur. 2d. *Mortgages* § 584 (2009), "a plaintiff has no foundation in law or fact to foreclose upon a mortgage in which the Plaintiff has no legal or equitable interest."

2. *Carpenter*

In *Young v. People's Bank*, the South Carolina Supreme Court adopted the holding of *Carpenter v. Longan*, supra, which "clearly supports the notion that the Plaintiff must own the Note and the Mortgage to foreclose on the property." The Court determined that "Plaintiff failed to show that it owned the Mortgage at the time the Complaint was filed." Judge Nicholson, in *Deutsche Bank Nat'l Trust Co. v. Heinrich*, 2011-CP-10-1060 (July 31, 2013) applied the same principle.

Here, Wells Fargo has presented no evidence that it owned the Mortgage at the time of the commencement of the Counterclaim – and has produced evidence and admissions that it did not own the Note – its Counterclaim should be dismissed for lack of standing and failure to comply with *Carpenter*.

Mr. Wakefield's affidavit is too little, too late. It contains three serious flaws:

First – the information contained in the affidavit should have been pleaded and attached, along with supporting documents, to the initial Counterclaim in order to prove Wells Fargo's

enforcement rights. The failure to do so is fatal to the Counterclaim. See, generally *In Re Veal*.

Second – Mr. Wakefield's affidavit also further undercuts Wells Fargo's "servicer" ploy (Section E) because he claims the Note was repurchased in May, 2010 – nearly 18 months before Wells Fargo interposed the Counterclaim.

Third – Mr. Wakefield fails to attach any records to substantiate the May 1st merger between the Money Store, LLC and The Money Store Service Corp as well as the purported distribution to Wells Fargo Bank, NA.

II. NO RIGHT TO CURE LETTER

Plaintiff is entitled to summary judgment on Wells Fargo's counterclaim because Wells Fargo did not send a timely right to cure letter prior to filing the instant Counterclaim.

In its Counterclaim dated December 13, 2011, Defendant asserts that on November 20, 2011 it sent Bentrim a thirty (30) day right to cure letter. (Amended Counterclaim ¶ 183). Wells Fargo then avers Bentrim ignored the opportunity to cure, giving them the right institute foreclosure. Id. at ¶ 184.

Wells Fargo has never produced a right to cure letter. In Southern *Atlantic Financial Services, Inc. v. Middleton*, the Court of Appeals held that a notice of default and right to cure are standard contractual rights and a reasonable expectation exists that they will be entitled to notice of default and right to cure. 349 S.C. 47, 562 S.E.2d 482 (2002). When there is an option in the loan documents for the same – as here – then it is error to allow a bank to file a counterclaim without giving a right to cure notice prior to instituting the action. As a threshold matter, for all reasons set forth above, Wells Fargo had no right to send acceleration letter or right to cure letter in its own name.

III. VIOLATION OF COURT'S ORDER

Plaintiff is entitled to summary judgment on Wells Fargo's counterclaim because Wells Fargo failed to follow a prerequisite court order. There is no genuine issue of material fact that the Counterclaim was filed in contravention of the Court's order of July 9, 2010 in case number 09-CP-10-4700 which specifically required Wells Fargo to provide a calculated payoff prior to refilling a claim under the Note.

In *Georganne Apparel, Inc. v. Todd*, the Court of Appeals upheld an order dismissing a case under Rule 41(a)(2) and Rule 41(b) after the plaintiff had dismissed and restored the case under former SCRCP40(c)(3) and later voluntarily dismissed it under SCRCP 41(a)(2) subject to conditions, and then refiled the action violating those conditions. 303 S.C. 87, 399 S.E.2d 16 (Ct. App. 1990).

It is anticipated that Plaintiff will argue it has a right to file a Counterclaim regardless of the Court's order. Plaintiff would submit that to the extent Defendant had a right to file a Counterclaim, it was mandatory counterclaim; Defendant's first answer, however, failed to include a Counterclaim. This violates Rule 13, SCRCP, which provides:

> A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought the suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13. Rule 13, SCRCP.

By definition, a counterclaim is "compulsory" only if it arises out of the same transaction or occurrence as the opposing party's claim; the test for determining if a counterclaim is compulsory is whether there is a logical relationship between the claim and the counterclaim. *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012); *Beach Co. v. Twillman, Ltd.*

351 S.C. 56, 566 S.E.2d 863 (Ct. App. 2002). In *N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 518, 381 S.E.2d 903, 905 (1989), our Supreme Court adopted the "logical relationship" test. In essence, the "logical relationship" determination is made by asking whether the Counterclaim would affect the lender's right to enforce the note and foreclose the mortgage. *Advance Intern., Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 269–70, 449 S.E.2d 580, 582 (Ct.App.1994), *aff'd in part, vacated in part,* 320 S.C. 532, 466 S.E.2d 367 (1996).

Defendant's failure to include the compulsory Counterclaim with its original answer is another ground militating in favor of dismissal. To the extent Defendant argues that the motion to amend granting leave to file the Counterclaim cured any defect, the Court of Appeals in *City of N. Myrtle Beach v. Lewis-Davis,* 360 S.C. 225, 233, 599 S.E.2d 462, 465-66 (Ct. App. 2004) held that substantive arguments are not to be considered at amendment, and arguments going to the legal merits of a counterclaim are better taken up in the context of a Rule 12(b) motion to dismiss or Rule 56 motion for summary judgment.

CONCLUSION

For the above reasons, Plaintiff respectfully request that this Court grant summary judgment in favor of the Plaintiff on the Defendant's Counterclaim.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiff

June 6, 2014
Mt. Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
PLAINTIFF,	)	
	)	**MEMORANDUM IN SUPPORT OF DEFENDANT WELLS FARGO BANK N.A.'S MOTION FOR SUMMARY JUDGMENT**
V.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
DEFENDANT.	)	
	)	

FILED
2014 JUN -6 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant, Wells Fargo Bank, N.A. ("**Defendant**" or "**Wells Fargo**"), submits this Memorandum in Support of its Motion for Summary Judgment filed on May 19, 2014 ("Motion"). For the following reasons, the Court should grant summary judgment on all claims.

PROCEDURAL HISTORY

The Plaintiff, Brent E. Bentrim ("**Plaintiff**" or "**Bentrim**"), filed a complaint against Wells Fargo on April 25, 2011, which included six purported causes of action: RESPA violations, breach of contract, TILA violations, unfair trade practices, mail fraud, and punitive damages. Wells Fargo moved for summary judgment, and the circuit court dismissed Plaintiff's breach of contract and TILA claims with prejudice. **Exhibit A**, Nov. 20, 2012 Order. On November 1, 2013, Plaintiff filed a Notice of Motion and Motion to Amend Complaint. Plaintiff's Amended Complaint removed punitive damages as a cause of action, but added fourteen new causes of action.

UNDISPUTED FACTS

1. Plaintiff signed a Negotiable Promissory Note ("Note") and Mortgage in favor on First Union National Bank dated March 12, 2002. **Exhibit B**, Answers for Requests for Admission by Plaintiff in Response to Defendant, Sept. 11, 2012.
2. The Note and Mortgage were used by Plaintiff to refinance a pre-existing mortgage with Bank of America. **Exhibit C**, Bentrim Depo Tran. 21:12-20; **Exhibit D,** Satisfaction of Bank of America Mortgage at Book 412, Page 295.
3. Plaintiff claims errors in the origination and servicing of his loan. He admits, however, that he has been aware of these errors since 2002. **Exhibit C**, Bentrim Depo Tran. 36: 7-13.
4. In an earlier foreclosure action pending before this Court, Case No. 05-CP-10-4814, the filed Master's Report and Judgment of Foreclosure and Sale found, among other things, that:
    a. For value received, Plaintiff made, executed and delivered the Note; and
    b. Plaintiff made, executed and delivered the Mortgage.

    See **Exhibit E**, Master's Report and Judgment of Foreclosure and Sale, Aug. 16, 2006.
5. In a Stipulation executed by Plaintiff on April 28, 2006, Plaintiff acknowledged that:
    a. On March 12, 2002, he made, executed and delivered unto First Union National Bank a Note in the principal sum of $182,700.00;
    b. On March 12, 2002, he made, executed and delivered unto First Union National Bank a Mortgage to secure the Note; and
    c. The Mortgage was duly signed, witnessed and probated.

See **Exhibit F**, Stipulation, April 28, 2006.

6. First Union National Bank merged with Wachovia Bank, N.A., which in turn merged with Wells Fargo Bank, N.A. *See* **Exhibit G**, Matthew Wakefield Affidavit Filed on June 5, 2014).
7. In three prior foreclosure actions brought by either First Union or Wachovia against Plaintiff (05-CP-10-4814; 07-CP-10-3933; 09-CP-10-4700), Plaintiff never filed counterclaims against the bank.
8. Plaintiff has not made a payment on the Note and Mortgage since 2009. **Exhibit C**, Bentrim Depo Tran. 48:14-22.
9. Wells Fargo is in possession of the original Note which is made payable to First Union National Bank.

STANDARD OF REVIEW

Under Rule 56(c), SCRCP, "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003). "The evidence, and all reasonable inferences must be viewed in the light most favorable to the non-moving party." *Id.* However, "when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings. The adverse party's response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial." *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990) (quoting Rule 56(e), SCRCP).

ARGUMENT

With the exception of Plaintiff's request for an accounting, all Plaintiff's claims fail as a matter of law, for the following reasons:

1. Negligence/Gross Negligence (First Cause of Action)

a. The underlying allegations of Plaintiff's negligence cause of action arise solely out of his contractual relationship with Wells Fargo and therefore Plaintiff's claim cannot sound in tort. *See Waterpointe I Property Owner's Ass'n, Inc. v. Paragon, Inc.*, 342 S.C. 454, 536 S.E.2d 878 (Ct. App. 2000) (noting that alleging a breach of duty does not establish a tort claim where the duty arose solely from the subject contract).

b. Plaintiff's negligence claim is governed by a three-year limitations period. *See* S.C. Code Ann. § 15-3-530. Plaintiff alleges errors with the origination and servicing of his loan, but he admits that he has known about the alleged issues since shortly after the loan closing in 2002. **Ex. C**, Bentrim Depo Tran. 36: 7-13. Because Plaintiff knew or should have known of the issues he is now complaining of nine years before he brought this lawsuit, his negligence claim is barred by the applicable statutes of limitation.

c. At all times relevant to this lawsuit, the relationship between Plaintiff and Wells Fargo was that of debtor-creditor, and therefore no special duty arose between the two parties which could give rise to claims of negligence. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003)(Bank did not owe a special duty of care to customer who was not in a vulnerable position.) "A bank in South Carolina does not owe a special duty

of care to its customers, unless perhaps certain circumstances establish that special duty. . . The mere fact that [Borrowers] are no longer able to make payments—as they agreed to do—on their mortgage does not place a heightened duty on [the bank]." *Weber v. Bank of Am. NA*, 2013 WL 4820446 (D.S.C. Sept. 10, 2013)(internal citations omitted).

2. Negligent Misrepresentation (Second Cause of Action)

a. The underlying allegations of Plaintiff's negligence cause of action arise solely out of his aforementioned contractual relationship with Wells Fargo and therefore Plaintiff's claim cannot sound in tort. *See Waterpointe v. Paragon, supra.*

b. As to any representations which allegedly occurred prior to April 2008 regarding the subject loan, Plaintiff's claims as to such claims are barred by the applicable three-year limitations period. *See* S.C. Code Ann. § 15-3-530.

c. "To state a claim for negligent misrepresentation, the plaintiff must allege: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon the representation." *Kelly v. S. Carolina Farm Bureau Mut. Ins. Co.*, 316 S.C. 319, 323-24, 450 S.E.2d 59, 62 (Ct. App. 1994). Plaintiff has no evidence that any alleged representation made by Wells Fargo was false at the time it was made.

Accordingly, there cannot be any liability on the part of Wells Fargo. *See Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993) (holding that "[t]o be actionable, the representation must relate to a present or pre-existing fact and be false when made").

d. Plaintiff has not produced any evidence that Wells Fargo failed to exercise due care in any communications with him. Because he has not set forth specific facts showing there is a genuine issue for trial, this cause of action must fail. *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990).

e. Plaintiff has not produced any evidence that his alleged reliance on any alleged negligent representation proximately caused him to suffer any pecuniary loss. Because he has not set forth specific facts showing there is a genuine issue for trial, this cause of action must fail. *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990).

3. **Breach of Implied Covenant of Good Faith and Fair Dealing (Third Cause of Action)**

a. Plaintiff's breach of contract claim was dismissed with prejudice by order of Judge Markley Dennis on November 20, 2012. **Exhibit A**, Order dated Nov. 20, 2012. Plaintiff did not file a Rule 59 motion regarding this order from Judge Dennis, nor did he appeal the order. Accordingly, Plaintiff is barred from now filing any cause of action based upon breach of contract and this cause of action should be dismissed with prejudice. *See RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App.

2004) (holding that the implied covenant of good faith and fair dealing is not an independent cause of action separate from the claim for breach of contract).

b. Additionally, any claim for the breach of good faith and fair dealing which is based on conduct occurring prior to April 2008 is barred by the three-year statute of limitations. *See* S.C. Code Ann. § 15-3-530.

4. Breach of Contract Accompanied by a Fraudulent Act (Fourth Cause of Action)

a. As noted in the preceding section, Plaintiff's breach of contract claim was dismissed with prejudice by order of Judge Markley Dennis on November 20, 2012. **Ex. A**, Order dated Nov. 20, 2012. Breach of contract is a required element of breach of contract accompanied by a fraudulent act. *See id.* at 470, 597 S.E.2d at 883 (finding that to maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach). Accordingly, this cause of action should be dismissed with prejudice.

b. Additionally, any claim for breach of contract accompanied by a fraudulent act which is based on conduct occurring prior to April 2008 is barred by the applicable statute of limitations. *See* S.C. Code Ann. § 15-3-530.

5. Conversion (Fifth and Tenth Causes of Action)

a. The contractual relationship between Plaintiff and Wells Fargo is solely that of debtor and creditor. Further, the only funds which Wells Fargo received from Plaintiff were payments on the subject loan. An action cannot lie in

conversion based on these facts. *See Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 220 S.E.2d 116 (1978) ("[T]here can be no conversion where there is a mere obligation to pay a debt. Thus, where there is merely the relationship of debtor and creditor, an action based on conversion of the funds representing the debt is improper.").

b. Further, "money on deposit in a bank cannot be the subject of conversion unless it was intended to be kept separate or constituted a specific intact fund." *Owens*, 265 S.C. at 497, 220 S.E.2d at 119 (1975).

6. Fraud/Fraudulent Misrepresentation/Constructive Fraud (Sixth and Seventh Causes of Action)

a. All elements of fraud must be proved by clear, cogent and convincing evidence. "In order to recover in an action for fraud and deceit, based upon misrepresentation, the following elements must be shown by clear, cogent and convincing evidence: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury. ***Failure to prove any one of the foregoing elements is fatal to recovery.***" *M. B. Kahn Const. Co., Inc. v. S. Carolina Nat. Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980)(emphasis added).

b. Plaintiff has failed to state or plead with particularity the circumstances constituting fraud as required by Rule 9(b), SCRCP. *See also Bookhart v Central Elec. Power Cooperative, Inc.*, 222 S.C. 289, 72 S.E.2d 576 (1952).

c. Plaintiff's claims for fraud or fraudulent misrepresentation should be dismissed with prejudice because he has no evidence that any alleged representations made by Wells Fargo were false at the time they were made. *Fields v. Melrose Ltd. P'ship,* 312 S.C. 102, 105, 439 S.E.2d 283, 285 (Ct. App. 1993).

d. At the time Plaintiff signed the Note and Mortgage, he had been working in the banking industry for approximately six years. Ex. __, Bentrim Depo Tran. 18: 11-14. The underlying transaction was arms-length, and no fiduciary or confidential relationship was formed as a matter of law. Therefore, Plaintiff had no right to rely on Wells Fargo's statements. *Regions Bank v. Schmauch,* 354 S.C. 648, 672, 582 S.E.2d 432, 445 (Ct. App. 2003) ("[T]here is no right to rely, as required to establish fraud, where there is no confidential or fiduciary relationship and there is an arm's length transaction between mature, educated people. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests.")

e. No representations were made by Wells Fargo to Plaintiff which proximately caused Plaintiff to suffer any injury. Failure to prove damages is fatal to Plaintiff's claim. *M. B. Kahn,* 275 S.C. at 384, 271 S.E.2d at 415. Plaintiff has produced a Statement of Damages (**Exhibit H,** Statement of Damages), but the alleged damages which Plaintiff claims relate to fraud by Wells Fargo cannot, as a matter of law, be linked to an alleged fraud perpetrated by Wells Fargo.

7. South Carolina Unfair Trade Practices Act (Eighth Cause of Action)

a. The SCUTPA does not apply to federally-insured banks. S.C. Code Ann. § 39-5-20(b) specifically provides that "[i]t is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to § 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended." In 15 U.S.C. 45(a)(2), the Federal Trade Commission Act sets forth the extent to which the Federal Trade Commission can regulate banks:

> The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, savings and loan institutions described in section 18(f)(3) [15 USCS § 57a(f)(3)], Federal credit unions described in section 18(f)(4) [15 USCS § 57a(f)(4)], common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 [49 USCS §§ 40101 et seq.], and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended [7 USCS §§ 181 et seq.], except as provided in section 406(b) of said Act [7 USCS § 227(b)], from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

15 U.S.C. 45(a)(2) (emphasis added).

Based on S.C. CODE ANN. § 39-5-20(b), circuit courts across the state have found that the SCUTPA is inapplicable to banks like Wells Fargo. *See, e.g. JJH Transport, LLC and Joel Herring v. Brank Banking and Trust Company of South Carolina* (2006-CP-21-1814) (attached hereto as **Exhibit I**); *Branch Banking and Trust Company of South Carolina v. Eartha Marshall* (2003-CP-40-3272) (attached hereto as **Exhibit J**). Accordingly, the Court should grant Wells Fargo summary judgment as to Bentrim's SCUTPA claim.

b. Even if the SCUTPA applied, the basis for Plaintiff's cause of action—that Wells Fargo overcharged Plaintiff by $2,700—constitutes a dispute solely and uniquely between Plaintiff and Wells Fargo and therefore does not affect the public interest. *See, e.g. Drs. Steuer & Latham, P.A. v. Nat'l Med. Enterprises, Inc.*, 672 F. Supp. 1489, 1522 (D.S.C. 1987) aff'd, 846 F.2d 70 (4th Cir. 1988)(granting summary judgment based on absence of a showing of harm to the public interest); *Jefferies v. Phillips*, 316 S.C. 523, 527-28, 451 S.E.2d 21, 23 (Ct. App. 1994)("To be actionable under the UTPA, an unfair or deceptive practice or act must adversely affect the public interest. Therefore, conduct which only affects the parties to the transaction provides no basis for a UTPA claim. This adverse effect on the public must be proved by specific facts. . . . Jefferies introduced no evidence of specific facts which show any member of the public was adversely affected by this transaction. Without this showing, Phillips' conduct cannot be said to affect anyone other than the parties to this controversy, in which case the conduct falls outside the scope of the UTPA.").

c. Plaintiff has no evidence indicating that Wells Fargo engaged in conduct rising to the level of an unfair trade practice. S.C. Code Ann. § 39-5-20.

8. Slander of Title (Ninth Cause of Action)

a. Plaintiff's cause of action for Slander of Title should be dismissed with prejudice because the filing of a *lis pendens*, as with any other publication incident to a judicial proceeding, is absolutely privileged. *D.R. Horton, Inc. v. Wescott Land Co.*, LLC, 398 S.C. 528, 546, 730 S.E.2d 340, 349 (Ct. App.

2012). Accordingly, Plaintiff may not maintain this cause of action simply because Wells Fargo filed a *lis pendens* in connection with previous foreclosure actions which have since been dismissed or filed a *lis pendens* in connection with its counterclaim for foreclosure in this case.

9. Civil Conspiracy (Eleventh Cause of Action)

a. "The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages." *Pye v. Estate of Fox*, 369 S.C. 555, 566-67, 633 S.E.2d 505, 511 (2006)(granting summary judgment when not all elements met). Plaintiff's civil conspiracy claim fails as a matter of law because Plaintiff has no evidence that Wells Fargo acted in concert with any other person.

b. Similarly, Plaintiff has no evidence that Wells Fargo acted for the purpose of injuring the Plaintiff.

c. "Special damages" cannot duplicate damages allegedly suffered as a result of other causes of action- they must go beyond the damages already alleged. *Pye*, 369 S.C. at 568, 633 S.E.2d at 511 (2006). Plaintiff failed to allege or produce any evidence that he suffered special damages as result of an alleged conspiracy. Plaintiff produced a Statement of Damages (Ex. H), but it gives no explanation whatsoever of any "special damages." Instead, it merely states that damages are "to be determined by the trier of fact but no less than $100,000." With no explanation of special damages, this claim fails as a matter of law. *Robinson v. Metts*, 86 F. Supp 2d 557 (D.S.S. 1997)(where

plaintiff failed to specify nature of alleged special damages and court found no evidence that plaintiff suffered special damages defendant entitled to summary judgment).

10. Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (Thirteenth Cause of Action)

a. Wells Fargo, a national bank in the business of lending money, is not a debt collector as defined by 15 U.S.C. § 1692a when it is collecting its own loan and therefore is not subject to the provisions of the Fair Debt Collection Practices Act ("FDCPA"), codified as 15 U.S.C. § 1692 et seq. *See, e.g. Davis v. Dillard Nat'l Bank*, 1:02 CV 00546, 2003 WL 21297331, *4 (M.D.N.C. June 4, 2003) ("Crediting institutions, such as banks, are not debt collectors under section 1692a(6)(A) because they collect their own debts and are in the business of lending money to consumers."). Similarly, the FDCPA would not apply to Wells Fargo as a servicer of the loan. *Reese v. JPMorgan Chase & Co.*, 686 F. Supp. 2d 1291, 1311 (S.D. Fla. 2009) (holding that, because defendant was the mortgage servicing company servicing plaintiff's mortgage, it could not be held liable as a "debt collector" under § 1692); *Casault v. Federal Nat'l Mortgage Ass'n et al.*, 915 F. Supp. 2d 1113, 1126 (C.D. Cal. 2012)(same). The only evidence before this Court is that Wells Fargo was at all times collecting a debt in its own name and servicing its own debt. Accordingly, Plaintiff's cause of action for violation of the FDCPA should be dismissed with prejudice.

b. Even if the FDCPA applied to Wells Fargo's actions in this matter, there is no evidence before this Court indicating that the provisions of the act were violated by specific conduct of Wells Fargo. 15 U.S.C. § 1692, *et seq.*

11. South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-108 (Fourteenth Cause of Action)

a. The underlying loan that is the subject of this action is secured by a first lien or equivalent security interest in real estate and is therefore excluded from the definition of "consumer loan" pursuant to § 37-3-105(1). As such, the subject loan is not a "consumer credit transaction" as defined by § 37-1-301(11), and the provisions of § 37-5-108 do not apply to Wells Fargo.

b. Neither § 37-5-108 nor § 37-10-105(C) provide for an award of treble damages as requested by Plaintiff pursuant to this cause of action. Plaintiff's claim for such damages should be dismissed with prejudice.

c. As a matter of law, no action taken by Wells Fargo or its predecessor entities was "unconscionable," as defined by the Consumer Protection Code.

d. Plaintiff's claims are barred by the applicable limitations period. Pursuant to § 37-5-202(3), if Plaintiff's loan was a "consumer credit transaction," which Wells Fargo denies, it would be barred one year after the accelerated maturity of the debt, which occurred during the first foreclosure action against Plaintiff in 2005.

e. Plaintiff failed to comply with the procedures set forth in the Consumer Protection Code at § 37-5-108(6) and therefore his cause of action is premature.

f. Plaintiff's claims are preempted by federal law.

12. Real Estate Settlement Procedures Act (Fifteenth Cause of Action)

a. Plaintiff's Amended Complaint alleges that Plaintiff sent two Qualified Written Requests," ("QWRs") to Wells Fargo, and that Wells Fargo failed to adequately respond. According to the Amended Complaint, the letters were sent on December 8, 2008 (Amended Complaint ¶ 48) and July 21, 2010 (Amended Complaint ¶ 59). Plaintiff's alleged QWRs do not conform to the requirements set forth in 12 U.S.C. § 2605(e)(1)(B), and therefore do not qualify as QWRs. This cause of action therefore fails as a matter of law.

b. Plaintiff's July 21, 2010 letter sent to former Wells Fargo counsel at the Brock & Scott law firm does not constitute a QWR because the letter was not sent directly to Wells Fargo. RESPA provides that if a "servicer of a federally related mortgage loan" receives a QWR from "the borrower (or an agent of the borrower)," the servicer must send notice to the borrower confirming receipt within 20 days and take appropriate action within 60 days. 24 C.F.R 3500.21(e)(1); 12 U.S.C. §2605(e)(2)(A)(B)(C). RESPA is silent as to whether correspondence sent to an agent of a servicer can qualify as a QWR. However, RESPA explicitly states that submission of correspondence from a borrower's agent must still be treated as a QWR. In order to provide guidance in such a situation, the Supreme Court held that "where Congress includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that Congress actions intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983). Thus, by specifically including one type of

agent, the borrowers, Congress necessarily excludes another type of agent, the servicers. Therefore, correspondence sent to agents of borrowers cannot constitute a QWR under RESPA regardless of the contents of the correspondence. Courts in other jurisdictions have found that correspondence sent to borrower's counsel cannot qualify as a QWR. Identical to Mr. Bentrim's letter, in *Kee v. Fifth Third Bank*, a borrower sent correspondence to the bank's attorney rather than the bank. *Kee v. Fifth Third Bank*, No. 2:06-cv-00602-cw, 2009 U.S. Dist. Lexis 21502, at *12 (D. Utah. Mar. 18, 2009). The *Kee* Court held that "because Congress refers to a borrower's agent but does not reference a servicer's agent [. . .] the court concludes Congress intentionally excluded the servicer's agent." *Id.* As such, "written correspondence sent to the Bank's attorney did not constitute qualified written requests because they were not sent to the loan servicer." *Id.* at *13; *See e.g. Griffin v. CitiFinancial Mortgage Co., Inc.*, No. 3:05-cv-1502, 2006 U.S. Dist. LEXIS 6709, at *6-7 (M.D. Pa. Feb. 1, 2006) (holding correspondence sent from borrower's agent to servicer's agent could not constitute a QWR); *Morilus v. Countrywide Home Loans, Inc.*, 2007 U.S. Dist. LEXIS 44943 (E.D. Pa. June 20, 2007) (same).

Here, Bentrim only claims he sent the July 21, 2010 letter "via Defendant's attorney." Comp. ¶ 24. Mr. Bentrim further attaches Exhibit K, an email chain between Mr. Bentrim and former counsel for Wells Fargo, as "proof of receipt." *Id.*; Comp. Ex. K. Even taking all evidence in the light most favorable to Bentrim, there is no evidence he sent the letter to anyone

other than Wells Fargo's former counsel. Because Bentrim only sent the July 21, 2010 letter to an agent of Wells Fargo, the letter is not a QWR. Therefore, Wells Fargo was under no obligation under RESPA to act or respond to Bentrim's letter.

c. Further, Plaintiff's July 21, 2010 letter is not a valid QWR because it requests information outside the realm of servicing. Pursuant to 12 U.S.C. § 2605(e)(2), a QWR must "relat[e] to the servicing of such loan." The July 10, 2010 letter requests some servicing information, but also requests documentation related to insurance. Because this request falls outside the scope of a QWR, Plaintiff's RESPA claim as it relates to the July 21, 2010 letter fails as a matter of law.

d. As to Plaintiff's alleged QWR sent December 8, 2008, Plaintiff's Amended Complaint does not allege that Wells Fargo's response to his correspondence was insufficient. Amended Complaint, ¶ 49. Wells Fargo's responses were sufficient under 12 U.S.C. § 2605(e)(2). For these reasons, Plaintiff's claims and affirmative defenses under RESPA should be dismissed with prejudice.

13. Mail Fraud (Sixteenth Cause of Action)

a. Plaintiff has failed to state with particularity the circumstances constituting fraud as required by Rule 9(b), SCRCP. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137, n. 8 (noting that allegations of mail fraud is subject to the same pleading requirement as common law fraud as set forth in Rule 9, SCRCP).

b. Further, the acts involving the mail alleged by Plaintiff are not criminally indictable as mail fraud under 18 U.S.C. § 1341 and therefore Plaintiff's

private cause of action pursuant to 18 U.S.C. § 1964 fails as a matter of law. *See Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) ("The upshot is that RICO provides a private right of action for treble damages to any person injured in his business or property by reason of the conduct of a qualifying enterprise's affairs through a pattern of acts indictable as mail fraud").

14. Declaratory Judgment (Seventeenth Cause of Action)

a. Plaintiff seeks a declaration that Wells Fargo "has no ownership interest, or any rights whatsoever, associated with the Property." However, Plaintiff admitted he executed a mortgage in favor of Wells Fargo's predecessor in interest, First Union. Further, the Master's Report and Judgment of Foreclosure and Sale, executed by Judge Scarborough and entered on August 16, 2006, specifically found that Wells Fargo, by way of its predecessor by merger, had a mortgage interest in the subject property. Therefore, Plaintiff is collaterally estopped from now claiming that Wells Fargo has no mortgage lien on the property. This cause of action should be dismissed with prejudice.

b. Further, Wells Fargo is in possession of the original Note, which is made payable to its predecessor in interest, First Union. It is undisputed that Plaintiff also executed a Mortgage dated March 12, 2002 in order to better secure his obligation to First Union pursuant to the Note which is now in Wells Fargo's possession. It is undisputed and uncontroverted in the record before this Court that the loan servicer for the subject loan was at all times either First Union, Wachovia or Wells Fargo.

As a matter of public record, First Union and Wachovia Bank merged effective April 1, 2002 and Wachovia Bank merged with Wells Fargo on March 20, 2010. Accordingly, pursuant to 12 USC 215(a)(e) and Sections 36-1-201(20), 36-3-203(b) and 36-3-301, Wells Fargo is a "holder" and a "person" or, in this case an "entity" entitled to enforce the subject Note and Mortgage. At the least, even if Plaintiff's arguments to the contrary are accepted by this Court and it concludes Wells Fargo is a non-holder in possession of the Original Note, such status also confers upon Wells Fargo the right to enforce the Note and the Mortgage it is secured by. *See In re Neals,* 459 B.R. 612, 619 (2011) (holding where the original note has been presented and there is undisputed evidence the person trying to enforce the note was also the loan servicer responsible for collecting payments on and enforcing the terms of the note, then such entity has the right of a holder, including the right to enforce the note under Article Three of the UCC). Therefore, Wells Fargo has a mortgage interest in the property as a matter of law, and Plaintiff's cause of action should be dismissed with prejudice.

CONCLUSION

For the reasons set forth above, and for any other reasons the Court sees fit, Wells Fargo requests that all Plaintiff's claims, with the exception of his claim for an accounting, be dismissed with prejudice.

Charles Baker (SC Bar # 486)
S. Sterling Laney, III (SC Bar # 6933)
John C. Hawk, IV (SC Bar # 74786)
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29401
Telephone: (843) 722-3400
jhawk@wcsr.com
slaney@wcsr.com

This 6 th day of June, 2014
Charleston, South Carolina

WCSR 32353136v1

2011-CP-10-2996

CERTIFICATE OF SERVICE

I do hereby certify that on the 6th day of June, 2014, I served a copy of the within **DEFENDANT WELLS FARGO BANK N.A.'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to Counsel of Record in the within entitled matter by sending a copy of the same in an envelope with the correct postage prepaid addressed to:

Robert B. Varnado Esquire
Brown & Varnado, LLC
Post Office Box 1127
Mount Pleasant SC 29465-1127

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

FILED
2014 JUN -6 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY

WCSR 32353136v1

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS.
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2011-CP-10-2946
	)	
BRENT E. BENTRIM,	)	
	)	
Plaintiff,	)	**ORDER GRANTING, IN PART, AND DENYING IN PART, DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
	)	
v.	)	
	)	
WELLS FARGO BANK, N.A.,	)	
	)	
Defendant.	)	

FILED
2012 NOV 20 AM 8:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Judge: The Honorable R. Markley Dennis, Jr.
Plaintiffs' Attorney: Robert B. Varnado, Esquire
Defendant Wells Fargo's Attorney: Jana B. Baker, Esquire

A hearing on Defendant Wells Fargo Bank, N.A.'s (the "**Defendant**" or "**Wells Fargo**") Motion for Summary Judgment (the "**Motion**") was held on October 23, 2012 at 9:30 a.m. in the Charleston County Courthouse (the "**Hearing**"). The Honorable R. Markley Dennis, Jr., presided at the Hearing. Robert B. Varnado, Esquire, appeared on behalf of the Plaintiff Brent E. Bentrim (the "**Plaintiff**" or "**Bentrim**"). Jana B. Baker, Esquire, appeared at the Hearing on behalf of Wells Fargo.

For the reasons set forth below, Wells Fargo's Motion is granted in part, and denied, in part. Specifically, Bentrim's Breach of Contract and Truth in Lending Act (TILA), 15 U.S.C. § 1640(e) claims are dismissed *with prejudice* as a matter of law. However, the following claims remain: (1) RESPA Violations, Section 2605; (2) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (3) Mail Fraud; and, (4) Punitive Damages.

RMDJ 11/1

EXHIBIT
tabbies
A

STANDARD OF REVIEW

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Milligan v. Liberty Life Ins. Co., 313 S.C. 478, 443 S.E.2d 381 (1994). The evidence and all reasonable inferences must be examined in the light most favorable to the non-moving party. Sauner v. Public Service Authority of South Carolina, 581 S.E.2d 161, 165 (2003). Summary judgment is inappropriate if the facts are conflicting or the inferences to be drawn from the facts are doubtful. Alston v. Blue Ridge Transfer Co., 308 S.C. 292, 294, 417 S.E.2d 631, 632 (Ct. App. 1992).

CONCLUSIONS OF LAW

I conclude as follows:

1. Wells Fargo's Motion should be granted, in part, and denied, in part, as more particularly set forth below.

2. Bentrim filed the above-referenced action against Wells Fargo on April 25, 2011. Bentrim asserted the following claims against Wells Fargo: (i) RESPA Violations, Section 2605; (ii) Breach of contract; (iii) TILA Violations; (iv) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, et. seq.; (v) Mail Fraud; and, (vi) Punitive Damages.

Plaintiff's claims for (1) Breach of Contract; and (2) TILA Violations shall be dismissed *with prejudice* as a matter of law.

Specifically, Bentrim's breach of contract claim fails as a matter of law since the essential elements are (i) the existence of a contract, (ii) its breach, and (iii) the damages caused by the breach. Branche Builders, Inc. v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Here, Wells Fargo is entitled to Summary Judgment as to Plaintiffs' Breach of Contract claim since Plaintiff has failed to allege the elements of breach of contract. (Compl. at ¶ 34.) In fact, Plaintiff failed to allege any of the requisite elements to prevail on a breach of contract claim. As such, Plaintiff has failed to: (i) identify the contract that Wells Fargo allegedly breached, (ii) state when such breach occurred; (iii) set forth any allegations to how such breached occurred; and, (iv) set forth the damages, if any, that Plaintiff suffered by such alleged breach. Plaintiff cannot rely on a conclusory statement that simply alleging "Wells Fargo breached its contract with Mr. Bentrim." (Compl. at ¶ 24.) "In our State, the complaint is sufficient if it informs the defendant of the ultimate facts supporting *each element of the cause of action*; there is no necessity that the complaint states all the evidence to be presented upon the trial of the case." Moore v. Moore, 284 S.C. 278, 283, 326 S.E.2d 157 160 (Ct. App. 1985) (emphasis added). "A litigant is required to plead ultimate facts -- the facts which evidence upon trial will prove -- not the evidence necessary to prove these facts." Id. (citing Crowley v. Bob Jones University, 268 S.C. 492, 497, 234 S.E.2d 879, 881 (1977)). "A pleading which sets forth a cause of action. . . shall contain. . . . a short and plain statement of the facts showing that the pleading is entitled to relief. . ." Rule 8(a), SCRCP.

Plaintiff Bentrim's breach of contract cause of action does not plead "ultimate facts supporting *each element of the cause of action*." Bentrim's Complaint does not even attempt to set forth the elements of this cause of action, and therefore, his pleadings fail to comply with the South Carolina Rule of Civil Procedure 8 and the case law interpreting this Rule.

RMPJ/3

Moreover, Bentrim did not submit an affidavit in opposition to the Motion that would support his Breach of Contract claim. Accordingly, Plaintiff Wells Fargo is entitled to Summary Judgment as to Plaintiff's Breach of Contract claim, and therefore, this cause of actions fails as a matter of law and must be dismissed *with prejudice*.

Plaintiff's TILA claim fails as a matter of law and judgment should be granted in favor of Wells Fargo since the claim is time barred. Specifically, 15 U.S.C. § 1640(e) provides, in pertinent part, the following: "Any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within *one year* from the date of the occurrence of the violation or . . ." 15 U.S.C. § 1640(e) (emphasis added).

Plaintiff alleges that the TILA violations occurred in December 19, 2008 or 2009. (Compl. at ¶¶ 14, 15 & 21.) Plaintiff's Complaint was filed on April 25, 2011. Therefore, the TILA claim should have been brought in 2010 at the latest, however, it was not, and as such, the claim should be dismissed as a matter of law since it is time barred under the applicable one year statute of limitations.

Moreover, Plaintiff's counsel admitted at the end of the Hearing that this cause of action should be withdrawn by Plaintiff.

Accordingly, Wells Fargo is entitled to Summary Judgment as to Plaintiff's TILA Violations claim, and therefore, this cause of action fails as a matter of law and must be dismissed *with prejudice*.

