

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

U.S. Bank National Association, as Trustee for the
registered holders of Credit Suisse Seasoned Loan
Trust 2006-1, Home Equity Pass-Through Certificates,
Series 2006-1,
 Plaintiff

vs.

Anita Joye Bethea a/k/a Anita Joy; Jackson D. Joye, Jr.
a/k/a Jackson Joy, Jr.,

Defendant(s)

Check box above indicating submitting party.

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

CASE NO. 2015 28-383
2014-CP-48-01395

MOTION INFORMATION
FORM AND COVER SHEET

RECEIVED
MAY 16 2016
SC Court of Appeals

JOYCE HODDGHILL
CLERK OF COURT
KERSHAW COUNTY, S.C.
2016 APR 26 AM 11:32
RECEIVED FOR RECORD

Name, S.C. Bar no. and address of Plaintiffs attorney.
William P. Stork, SC Bar# 100242
3800 Fernandina Road, Suite 110
Columbia, SC 29210
E-mail: William.Stork@brockandscott.com
Telephone: 803-454-3540 Fax: 803-454-3541

Name, S.C. Bar no. and address of Defendant's attorney.
Brian L. Boger, Esq.
Law Offices of Brian L. Boger
PO Box 65
Columbia, SC 29202
Telephone: 803-252-2880

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 Reconsider

Estimated Time Needed: 15 Minutes

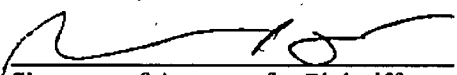
Court Reporter Needed: Yes

SECTION II: Motion Type

Written Motion attached

Form Motion/Order

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


Signature of Attorney for Plaintiff

4/25/16
Date Submitted

SECTION III: Motion Fee

Paid-Amount: \$25.00

EXEMPT:

- 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 to Stay Bankruptcy
- Motion for Publication Motion for Execution (Rule 69, SRCP)
- Proposed Order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions.

Name of Court Reporter: _____

OTHER

JUDGE'S SECTION

Motion fee to be paid upon filing of the attached Order.

Other: _____

JUDGE: _____
CODE: _____
DATED: _____

CLERKS VERIFICATION

Collected by: _____
(print name)

Date Filed: _____

MOTION FEE COLLECTED: _____

CONTESTED—AMOUNT DUE: _____

SCCA/233 (11/03)

B&S No.: 15-08409

EXHIBIT
C

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2015-CP-28-00383

U.S. Bank National Association, as Trustee for
the registered holders of Credit Suisse
Seasoned Loan Trust 2006-1, Home Equity
Pass-Through Certificates, Series 2006-1,

Plaintiff,

v.

Anita Joye Bethea a/k/a Anita Joy; Jackson D.
Joye, Jr. a/k/a Jackson Joy, Jr.,

Defendants.

**NOTICE OF MOTION AND MOTION TO
RECONSIDER**

FILED FOR RECORD
2016 APR 26 AM 11:32
JOYCE HEGDORN
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO: BRIAN BOGER ATTORNEY FOR DEFENDANT ANITA JOYE BETHEA:

YOU WILL PLEASE TAKE NOTICE that the attorney for the Plaintiff will, on the tenth:(10th) day after service hereof, or as soon thereafter as counsel may be heard, move before the Honorable Robert E. Hood as Resident Judge of the Fifth Circuit, to reconsider that certain Order of Reference allowing Defendant's claim of a violation of the South Carolina Unfair Trade Practices Act to be bifurcated from the foreclosure action and placed on the jury docket. Plaintiff makes this motion to reconsider pursuant to all applicable South Carolina Rules of Civil Procedure, including but not limited to, Rules 53, 59(e), and 71. The basis for said motion is as follows:

- (1) This is an action for the foreclosure of real property;
- (2) Only counterclaims that are *both* permissive and legal may be heard by a jury;
- (3) The South Carolina Supreme Court held that by bringing a permissive counterclaim in a foreclosure action, the Defendant waives their right to a jury trial, *C&S Real Estate Services, Inc. v. Massengale*, 290 S.C. 299, 301, 350 S.E.2d 191, 193 (1986);
- (4) While legal in nature, a counterclaim for an alleged violation of the South Carolina Unfair Trade Practices Act is permissive since it merely seeks money damages and will not affect the enforceability of the underlying Note and Mortgage;
- (5) For a counterclaim to be compulsory, thereby entitled to a jury trial, it must effect the enforceability of the Note and Mortgage,

- (6) The remedy for a violation of the South Carolina Unfair Trade Practices Act under S.C. Code Ann. §39-5-110 is monetary damages not to exceed five thousand dollars (\$5,000.00) per violation.
- (7) This penalty has absolutely no effect on the enforceability of the Note and Mortgage and, therefore, is clearly permissive.
- (8) The South Carolina Supreme Court has specifically ruled that a counterclaim for an alleged violation of the South Carolina Unfair Trade Practices Act, when brought as a counterclaim in an action for the foreclosure of real property, is properly referred to the Master-in-Equity. *Advance Int'l, Inc. v. N.C. Nat'l Bank of S.C.*, 316 S.C. 266, 270-71, 449 S.E.2d 580, 582-83 (Ct. App. 1994), *aff'd in part, vacated on other grounds*, 320 S.C. 532, 466 S.E.2d 367 (1996).

This Motion is supported by the South Carolina Rules of Civil Procedure, relevant case law, and any discovery, affidavits, or memoranda presented.

WHEREFORE, Plaintiff prays this Honorable Court for an order:

1. Rescinding the bifurcation of the Defendant's counterclaim for an alleged violation of the South Carolina Unfair Trade Practices Act;
2. Referring the case in whole to be heard by the Honorable Jeffrey Marc Tzerman as Master-in-Equity for Kershaw County;
3. Granting such other and further relief as the Court may deem just and proper.



William P. Stork, SC Bar #100242
Brock & Scott, PLLC
3800 Fernandina Road, Suite 110
Columbia, SC 29210
Phone 803-454-3540 Fax 803-454-3541
Attorney for Plaintiff

Dated: April 25, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

U.S. Bank National Association, as Trustee for
the registered holders of Credit Suisse
Seasoned Loan Trust 2006-1, Home Equity
Pass-Through Certificates, Series 2006-1,

Plaintiff,

v.

Anita Joye Bethea a/k/a Anita Joy; Jackson D.
Joye, Jr. a/k/a Jackson Joy, Jr.,

Defendants.

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: 2015-CP-28-00383

RECEIVED

CERTIFICATE OF MAILING

MAY 16 2016

SC Court of Appeals

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

2016 APR 26 AM 11:32

FILED FOR REI

The undersigned hereby certifies that on April 25th, 2016

he served a copy of Plaintiff's Notice of Motion and Motion to Reconsider, and Certificate of Mailing upon the person(s) below by depositing the same in the US Mail with proper postage affixed and addressed as follows:

The Honorable Joyce McDonald Kershaw County Clerk of Court P.O. Box 1557 Camden, SC 29021	The Honorable Robert E. Hood Resident Judge of the Fifth Judicial Circuit P.O. Box 192 Columbia, SC 29202
Brian L. Boger, Esq. Law Offices of Brian L. Boger PO Box 65 Columbia, SC 29202	

Caroline Laster
Paralegal to William Stork, Esq
Brock and Scott, PLLC

Dated: April 25th, 2016
Columbia, South Carolina