

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

William C. Tindal, Special Referee

RECEIVED

Case No.: 12-CP-29-0892

JUN 03 2016

SC Court of Appeals

Scott L. Butler and Jacqueline Butler,

Appellants,

New York Community Bank,

Respondent.

MOTION FOR SUPERSEDEAS OF ORDER AND JUDGMENT OF FORECLOSURE AND
SALE AND ORDER SETTING BOND

Comes now Appellants, SCOTT L. BUTLER and JACQUELINE BUTLER, through their undersigned counsel and pursuant to Rule 241(c), SCRAP and all other applicable law, seeks a supersedeas of the Judgment of Foreclosure and Order setting bond. In support of said Motion, Appellants would state as follows:

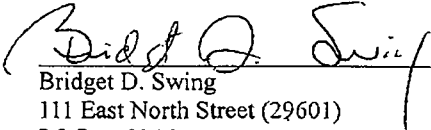
1. The underlying case in this matter is a foreclosure of the Appellants principle residence located in Lancaster County, South Carolina;
2. A Motion for Leave to file a 60(b) Motion in the lower court was filed with the Court of Appeals on April 21, 2016. A decision has not yet been issued as of the date of this Motion.
3. An Order setting bond was entered by lower court on May 2, 2016 and an appeal of that Order was filed with this Court on June 2, 2016.

4. Appellants are seeking leave to file a Motion to Vacate the underlying Order and Judgment of Foreclosure and Sale based on the fact that approximately fifty percent (50%) of the Appellants real property that is the subject of the underlying South Carolina Order and Judgment of Foreclosure and Sale is located in the State of North Carolina and it is Appellants position that the lower court has no jurisdiction over the property located in North Carolina and the Order of Foreclosure and Sale are thus void and subject to being vacated under SCRCP 60(b).
5. Appellants additionally have appealed the Order setting bond based on their position that the bond amount is improper based on the fact that the lower court has no jurisdiction over a great portion of the property it is seeking to foreclose as it is property located in the State of North Carolina.
6. Additionally, Appellants have filed a Complaint for Declaratory Relief and Other Relief with the Superior Court of North Carolina seeking that Court's determination as to whether a court in South Carolina has jurisdiction over Plaintiff's residential real property situated in the State of North Carolina as evidenced by the North Carolina General Warranty Deed and land surveys filed in Mecklenburg County North Carolina and Lancaster County, South Carolina. A copy of said Complaint is attached hereto as Exhibit A.

Wherefore, based on the above jurisdictional issues, the Appellants seek a supersedeas stay of the currently scheduled foreclosure sale date of June 6, 2016 to allow the above issues to be determined via a full evidentiary hearing.

Respectfully submitted,

June 3, 2016



Bridget D. Swing
111 East North Street (29601)
PO Box 8246
Greenville, SC 29604
Mr. William Jeffrey Barnes
1515 North Federal Highway
Suite 300
Boca Raton, Florida 33232
Pro Hac Vice

Attorneys for Defendants Scott and Jacqueline
Butler

Other Counsel of Record

Magalie A. Creech
Finkel Law Firm, LLC
PO Box 71727
North Charleston, SC 29415
Attorney for Respondent

Mr. Adam S. Tesh,
Richardson Plowden & Robinson, P.A.
PO Drawer 7788
Columbia, SC 29202
Attorney for LVNV Funding, LLC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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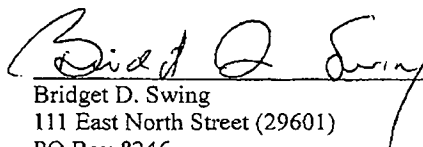
Certificate of Service

The undersigned attorney of record for Appellants Scott L. Butler and Jacqueline Butler hereby certifies that the foregoing Motion was personally served upon the following addressees via regular mail via electronic mail:

Ms. Magalie A. Creech, Finkel Law Firm, 4000 Faber Place, Suite 450, North Charleston, SC 29405

Mr. Adam S. Tesh, Esq., 1900 Barnwell Street, Columbia, SC 29201

This the ^{3rd} day of June, 2016


Bridget D. Swing
111 East North Street (29601)
PO Box 8246
Greenville, SC 29604

Mr. William Jeffrey Barnes
22174 Bella Lago Drive, Suite 501
Boca Raton, FL 33433
Pro Hac Vice