12. Defendants' motion for summary judgment is denied as to (1) RESPA Violations, Section 2605; (2) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (3) Mail Fraud; and, (4) Punitive Damages because the Court finds the existence of genuine issues of material fact as a matter of law on each of the foregoing counts. Based on the reasons set forth in

RMP 5/14

this Order and all the pleadings on file with the Court and the arguments submitted by counsel at the Hearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Wells Fargo's Motion for Summary Judgment is granted, in part, and denied, in part.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the following claims asserted by Plaintiff Brent E. Bentrim are dismissed as a matter of law *with prejudice*: (1) Breach of Contract; and, (2) Truth in Lending Act (TILA), 15 U.S.C. § 1640(e).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' motion for summary judgment is denied as to (1) RESPA Violations, Section 2605; (2) South Carolina Unfair Trade Practices Act under S.C. Ann. § 39-5-10, *et. seq.*; (3) Mail Fraud; and, (4) Punitive Damages because the Court finds the existence of genuine issues of material fact as a matter of law on each of the foregoing counts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff may, at its option, re-file a motion for summary judgment to dismiss the above claims once the parties engage in further discovery.

IT IS SO ORDERED.

The Honorable R. Markley Dennis, Jr.
Judge, Ninth Judicial Circuit

November 13, 2012

Charleston, South Carolina

RMDJ/S

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	))	COURT OF COMMON PLEAS
BRENT E. BENTRIM, Plaintiff, WELLS FARGO BANK, NA, Defendant.	)	CASE NO. 2011-CP-10-2946 ANSWERS FOR REQUEST FOR ADMISSION BY PLAINTIFF IN RESPONSE TO DEFENDANT

Plaintiff, via his undersigned attorney, answers the Requests for Admission served upon him by Defendant's counsel.

1. Please admit that the copy of the Negotiable Promissory Note attached hereto and incorporated herein by reference as **Exhibit** "A" is a true and accurate copy of the Note dated March 12, 2002, signed by Brent E. Bentrim promising, without limitation, to pay First Union National Bank the principal sum of $182,700.00 plus interest (the **Note**").

Answer: **Plaintiff admits that the document appears to be the same document signed by Plaintiff on March 12, 2002. Plaintiff denies that the Note is Negotiable. Plaintiff does not understand the "without limitation" portion of this Request to Admit and therefore, cannot admit or deny same.**

2. Please admit that the copy of the Mortgage attached hereto and incorporated herein by reference as **Exhibit "B"** is a true and accurate copy of the Mortgage dated March 12, 2002 given by Brent E. Bentrim to First Union National Bank and recorded on April 3, 2002 in the Charleston County RMC Office on August 31, 2007 in Book C-402, at Page 182.

Answer: Plaintiff admits that the document is a copy of the Mortgage that he signed. Plaintiff does admit that the Mortgage was recorded in the RMC Office as stated. Plaintiff does not admit the right of Defendant to enforce same.

3. Please admit that Plaintiff failed to make payments as they have become due and owing pursuant to the terms and conditions of the Note and Mortgage.

Answer: Plaintiff denies that the Note and Mortgage accurately show the transaction that actually took place.

4. Please admit that Plaintiff is in default under the terms of the Note and Mortgage for failing to pay the monthly payments as required under the terms of the Note.

Answer: Denied.

5. Please admit the terms of the Note and Mortgage and other loan documents allow Defendant to, among other things, foreclose on the subject Property if Plaintiff breached the terms of the Note and/or Mortgage.



Answer: Plaintiff admits that the documents state what is stated. Defendant denies that there is a default.

6. Please admit that the copy of the Truth-in-Lending Disclosure Statement attached hereto and incorporated herein by reference as **Exhibit** "C," is a true and accurate copy of the Truth-in-Lending Disclosure Statement dated March 12, 2002, and signed by Plaintiff.

Answer: Plaintiff admits that the document is a copy of what he signed on March 12, 2002. Plaintiff denies that is accurately shows the transaction.

7. Please admit that the copy of the First Union Adjustable Rate Loan Information Sheet attached hereto and incorporated herein by reference as **Exhibit "D,"** is a true and accurate copy of the Interest Rate Agreement dated March 12, 2002, and signed by Plaintiff.

Answer: Admitted.

William H. Sloan
Bar No. 69630
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527
Attorney for Plaintiff
September 11 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
:
COUNTY OF CHARLESTON) Case No. 2011-CP-10-2946

BRENT E. BENTRIM)
)
Plaintiff(s),)
) DEPOSITION OF:
-vs-)
) BRENT E. BENTRIM
)
WELLS FARGO BANK, NA,)
)
Defendant(s),)

Given before John P. Crawford, Jr., Court Reporter and Notary Public, at Womble Carlyle Sandridge & Rice, LLP, 5 Exchange Street, Charleston, South Carolina, on Wednesday, May 8th, 2013, commencing at 10:10 o'clock, a.m.

ESQUIRE SOLUTIONS
EXHIBIT C
800.211.DEPO (3376)
EsquireSolutions.com

A P P E A R A N C E S

For the Plaintiff(s): Brown & Varnado, LLC
By: Robert B. Varnado, Esquire
103 Church Street
Mount Pleasant, SC 29464

For the Defendant(s): Womble Carlyle Sundridge & Rice, LLP
By: Jana B. Baker, Esquire
5 Exchange Street
Charleston, SC 29401

INDEX TO EXAMINATIONS

DIRECT EXAMINATION BY MS. BAKER 6

A. Yes.
Q. In Charleston?
A. No. In Greenville, Taylors.
Q. Okay. And where did you go to college?
A. I started at the University of Miami down in Florida.
Q. Right.
A. And then transferred and finished up at the College of Charleston.
Q. Okay. What year did you finish?
A. '94.
Q. Okay. And what was your degree at the College of Charleston?
A. I had a degree in both business finance and corporate communications.
Q. Okay. And so after, you said you graduated in '94?
A. Uh-huh.
MR. VARNADO: Say yes or no.
A. Oh, yes.
Q. Do you have any military background?
A. I do not.
Q. Okay. When you graduated in '94, what did you do or where did you start working right after?
A. I did. I moved to Richmond, Virginia and worked

for my national fraternity headquarters.
Q. Okay. Which was?
A. Sigma Phi Epsilon.
Q. Okay. And then after that? I mean, how long were you there for?
A. Right at a year and a half.
Q. Okay. And so, until about 1996 or so?
A. Mid-'95, 1996. Yeah.
Q. Okay. And then where did you go to work after that?
A. I spent about six months back in Greenville just working BS retail and then moved to Charleston and started working with Merrill Lynch in April of 1996.
Q. Okay. And then, were you with Merrill until 2000?
A. 2000. Yes.
Q. When you started working for First Union?
A. Yes.
Q. Okay. Okay. You said you had no military background, correct?
A. No.
Q. Okay. Do you belong to a church?
A. Not really, no.
Q. Okay. Okay. Well, let's go to, you know, why

we're here today. Okay. You know, with regarding this -- I apologize on that earlier today.

A. That's all right.

(DEED MARKED AS DEFENDANT'S EXHIBIT NO. 1 FOR IDENTIFICATION.)

Q. And this is just so I want to make sure the record is clear. This is, we can use this as -- I wish I hadn't marked this, but this is the deed, or you can take a look at this first.

MR. VARNADO: Do you have an extra?

MS. BAKER: Yeah. I just --

MR. VARNADO: That's all right. I'll just share with him.

MS. BAKER: I'm sorry about that, Rob.

MR. VARNADO: As long as you don't mind, can I write on this? If that's the real exhibit for the court reporter, can I just write number one on this, and I'll just take a copy home?

MS. BAKER: You can take it all with you.

Yes.

Q. Okay.

A. Okay.

Q. Okay. And have you seen this deed before?

A. I believe so.

Q. Okay. And this is the deed showing that you purchased the 10 Nicholson property, correct?
A. Right. From Ms. Zervos.
Q. Okay. Exactly. And what was the year that you, when was the original closing for this?
A. September 2000. I know it's dated here on October 6th, but I think that's when they stamped it.
Q. Is it September 29th, 2000?
A. Right around, yeah. It's going to be somewhere around there.
Q. Okay. And did you, when you initially purchased the property, did you obtain a mortgage?
A. I did.
Q. Okay. And was it with Bank of America?
A. It was.
Q. Okay. And were you able to make the monthly payments at that time?
A. I was.
Q. Okay. And what was the amount of the mortgage with Bank, B of A, if you recall?
A. I believe it was one sixty, I'm trying to think if I did like an eighty/twenty, but I don't believe I did. I believe it was just one sixty. I don't think there was a second on there.

Q. Okay. I'm not going to hold you to that.
A. Yeah. No. I was just trying to --
Q. Okay.
A. -- some of these questions, you're like, wow, why don't, you know.
Q. It was a long time ago. Right, exactly. Okay. And then you, after that, you went ahead and refinanced with First Union, correct?
A. Right.

(PROMISSORY NOTE MARKED AS DEFENDANT'S EXHIBIT NO. 2 FOR IDENTIFICATION.)

Q. Okay. And take a look, we're going to use this as Exhibit Two. This is the note. I'll just let you hold onto that. Okay. And so, do you recall the date that you refinanced with First Union?
A. Yes. It was March 12th, 2002.
Q. Okay. And take a look at what's marked as Exhibit Two which is a negotiable promissory note?
A. Right.
Q. Have you seen that before, have you seen the document before that you're looking at?
A. Yes.
Q. Okay. And does it appear to be a true and accurate copy of the note that you signed?

A. At this point, I have no idea, Jana. There's been three or four notes proffered by your client that says that this is a true and accurate copy.
Q. Do you know the original note we have here in our vault?
A. Right.
Q. Okay. And you're welcome to look at it with your attorney.
MR. VARNADO: In fact, we might do that. We might take you up on that at a break.
MS. BAKER: We can do that.
THE WITNESS: Okay.
Q. Well, how about this, if you turn, this is again Exhibit Two of the note, if you turn to the last page of the document which is at the bottom, it's labeled WF eight.
A. Yep.
Q. Is that your signature?
A. Yes. It is.
Q. Okay. And do you recall the amount of the loan with First Union?
A. One eighty-two seven hundred.
Q. Okay. And do you recall what the interest rate was?
A. Yes. I do.

Q. Okay.
A. It was an adjustable rate mortgage.
Q. Okay.
A. It was based off the prime plus a quarter.
Q. Okay. Or you could actually, if you look at the note, it may, where the X is on the first page it's indicated. Is that correct? Here, I can show it to you.
A. Yeah. That is correct.
Q. Do you want to read it just for the record?
A. The interest rate is prime rate which was then four point seven five percent plus point two four percentage points or twenty-four basis points.
Q. Okay. And where are you? Sorry about this. Okay. I see what you're saying. Okay. That's the initial interest rate?
A. Yeah.
Q. And then, if you read above that where the X is located, is that correct? If indicated, which is where the X is. I can point it.
A. Four point nine nine.
Q. You can just read that sentence.
A. "If indicated, this is a variable rate loan and my initial interest rate is four point nine nine."

Q. Okay. And then, was this, did this reduce, what did the modification do?
A. Ten grand. Ten thousand.
Q. It reduced it to ten thousand dollars?
A. Yeah.
Q. Okay. You said, is it still open?
A. What happened last or in 2011 when your firm sent me out an acceleration on the other loan is they quit accepting payments and quit sending me statements on this loan. So, it's still got something on it.
Q. Okay. So, there's still a -- okay. What did you, did you use the loan proceeds to buy anything or did you --
A. Heck if I know.
Q. All right.
A. Yeah.
Q. Does this law suit that we're here, does it have anything to do with this amount?
A. No.
Q. No. Okay. Okay. Now --
A. However.
Q. Okay.
A. Sorry. When I did call and say hey, you know, why did you quit accepting my payments and quit

sending me statements, they said because we're foreclosing, so I believe Wells Fargo believes this is part of it.

Q. Okay.

A. Yeah.

Q. But it's not part of any of your claims against Wells Fargo?

A. No. Not part of my claims against them.

Q. Okay. Now, in regard to, let's see here, the current, you know, the mortgage and note and mortgage, are you currently, you know, which is Exhibit Two that we looked at and probably Three.

A. Three.

Q. Are you making payments now on this loan?

A. No.

Q. Okay. When did you stop making payments, do you recall?

A. In January 2009, your client refused to take further payments.

Q. So, you were making payments in January of 2009; is that a yes?

A. Yes. It is. Sorry.

Q. Okay. Why did Wells Fargo, why did they stop accepting the payments?

MR. VARNADO: Object to form. You can

17
X

BK L 412PG295

State of South Carolina
County of Charleston

Prepared by:
Liz Injaychock
Bank of America
475 CrossPoint Pkwy, Getzville NY 14068
Loan Number: 6497088796

When recorded mail to:
Brent E Bentrim

10 Nicholson Street
Charleston, SC 29407

Satisfaction
(with Lost Mortgage Affidavit)

The debit secured by that certain mortgage of real estate executed by Brent E Bentrim to BANK OF AMERICA NA dated 09/29/2000, recorded on 09/29/2000 in Mortgage Book B 356 Page 683 has been paid in full.

Dated 06/21/2002.

Bank of America, N.A., ~~a national banking association~~

Witness Sandra Boyce
Sandra Boyce

By: Susan A.D. Corrigan
Susan A.D. Corrigan,
Vice President

Witness Veronica Garrison
Veronica Garrison

STATE OF New York
COUNTY OF Erie

Personally appeared before me Sandra Boyce and made oath that he/she saw the within named Susan A.D. Corrigan, Vice President sign, seal and as his/her Act and Deed, deliver the within written Deed; and that he/she with Veronica Garrison witnessed the execution thereof.

Sworn before me on 06/21/2002.

Marla J Naab
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 16, 2003

Sandra Boyce
Sandra Boyce

STATE OF New York
COUNTY OF Erie

Personally appeared before me Susan A.D. Corrigan, Vice President who being duly sworn deposes and says that he/she is the bona fide owner and holder of the within Bond/Note and Mortgage, that the same has not been assigned hypothecated or otherwise deposed of, and that the same has been lost or destroyed, and after diligent search cannot be found. That deponent has full authority to mark the Mortgage satisfied and canceled of record.

Sworn before me on 06/21/2002.

Marla J Naab
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 16, 2003

By: Susan A.D. Corrigan
Susan A.D. Corrigan,
Vice President

MARLA J. NAAB NOTARY PUBLIC STATE OF NEW YORK

EXHIBIT
tabbies
D

BANK OF AMERICA
POST OFFICE BOX 9000
GETZVILLE,NY 14068-9000
ENV

BK L 412PG296

FILED 4
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2002 JUL 17 PM 12:27
REGISTER
CHARLESTON COUNTY SC

SATISFACTION

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS Civil Action No.: 05-CP-10-4814
Wachovia Bank, N.A., successor to First Union National Bank, Plaintiff, vs. Brent E. Bentrim and Citibank, South Dakota, N.A., Defendant(s).	)	**MASTER'S REPORT AND JUDGMENT OF FORECLOSURE AND SALE**

FILED
2006 AUG 16 PM 12:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(Deficiency Demanded)

Notice: The original of this report was filed in the office of the Clerk of Court for Charleston County on _____ day of July, 2006 and copies forwarded to the following on the same date.

To: Warren R. Herndon, Jr., Esquire

Pursuant to Rule 53, South Carolina Rules of Civil Procedure, the above entitled matter was referred to the undersigned to make appropriate findings of facts and conclusions of law with authority to enter a final judgment in the cause. Any appeal from this Order is to the Supreme Court.

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

FINDINGS

1. The Lis Pendens was filed on November 28, 2005.

2. The Summons and Complaint were filed on November 28, 2005.

EXHIBIT
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E

WF 000400

3. Service was made upon the defendants named in this Report as is shown by the proofs of service filed herein.

4. The defendant, Brent E. Bentrim, is in default as shown by affidavits on file herein.

5. According to the affidavit filed herein, the defendant in default is not in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940 and any amendments thereto.

6. All Defendants in default and all attorneys of record and defendants pro se were notified of the time, date, and place of hearing in this matter.

7. For value received, Brent E. Bentrim, made, executed, and delivered a certain Promissory Note dated May 24, 2001, promising thereby to pay to the order of First Union National Bank, the sum of $49,000.00 Dollars with interest now running at 9.0% per annum as stated in the Note. Other terms and conditions are stated in the note, which is of record herein.

8. To better secure the payment of the note described above, the said Brent E. Bentrim, made, executed and delivered to First Union National Bank, a mortgage in writing dated May 24, 2001, covering real property in Charleston County, which is the same as that described in the Complaint. The mortgage was filed on June 6, 2001, and is of record in the office of the RMC for Charleston County in Mortgage Book 0373 at Page 230.

9. This mortgage constitutes a first lien on the mortgaged premises.



10. For value received, Brent E. Bentrim, made, executed, and delivered a certain Promissory Note dated March 12, 2002, promising thereby to pay to the order of First Union National Bank, the sum of $182,700.00 Dollars with interest now running at 8.24% per annum as stated in the Note. Other terms and conditions are stated in the note, which is of record herein.

11. To better secure the payment of the note described above, the said Brent E. Bentrim, made, executed and delivered to First Union National Bank, a mortgage in writing dated March 12, 2002, covering real property in Charleston County, which is the same as that described in the Complaint. The mortgage was filed on April 3, 2002, and is of record in the office of the RMC for Charleston County in Mortgage Book C402 at Page 182.

12. This mortgage constitutes a second lien on the mortgaged premises.

13. The Plaintiff in this action is the owner and holder of the notes and mortgages it is seeking to foreclose.

14. The title holder of record in and to the subject property as of the filing of the lis pendens in this action is Brent E. Bentrim, who is the original mortgagor.

15. Payment due on the notes have not been made as provided for in the notes, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness and has placed the notes and mortgages in the hands of the attorney herein for collection.

WF 000402

16. The sum of $7,500.00 is a reasonable fee to allow as attorney fees for plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action under the terms of the notes and mortgages.

17. The amount due and owing on the first note, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee secured by the note and mortgage is as follows:

a.	Principal due 7/19/06:	$12,651.87
b.	Interest to 7/19/06 at 8.24%	572.02
c.	2005 Property taxes	1,376.24
d.	Costs of collection prior to hearing, service, filing, etc.	525.00
	TOTAL DEBT secured by note and mortgage including interest to date shown:	$15,125.13

Interest for the period from the date shown in (b), above through the date of this judgment at above stated rate to be added to the above stated "total debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 9.0% per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of plaintiff's debt secured by the mortgage through the date to which such interest is computed.

18. The amount due and owing on the second note, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee secured by the note and mortgage is as follows:

a.	Principal due 7/19/06:	$174,962.08
b.	Interest to 7/19/06 at 8.24%	10,600.95
c.	Attorney's fees	$ 7,500.00
	TOTAL DEBT secured by note and mortgage including interest to date shown:	$193,063.03

Interest for the period from the date shown in (b), above through the date of this judgment at above stated rate to be added to the above stated "total debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 8.24% per annum (pursuant to the terms of the note and mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of plaintiff's debt secured by the mortgage through the date to which such interest is computed.

19. The plaintiff is seeking foreclosure of the mortgages and has in the complaint, expressly demanded a personal or deficiency judgment pursuant to Rule 71(b) South Carolina Rules of Civil Procedure, but reserved the right to waive same at any time prior to sale.

20. The Defendant, Citibank, South Dakota, N.A. claims or may claim a lien upon or interest in the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure. The said Defendant and such claims or liens are as follows:

a. Citibank, South Dakota, N.A., by virtue of a judgment against Brent Bentrim dated November 2, 2004 in the amount of $2,335.20 plus interest and filed on November 2, 2004 as Civil Action #2004-CP-10-0569.

CONCLUSIONS OF LAW

I, therefore, conclude as follows:

1. The plaintiff should have judgment of foreclosure of the mortgages and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS ORDERED, ADJUDGED AND DECREED:

1. That there is due to the plaintiff on the obligation and mortgage set forth in the complaint the sum of $15,125.13 representing the "Total Debt" due Plaintiff as set out in paragraph seventeen supra, together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph seventeen and later accrued interest on the principal) shall constitute the total judgment debt due the plaintiff and shall bear interest hereafter at the rate of 9.0% per annum.

3. That there is due to the plaintiff on the obligation and mortgage set forth in the complaint the sum of $193,063.03 representing the "Total Debt" due Plaintiff as set out in paragraph eighteen supra, together with interest at the rate provided in said obligation on the balance of principal from the aforesaid date to the date hereof.

4. The amount due in the preceding paragraph (the "Total Debt" as set forth in paragraph eighteen and later accrued interest on the principal) shall constitute the total judgment debt due the plaintiff and shall bear interest hereafter at the rate of 8.24% per annum.

5. That the defendant(s) liable for the aforesaid mortgage debt do, on or before the date of sale of the property hereinafter described, pay to the plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the complaint, as hereinafter set forth, be sold by the undersigned Master in Equity, at public auction, at the Courthouse, in the City of Charleston, County and State aforesaid, on some convenient sales hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the salesday shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

a. FOR CASH: the undersigned Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within thirty (30) days same to be forfeited and applied to the costs and plaintiff's debt.

WF 000406

b. The sale shall be subject to taxes and assessments, existing easements and restrictions of record.

c. Purchaser to pay for deed stamps and cost of recording the deed.

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

8. Personal or deficiency judgment being demanded, the bidding will remain open for thirty (30) after the date of sale, but Plaintiff has reserved the right to waive its demand for a personal or deficiency judgment and if waived, the bidding will not remain open after the date of sale and compliance with the bid may be made immediately.

9. That the undersigned Master in Equity will, by advertisement according to law, give notice of the 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, and that if, upon such sale being made, the purchaser or purchasers, should fail to comply with the terms thereof within thirty (30) days after date of sale, then the undersigned Master in Equity may advertise the said premises for sale on the next, or some other subsequent salesday, at the risk

of the former highest bidder, and so from time to time thereafter until a full compliance shall be secured.

10. That the undersigned Master in Equity do apply the proceeds of the sale as follows:

First: to 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, so much thereof as the purchase money will pay on the same;

Next: any surplus to be held pending further order of this Court.

11. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the defendant(s) in possession herein, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant of the property sold, together with all personal property located thereon, put the successful bidder or his assigns in full, quiet and peaceable possession of said premises.

12. And it is further ORDERED, ADJUDGED AND DECREED that each defendant named herein, Brent E. Bentrim and all persons whosoever claiming under them, 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.

13. IT IS FURTHER ORDERED that, pursuant to S. C. CODE Ann. Section 30-9-31 (Supp. 1987), that the deed of conveyance made pursuant to said sale shall be indexed in the grantor index by the Register of Mesne Conveyance in the name of the owner of record of subject property immediately prior to execution of the deed, as well as in the name of the undersigned Master in Equity, who executes such deed as grantor.

14. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any funds pursuant to Rule 71(c), South Carolina Rules of Civil Procedure.

15. The following is a description of the premises herein ordered to be sold:

> All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andres parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W.A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat Book F at page 178 and on plat made by W.A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.
>
> This being the same property conveyed to Brent E. Bentrim by deed of M. Elizabeth Zervos dated September 29, 2000 and recorded on October 4, 2000 in Book B356 at Page 214.

TMS No.: 421-02-00-107

Mikell R. Scarborough, Master In Equity for Charleston County

Charleston, South Carolina
August 14, 2006
wah: 05-8293

11

WF 000410

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Civil Action No. 05-CP-10-4814
COUNTY OF CHARLESTON	)	
Wachovia Bank, N.A., successor to First Union National Bank,	)	
Plaintiff,	)	**STIPULATION**
vs.	)	
Brent E. Bentrim and Citibank, South Dakota, N.A.,	)	
Defendant(s).	)	

The undersigned acknowledges and stipulates the following:

1. The undersigned defendant Brent E. Bentrim has been duly served.

2. Plaintiff and the undersigned agree to settle the relief sought in the Commplaint.

3. That on May 24, 2001, the undersigned made, executed and delivered unto First Union National Bank a certain Promissory Note in the principal sum of $49,000.00 Dollars. —reduced in 3/2007 to $10,000

4. That in order to better secure the payment of said note according to the terms and conditions thereof, the undersigned made, executed and delivered unto First Union National Bank a certain real estate Mortgage, wherein and whereby the undersigned conveyed to the said First Union National Bank by way of a mortgage the following described property:

> All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andres parish, County of Charleston, State of South Carolina, known and

EXHIBIT F tabbies

WF 000443

designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W.A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat Book F at page 178 and on plat made by W.A. Clark dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

5. That said Mortgage was duly signed, witnessed and probated. That thereafter said Mortgage was duly recorded in the office of the RMC for Charleston County on June 6, 2001 in Mortgage Book 0373 at Page 230.

6. That said Mortgage evidences and secures the repayment of money advanced by First Union National Bank to, or on behalf of, the undersigned and constitutes a first lien on the mortgaged premises.

7. That heretofore on March 12, 2002, the undersigned made, executed and delivered unto First Union National Bank a certain Promissory Note in the principal sum of $182,700.00 Dollars.

8. That in order to better secure the payment of said note according to the terms and conditions thereof, the undersigned made, executed and delivered unto First Union National Bank a certain real estate Mortgage, wherein and whereby said undersigned conveyed to the said mortgagee by way of a mortgage the following described property:

All that certain piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in St. Andres parish, County of Charleston, State of South Carolina, known and designated as Lot 62, Block I, on a plat of the subdivision known as Byrnes Downs, which plat was made by W.A. Clark, L.S., dated January, 1944, and is duly recorded in the RMC Office for Charleston County in Plat Book F at page 178 and on plat made by W.A. Clark

WF 000444

dated January, 1945 and recorded in the RMC Office for Charleston County in Plat Book F, Page 219.

9. That said Mortgage was duly signed, witnessed and probated. That thereafter said Mortgage was duly recorded in the office of the RMC for Charleston County on April 3, 2002 in Mortgage Book C402 at Page 182.

10. That payment has not been received of the installments due under the notes and mortgages and such non-payment constitutes a breach of the covenants of the mortgages to pay when due the sums secured thereby and Plaintiff notified the undersigned of the breach and of what was necessary to cure the same, but the undersigned failed to cure the breach within the time specified in the notice.

Brent E. Bentrim
Appearing *pro se*

4/28/06, 2006

Charleston, South Carolina

wch: 05-8293

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) C/A No.: 2011-CP-10-2946
BRENT E. BENTRIM	)
Plaintiff,	)
vs.	) **AFFIDAVIT OF MATTHEW WAKEFIELD**
WELLS FARGO BANK, N.A.	)
Defendant.	)

The undersigned, being duly sworn, states as follows:

1. He is a Vice President at Wells Fargo Bank, N.A. ("Wells Fargo"), and as such has access to business records and information which pertain to the facts set forth in this Affidavit.

2. The loan at issue in this case was made by First Union National Bank ("First Union") pursuant to a Negotiable Promissory Note dated March 12, 2002 executed in favor of First Union by Brent E. Bentrim the ("Bentrim Loan.")

3. The beneficial interest of the Bentrim loan was sold to The Money Store Service Corporation for fair market value on or about November 29, 2006. On or about May 1, 2010, The Money Store Service Corporation was merged into The Money Store, LLC. Also, on May 1, 2010, The Money Store, LLC was dissolved and distributed to Wells Fargo.

4. As evidenced by the attached record which is publicly available and maintained by the Federal Reserve ("Exhibit 1"), The Money Store Service Corporation was a subsidiary of The Money Store, LLC which was a subsidiary of Wells Fargo Bank, N.A.

FURTHER AFFIANT SAYETH NOT

By: _____
Name: Matthew Wakefield
Title: Vice President
Company: Wells Fargo Bank, N.A.

SWORN to before me this 4th day of June, 2014.

_____
Notary Public for the State of North Carolina
My commission expires: 4-22-2017

LINDA L PETERSON NOTARY PUBLIC UNION COUNTY NC

EXHIBIT 6

Report created: 6/3/2014

WACHOVIA BANK, NATIONAL ASSOCIATION (484422)

as of 11/29/2006

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
1	* WACHOVIA BANK, NATIONAL ASSOCIATION (484422)		CHARLOTTE	NC	National Bank
2	-* WACHOVIA INTERNATIONAL BANKING CORPORATION (24837)	1	CHARLOTTE	NC	Edge Corporation - Investment
3	—* PHILADELPHIA INTERNATIONAL EQUITIES, INC. (1188156)	2	WILMINGTON	DE	Domestic Entity Other
4	—* + PHILADELPHIA NATIONAL LIMITED (1181915)	3	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
5	—* WACHOVIA SERVICES PTE. LTD. (2449827)	3	SINGAPORE	SINGAPORE	International Nonbank Sub of Domestic Entities
6	—* WACHOVIA CAPITAL FINANCE CORPORATION (CANADA) (2324803)	2	TORONTO	CANADA	Finance Company
7	—* WACHOVIA SECURITIES INTERNATIONAL LIMITED (2715063)	2	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
8	—* EVERGREEN WORLDWIDE DISTRIBUTORS, LTD. (2823632)	2	HAMILTON	BERMUDA	International Nonbank Sub of Domestic Entities
9	—* CONGRESS FINANCIAL CAPITAL (US) CORPORATION (3088830)	2	CHARLOTTE	NC	Domestic Entity Other
10	—* CONGRESS FINANCIAL CAPITAL COMPANY (3088885)	9	HALIFAX	CANADA	Finance Company
11	—* CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	10	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
12	—* + CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	9	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
13	—* WIBC ARUBA N.V. (3469167)	2	ORANJESTAD	ARUBA	International Nonbank Sub of Domestic Entities
14	-* FIRST NATIONAL PROPERTIES, INC. (1308945)	1	COLUMBIA	SC	Domestic Entity Other
15	-* WB LOAN FUNDING 3, LLC (3302992)	1	CHARLOTTE	NC	Domestic Entity Other
16	-* CALIBRE ADVISORY SERVICES, INC. (3308323)	1	WALTHAM	MA	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

^ Although this relationship is not governed by U.S. banking statutes, it is included because it is of interest to the Federal Reserve.



Report created: 6/3/2014

WACHOVIA BANK, NATIONAL ASSOCIATION (484422)

as of 11/29/2006

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
1294	-* POOLED AUTO SECURITIES SHELF LLC (2924557)	1	CHARLOTTE	NC	Domestic Entity Other
1295	--* WACHOVIA AUTO OWNER TRUST 2004-A (3287129)	1294	CHARLOTTE	NC	Domestic Entity Other
1296	--* WACHOVIA AUTO OWNER TRUST 2004-B (3291984)	1294	CHARLOTTE	NC	Domestic Entity Other
1297	--* WACHOVIA AUTO OWNER TRUST 2005-A (3308556)	1294	CHARLOTTE	NC	Domestic Entity Other
1298	--* WACHOVIA AUTO OWNER TRUST 2005-B (3368297)	1294	CHARLOTTE	NC	Domestic Entity Other
1299	--* WACHOVIA AUTO OWNER TRUST 2006-A (3384943)	1294	CHARLOTTE	NC	Domestic Entity Other
1300	-* WACHOVIA EXCHANGE SERVICES, LLC (2944274)	1	CHARLOTTE	NC	Domestic Entity Other
1301	--* TQI EXCHANGE, LLC (3302910)	1300	CHARLOTTE	NC	Domestic Entity Other
1302	--* HNB AUTO EXCHANGE, LLC (3379640)	1300	CHARLOTTE	NC	Domestic Entity Other
1303	--* RYDER EXCHANGE, LLC (3411214)	1300	CHARLOTTE	NC	Domestic Entity Other
1304	--* PHH FUNDING, LLC (3437214)	1300	CHARLOTTE	NC	Domestic Entity Other
1305	-* WACHOVIA CAPITAL FINANCE CORPORATION (WESTERN) (1149296)	1	PASADENA	CA	Domestic Entity Other
1306	-* WACHOVIA EMPLOYER SOLUTIONS, LLC (3039458)	1	TAMPA	FL	Domestic Entity Other
1307	-* SOUTHTRUST INTERNATIONAL, INC. (3088979)	1	BIRMINGHAM	AL	Agreement Corporation - Investment
1308	--* SOUTHTRUST HONG KONG, LIMITED (3121483)	1307	CENTRAL	HONG KONG	Finance Company
1309	-* SUMMITT PELS FUNDING LLC (3147054)	1	CHARLOTTE	NC	Domestic Entity Other
1310	-* MW1-2002, LLC (3149937)	1	CHARLOTTE	NC	Domestic Entity Other
1311	-* SPFE, INC. (3151127)	1	CHARLOTTE	NC	Domestic Entity Other
1312	-* WACHOVIA LARGE LOAN, INC. (3157914)	1	CHARLOTTE	NC	Domestic Entity Other
1313	-* UNIVERSAL MASTER SERVICING, LLC (3165898)	1	CHARLOTTE	NC	Domestic Entity Other
1314	-* MONEY STORE, LLC, THE (3168536)	1	ROSEVILLE	CA	Domestic Entity Other
1315	--* WACHOVIA SBA LENDING, INC. (1675683)	1314	ROSEVILLE	CA	Domestic Entity Other
1316	---* WACHOVIA SBA HOLDINGS, INC. (2722799)	1315	ROSEVILLE	CA	Domestic Entity Other
1317	--* MONEY STORE/SERVICE CORP., THE (2722306)	1314	ROSEVILLE	CA	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

^ Although this relationship is not governed by U.S. banking statutes, it is included because it is of interest to the Federal Reserve.

Report created: 6/3/2014

WELLS FARGO BANK, NATIONAL ASSOCIATION (451965)

as of 05/01/2010

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
1	* WELLS FARGO BANK, NATIONAL ASSOCIATION (451965)		SIOUX FALLS	SD	National Bank
2	-* WACHOVIA INTERNATIONAL BANKING CORPORATION (24837)	1	CHARLOTTE	NC	Edge Corporation - Investment
3	—* PHILADELPHIA INTERNATIONAL EQUITIES, INC. (1188156)	2	WILMINGTON	DE	Domestic Entity Other
4	—* PHILADELPHIA NATIONAL LIMITED (1181915)	3	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
5	—* WELLS FARGO CAPITAL FINANCE CORPORATION CANADA (2324803)	2	TORONTO	CANADA	Finance Company
6	—* WELLS FARGO SECURITIES INTERNATIONAL LIMITED (2715063)	2	LONDON	ENGLAND	International Nonbank Sub of Domestic Entities
7	—* EVERGREEN WORLDWIDE DISTRIBUTORS, LTD. (2823632)	2	HAMILTON	BERMUDA	International Nonbank Sub of Domestic Entities
8	—* CONGRESS FINANCIAL CAPITAL (US) CORPORATION (3088830)	2	CHARLOTTE	NC	Domestic Entity Other
9	—* CONGRESS FINANCIAL CAPITAL COMPANY (3088885)	8	HALIFAX	CANADA	Finance Company
10	—* CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	9	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
11	—* + CONGRESS FINANCIAL CAPITAL CORPORATION (CANADA) (3088894)	8	TORONTO	CANADA	International Nonbank Sub of Domestic Entities
12	—* WIBC ARUBA N.V. (3469167)	2	ORANJESTAD	ARUBA	International Nonbank Sub of Domestic Entities
13	—* WACHOVIA REAL ESTATE KOREA, INC. (3559273)	2	SEOUL	KOREA, SOUTH	International Nonbank Sub of Domestic Entities
14	-* WACHOVIA MORTGAGE CORPORATION (1073560)	1	CHARLOTTE	NC	Domestic Entity Other
15	—* RELS, L.L.C. (2724010)	14	DES MOINES	IA	Domestic Entity Other
16	—* RELS REPORTING SERVICES, L.L.C. (2377340)	15	DES MOINES	IA	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

^ Although this relationship is not governed by U.S. banking statutes, it is included because it is of interest to the Federal Reserve.

Report created: 6/3/2014

WELLS FARGO BANK, NATIONAL ASSOCIATION (451965)

as of 05/01/2010

Hierarchy report with the following institution types: Commercial Bank, Cooperative Bank, Credit Union, Edge/Agreement Corporation, Financial Holding Company, Holding Company, Industrial Bank, Insurance Co. Broker/Agent/Underwriter, Nondepository Trust Company, Other Company, Savings Bank, Savings and Loan Association, and the Securities Broker/Dealer/Underwriter

Seq Num	Name (RSSD ID)	Parent Seq	City	State or Country	Entity Type
54	-* J.L. KAPLAN ASSOCIATES, LLC (3153505)	1	BOSTON	MA	Domestic Entity Other
55	-* WACHOVIA PREFERRED REALTY, LLC (3153916)	1	ROSEVILLE	CA	Domestic Entity Other
56	-* WACHOVIA LARGE LOAN, INC. (3157914)	1	CHARLOTTE	NC	Domestic Entity Other
57	-* UNIVERSAL MASTER SERVICING, LLC (3165898)	1	CHARLOTTE	NC	Domestic Entity Other
58	-* SOUTHTRUST MORTGAGE CORPORATION (1079544)	1	MARIETTA	GA	Domestic Entity Other
59	-* MONEY STORE, LLC, THE (3168536)	1	ROSEVILLE	CA	Domestic Entity Other
60	—* WES HOLDING CORPORATION (3536537)	59	CHARLOTTE	NC	Domestic Entity Other
61	—* EQUITY INSURANCE AGENCY, INC. (2722696)	60	ROSEVILLE	CA	Domestic Entity Other
62	—* MONEY STORE/SERVICE CORP., THE (2722306)	59	ROSEVILLE	CA	Domestic Entity Other
63	—* TMS SPECIAL HOLDINGS, INC. (2722753)	62	ROSEVILLE	CA	Domestic Entity Other
64	—* WELLS FARGO EDUCATION FINANCE INC. (2722856)	59	RANCHO CORDOVA	CA	Finance Company
65	—* TMS STUDENT HOLDINGS INC. (2722865)	64	RANCHO CORDOVA	CA	Domestic Entity Other
66	—* WACHOVIA EDUCATION LOAN FUNDING LLC (3368309)	64	CHARLOTTE	NC	Finance Company
67	—* WACHOVIA STUDENT LOAN TRUST 2005-1 (3402641)	66	CHARLOTTE	NC	Domestic Entity Other
68	—* WACHOVIA STUDENT LOAN TRUST 2006-1 (3451984)	66	CHARLOTTE	NC	Domestic Entity Other
69	-* WACHOVIA ENCRYPTION TECHNOLOGIES, LLC (3175422)	1	CHARLOTTE	NC	Data Processing Servicer
70	-* WPFC ASSET FUNDING LLC (3182608)	1	CHARLOTTE	NC	Domestic Entity Other
71	-* WELLS FARGO CREDIT CARD FUNDING, LLC (3195532)	1	LAS VEGAS	NV	Finance Company
72	—* WELLS FARGO CREDIT CARD MASTER NOTE TRUST (3207798)	71	LAS VEGAS	NV	Domestic Entity Other
73	-* WELLS FARGO CAPITAL FINANCE, LLC (3197200)	1	SANTA MONICA	CA	Finance Company
74	—* WELLS FARGO DISTRIBUTION FINANCE, LLC (3801994)	73	SANTA MONICA	CA	Finance Company
75	-* OMNIPLUS CAPITAL CORPORATION (3221730)	1	NASHVILLE	TN	Domestic Entity Other

* Institutions Matching Selection Rule.

+ For purposes of Regulation Y, the top-tier reporter's ownership level in this banking organization does not meet the definition of "control"; however, the ownership level does meet the FY Y-10/10F reportability criteria as this banking relationship is regulated by the Federal Reserve.

^ Although this relationship is not governed by U.S. banking statutes, it is included because it is of interest to the Federal Reserve.

Bentrim v. Wells Fargo, N.A.
Civil Action No.:2011-CP-10-2946
Statement of Damages:

A. **Causes(s)** **1, 2, 3, 4, 6, 7, 15**

i. $99,658.12 difference between BOA loan and current loan as of Aug. 2013

ii. $25,000.00 failure to release lien – pursuant to S.C. Code. § 29-3-320

iii. $38,500.00 payments made to Wachovia Bank, N.A. Dec. 2006 to Nov. 2008

Sub-Total: $163,158.12

B. **Causes(s)** **5, 10**

$38,500.00 (see A.iii above)

C. **Causes(s)** **8, 14**

$489,474.36 (see A.i through A.iii, trebled)

D. **Cause(s)** **9**

To be determined by trier of fact but no less than $100,000.00

E. **Cause(s)** **11**

To be determined by trier of fact but no less than $100,000.00

F. **Causes(s)** **13**

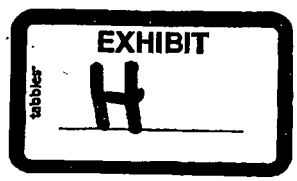
$15,000.00 One Thousand ($1,000.00) Dollars per incident x 15 incidents

G. **Cause(s)** **14**

$99,658.12 (see A.iii above)

(cont'd)

1



H.	Cause(s)	16
	Mail Fraud 2007	$300,000.00
	Mail Fraud 2009	$250,000.00

Plaintiff would crave reference to all documents produced so far in discovery, including but not limited to Plaintiff's documents "A." through "PP" in Plaintiff's Answer to Interrogatory number 2 of Wells Fargo's First Set of Interrogatories, and Wells Fargo documents ## 150-153, 159-218, 2299-2304.

Plaintiff reserves the right to supplement these damages at a later time in accordance with the rules and scheduling order(s) applicable in this case.

CERTIFIED A TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
C/A No: 2006-CP-21-1814

CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.

JJH TRANSPORT, LLC AND JOEL HERRING,

Plaintiff,

vs.

BRANCH BANKING AND TRUST COMPANY OF SOUTH CAROLINA,

Defendants

FILED
2007 MAY 24 AM 9:42
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

ORDER ON AMENDED MOTION TO DISMISS

This matter came before the Court on the Motion to Dismiss pursuant to Rules 12(b)(6) and (8), SCRCP, of Branch Banking and Trust Company of South Carolina ("BB&T").

The Motion to Dismiss sought the dismissal of all causes of action as to Joel Herring, pursuant to Rule 12(b)(8), SCRCP, on the grounds that a prior pending action was pending between the same parties involving the same claims as alleged herein. The Motion to Dismiss further sought the dismissal of the First and Second Causes of action, alleging negligence, the Fourth Cause of Action, alleging conspiracy, the Fifth Cause of Action, alleging a violation South Carolina Unfair Trade Practices Act and the Sixth Cause of Action, alleging intentional infliction of emotional distress.

MOTION TO AMEND

At the hearing in this matter, the Plaintiff presented to the Court a Motion to Amend and a proposed Second Amended Complaint. Arguments at the hearing and subsequent written submissions by the Plaintiff have relied upon the Second Amended Complaint. With the consent

EXHIBIT
1

of counsel and to avoid unnecessary further pleadings, this Court has considered the Second Amended Complaint in the determination of this Motion. As a preliminary matter, the Court grants the Motion to Amend dated January 8, 2007. The Amended Motion to Dismiss is construed by the Court as addressing the Second Amended Complaint and a further motion specifically directed to that pleading shall not be required. In addition, the Court determines that the previously filed Answer to Amended Complaint is sufficiently responsive to the Second Amended Complaint with any material facts added in the Second Amended Complaint to be considered denied without further answer.

RULE 12(b)(8) – PRIOR PENDING ACTION

Rule 12(b)(8), SCRCP, specifically provides for dismissal of an action or claim if "another action is pending between the same parties for the same claim".

BB&T argues that the appropriate standard to be applied in determining the applicability of Rule 12(b)(8), SCRCP, was set forth by the Court of Appeals in *Corbett v. City of Myrtle Beach*[1] where the Court was evaluating the propriety of a suit brought by a wife for intentional infliction of emotional distress subsequent to the filing of two previous wrongful death actions. The Court dismissed the third action, even though on a separate legal theory, finding that the "claim involves the same parties and is based upon the same facts and circumstances as the first two civil actions."

On July 12, 2006, BB&T filed its Complaint for foreclosure in Marion County in Civil Action No. 2006-CP-33-251 against Sawgrass Timber & Chip, LLC and Joel Herring (the "Foreclosure Action"). The Foreclosure Action was served on August 29, 2006. On October 25, 2006, Plaintiff's counsel herein, as attorney for Sawgrass Timber & Chip, LLC and Joel Herring served an Answer and Counterclaim in the Foreclosure Action which Answer and Counterclaim

asserted, on behalf of Joel Herring, each cause of action alleged in the Complaint in this action (along with others). The Complaint in this action was not filed until October 30, 2006, five days after the service of the Answer and Counterclaims in the Foreclosure Action. The Complaint in this action, as it relates to Herring, clearly involves the same parties and is based upon the same facts and circumstances as the Counterclaims. Each of the claims alleged herein on behalf of Joel Herring were, therefore, the subject of a "another action pending between the same parties for the same claim" at the time of the filing of the Complaint in this action and would be barred under the *Corbett* standard.

In his initial written presentation to the Court, Joel Herring attempts to distinguish the Counterclaims in the Marion action from his claims in this action by asserting that Mr. Herrings status is different in the two cases ("as guarantor and principal of Sawgrass" in the Marion Counterclaims and "as principal of JJH" in this case) and that the damages sought are different in the two actions. These alleged distinctions, however, are not sufficient to allow the two cases to continue under the *Corbett* standard.

In further Court submissions the Plaintiff concedes that *Corbett* is the only case decided under Rule 12(b)(8), SCRCP but cites the Court to *Connecticut Nat'l Bank v. Wilson*,[2] decided under what the Plaintiff describes as the "precursor" of Rule 12(b)(8) and asks the Court to apply an allegedly "more restrictive" standard established under that "precursor." The "precursor" to Rule 12(b)(8), SC Code Ann. §Section 10-642 (utilizing the numbering system in effect at the time) provided "The defendant may demur to the complaint when it shall appear upon the face thereof that: (3) There is another action pending between the same parties for the same cause." When the current Rules of Civil Procedure were adopted the wording was changed from the

1 336 S.C. 601, 610 (S.C. Ct. App. 1999)
2 284 S.C. 415, 326 S.E.2d 657 (S.C. 1985)

specific "cause" to a more general "claim." This would appear to be the rationale behind the less restrictive interpretation as found in *Corbett*. However, even if the more restrictive standard of *Connecticut Nat'l Bank* is applied, dismissal would be appropriate. Each of the cases under the former SC Code §Section 10-642, including *Connecticut Nat'l Bank*, cite 1 C.J.S. *Abatement and Revival* § 39 as authority for the standard set out[3]. As quoted in *Connecticut Nat'l Bank* that standard is:

> Generally speaking, in order that one of two pending actions may be urged in abatement of the other, the actions must be identical **or substantially** so, that is, they must be between the same parties (infra §§ 56-62), based on the same cause of action, involve the same issues (infra § 40), and be **capable of authorizing the same relief** (infra § 43).

As it relates to Joel Herring and his claims in the Marion and Florence actions, the parties are the same, the causes of action are identical and the issues involved are identical. The underlying authority behind the South Carolina cases under the former statute clearly states that the standard is met if the Court in the first action is "capable of authorizing the same relief." The Court in Marion County is capable of granting to Joel Herring any and all relief to which he might be entitled under each of the causes of action pled in that Court (which, as previously set forth, are the same causes of action later pled in Florence County).

#4 JHR

In addition, even under the old more restrictive statute, courts would apply the statute and abate (the term used for the action at the time) the second suit even if they were not identical. In *McConnell v Williams*[4] the Court applied abatement in a case stating:

> "the object of the two suits and the relief sought are not absolutely identical. At the same time the issues are so interrelated that the ends of justice will be best served by allowing the first suit to proceed and by withholding action in the second suit."

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3 McConnell v. Williams 252 S.C. 573; 167 S.E.2d 429 (SC 1969); South Carolina Public Service

The issues in the two cases, as they relate to Joel Herring, are, in the Court's opinion, clearly so interrelated that the ends of justice will be best served by allowing the first suit to proceed (the Counterclaims in the Marion action) and by withholding action, through dismissal, in the second suit (this action). Although the Court understands the argument that Herring is seeking redress and damages for wrongs allegedly incurred in different capacities in the two actions, the court sees no practical way to separate the claims into two distinct pieces of litigation in two counties.

The claims of Joel Herring are, therefore, dismissed and Joel Herring is, as a result, dismissed as a Plaintiff and party herein.

RULE 12(b)(6) -- NEGLIGENCE

BB&T moves to dismiss the First and Second Causes of Action on the basis that "the Plaintiff has failed to state facts sufficient to constitute a cause of action for negligence as, as a matter of law, no duty exists between the Plaintiff JJH Transport, LLC and BB&T under the facts alleged.".

At issue in this case is the existence of a legal duty. BB&T asserts that "absolutely no relationship exists between the Plaintiff, JJH Trucking, LLC and the alleged tort-feasor, BB&T, from which any duty to act can or does arise" and seeks a dismissal of the first and second causes of action as a result.

At this point in the litigation, the Motion to Dismiss is denied as to these two causes of action.[5]

Commission V. City Of Rock Hill 268 S.C. 405; 234 S.E.2d 228 (SC 1977)
252 S.C. 573; 167 S.E.2d 429 (S.C. 1969).
In denying the Motion to Dismiss at this stage, the Court is specifically not ruling on the existence or not of any specific duty as a matter of law. The Court's ruling is simply that, at this pleading stage, the Second Amended Complaint is sufficient. BB&T shall be free to raise its legal arguments raised herein in a later filed Motion for Summary Judgment as to the facts as actually developed in the case should it deem it appropriate.

RULE 12(b)(6) – CONSPIRACY

BB&T moves to dismiss the Fourth Cause of Action on the basis that "the Plaintiff has failed to state facts sufficient to constitute a cause of action for conspiracy in regard to the sale of the 'chipper' as there is no allegation that either Plaintiff had any interest in that piece of equipment." BB&T relies upon *Todd v. South Carolina Farm Bureau Mutual Insurance Company*[6] as support for its motion.

The Court, at this stage, finds that Plaintiff's allegations are sufficient to survive a Motion to Dismiss and the motion is, therefore, denied as to the Fourth Cause of Action.[7]

RULE 12(b)(6) – UNFAIR TRADE PRACTICES

BB&T moves to dismiss the Fifth Cause of Action on the basis that, "the Plaintiff has failed to state facts sufficient to constitute a cause of action as S.C. Code Ann. §39-5-20 is not applicable to the transaction sued upon as this transaction is exempt from the provisions thereof pursuant to S.C. Code Ann. §39-5-40 and/or from the facts alleged in the Complaint that the activity complained of is no more than a private contractual dispute between the parties hereto which does not affect the public interest of the State of South Carolina and/or the activities complained of are not within the coverage of S.C. Code Ann. §39-5-20."

The argument of BB&T has, essentially, two components, that the activity complained of is not trade or commerce as covered by the act and/or that BB&T, as a federally insured financial institution, is exempt from the Act.

As to the first component of BB&T's argument, it asserts that the gravamen of the Plaintiff's Complaint against BB&T is that BB&T improperly converted the Plaintiff's

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6 276 S.C. 284; 278 S.E.2d 607 (S.C. 1981).

7 The Court's ruling as to the Fourth Cause of action is not intended to preclude BB&T from raising the issues raised in its Motion to Dismiss in an appropriate Motion for Summary Judgment. The Court, specifically, is not determining that the alleged "special damages" are legally sufficient.

equipment in the process of collecting upon debts owed to it by a third party. The Court agrees with this interpretation of the Second Amended Complaint.

In *Connolly v. Peeples Life Insurance Co.*,[8] the Court of Appeals refused to apply the UTPA to a debt collection situation holding that there were limitations to what constituted trade and commerce as defined in S.C. Code Ann. §39-5-10. The *Connolly* court was faced with a conversion claim arising from the borrower's assertion that it had fully paid a note and mortgage and that it should, therefore, have been marked paid and returned. The Court reversed a jury verdict based on UTPA against the lender stating:

> We recognize that the unfair trade practices act should be given a liberal construction. See *Paces Ferry Dodge, Inc. v. Thomas*, 174 Ga.App. 642; 331 S.E.2d 4 (1985) (interpreting the Georgia Fair Business Practice Act OCGA §§10-1-391 *et seq.*). Still, the unfair trade practices act should not be held to apply where it is clearly not applicable.
>
> Here, the conversion of the note and mortgage by People's Life, an assignee, was unconnected with the "advertising, offering for sale, sale or distribution of any services and any property, ... and any other article, commodity or thing of value ... ." S.C. Code of Laws §39-5-10(b) (1976). Being unconnected with a transaction constituting either trade or commerce, People's Life's conversion of Connolly's note and mortgage, while admittedly unfair, is simply not the kind of "unfair or deceptive method, act or practice declared unlawful by [Section] 39-5-20" and we so hold.

In the case before the Court finds *Connolly* applicable and controlling. The alleged conversion of the Plaintiff's equipment is unconnected with the "advertising, offering for sale, sale or distribution of any services and any property, ... and any other article, commodity or thing of value ... ." and is simply not the kind of "unfair or deceptive method, act or practice declared unlawful by [Section] 39-5-20".

[8] 294 S.C. 355, 364 S.E.2d 475 (Ct. App. 1988) 7

BB&T further argues that even if the Plaintiff's claims could be found to fall within the general coverage of S.C. Code Ann. §39-5-20, this section has been held to be inapplicable to actions involving a federally insured bank. In *Anderson v. Citizens Bank*,[9] the Court of Appeals, relying on *McLeod v. Rhoades*,[10] which had held securities transactions were exempt from UTPA, and upon an interpretation of the Federal Trade Commission Act, held that the UTPA did not apply to the actions of a lender in failing to give a loan to which it was claimed to have committed. The Court stated:

> The State Board of Financial Institutions regulates the banking practices of Citizens Bank pursuant to Section 34-1-10 to -130, Code of Laws of South Carolina, 1976. The Board has extensive regulatory authority over banking practices, including the power to initiate criminal prosecutions against banks that violate a statute or regulation. Sections 34-1-60, 34-1-90, 34-1-100, Code of Laws of South Carolina, 1976. Therefore, under the "general activity" test of *State ex rel. McLeod v. Rhoades*, 275, S.C. 104, 267 S.E.2d 539 (1980), the actions of Citizens bank in connection with the Graham loan are exempt from the provisions of the Unfair Trade Practices Act pursuant to Section 39-5-40(a), Code of Laws of South Carolina, 1976. *See NCNB Nat'l Bank of North Carolina v. Tiller*, 814 F.2d (4th Cir.1987). [FN1] Accordingly, we affirm the ruling of the trial judge.

The Court further noted in its footnote:

> FN1. Cf. 15 U.S.C. 57a(f)(1) (1985), which provides that unfair and deceptive practices by banks are regulated under rules of the Federal Reserve System, not under the Federal Trade Commission Act. *See also Fed. Trade Comm'n v. Winters Nat'l Bank & Trust Co.*, 601 F.2d 395 (6th Cir. 1979). The South Carolina Unfair Trade Practices Act states that the legislature intends the courts to be guided by federal interpretations of the Federal Trade Commission Act in construing Section 39-5-20(a). See Section 39-5-20(b), Code of Laws of South Carolina, 1976.

S.C. Code Ann. §39-5-20 (b) specifically provides: "It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given

9 294 S.C. 387, 365 S.E.2d 26 (S.C.App. 1987)
10 275 S.C. 104, 267 S.E.2d 539 (1980)

by the Federal Trade Commission and the Federal Courts to § 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended." This Court need go no further than the federal statute alone to determine its applicability against insured banking institutions. In 15 U.S.C. 45(a)(2), the Federal Act specifically sets forth the extent of the ability of the Federal Trade Commission to regulate banking institutions as follows:

> (2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations, **except banks, savings and loan institutions described in section 18(f)(3),** credit unions described in section 18(f)(4), common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958 , and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act, 1921, as amended, except as provided in section 406(b) of said Act, from using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce.

In 1990, the Supreme Court rejected the "general activity" test of *Rhoades* in *Ward v. Dick Dyer and Associates, Inc.*,[11] and overruled *Anderson* but only to the extent that the result was based upon the "general activity" test of *Rhoades*. The separate finding of *Anderson* (stated in the footnote) that banks were not subject to the coverage of S.C. Code Ann. §39-5-20 was not disturbed. The Court further notes that subsequent to *Anderson* and *Ward*, lower courts across the State (including the United States District Court for the District of South Carolina) have continued to find that S.C. Code Ann. §39-5-20 is inapplicable to activities of banking institutions.[12]

In arguing its point, the Plaintiff cites two cases, *Beattie v Nations Credit Financial Services Corporation*[13], an unpublished opinion of the Fourth Circuit and *In re Daniel* [14] as

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11 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991)

12 Southern National Bank of South Carolina v. Cochran, No. 95-CP-04-352 (Amended Order Dismissing Defendants' Counterclaims and Referring Foreclosure Action to the Master-in-Equity); Southern National Bank of South Carolina v. McLean, No. 93-CP-26-2589 (Order Granting Summary Judgment); Inabinet v. Knehler, No. 94-CP-10-0411 (Order Granting Motion to Dismiss)

13 65 Fed. Appx 893 (4th Cir 2003)

14 137 B.R. 884 (Bank. D.S.C. 1992)

support for its proposition that the Unfair Trade Practices Act applies to banks such as BB&T and covers the activity complained of.

In citing *Beattie*, the Plaintiff states that "The Fourth Circuit has specifically found that mortgagees are not exempt from liability under the South Carolina Unfair Trade Practices Act based upon its pursuit of collection or foreclosure activities." This statement is an apparent attempt to cite *Beattie* for the two propositions: that mortgagees are subject to the Act and that collection or foreclosure activities fall under the coverage of the Act.

The first part of this statement is technically correct to the extent that NationsCredit, the named defendant in the case, (a **mortgagee**) was found to be subject to the Act. There was, however, no indication that NationsCredit was a bank (as opposed to a mortgage company which is not subject to the federal exclusion argued by BB&T) and no mention was made of *Anderson v. Citizens Bank*[15] . It is, therefore, probable that the Fourth Circuit did not address the argument that *Anderson* had an independent holding that was not overruled by *Ward v Dick Dyer & Associates, Inc.* [16] as presented to this Court and supported by numerous South Carolina opinions as any such argument would not have applied under the facts of that case as it does not appear to have involved a bank[17].

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15 294 S.C. 387, 365 S.E.2d 26 (S.C.App. 1987)

16 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991)

17 This is particularly true since the *Beattie* opinion, also did not mention the earlier fourth Circuit opinion of *NCNB National Bank of North Carolina v Tiller* 814 F 2d 931 (4th Cir 1987) in which the Fourth Circuit had previously held that banks were exempt from the South Carolina Unfair Trade Practices Act:
Appellants also take exception to the dismissal of their claim that NCNB violated the South Carolina Unfair Trade Practices Act, S.C. Code § 39-5-10 (1976) *et seq.* However, the Unfair Trade Practices Act does not apply to actions permitted under law or administered by any regulatory body or officer acting under the statutory authority of the United States of America. S.C. Code § 39-5-40(a) (1976).
Congress has given the Board of Governors of the Federal Reserve System authority to promulgate and enforce regulations to define and prevent unfair or deceptive acts or practices by banks. 15 U.S.C. § 57a(f) (Supp. 1986). Pursuant to this statute, the Comptroller of the Currency has established a formal complaint and investigation procedure to deal with alleged unfair or deceptive acts or practices by national banks. This regulation of the banking industry by Congress is sufficient to come within the exception to the Unfair Trade Practices Act established by S.C. Code § 39-5-40(a). *See, McCleod v. Rhoades*, 275 S.C. 104, 267

The second part of the Plaintiff's reliance on *Beattie*, that it supports a finding that collection or foreclosure activities fall within the coverage of the Act, is unfounded and not a correct statement of *Beattie*. In fact, *Beattie* found that the activities complained of (false reports to credit bureaus that a mortgage was in foreclosure) were not unlawful trade practices covered by the Act.[18]

Plaintiff, finally, cites the case of *In re Daniel* [19]for the proposition that "it is an unfair or deceptive act or practice to disregard the law of proper repossession."[20] *Daniel* involved the repossession of a mobile home by a finance company (not a bank) in which the representative of the finance company began repossession of a mobile home after being told not to, after representing that he would not and while the debtor's child was still in the mobile home. It should be noted that the Court did not find the repossession itself as the matter triggering the Act but deceptive acts occurring in connection with the repossession:

> The SCUTPA may be violated if there is a representation that had the capacity or effect or tendency to deceive. Clarkson v. Orion Exterminating Co., Inc., 761 F.2d 189, 191 (4th Cir. 1985). It does not need to be shown that the deception was intentional. Id. The bankruptcy court's finding that LeMaster's statements deceived Daniel into believing that the mobile home would not be taken is not clearly erroneous. The bankruptcy court did not err in finding that the acts were sufficiently deceptive to be a violation of the SCUTPA.[21]

As previously stated , the gravamen of the Plaintiff's Complaint against BB&T is that BB&T improperly converted the Plaintiff's equipment in the process of collecting upon debts owed to it by a third party and that BB&T knew it was doing so. There is no allegation that any

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S.E.2d 539 (1980) (transactions in question are regulated by the Securities Exchange Commission and the South Carolina Uniform Securities Act, and are therefore exempt from the coverage of the Unfair Trade Practices Act.)

18 Supporting BB&T's argument made in its prior brief relying upon *Connolly v. Peeples Life Insurance Co.* 294 S.C. 355, 364 S.E.2d 475 (Ct. App. 1988)

19 137 B.R. 884 (D.S.C. 1992).

20 Plaintiff's memorandum at page 14.

21 Daniel, *supra*.

deceptive statement or act took place. To the extent that *Daniel* might be argued to extend to such a situation, it would conflict with the controlling South Carolina authority set forth In *Connolly*.

As a result of the foregoing, the Court finds that the Fifth Cause of Action should be dismissed.

RULE 12(b)(6) – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

BB&T moves to dismiss the Sixth Cause of Action on the basis that "the Plaintiff has failed to state facts sufficient to constitute a cause of action for intentional infliction of emotional distress and/or extreme and outrageous conduct." The Court has dismissed Joel Herring as a party to this action.

The Court views the Sixth Cause of Action as a cause of action which is personal to Mr. Herring which is not pled on behalf of the corporation and, as a result, subject to dismissal pursuant to Rule 12(b)(6).

It is, therefore ORDERED, ADJUDGED and DECREED as follows:

1. The Motion to Amend is granted and the Second Amended Complaint is deemed filed and served with no further responsive pleadings required thereto on behalf of the Defendant;
2. The Second Amended Complaint is dismissed as to all causes of action pled on behalf of Joel Herring and Joel Herring is dismissed as a party hereto.
3. The Fifth (Unfair Trade Practices) and Sixth (Intentional Infliction of Emotional Distress) Causes of Action of the Second Amended Complaint pled on behalf of JJH Transport, LLC are hereby dismissed.

4. This action shall continue on behalf of JJH Transport, LLC as to the remaining causes of action.

Thomas A. Russo.
Circuit Court Judge

Florence South Carolina
May ~~18, 2007~~
23, 2007

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COMMON PLEAS
CCP & GS
FLORENCE COUNTY, SC

#13 AR

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

BB&T

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 01-CP-45-389
02 43

Newton

DEFENDANT(S)

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), SCRCP; [ ] Rule 41(a), SCRCP (Vol. Nonsuit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____

[ ] ACTION STRICKEN (*CHECK REASON*): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other _____

IT IS ORDERED AND ADJUDGED: [X] See attached order; [ ] Statement of Judgment by the Court:

Dated at _____, South Carolina, this _____ day of _____, 20___.

PRESIDING JUDGE

This judgment was entered on the 17th day of Dec, 2003, and a copy mailed first class this 17th day of Dec.; 2003 to attorneys of record or to parties (when appearing pro se) as follows:

Steven B. Licata
BOB 23407
Cola SC 29224

ATTORNEY(S) FOR THE PLAINTIFF(S)

William H. Johnson
Steven McKenzie 16 N. Brooks St.
Manning 29102

ATTORNEY(S) FOR THE DEFENDANT(S)

Carolina A. Williams
CLERK OF COURT

SCRCP APP-Z4

SCRCP FORM 4 (Revised 5/00)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS C/A No. 2003-CP-40-3272

BRANCH BANKING & TRUST COMPANY OF SOUTH CAROLINA,

Plaintiff,

vs.

EARTHA MARSHALL.

Defendant, Third Party Plaintiff,

vs.

DANIEL GOLDSTEIN AND JAMES CHRIS ALEXANDER,

Third Party Defendants

ORDER GRANTING SUMMARY JUDGMENT

This matter is before the Court upon the Motion for Summary Judgment filed by Branch Banking and Trust Company of South Carolina ("BB&T") on July 1, 2004. Having heard arguments of counsel and considered the record before the Court, the Court finds as follows:

GENERAL BACKGROUND

This action was initiated as an action for foreclosure of a Mortgage given by Eartha Marshall ("Marshall") to BB&T dated August 20, 2001 covering certain real property at 5883 Ames Road ("Property"). In response to the foreclosure action, Marshall answered the allegations of the Complaint by admitting the execution of the Note and the Mortgage on August

EXHIBIT J

20, 2001 and the modification thereof on August 2, 2002. The response also contained Counterclaims/ Third Party Claims which asserted certain affirmative claims as to BB&T, the Seller of the Property to Marshall (Chris Alexander, "Alexander") and a second individual involved in a related transaction who represented the Seller in this transaction (Danny Goldstein, "Goldstein"). The Counterclaims/ Third Party Claims first assert a cause of action for fraud as to the Goldstein and Alexander assert causes of action for Negligence and for violation of the South Carolina Unfair Trade Practices Act as to BB&T. The claim for fraud as to the individuals is not addressed or involved in the pending motions.

Appropriate Standard

The Supreme Court of South Carolina has clearly set forth the standard to apply in this court's determination of this Motion:

> In reviewing the grant of a summary judgment motion, we apply the same standard which governs the trial court under Rule 56(c), S.C.R.C.P.: summary judgment is proper when "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." See 10 Wright & Miller, Federal Practice and Procedure § 2716, p. 643 (1983); SSI Medical Services, Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); Irby v. Richardson, 278 S.C. 484, 298 S.E.2d 452 (1982). This standard "mirrors" the standard for a directed verdict under Rule 50(a), S.C.R.C.P. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202, 213 (1986); see also Main v. Corley, 281 S.C. 525, 316 S.E.2d 406 (1984).
>
> In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. SSI Medical Services, supra; Standard Fire, supra. The court then applies the standard set out in Rule 56(c):
>
> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case,

and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact,' since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.

Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); see also Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990). With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility "may be discharged by 'showing'--that is, pointing out to the [trial] court--that there is an absence of evidence to support the nonmoving party's case." Celotex 477 U.S. at 325, 106 S.Ct. at 2554, 91 L.Ed.2d at 275. The moving party need not "support its motion with affidavits or other similar materials negating the opponent's claim." Id. at 323, 106 S.Ct. at 2553, 91 L.Ed.2d at 274. (Emphasis in original).
Once moving party carries its initial burden, opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing that there is a genuine issue for trial.' " Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original). Indeed, Rule 56(e) specifically prohibits the nonmoving party from resting upon the mere allegations or denials of its pleadings. See SSI Medical Services, supra; Moody v. McLellan, 295 S.C. 157, 367 S.E.2d 449 (Ct.App.1988).

[Baughman v. American Tel. and Tel. Co. 410 S.E.2d 537,545 , 306 S.C. 101 (S.C. 1991)].

Following this standard it is, therefore, incumbent upon BB&T to have in the record before the Court facts sufficient to meet each element of the cause of action pled for foreclosure and for Marshall to have in the record before this court facts sufficient to meet each element of

the counterclaims. The Court must, therefore, examine the record before it. That record consists of the Affidavit of Randy Fox filed with the Motion for Summary Judgment, the deposition testimony of Marshall and the Affidavit of Marshall filed prior to the hearing in this matter as well as certain documents of public record relied upon by Marshall.

UNDISPUTED AND UNCONTESTED FACTS

As to the facts leading up to the transaction in question, the deposition and affidavit of Marshall and the public records (which constitute the only evidence before the Court) establish the following undisputed facts:

1. Ms. Marshall is a high school graduate with nine months of business education who, at one time, was a licensed real estate agent in the State of South Carolina. (Deposition of Marshall at pages 16 and 30).
2. For a period of "six or seven months" prior to the events at issue in this action, Marshall had been watching a series of "in-commercials"[1] on television which dealt with "how you can get involved in buying real estate, and you could supplement your income." (Deposition of Marshall, Page 74).
3. As a result of watching these programs, "[Marshall] saw a way that we could supplement our retirement by getting involved in real estate." (Deposition of Marshall, Page 76).
4. In following up on her desire to "[get] involved in real estate", Marshall contacted Goldstein and Alexander[2] as a result of information provided to Marshall by her daughter. (Deposition of Marshall, Pages 77 and 80, Affidavit of Marshall).

[1] The Court presumes that the reference was intended to be what have come to be known as "info-mercials" or like terms.

[2] In reviewing the Marshall Affidavit, it would appear that Marshall claims that she "met" both Alexander and Goldstein. However, in her deposition testimony, she expressly testified that she had "never met Chris [Alexander]" and had talked to him prior to the date of the deposition (Deposition of Marshall Pages 77 and 189). This

5. Prior to the events in question in this action, Marshall's husband had met Alexander and/or Goldstein in July, 2001.

6. The first time that Marshall met Goldstein was at the Property in August 2001 (Deposition of Marshall, Pages 83 and 84).

7. While at the Property, Goldstein "shared ... how much – all of this was done at Ames Road – how much money that – the way this investment operated, you know, how its done, ... There was so much money that is involved that you will get to fix the house up." (Deposition of Marshall at Page 84 and 85). As later stated in her Affidavit, Marshall describes the information obtained as follows: "They mentioned to me that they could help me invest in real estate without having to put any money down. They told me that they had several properties in need of repair that could be used to rent, but not to worry about the money necessary for the repairs because they could get me approximately Eleven Thousand Dollars ($11,000) out of the closing. Additionally, they told me that it was easy to supplement our income through this process of buying homes and fixing them with the money from the closing, and then renting them for a profit." (Affidavit of Marshall) (Deposition of Marshall Pages 96 and 97).

8. Marshall "believed that this was a great way to invest" and "trusted Goldstein and Alexander." (Affidavit of Marshall).

9. Marshall viewed the property for a period of "about a half an hour or so" (Deposition of Marshall, Page 87) and concluded "After he showed us the house and explained to us what would need to be done, what would need to be replaced – I think we had to replace

discrepancy is not material for the purposes of the determination of the Motion before the Court. However, as other claims are pending before the Court as to which this issue may be relevant, the Court expressly notes that it is making no finding as to this factual circumstance.

a refrigerator and the stove, and the linoleum in the kitchen needed replacing. Well, there was – quite a bit of work needed to be done, but according to what we had noticed on television, that you can fix them up, so the work – you know what the house looked like then, we figured that we could fix it up so someone could rent it." (Deposition of Marshall, Page 86).

10. After viewing the house, Marshall recognized that "some work needed to be done" but that "that's what the money was for, to fix the house up, so there was no problem there." (Deposition of Marshall Page 87 and 88). Marshall described the house as being "livable" at the time of her initial inspection. (Deposition of Marshall, Page 89).

11. Marshall and Goldstein agreed upon a price of $68,000 for the property which Marshall believed to be a fair price for the property based upon what she had seen when she looked at the Property. (Deposition of Marshall, Page 115).

12. In determining that the loan could be paid from the rentals of the Property, " no one told [Marshall] anything that led [Marshall] to believe that [Marshall] could use the rents from the property to pay the loan." (Deposition of Marshall Pages 123 and 124). She was "getting a lot of" her information from the "in-commercials" as she described the programs she had watched on television. (Deposition of Marshall Pages123 and 124).

13. As to her own efforts regarding investigation into the value of the property, Marshall testified as follows: "Q. What investigation did you do to determine that the $68,000 that you agreed to pay for the property was a fair price for the property ? A. .... I did not investigate it because I assumed that was a legit price because it was told to me by a certified broker. So why would I think that it wasn't true? No, I did not investigate it?

On August 20, 2001, a closing took place at the offices of White and White, attorneys as to which the following is undisputed:

1. The Note and Mortgage which are the subject of this action were executed. (Affidavit of Randy Fox, Deposition of Marshall).
2. The closing statement for the purchase of the Property shows the receipt by Marshall of "Seller Concessions" of $16,800 and further reflects that Marshall received $5,194.76 in cash from the closing and that, additionally, $5,826.01 was paid on obligations which she owed to third parties on her behalf. (Exhibit 3 to Deposition of Marshall). The combined total of these amounts either actually received by or paid on Marshall's behalf $11,020.77.

As to the involvement of BB&T up to and through the point of the closing, there is no dispute as to the following as testified to by Marshall or set forth in her Affidavit:

1. "Q. Did you talk to anyone at BB&T about the Ames Road property either at or before the closing on the Ames Road Property? A. No. (Deposition of Marshall Page 113)
2. "Q. Okay. You didn't rely on anything that BB&T told you about either the property or the closing itself in deciding to go through with the closing, did you? A. Because we didn't – we didn't have any correspondence with them and all, so , no, they didn't – no there was nothing." (Deposition of Marshall Pages 113 and 114)
3. "Q. Did BB&T do or say anything to you before the closing that led you to conclude that $68,000 was a fair price for the property, yes or no? A. No.

Q.. Okay. A. There was no BB&T. ..... why would they contact me before the closing? I was not a client.

4. In connection with the closing Marshall testified: " We didn't even know that BB&T was the Bank."

Paragraph 11 of the Answer and Counterclaim alleges: "The property which is the subject of this action was grossly overvalued by an appraisal shown to Mrs. Marshall by Goldstein and Alexander." The Court, in determining the state of facts as it relates to this crucial allegation first notes that Marshall specifically testified in her deposition and it is not disputed that she had not seen the appraisal which valued the property at $68,000. (Deposition of Marshall at Pages 139 and 140). As a result, the allegations as to being shown an appraisal are unsupported in the record before the Court. However, in her Affidavit Marshall states that she was told that the property appraised for $68,000. This testimony directly contradicts Marshall's earlier deposition testimony where she concedes that "I didn't get into that about the appraisal because I assumed he was a broker, and that it was already appraised." (Deposition of Marshall Pages 196 and 197, 200-201).In reviewing this contradictory testimony, the Court notes that our Supreme Court has recently discussed and adopted the "competing affidavit" rule to allow the Court to disregard factual disputes created by a parties own sworn statements if those statements are a "sham." [Cothran v. Brown 357 S.C. 210, 592 S.E.2d 629 (SC 2004). In Cothran, the Supreme Court directed the trial courts as follows:

> In distinguishing between a sham affidavit and a correcting or clarifying affidavit, the following considerations provide guidance: (1) whether an explanation is offered for the statements that contradict prior sworn statements; (2) the importance to the litigation of the fact about which there is a contradiction; (3) whether the nonmovant had access to this fact prior to the previous sworn testimony; (4) the frequency and degree of variation

> between statements in the previous sworn testimony and statements made in the later affidavit concerning this fact; (5) whether the previous sworn testimony indicates the witness was confused at the time; (6) when, in relation to summary judgment, the second affidavit is submitted

In reviewing the contradictory filings of Marshall, the Court finds no explanation for the contradictory statements as to pre-sale knowledge of the appraisal and representations regarding the appraisal. The Court further finds that based on the allegations of the Counterclaims and the matters pled by Marshall, the issue as to whether she saw or was told of an appraisal prior to her agreeing to purchase the property is a critical issue as to which Marshall clearly had access prior to the time of the taking of her deposition. The Court further finds that the subject was covered in several places and in detail at the time of the deposition and that her answers at that time were certain, direct and do not appear to have been confused. On the other hand, the Affidavit containing the contradictory statements was executed on the Sunday before this hearing and served just two days prior to the hearing. As a result, the Court finds that the portions of the Affidavit of Marshall which contradict her earlier testimony that she did not see and was not told of the appraisal at the time of the closing should not be considered by the Court and that the record before this Court establishes that Marshall was told the asking price, determined on her own that that price was fair and proceeded with the purchase with no further investigation as set forth above.

Subsequent to the closing of the sale of the Property, in March 2002, Marshall had the Property appraised in connection with attempts to have the Note which is the subject of this action refinanced. That appraisal indicated the fair market value of the property to be $48,000, disclosed the prior sale of the Property of $19,000 (which was the purchase by Alexander) and

indicated a fair rental value for the property of $470 per month. The appraisal further described the property as "Quality and overall condition is good." (Exhibit 7 to Deposition of Marshall).

On August 2, 2002 (5 months after Marshall received and read the March 2002 appraisal) Marshall executed a Note Modification Agreement renewing and extending the Note (which was than due and payable). (Exhibit 8 to Deposition of Marshall).

On June 3, 2003 a second appraisal of the Property was obtained by or on behalf of Marshall. That appraisal indicated the value of the Property had declined to $22,500 and that the Property was "not marketable due to the physical condition" and described the general condition as " poor physical condition both interior and exterior." (Exhibit 10 to Marshall Deposition).