Attorneys for Defendants Scott and Jacqueline
Butler

EXHIBIT A

STATE OF NORTH CAROLINA		File No. 16CVS 8454
_____ Mecklenburg County		In The General Court Of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division
Name Of Plaintiff Scott L. Butler and Jacqueline Butler		CIVIL SUMMONS <input type="checkbox"/> ALIAS AND PLURIES SUMMONS (ASSESS FEE)
Address 30245 Camden Lane		
City, State, Zip Fort Mill SC 29715		
VERSUS		
Name Of Defendant(s) New York Community Bank C/O Corporation Service Company		Date Original Summons Issued _____ Date(s) Subsequent Summons(es) Issued _____
To Each Of The Defendant(s) Named Below:		
Name And Address Of Defendant 1 New York Community Bank c/o Corporation Service Company 80 State Street Albany NY 12207-2543		Name And Address Of Defendant 2
<p>A Civil Action Has Been Commenced Against You!</p> <p>You are notified to appear and answer the complaint of the plaintiff as follows:</p> <ol style="list-style-type: none"> 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and 2. File the original of the written answer with the Clerk of Superior Court of the county named above. <p>If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.</p>		
Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff) Bridget D. Swing Law Office of Bridget D. Swing 111 E. North Street Greenville, SC 29601		Date Issued 5/16/16 Time 12:00 <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM Signature _____ <input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
<input type="checkbox"/> ENDORSEMENT (ASSESS FEE) This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.		Date Of Endorsement _____ Time _____ <input type="checkbox"/> AM <input type="checkbox"/> PM Signature _____ <input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk Of Superior Court
<p>NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.</p>		
AOC-CV-100, Rev. 6/11 © 2011 Administrative Office of the Courts		(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)
- Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2		
Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)
- Other manner of service (specify)

Defendant WAS NOT served for the following reason:

Service Fee Paid \$	Signature Of Deputy Sheriff Making Return
Date Received	Name Of Sheriff (Type Or Print)
Date Of Return	County Of Sheriff

STATE OF NORTH CAROLINA File No. 16-2158454

Mecklenburg County

In The General Court Of Justice
 District Superior Court Division

Name Of Plaintiff
Scott L. Butler and Jacqueline Butler
Address
30245 Camden Lane
City, State, Zip
Fort Mill SC 29715

CIVIL SUMMONS
 ALIAS AND PLURIES SUMMONS (ASSESS FEE)
G.S. 1A-1, Rules 3, 4

VERSUS
Name Of Defendant(s)
New York Community Bank
C/O Corporation Service Company

Date Original Summons Issued
Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
New York Community Bank
c/o Corporation Service Company
80 State Street
Albany NY 12207-2543

Name And Address Of Defendant 2

A Civil Action Has Been Commenced Against You!
You are notified to appear and answer the complaint of the plaintiff as follows:
1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.
If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If None, Address Of Plaintiff)
Bridget D. Swing
Law Office of Bridget D. Swing
111 E. North Street
Greenville, SC 29601

Date Issued: 5/11/16 Time: 12:00
Signature: [Handwritten Signature]
 AM PM
 Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement: _____ Time: _____
Signature: _____
 AM PM
 Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
--------------------	---	--------------------------

- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
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Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (Type Or Print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA **FILED** File No. **16CV58459**

Mecklenburg County In The General Court Of Justice
 District Superior Court Division

2016 MAY 16 AM 10:59

GENERAL CIVIL ACTION COVER SHEET
 INITIAL FILING SUBSEQUENT FILING
 Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Plaintiff 1
 Scott L. Butler and Jacqueline Butler
 30245 Camden Lane
 Fort Mill South Carolina 29715

Name And Address Of Plaintiff 2

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)
 Bridget D. Swing
 Law Office of Bridget D. Swing PLLC
 111 E. North Street
 Greenville, SC 29601

Telephone No. (864) 551-4353 Cell Telephone No.
 NC Attorney Bar No. 41622 Attorney E-Mail Address bswinglaw@gmail.com

VERSUS

Name Of Defendant 1
 New York Community Bank
 c/o Corporation Service Company
 80 State Street
 Albany, NY 12207-2543

Name Of Defendant 2
 Unnamed Defendant

Summons Submitted Yes No Initial Appearance In Case Change of Address

Name Of Firm
 Law Office of Bridget D. Swing, PLLC
 FAX No. (864-551-4353)

Counsel for All Plaintiffs All Defendants Only (List party(ies) represented)

Summons Submitted Yes No

Jury Demanded In Pleading Amount in controversy does not exceed \$15,000
 Complex Litigation Stipulate to arbitration

TYPE OF PLEADING

(check all that apply)