The Affidavit of Randy Fox filed with the motion for Summary Judgment contains the following testimony which is uncontested in the record before this Court:

1. Attached hereto as Exhibit D is a copy of an appraisal of the property securing Note 1 (5883 Ames Road) which is the subject of Mortgage 1 valuing said property at the amount of $68,000.00. A review of this appraisal does not indicate anything that on the face of the appraisal would have caused the loan officer to question the findings contained therein.
2. Attached hereto as Exhibit E is a closing statement dated August 20, 2001 for the transaction involving Note 1 indicating that Eartha Marshall received $5,194.76 from the closing in cash and that an additional sum of $5,326.01 was paid on her behalf.
3. As to the Note 2 transaction, BB&T's files contain a Contract of Sale indicating that the property was to be purchased "where-is- as is" and that purchaser (Eartha Marshall) was to receive $13,000 "at closing for repairs." In

a loan of this amount, it would not have been the policy of BB&T to require that sums such as described in the Contract of Sale to be escrowed or otherwise accounted for.

4. With the adoption of a practice prior to August 20, 2001 of having all real estate loans closed by attorneys (normally chosen by the Borrower as in the case of both Notes 1 and 2 as evidenced by the closing transmittals indicating that the Borrower had selected White and White, attached hereto as Exhibits K and L), it was not unusual for a loan officer to not personally meet a borrower in a real estate loan transaction, especially where the transaction involved a loan broker such as in the case of both Notes 1 and 2, Capital Trust Mortgage Group. At the time that the loans evidenced by Notes 1 and 2 were made, there was no policy of BB&T in place that would have required a personal meeting between the loan officer and the borrower.
5. At the time of the loans evidenced by Notes 1 and 2, loan officers, based upon there knowledge and experience, were given individual loan authority. Loans made below the authority amount were not individually reviewed by any other bank officer. This practice is consistent with the custom and practice in the banking industry.
6. A review of the loan files relating to Notes 1 and 2 indicated that the loan officer had obtained the information which was necessary to properly underwrite the loan as the loan file contained a credit report (obtained through the BB&T system), showing an acceptable Beacon Score of 628, an appraisal

of the property which supported the amount loaned and other financial information of the Borrower (including tax returns and a loan application).

7. In connection with business loans for the purchase of real estate (such as a purchase for investment as was the case with Note 1), it is not the practice or policy of BB&T to verify or assure that its Borrower is making a good business deal or wise purchase. BB&T conducts a sufficient investigation, through personal inspection, third party appraisal or other means to determine that the collateral to be received has a sufficient value to support the loan being made. In fact, BB&T, to some degree, relies upon its customers decision to make a purchase of real estate as evidence of the existence of this value and of their belief in their ability to repay the loan. Appraisals and other activity in the underwriting process are not undertaken to protect the Borrower and/or to insure that the Borrower is making a good business decision. Those activities are undertaken to protect the interest of BB&T.

8. Under the terms of the loan as evidenced by Notes 1 and 2, BB&T policy did not require an independent third party appraisal. The appraisals utilized, as indicated on their face, was not acquired by or for BB&T. Given the amount of the loan, reliance on an appraisal prepared for and obtained by a third party was not a violation of any internal policy of BB&T.

9. In a loan of the type evidenced by Notes 1 and 2, it is not required that the loan officer review and/or analyze the contract of sale involved. This is particularly true where an appraisal is in existence which supports the loan amount.

10. At the time of the loans evidenced by Notes 1 and 2, BB&T had in place and followed policies for the supervision and review of small business lenders which were consistent with the normal practices in the banking industry.

11. Note 1, as modified, required payments in the amount of $432.60 per month beginning on September 10, 2002 and continuing thereafter until August 10, 2007 at which time the Note was due and payable, in full. The payments were not made as agreed and by letter dated June 4, 2003, BB&T, pursuant to the rights granted to it in the Note, declared the entire balance due thereunder to be immediately due and payable.

12. As of June 17, 2004, the balance due under Note 1 is $64,791.97 and that amount is accruing interest at the rate of 9% per day [sic] [BB&T Prime Rate plus 5%].

13. On June 27th, 2003, Eartha Marshall wrote a letter to BB&T in which she indicated that her failure to pay BB&T was as a result of her inability to collect rentals on the properties and no other reason was given.

14. The Notes further provide that in the event of default, BB&T is entitled to an award of its attorney's fees and specifically provides that those fees shall be 15% of the amounts due at the time of acceleration or other action by BB&T.

15. At the time of the acceleration by BB&T, the amount due under Note 1 was $60,923.26. Based upon that amount the attorney's fees provided in the Note would be $9,138.49.

16. There is no evidence contained in the files of BB&T related to this matter that Eartha Marshall ever complained to BB&T or brought the matters alleged in

the Counterclaim to BB&T's attention prior to the filing of the Counterclaim in this action.

DISCUSSION AND CONCLUSIONS OF LAW

ENFORCEMENT OF THE NOTES AND FORECLOSURE OF THE MORTGAGES

The execution of the Note, Mortgage and Modification and the default under the terms thereof is not contested.

Assuming that the Court determines that judgment is appropriate in favor of BB&T as to its Note and Mortgage, the Court must determine the appropriate amount of judgment. There is no dispute as to the principal and interest due. The only outstanding matter, therefore, would be the appropriate amount of attorneys' fees. That amount is set by the parties agreements, the loan documents. The Note provides:

> "the undersigned agrees to pay , in addition to the principal and interest, all costs of collection, including reasonable attorneys' fees which the undersigned agrees shall be equal to 15% of the principal and interest outstanding at the time of acceleration or other action by Lender to collect the sums due hereunder."

The South Carolina Supreme Court has specifically held that "[w]ith regard to [Notes] which provide for attorneys' fees at a specific rate in the event collection becomes necessary, it is a well established principle of law that where there is a contract providing for such, the amount of attorneys fees is governed by the contract." [Dedes v. Strickland, 414 S.E.2d 134, 137 (S.C. 1992); accord, The Citizens and Southern National Bank of South Carolina v. Easton, et al., 310 S.C. 458, 427 S.E.2d 640 (1993) wherein the Court stated "Since the guarantees provided for attorney's fees at a specific rate, we hold it was error to deny such fees" citing Dedes, supra.]. The Dedes case makes it clear that no determination of reasonableness is required as the Court in Dedes, after reviewing the notes with specific amounts addressed the necessity for showing reasonableness when the note provided only for reasonable fees with no fixed amount. The

Court of Appeals has specifically stated the current law in this area in Nationsbank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (S.C. App. 1995) when the Court stated:

> In South Carolina, where a contractual obligation provides only that a party is to pay "reasonable attorneys fees" the amount is unliquidated and, therefore, requires a finding on the reasonableness of the award. On the other hand, where a contractual provision in a Note provides for attorneys fees at a specific rate, the amount of attorneys fees is governed by the contract (citations omitted). We find that the trial court properly determined the attorneys fees by looking to the terms of the contract.

It is, therefore, clear that the attorneys fees to be awarded in this matter are governed by the contracts of the parties, the loan documents and are, appropriately, 15% of the amounts due as of the time of the filing of this action.

The Court, therefore, finds that absent the establishment of a defense thereto, BB&T is entitled to enforcement of the Note and Mortgage and that the amount due thereon is $64,791.97 as of June 17, 2004 plus interest at BB&T's Prime Rate plus 5% from that date to the date of judgment plus attorney's fees in the amount of $9,138.49.

THE COUNTERCLAIMS

1. **Marshall, by the signing of the Modification and the renewal of the Note as a result thereof waived any right to make the claims alleged in this case.**

> "The settled statement of law that the renewal of a note with knowledge of defenses to the original document operates as a waiver of any right to subsequently assert those defenses is directly applicable to this case. Although over one hundred years old, the principles enunciated in *Grier v. Wallace*, 7 S.C. 182 (1876), remain sound law today. In *Grier*, the surety on a renewal note given to replace a note for the purchase of slaves was held estopped from asserting the unsoundness of the slaves at the time of purchase as a defense to a suit on a renewal note. The court held the purchaser estopped because:
> [b]y giving a new note for the old one, twelve years after the purchase, with the respondent, Wallace, as surety upon the same, thereby acknowledging the former transaction as a valid one, and the consideration as a good and valuable one by a higher

guarantee, to wit: security in case of failure on the part of the principal. This was a new contract, the former note having been parted with as it was extinguished.

Id. at 184. An annotation on this subject in 35 A.L.R. 1258, supplemented in 72 A.L.R. 600, [FN8] gathers numerous cases from other jurisdictions which concur with this holding. This court finds these annotations both helpful and persuasive. Typical of these cases is *Stephens v. Citizens & Southern Nat'l Bank*, 170 Ga.App. 793, 318 S.E.2d 216 (1984). In *Stephens*, the appellant signed a guaranty agreement guaranteeing payment of a note of a co-worker to C & S. The co-worker subsequently defaulted and C & S called on the guarantor. The guarantor thereupon executed a new note. Upon the guarantor's default, C & S brought suit to recover on the new note and the guarantor answered and counterclaimed setting forth defenses of failure *516 of consideration and fraud. The trial court granted C & S summary judgment and the Court of Appeals affirmed, holding:

FN8. *Renewal of bill or note as precluding defense[s] available against the original*, 35 A.L.R. 1258 & 72 A.L.R. 600.

'The renewal of a note ... in order to obtain an extension of time for payment, done with knowledge of defenses ... works an estoppel to urge, against the subsequently executed instrument, the defenses of which the maker had knowledge at the time.'

Id., 318 S.E.2d at 217 (citations omitted). All of defendants' asserted defenses, save one, existed prior to the execution of the Modification Agreements. Defendants should not have signed the Modification Agreements if they wanted to preserve their defenses to a potential foreclosure action.

[Resolution Trust Corporation v. Palmetto Fort Of Mt. Pleasant 831 F.Supp. 510 (D.S.C. 1993)].

As in *Palmetto Fort* and the cases cited therein, Marshall executed Modification Agreements at a time when she knew what, if anything, had occurred that she was later going to claim as a basis for this action. The essence of the claims in this matter revolve around the assertion that the Property was overpriced. Marshall had an appraisal in March 2002 indicating a value of $20,000 less than her purchase price and reciting the earlier purchase by her seller for $18,000.00. She

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could have chosen to attack this transaction at that the time of the modification and did not. Having chosen to take advantage of the extension in loan terms she cannot now go back and assert the claim which existed at that time. This bars all claims made at this time.

2. There is a complete lack of evidence to support the affirmative claims pled in the Counterclaims

As indicated in the initial portions of this Order, it was incumbent upon Marshall to place evidence before the court to allow the Court to find facts supporting each and every element of the causes of action pled. She has failed to do so. "In order to prove negligence, the plaintiff must show: (1) defendant owes a duty of care to the plaintiff; (2) defendant breached the duty by a negligent act or omission; (3) defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) plaintiff suffered an injury or damages." [Doe v. Marion 2004 WL 2380971, Court of Appeals Opinion No. 3879 (October, 2004)]. "Under South Carolina law, there is no general duty to control the conduct of another or to warn a third person or potential victim of danger." [Id.]. "The issue of whether the law recognizes a particular duty is an issue of law to be decided by the court." [Murray v Bank of America 354 S.C. 337, 580 S.E.2d 194 (S.C. Appeals 2003)] . "Ordinarily, the common law imposes no duty on a person to act." [Id.] "An affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance."

The Counterclaim alleges that BB&T owed Marshall a duty to undertake certain acts or actions in connection with this transaction. Initially, there is no evidence before the Court that the duties alleged exist in that there is no evidence of any standard of activity in the banking industry which was not followed by BB&T. To the contrary, the Affidavit of Randy Fox asserts that certain of the duties alleged either are not normally undertaken in the banking industry

and/or that the than existing standards were followed. In essence Marshall is asking this Court to impose upon a lender, such as BB&T, an affirmative duty to examine and ratify the bona fides of a business transaction that its customer has entered into. This Court refuses to take this step in the absence of any authority existing for the imposition of such a duty.

Even assuming a duty existed as alleged in the Complaint, the existence of which is not supported on this record, Marshall testified that she agreed to the purchase of the Property for the asking price with no input from or reliance upon any action by BB&T. In view of such state of facts, the Court is unable to see how any action or inaction of BB&T could possibly be the proximate cause of any loss suffered by Marshall. Based upon the undisputed testimony, she had already committed herself to the transaction before ever dealing with BB&T. Lastly, although the allegation is made that the Property was sold for a "grossly overvalued" price as indicated by the appraisal existing at the time, there is no evidence in the record as to the value of the property at the time of the sale in 2001 other than Marshall's own testimony that she felt that $68,000 was a fair price for the Property. The subsequent appraisals do not purport to evidence a value of the Property in August 2001 and there is no evidence in the record of that value. The subsequent appraisals establish only that the value of the Property dropped by $22,500 during the period of March 2002, to June of 2003, a period during which Marshall had sole control over the Property. As a final point, Marshall admits in her testimony that she knowingly made the decision to purchase the Property based upon the statement to her that the asking price was $68,000 and that she thought that price was fair at the time. She concedes that she undertook no independent investigation of the value of the Property to assure herself that she was making a good business deal. The Court specifically finds that this lack of action on the part of Marshall is and was the proximate cause of her loss, if any.

On the facts of this case, Marshall takes the position that BB&T should have protected her from her own business inexperience even though she had no contact whatsoever with BB&T prior to the closing of the transaction in question. Marshall has provided no authority to this Court to support such an obligation on the part of a lender in a commercial transaction and this Court refuses to adopt such an obligation.

3. The South Carolina Unfair Trade Practices Act is not applicable to the transactions involved in this action as they are exempt therefrom

S.C. Code Ann. §39-5-20, commonly known as the Unfair Trade Practices Act ("UTPA") declares unlawful, "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

In Anderson v. Citizens Bank,[3] the Court of Appeals, relying on McLeod v. Rhoades,[4] which had held securities transactions were exempt from UTPA, and upon an interpretation of the Federal Trade Commission Act, held that the UTPA did not apply to the actions of a lender in failing to give a loan to which it was claimed to have committed. The Court stated:

> The State Board of Financial Institutions regulates the banking practices of Citizens Bank pursuant to Section 34-1-10 to -130, Code of Laws of South Carolina, 1976. The Board has extensive regulatory authority over banking practices, including the power to initiate criminal prosecutions against banks that violate a statute or regulation. Sections 34-1-60, 34-1-90, 34-1-100, Code of Laws of South Carolina, 1976. Therefore, under the "general activity" test of *State ex rel. McLeod v. Rhoades*, 275, S.C. 104, 267 S.E.2d 539 (1980), the actions of Citizens bank in connection with the Graham loan are exempt from the provisions of the Unfair Trade Practices Act pursuant to Section 39-5-40(a), Code of Laws of South Carolina, 1976. *See NCNB Nat'l Bank of North Carolina v. Tiller*,

[3]294 S.C. 387, 365 S.E.2d 26 (S.C.App. 1987)

[4]275 S.C. 104, 267 S.E.2d 539 (1980)

814 F.2d (4th Cir.1987). [FN1] Accordingly, we affirm the ruling of the trial judge.

The Court further noted in its footnote:

> FN1. Cf. 15 U.S.C. 57a(f)(1) (1985), which provides that unfair and deceptive practices by banks are regulated under rules of the Federal Reserve System, not under the Federal Trade Commission Act. *See also Fed. Trade Comm'n v. Winters Nat'l Bank & Trust Co.*, 601 F.2d 395 (6th Cir. 1979). The South Carolina Unfair Trade Practices Act states that the legislature intends the courts to be guided by federal interpretations of the Federal Trade Commission Act in construing Section 39-5-20(a). See Section 39-5-20(b), Code of Laws of South Carolina, 1976.

In 1990, the Supreme Court in Ward v. Dick Dyer and Associates, Inc.,[5] rejected the "general activity" test of Rhoades and overruled Anderson but only to the extent that the result was based upon the "general activity" test. Anderson, however, has a separate basis for its decision as stated in the footnote cited above and, as a result, is still valid law.

A number of Courts have analyzed the findings of Anderson and the effect of Ward on the findings of that case and determined that the partial overruling of Anderson left its secondary findings and conclusions intact. [See, e.g. Lands Inn, Inc. v. Branch Banking and Trust Company of South Carolina, Case No. 2:98-158-23, United States District Court for the District of South Carolina (1999) and cases cited therein; Branch Banking and Trust Company of South Carolina v. Derrick Wells; Civil Action No. 03-CP-43-193, Order dated June 24, 2004 (in which Judge King ruled in a case based upon a similar transaction by a different purchaser with the same seller)]. The UTPA is, therefore, inapplicable to the case before the Court due to the statutory exclusion.

[5] 304 S.C. 152, 403 S.E.2d 310 (S.C. 1991)

The Court further finds that the dispute between the parties is a private dispute that does not involve the public interest of the people of the State of South Carolina.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. There is due to the Plaintiff on the Note and Mortgage note set forth in the Complaint the sum of $64,791.97 as of June 17, 2004 plus interest thereon through the date of this Order at the rate set forth in the Note[6] plus attorney's fees in the amount of $9,138.49[7] for a total judgment of $73,930.46 as of June 17, 2004 ("Total Debt").

2. The "Total Debt" and later accrued interest thereon constitutes the total judgment debt due the Plaintiff and shall bear continue to bear interest hereafter at the judgment rate of interest.

3. That this matter is hereby referred to the Master in Equity for Richland County for the purpose of the conduct of the sale ordered herein and for such other and further matters as may arise herein including the issuance of a Writ of Assistance and the hearing of any issues involving appraisal proceedings under S.C. Code Ann. §29-3-360 with any appeal from any action of the Master in Equity to be to the Court of Appeals.

4. That the Defendant liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with accrued interest thereon and the costs and disbursements of this action.

5. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity at

[6] The Prime rate of the plaintiff plus 5%.

[7] As established in the record before the Court, the Note provided for the award of reasonable attorney's fees and, in the Note, the defendant agreed that 15% of the amounts due at the time of acceleration or other action by the Plaintiff would be a reasonable fee.

public auction at the Richland County Courthouse, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in the 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 Clerk of Court shall require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied to the purchase price only upon compliance with the bid, but in case of non-compliance within twenty days , same to be forfeited and applied to the costs and Plaintiff's debt.

B. The sale shall be subject to taxes and assessments, existing easements, and easements and restrictions of record.

C. Plaintiff's Mortgage constitutes a first priority on the subject property.

D. Purchaser to pay for Deed Stamps and costs of recording the Deed.

6. If Plaintiff be the successful bidder at the said sale for a sum not exceeding the amount of costs, disbursements, expenses, and the indebtedness of the Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs, disbursements, and expenses, crediting the balance of the bid on Plaintiff's indebtedness.

7. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days after the date of sale as provided by law in such cases. However, the plaintiff reserves its right to waive deficiency up to the time of the sale.

8. That the Master in Equity shall, by advertisement according to law, give notice of the time and place of sale and the terms thereof, and shall 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, and if, upon such sale being made, the Purchaser or Purchasers should fail to comply with the terms thereof within twenty days after date of sale, then the Master in Equity may advertise the said premises for sale on the next or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

9. That the Master in Equity shall apply the proceeds of the sale as follows:

FIRST: To 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 attorneys of the amount of Plaintiff's Total Debt and interest thereon, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus will be held pending further order of the Court.

10. It is further ORDERED, ADJUDGED, AND DECREED that in the event the successful bidder is other than the Defendants in possession herein, the Sheriff of Richland County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, to 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.

11. It is further ORDERED, ADJUDGED, AND DECREED that, in addition to all parties deemed by law to have received constructive notice of this action, all Defendants and all persons whomsoever claiming under them 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.

12. It is further ORDERED, ADJUDGED, AND DECREED that the Deed of conveyance made pursuant to said sale shall contain only the names of the first named Plaintiff, the Defendants who were the titleholder titleholders of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the Grantee, and the recording office is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

13. The Master in Equity shall retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680, et seq., South Carolina Code of Laws (1976), as amended.

14. Upon conclusion of the sale called for herein (and only upon its conclusion), the Master in Equity is directed to release of record the mortgage lien[s] being foreclosed after the Order Confirming Sale and Disbursements has been executed and filed, which mortgage lien is described as follows:

> That certain mortgage given by Bartha Marshall to Branch Banking And Trust Company of South Carolina dated August 20, 2001, and recorded in the appropriate office for Richland County on September 4, 2001, in Book 562 at page 1493.

15. The following is a description of the premises herein ordered to be sold:

> All that certain piece, parcel or lot of land, with improvements thereon, lying, being in Harlem Heights, a development located in the Northeast suburbs of the City of Columbia, in the County of Richland in the State of South Carolina, known as 5883 Ames Road and shown and designated as Lot # 27 on a plat of Harlem Heights and Harlem Heights Extension, property of Bright L. Stevenson, made by James C. Covington, CE, dated September 13, 1945 and recorded in the Office of the Clerk of Court for Richland County in Plat Book K at Page 64. Reference to said plat is hereby craved for a more complete and accurate description thereof.

Property Address – 5883 Ames Road, Columbia, SC
TMS No. R11714-03-15

16. IT IS FURTHER ORDERED, that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

17. The Counterclaims of the defendant are dismissed, with prejudice.

Paul M. Burch, Presiding Judge

Columbia, South Carolina
~~November~~ March 9, 2004.

State of South Carolina | Form 4 | Judgment in a Civil Case

County of Florence County | 2006-CP-21-1814

J.J.H. Transport, LLC, et al

CERTIFIED A TRUE COPY
CLERK OF COURT C.P & G.S.
FLORENCE COUNTY, S.C.

Plaintiff(s)

vs.

Prime Rel-Stearns, a Branch Banking and Trust Company of South Carolina

Defendant(s)

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 decision rendered.

( ) **ACTION DISMISSED** (CHECK REASON): ( ) Rule 12(b), SCRCP; ( ) Rule 41 (a), SCRCP (Vol: Nonsuit); ( ) Rule 43(k), SCRCP (Settled); ( ) Other _____

( ) **ACTION STRICKEN** (CHECK REASON): ( ) Rule 40(j) SCRCP; ( ) Bankruptcy; ( ) Binding arbitration, subject to right to restore to confirm, vacate modify arbitration award; ( ) Other _____

IT IS ORDERED AND ADJUDGED: (✓) See attached order; ( ) Statement of Judgment by the court:

FILED
2007 MAY 29 AM 11:24
CONNIE REEP-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Dated at Florence, South Carolina, this _____ day of _____, 2007

PRESIDING JUDGE

This judgment was entered on the 24 day of May, 2007, and a copy mailed first class this 29 day of May, 2007 to attorneys of record or to parties (when appearing pro-se) as follows.

W. J. Tuck
PO Box 933
Darlington, SC 29540
Attorney(s) for Plaintiff(s)

O B Licata
P O Box 2340
Columbia, SC 29224
Attorney(s) for Defendant(s)

CONNIE REEP-SHEARIN
Florence County Clerk of Court

SCRCP APP-24

SCRCP FORM 4 (REVISED 5/00

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BRENT E. BENTRIM, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	)	COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2011-CP-10-2946 **MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

FILED
2014 JUN -9 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY
Docketed in Error Canceled

TO: THE HONORABLE MIKELL R. SCARBOROUGH, CHARLESTON COUNTY MASTER IN EQUITY:

The Plaintiff Brent E. Bentrim ("Bentrim" or "Plaintiff") would respectfully submit the following memorandum of law in opposition to the May 19, 2014 motion for summary judgment of the Defendant Wells Fargo Bank, N.A. ("Wells Fargo" or "Defendant").

LEGAL STANDARD

Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991). "This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Id.* Pursuant to Rule 56(f), a motion for summary judgment can be denied when additional time is necessary to obtain evidence about disputed facts. SC Rule Civ. P. 56(f).

Once a Rule 56 motion has been made, the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Id.* at 115, 410 S.E.2d at 545. Moreover, for summary judgment, "the non-moving party is only required to submit a mere

scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid–South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

1. A. Negligence.

In its recent decision in *Kerr v. Branch Bank & Trust*, the South Carolina Supreme Court held that **"[i]t is well established that banks owe a limited duty of care to their customers."** Opinion 27379 (April 14, 2014)(citing *Burwell v. S.C. Nat'l Bank*, 288 S.C. 34, 340 S.E.2d 786 (1986)). Moreover, the nature of the relationship between a bank and plaintiff – and a bank's failure to follow its own procedures – can give rise to specific duties of care. *Cf. Murray v. Bank of America*, 354 S.C. 337, 580 S.E.2d 194 (Ct. App. 2003)(imposing a duty of care on a bank in a fraud case). Based on the *Kerr* decision alone, the Court should deny Wells Fargo's motion on the negligence causes of action since the entire argument is predicated on a theory contrary to *Kerr*.

Wells Fargo attempts to argue the applicability of *Waterpointe I Prop. Owners Ass'n v. Paragon*, Inc., 342 S.C. 454, 536 S.E.2d 878 (Ct. App. 2000) – but *Waterpointe* has no bearing on this case for three reasons: First, *Waterpointe* is not a bank case but arises out of a condominium management contract where the manager allegedly failed to renew insurance; the case has nothing to do with bank procedures. Second, Wells Fargo's reading of *Waterpointe* would stand square in opposition to the holding in *Kerr supra* that a bank does have a limited duty of care – i.e., a general duty of care but not a fiduciary one; a non-banking case should not overrule a banking-specific case like *Kerr*. Third, the plaintiff in *Waterpointe* referenced the management contract specifically within the negligence cause of action – whereas here, Bentrim references numerous acts and actions beyond the underlying note and mortgage.

Wells Fargo also cites *Regions Bank v. Schmauch*, 345 S.C. 648, 582 S.E.2d 432 (Ct.

App. 2003) for the proposition that a bank did not owe a ***special*** duty of care to customer not in a vulnerable position. *Schmauch*, however, does not preclude the existence of a ***general*** duty of care by a bank: it merely refuses to impose a duty on the bank to apprise a customer of what is contained in the written lending documents – an argument not being advanced by Bentrim. *Id.* at 669-670. Moreover, *Kerr* – a 2014 Supreme Court case – establishes the duty of care, and thus outweighs *Schmauch* in terms of precedential value. The other case cited by Wells Fargo, *Weber v. Bank of America* 2013 WL 4820446 (D.S.C. 2013) is an unreported decision, where the plaintiff claimed the bank was negligent for not providing a loan modification. Thus, it is also of no precedential value because it predates *Kerr* and its holding is totally unrelated to Bentrim's claim.

Here, Wells Fargo owed Bentrim a duty of care *inter alia*: (a) to service the loan properly in accordance with the terms of the Note (which it did not); (b) to refrain from imposing new terms, never acceded by Bentrim in writing, on the loan in what constitutes a bait-and-switch; (c) to refrain from applying different principal and interest payments, along with penalties, without any authority to do so; (d) to fail to maintain accurate servicing, payoff and payment records when required to do so by law; (e) to provide true and correct, rather than false and misleading, information to Bentrim, when required to do so by law; and (f) refrain from instituting foreclosure proceedings in 2007 and 2009 claiming to be the holder and owner of a note that had in fact been sold to a third party in 2006.

This is not an exhaustive list, but is certainly sufficient to meet the requirement of *Kerr* and defeat summary judgment. None of the foregoing acts and omissions could possibly rise to "reasonable" conduct – which is the *sine qua non* of determining whether a duty exists in a banking case. *Schmauch*, 582 S.E.2d at 443 ("In determining whether a particular act is

negligent, the test used is what would a person of ordinary reason and prudence do under those circumstances at that time and place"). Moreover, they are all in dispute and more than satisfy the scintilla standard set forth in *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

Finally, since Wells Fargo admits in the Wakefield Affidavit its predecessor, Wachovia Bank, NA, did not own the Note after November 29, 2006, therefore it cannot possibly claim that "at all-times relevant to this lawsuit, the relationship between Plaintiff and Wells Fargo was that of a depositor-creditor" -- particularly when during this period of non-ownership it filed the 2007 and 2009 foreclosures cases, or made repeated demands for a right to payment in its own name, or provided conflicting payoff statements in its own name. These are genuine issues of material fact that make summary judgment inappropriate and for this additional reason, summary judgment on the negligence claim should be denied. *Id.* at 803

1.B. Statute of Limitations.

The statute of limitations on a negligence claim accrues at the time of the negligence, or when facts and circumstances would put a person of common knowledge on notice that he might have a claim against another party (i.e, the discovery rule). *Kreutner v. David*, 320 S.C. 283, 285-86, 465 S.E.2d 88, 90 (1995); *Strong v. University of South Carolina School of Medicine,* 316 S.C. 189, 447 S.E.2d 850 (1994). The date on which discovery should have been made is an objective, not subjective, question. *Kreutner v. David*, 320 S.C. 283, 285-86, 465 S.E.2d 88, 90 (1995); *Wiggins v. Edwards,* 314 S.C. 126, 442 S.E.2d 169 (1994).

In Bentrim's deposition, he states that in 2007 he was unaware Wells Fargo's predecessors, Wachovia, were misapplying principal and interest. (EXHIBIT A: Bentrim Depo. Tran. 143: 6-13). Additionally, Bentrim contends that he was unaware that Wachovia failed to

apply a payment towards principal until he received a letter from Ms. Caudill, an employee of Wells Fargo, on December 19, 2008. (EXHIBIT A: Bentrim Depo Tran. 144-145: 17-1). The lawsuit was filed on April 22, 2011. Therefore, the statute of limitations for a negligence claim had not run at the time of commencement of this action so summary judgment on this ground should be denied as there is a genuine issue of material fact. *Hancock* at 803.

2. Negligent Misrepresentation.

In order to seek claim for negligent misrepresentation, plaintiff must allege (1) that defendant made false representation to plaintiff, (2) that defendant had pecuniary interest in making statement, (3) that defendant owed duty of care to see that he communicated truthful information to plaintiff, (4) that defendant breached that duty by failing to exercise due care, (5) that plaintiff justifiably relied on representation, and (6) that plaintiff suffered pecuniary loss as proximate result of his reliance upon representation. *Kelly v. S. Carolina Farm Bureau Mut. Ins. Co.*, 316 S.C. 319, 450 S.E.2d 59 (Ct. App. 1994).

To the extent Wells Fargo relies on its erroneous reasoning in Section 1 that a bank can never owe a duty of care to its customer, or that the negligence claims arise solely out of contract, or that the relationship between Plaintiff and Defendant was exclusively depositor and creditor, then Plaintiff reincorporates his arguments set forth in Section 1.A above. The holding in *Kerr v. Branch Bank & Trust* would apply to the negligent misrepresentation cause of action, as well. To the extent Defendant advances statute of limitations arguments, Plaintiff incorporates his arguments set forth in Section 1.B – *i.e.*, that the discovery rule does not create an arbitrary cut-off three years before the filing of a Summons and Complaint.

Wells Fargo is flat-out wrong that Wells Fargo has made no misrepresentations that were false at the time made, and related to a present or pre-existing fact. Here is just a sampling of

some of the many misrepresentations made by the Defendant:

i. The falsity of the Adjustable Rate Disclosure Statement (EXHIBIT B);
ii. The four conflicting CRIS statements (EXHIBIT C);
iii. The 2007 and 2009 foreclosure lawsuits;
iv. Foreclosure demand (EXHIBIT D);
v. Advancing the Real Estate attorneys' copy of the Note as a true and correct copy;
vi Repeatedly claiming to be the holder.
vii. Repeatedly claiming right to enforce by successor by merger to Wachovia Bank, NA

Therefore, there is more than a scintilla of evidence that Bentrim has a claim for negligent misrepresentation and Defendant's motion for summary judgment on this issue should fail. *Hancock* at 803. Insofar as discovery is incomplete, Wells Fargo should not be allowed to argue there is no proof or evidence that the statements were false at the time of execution – either summary judgment on this particular argument is premature [Rule 56(f)] or it is a contested issue of fact. *Hancock* at 803.

3. Good Faith & Fair Dealing.

The South Carolina Uniform Commercial Code provides: "Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement." S.C. Code § 36-1-203. This statutory authority exists independent of case law. Insofar as *RoTec v. Encompass Services, Inc.* 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004) did not analyze the applicability of UCC § 1-203, Plaintiff submits that this statutorily-authorized claim should be preserved and Wells Fargo's motion for summary judgment on this issue should be denied. Wells Fargo offers no citation to authority for the proposition that Judge Dennis' ruling of November 20, 2012 bars any claim that is related or touches on contract.

4. Breach of Contract.

It is black-letter law in South Carolina that "breach of contract" and "breach of contract accompanied by a fraudulent act" are *separate* causes of action which can be maintained

separately from each other – and also separately from a fraud claim. *Hubbard and Felix*, THE SOUTH CAROLINA LAW OF TORTS, 3D ED. (2004)(citing *Perry v. Green*, 313 S.C. 250, 437 S.E.2d 150 (Ct. App. 1993)). "Breach of contract accompanied by a fraudulent act is not simply a combination of a claim for breach of contract and a claim for fraud." *Ball v. Canadian Am. Exp. Co., Inc.*, 314 S.C. 272, 276, 442 S.E.2d 620, 622 (Ct. App. 1994). As such, there is no requirement that a plaintiff plead both claims together in a single action. *Id.* Indeed, a quick search on Westlaw reveals cases in which plaintiffs bring a claim for breach of contract accompanied by a fraudulent act but not for breach of contract alone.

In this case, it is especially important to note that Judge Dennis dismissed Plaintiff's original, *pro se* breach of contract cause of action only because of a pleading error – after Wells Fargo rather disingenuously argued that it did not know *which* contract Bentrim meant, despite the fact it was obvious related to the very loan documents that Wells Fargo referenced in its counterclaim for breach of contract. Thus, Judge Dennis' ruling was more in the nature of a Rule 12(b)(6) dismissal – which has been corrected by more specific allegations in the Amended Complaint – rather than summary judgment, because he made no findings of fact or conclusions of law that Wells Fargo did – or did not – specifically breach the terms of the Note and/or Mortgage and/or the Adjustable Rate Disclosure Statement (which meet the first prong of the current cause of action).

It should be also noted that Wells Fargo submits no authority of any sort for the proposition that the dismissal of a breach of contract claim somehow precludes a separate breach of contact with fraudulent intent claim. The absence of authority is fatal to its argument.

Moreover, if Bentrim's instant cause of action is dismissed, it would leave the parties in the incongruous position of having a Defendant allowed to proceed on a breach of contract

counter-claim arising out of the same contractual relationship that Plaintiff is disallowed from pursuing in the first party case, simply because of a *pro se* pleading error. Plaintiff submits this is a manifest injustice, especially when the causes of action between breach of contract and breach of contract accompanied by a fraudulent act are legally separate. *Hubbard and Felix, supra.*

5. Conversion.

A plaintiff claiming conversion may prevail based upon a showing of unauthorized detention of property, after demand. The plaintiff must show either title or right to possession of the property at the time of conversion. Money may be the subject of conversion if it is capable of being identified, and there may be conversion of determinate sums even though specific coins and bills are not identified. *Mullis v. Trident Emerg. Phys.*, 351 S.C. 503, 570 S.E.2d 549, 551 (Ct. App. 2002). *Oxford Fin. Cos. v. Burgess,* 303 S.C. 534, 539, 402 S.E.2d 480, 482 (1991). In *Regions Bank v. Schmauch*, 345 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003), the Court of Appeals held that conversion "may arise by some illegal use ***or misuse*** ... of another's personal property (emphasis added)."

In March 2011, Bentrim sent the Defendant a certified letter stating since it could not or would not produce the original Note, it must drop the lien on his property. Wells Fargo's refusal to do so initiated this suit.

Here, there is ample evidence that Wells Fargo converted payments received from Bentrim during the period it did not own the loan, which Wells Fargo avers (in the Wakefield Affidavit) after November 29, 2006. Wells Fargo has denied over and over again that it was in a third-party servicing relationship – thus, it cannot claim it was a servicer. Because Wells Fargo cannot be a "person entitled to enforce" ["PETE"] under S.C. Code Ann. § 36-3-301(i) or (ii)

[since it is not a holder and has offered no proof of a contractual service arrangement with a PETE], then it had no right to the payments.

Bentrim, by contrast, had a right to possess all sums he paid to Wells Fargo's predecessors after November 29, 2006, because Bentrim was only obligated to pay a PETE. S.C. Code Ann. § 36-3-412.

Defendant would cite *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975) for the general proposition that there can be no conversion where there is a mere obligation to pay a date and "where there is merely the relationship of a debtor and creditor, an action based on conversion of the funds representing the debt is improper." While this is an accurate statement of the general law, it is inapplicable here for three reasons:

First – there was no debtor-creditor relationship between Defendant and Plaintiff after November 29, 2006.

Second – there is evidence in the record that Defendant wrongfully and illegally misused Plaintiff's payments by applying different principal and interest payments, along with penalties, without any authority to do so; under *Owens*, such wrongful and illegal misuse triggers an exception to the general rule. *Owens v. Andrews Bank & Trust Co.*, 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975).

Third – it is indisputable that Wells Fargo sold 100% of the note on November 29, 2006 (Wakefield Affidavit; Boddiford Affidavit) but specifically told Bentrim in 2008 that it owned the mortgage (WF 59); assuming this *may* be true, in the light most favorable to Bentrim, the result is that Wells Fargo bifurcated the Note from the Mortgage (by selling the Note, but intentionally withholding the Mortgage) thus rendering the Mortgage void as a matter of law. Accordingly, there is a genuine issue of material fact that Wells Fargo converted the Plaintiff's

property interest in 10 Nicholson Street, precluding him from selling, refinancing, etc., when he had a right to possess the property in fee at the time. This theory would need to be tested by additional discovery, which is a further ground to deny summary judgment on the conversion cause of action at this time. Rule 56(f).

6. Fraud and Fraudulent Misrepresentation.

The Amended Complaint contains very specific allegations and facts that are more than sufficient to satisfy Rule 9(b). Indeed, the Amended Complaint goes on at length for approximately 60 paragraphs detailing with specificity the facts underlying the fraud-based claims. In addition, each of the challenged cause of actions references these factual paragraphs. Moreover, the fact that this boilerplate argument is included, and in fact is placed so high on Defendant's list, is very telling and demonstrates that Defendant is grasping at straws. In any event, the claims for breach of contract accompanied by a fraudulent act, fraud/fraudulent misrepresentation, constructive fraud, and negligent misrepresentation should survive a Rule 9(f) analysis. Moreover, all pleadings shall be so construed as to do substantial justice to all parties." Rule 8(f), SCRCP; *see also Russell v. City of Columbia,* 305 S.C. 86, 89, 406 S.E.2d 338, 340 (1991) (holding to ensure substantial justice to the parties, the pleadings must be liberally construed). "[T]echnical, restrictive or outmoded requirements of Code Pleading are not necessarily required [under the SCRCP]." *Gaskins v. S. Farm Bureau Cas. Ins. Co.,* 343 S.C. 666, 671, 541 S.E.2d 269, 271 (Ct.App.2000) (quoting Harry M. Lightsey, Jr. & James F. Flanagan, *South Carolina Civil Procedure* 93–94 (2nd ed. 1996)).

A. STATUTE OF LIMITATIONS

Unless otherwise tolled or provided for under South Carolina law, a civil action must be filed within three years from the date it accrues. *See* S.C. Code Ann. § 15-3- 530; *see also*

Kleckley v. Northwestern Nat'l Cas. Co., 338 S.C. 131, 526 S.E.2d 218 (2000); *Bennett v. Metropolitan Life Ins. Co.*, 197 S.C. 498, 15 S.E.2d 743 (1941). Further, the discovery rule provides that the cause of action accrues when the claimant knew or reasonably should have known of the alleged wrong. *See Holy Lock Distributors, Inc. v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787 (Ct.App. 1998), *rev'd on other grounds*, 340 S.C. 20, 531 S.E.2d 282 (2000). An action for fraudulent misrepresentation is a civil action under S.C. Code Ann. § 15-3-530. Therefore, the discovery rule applies.

In *Turner v. Milliman*, a genuine issue of material fact existed as to when insured was placed on notice that insurance agent's prior representations as to the increases in the cost of insurance premiums were inconsistent with the increases actually imposed, precluding summary judgment on limitations grounds in insured's action against agent and others for fraud and negligent misrepresentation. 381 S.C. 101, 671 S.E.2d 636 (Ct. App. 2009), *rehearing denied, affirmed in part, reversed in part.* This same reasoning applies here: there is a genuine issue of material fact as established by Bentrim's testimony (See § 1 above).

The applicable statutes of limitation do not preclude the claims here. Plaintiff did not know of Defendant's fraudulent conduct shortly after his loan closed in 2002; in fact, he pieced it together much later as evidenced in his deposition testimony. The allegations in the complaints state what transpired, and the evidence verifies it, but at the time such activity was hidden and Plaintiff could not and did not have the requisite knowledge of such wrongdoing. Plaintiff believed that the errors associated with his loan were simply that and he initially sought to have all mistakes corrected. It was only later that Defendant's wrongful acts became apparent.

At this stage of the case and with so many contested issues of fact, it is simply too early to conclusively determine the application of any statutes of limitations. *Silvester v. Spring Valley*

Country Club, 344 S.C. 280, 284-85, 543 S.E.2d 563, 566 (Ct. App. 2001) (citation omitted). As such, all of the evidence must be viewed in the light most favorable to the non-moving party. *Id.* (citation omitted). As discussed above, Plaintiff did not have the requisite knowledge of Defendant's wrongdoing until shortly before filing this action.

Furthermore, the evidence adduced in discovery reveals that Defendant has perpetuated a fraud upon the Court in this and previous actions, therefore any such prior judgments should be set aside. "There is no statute of limitations when a party seeks to set aside a judgment due to fraud upon the court." Rule 60(b), SCRCP; *see Hagy v. Pruitt, supra* (court has the inherent authority to set aside a judgment on the ground of extrinsic fraud in spite of any facially applicable statute of limitations)." *Chewning v. Ford Motor Co.*, 579 S.E.2d 605, 609-10, 354 S.C. 72, 80 (S.C. 2003). The Court's inherent power should allow it move beyond the statute of limitations and other such barriers in order to expose Defendant's fraud. In addition, in light of Defendant's improper changes to the loan, "[i]t would be manifestly unjust to permit the vender to enforce a subsisting contract, and deny to the purchaser, from lapse of time, a defense involving the validity of it at its inception." *Evans' Executors v. Yongue*, 42 S.C.L. (8 Rich.) 113, 115 (1854).

7.A. General Applicability of the UTPA.

In its motion for summary judgment, Wells Fargo basically argues that a "general activity test" still applies to banks – i.e., because nationally chartered banks are regulated by the federal government, and thus the UTPA cannot apply to them. Wells Fargo advances this argument despite the fact that in 1991, the South Carolina Supreme Court abolished the old "general activity" exception to the UTPA, in *Ward v. Dick Dyer & Associates, Inc.*, 304 S.C. 152, 403 S.E.2d 310 (1991), and *specifically* overruled an earlier Court of Appeals decision in *Anderson v.*

Citizen's Bank, 294 S.C. 387, 365 S.E.2d 326 (Ct. App. 1987) which had extended the general activity test to banks. *See Ward*, 304 S.C. at 157, 403 S.E.2d at 312 (holding *Anderson* is "overruled to the extent that the result was based upon the 'general activity' test").

The purpose behind *Dick Dyer* was crystal clear: "[i]n finding the buyers could bring an action against the car dealership, despite its regulation by a South Carolina regulatory agency, the [*Dick Dyer* Court] held 'the exemption is intended to exclude those actions or transactions which are *allowed or authorized* by regulatory agencies or other statutes'." *Hennes v. Shaw*, 397 S.C. 391, 400, 725 501, 506 (Ct. App. 2012). Specifically, the Supreme Court further elaborated in *Dick Dyer* that:

> The purpose of the exemption is to insure that a business is not subjected to a lawsuit under the [UTPA] when it does something required by law, or does something that would otherwise be a violation of the [UTPA], but which is allowed under other statutes or regulations. It is intended to avoid conflict between laws, not to exclude from the [UTPA]'s coverage every activity that is authorized or regulated by another statute or agency. *397 S.C.* at 156, 403 S.E.2d at 312.

No reported, appellate-level South Carolina opinion supports Wells Fargo's contention that a "general activity" test is still in place in South Carolina for federally-insured banks. In fact, in *Robertson v. First Union Nat'l Bank,* 350 S.C. 339, 565 S.E.2d 309 (Ct. App. 2002), *cert. dismissed* 357 S.C. 191, 592 S.E.2d 625 (2004), the Court of Appeals analyzed a UTPA case against a bank without any reference to an exclusion under S.C. Code Ann. § 29-5-20.

Moreover, insofar as Wells Fargo claims that it was its own servicer on the Bentrim loan, the Fourth Circuit Court of Appeals held in *Beattie v. Nations Credit Fin. Serv. Corp.*, 69 F.App'x 585 (4th Cir. 2003), that a mortgagee was not exempt from liability under SCUTPA based on its pursuit of collection and foreclosure activities because SCUTPA did not protect mortgagees from lawsuits for "general activity." *Id.* at 895. This is consistent with the holdings

of the South Carolina Supreme Court for the last decade extending the scope of the UTPA into regulated industries. *See, e.g., RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.* 399 S.C. 322, 338 732 S.E.2d 166, 174 (2012)(extending reach of UTPA to attorneys).

SECTION 29-5-20(B) ANALYSIS

Wells Fargo makes specific reference to Section 39-5-20(b) of the UTPA for the proposition that the general activity test still applies to banks:

> "[i]t is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to **Section 5(a) (1)** of the Federal Trade Commission Act (**15 U.S.C. 45(a)(1)**), as from time to time amended.

S.C. Code Ann. § 29-5-20(b)(emphasis added). Wells Fargo then turns around and cites to FTC Act § 5(a)(2) for the proposition that the FTC does not regulate banks, before drawing an *ergo hoc, propter hoc* conclusion that this carves out a bank exception to the ban on the general activity test. (Wells Fargo Memo, § 8). This argument should fail for four reasons:

First, it must be noted that S.C. Code Ann. § 39-5-20(b) is *specifically limited* to "interpretations given by the Federal Trade Commission and the Federal Courts to **§ 5(a)(1)** of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended (emphasis added)." The legislative direction under § 39-5-20(b) that our Courts be guided by the FTC and Federal Courts ***does not extend to § 5(a)(2) of the FTC Act*** – the very section on which Wells Fargo relies.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *Sloan v. Hardee,* 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." *Id.* In interpreting a statute, "[w]ords must be given their plain and ordinary meaning without resort to

subtle or forced construction to limit or expand the statute's operation." *Id.* at 499, 640 S.E.2d at 459. Further, "the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). Here, the language of § 39-5-20(b) clearly does not extend to 15 U.S.C. 45(a)(2). The General Assembly specifically said "§ 5(a)(1)" – not "§5(a)" or even "§5" of the FTC.

Therefore, the South Carolina courts should not consider themselves bound in any way by § 5(a)(2) of the FTC Act because it is specific to the FTC's specific powers, and not to what constitutes business or commerce. Unlike Congress – which conferred bank oversight to another agency [the Office of the Comptroller of the Currency] – South Carolina included nothing in the UTPA that exempts banks from the purview of the UTPA, nor did the General Assembly preclude the Administrator of the South Carolina Department of Consumer Affairs from prosecuting UTPA claims. In fact, unlike his federal counterpart, the SCDCA Administrator is specifically given bank oversight. S.C. Code Ann. § 37-6-105(3)(" The Administrator and any official or agency of this State having supervisory authority over a supervised financial organization ... may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action"). If the General Assembly wanted the UTPA to apply to § 5(a)(2) it would have said so.

Second, because the text of § 5(a)(1) of the FTC Act is virtually identical to § 39-5-20(a), we can logically deduce that by enacting § 39-5-20(b), the General Assembly wanted the South Carolina courts to track what would, or would not, constitute ***trade or commerce*** at the federal level. This stands to reason – it would be bad for business to allow a major deviation between

State and Federal authorities over the definition of what constitutes trade and commerce. In the decades that have passed since the enactment of the UTPA, the South Carolina Supreme Court has made it very clear what it believes constitutes trade or commerce -- which it defines to involve: "[e]very business occupation carried on for subsistence or profit and involving the elements of bargain and sale, barter, exchange, or traffic." *RFT Management Co., L.L.C. v. Tinsley & Adams, L.L.P.* 399 S.C. 322, 338 732 S.E.2d 166, 174 (2012); *see also Bretton v. State Lottery Comm'n,* 41 Mass.App.Ct. 736, 673 N.E.2d 76, 78–79 (1996) (recognizing that UTPA applies to acts or practices which are perpetrated in a "business context"). Wells Fargo has not cited one South Carolina or Federal Court opinion, in its motion or memorandum of law, standing for the proposition that a bank is not engaged in business for the purpose of profit – which further undercuts its argument.

Three, in the *United States of America v. Bank of America, et al.,* brought in the United States District Court for the District of Columbia, Case No. 1:12-cv-00361-RMC, Wells Fargo – a party-Defendant – entered into a Consent Judgment on April 4, 2012 with the Attorney General of South Carolina and the South Carolina Department of Consumer Affairs that it had violated the South Carolina UTPA. Not only is this an admission by a party opponent that raises genuine issues of material fact on adverse public impact (see below), it begs the question why Wells Fargo would admit it violated the UPTA in South Carolina if it truly did not apply. The answer is obvious: the UTPA absolutely does apply to banks like Wells Fargo --- as Defendant has admitted.

Perhaps the most important reason of all, however is the fourth fact: that the bank's federal regulator – the Office of the Comptroller of the Currency (OCC) – takes the position that ***Section 5 of the FTC does apply*** to Banks, and that Banks can have State liability for

unfair and deceptive acts! In Advisory Letter 2002-3, the OCC states:

> Unfair or deceptive acts or practices are unlawful under federal and State law. Section 5 of the Federal Trade Commission Act (FTC Act), 15 USC 45(a)(1), prohibits "unfair or deceptive acts or practices in or affecting commerce." Under section 8 of the Federal Deposit Insurance Act, 12 USC 1818, the OCC may take appropriate enforcement actions against national banks and their subsidiaries for violations of *any* law or regulation, which necessarily includes section 5 of the FTC Act. Certain unfair or deceptive acts or practices by banks and their subsidiaries have been specifically prohibited by regulation. Other acts or practices may be determined to be unfair or deceptive on a case-by-case basis, under the standards set forth in the FTC Act. *Section 5 of the Federal Trade Commission Act*

(emphasis added; see: http://www.occ.gov/static/news-issuances/memos-advisory-letters/2002/advisory -letter-2002-3.pdf, attached hereto as EXHIBIT D).

Applying this authority, it would appear that Wells Fargo is arguing a legal position that directly contradicts its regulator's position on the same issue.

THE ANDERSON FOOTNOTE

Notwithstanding the foregoing, in its memorandum of law, Wells Fargo cites some trial court orders which advance the same faulty § 29-5-20(b) analysis.

Basically, these circuit judges found that while *Dick Dyer* overruled the general activity test for banks established in *Anderson*, the *Dick Dyer* Court did not overturn the footnote (!) in *Anderson* – which serves as a "separate basis" for excluding banks from the UTPA and is still "valid law." *See Anderson*, 294 S.C. at 400, 365 S.E.2d at 34, n.1.

In response, Plaintiff would offer three counter-arguments:

One – the footnote is clearly *dicta* because it is not essential to the decision. The best evidence for that it is that it is in a footnote. Moreover, *dicta* has no precedential value. *Herndon v. Wright*, 257 S.C. 98, 184 S.E.3d 444, 445 (1971); *Nash v. Tindall Corp.*, 375 S.C. 36, 40, 650 S.E.2d 81, 83 (Ct. App. 2007)("[d]icta or, as it is also known, dictum 'is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the

court's decision"). It's such a stretch, in fact, that even Wells Fargo does not advance the "footnote is still valid" in its court papers.

Two – even if the *Anderson* footnote is not dicta, *Dick Dyer* still overrules it. The use of the "*Cf.*" (i.e., Compare) citation "directs the reader's attention to another authority or section of the work in which contrasting, analogous, or explanatory statements may be found." BLACK'S LAW DICTIONARY, 9th Ed. (2009). Since the footnote is appended to Judge Bell's general activity analysis, it is intended to support his citation to *State ex rel. McLeod v. Rhoades,* 275 S.C. 104, 267 S.E.2d 539 (1980) and *NCNB Nat'l Bank of North Carolina v. Tiller,* 814 F.2d 931 (4th Cir.1987) – the same analysis overturned by *Dick Dyer.* Nowhere in the opinion does the careful Judge Bell state the footnote advances an alternate ground; he clearly means for the note to be *dicta* in support of the general activity test overruled four years later by the Supreme Court. Even if other trial judges have incorrectly given it weight, it should not be *stare decisis. Brown v. Anderson Co. Hosp. Ass'n,* 268 S.C. 479, 486, 234 S.E.2d 873, 876 (1977)(the doctrine of *stare decisis* is not intended "to effect a 'petrifying rigidity,' but to assure the justice that flows from certainty and stability ... [f]undamentally, [it is] not a rule of law; it is a matter of judicial policy. It does not render immutable judicial formulations of common law rules").

Three – the interpretation of the *Anderson* footnote in the circuit court orders cited by Wells Fargo is just plain bad law. Judge Burch and Judge Russo's decisions were never confirmed by an appellate court. They ignore principals of statutory construction. They over-extend the scope of § 29-5-20(b). They fail to consider the OCC's position that banks are subject to federal and state causes of action under the FCC Act by virtue of 12 USC § 1818 and state UTPA actions. Their opinions allow banks to advance a position contrary to that of their regulator. By contrast, Plaintiff would point to the decision of U.S. District Judge Weston

Houck, who recently held that a plaintiff in a Charleston County foreclosure case who claimed he was "assessed and collected default-related fees that they were not legally authorized to assess and collect pursuant to the mortgage contract" did in fact have actionable under the FTC Act. *See Roane v. Everbank*, 2013 WL 4505415, p. 5 (D.S.C. 2013).

7.B UTPA Adverse Public Impact.

The argument advanced by Wells Fargo in sub-paragraph (b) of its UTPA analysis is flawed. This case is not simply about Wells Fargo overcharging $2,700.00. Rather it goes right to the heart of the mortgage loan sales and servicing practices of Wells Fargo and its predecessors.

In order to assert a cause of action under the UTPA, the Plaintiff must allege and prove that the defendant's actions have adversely affected the public interest. *Daisy Outdoor Advertising v. Abbott,* 322 S.C. 489, 493, 473 S.E.2d 47, 49 (1996). An "impact upon the public interest" may be shown if the acts or practices have the ***potential for repetition.*** *Singleton v. Stokes Motor Co.*, 358 S.C. 269, 379, 595 S.E.2d 461, 622 (2004). "The potential for repetition may be demonstrated in either of two ways: 1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence, or 2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts." *Crary v. Djebelli,* 329 S.C. 385, 388, 496 S.E.2d 21, 23 (1998); *Wright v. Craft,* 372 S.C. 14, 29, 640 S.E. 2d 486, 502 (Ct. App. 2006). It should be noted that in *Daisy,* the Supreme Court: "declined to hold, however, that those are the only means for showing potential for repetition / public impact. Rather each case must be evaluated on its own merits. We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition / public impact prong of the UTPA test." *Daisy* 322 S.C. at 497; 496 S.E.2d at 51.

All of the negligent misrepresentations set forth above in § 2 would apply here. As noted above, Wells Fargo has admitted to its regulator [OCC], the South Carolina Attorney General and the South Carolina Department of Consumer Affairs that it violated the UTPA in South Carolina with respect to mortgage servicing – which meets the "showing the same kind of actions occurred in the past" is satisfied. Otherwise, Plaintiff is entitled to more discovery on whether other South Carolina homeowners were subjected to the same sort of unfair and deceptive practices. In any event, Plaintiff submits that conduct which throws into question the fairness and truthfulness of foreclosure proceedings must, by its very nature, impact the public interest and make this much more than a mere breach of contract claim.

8. Slander of Title.

Defendant mischaracterizes Plaintiff's slander of title cause of action – which goes beyond the mere filing of a *lis pendens*, and includes allegations regarding diminished value in the eyes of third parties, including the inability to refinance and inability to sell the property. In *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012), the Court of Appeals allowed a slander of title claim to proceed against a lender:

> "Wrongfully recording an unfounded claim against the property of another generally is actionable as slander of title." *Huff*, 319 S.C. at 149, 459 S.E.2d at 891. "[M]alice merely means a lack of legal justification and is to be presumed if the disparagement is false, if it caused damage, and if it is not privileged." *Home Invs. Fund v. Robertson*, 10 Ill.App.3d 840, 295 N.E.2d 85, 87 (1973) (citing *Gates v. Utsey*, 177 So.2d 486, 488 (Fla.Dist.Ct.App.1965)). In *Huff*, 319 S.C. at 149–50, 459 S.E.2d at 891, the court found a jury reasonably could conclude the defendant published a false statement when she filed a lien she knew or should have known was invalid. "A publication is derogatory to the plaintiff's title if the publication disparages or diminishes the quality, condition, or value of the property." *Id.* at 150, 459 S.E.2d at 891. The court further found the defendant's lien clearly diminished the value of the property in the eyes of a third party, given that the plaintiff was required to discharge the lien before he could complete the refinancing of the property. *Id.*
>
> The Solley majority also specifically ruled that: "[r]ecording a mortgage that is a nullity

should be considered a false statement derogatory to Solley's title." The pleadings and discovery in this case, as well as legal argument over whether Wells Fargo is a PETE on the current counterclaim, or had the right file the 2007 and 2009 actions, raise genuine issues of material fact that preclude summary judgment at this time. *Hancock* at 803.

9. Civil Conspiracy.

"[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris,* 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987); *accord Cowburn,* 366 S.C. at 49, 619 S.E.2d at 453; *Pye v. Estate of Fox,* 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006). The Wakefield affidavit establishes The Money Store – an independent, separate corporation – is the second party; obviously, since Wells Fargo only revealed this fact in the last four days, more discovery is needed and summary judgment would be inappropriate at this time on the issue of willfulness. Attorneys' fees incurred in defending the instant counter-claim would be cognizable special damages, as established in discovery responses, as well as damage to credit as identified in the pleadings and discovery responses.

10. Fair Debt Collection Practices Act.

In the Wakefield Affidavit, Wells Fargo concedes that it sold a 100% beneficial interest in the Bentrim loan on November 29, 2006. It is undisputed that during this time period (11.29.06-5.1.10), Wells Fargo's predecessor Wachovia Bank, N.A. hired collection counsel and instituted two (2) foreclosure actions, along with sending collection demands through the interstate mails and making reports to credit bureaus --- all while the Bentrim loan was owned [according to Wells Fargo] by The Money Store. As such, there are genuine issues of material

fact that as to whether Wells Fargo's predecessor used "instrumentalit[ies] of interstate commerce or the mails ... who regularly collects or attempts to collect, directly or indirectly, debts owed, or due or due another." 15 U.S.C.A. § 1692a.

In discovery responses, Wells Fargo has consistently denied being a servicer or operating under a service contract. (EXHIBIT E). In *Bank of America v. Draper*, 405 S.C. 214, 221, 746 S.E.2d 478, 481 (Ct. Capp. 2013), the Court of Appeals cited with approval authority for the proposition that the maker or holder of a loan could be its own servicer; however, Wells Fargo admits via the Wakefield affidavit that it sold the Bentrim loan on November 29, 2006. Due to the lack of endorsement on the note, and the fact it was issued to First Union National Bank or order, Wells Fargo therefore cannot be the holder as a matter of law pursuant to S.C. Code Ann. § 36-1-201(20). This means it could not be a self-servicer after November 29, 2006 since it was not a holder, per *Draper*. 746 S.E.2d at 481.

To the extent Wells Fargo now claims it was a third-party servicer to The Money Store, then this must fail too. First, it has steadfastly denied the existence of a servicing contract. Next, a servicer first has to prove its rights to enforce under Article 3 as a non-holder in possession under Section 3-301(ii). *See In Re Neals*, 459 B.R. 612, 618 (Bankr. D.S.C. 2011). In order to have standing, a servicer must also prove an agency relationship with a PETE. *In Re Veal*, 450 B.R. at 920. Finally, it is generally accepted that servicer status requires the existence of a contractual relationship with the holder. *In Re Woodberry*, 383 B.R. 373, 379 (Bankr. D.S.C. 2012). Wells Fargo has presented no competent evidence that it was a third-party servicer, under contractual obligation, with enforcements rights of its own or servicing for a PETE. Thus, its arguments to the contrary should be disregarded.

Wells Fargo is also wrong when it says the "[o]nly evidence before this Court is that

Wells Fargo was at all times collecting a debt in its own name and servicing its own debt." The Money Store is a separate corporation. Wells Fargo cannot pierce its own corporate formality and claim it is an alter ego; it cannot disregard the corporate structure it set up. A basic tenet of American corporate law is that the corporation and its shareholders are distinct entities. *See, e.g., First Nat. City Bank v. Banco Para El Comercio Ext. de Cuba,* 462 U.S. 611, 625, 103 S.Ct. 2591 (1983) ("Separate legal personality has been described as 'an almost indispensable aspect of the public corporation"). A corporate parent which owns the shares of a subsidiary does not, for that reason alone, own or have legal title to the assets of the subsidiary; and, it follows with even greater force, the parent does not own or have legal title to the subsidiaries of the subsidiary. "The properties of two corporations are distinct, though the same shareholders own or control both. A holding corporation does not own the subsidiary's property." *Dole Food Co. v. Patrickson,* 538 U.S. 468, 476, 123 S.Ct. 1655, 1660 (2002)(internal citations omitted). One who has created a corporate arrangement, chosen as a means of carrying out his business purposes, does not have the choice of disregarding the corporate entity in order to avoid the obligations which the statute lays upon it for the protection of the public. *Schneley Distillers Corp. v. U.S.,* 326 U.S. 432, 436, 66 S.Ct. 247, 249 (1946).

"The corporate form may be disregarded only where equity requires the action to assist a third party." *Hunting v. Elders,* 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004)(internal citations omitted). Because Bentrim is not seeking to pierce the corporate veil, Wells Fargo cannot disregard its corporate structure. *Schneley,* 326 U.S. at 436.

11. South Carolina Consumer Protection.

There are genuine issues of material fact whether the Bentrim loan meets the test of a "consumer loan" under S.C. Code Ann. § 37-3-105(1)("unless the loan is made subject to this

title by agreement ... 'consumer loan' does not include a loan secured by a first lien or equivalent security interest in real estate").

Bentrim does not deny a loan took place in March, 2002 – but he steadfastly denies that the loan he received is the one described in the March 12, 2002 Note, or secured by the March 12, 2002 Mortgage which references that Note. Recall that the loan was not funded until March 21, 2002 – three days after the closing expired. Bentrim signed a new HUD-1 on April 4, 2002. Also, Bentrim has demonstrated that the terms of the March 12, 2002 Note have never been applied by Wells Fargo or its principals; the transaction described in the Note, and secured by the Mortgage, did not take place. There is also the open question advanced by the Defense of whether Wells Fargo contractually severed the Mortgage from the Note on November 29, 2006, which would render the Mortgage ineffective.

Since there are genuine issues of material fact – and the requirement for more discovery – the Court should deny summary judgment on this cause of action for the foregoing reasons. If the allegations set forth in the UTPA are taken in the light most favorable to Bentrim, then there also genuine issues of material fact as to the unconscionability provisions under § 37-5-108 – primarily by virtue of bringing the 2007 and 2009 actions in their own name. *Hancock* at 803.

12. Real Estate Settlement Procedures Act.

Wells Fargo moves for summary judgment under Plaintiff's cause of action under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605. In order to advance a RESPA claim, a Plaintiff must send a QWR to the lender; the lender then has twenty (20) days to acknowledge receipt and sixty (60) days to respond to the requests. *Id.*

According to Wells Fargo, summary judgment turns on whether is whether two (2) letters sent by Plaintiff to Wells Fargo are Qualified Written Requests ("QWRs") under 12

U.S.C. § 2605(e)(2) – December 8, 2008 and July 21, 2010.

In its previous motion for summary judgment before Judge Dennis, Wells Fargo **conceded** that the December 8, 2008 letter constituted a QWR -- but argued its reply of December 19, 2008 "fully complied" with RESPA. This is the same position they advance now. Bentrim has consistently argued in opposition that the December 19 response was insufficient; his pleading should be construed as to do substantial justice to all parties." Rule 8(f), SCRCP; *see also Russell v. City of Columbia,* 305 S.C. 86, 89, 406 S.E.2d 338, 340 (1991) (holding to ensure substantial justice to the parties, the pleadings must be liberally construed). He should not have to plead his opposition to a defense raised by Defendant – the efficacy of the December 19 reply will stand or fall on its own. *Id.*

Regardless, the facts show that there are genuine and contested issues of fact regarding the December 8, 2008 QWR (EXHIBIT F):

- The 12.08.08 QWR Letter asks for both the "payment and interest schedules" as Wells Fargo concedes. But it also asks for a copies of "the original loan documentation – which Wells Fargo omits from its RESPA analysis;
- Insofar as the 12.19.08 reply is silent on the "original loan documentation" – and no follow-up is received by the sixty day deadline – there is a contested issue of fact on whether Wells Fargo complied with RESPA. Specifically, Plaintiff asserts that the explanation given in the 12.19.08 reply is in direct conflict with Adjustable Rate Information Statement in closing package;
- This is further buttressed by the fact that on December 22, 2008, Mr. Bentrim wrote Wells Fargo arguing that the 12.19.08 response was incorrect in crediting principal payment. There is nothing in discovery provided by Wells Fargo to

demonstrate that Wells Fargo followed up within the prescribed deadline under RESPA.

Wells Fargo next argues that even if Plaintiff's July 21, 2010 letter constitutes a QWR, then the fact Plaintiff sent it to Wells Fargo's former counsel renders it *ipso facto* ineffective – and, thus, Wells Fargo had no duty to respond. As with the other QWR, there are contested issues of fact regarding the July 21, 2010 QWR. In the prior summary judgment motion, Wells Fargo did not deny Plaintiff drafted *a prima facie* valid QWR on July 21, 2010. It did not deny that its lawyer told Plaintiff - via e-mail - to send the QWR to him. It did not deny that its former attorney received the QWR, either. Wells Fargo also conceded that RESPA is silent as to whether a QWR can be sent to a bank's agent. This is still Wells Fargo's basic position today.

Then, as now, Wells Fargo argued that the Court should strictly construe three U.S. District Court rulings that a QWR cannot be sent to a lender's attorney/agent. Unfortunately, this position is foursquare against South Carolina law, which provides that: "In the attorney-client relationship, clients are generally bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority." *Koutsogiannis v. BB & T,* 365 S.C. 145, 149-150, 616 S.E.2d 425, 428 (2005). To overcome this general rule that an attorney's neglect is attributable to the client, the client must establish that the attorney "willfully and unilaterally" abandoned the client." *Stearns Bank Nat'l Ass'n v. Glenwood Falls,* 373 S.C. 331, 342, 644 S.E.2d 793 (Ct. App. 2007).

It was entirely within Wells Fargo's prior counsel's scope of authority on July 21, 2010 to direct Plaintiff to send him a QWR. It was also in his apparent scope of authority on September 23 to say that he would press Wachovia to reply. Consequently, these are further

contested issues of fact which preclude summary judgment; additionally, the acts of Mr. Johnson in the scope of his representation distinguish the case at bar from the authority cited by Wells Fargo – here, its counsel ***invited*** the July 21, 2010 QWR and specifically said he would follow up with the bank.

The argument that the July 21, 2010 QWR is invalid because it requests a mix of servicing and non-servicing documents is not a serious argument. Wells Fargo concedes the letter requested servicing information (See Defendant's Memorandum § 12(c)). It cites absolutely no authority for the proposition in support of its argument that including a request for non-QWR materials somehow voids an otherwise valid QWR. For this additional reason, summary judgment should be denied.

Notwithstanding the foregoing, Plaintiff sent additional QWR's on October 12, 2010, and October 25 and November 8, 2010. The only response from Wachovia was on October 28 – which was only a *partial* response – "once we have completed our review, a copy of our findings will be sent to you in separate correspondence." Wachovia never followed-up, however. Thus, there are even further contested issues of fact regarding the applicability of RESPA to the case at bar.

13. Mail Fraud.

Wells Fargo sent via U.S. Mail servicing records which Plaintiff asserts were fraudulent the loan, and sent conflicting payout information in contravention of the law via the U.S Mails. These issues clearly impact genuine issues of material fact.

14. Declaratory Judgment.

In the interests of brevity, Plaintiff would incorporate herein by reference, as if fully set forth herein verbatim, all of the arguments made in its Memorandum of Law in Support of his

Motion for Summary Judgment on Wells Fargo's counterclaim – all of which directly apply to this cause of action.

The short version is that Wells Fargo is not entitled to summary judgment on the Declaratory Judgment cause of action because:

- The Note is unendorsed;
- The Note is issued to First Union National Bank ("FUNB") or Order;
- Wells Fargo is a successor to FUNB and Wachovia Bank, N.A.;
- Wells Fargo is not a "holder" under the definition codified at S.C. Code Ann. § 36-1-201(20);
- Wachovia Bank, NA records show it sold the Note prior to the Wells Fargo Bank, NA merger in 2010;
- Wells Fargo, has shown no proof nor pleaded that it actually transferred physical possession of the Note to The Money Store; it's counsel has represented to the Court that it did not;
- Wells Fargo has shown no actual proof – by affidavit or documentary evidence – nor has it pleaded that The Money Store transferred its enforcement interests in the Note back to Wells Fargo;
- Wells Fargo has shown no actual proof – by affidavit or documentary evidence – nor has it pleaded that it is a "person entitled to enforce" ("PETE") under S.C. Code Ann. § 36-3-301 as a non-holder in possession with rights to enforce, and moreover, a non-holder bears the burden of proof under S.C. Code Ann. § 36-3-203;
- The Wakefield Affidavit merely says The Money Store merged with Wells Fargo on May 1, 2010 and is silent on whether The Money Store owned or possessed the Note at that

time and Wells Fargo has not pleaded or proved this point;

- Wells Fargo has shown no proof of regarding whether The Money Store maintained ownership and/or possession of the Note prior to its merger with Wells Fargo – in fact, it has produced no evidence as to ownership or enforcement rights at all.
- Wells Fargo has shown no proof nor has it pleaded that it was in a contractual servicing arrangement with The Money Store, or that it was an agent for a PETE; to the contrary, and has repeatedly and vociferously denied there was any third-part servicing arrangement;
- Wells Fargo has shown no proof nor has it pleaded that it owned the Bentrim loan at the time it filed the Counterclaim;
- Wells Fargo has shown no proof nor has it pleaded that it had physical possession of the Note at the inception of the suit;

All these material facts militate against summary judgment that Wells Fargo has a valid mortgage interest in the property.

15. Insufficient Discovery.

Many of Wells Fargo's grounds for summary judgment are predicated on the idea that there is no proof of certain final conclusions of law for the various causes of action – despite the fact that the no meaningful discovery depositions have been taken. Only in the last several weeks has Wells Fargo identified the two fact witnesses they were ordered to produce in the March 5 Discovery Order. Only last Thursday did Wells Fargo concede that it had sold a 100% interest in the loan. Plaintiff contends that Wells Fargo has not completed its document production obligations flowing from the March 5 Discovery Order. Many of the grounds for summary judgment based on lack of evidence – rather than arguments of law – are thus

premature until the close of discovery and it would be unfair to grant the extraordinary relief of summary judgment at this time for lack of proof while document discovery is incomplete and no Wells Fargo witnesses have been deposed. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)("summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery.").

CONCLUSION

For the reasons set forth above, Defendant's Motions should be denied in their entirety with prejudice.

BROWN & VARNADO LLC

By: _____

Robert B. Varnado
103 Church Street (29464)
P.O. Box 1127
Mt. Pleasant, SC 29465
(843) 737-7300
(843) 654-5109 facsimile
rvarnado@brown-varnado.com
Attorney for Plaintiffs

June 9, 2014
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served the attached ***Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment*** in the above-captioned action by hand delivery to the attorney for the Defendant as follows:

Charles M. Baker III, Esquire
S. Sterling Laney III, Esquire
John C. Hawk IV, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
P.O. Box 999
Charleston, SC 29402
Attorney for Defendant

Robert B. Varnado

June 9, 2014
Mount Pleasant, South Carolina

FILED
2014 JUN -9 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

EXHIBIT A

A. Yeah.
Q. So, did you on, you know, around 12/5/2007 say, you know, I want to see the records?
A. Yeah.
Q. Okay. And you made the inquiry around, I mean, in the beginning of 2008 or end of 2007?
A. Oh, I had been making and asking the attorneys, you know, since 2005.
Q. Okay. So, since 2005, you had an issue with Wells Fargo regarding the application of payments?
A. No. Because Wells Fargo was a separate entity then.
Q. Wachovia, excuse me.
A. Well, I'm --
Q. Wells Fargo's predecessors?
A. Yes.
Q. Okay. But since 2005, you had, that's when you had this issue?
A. Yes.
Q. Okay. When I say this issue with the application of payments or is it more, I would say, the application of the interest or how the --
A. No. At that point, it was the twenty-seven hundred dollars which really isn't a big part of

the law suit.
Q. Right. Okay. So, that's part of it, and then what else was your other problem in '05 besides the twenty-seven hundred dollars?
A. That was it.
Q. But then in '07 when you had to pay the seven thousand one thirty-five fifty-one, what did you contend, what did you want from Wells Fargo's predecessors, Wachovia at that time?
A. To go ahead and make sure that the twenty-seven was correctly credited. At that point, I did not know they were misapplying principal and interest.
Q. Okay. Did you ask for records in '05 when you --
A. Yes. I said that several times.
Q. Okay. In this deposition?
A. Yes.
Q. Right. Okay. I'm just trying to --
A. I understand.
Q. And so, you asked, in '05, and you never got any records in 2005?
A. I would get a payoff statement from the attorney, pay this, that's it.
Q. In 2007, you asked again?
A. Yes.

Q. Okay. Now, and so going back to, it was, this is December 22nd, 2008 letter which is Bentrim Twenty-six. When you said the foreclosure procedures, those were the previous two?
A. Yes.
Q. Theoretically three at that point, no, two at that point because another one was filed in 2009?
A. Yeah.
Q. Okay. Now, the second paragraph, okay, of your letter, second sentence. In fact, this is again, we're looking at Bentrim Twenty-six. I'm sorry. Do you want, is that the December 22nd, 2008 letter? In the second paragraph, second sentence. In fact, with the very first payment on 5/28/2002, Wachovia failed to apply two hundred and twenty-two dollars and forty cents of the payment towards principal. When did you find out about, you know, as early as 2002 was pretty much when you refinanced, I thought, was 2002.
A. When did I find out what?
Q. That the two hundred and twenty-two dollars and forty cents was not applied towards the principal?
A. When I got this letter on the 19th.
Q. This letter just so the record's clear would be

Ms. Caudill's letter to you?
A. Yeah. Exhibit Twenty-five.
Q. Okay. Okay. Then, the next paragraph, you say, in late 2005 when Wachovia refused to accept payments forcing my loan into default, evidence in your payment history and loan documents, the note was in fact nearly six months ahead of schedule for payments?
A. Yes.
Q. Okay. And do you have proof of this that you can show me if we want it?
A. Yes. It's right here.
Q. Okay. And show that to me when you say right here.
A. The consumer loan payment history.
Q. Right. Exhibit Twenty-three.
A. Exhibit Twenty-three. When you add in the twenty-seven hundred dollars plus what was paid.
Q. The transaction amount.
A. Uh-huh.
Q. Under payment?
A. Uh-huh. That shows that there's almost six months ahead schedule.
Q. Okay. And you also have that, even though it's on here, you have it in your records as well,

EXHIBIT B

First Union Adjustable Rate Loan Information Statement

This disclosure describes the features of the Adjustable Rate Loan Program for loans that I am considering. Information on other Adjustable Rate Loan programs is available upon request.