<input type="checkbox"/> Amend (AMND) Assess Motion Fee <input type="checkbox"/> Amended Answer/Reply (AMND-Response) Assess Motion Fee <input type="checkbox"/> Amended Complaint (AMND) Assess Motion Fee <input type="checkbox"/> Answer/Reply (ANSW-Response) <input type="checkbox"/> Change Venue (CHVN) Assess Motion Fee <input checked="" type="checkbox"/> Complaint (COMP) <input type="checkbox"/> Confession Of Judgment (CNFJ) <input type="checkbox"/> Consent Order (CONS) <input type="checkbox"/> Consolidate (CNSL) Assess Motions Fee <input type="checkbox"/> Contempt (CNTP) Assess Motions Fee <input type="checkbox"/> Continue (CNTN) Assess Motions Fee <input type="checkbox"/> Compel (CMPL) Assess Motions Fee <input type="checkbox"/> Counterclaim vs. (CTCL) Assess Court Costs <input type="checkbox"/> Crossclaim (List On Back) (CRSS) Assess Court Costs <input type="checkbox"/> Dismiss (DISM) Assess Court Costs <input type="checkbox"/> Exempt/Waive Mediation (EXMD) Assess Motions Fee <input type="checkbox"/> Extend Status Of Limitations, Rule 9 (ESOL) Assess Motions Fee <input type="checkbox"/> Extend Time For Complaint (EXCO) Assess Motions Fee	<input type="checkbox"/> Failure To Join Necessary Party (FJNP) Assess Motions Fee <input type="checkbox"/> Failure To State A Claim (FASC) <input type="checkbox"/> Improper Venue/Division (IMVN) Assess Motions Fee <input type="checkbox"/> Intervene (INTR) Assess Motions Fee <input type="checkbox"/> Interplead (OTHR) Assess Motions Fee <input type="checkbox"/> Lack Of Jurisdiction (Person) (LJPN) Assess Motions Fee <input type="checkbox"/> Lack Of Jurisdiction (Subject Matter) (LJSM) Assess Motions Fee <input type="checkbox"/> Rule 12 Motion In Lieu Of Answer (MDLA) Assess Motions Fee <input type="checkbox"/> Sanctions (SANC) Assess Motions Fee <input type="checkbox"/> Set Aside (OTHR) Assess Motions Fee <input type="checkbox"/> Show Cause (SHOW) Assess Motions Fee <input type="checkbox"/> Transfer (TRFR) Assess Motions Fee <input type="checkbox"/> Third Party Complaint (List Third Party Defendants on Back) (TPCL) <input type="checkbox"/> Vacate/Modify Judgment (VCMD) Assess Motions Fee <input type="checkbox"/> Withdraw as Counsel (WDCN) Assess Motions Fee <input type="checkbox"/> Other (specify and list each separately)
---	---

NOTE: See Side Two for a list of motions not subject to the motions fee.

CLAIMS FOR RELIEF

<input type="checkbox"/> Administrative Appeal (ADMA) <input type="checkbox"/> Appointment Of Receiver (APRC) <input type="checkbox"/> Attachment/Garnishment (ATTC) <input type="checkbox"/> Claim And Delivery (CLMD) <input type="checkbox"/> Collection On Account (ACCT) <input type="checkbox"/> Condemnation (CNOM) <input type="checkbox"/> Contract (CNTR) <input type="checkbox"/> Discovery Scheduling Order (DSCH)	<input type="checkbox"/> Injunction (INJU) <input type="checkbox"/> Medical Malpractice (MDML) <input type="checkbox"/> Minor Settlement (MSTL) <input type="checkbox"/> Money Owed (MNYO) <input type="checkbox"/> Negligence - Motor Vehicle (MVNG) <input type="checkbox"/> Negligence - Other (NEGO) <input type="checkbox"/> Motor Vehicle Lien G.S. 44A (MVLN)	<input type="checkbox"/> Limited Driving Privilege - Out-Of-State Convictions (PLDP) <input type="checkbox"/> Possession Of Personal Property (POPP) <input type="checkbox"/> Product Liability (PROD) <input type="checkbox"/> Real Property (RLPR) <input type="checkbox"/> Specific Performance (SPPR) <input checked="" type="checkbox"/> Other (specify and list separately)
---	--	--

Date **May 13 2016** Signature Of Attorney/Party *[Signature]*

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Administrative Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in civil actions, the filing party must either include a General Civil (AOC-CV-751), Motions (AOC-CV-752) or Court Action (AOC-CV-753) cover sheet (Over)

AOC-CV-751, Rev. 6/11, © 2011 Administrative Office of the Courts

DO NOT CHARGE MOTIONS FEE

Assess costs (COST) Including Attorney's Fees (ATTY)
Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
Modification Of Child Support In IV-D Actions (MSUP)
Notice Of Dismissal With Or Without Prejudice (VOLD)
Petition To Sue As Indigent (OTHR)

DO NOT CHARGE MOTIONS FEE. FEES IN GS 7A-308 APPLY

Assert Right Of Access (ARAS)
Substitution Of Trustee (Judicial Forclosure) (RSOT)
Supplemental Procedures (SUPR)

DO NOT CHARGE MOTIONS FEE. OTHER FEES APPLY

Motion For Out-of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter (Out Of State Attorney/Pro Hac Vice Fee)
Request For Subpoena By Out-Of-State Attorney

No.	<input type="checkbox"/> Additional Plaintiff(s)

No.	<input type="checkbox"/> Additional Defendant(s)	<input type="checkbox"/> Third Party Defendant(s)	Summons Submitted
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No

Plaintiff(s) Against Whom Counterclaim Asserted

Defendant(s) Against Whom Crossclaim Asserted

FILED

2016 MAY 16 AM 10: 59

IN THE SUPERIOR COURT FOR MECKLENBURG COUNTY MECKLENBURG CO., C.S.C.
NORTH CAROLINA

SCOTT L. BUTLER and JACQUELINE BUTLER,)
)
 Plaintiffs,)
 v.)
)
 NEW YORK COMMUNITY BANK,)
)
 Defendant.)