How My Interest Rate and Payment Are Determined

- My interest rate will be based on an index plus a margin.
- My payment will be based on the interest rate, loan balance, and loan term.
  - The interest rate will be based on the Prime Rate published in the "MONEY RATES" table in the Eastern Edition of *The Wall Street Journal* (my "Index") plus a margin. My interest rate may be changed on the first day of each month (my "Change Date"). The Prime Rate in effect on the 25th of the month prior to the Change Date is the Index. If more than one Prime Rate is published, the higher rate will be used. Ask for the current interest rate and margin.
  - Information about the Index is published daily in *The Wall Street Journal*.
- My interest rate will equal the Index plus my margin unless my interest rate "cap" limits the amount of change in the interest rate.

How My Interest Rate Can Change

- My interest rate can change monthly.
- My interest rate cannot exceed 18.00%. In North Carolina, if the original amount of my loan is $25,000 or less, my interest rate cannot exceed 16.00%.
- There is no limit as to how much my interest rate can increase or decrease either annually or over the term of the loan, except in Florida where it cannot increase or decrease more than 6 percentage points over the term of the loan.

How My Payment Can Change

- My monthly payment can increase or decrease substantially based upon changes in the interest rate.
- If my loan has an original term of 60 months or less, my payment will not change. You will continue to bill me for my payment as long as any balance remains unpaid on my loan.
- My payment can change in the 61st calendar month, and, if applicable, every 60 calendar months thereafter based on changes in the interest rate. My payment cannot increase more than 25% of the previous payment at each adjustment. If on any payment change date, 60 months or less remain on my loan, said payment change will be considered as the final payment change. On the final payment change, if necessary, you will increase my payment up to 25% of my previous payment and you will continue to bill me for my payment as long as any balance remains unpaid on my loan.
- Because my periodic payment may change once every 60 months and my interest rate may change monthly, my periodic payments may not fully cover the interest due. Such interest will be added to my loan amount and will be due at the end of the term of my loan. In such cases, unless the program I choose has a balloon provision, I will continue to make my final adjusted periodic payment for as long as any unpaid balance remains on my loan. If I have a balloon provision, I must make a single payment of the total of my periodic payment plus the remaining unpaid balance, including any accrued interest and other unpaid fees and charges I owe, at the end of the loan term.

Initial and Maximum Interest Rate and Payment Examples

For example, on a $10,000 loan with an initial interest rate of 10.00% (in effect in April 1998) and with the maximum amount the interest rate can rise under this program being either 18.00% or 16.00% (for loans of $25,000 or less in North Carolina, and in Florida, using the 6.00% maximum interest rate increase over the term of the loan), the monthly payment can rise from a first year payment to a maximum payment as shown below (assuming the interest rate rose to the maximum rate in the first month):

	60 months**	180 months	360 months
Initial Payment*	$214.29	$108.37	$ 88.46
Maximum Payment (18.00%)	$214.29 in 1st year	$169.33 in 11th year	$269.99 in 26th year
Maximum Payment (16.00%)	$214.29 in 1st year	$169.33 in 11th year	$193.51 in 21st year

* Assumes no rate changes over the term of the loan

**Because my loan term in this example is only 60 months, my payment amount would not have changed. However, if I choose a balloon payment program, my final payment will be substantially larger than disclosed. Otherwise, I will have to make enough additional payments to fully amortize the balance remaining at maturity.

Note: The number and/or the amount of the periodic payment may increase or decrease substantially depending on monthly changes in the Index rate.

How to Compute My Actual Payment

To see what my initial actual payment would be, I can divide my mortgage amount by $10,000, then multiply the initial monthly payment from the chart above by the amount. For example, the initial monthly payments for a $60,000 loan with an initial interest rate of 10.00% would be:

$60,000 ÷ $10,000 = 6; 6 x $214.29 = $1,285.74 per month (60 month term)
6 x $108.37 = $ 650.22 per month (180 month term)
6 x $ 88.46 = $ 530.76 per month (360 month term)

I will be notified in writing at least 25 days before the due date of a payment at a new level. This notice will contain information about my interest rates, payment amount, and loan balance.

By signing below, I acknowledge that I have received a copy of this Adjustable Rate Loan Information Statement and the booklet entitled "Consumer Handbook on Adjustable Rate Mortgages" at the time of application.

March 12, 2002 _____ _____

Date of Acknowledgement Applicant's Signature Co-Applicant's Signature

BENTRIM 00017

EXHIBIT C

Wachovia Bank, N.A.
Retail Credit Servicing
VA0343
Post Office Box 13327
Roanoke, VA 24040-0343



December 19, 2008

WACHOVIA

Brent E. Bentrim
49 Archdale St Suite 2G
Charleston, SC 29401-6952

RE: Loan Number 0-0-00-4120021308-9

Dear Brent E. Bentrim:

Thank you for your recent inquiry regarding the loan referenced above.

Your loan is a Daily Simple Interest account. On this type of loan, the interest accrues daily on the unpaid principal balance starting from the note date. All payments received will be applied to interest accrued through the date of application of payment, then to any late charges which assessed, and then to the principal balance. The formula for calculating interest is listed below:

(Principal Balance X Interest Rate X Days) / 365 (366 leap year) = Interest

Enclosed is a payment transaction history for your loan. Please note, any late charges, extensions and payments received after the due date will contribute to additional interest accruing on the account. As with all important loan documents, please keep this history for future reference.

On behalf of Wachovia Bank, thank you for allowing me to assist you with this matter. If you have any further questions concerning this loan, you may contact us at 800-347-1131 or visit our web site at www.Wachovia.com.

Sincerely,

Sherrie Caudill
Account Analyst
Retail Credit Servicing

Spanish language customer assistance: Esta comunicación contiene información importante sobre su cuenta. Si tiene alguna pregunta o necesita ayuda para traducir la información incluida en esta comunicación, por favor llame al 800-669-8589. Nuestros representantes se encuentran disponibles para ayudarle de lunes a viernes de 8:00 a.m. a 9:30 p.m. hora del este.

Consumer Loan Payment History



Acct No: 0-0-00-4120021308-9 **Name:** Brent E Bentrim **Note Date:** 03/12/2002 **Prepared by:** Sherrie Caudill

Original Rate: 4.990 **Loan Amount:** $182,700.00 **Date Prepared:** 12/19/2008

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Expense Paid	Life Insurance	A H Insurance	Principal Paid	Interest Paid	Principal Balance
5/26/2002	4.990	Late Charge Assessment		$10.00							$182,700.00
5/28/2002	4.990	Payment	$984.21							$984.21	$182,700.00
6/26/2002	4.990	Late Charge Assessment		$10.00							$182,700.00
7/3/2002	4.990	Payment	$2,068.42		$20.00				$185.22	$1,863.20	$182,514.78
8/26/2002	4.990	Late Charge Assessment		$10.00							$182,514.78
9/13/2002	4.990	Payment	$994.21		$10.00					$984.21	$182,514.78
9/13/2002	4.990	Payment	$984.21						$171.87	$812.34	$182,342.91
10/26/2002	4.990	Late Charge Assessment		$10.00							$182,342.91
11/26/2002	4.990	Late Charge Assessment		$10.00							$182,342.91
12/1/2002	4.490	Interest Rate Change									$182,342.91
12/9/2002	4.490	Payment	$1,900.00							$1,900.00	$182,342.91
12/26/2002	4.490	Late Charge Assessment		$10.00							$182,342.91
1/6/2003	4.490	Payment	$994.21		$30.00				$89.85	$874.36	$182,253.06
1/26/2003	4.490	Late Charge Assessment		$10.00							$182,253.06
2/26/2003	4.490	Late Charge Assessment		$10.00							$182,253.06
3/26/2003	4.490	Late Charge Assessment		$10.00							$182,253.06
4/1/2003	4.490	Payment	$3,077.63		$30.00				$1,141.96	$1,905.67	$181,111.10
4/10/2003	4.490	Payment	$984.21						$783.70	$200.51	$180,327.40
5/26/2003	4.490	Late Charge Assessment		$10.00							$180,327.40
6/6/2003	4.490	Payment	$994.21							$994.21	$180,327.40
6/26/2003	4.490	Late Charge Assessment		$10.00							$180,327.40
6/27/2003	4.490	Payment	$1,000.00		$20.00				$243.95	$736.05	$180,083.45
7/14/2003	4.490	Payment	$883.42						$506.82	$376.60	$179,576.63
8/1/2003	4.240	Interest Rate Change									$179,576.63
8/26/2003	4.240	Late Charge Assessment		$10.00							$179,576.63

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Expense Paid	Life Insurance	A H Insurance	Principal Paid	Interest Paid	Principal Balance
9/2/2003	4.240	Payment	$1,000.00							$1,000.00	$179,576.63
9/26/2003	4.240	Late Charge Assessment		$10.00							$179,576.63
10/27/2003	4.240	Late Charge Assessment		$10.00							$179,576.63
11/26/2003	4.240	Late Charge Assessment		$10.00							$179,576.63
12/3/2003	4.240	Payment	$3,000.00		$40.00				$976.91	$1,983.09	$178,599.72
12/15/2003	4.240	Principal Only Payment	$15.79						$15.79		$178,583.93
12/15/2003	4.240	Payment	$984.21						$735.25	$248.96	$177,848.68
2/2/2004	4.240	Payment	$921.05							$921.05	$177,848.68
2/11/2004	4.240	Auto Draft Payment	$984.21						$709.37	$274.84	$177,139.31
3/11/2004	4.240	Auto Draft Payment	$984.21						$389.10	$595.11	$176,750.21
4/11/2004	4.240	Auto Draft Payment	$984.21						$349.45	$634.76	$176,400.76
5/11/2004	4.240	Auto Draft Payment	$984.21						$371.15	$613.06	$176,029.61
6/11/2004	4.240	Auto Draft Payment	$984.21						$352.04	$632.17	$175,677.57
7/11/2004	4.240	Auto Draft Payment	$984.21						$373.66	$610.55	$175,303.91
8/1/2004	4.490	Interest Rate Change									$175,303.91
8/11/2004	4.490	Auto Draft Payment	$984.21						$341.48	$642.73	$174,962.43
9/1/2004	4.740	Interest Rate Change									$174,962.43
10/1/2004	4.990	Interest Rate Change									$174,962.43
10/26/2004	4.990	Late Charge Assessment		$10.00							$174,962.43
11/26/2004	4.990	Late Charge Assessment		$10.00							$174,962.43
12/1/2004	5.240	Interest Rate Change									$174,962.43
12/13/2004	5.240	Expense Debit		$100.00							$174,962.43
12/16/2004	5.240	Payment	$984.21							$984.21	$174,962.43
1/1/2005	5.490	Interest Rate Change									$174,962.43
1/14/2005	5.490	Payment	$1,900.00							$1,900.00	$174,962.43
1/26/2005	5.490	Expense Debit		$75.00							$174,962.43
2/24/2005	5.490	Payment	$203.01							$203.01	$174,962.43
2/28/2005	5.490	Late Charge Assessment		$10.00							$174,962.43
3/1/2005	5.740	Interest Rate Change									$174,962.43
3/16/2005	5.740	Payment	$400.00							$400.00	$174,962.43
3/16/2005	5.740	Payment	$655.93							$655.93	$174,962.43
4/1/2005	5.990	Interest Rate Change									$174,962.43

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Expense Paid	Life Insurance	A H Insurance	Principal Paid	Interest Paid	Principal Balance
4/14/2005	5.990	Payment	$1,762.11							$1,762.11	$174,962.43
5/26/2005	5.990	Late Charge Assessment		$10.00							$174,962.43
5/31/2005	5.990	Payment	$984.21							$984.21	$174,962.43
6/1/2005	6.240	Interest Rate Change									$174,962.43
6/14/2005	6.240	Payment	$984.21							$984.21	$174,962.43
7/26/2005	6.240	Late Charge Assessment		$10.00							$174,962.43
8/1/2005	6.490	Interest Rate Change									$174,962.43
8/22/2005	6.490	Payment	$1,458.00							$1,458.00	$174,962.43
9/1/2005	6.740	Interest Rate Change									$174,962.43
10/1/2005	6.990	Interest Rate Change									$174,962.43
12/1/2005	7.240	Interest Rate Change									$174,962.43
1/1/2006	7.490	Interest Rate Change									$174,962.43
3/1/2006	7.740	Interest Rate Change									$174,962.43
5/1/2006	7.990	Interest Rate Change									$174,962.43
5/15/2006	7.990	Payment	$1,947.31							$1,947.31	$174,962.43
5/15/2006	7.990	Late Charge Payment			$50.00						$174,962.43
6/1/2006	8.240	Interest Rate Change									$174,962.43
8/1/2006	8.490	Interest Rate Change									$174,962.43
9/11/2006	8.490	Payment	$13,242.05						$457.81	$12,784.24	$174,504.62
10/26/2006	8.490	Late Charge Assessment		$10.00							$174,504.62
11/27/2006	8.490	Late Charge Assessment		$10.00							$174,504.62
12/18/2006	8.490	Expense Debit		$225.00							$174,504.62
12/26/2006	8.490	Late Charge Assessment		$10.00							$174,504.62
1/10/2007	8.490	Payment	$1,500.00							$1,500.00	$174,504.62
1/26/2007	8.490	Late Charge Assessment		$10.00							$174,504.62
2/22/2007	8.490	Payment	$1,500.00							$1,500.00	$174,504.62
3/22/2007	8.490	Payment	$1,000.00							$1,000.00	$174,504.62
4/25/2007	8.490	Payment	$1,200.00							$1,200.00	$174,504.62
4/30/2007	8.490	2 Month Extension									$174,504.62
5/25/2007	8.490	Payment	$1,000.00							$1,000.00	$174,504.62
6/26/2007	8.490	Late Charge Assessment		$10.00							$174,504.62
10/1/2007	7.990	Interest Rate Change									$174,504.62

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Expense Paid	Life Insurance	A H Insurance	Principal Paid	Interest Paid	Principal Balance
12/1/2007	7.740	Interest Rate Change									$174,504.62
12/5/2007	7.740	Payment	$7,135.51							$7,135.51	$174,504.62
12/5/2007	7.740	Late Charge Payment			$50.00						$174,504.62
12/26/2007	7.740	Payment	$1,020.00							$1,020.00	$174,504.62
1/1/2008	7.490	Interest Rate Change									$174,504.62
1/28/2008	7.490	Late Charge Assessment		$10.00							$174,504.62
2/1/2008	6.740	Interest Rate Change									$174,504.62
2/21/2008	6.740	Payment	$1,200.00							$1,200.00	$174,504.62
2/26/2008	6.740	Late Charge Assessment		$1.51							$174,504.62
3/1/2008	6.240	Interest Rate Change									$174,504.62
3/25/2008	6.240	Payment	$1,200.00							$1,200.00	$174,504.62
3/26/2008	6.240	Late Charge Assessment		$1.51							$174,504.62
4/1/2008	5.490	Interest Rate Change									$174,504.62
6/1/2008	5.240	Interest Rate Change									$174,504.62
6/9/2008	5.240	Payment	$1,230.26							$1,230.26	$174,504.62
6/18/2008	5.240	2 Month Extension									$174,504.62
6/26/2008	5.240	Late Charge Assessment		$10.00							$174,504.62
7/1/2008	5.240	Payment	$1,225.00							$1,225.00	$174,504.62
7/28/2008	5.240	Late Charge Assessment		$10.00							$174,504.62
8/1/2008	5.240	Payment	$1,300.00							$1,300.00	$174,504.62
8/26/2008	5.240	Late Charge Assessment		$10.00							$174,504.62
9/26/2008	5.240	Late Charge Assessment		$10.00							$174,504.62
9/29/2008	5.240	Payment	$1,300.00							$1,300.00	$174,504.62
10/27/2008	5.240	Late Charge Assessment		$10.00							$174,504.62
11/1/2008	4.740	Interest Rate Change									$174,504.62
11/14/2008	4.740	Payment	$1,400.00							$1,400.00	$174,504.62
12/1/2008	4.240	Interest Rate Change									$174,504.62
12/19/2008	4.240	Interest Accrual									$174,504.62
				$713.02	$250.00				$8,195.38	$67,061.68	

WACHOVIA

WACHOVIA BANK, N.A.
P.O. BOX 13327
ROANOKE VA 24040-0343

09/24/08

CONSUMER LOAN BILLING STATEMENT & PAYMENT DUE NOTICE
ACL52034

LOAN NUMBER: 000041200213089

000657 ADDIA1TA 1T 000663 R0

BRENT E BENTRIM
SUITE 2G
49 ARCHDALE ST
CHARLESTON SC 29401-6952

CONSUMER LOAN BILLING STATEMENT & PAYMENT DUE NOTICE

PLEASE KEEP THIS PORTION OF STATEMENT FOR YOUR RECORDS

STATEMENT DATE		09-23-08	SCHEDULED PAYMENT DUE	$1,230.26
ACCOUNT NUMBER		000041200213089	+ PREVIOUS PAYMENTS UNPAID	$2,456.29
PREVIOUS PRINCIPAL BALANCE		$174,504.20	+ LATE CHARGES DUE	$43.02
CURRENT PRINCIPAL BALANCE		$174,504.20	= TOTAL PAYMENTS & LATE CHG	$3,729.57
PAYOFF AMOUNT	$181,381.17	UNTIL 10-11-08	+ NSF FEE	$0.00
SCHEDULE PAYMENT DUE DATE		10-11-08	= TOTAL AMOUNT DUE	$3,729.57

The total payment due shown on this statement assumes payment on the due date. Should you have any questions, please call us at 800-347-1131, Monday through Friday, 8.00 a.m. - 9.30 p.m. ET. Thank you for financing with Wachovia.

Items received after the statement date will appear on the next statement.

TRANSACTION				APPLIED TO						PRINCIPAL
POSTING DATE	EFFECTIVE DATE	DESCRIPTION	AMOUNT	CREDIT INSURANCE	FINANCE CHARGE	LATE CHARGE	PRINCIPAL AMOUNT	EXPENSE	NSF FEE	BALANCE AFTER TRANSACTION
08-26-08	08-26-08	LTE CHRG ASSESSED	10.00							174,504.20

(Detach and return this portion - Insert in envelope to address your payment)

BRENT E BENTRIM
SUITE 2G
49 ARCHDALE ST
CHARLESTON SC 29401-6952

Loan Number: 000041200213089
Total Payment Due: $3,729.57
Due Date: 10/11/08

Payments received after 2 p.m. at a financial center will be credited as of the next BUSINESS DAY.

AMOUNT ENCLOSED
$

1000041200213089600037295790003729579

WACHOVIA BANK, N.A.
P. O. BOX 530554
ATLANTA, GA 30353-0554

ADA17253 000657 2860425550713 NNNNNNNNNNNNNNNN 000001

WACHOVIA

WACHOVIA BANK, N.A.
P.O. BOX 13327
ROANOKE VA 24040-0343

09/24/08

CONSUMER LOAN BILLING STATEMENT & PAYMENT DUE NOTICE
ACL52034

LOAN NUMBER: 000041200213089

000657 ADDIA1TA 1T 000663 R0

BRENT E BENTRIM
SUITE 2G
49 ARCHDALE ST
CHARLESTON SC 29401-6952

CONSUMER LOAN BILLING STATEMENT & PAYMENT DUE NOTICE

PLEASE KEEP THIS PORTION OF STATEMENT FOR YOUR RECORDS

STATEMENT DATE		09-23-08	SCHEDULED PAYMENT DUE	$1,230.26
ACCOUNT NUMBER		000041200213089	+ PREVIOUS PAYMENTS UNPAID	$2,456.29
PREVIOUS PRINCIPAL BALANCE		$174,504.20	+ LATE CHARGES DUE	$43.02
CURRENT PRINCIPAL BALANCE		$174,504.20	= TOTAL PAYMENTS & LATE CHG	$3,729.57
PAYOFF AMOUNT	$181,381.17	UNTIL 10-11-08	+ NSF FEE	$0.00
SCHEDULE PAYMENT DUE DATE		10-11-08	= TOTAL AMOUNT DUE	$3,729.57

The total payment due shown on this statement assumes payment on the due date. Should you have any questions, please call us at 800-347-1131, Monday through Friday, 8.00 a.m. - 9.30 p.m. ET. Thank you for financing with Wachovia.

Items received after the statement date will appear on the next statement.

TRANSACTION				APPLIED TO						PRINCIPAL
POSTING DATE	EFFECTIVE DATE	DESCRIPTION	AMOUNT	CREDIT INSURANCE	FINANCE CHARGE	LATE CHARGE	PRINCIPAL AMOUNT	EXPENSE	NSF FEE	BALANCE AFTER TRANSACTION
08-26-08	08-26-08	LTE CHRG ASSESSED	10.00							174,504.20

(Detach and return this portion - Insert in envelope to address your payment)

ADA1T268 000657 2680425S6013 NNNNNNNNNNNNNNNN 000001

BRENT E BENTRIM
SUITE 2G
49 ARCHDALE ST
CHARLESTON SC 29401-6952

Loan Number: 000041200213089
Total Payment Due: $3,729.57
Due Date: 10/11/08

Payments received after 2 p.m. at a financial center will be credited as of the next BUSINESS DAY.

AMOUNT ENCLOSED
$

100004120021308960003729579000372957 99

WACHOVIA BANK, N.A.
P. O. BOX 530554
ATLANTA, GA 30353-0554

WACHOVIA

WACHOVIA BANK, N.A.
P.O. BOX 13327
ROANOKE VA 24040-0343

12/25/08

CONSUMER LOAN BILLING STATEMENT & PAYMENT DUE NOTICE
ACL52034

LOAN NUMBER: 000041200213089

001326 ADDIA1TA 1T 001328 R0

BRENT E BENTRIM
SUITE 2G
49 ARCHDALE ST
CHARLESTON SC 29401-6952

CONSUMER LOAN BILLING STATEMENT & PAYMENT DUE NOTICE

PLEASE KEEP THIS PORTION OF STATEMENT FOR YOUR RECORDS

STATEMENT DATE		12-24-08	SCHEDULED PAYMENT DUE	$1,230.26
ACCOUNT NUMBER		000041200213089	+ PREVIOUS PAYMENTS UNPAID	$3,447.07
PREVIOUS PRINCIPAL BALANCE		$174,504.20	+ LATE CHARGES DUE	$63.02
CURRENT PRINCIPAL BALANCE		$174,504.20	= TOTAL PAYMENTS & LATE CHG	$4,740.35
PAYOFF AMOUNT	$180,727.89	UNTIL 01-11-09	+ NSF FEE	$0.00
SCHEDULE PAYMENT DUE DATE		01-11-09	= TOTAL AMOUNT DUE	$4,740.35

The total payment due shown on this statement assumes payment on the due date. Should you have any questions, please call us at 800-347-1131, Monday through Friday, 8.00 a.m. - 9.30 p.m. ET. Thank you for financing with Wachovia.

Items received after the statement date will appear on the next statement.

(Detach and return this portion - Insert in envelope to address your payment)

BRENT E BENTRIM
SUITE 2G
49 ARCHDALE ST
CHARLESTON SC 29401-6952

Loan Number: 000041200213089
Total Payment Due: $4,740.35
Due Date: 01/11/09

Payments received after 2 p.m. at a financial center will be credited as of the next BUSINESS DAY.

AMOUNT ENCLOSED
$

1000041200213089600047403530004740353 9

WACHOVIA BANK, N.A.
P. O. BOX 530554
ATLANTA, GA 30353-0554

ADA17350 001326 3600420120213 NNNNNNNNNNNNNNN 00001

[x] Wells Fargo Bank N.A.

Transaction Statement

Wachovia Account Number: 41200213089 **Wells Fargo Account Number:** 68068004199310001

Active History

Statement Period: 03/12/2002 - 04/21/2010

STATEMENT SUMMARY

Acct No:	68068004199310001	Name:	BRENT E BENTRIM	Note Date:	03/12/2002	Prepared By:	Helen Arnold
Original Rate	4.990%	Loan Amount:	$179,576.34			Date Prepared:	September 09, 2010

TRANSACTIONS

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Expense Paid	Life Insurance	AH Insurance	Principal Paid	Interest Paid	Principal Balance
03/12/2002	4.990	Conversion Loan DR	$179,576.34								$179,576.34
03/21/2002	4.990	Int Rate Change	$2,700.00								$0.00
05/28/2002	4.990	Ltch Assess	$10.00	$10.00							$0.00
06/28/2002	4.990	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$0.00
06/26/2002	4.990	Ltch Assess	$10.00	$10.00							$0.00
07/03/2002	4.990	Payment	$2,068.42		$20.00	$0.00	$0.00	$0.00	$185.27	$1,883.15	$0.00
08/26/2002	4.990	Ltch Assess	$10.00	$10.00							$0.00
09/13/2002	4.990	Payment	$984.21		$10.00	$0.00	$0.00	$0.00	$171.90	$812.31	$0.00
09/13/2002	4.990	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$0.00
10/26/2002	4.990	Ltch Assess	$10.00	$10.00							$0.00
11/26/2002	4.990	Ltch Assess	$10.00	$10.00							$0.00
12/01/2002	4.490	Int Rate Change									$0.00
12/09/2002	4.490	Payment	$1,900.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,900.00	$0.00
12/26/2002	4.490	Ltch Assess	$10.00	$10.00							$0.00
01/06/2003	4.490	Payment	$994.21		$30.00	$0.00	$0.00	$0.00	$89.91	$874.30	$0.00
01/26/2003	4.490	Ltch Assess	$10.00	$10.00							$0.00
01/30/2003	4.490	Payment	$1,000.00		$10.00	$0.00	$0.00	$0.00	$451.95	$538.05	$0.00
01/31/2003	4.490	Pay Rev NSF	$1,000.00	($10.00)		$0.00	$0.00	$0.00	($451.95)	($538.05)	$0.00
02/26/2003	4.490	Ltch Assess	$10.00	$10.00							$0.00
03/26/2003	4.490	Ltch Assess	$10.00	$10.00							$0.00
04/01/2003	4.490	Payment	$3,077.63		$30.00	$0.00	$0.00	$0.00	$1,142.02	$1,905.61	$0.00
04/10/2003	4.490	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$783.71	$200.50	$0.00
05/26/2003	4.490	Ltch Assess	$10.00	$10.00							$0.00
06/06/2003	4.490	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$0.00
06/26/2003	4.490	Ltch Assess	$10.00	$10.00							$0.00
06/27/2003	4.490	Payment	$1,000.00		$20.00	$0.00	$0.00	$0.00	$244.01	$735.99	$0.00
07/14/2003	4.490	Payment	$983.42		$0.00	$0.00	$0.00	$0.00	$506.84	$376.58	$0.00
08/01/2003	4.240	Int Rate Change									$0.00
08/26/2003	4.240	Ltch Assess	$10.00	$10.00							$0.00
09/02/2003	4.240	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$179,576.34

09/26/2003	4.240	Ltch Assess	$10.00	$10.00							$178,576.34
10/27/2003	4.240	Ltch Assess	$10.00	$10.00							$178,576.34
11/26/2003	4.240	Ltch Assess	$10.00	$10.00							$178,576.34
12/03/2003	4.240	Payment	$3,000.00		$40.00	$0.00	$0.00	$0.00	$976.95	$1,983.05	$176,599.39
12/15/2003	4.240	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$735.25	$248.96	$177,864.14
12/15/2003	4.240	Prino Only Pay	$15.79						$15.79		$177,848.35
01/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$427.02	$557.19	$177,421.33
01/11/2004	4.240	Pay Rev NSF	$984.21	$0.00		$0.00	$0.00	$0.00	($427.02)	($557.19)	$177,848.35
02/02/2004	4.240	Payment	$921.05		$0.00	$0.00	$0.00	$0.00	$0.00	$921.05	$177,848.35
02/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$709.38	$274.83	$177,138.97
03/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$389.10	$595.11	$176,749.87
04/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$349.45	$634.76	$176,400.42
05/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$371.15	$613.06	$176,029.27
06/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$352.05	$632.16	$176,677.22
07/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$373.66	$610.55	$176,303.56
08/01/2004	4.490	Int Rate Change									$0.00
08/11/2004	4.490	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$341.48	$642.73	$174,962.08
09/01/2004	4.740	Int Rate Change									$0.00
09/11/2004	4.740	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$305.67	$678.54	$174,656.41
09/11/2004	4.740	Pay Rev NSF	$984.21	$0.00		$0.00	$0.00	$0.00	($305.67)	($678.54)	$174,962.08
10/01/2004	4.990	Int Rate Change									$0.00
10/26/2004	4.990	Ltch Assess	$10.00	$10.00							$174,962.08
11/26/2004	4.990	Ltch Assess	$10.00	$10.00							$174,962.08
12/01/2004	5.240	Int Rate Change									$0.00
12/13/2004	5.240	Exp Debit	$100.00						$100.00		$174,962.08
12/16/2004	5.240	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,962.08
01/01/2005	5.490	Int Rate Change									$0.00
01/14/2005	5.490	Payment	$1,900.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,900.00	$174,962.08
01/26/2005	5.490	Exp Debit	$75.00						$75.00		$174,962.08
02/24/2005	5.490	Payment	$203.01		$0.00	$0.00	$0.00	$0.00	$0.00	$203.01	$174,962.08
02/28/2005	5.490	Ltch Assess	$10.00	$10.00							$174,962.08
03/01/2005	5.740	Int Rate Change									$0.00
03/16/2005	5.740	Payment	$400.00		$0.00	$0.00	$0.00	$0.00	$0.00	$400.00	$174,962.08
03/16/2005	5.740	Payment	$655.93		$0.00	$0.00	$0.00	$0.00	$0.00	$655.93	$174,962.08
04/01/2005	5.990	Int Rate Change									$0.00
04/14/2005	5.990	Payment	$1,762.11		$0.00	$0.00	$0.00	$0.00	$0.00	$1,762.11	$174,962.08
05/26/2005	5.990	Ltch Assess	$10.00	$10.00							$174,962.08
05/31/2005	5.990	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,962.08
06/01/2005	6.240	Int Rate Change									$0.00
06/14/2005	6.240	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,962.08
06/30/2005	6.240	Payment	$1,024.21		$0.00	$0.00	$0.00	$0.00	$502.78	$521.43	$174,459.30
06/30/2005	6.240	Pay Rev	$1,024.21	$0.00		$0.00	$0.00	$0.00	($502.78)	($521.43)	$174,962.08
07/26/2005	6.240	Ltch Assess	$10.00	$10.00							$174,962.08
08/01/2005	6.490	Int Rate Change									$0.00
08/22/2005	6.490	Payment	$1,468.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,468.00	$174,962.08
09/01/2005	6.740	Int Rate Change									$0.00
09/26/2005	6.740	Foreclosure									$174,962.08
10/01/2005	6.990	Int Rate Change									$0.00
12/01/2005	7.240	Int Rate Change									$0.00
01/01/2006	7.490	Int Rate Change									$0.00
03/01/2006	7.740	Int Rate Change									$0.00
05/01/2006	7.990	Int Rate Change									$0.00
		Late Charge									

05/15/2006	7.990	Payment	$50.00		$50.00						$174,962.08
05/15/2006	7.990	Payment	$1,947.31		$0.00	$0.00	$0.00	$0.00	$0.00	$1,947.31	$174,962.08
05/26/2006	7.990	Place in Memo Stop									$174,962.08
05/26/2006	7.990	Remove from Memo Stop									$174,962.08
05/26/2006	7.990	Place in Memo Stop									$174,962.08
05/26/2006	7.990	Remove from Memo Stop									$174,962.08
06/01/2006	8.240	Int Rate Change									$0.00
06/01/2006	8.490	Int Rate Change									$0.00
09/11/2006	8.490	Payment	$13,242.05		$0.00	$0.00	$0.00	$0.00	$457.88	$12,784.17	$174,504.20
09/19/2006	8.490	Remove from Foreclosure									$174,504.20
10/26/2006	8.490	Ltch Assess	$10.00	$10.00							$174,504.20
11/27/2006	8.490	Ltch Assess	$10.00	$10.00							$174,504.20
12/18/2006	8.490	Exp Debit	$225.00						$225.00		$174,504.20
12/26/2006	8.490	Ltch Assess	$10.00	$10.00							$174,504.20
01/10/2007	8.490	Payment	$1,500.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,500.00	$174,504.20
01/26/2007	8.490	Ltch Assess	$10.00	$10.00							$174,504.20
02/22/2007	8.490	Payment	$1,500.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,500.00	$174,504.20
03/22/2007	8.490	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,504.20
03/29/2007	8.490	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,504.20
03/29/2007	8.490	Pay Rev	$984.21	$0.00		$0.00	$0.00	$0.00	$0.00	($984.21)	$174,504.20
04/25/2007	8.490	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,504.20
04/30/2007	8.490	Extension									$0.00
05/11/2007	8.490	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,504.20
05/11/2007	8.490	Pay Rev	$984.21	$0.00		$0.00	$0.00	$0.00	$0.00	($984.21)	$174,504.20
05/25/2007	8.490	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,504.20
06/26/2007	8.490	Ltch Assess	$10.00	$10.00							$174,504.20
07/19/2007	8.490	Foreclosure									$174,504.20
10/01/2007	7.990	Int Rate Change									$0.00
12/01/2007	7.740	Int Rate Change									$0.00
12/05/2007	7.740	Late Charge Payment	$50.00		$50.00						$174,504.20
12/05/2007	7.740	Payment	$7,135.51		$0.00	$0.00	$0.00	$0.00	$0.00	$7,135.51	$174,504.20
12/13/2007	7.740	Place in Memo Stop									$174,504.20
12/19/2007	7.740	Remove from Memo Stop									$174,504.20
12/19/2007	7.740	Remove from Foreclosure									$174,504.20
12/26/2007	7.740	Payment	$1,020.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,020.00	$174,504.20
01/01/2008	7.490	Int Rate Change									$0.00
01/28/2008	7.490	Ltch Assess	$10.00	$10.00							$174,504.20
02/01/2008	6.740	Int Rate Change									$0.00
02/21/2008	6.740	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,504.20
02/26/2008	6.740	Ltch Assess	$1.61	$1.61							$174,504.20
03/01/2008	6.240	Int Rate Change									$0.00
03/25/2008	6.240	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,504.20
03/26/2008	6.240	Ltch Assess	$1.61	$1.61							$174,504.20
04/01/2008	5.490	Int Rate Change									$0.00
04/11/2008	5.490	Payment	$1,303.53		$0.00	$0.00	$0.00	$0.00	$0.00	$1,303.53	$174,504.20
04/11/2008	5.490	Pay Rev	$1,303.53	$0.00		$0.00	$0.00	$0.00	$0.00	($1,303.53)	$174,504.20
04/28/2008	5.490	Ltch Assess	$10.00	$10.00							$174,504.20
05/27/2008	5.490	Ltch Assess	$10.00	$10.00							$174,504.20
06/01/2008	5.240	Int Rate Change									$0.00

06/09/2008	5.240	Payment	$1,230.26		$0.00	$0.00	$0.00	$0.00	$0.00	$1,230.26	$174,504.20
06/17/2008	5.240	Payment	$1,290.51		$0.00	$0.00	$0.00	$0.00	$0.00	$1,290.51	$174,504.20
06/17/2008	5.240	Pay Rev	$1,290.51	$0.00		$0.00	$0.00	$0.00	$0.00	($1,290.51)	$174,504.20
06/18/2008	5.240	Extension									$0.00
06/26/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
07/01/2008	5.240	Payment	$1,225.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,225.00	$174,504.20
07/28/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
08/01/2008	5.240	Payment	$1,300.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,300.00	$174,504.20
08/28/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
09/26/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
09/29/2008	5.240	Payment	$1,300.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,300.00	$174,504.20
10/27/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
11/01/2008	4.740	Int Rate Change									$0.00
11/14/2008	4.740	Payment	$1,400.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,400.00	$174,504.20
12/01/2008	4.240	Int Rate Change									$0.00
12/26/2008	4.240	Ltch Assess	$10.00	$10.00							$174,504.20
01/01/2009	3.490	Int Rate Change									$0.00
01/26/2009	3.490	Ltch Assess	$10.00	$10.00							$174,504.20
02/03/2009	3.490	Foreclosure									$174,504.20
06/30/2009	3.490	Flood Ins CR	$2,375.00						$2,375.00		$176,879.20
02/15/2010	3.490	Flood Ins CR	$2,122.54						$2,122.54		$179,001.74
02/15/2010	3.490	Princ CR	$2,122.54						($2,122.54)		$176,879.20
04/21/2010	3.490	Exp Debit	$2,122.54						$2,122.54		$179,001.74

Toggle View

WELLS FARGO

Transaction Statement

Wachovia Account Number: 41200213089 **Wells Fargo Account Number: 68068004199310001**

BRENT E BENTRIM
10 NICHOLSON ST
CHARLESTON, SC 29407-7318

Statement Period: 05/30/2010 - 01/27/2011

STATEMENT SUMMARY

Original Balance	$182,700.00	AUX Number:	41200213089
Current Balance	$176,879.20	Statement Date:	August 11, 2011
Note Date:	03/12/2002		
Product	ILA		

TRANSACTIONS

Proc Date	Eff Date	Tran Code	Action	Interest	Principal	Misc 1	Misc 2	Misc 3	Total Pmt	Prin Bal
10/06/2010	05/30/2010	38 2	Fee Waiver	$0.00	$0.00	($1,516.41)	$0.00	$0.00	$0.00	$176,879.20
10/08/2010	06/05/2010	38 2	Fee Waiver	$0.00	$0.00	($2,376.00)	$0.00	$0.00	$0.00	$176,879.20
04/26/2011	01/27/2011	38 2	Fee Waiver	$0.00	$0.00	($126.70)	$0.00	$0.00	$0.00	$176,879.20
07/26/2011	01/27/2011	38 2	Fee Waiver	$0.00	$0.00	($95.90)	$0.00	$0.00	$0.00	$176,879.20

Active History

Statement Period: 05/26/2002 - 04/21/2010

STATEMENT SUMMARY

Acct No:	68004199310001	Name:	~~BRENT E BENTRIM~~	Note Date:	03/12/2002
Original Rate:	4.990%	Loan Amount:	$179,576.34	Date Prepared:	August 11, 2011

TRANSACTIONS

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Expense Paid	Life Insurance	AH Insurance	Principal Paid	Interest Paid	Principal Balance
05/26/2002	4.490	Ltch Assess	$10.00	$10.00							$182,700.00
05/28/2002	4.490	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$182,700.00
06/26/2002	4.490	Ltch Assess	$10.00	$10.00							$182,700.00
07/03/2002	4.490	Payment	$2,068.42		$20.00	$0.00	$0.00	$0.00	$185.27	$1,863.15	$182,514.73
08/26/2002	4.490	Ltch Assess	$10.00	$10.00							$182,514.73
09/13/2002	4.490	Payment	$994.21		$10.00	$0.00	$0.00	$0.00	$171.90	$812.31	$182,342.83
09/13/2002	4.490	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$182,342.83
10/26/2002	4.490	Ltch Assess	$10.00	$10.00							$182,342.83