CIVIL ACTION FILE No.: 16-CVS-8454

COMPLAINT FOR DECLARATORY
RELIEF AND OTHER RELIEF

Plaintiffs SCOTT L. BUTLER and JACQUELINE BUTLER, by and through their undersigned attorneys, file their Complaint for Declaratory Relief and Other Relief and sue Defendant NEW YORK COMMUNITY BANK, and state:

A. Parties and Jurisdiction

1. This is an action for declaratory relief and for other relief which is properly before this Court pursuant to NCGS 1-253 *et seq.*, which is the North Carolina Uniform Declaratory Judgments Act.

2. Plaintiff SCOTT L. BUTLER is and was at all times material hereto a *sui juris* resident of the State of South Carolina and over the age of eighteen (18), and is, together with Plaintiff JACQUELINE BUTLER, one of the two legal owners of the residential real property identified herein *infra*.

3. Plaintiff JACQUELINE BUTLER is and was at all times material hereto a *sui juris* resident of the State of South Carolina and over the age of eighteen (18), and is, together with Plaintiff SCOTT L. BUTLER, one of the two legal owners of the residential real property identified herein *infra*.

4. Defendant NEW YORK COMMUNITY BANK (hereafter "NYCB or "Defendant") is and was at all times material hereto a foreign (non-North Carolina incorporated) banking and lending institution which is subject to the jurisdiction of this Court as it has sought, albeit in an action filed in another state, to seek to foreclose upon the residential real property the subject of this action which real property is situated in Mecklenburg County, North Carolina and thus within the jurisdiction of this Court.

5. Plaintiffs SCOTT L. BUTLER and JACQUELINE BUTLER will be referred to herein as "the Butlers" unless denominated otherwise.

6. This action concerns residential real property which is located and situated in Mecklenburg County, North Carolina, and thus venue of this action is proper in this Court.

B. Background Material Facts

7. On or about October 30, 2006, the Butlers purchased certain residential real property legally described as Lot 718 of Bridgehampton Subdivision, Phase 10, Map 3 as shown on plat recorded in Book 42 at Page 81 in the Mecklenburg County Public Registry, with a street address of 30245 Camden Lane, Fort Mill, South Carolina 29715 (hereafter the "Property"). A copy of the North Carolina General Warranty Deed and Mecklenburg County Register of Deeds cover page is attached hereto marked Exhibit "A" and incorporated herein by reference.

8. The Plat survey of the Property (a copy of the original and revised attached hereto and marked Composite Exhibit "B" and incorporated herein by reference) was provided to Plaintiffs at the time of purchase of the Property. The survey of the subdivision where Plaintiff's property is located was filed with the Register of Deeds of Mecklenburg County, North Carolina on April 16, 2004 (survey and cover page from Register of Deeds of Mecklenburg County, North Carolina showing recording of Map 42, page 81-82, Exhibit "C" attached hereto and

incorporated herein by reference) and upon information and belief was also filed with the Lancaster County Register of Deeds.

9. All of the above referenced survey maps show that over 50% of Plaintiff's property lies in the State of North Carolina. Specifically, the revised survey attached hereto in Exhibit B shows and demonstrates that 16,466 square feet of the Property lies in the State of North Carolina, which is 69.3% of the total lot footage of the Property.

10. Defendant commenced a judicial foreclosure action in Lancaster County, South Carolina against the Property which was assigned Lancaster County, South Carolina Court of Common Pleas Case No. 12-CP-29-0892 (hereafter the "South Carolina Foreclosure Action").

11. Defendant never, at any time, commenced a foreclosure action against that portion of the Property which is situated in the State of North Carolina.

12. The South Carolina Foreclosure Action proceeded to summary judgment where a final summary judgment was entered against Plaintiffs herein and in favor of NYCB (Defendant herein).

13. No judgment or any other ruling has been entered by any court of this State against that portion of the Property which is located in this State, and no order or judgment of any court was ever issued which would have provided the South Carolina Court of Common Pleas with jurisdiction to foreclose upon that portion of the Property which is situated in this State. Defendant also never sought or obtained any order of court to permit it to seek to foreclose on North Carolina property (a) by filing an action solely in South Carolina or (b) without having to institute an action for foreclosure in North Carolina.

14. The South Carolina Foreclosure Action is currently on appeal, and there is a pending request to the South Carolina Court of Appeals for permission for the Butlers to file a Rule 60(b) Motion to seek to vacate the Final Judgment in the subject action.