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11/26/2002	4.490	Ltch Assess	$10.00	$10.00							$182,342.83
12/09/2002	4.490	Payment	$1,800.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,800.00	$182,342.83
12/26/2002	4.490	Ltch Assess	$10.00	$10.00							$182,342.83
01/06/2003	4.490	Payment	$994.21		$30.00	$0.00	$0.00	$0.00	$89.91	$874.30	$182,252.92
01/26/2003	4.490	Ltch Assess	$10.00	$10.00							$182,252.92
01/30/2003	4.490	Payment	$1,000.00		$10.00	$0.00	$0.00	$0.00	$451.95	$538.05	$181,800.97
01/31/2003	4.490	Pay Rev NSF	$1,000.00	($10.00)		$0.00	$0.00	$0.00	($451.95)	($538.05)	$182,252.92
02/26/2003	4.490	Ltch Assess	$10.00	$10.00							$182,252.92
03/26/2003	4.490	Ltch Assess	$10.00	$10.00							$182,252.92
04/01/2003	4.490	Payment	$3,077.63		$30.00	$0.00	$0.00	$0.00	$1,142.02	$1,905.61	$181,110.90
04/10/2003	4.490	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$793.71	$200.50	$180,327.19
05/26/2003	4.490	Ltch Assess	$10.00	$10.00							$180,327.19
06/06/2003	4.490	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$180,327.19
06/26/2003	4.490	Ltch Assess	$10.00	$10.00							$180,327.19
06/27/2003	4.490	Payment	$1,000.00		$20.00	$0.00	$0.00	$0.00	$244.01	$735.99	$180,083.18
07/14/2003	4.490	Payment	$883.42		$0.00	$0.00	$0.00	$0.00	$506.84	$376.58	$179,576.34
08/01/2003	4.240	Int Rate Change									$0.00
08/26/2003	4.240	Ltch Assess	$10.00	$10.00							$179,576.34
09/02/2003	4.240	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$179,576.34
09/26/2003	4.240	Ltch Assess	$10.00	$10.00							$179,576.34
10/27/2003	4.240	Ltch Assess	$10.00	$10.00							$179,576.34
11/26/2003	4.240	Ltch Assess	$10.00	$10.00							$179,576.34
12/03/2003	4.240	Payment	$3,000.00		$40.00	$0.00	$0.00	$0.00	$976.95	$1,983.05	$178,599.39
12/16/2003	4.240	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$735.25	$248.96	$177,864.14
12/16/2003	4.240	Princ Only Pay	$15.79						$15.79		$177,848.35
01/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$427.02	$557.19	$177,421.33
01/11/2004	4.240	Pay Rev NSF	$984.21	$0.00		$0.00	$0.00	$0.00	($427.02)	($557.19)	$177,848.35
02/02/2004	4.240	Payment	$921.05		$0.00	$0.00	$0.00	$0.00	$0.00	$921.05	$177,848.35
02/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$709.38	$274.83	$177,138.97
03/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$389.10	$595.11	$176,749.87
04/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$349.45	$634.76	$176,400.42
05/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$371.18	$613.08	$176,029.27
06/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$352.05	$632.18	$175,677.22
07/11/2004	4.240	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$373.66	$610.55	$175,303.56
08/01/2004	4.490	Int Rate Change									$0.00
08/11/2004	4.490	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$341.48	$642.73	$174,962.08
09/01/2004	4.740	Int Rate Change									$0.00
09/11/2004	4.740	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$305.67	$678.54	$174,656.41
09/11/2004	4.740	Pay Rev NSF	$984.21	$0.00		$0.00	$0.00	$0.00	($305.67)	($678.54)	$174,962.08
10/01/2004	4.990	Int Rate Change									$0.00
10/26/2004	4.990	Ltch Assess	$10.00	$10.00							$174,962.08
11/26/2004	4.990	Ltch Assess	$10.00	$10.00							$174,962.08
12/01/2004	5.240	Int Rate Change									$0.00
12/13/2004	5.240	Exp Debit	$100.00						$100.00		$174,962.08
12/16/2004	5.240	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,962.08
01/01/2005	5.490	Int Rate Change									$0.00
01/14/2005	5.490	Payment	$1,900.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,900.00	$174,962.08
01/26/2005	5.490	Exp Debit	$75.00						$75.00		$174,962.08
02/24/2005	5.490	Payment	$203.01		$0.00	$0.00	$0.00	$0.00	$0.00	$203.01	$174,962.08
02/26/2005	5.490	Ltch Assess	$10.00	$10.00							$174,962.08
03/01/2005	5.740	Int Rate Change									$0.00
03/16/2005	5.740	Payment	$400.00		$0.00	$0.00	$0.00	$0.00	$0.00	$400.00	$174,962.08

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03/16/2005	6.740	Payment	$855.93		$0.00	$0.00	$0.00	$0.00	$0.00	$855.93	$174,962.08
04/01/2005	5.990	Int Rate Change									$0.00
04/14/2005	5.990	Payment	$1,762.11		$0.00	$0.00	$0.00	$0.00	$0.00	$1,762.11	$174,962.08
05/26/2005	5.990	Lich Assess	$10.00	$10.00							$174,962.08
05/31/2005	5.990	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,962.08
06/01/2005	6.240	Int Rate Change									$0.00
06/14/2005	6.240	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,962.08
06/30/2005	6.240	Payment	$1,024.21		$0.00	$0.00	$0.00	$0.00	$502.78	$521.43	$174,459.30
06/30/2005	6.240	Pay Rev	$1,024.21	$0.00		$0.00	$0.00	$0.00	($502.78)	($521.43)	$174,962.08
07/28/2005	6.240	Lich Assess	$10.00	$10.00							$174,962.08
08/01/2005	6.490	Int Rate Change									$0.00
08/22/2005	6.490	Payment	$1,458.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,458.00	$174,962.08
09/01/2005	6.740	Int Rate Change									$0.00
09/28/2005	6.740	Foreclosure									$174,962.08
10/01/2005	6.990	Int Rate Change									$0.00
12/01/2005	7.240	Int Rate Change									$0.00
01/01/2006	7.490	Int Rate Change									$0.00
03/01/2006	7.740	Int Rate Change									$0.00
05/01/2006	7.990	Int Rate Change									$0.00
05/15/2006	7.990	Late Charge Payment	$50.00		$50.00						$174,962.08
05/16/2006	7.990	Payment	$1,947.31		$0.00	$0.00	$0.00	$0.00	$0.00	$1,947.31	$174,962.08
05/28/2006	7.990	Place in Memo Stop									$174,962.08
05/28/2006	7.990	Remove from Memo Stop									$174,962.08
05/28/2006	7.990	Place in Memo Stop									$174,962.08
05/28/2006	7.990	Remove from Memo Stop									$174,962.08
06/01/2006	8.240	Int Rate Change									$0.00
08/01/2006	8.490	Int Rate Change									$0.00
08/11/2006	8.490	Payment	$13,242.05		$0.00	$0.00	$0.00	$0.00	$457.88	$12,784.17	$174,504.20
09/19/2006	8.490	Remove from Foreclosure									$174,504.20
10/26/2006	8.490	Lich Assess	$10.00	$10.00							$174,504.20
11/27/2006	8.490	Lich Assess	$10.00	$10.00							$174,504.20
12/18/2006	8.490	Exp Debit	$226.00						$226.00		$174,504.20
12/26/2006	8.490	Lich Assess	$10.00	$10.00							$174,504.20
01/10/2007	8.490	Payment	$1,500.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,500.00	$174,504.20
01/26/2007	8.490	Lich Assess	$10.00	$10.00							$174,504.20
02/22/2007	8.490	Payment	$1,500.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,500.00	$174,504.20
03/22/2007	8.490	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,504.20
03/29/2007	8.490	Payment	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,504.20
03/29/2007	8.490	Pay Rev	$984.21	$0.00		$0.00	$0.00	$0.00	$0.00	($984.21)	$174,504.20
04/25/2007	8.490	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,504.20
04/30/2007	8.490	Extension									$0.00
05/11/2007	8.490	Auto Draft Pay	$984.21		$0.00	$0.00	$0.00	$0.00	$0.00	$984.21	$174,504.20
05/11/2007	8.490	Pay Rev	$984.21	$0.00		$0.00	$0.00	$0.00	$0.00	($984.21)	$174,504.20
05/25/2007	8.490	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,504.20
06/26/2007	8.490	Lich Assess	$10.00	$10.00							$174,504.20
07/19/2007	8.490	Foreclosure									$174,504.20
10/01/2007	7.990	Int Rate Change									$0.00
12/01/2007	7.740	Int Rate Change									$0.00
12/05/2007	7.740	Late Charge Payment	$50.00		$50.00						$174,504.20

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12/05/2007	7.740	Payment	$7,135.51		$0.00	$0.00	$0.00	$0.00	$0.00	$7,135.51	$174,504.20
12/13/2007	7.740	Place In Memo Stop									$174,504.20
12/13/2007	7.740	Remove from Memo Stop									$174,504.20
12/19/2007	7.740	Remove from Foreclosure									$174,504.20
12/26/2007	7.740	Payment	$1,020.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,020.00	$174,504.20
01/01/2008	7.490	Int Rate Change									$0.00
01/28/2008	7.490	Ltch Assess	$10.00	$10.00							$174,504.20
02/01/2008	6.740	Int Rate Change									$0.00
02/21/2008	6.740	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,504.20
02/26/2008	6.740	Ltch Assess	$1.51	$1.51							$174,504.20
03/01/2008	6.240	Int Rate Change									$0.00
03/25/2008	6.240	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,504.20
03/26/2008	6.240	Ltch Assess	$1.51	$1.51							$174,504.20
04/01/2008	5.490	Int Rate Change									$0.00
04/11/2008	5.490	Payment	$1,303.53		$0.00	$0.00	$0.00	$0.00	$0.00	$1,303.53	$174,504.20
04/11/2008	5.490	Pay Rev	$1,303.53	$0.00		$0.00	$0.00	$0.00	$0.00	($1,303.53)	$174,504.20
04/26/2008	5.490	Ltch Assess	$10.00	$10.00							$174,504.20
05/27/2008	5.490	Ltch Assess	$10.00	$10.00							$174,504.20
06/01/2008	5.240	Int Rate Change									$0.00
06/09/2008	5.240	Payment	$1,230.26		$0.00	$0.00	$0.00	$0.00	$0.00	$1,230.26	$174,504.20
06/17/2008	5.240	Payment	$1,290.51		$0.00	$0.00	$0.00	$0.00	$0.00	$1,290.51	$174,504.20
06/17/2008	5.240	Pay Rev	$1,290.51	$0.00		$0.00	$0.00	$0.00	$0.00	($1,290.51)	$174,504.20
06/18/2008	5.240	Extension									$0.00
06/26/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
07/01/2008	5.240	Payment	$1,225.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,225.00	$174,504.20
07/28/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
08/01/2008	5.240	Payment	$1,300.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,300.00	$174,504.20
08/26/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
09/26/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
09/29/2008	5.240	Payment	$1,300.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,300.00	$174,504.20
10/27/2008	5.240	Ltch Assess	$10.00	$10.00							$174,504.20
11/01/2008	4.740	Int Rate Change									$0.00
11/14/2008	4.740	Payment	$1,400.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,400.00	$174,504.20
12/01/2008	4.240	Int Rate Change									$0.00
12/26/2008	4.240	Ltch Assess	$10.00	$10.00							$174,504.20
01/01/2009	3.490	Int Rate Change									$0.00
01/26/2009	3.490	Ltch Assess	$10.00	$10.00							$174,504.20
02/03/2009	3.490	Foreclosure									$174,504.20
05/30/2009	3.490	Flood Ins CR	$2,375.00						$2,375.00		$176,879.20
02/15/2010	3.490	Flood Ins CR	$2,122.54						$2,122.54		$179,001.74
02/15/2010	3.490	Prino CR	$2,122.54						($2,122.54)		$176,879.20
04/21/2010	3.490	Exp Debit	$2,122.54						$2,122.54		$179,001.74

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WELLS FARGO

Transaction Statement

Wachovia Account Number: 41200213089 Wells Fargo Account Number: 8806800419931000 1

BRENT E BENTRIM
10 NICHOLSON ST
CHARLESTON, SC 29407-7315

Statement Period: 05/30/2010 - 01/27/2011

STATEMENT SUMMARY

Original Balance	$182,700.00	AMX Number:	41200213089
Current Balance	$178,078.20	Statement Date:	August 11, 2011
Note Date:	03/12/2002		
Product	EA		

TRANSACTIONS

Proc Date	Eff Date	Tran Code	Action	Amount	Principal	Misc 1	Misc 2	Misc 3	Total Fee	Prin Bal
10/06/2010	09/30/2010	30.2	Fee Waiver	$10.00	$0.00	($3,318.41)	$0.00	$0.00	$0.00	$178,078.20
10/28/2010	09/30/2010	30.2	Fee Waiver	$10.00	$0.00	($2,375.00)	$0.00	$0.00	$0.00	$178,078.20
04/25/2011	01/27/2011	30.2	Fee Waiver	$10.00	$0.00	($175.79)	$0.00	$0.00	$0.00	$178,078.20
07/25/2011	01/27/2011	30.2	Fee Waiver	$10.00	$0.00	($175.79)	$0.00	$0.00	$0.00	$178,078.20

Active History

Statement Period: 05/26/2002 - 04/21/2011

STATEMENT SUMMARY

Acct No:	8806041993100 01	Name:	BRENT E BENTRIM	Note Date:	03/12/2002
Original Rate:	4.990%	Loan Amount:	$178,078.34	Date Prepared:	August 11, 2011

TRANSACTIONS

Date	Interest Rate	Description	Transaction Amount	Other Charge	Other Paid	Escrow Paid	Life Insurance	AH Insurance	Principal Paid	Interest Paid	Principal Balance
05/26/2002	4.490	Loan Assess	$10.00	$10.00							$182,700.00
05/26/2002	4.490	Payment	$994.29		$0.00	$0.00	$0.00	$0.00	$0.00	$994.29	$182,700.00
06/21/2002	4.490	Late Assess	$10.00	$10.00							$182,700.00
07/03/2002	4.490	Payment	$2,003.42		$0.00	$0.00	$0.00	$0.00	$185.27	$1,818.15	$182,514.73
08/26/2002	4.490	Late Assess	$10.00	$10.00							$182,514.73
08/13/2002	4.490	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$177.96	$812.21	$182,342.83
09/13/2002	4.490	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$182,342.83
10/26/2002	4.490	Late Assess	$10.00	$10.00							$182,342.83

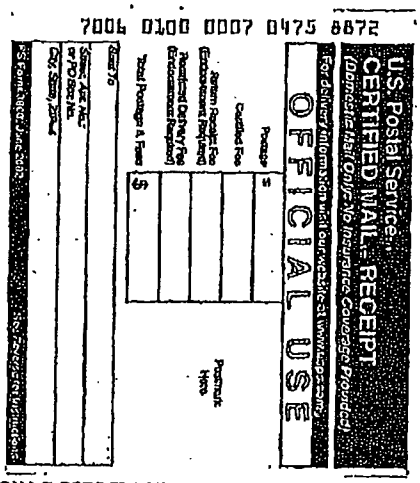
11/26/2003	4,490	Lich Assess	$10.00	$10.00							$182,342.83
12/01/2003	4,495	Payment	$1,900.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,900.00	$182,342.83
12/26/2003	4,496	Lich Assess	$10.00	$10.00							$182,342.83
01/06/2004	4,499	Payment	$994.21		$39.00	$0.00	$0.00	$0.00	$82.84	$874.37	$182,352.92
01/26/2004	4,498	Lich Assess	$10.00	$10.00							$182,352.92
02/02/2004	4,498	Payment	$1,000.00		$10.00	$0.00	$0.00	$0.00	$4.85	$836.85	$181,499.92
01/31/2004	4,499	Pay Rev NSF	$1,000.00	($10.00)		$0.00	$0.00	$0.00	($4.85)	($836.85)	$182,352.92
02/27/2004	4,495	Lich Assess	$10.00	$10.00							$182,352.92
03/26/2004	4,495	Lich Assess	$10.00	$10.00							$182,352.92
04/02/2004	4,490	Payment	$1,077.63		$10.00	$0.00	$0.00	$0.00	$1,142.02	$1,005.61	$181,119.93
04/19/2004	4,496	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$783.37	$200.82	$180,727.19
04/26/2004	4,496	Lich Assess	$10.00	$10.00							$180,727.19
05/04/2004	4,496	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$180,327.19
05/26/2004	4,496	Lich Assess	$10.00	$10.00							$180,327.19
06/02/2004	4,499	Payment	$1,000.00		$20.00	$0.00	$0.00	$0.00	$344.01	$735.99	$180,083.18
06/14/2004	4,499	Payment	$788.62		$0.00	$0.00	$0.00	$0.00	$208.84	$579.78	$179,979.34
06/24/2004	4,240	Int Rate Change									$0.00
06/26/2004	4,240	Lich Assess	$10.00	$10.00							$179,979.34
07/02/2004	4,240	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$82.00	$1,000.00	$179,979.34
07/26/2004	4,240	Lich Assess	$10.00	$10.00							$179,979.34
08/27/2004	4,240	Lich Assess	$10.00	$10.00							$179,979.34
11/26/2004	4,240	Lich Assess	$10.00	$10.00							$179,979.34
12/02/2004	4,240	Payment	$5,000.00		($0.00)	$0.00	$0.00	$0.00	$410.85	$7,605.01	$178,600.35
12/15/2004	4,240	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$730.25	$263.96	$177,864.14
12/15/2004	4,240	Print Only Pay	$16.78							$16.78	$177,847.36
01/11/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$427.82	$567.39	$177,431.53
01/13/2004	4,240	Pay Rev NSF	$994.21	$0.00		$0.00	$0.00	$0.00	($427.82)	($567.39)	$177,847.35
02/27/2004	4,210	Payment	$421.05		$0.00	$0.00	$0.00	$0.00	$0.00	$421.05	$177,426.30
02/15/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$729.10	$265.11	$177,426.87
03/15/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$399.10	$595.11	$176,749.67
04/13/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$349.15	$644.76	$176,506.42
05/13/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$371.15	$623.06	$176,029.27
06/14/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$352.05	$642.16	$175,977.22
07/13/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$327.06	$670.15	$175,303.56
08/04/2004	4,490	Int Rate Change									$0.00
08/13/2004	4,490	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$341.49	$652.72	$174,650.84
09/09/2004	4,240	Int Rate Change									$0.00
09/13/2004	4,240	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$305.07	$689.14	$174,000.41
09/13/2004	4,240	Pay Rev NSF	$994.21	$0.00		$0.00	$0.00	$0.00	($305.07)	($689.14)	$174,650.84
10/01/2004	4,240	Int Rate Change									$0.00
10/26/2004	4,240	Lich Assess	$10.00	$10.00							$174,650.84
11/29/2004	4,240	Lich Assess	$10.00	$10.00							$174,650.84
12/01/2004	4,240	Int Rate Change									$0.00
12/13/2004	4,240	Exp Draft	$165.69						$105.00		$174,650.84
12/15/2004	4,240	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$174,650.84
01/01/2005	4,490	Int Rate Change									$0.00
01/14/2005	4,490	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,650.84
01/26/2005	4,490	Exp Draft	$75.00						$75.00		$174,650.84
02/14/2005	4,490	Payment	$994.01		$0.00	$0.00	$0.00	$0.00	$0.00	$994.01	$174,650.84
02/28/2005	4,490	Lich Assess	$10.00	$10.00							$174,650.84
03/01/2005	4,240	Int Rate Change									$0.00
03/15/2005	4,240	Payment	$400.00		$0.00	$0.00	$0.00	$0.00	$0.00	$400.00	$174,650.84

03/30/2005	5.749	Payment	$656.80		$0.00	$0.00	$0.00	$0.00	$0.00	$653.11	$174,982.08
04/09/2005	5.624	Int Rate Change									$0.00
04/14/2005	5.499	Payment	$1,782.11		$0.00	$0.00	$0.00	$0.00	$0.00	$1,782.11	$174,982.08
05/26/2005	5.999	Late Charge	$10.00	$10.00							$174,992.08
05/31/2005	5.999	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.86	$994.21	$174,992.08
06/09/2005	5.249	Int Rate Change									$0.00
06/14/2005	5.249	Payment	$994.21		$4.00	$0.00	$0.00	$0.00	$0.00	$994.21	$174,992.08
06/30/2005	5.249	Payment	$1,078.21		$0.00	$0.00	$0.00	$0.00	$907.78	$322.43	$174,169.30
06/30/2005	5.249	Pay Rev	$1,078.21	$0.00		$0.00	$0.00	$0.00	($907.78)	($322.43)	$174,992.08
07/29/2005	5.249	Late Charge	$10.00	$10.00							$174,992.08
08/31/2005	5.499	Int Rate Change									$0.00
08/22/2005	5.499	Payment	$1,458.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,458.00	$174,992.08
09/21/2005	5.749	Int Rate Change									$0.00
09/29/2005	5.749	Foreclosure									$174,992.08
10/31/2005	5.999	Int Rate Change									$0.00
11/30/2005	6.249	Int Rate Change									$0.00
12/31/2005	6.499	Int Rate Change									$0.00
01/31/2006	6.749	Int Rate Change									$0.00
02/01/2006	6.999	Int Rate Change									$0.00
02/13/2006	6.999	Late Charge Payment	$50.00		$50.00						$174,992.08
02/15/2006	6.999	Payment	$1,947.21		$0.00	$0.00	$0.00	$0.00	$0.00	$1,947.21	$174,992.08
02/28/2006	6.999	Fiserv to Memo Step									$174,992.08
03/28/2006	6.999	Remove from Memo Step									$174,992.08
03/28/2006	6.999	Fiserv to Memo Step									$174,992.08
03/28/2006	6.999	Remove from Memo Step									$174,992.08
05/01/2006	6.249	Int Rate Change									$0.00
05/01/2006	6.499	Int Rate Change									$0.00
05/12/2006	6.499	Payment	$12,292.83		$0.00	$0.00	$0.00	$0.00	$437.80	$12,794.17	$174,554.20
06/19/2006	6.499	Remove from Foreclosure									$174,554.20
10/26/2006	6.499	Late Assess	$10.00	$10.00							$174,554.20
11/27/2006	6.499	Late Assess	$10.00	$10.00							$174,554.20
12/18/2006	6.499	Corp Draft	$225.00						$225.00		$174,554.20
12/29/2006	6.499	Late Assess	$10.00	$10.00							$174,554.20
01/19/2007	6.499	Payment	$1,900.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,900.00	$174,554.20
01/29/2007	6.499	Late Assess	$10.00	$10.00							$174,554.20
02/22/2007	6.499	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,554.20
03/23/2007	6.499	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,554.20
03/29/2007	6.499	Payment	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$174,554.20
03/29/2007	6.499	Pay Rev	$994.21	$0.00		$0.00	$0.00	$0.00	$0.00	($994.21)	$174,554.20
04/25/2007	6.499	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,554.20
04/30/2007	6.499	Suspense									$0.00
05/11/2007	6.499	Auto Draft Pay	$994.21		$0.00	$0.00	$0.00	$0.00	$0.00	$994.21	$174,554.20
05/11/2007	6.499	Pay Rev	$994.21	$0.00		$0.00	$0.00	$0.00	$0.00	($994.21)	$174,554.20
05/29/2007	6.499	Payment	$1,000.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,000.00	$174,554.20
06/28/2007	6.499	Late Assess	$10.00	$10.00							$174,554.20
07/19/2007	6.499	Foreclosure									$174,554.20
10/01/2007	7.999	Int Rate Change									$0.00
12/01/2007	7.749	Int Rate Change									$0.00
12/03/2007	7.749	Late Charge Payment	$50.00		$50.00						$174,554.20

12/05/2007	7,745	Payment	$7,135.51		$0.00	$0.00	$0.00	$0.00	$0.00	$7,135.51	$174,604.29
12/13/2007	7,745	Fees In Mem Stop									$174,604.29
12/13/2007	7,745	Remove Fees Memo Stop									$174,604.29
12/19/2007	7,745	Remove Fees Foreclosure									$174,604.29
12/26/2007	7,745	Payment	$1,020.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,020.00	$174,604.29
01/09/2008	7,430	Int Rate Change									$0.00
01/28/2008	7,490	Lich Assess	$10.00	$10.00							$174,604.29
02/01/2008	7,745	Int Rate Change									$0.00
02/18/2008	7,745	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,604.29
02/25/2008	7,745	Lich Assess	$1.61	$1.61							$174,604.29
03/01/2008	8,240	Int Rate Change									$0.00
03/25/2008	8,240	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,604.29
03/31/2008	8,240	Lich Assess	$1.61	$1.61							$174,604.29
04/01/2008	8,490	Int Rate Change									$0.00
04/11/2008	8,490	Payment	$1,307.53		$0.00	$0.00	$0.00	$0.00	$0.00	$1,307.53	$174,604.29
04/11/2008	8,490	Pay Rev	$1,307.53	$0.00		$0.00	$0.00	$0.00	$0.00	($1,307.53)	$174,604.29
04/25/2008	8,497	Lich Assess	$10.00	$10.00							$174,604.29
05/01/2008	8,497	Lich Assess	$10.00	$10.00							$174,604.29
05/01/2008	8,740	Int Rate Change									$0.00
05/09/2008	8,740	Payment	$1,237.28		$0.00	$0.00	$0.00	$0.00	$0.00	$1,237.28	$174,604.29
06/11/2008	8,240	Payment	$1,241.51		$0.00	$0.00	$0.00	$0.00	$0.00	$1,241.51	$174,604.29
06/17/2008	8,240	Pay Rev	$1,290.51	$0.00		$0.00	$0.00	$0.00	$0.00	($1,290.51)	$174,604.29
06/18/2008	8,240	Foreclose									$0.00
06/25/2008	8,240	Lich Assess	$10.00	$10.00							$174,604.29
07/01/2008	8,240	Payment	$1,225.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,225.00	$174,604.29
07/24/2008	8,240	Lich Assess	$10.00	$10.00							$174,604.29
08/01/2008	8,240	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,604.29
08/26/2008	8,240	Lich Assess	$40.00	$10.00							$174,604.29
09/25/2008	8,240	Lich Assess	$10.00	$10.00							$174,604.29
09/29/2008	8,240	Payment	$1,200.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,200.00	$174,604.29
10/27/2008	8,240	Lich Assess	$10.00	$10.00							$174,604.29
11/01/2008	4,740	Int Rate Change									$0.00
11/14/2008	4,740	Payment	$1,400.00		$0.00	$0.00	$0.00	$0.00	$0.00	$1,400.00	$174,604.29
12/01/2008	4,210	Int Rate Change									$0.00
12/29/2008	4,210	Lich Assess	$10.00	$10.00							$174,604.29
01/01/2009	3,490	Int Rate Change									$0.00
01/29/2009	3,490	Lich Assess	$10.00	$10.00							$174,604.29
02/03/2009	3,490	Foreclosure									$174,604.29
06/09/2009	3,490	Fixed Int CR	$2,828.00							$2,775.00	$177,379.29
03/15/2010	3,490	Fixed Int CR	$2,122.54							$2,122.54	$179,501.74
03/15/2010	3,490	Prin CR	$2,122.54							($2,122.54)	$177,379.20
04/21/2010	3,490	Cap Debit	$2,122.54							$2,122.54	$179,501.74

Toggle View

EXHIBIT D



WACHOVIA

Wachovia Bank N.A.
FL 0503
Collection Shared Services
PO Box 52117
Jacksonville, FL 32201-2117
Tel 866-509-7093

December 13, 2006

Brent B Bentrim
10 Nicholson Street
Charleston, SC 29407

NOTICE OF INTENTION TO FORECLOSE

RE: 0000412002213089

Dear Wachovia Customer:

As you are aware, Wachovia Bank N.A. holds a recorded mortgage on 10 Nicholson Street Charleston, SC 29407, in the amount of $182,700.00.

Your mortgage payments are past due which puts you in default of your loan agreement. As of 12/13/2006 you owe the following:

Past due payments:	$4,021.05
Current Late Charges:	$10.00
Accumulated late charges:	$20.00
Other charges:	$95.00
Total due to reinstate and cure default:	$4,146.05

You may cure your default by paying the aforesaid amount by bank check, money order, or other certified funds so that it is received at the following address on or before 1/12/2007:

Wachovia Bank N.A.
Consumer Credit Department
P.O. Box 13327
Roanoke, VA 24040

WF 69

If your account is not brought current by 1/12/2007, then we may start foreclosure proceedings, which will cause you to lose your property.

Even if a foreclosure is started, you may reinstate your account until a judgement in foreclosure is entered. However, if a foreclosure is started, in addition to curing all missed payments, late charges, and other necessary items, you will be required to pay for attorney's fees and costs.

Among other things, the purpose of this letter is to make one final attempt to possibly avoid acceleration or foreclosure and reach an agreement with you to satisfy your delinquent mortgage loan account. There are alternatives to foreclosure and its severe consequences. These alternatives can include a short payoff, a reinstatement or restructure of your loan. Wachovia Bank N.A. is willing to consider your individual circumstances and be flexible as possible in attempting to make one of these alternatives available to you. However, you or your attorney must contact this office to discuss your situation if foreclosure is to be avoided.

This letter is not to be considered a definite offer to accept one of the above alternatives to foreclosure. Likewise, this letter is not a waiver of the acceleration of your mortgage or a waiver of any of the bank's rights or remedies under the loan documents.

The failure to cure or resolve the default on or before the date specified in this notice shall result in the acceleration of the sums secured by the Mortgage, foreclosure by judicial proceedings and sale of the property. There shall be no further notice prior to acceleration. You shall have the right to assert in the foreclosure proceedings the non-existence of a default or any other defense that you may have to acceleration and foreclosure. In such action, Wachovia Bank N.A. shall be entitled to collect all expenses incurred in pursuing the remedies provided for herein, including, but not limited to, reasonable attorney's fees and costs, all at your additional expense and without further notice.

The debt described in this letter will be assumed to be valid by Wachovia Bank N.A.'s law firm, unless the debtor within thirty (30) days after the receipt of this notice disputes, in writing, the validity of the debt or some portion thereof. If the debtor notifies Wachovia Bank N.A. in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, Wachovia Bank N.A. will obtain a verification of the debt and a copy of the verification will be mailed to the debtor.

There may be possible availability of financial assistance for curing a default from programs operated by the State or Federal Government or non-profit organizations. You may wish to call the number below to ascertain whether you qualify for assistance.

This is an attempt to collect a debt. Any information obtained in that regard shall be used for that purpose.

If you disagree with the assertion that a default has occurred or with the correctness of the calculation of the amount required to cure the default, you may contact Retail Credit Collections at 1(866)509-7093.

Sincerely,

Retail Credit Collections
866-509-7093
(866)509-7093

WF 60

WACHOVIA
Wachovia Bank, N.A.
Retail Credit Collections
PA1327
123 South Broad St
Philadelphia, PA 19109

09/22/2008 VIA CERTIFIED MAIL AND REGULAR MAIL

6,705,780
Brent E Benkrim
10 Nicholson Street
Charleston, SC 29407

Re: Account #: 0000412002130009

Dear Wachovia Customer(s):

I am writing to let you know that, based on the terms and conditions of your loan with us, you have defaulted on your account.

You now owe $2,466.29 on your loan. This amount has been past due for some time. According to your agreement with us, as well as your disclosure statement, we can now demand immediate payment for the entire unpaid balance of $100,906.00. If you fail to make full payment within ten days of the date of this letter, we may take legal action to collect this debt and protect our interest in any collateral you used to secure your loan.

In addition, the terms and conditions of your loan state that you will be responsible for paying Attorney's fees we incur while trying to collect this debt. We are also entitled to add a delinquency charge for late payments.

To avoid additional costs and legal action, I urge you to call us immediately at (877) 508-2974 to arrange for your payoff. Thank you.

Please note: If you are eligible for protection under the Soldier's and Sailor's Civil Relief Act, please contact us immediately. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Sincerely,

Veronica D Lawrence
Retail Credit Collections

Spanish language customer assistance – NOTIFICACIÓN: ESTA COMUNICACIÓN CONTIENE INFORMACIÓN IMPORTANTE SOBRE SU CUENTA WACHOVIA Y TAL VEZ REQUIERA QUE USTED TOME UNA MEDIDA OPORTUNAMENTE. SI TIENE ALGUNA PREGUNTA O NECESITA AYUDA PARA TRADUCIR LA INFORMACIÓN INCLUIDA EN ESTA COMUNICACIÓN, POR FAVOR LLAME AL (877) 508-2974.

WF 75

Wachovia Bank, N.A.
Retail Credit Collections
PA1327
123 South Broad St
Philadelphia, PA 19109

10/23/2008

VIA CERTIFIED MAIL AND REGULAR MAIL

26,469.34,118
Brent E Behrim
10 Nicholson Street
Charleston, SC 29407

Re: Account #: 000041200213089

Dear Wachovia Customer(s):

I am writing to let you know that, based on the terms and conditions of your loan with us, you have defaulted on your account.

You now owe $2,386.55 on your loan. This amount has been past due for some time. According to your agreement with us, as well as your disclosure statement, we can now demand immediate payment for the entire unpaid balance of $180,391.00. If you fail to make full payment within ten days of the date of this letter, we may take legal action to collect this debt and protect our interest in any collateral you used to secure your loan.

In addition, the terms and conditions of your loan state that you will be responsible for paying Attorney's fees we incur while trying to collect this debt. We are also entitled to add a delinquency charge for late payments.

To avoid additional costs and legal action, I urge you to call us immediately at (877) 508-2974 to arrange for your payoff. Thank you.

Please note: If you are eligible for protection under the Soldier's and Sailor's Civil Relief Act, please contact us immediately. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

Sincerely,

Veronica D Lawrence
Retail Credit Collections

Spanish language customer assistance – NOTIFICACIÓN: ESTA COMUNICACIÓN CONTIENE INFORMACIÓN IMPORTANTE SOBRE SU CUENTA WACHOVIA Y TAL VEZ REQUIERA QUE USTED TOME UNA MEDIDA OPORTUNAMENTE. SI TIENE ALGUNA PREGUNTA O NECESITA AYUDA PARA TRADUCIR LA INFORMACIÓN INCLUIDA EN ESTA COMUNICACIÓN, POR FAVOR LLAME AL (877) 508-2974.

WACHOVIA

Wachovia Bank, N.A.
Retail Credit Collections
FL0503
P.O. Box 52117
Jacksonville, FL 32201-2117

11/17/2008

VIA CERTIFIED AND REGULAR MAIL

41,429,55,045
Brent E Bentrim
10 Nicholson Street
Charleston, SC 29407

NOTICE OF INTENTION TO FORECLOSE

RE: Account Number: 0000412002130B9
Property Address: 10 Nicholson Street, Charleston, SC 29407

Dear Wachovia Customer(s):

As you are aware, Wachovia Bank, N.A. holds a recorded lien on the real property listed above, in the amount of $182,700.00.

Your loan payments are past due, which puts you in default of your loan agreement. As of 11/17/2008 you owe the following:

Principal and Interest	$4,847.07
Current Late Charges	$73.02
TOTAL DUE	$4,920.09

You may cure your default by paying the aforesaid amount by bank check, money order, or other certified funds so that it is received at the following address on or before 12/14/2008: Wachovia Bank, N.A., Retail Credit Collections, FL0503, P.O. Box 52117, Jacksonville, FL 32201-2117.

If your account is not brought current by 12/14/2008, then we may start foreclosure proceedings.

Among other things, the purpose of this letter is to make one final attempt to possibly avoid acceleration or foreclosure and reach an agreement with you to satisfy your delinquent loan account. There are alternatives to foreclosure and its severe consequences. Wachovia Bank, N.A. is willing to consider your individual circumstances and be flexible as possible in attempting to make alternatives available to you. However, you or your attorney must contact this office to discuss your situation if foreclosure is to be avoided. This letter is not to be considered a definite offer to accept an alternative to foreclosure. Likewise, this letter is not a waiver of the acceleration of your mortgage or a waiver of any of the bank's rights or remedies under the loan documents.

Failure to bring your account current may result in our election to exercise our right to foreclose on your property. Upon acceleration, your total obligation will be immediately due and payable without further notice or demand. In foreclosure proceedings, we are entitled to collect your total arrearage in addition to any expenses of foreclosure, including but not limited to reasonable foreclosure fees and costs. You have the right to assert in court the non-existence of a default or any other defense to acceleration and foreclosure.



WACHOVIA

Wachovia Bank, N.A.
Retail Credit Collections
FL0503
P.O. Box 62117
Jacksonville, FL 32201-2117

11/17/2008 VIA CERTIFIED AND REGULAR MAIL

After acceleration of the debt, but prior to foreclosure, you may have the right to reinstate the loan, depending on the terms of the loan documents. We encourage you to review the provisions of the loan documents. Please be aware that, after acceleration of the debt, there may be expenses and fees and costs incurred by us to enforce our lien in addition to the overdue amount. Any payment to reinstate the loan after acceleration must therefore include an amount sufficient to cover such expenses and fees incurred. Payments received that are less than the amount required to reinstate the loan will be returned, and will not stop any foreclosure proceedings that have begun. Prior to submitting payment, you may wish to call us to verify the exact amount due.

There may be possible availability of financial assistance for curing a default from programs operated by the State or Federal Government or non-profit organizations. You may wish to call the number below to ascertain whether you qualify for assistance.

In addition, if you have recently filed a petition under the Bankruptcy Code, this notice has been sent to you because Wachovia has not been notified of your bankruptcy case. If the foregoing applies to you, it is very IMPORTANT that you or your bankruptcy attorney contact us immediately and provide us with the following information: date and jurisdiction of your filing, your case number and the number of the chapter you have filed.

Please note:

- If you are eligible for protection under the Servicemembers Civil Relief Act, or similar state statute, please contact us immediately.
- We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

If you disagree with the assertion that a default has occurred or with the correctness of the calculation of the amount required to cure the default, you may contact Retail Credit Collections at 1 (800) 829-2474.

Sincerely,

Retail Credit Collections
1 (800) 829-2474

EXHIBIT E

OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

Subject: Guidance on Unfair or Deceptive Acts or Practices

TO: Chief Executive Officers of All National Banks and National Bank Operating Subsidiaries, Department and Division Heads, and All Examining Personnel.

PURPOSE

The Office of the Comptroller of the Currency (OCC) is issuing this advisory letter to inform national banks and their operating subsidiaries about the risks present in engaging in lending and marketing practices that may constitute unfair or deceptive acts or practices and to help national banks avoid being placed in jeopardy of penalties, judgments, and harm to their reputations that can result from such practices. The OCC may become aware of issues regarding unfair or deceptive acts or practices during the course of a regular safety and soundness or compliance examination, through consumer complaints, or through referrals from state agencies.

Generally, a deceptive act or practice involves a representation or omission that is likely to mislead a reasonable consumer in some material way. Whether particular conduct constitutes an unfair act or practice would depend on the particular facts and circumstances presented, but generally would involve acts or practices that are unscrupulous, unconscionable, or contrary to public policy, and that harm consumers.

The consequences of engaging in practices that may be unfair or deceptive under federal or state law can include litigation, enforcement actions, monetary judgments, and harm to the institution's reputation. The OCC is issuing this guidance to assist national banks to ensure that management and staff throughout their organizations are aware of these significant risks and of the practices that could place the bank in any jeopardy of liability or other adverse consequences. Therefore, this advisory letter provides detailed guidance to help OCC-supervised institutions avoid such practices, and also describes the type of activities that pose the greatest risk of being viewed as unfair or deceptive. The advisory:

- Describes applicable legal standards the OCC uses to evaluate whether an act or practice violates applicable law prohibiting unfair or deceptive acts or practices;
- Provides general guidance on the types of activities that examiners should scrutinize;
- Describes other laws that may be implicated in connection with a supervisory review for unfair or deceptive acts or practices; and
- Provides guidance on how banks and their operating subsidiaries can prevent reputation, compliance, and legal risks posed by certain practices.

BACKGROUND

One consequence of increasing competition among lenders has been the aggressive marketing of various forms of secured and unsecured consumer credit, along with credit-related products. Often this marketing takes place through large direct mail and telemarketing campaigns. Advances in information technology, increased access to information on customers, and sophisticated use of credit bureau information have fueled the rise of "preapproved" solicitations for credit cards and other consumer credit. These efforts have been enhanced by amendments to the Fair Credit Reporting Act that loosened restrictions on obtaining prescreened mailing lists from credit reporting agencies that are used in this form of targeted marketing. Finally, banks and their subsidiaries also increasingly rely on independent agents, such as telemarketers, to market and offer services on behalf of the bank or subsidiary.[1]

The OCC has found that these developments create increased risk that the institution may engage in practices, including unfair or deceptive acts or practices, that cause customer dissatisfaction, harm to the company's reputation, and even litigation and government enforcement actions. Engaging in practices that harm customer relations can undermine the institution's reputation and its ability to retain customers. The OCC encourages national banks and their operating subsidiaries to review their practices to guard against activities that pose risks of the sort described in this advisory or that could undermine customer trust in the institution, and to take corrective action where needed.

COMPLIANCE AND LEGAL RISKS

Banks and their operating subsidiaries should exercise diligence to ensure that, in marketing their products and services, they avoid violating applicable standards concerning unfair or deceptive acts or practices. Failure to comply with statutory and regulatory requirements may lead to administrative actions, including enforcement actions to address violations and to ensure appropriate corrective action; lawsuits; and civil penalties.

[1] The OCC will treat arrangements in which a third party provides services on behalf of the bank, including marketing services, to bank customers as subject to the provisions of the Bank Service Company Act, 12 USC 1867(c). Therefore, the OCC has authority to examine the performance of these services by the third party to the same extent as if the bank itself were performing the services on its own premises. Such examinations would evaluate potential supervisory and reputation risks and compliance with applicable law, including prohibitions on engaging in unfair or deceptive acts or practices. Pursuant to 12 CFR 8.6(a), the OCC may assess a national bank a special examination or investigation fee when the OCC examines or investigates the activities of a third-party service provider.

Key Statutory and Regulatory Standards

Federal Trade Commission Act Prohibitions on Unfair or Deceptive Acts or Practices

Unfair or deceptive acts or practices are unlawful under federal and State law.[2] Section 5 of the Federal Trade Commission Act (FTC Act), 15 USC 45(a)(1), prohibits "unfair or deceptive acts or practices in or affecting commerce." Under section 8 of the Federal Deposit Insurance Act, 12 USC 1818, the OCC may take appropriate enforcement actions against national banks and their subsidiaries for violations of *any* law or regulation, which necessarily includes section 5 of the FTC Act.[3] Certain unfair or deceptive acts or practices by banks and their subsidiaries have been specifically prohibited by regulation. Other acts or practices may be determined to be unfair or deceptive on a case-by-case basis, under the standards set forth in the FTC Act.
Section 5 of the Federal Trade Commission Act

- Deceptive acts or practices.

  Practices may be found to be *deceptive* and thereby unlawful under section 5 of the Federal Trade Commission Act (FTC Act) if the following three factors, derived from principles applied by the Federal Trade Commission, are present:[4]

  – There is a representation, omission, act or practice that is likely to mislead.

    Practices that can be misleading or deceptive include false oral and written representations; misleading claims about costs of services or products; use of bait-and-switch techniques; and failure to provide promised services or products. For example, there is an implied representation that a product or service is fit for the purposes for which it is sold or marketed. In addition, the focus of this inquiry is on whether a practice is *likely to* mislead, rather than on whether it actually misleads. The OCC will consider the entire advertisement, transaction, or course of dealing in determining whether practices are misleading.

  – The act or practice would be deceptive from the perspective of a reasonable consumer.

    The totality of the circumstances and the net impression that is made will be evaluated in making this determination. Failure to provide information also may be a deceptive act or practice and will be evaluated from the perspective of whether a reasonable consumer is

[2] A number of state laws prohibit unfair or deceptive acts or practices, and such laws may be applicable to insured depository institutions. *See, e.g.*, Cal. Bus. Prof. Code 17200 *et seq.* and 17500 *et seq.* Operating subsidiaries, which operate effectively as divisions or departments of their parent national bank, also may be subject to such state laws. Congress explicitly acknowledged that national bank operating subsidiaries engage "solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks." 12 USC 24a(g)(3). Pursuant to 12 CFR 7.4006, state laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank, unless otherwise provided by federal law or OCC regulation. The OCC has authority under, *inter alia*, 12 USC 1818(b)(3), 12 CFR 5.34(e)(3), and 12 USC 484 to enforce state laws against national bank operating subsidiaries.

[3] *See* 12 USC 1818.

[4] These principles are derived from the Policy Statement on Deception, issued by the Federal Trade Commission on October 14, 1983.

likely to have been misled by the omission. A consumer's reaction to an act or practice may be reasonable even if it is not the only reaction that a consumer might have. For example, if marketing conveys more than one meaning to reasonable consumers, one of which is false, it may be deceptive. In addition, an interpretation may be reasonable even if not shared by the majority of consumers who received the marketing. Thus, a practice that misleads a significant minority of consumers may be deceptive. In addition, the OCC will evaluate the act or practice from the perspective of any specific audience to which it was targeted or which was reasonably foreseeable.

Depending on the circumstances, subsequent written disclosures containing accurate information about the benefits or material limitations of a product or service may be insufficient to correct a misleading representation. For example, a misleading representation *may not* have been corrected if the consumer is directed away from the importance of language that qualifies or contradicts the prior representation or if it is unreasonable to expect that a consumer will read the entire document containing the qualifying language. Generally, the OCC does not view a disclosure as unfair or deceptive simply because material information is contained in "fine print." However, information in fine print may be insufficient to modify a statement, made conspicuously elsewhere in the communication, that would be false or misleading without that modification. This could cause the communication as a whole to be deceptive in violation of the FTC Act.

- The representation, omission, act, or practice is material.

  A material misrepresentation or practice is one that is likely to affect a consumer's choice or conduct concerning a product or service. Consumer injury is likely if inaccurate or omitted information is important to the consumer's decision. Generally, information about costs, benefits, or significant limitations related to the product or service would be material.

- Unfair acts or practices.

  A practice may be found to be *unfair* and thereby unlawful under section 5 of the FTC Act if: [5]

  - The practice causes substantial consumer injury.

    Generally, monetary harm, such as when a consumer pays a fee or interest charge, or incurs other similar costs to obtain a bank product or service as a result of an unfair practice, will be deemed to involve substantial injury. An injury may also be substantial if it does a small harm to a large number of consumers or if it raises a significant risk of specific harm.

  - The injury is not outweighed by benefits to the consumer or to competition.

[5] These principles are derived from the Policy Statement on Unfairness, issued by the Federal Trade Commission on December 17, 1980.

To be unfair, a practice must be injurious in its net effects. Generally, an analysis of the net effects includes not only the costs and harm to the consumer, but also consideration of the costs and regulatory burdens to banks, and the potential restrictions on competition and the availability of credit that may result from a finding of unfairness.

– The injury caused by the practice is one that consumers could not reasonably have avoided.

For example, the injury could reasonably have been avoided if the consumer had sufficient information to make an informed choice. The OCC will not find a practice unfair solely on the grounds that a consumer could have obtained a more appropriate or satisfactory product or service elsewhere. Rather, consumer harm caused by a practice that is coercive or that otherwise effectively inhibits the consumer from making an informed choice would be considered not reasonably avoidable.

Established public policies may be considered as evidence, to be considered with all other evidence, in determining whether an act or practice is unfair. Such public policy considerations may not, however, serve as a primary basis for such a determination.

- Examples of practices that may violate the FTC Act.

The OCC has taken enforcement action in situations where it concluded that a national bank's practices were deceptive. In each instance, the practice at issue involved a representation or omission about a material aspect of a product or service that was misleading, including:

– Failure to provide sufficient information to allow consumers to understand the terms of the product or service being offered without being misled.

The OCC concluded that materials used to market a credit product misled consumers because they suggested particular features and benefits that did not in fact apply to the credit product the consumers received.

– Failure to adequately disclose when significant fees or similar material prerequisites applied in order to obtain the particular product or service being offered.

The OCC concluded that consumers were misled when they were offered a credit product on which a fee was imposed and were not made aware that the fee would attach until after they accepted the product.

– Failure to adequately disclose material limitations affecting the product or service being offered.

The OCC concluded that consumers were misled by materials used to market a credit-related product that did not disclose that numerous exceptions applied to the material benefits that were promised.

Relation to Other Laws

A number of specific compliance laws may also apply to practices that are unfair or deceptive. The following describes some of the related issues that can arise under certain compliance laws:

- Truth in Lending Act

  Under the Truth in Lending Act (TILA) and Regulation Z, a creditor that extends consumer credit must make certain disclosures "clearly and conspicuously" that describe the cost and terms of that credit. Depending upon the totality of the circumstances, failure to comply with certain TILA provisions may also involve conduct that constitutes an unlawful, unfair, or deceptive act or practice. Moreover, depending upon the totality of the circumstances, an institution may be engaged in unfair or deceptive acts or practices for marketing or other practices even if the transaction is otherwise in technical compliance with applicable TILA and Regulation Z provisions. For example, advertising a "guaranteed" or "lifetime" interest rate could be misleading when the institution makes the representation despite an intention to increase the rate. Such an institution could face reputation or litigation risks if consumers are not provided information that the institution may unilaterally change the contract terms – *whether or not* the institution's disclosure of a fixed interest rate satisfies the technical requirements of TILA.

- Equal Credit Opportunity Act

  The Equal Credit Opportunity Act (ECOA) and Regulation B prohibit discrimination in any aspect of a credit transaction against persons on the basis of race, color, religion, national origin, sex, marital status, age, and the fact that an applicant's income derives from any public assistance program. Depending upon the totality of the circumstances, an institution that engages in unfair or deceptive acts or practices may also violate the Equal Credit Opportunity Act (ECOA) – particularly if such acts or practices affect or are targeted at consumers based on their age, race, gender or other prohibited factor.

- Privacy Regulations

  12 CFR 40, the OCC's regulations implementing Title V of the Gramm-Leach-Bliley Act (Privacy regulations), among other things, prohibit the disclosure to a nonaffiliated third party, other than to a consumer reporting agency, of an account number or similar access code for a credit card, deposit, or transaction account of a consumer for use in marketing.[6]

  Depending upon the totality of the circumstances, an institution that does not comply with these requirements may be also engaging in unfair or deceptive acts or practices – for example, in connection with the unlawful disclosure of account numbers in connection with marketing of a third party's products or services.

- Fair Debt Collection Practices Act

  The Fair Debt Collection Practices Act (FDCPA) prohibits unfair, deceptive, and abusive practices related to collection of consumer debts. Although the bank itself may not be subject

[6] See OCC Interpretive Letter 910.

to the FDCPA when a third party collects debts on its behalf, it nevertheless faces reputation risk – and potential legal risk for approving or assisting in an unfair or deceptive act or practice in violation of the FTC Act – if the third party violates the FDCPA by engaging in deception, harassment, or threats in the collection of the bank's loans.

GUIDELINES FOR MANAGING RISK

The following general guidelines illustrate the types of actions that could be taken by bank management to manage the risks identified in this advisory letter and to improve consumer information and customer service:

- Verify that information provided to consumers is complete and accurate and is not likely to mislead or deceive a reasonable consumer. This includes a review to ensure that customers receiving the information can reasonably be expected to understand the information about products or services -- including any material limitations – without having to do "detective" work.

- Avoid the use of claims such as "guaranteed," "pre-approved," and "lifetime rates," if there is a significant possibility that consumers will not receive the terms that have been advertised, and this possibility is not described adequately.

- Provide a clear, up-front disclosure of any contract provision that permits a change in the terms of the products or services that are offered.

- Avoid engaging in promotions of a product or service that highlight a particular benefit, if that benefit will be negated by another aspect of the transaction. For example, a product should not be promoted as having "no annual fees" if the product requires the consumer to pay annual premiums for another linked product, such as mandatory credit life insurance, or if the agreement would permit imposition of such a fee at any time, and this possibility is not described adequately.

- Review telemarketing scripts used to market products to bank customers for accuracy and to ensure that they fairly and adequately describe the terms, benefits, and material limitations of the product or service being offered.

- Clearly notify consumers in connection with "free trial periods" for services – at the time of an initial solicitation and subsequently – if the consumer will be required to affirmatively act to cancel the service at the end of the trial period to avoid being billed for service past the trial period. Get clear and affirmative consent to terms and billing arrangements.

- Follow the guidance relating to due diligence in selecting a third-party vendor, monitoring vendor performance, and maintaining proper documentation about vendor management in OCC Advisory Letter 2000-9, "Third Party Risk," issued August 29, 2000, and in OCC Bulletin 2001-47, "Third Party Relationships," issued November 1, 2001. Appropriate due diligence includes a review of the competence and business practices of the third party, as well as the financial capacity of the third party.

- Ensure that contractual arrangements with third-party service providers protect the bank against risk. For example, a bank should carefully consider whether a contract with a

telemarketer contains any financial incentive that could lead the telemarketer to mislead consumers. As another example, if a telemarketer's compensation is based on initial sales, and is unaffected by whether a consumer subsequently cancels the product or service, the telemarketer may have an incentive to mislead the consumer regarding the nature or benefits of the product or service.

- Ensure that promotional or other information in a solicitation or other communication does not conflict with or contradict required consumer disclosures, such as TILA and Privacy notices. Such conflict or contradiction could result in the disclosures not being "clear and conspicuous," as required by those laws, as well as the communication as a whole being deceptive in violation of the FTC Act.

- Institute appropriate procedures to ensure that consumer complaints and other communications are reviewed for indications that the institution's marketing or solicitations might have misled a consumer.

- Maintain procedures that ensure that payments are promptly posted.

- Monitor loan collection activities, including collection calls, of any third party on behalf of the institution.

Questions concerning this advisory letter may be directed to the Community and Consumer Law Division at (202) 874-5750, or the appropriate supervisory office.

Julie L. Williams
First Senior Deputy Comptroller and
Chief Counsel

Emory W. Rushton
Senior Deputy Comptroller and
Chief National Bank Examiner

EXHIBIT F

or admissibility of the documents or things that will be produced in response to the Request for Production.

C. To the extent that any request inquires about "all," "each" or "every," the request is objected to for being overly broad and unduly burdensome. It is impossible to represent, even after a reasonably diligent search, that "all," "each" or "every" document or thing falling within a description can be or has been located. Documents may be kept in myriads of locations and files. Many people may have handled them, they may have been moved frequently, and they may have been arranged, rearranged or reordered. Documents may have been lost or may have been part of materials disposed of according to a record retention policy. Therefore, the Defendant cannot warrant or represent that it has produced "all," "each" or "every" document or thing of a type requested, only that it has produced those documents or things that it could locate after a reasonably diligent search. Any further requirement is objected to for being unduly burdensome.

RESPONSES TO ANSWERS TO DOCUMENTS TO BE PRODUCED:

1. **All documents setting forth any servicing agreement between the Defendant and any entity with reference to the mortgage loan the subject of this action.**

RESPONSE: None.

2. **All Pooling and Servicing Agreements, Custodial Agreements, Deposit Agreements, Master Purchasing Agreements, Issuer Agreements, Commitment to Guarantee Agreements, Release of Document Agreements, Master Agreements for Servicer's Principal and Interest Custodial Account, Servicer's Escrow Custodial Account Agreements, Release of Interest Agreements, or Trustee Agreements relating to the mortgage loan that is the subject of this action.**

RESPONSE: None.

3. **All documents setting forth verification of all fees paid or assessed on the HUD-1.**

RESPONSE: Objection. Defendant objects to this Request to the extent it seeks documents protected by the attorney-client privileges and/or work product doctrine. Defendant further objects on the grounds that this Request is vague and ambiguous, overly broad in respect to time and scope and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. By way of further response, Defendant objects on the grounds that the Request seeks information that is unduly burdensome and expensive for Defendant to obtain. Moreover, such information is available to Plaintiff through his closing attorney. Without waiving its objections, Plaintiff please see a copy of Settlement Statement enclosed herewith and labeled WF 19 – WF 20.

4. **All documents setting forth any authority of Defendant to institute any foreclosure filed in the present or past.**

RESPONSE: Objection. Defendant objects to this Request to the extent it seeks documents protected by the attorney-client privileges and/or work product doctrine. Defendant further objects on the grounds that this Request is vague and ambiguous, overly broad in respect to time and scope and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving its objections, the relevant, non-privileged documents responsive to this Request including, without limitation, the Note and Mortgage which are the subject of this Complaint and the loan history which are enclosed herewith. By way of further response, please see the relevant, non-privileged documents produced herewith and labeled as follows: [WF 5- WF 218].

Defendant reserves the right to supplement this Request as discovery proceeds.

5. **All documents demonstrating any funding of the mortgage loan the subject of this action.**

RESPONSE: Objection. Defendant objects to this Request to the extent it seeks documents protected by the attorney-client privileges and/or work product doctrine. Defendant further objects on the grounds that this Request is vague and ambiguous, overly broad in respect to time and scope and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

6. **All documents concerning any consideration exchanged between any persons or parties in connection with the assignment or sale of any part of, or right under, or right incident to the sale or assignment of servicing rights.**

RESPONSE: Objection. Defendant objects to this Request on the grounds that it seeks information protected by the attorney-client privileges and/or work product doctrine. By way of further response, this Request is vague and ambiguous, overly broad in respect to time and scope, irrelevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that the Request seeks information that is unduly burdensome and expensive for Defendant to obtain. Moreover, such information is available to Plaintiff by reviewing the records available to the public, including, without limitation, the South Carolina Secretary of State website and the North Carolina Secretary of State website, which is more convenient, less burdensome and less expensive.

7. **All documents setting forth all information contained within any mortgage servicing or accounting computer systems, including but not limited to Alltel or Fidelity**

13. **All escrow analyses in reference to the mortgage loan the subject of this action from inception of the account to the present.**

RESPONSE: Defendant incorporates its response to Request No. 9, 10, 11 and 12.

14. **All documents evidencing any agreement between the original lender to whom the rights of the original lender were assigned to and any person or party relating to the servicing, in any respect, of the mortgage loan the subject of this action.**

RESPONSE: Objection. Defendant objects to this Request on the grounds that this Request is vague and ambiguous, overly broad in respect to time and scope, irrelevant and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. By way of further responsive, Defendant objects on the grounds that the Request seeks information that is unduly burdensome and expensive for Defendant to obtain. Without waiving its objections, Defendant states it does not have any documents responsive to this Request.

15. **All documents evidencing any agreement between Defendant and any person or party relating to the servicing, in any respect, of the mortgage loan the subject of this action.**

RESPONSE: Defendant incorporates its response to Request No. 6 and 14. By way of further response, Defendant states it does not have any documents responsive to this Request.

16. **All documents comprising the account servicing records in connection with the mortgage loan the subject of this action relating to calculation of interest, interest rate adjustments, ARM audits, and the like from the inception of the account to the present.**

RESPONSE: Objection. Defendant objects to this Request on the grounds that this Request is vague and ambiguous, overly broad in respect to time and scope and irrelevant.

ANSWER: Defendant incorporates its answer to Interrogatory No. 1. Defendant states that a designee of Wells Fargo Bank, N.A., has knowledge of, without limitation, the terms of the note and mortgage, which are, in part, the subject of the Complaint. Defendant further states that a designee of Wells Fargo has knowledge of the payment history concerning the loan, the loan payoff amounts, modification attempts concerning the loan and communications by and between Wells Fargo and Plaintiff pertaining to the loan which is the subject of this Complaint. By way of further response, Defendant reserves the right to supplement this response as discovery proceeds.

DEFENDANT'S ANSWERS TO ADDITIONAL INTERROGATORIES

1. **Is Defendant merely the servicer of this Mortgage that is the subject of this action or the owner of the mortgage as well? If Defendant is not the 100% owner of this mortgage, please list the names and addresses of the entities and their percentage shares of the Note and Mortgage that is the subject of this action.**

ANSWER: Defendant is the owner of the Mortgage subject to the complaint and has not contracted out the servicing rights.

2. **Please list the entities which use the Taxpayer Identification Numbers that are referenced in all of the annual IRS Form 1098s that were issued by Defendant to Plaintiff reporting mortgage interest for each year that was paid by Plaintiff.**

ANSWER: Objection. Defendant objects to this Interrogatory to the extent it seeks documents protected by the attorney-client privileges and/or work product doctrine. Defendant further objects on the grounds that this Interrogatory is vague and ambiguous, overly broad in respect to time and scope and seeks information that is not relevant and not reasonably calculated to lead to the discovery of admissible evidence.

EXHIBIT G

December 8, 2008

Wachovia Bank, NA
Retail Credit Collections
FL 0503
PO Box 52117
Jacksonville, Florida 32201

Dear Wachovia:

Attached you will find a Notice of Intention to Foreclose notice sent to me on November 17th, 2008. Because until I received this letter, my account was current, I am uncertain as to why such a demand letter has been sent.

I have attempted to contact you to obtain a fax number or address to send a certified letter; yet collections will either hang-up or promise to call back with the information. It is however strange to note I am also receiving conflicting amounts in regards to what should bring this loan current.

Would you please check your records in regards to payment and interest schedules since the life of the loan and forward to me along with the original loan documentation?

Regards,

Brent E. Bentrim
Loan #000041200213089

Attachments

July 15, 2009

Susan Brown
Brock & Scott
Westpark Center
3800 Fernandina Road
Suite 110
Columbia, SC 29210

RE: Wachovia v. Brent Bentrim
Loan Number 000041200213089

VIA FACSIMILIE

Dear Ms. Brown:

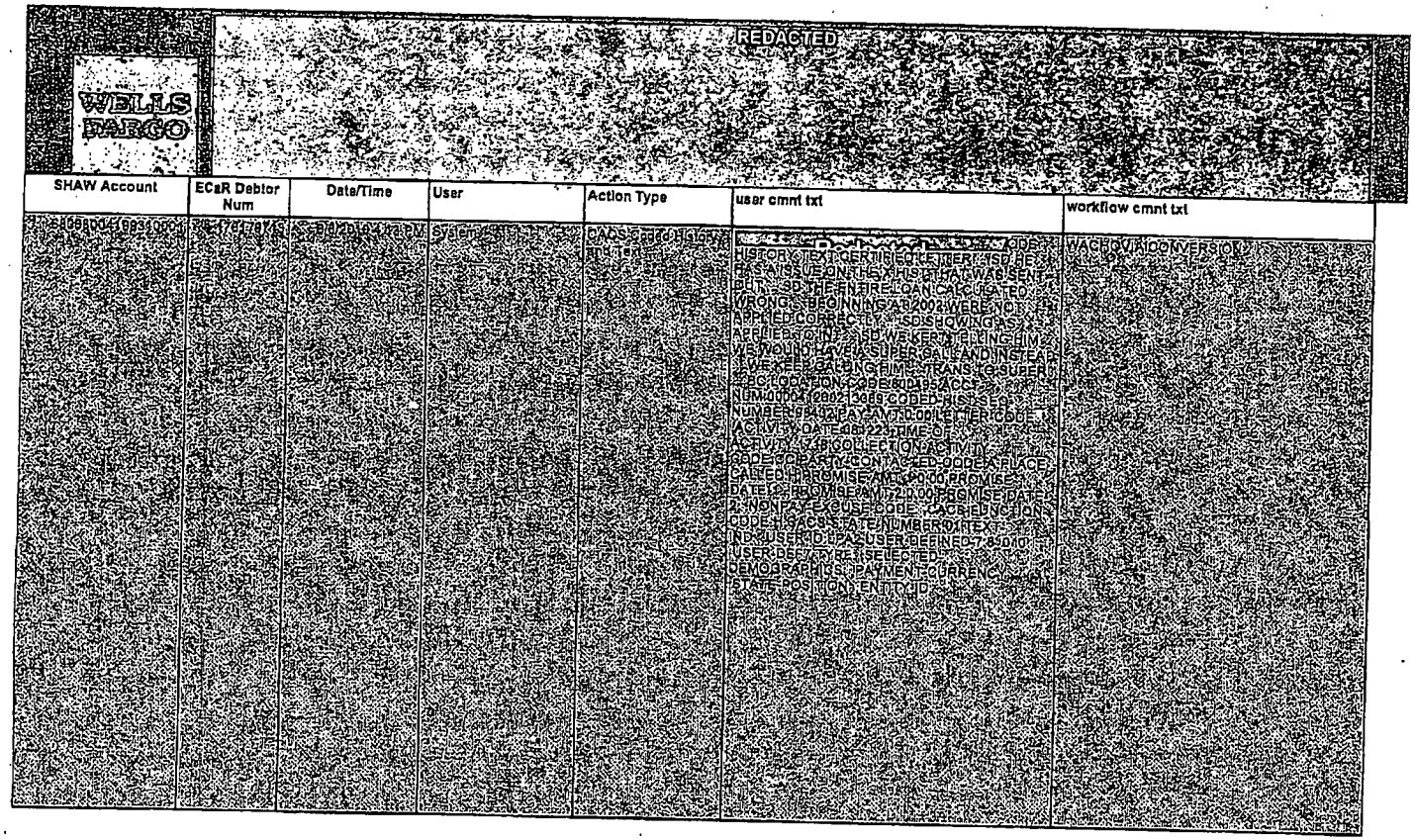
Having just received your fax communication today after returning from being out of town, I obviously will be unable to submit the quoted payment today. If you would please obtain a re-instatement amount from Wachovia through August 11, 2009 (when the next payment is due) I will re-instate promptly.

The matter still in dispute is how Wachovia is calculating and crediting loan principal and interest payments. While the payment is fixed every 60 months, subject to a no greater than 25% increase in the payment amount each additional period, there is no evidence of how interest and principal deductions are to be calculated.

Please request from your client how the interest accrued column is being calculated as they have not responded to such requests in the past. Should this calculation be spelled out in my loan document, please let me know where to find it.

Regards,

Brent E. Bentrim


WELLS FARGO
REDACTED
SHAW Account
ECaR Debtor Num
Date/Time
User
Action Type
user cmnt txt
workflow cmnt txt


REDACTED
REDACTED

Brent E. Bentrim

From: Brent E. Bentrim <brent@carolopolis.com>
Sent: Monday, July 19, 2010 11:31 AM
To: 'Ronald Johnson'
Subject: Wachovia/Wells Fargo

Mr. Johnson:

I attempted to contact Wachovia, now Wells Fargo last week to obtain a mailing address to send a certified letter (qualified written request). I am attempting to work with them on the loan interest and principal. The person said I had to speak with you and would only provide a PO Box.

While I mentioned that the case had been dismissed and I was unsure you were handling the case, they would not provide a physical address. Should I send the QWR to your office? Or do you have an address?

Thanks,

Brent E. Bentrim

Brent E. Bentrim

From: Ronald Johnson <Ronald.Johnson@brockandscott.com>
Sent: Wednesday, July 21, 2010 3:20 PM
To: brent@carolopolis.com
Subject: RE: Wachovia/Wells Fargo

Mr. Bentrim,

You can send it to me and I can pass it along to Wachovia.

Ronald Johnson
Attorney
803-454-3540 x1707

CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

From: Brent E. Bentrim [mailto:brent@carolopolis.com]
Sent: Monday, July 19, 2010 11:31 AM
To: Ronald Johnson
Subject: Wachovia/Wells Fargo

Mr. Johnson:

I attempted to contact Wachovia, now Wells Fargo last week to obtain a mailing address to send a certified letter (qualified written request). I am attempting to work with them on the loan interest and principal. The person said I had to speak with you and would only provide a PO Box.

While I mentioned that the case had been dismissed and I was unsure you were handling the case, they would not provide a physical address. Should I send the QWR to your office? Or do you have an address?

Thanks,

Brent E. Bentrim

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2012.0.2221 / Virus Database: 2441/5288 - Release Date: 09/23/12

July 21, 2010

Wells Fargo Bank, N.A.
PO Box 2248
Jacksonville, Florida 32203

Via Electronic Mail – Brock & Scott, Attorneys for Wachovia

RE: **Qualified Written Request**
Loan Number 000041200213089
10 Nicholson Street
Charleston, SC 29407

Dear Wells Fargo:

This letter shall serve as a qualified written request under Section 6 of the Real Estate Settlement Procedures Act (RESPA) which requires you to acknowledge my request within 20 days and attempt to resolve the issue within 60 days.

The following information on Wachovia/Wells Fargo servicing of the above referenced loan is requested:

1. Date Payments Received.
2. Total Payment Amount.
3. Interest Rate Applied to Payment (if more than 1 rate applied, please indicate number of days each rate was applied).
4. Fees applied to the account at any time and amount of said fees.
5. Evidence supporting calculation of Payoff Balance (statement dated 05/14/10) of $198,096.20.

Further, I am requesting:

1. Evidence of Wachovia/Wells Fargo's request for insurance documentation prior to the Forced Placed Insurance and finally,
2. Evidence to support required insurance in the amount of $250,000.

Your response should be forwarded to my mailing address:

49 Archdale Street, 2E
Charleston, SC 29401

Regards,

Brent E. Bentrim

Brent E. Bentrim

From: Brent E. Bentrim <brent@carolopolis.com>
Sent: Tuesday, September 21, 2010 11:16 AM
To: 'Ronald Johnson'
Subject: Qualified Written Request

Mr. Johnson:

I received a letter from Ms. Suzanne Brown acknowledging receipt of my QWR on July 21, 2010 and assuring me the requested information will be provided on or before today, as required under RESPA.

As the mail has already been delivered, and I have yet to receive a response, do you know if Wells Fargo is intending to reply to my request?

Thanks,

Brent

Brent E. Bentrim

From: Ronald Johnson <Ronald.Johnson@brockandscott.com>
Sent: Thursday, September 23, 2010 3:55 PM
To: brent@carolopolis.com
Subject: RE: Qualified Written Request

Mr. Bentrim,

I just today sent a follow up to Wachovia letting them know that you are pushing for a response. That's really all I can do. I feel certain they will eventually respond to your letter.

Ronald Johnson

From: Brent E. Bentrim [mailto:brent@carolopolis.com]
Sent: Tuesday, September 21, 2010 11:16 AM
To: Ronald Johnson
Subject: Qualified Written Request

Mr. Johnson:

I received a letter from Ms. Suzanne Brown acknowledging receipt of my QWR on July 21, 2010 and assuring me the requested information will be provided on or before today, as required under RESPA.

As the mail has already been delivered, and I have yet to receive a response, do you know if Wells Fargo is intending to reply to my request?

Thanks,

Brent

No virus found in this message.
Checked by AVG - www.avg.com
Version: 10.0.1390 / Virus Database: 1518/3807 - Release Date: 08/03/11

Brent E. Bentrim

From:	Brent E. Bentrim <brent@carolopolis.com>
Sent:	Tuesday, October 12, 2010 4:18 PM
To:	'Ronald Johnson'
Subject:	Follow-up on Qualified Written Request
Attachments:	Oct 12 2010.pdf

Mr. Johnson:

Attached you will find a letter notifying Wells Fargo they are past due on their reply to my QWR and requesting they produce the original Negotiated Promissory Note for my inspection.

In light of Wells Fargo's inability to produce principal and interest calculations and refusal to accept my settlement offer last December, I can only conclude neither Wells Fargo nor Wachovia was ever in possession of the note originated by First Union and is unable to determine to who the true owner is.

Please let me know if your firm is no longer representing Wells Fargo in this matter.

Regards,

Brent E. Bentrim

October 12, 2010

Wells Fargo Bank, N.A.
PO Box 2248
Jacksonville, Florida 32203

Via Electronic Mail – Brock & Scott, Attorneys for Wachovia

RE: **Qualified Written Request** (dated 7/21/2010)
Loan Number 000041200213089
10 Nicholson Street
Charleston, SC 29407

Dear Wells Fargo:

This letter shall serve to remind you a Qualified Written Request under the Real Estate Settlement Procedures Act, codified as Title 12 section 2605(e) of the United States Code, provides substantial penalties and fines for non-compliance or failure to answer my questions provided in my letter dated July 21, 2010 within sixty (60) days of its receipt. Your response is past due.

Since August 2007, I have brought to your attention on several occasions my belief that there were significant discrepancies in the manner you were calculating principal and interest on the above referenced loan and therefore misapplying payments.

I have serious concerns that after nearly 36 months you have been unable to provide this information.

I therefore request that you produce within 10 days for my inspection the Negotiated Promissory Note with my original signature signed on March 12, 2002.

In the event you do not supply me with the very security it will be a positive confirmation on your part that you have no standing or security interest in my property.

Please govern yourself accordingly.

Regards,

Brent E. Bentrim

Carolopolis
Fiduciary Counsel, Inc.

FROM: **Brent E. Bentrim**
Managing Director
Chief Investment Officer

49 Archdale Street
Suite 2E
Charleston, SC 29401
843.278.0061 Fax 888.819.3724

TO: April O'Quinn

FAX: 904-489-8869

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October 25, 2010

Wells Fargo Foreclosure Department
c/o April O'Quinn
PO Box 2248
Jacksonville, FL 32203-9952

VIA FACSIMILE – April O'Quinn
VIA ELECTRONIC MAIL – Ronald Johnson, Brock & Scott

Dear Wells Fargo:

I hope that you will be able to stop further harassing phone calls that attempt to induce me into a loan modification or selling my home. These calls are being made to my office and causing issues with my ability to work.

Although I am skeptical Wells Fargo has standing in this account as my own review of First Union, Wachovia and Wells Fargo's archived financial statements cannot find this series of HELOCs 'on the books,' I am happy to provide copies of the various discrepancies in payoff amounts that were placed on my personal credit reports as well as statements mailed through the United States Postal Service.

My original question as to the accurate servicing of this account was based off the variances between demand letters, statements sent in November and December 2008 and the Consumer Loan Payment History provided by Sherrie Caudill.

Ms. Caudill correct asserts my 'loan is a Daily Simple Interest account.' However a statement from Wachovia dated only 6 days later reflects a payoff amount $6223.27 greater. Because there is no pre-payment penalty on this account, how can this be?

This summer as I began to receive statements from Wells Fargo indicating forced placed insurance on my account, payoffs were shown in the amount of $197,876.33 as of 7-11-09 and $198,096.20 as of 8/11/09.

Although I question the correctness of the Consumer Loan Payment History, it is clear to determine Wells Fargo applied nearly $25,000 in interest to the account in only 9 months. While the interest rate on the account was only 3.49% annually over the period, Wells Fargo was applying a staggering 27.34% annualized rate of interest to this account.

I do not believe there is any question that the loan servicer on this account lacked the factual basis to ever determine if the account was current, in arrears or in default, yet 'on a hunch' negatively impacted my credit and wrongfully foreclosed.

I would further like to remind you a Qualified Written Request under the Real Estate Settlement Procedures Act, codified as Title 12 section 2605(e) of the United States Code, provides substantial penalties and fines for non-compliance or failure to answer my questions provided in my letter dated July 21, 2010 within sixty (60) days of its receipt. Your response is past due.

Also, my request to inspect the original Negotiate Promissory Note dated March 12, 2002 is due this week.

Regards,

Brent E. Bentrim

Brent E. Bentrim

From: Ronald Johnson <Ronald.Johnson@brockandscott.com>
Sent: Tuesday, October 12, 2010 5:49 PM
To: brent@carolopolis.com
Subject: RE: Follow-up on Qualified Written Request

Mr. Bentrim,

I have passed your comments and your latest letter to my client contact at Wachovia/Wells. I will certainly let you know if I receive any information. We are not currently moving forward with a foreclosure. That may change, but as of now – our file is on HOLD.

Ronald Johnson

From: Brent E. Bentrim [mailto:brent@carolopolis.com]
Sent: Tuesday, October 12, 2010 4:18 PM
To: Ronald Johnson
Subject: Follow-up on Qualified Written Request

Mr. Johnson:

Attached you will find a letter notifying Wells Fargo they are past due on their reply to my QWR and requesting they produce the original Negotiated Promissory Note for my inspection.

In light of Wells Fargo's inability to produce principal and interest calculations and refusal to accept my settlement offer last December, I can only conclude neither Wells Fargo nor Wachovia was ever in possession of the note originated by First Union and is unable to determine to who the true owner is.

Please let me know if your firm is no longer representing Wells Fargo in this matter.

Regards,

Brent E. Bentrim

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