15. The Butlers have constitutional rights as to the majority portion of the Property which is situated in this State including but not limited to the rights under the North Carolina Warranty Deed; rights of due process; and the right not to have their property taken by a court which has no jurisdiction over their Property, which rights have been wrongfully interfered with by the actions of the Defendant which, by its actions in South Carolina, have resulted in detriment and damage to the Butlers.

16. In view of the totality of the circumstances, the Butlers are in doubt as to their rights under the Note and Deed contracts.

COUNT I: DECLARATORY RELIEF

17. Plaintiffs reaffirm and reallege paragraphs 1 through 15 hereinabove as if set forth more fully hereinbelow.

18. This is an action for declaratory relief which is being brought pursuant to North Carolina's version of the Uniform Declaratory Judgments Act to declare that Defendant NYCB did not foreclose and could not have foreclosed on the Property which is situated in North Carolina through an action initiated solely in South Carolina; that the South Carolina court had no jurisdiction over the Property in North Carolina for any purpose; that the Plaintiffs' constitutional rights were wrongfully interfered with; that the Plaintiffs were denied their rights of due process; and that a significant portion of the Property does in fact lie in North Carolina (more than 50%).

19. Pursuant to NCGS 1-253, this Court has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed, and that the declaration sought may be either affirmative or negative in form.

20. NCGS 1-254 provides that any person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a constitution, statute, municipal charter, contract, or franchise may have determined any question of construction or validity arising under the instrument, constitution, statute, municipal charter, contract or franchise and obtain a declaration of rights, status, or other legal relations thereunder, and that a contract may be construed either before or after there has been a breach thereof.

21. NCGS 1-264 expressly provides that the Act is declared to be remedial and that its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

22. NCGS 1-256 provides that the enumeration in sections 1-254 and 1-255 does not limit or restrict the exercise of the general powers conferred in section 1-253 in any proceedings where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

23. Plaintiffs and Defendant are "persons" within the meaning and definition of "person" pursuant to NCGS 1-265.

24. Plaintiffs are persons who have an interest under a deed and written contracts and instruments and whose rights, status, or other legal relations are affected by the contracts and instruments and Defendant's actions in connection therewith, and Plaintiffs may thus have

determined any question of construction or validity arising under the instruments and contracts and obtain a declaration of rights, status, or other legal relations thereunder.

25. In view of the matters set forth above, there is an actual controversy concerning:

(a) whether a court in South Carolina has jurisdiction over the Plaintiffs' residential real property situated in North Carolina for purposes of foreclosure or otherwise;

(b) whether Defendant may foreclose on Plaintiffs' North Carolina property without instituting an action for foreclosure in North Carolina;

(c) whether the South Carolina court impeded upon the jurisdiction of this Court and usurped same through its actions;

(d) whether the actions of the South Carolina court were constitutional;

(e) whether the actions of the Defendant and the South Carolina court infringed on Plaintiffs' rights of due process as to their North Carolina property;

(f) whether the Defendant's actions resulted in interference with the Plaintiffs' rights under the North Carolina Warranty Deed; and

(g) whether the actions undertaken by the Defendants were lawful,

which actual controversy is properly resolved by this action for Declaratory Relief.

26. NCGS 1-259 provides that further relief based on a declaratory judgment may be granted when necessary or proper. Pursuant thereto, Plaintiffs request, in connection with the declaratory relief sought herein, that this Court issue a preliminary injunction barring any foreclosure, sale, conveyance, or other disposition of their North Carolina Property pending the full disposition of this action on the merits, and a permanent injunction forever barring any the Defendant from seeking or attempting to foreclose on the Property if it is determined that the

Defendant had no standing or other legal reason to interfere with the Plaintiffs' North Carolina Property.

27. As the disposition of this action on the merits will require the determination of multiple issues of fact, the trial of such issues of fact are, pursuant to NCGS 1-261, to be in the same manner as issues of fact are tried in determined in civil actions, and Plaintiffs thus demand trial by jury of all issues of fact.

28. Plaintiffs also demand an award of costs as may be found by this Court to be equitable and just pursuant to NCGS 1-263.

WHEREFORE, Plaintiffs demand that the court adjudge:

(a) that the court in South Carolina has no jurisdiction over the Plaintiffs' residential real property situated in North Carolina for purposes of foreclosure or otherwise and never did;

(b) that Defendant could not foreclose on Plaintiffs' North Carolina property without instituting an action for foreclosure in North Carolina;

(c) that the South Carolina court impeded upon the jurisdiction of this Court and usurped same through its actions;

(d) that the actions of the South Carolina court were unconstitutional;

(e) that the actions of the South Carolina court infringed on Plaintiffs' rights of due process as to their North Carolina property;

(f) that the Defendant's actions resulted in interference with the Plaintiffs' rights under the North Carolina Warranty Deed;

(g) that the actions undertaken by the Defendants and the South Carolina court are unlawful;

(h) that the Plaintiffs recover their costs as provided by law; and

(i) any other and further relief which is just and proper.

Dated this 12th day of May, 2016.

Jeff Barnes, Esq.
to seek admission *pro hac vice*
W. J. Barnes, P.A.
Florida office:
1515 North Federal Highway
Suite 300
Boca Raton, Florida 33432
Tel: (561) 864-1067

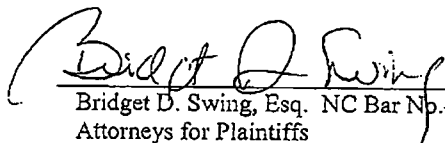
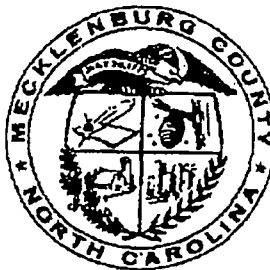

Bridget D. Swing, Esq. NC Bar No. 41622
Attorneys for Plaintiffs
111 East North Street
Greenville, South Carolina
Tel: (864) 551-4353

EXHIBIT A



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording and/or cancellation.

.....
Filed For Registration: 11/08/2006 09:45 AM
Book: RE 21330 Page: 814-816
Document No.: 2006233111
DEED 3 PGS \$17.00
Recorder: LYVANH PHETSARATH



2006233111

FOR REGISTRATION JUDITH H WILSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2008 NOV 03 03 45 AM
OK 21336 PG1014-016 PEE \$17.00
INSTRUMENT # 2006233111



Excise Tax -0-

Recording Time, Book and Page

Tax Lot Number 001 of 200-64-0304, 01, 09, 09 Parcel Identifier Number

Verified by _____ County on the _____ day of _____, 20____
by _____

Mail after recording to GRANTEE

This instrument was prepared by JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC

Brief description for the index: Lot 718 of Bridgehampton Subdivision

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 30th day of October, 2006 by and between

GRANTOR:	GRANTEE
JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC. f/a JOHN WIELAND HOMES AND NEIGHBORHOODS OF NORTH CAROLINA, INC. f/a JOHN WIELAND HOMES OF NORTH CAROLINA, INC., a Georgia corporation	Scott L. Butler and wife, Jacqueline Butler 30245 Camden Lane Fort Mill, SC 29715

The designation Grantor and Grantee as used herein shall include said parties their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of _____, Township, Mecklenburg County, North Carolina and more particularly described as follows:

BEING all of Lot 718 of Bridgehampton Subdivision, Phase 10, Map 3 as shown on plat recorded in Book 42 at Page 81 in the Mecklenburg County Public Registry.

The property herein above described was acquired by Grantor by instrument recorded in _____

A map showing the above-described property is recorded in Map Book/Plat Cabinet 42, page/file 81.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions herein stated. Title to the property herein above described is subject to the following:

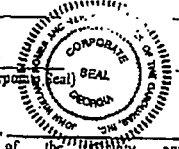
All such valid and enforceable easements and restrictions which may appear of record and the lien of ad valorem taxes for the current year which the Grantee hereby assumes and agrees to pay.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be affixed by authority of its Board of Directors, the day and year first above written.

JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC. _____ (Seal)

By: [Signature] _____ (Seal)
Vice President

And: [Signature] _____ (Seal)
Assistant Secretary



SEAL-STAMP

NORTH CAROLINA, _____ County.
I, a Notary of the _____ County and State aforesaid certify that
Grantor,
personally appeared before me this day and acknowledged the execution of the foregoing
instrument. Witness my hand and official stamp or seal, this _____ day of October, 2006.

My commission expires: _____ Notary Public



NORTH CAROLINA, MECKLENBURG County,
I, a Notary Public of the County and State aforesaid, certify that Michelle L. Bowling,
personally came before me this day and acknowledge that he/she is Assistant Secretary of
JOHN WIELAND HOMES AND NEIGHBORHOODS OF THE CAROLINAS, INC. a
Georgia corporation, and that by authority duly given and as the act of the corporation, the
foregoing instrument was signed in its name by John D. Feerer, its Vice President, sealed
with its corporate seal and attested by himself/herself as its Assistant Secretary.

Witness my hand and official stamp or seal, this 30th day of October, 2006.

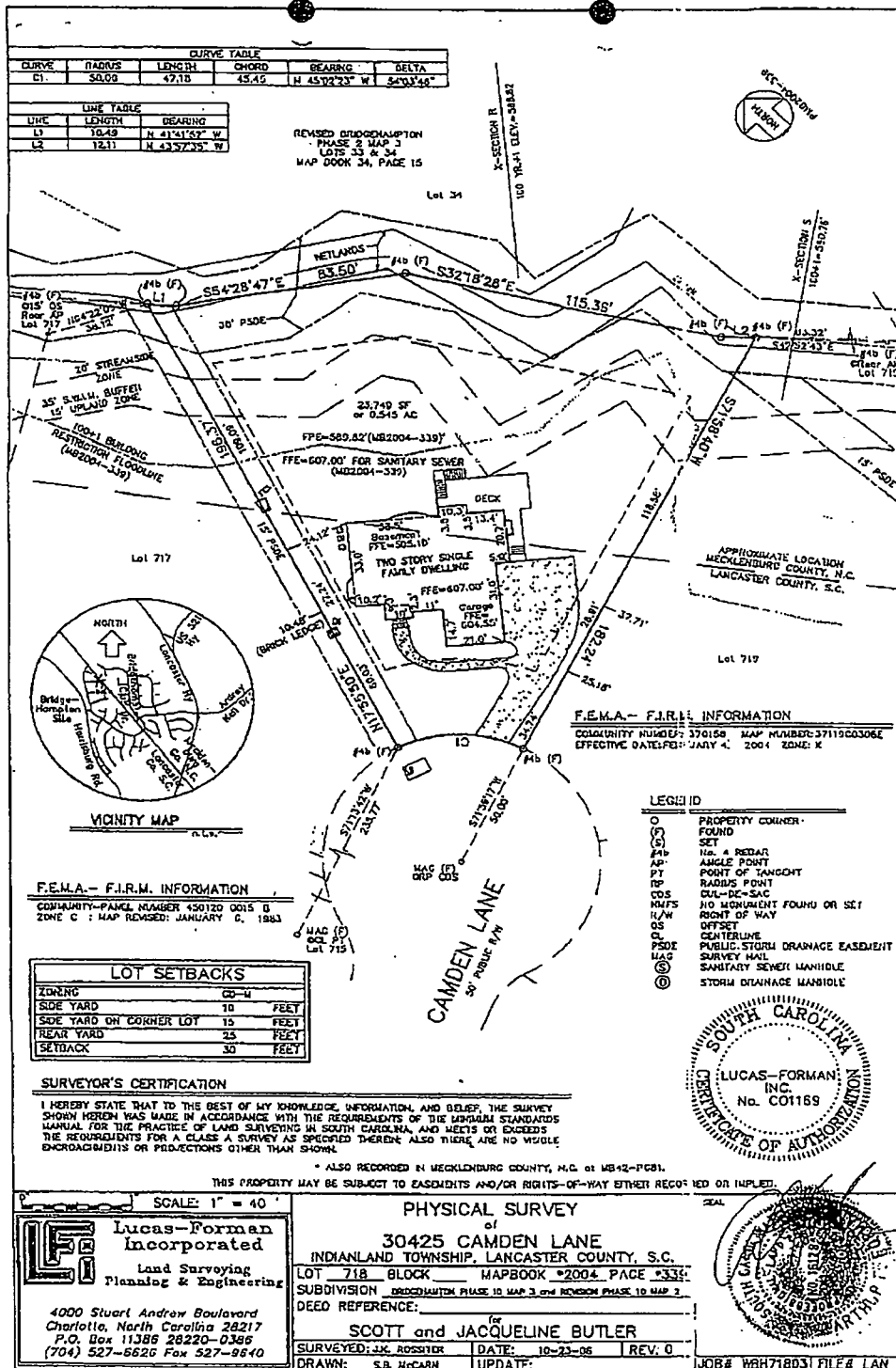
My commission expires: July 27, 2011 [Signature] Notary Public

The foregoing Certificate(s) of _____

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

REGISTER OF DEEDS FOR _____ COUNTY
By _____ Deputy/Assistant - Register of Deeds.

EXHIBIT B



SECURITY UNION

Vb BH-718-03

SURVEYOR'S INSPECTION REPORT

THIS IS TO CERTIFY, that I have made an accurate survey of the premises standing in the name of:
John Wieland Homes

Situated at *Indianland Township* *Lancaster* County, *South Carolina*

Known as Street Numbers *30425 CAMDEN LANE*

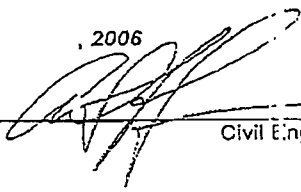
And shown on the accompanying survey entitled: *Physical Survey*

I made careful personal inspection of said premises and of the building located thereon at the time of making such survey, and from such inspection I found: *John Wieland Homes*
To be in possession of said premises as *Owner*

I further certify as to the existence or non-existence of the following:

- 1) Rights of way, old highways or abandoned roads, lanes or driveways, drains sewer or water pipes over and across said premises: *Drainage easement as shown on plat.*
- 2) Springs, streams, rivers, drainage ditches, ponds or lakes located, bordering on or running through said premises:
Wetlands as shown on plat.
- 3) Cemeteries or family burying grounds located on said premises: *None*
- 4) Telephone, telegraph or electric power poles, wires or lines, and pipe lines of every character, or railroad lines, located on or crossing said premises: *Possible Underground utility lines across Front.*
- 5) Disputed boundaries or encroachments. (Specify definitely whether buildings on surveyed premises encroach upon adjoining properties and whether buildings on adjoining properties encroach upon surveyed premises):
None
- 6) Are there indications of building construction, alterations or repairs within recent months?: *Yes*
- 7) Description of present improvements: *Two Story Single Family Dwelling*
- 8) Building or possession lines (In case of city or town property specify definitely as to whether or not walls are independent walls or party walls and as to all easements of support or "beam rights." In case of county property report as to fence lines.): *Monumentation as shown on plat*
- 9) Any changes in street lines either completed or officially proposed: *Not Reviewed by Me*
(a) Are there indication of recent street or sidewalk construction or repairs?: *None*
- 10) If any zoning or municipal regulations affect the use of the survey premises, do the improvements on the premises and the use made of them comply with such?: *Not Reviewed by Me*
- 11) If the surveyed premises are subject to covenants, do the improvements, use and occupancy comply with such?
(If premises are subject to restrictive covenants, have the examining attorney furnish you a verbatim copy of them.)
Not Reviewed by Me

Dated at this *23rd* day of *October*, *2006*



Civil Engineer or Land Surveyor

EXHIBIT C



FOR REGISTRATION JUDITH A. GIBSON
 REGISTER OF DEEDS
 MECKLENBURG COUNTY, NC
 2004 AUG 16 01:54 PM
 BK:42 PG:81-82 FEE:\$21.00

INSTRUMENT # 2004177411



2004177411

JUDITH A. GIBSON
 REGISTER OF DEEDS, MECKLENBURG
 COUNTY & COURTS OFFICE BUILDING
 720 EAST FOURTH STREET
 CHARLOTTE, NC 28202

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.....
 Filed For Registration: 08/16/2004 01:54 PM
 Book: MAP 42 Page: 81-82
 Document No.: 2004177411
 MAP/R 2 PGS \$21.00
 Recorder: TERESITA BYRUM



2004177411

000628

LAW OFFICE OF BRIDGET D. SWING, LLC

P.O. BOX 8246
GREENVILLE, SC 29604
(864) 551-4353

WELLS FARGO BANK, N.A.
66-21/530

6-3-2016

PAY TO THE ORDER OF South Carolina Court of Appeals \$ 50⁰⁰
Fifty dollars DOLLARS

MEMO Filing fees
mt. continue time
Superior court

Bridget D. Swing

⑈000628⑈ ⑆053000219⑆ 200006234439⑈

THIS DOCUMENT CONTAINS A COLORED BACKGROUND ON WHITE PAPER. MICROPRINT IS LOCATED BELOW THIS MARKING BAND.

LAW OFFICE OF BRIDGET D. SWING, LLC/P.O. BOX 8246

000628

RECEIVED

JUN 03 2016

SC Court of Appeals

LAW OFFICE OF BRIDGET D. SWING, LLC/P.O. BOX 8246

000628



10192



Law Office of
Bridget D Swing, LLC

BRIDGET D. SWING
Attorney
licensed in SC & NC

SC tel & fax: 864-551-4353

email: BSwingLaw@gmail.com

RECEIVED

June 3, 2016

JUN 03 2016

SC Court of Appeals

The Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia SC, 29201

RE: New York Community Bank, Respondents vs. Scott L. Butler and Jacqueline Butler,
Appellants.
Civil Action # 12-CP-29-0892
Appellate Case# 2016-000744

Dear Ms. Kitchings:

Enclosed for filing please find Appellants Motion for Supersedeas. Our check for \$25.00 is enclosed as the required motion fee.

I am also requesting an additional thirty day extension of time from the current June 8th deadline to file and serve its initial brief and designation of matter in the above-referenced case. This is the second request for an extension of time by the Respondent to file its initial brief and designation. This request is based on the fact that Appellants are currently waiting on this Court's decision on its Motion for Leave to file a 60(b) motion.

Based on our calculations, the new deadline would be Friday, July 8, 2016. I have spoken to opposing counsel, Ms. Creech, and she has no objection to the extension. Our check for \$25.00 is enclosed as the required motion fee for this continuation request. We thank the Court in advance for its consideration of these requests.

Sincerely,

Bridget D. Swing

CC: Ms. Magalie A. Creech, Esq., Finkel Law Firm, 4000 Faber Place, Suite 450, North Charleston, SC 29405; Adam Tesch, 1900 Barnwell Street, Columbia, SC 29201

P.O. Box 8246
Greenville, SC 29604

111 E. North Street
Greenville SC 29601

FAX

FROM

Test Extension
Law Office of Bridget Swing
PO Box 8246
Greenville
SC 29604-8246

Phone (864) 551-4353
Fax Number

DATE 06/03/2016

NOTE

TO

Shelby
South Carolina Court of Appeals

Phone
Fax Number

RECEIVED

JUN 03 2016

South Carolina Court of Appeals